

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2245

H.P. 1601

House of Representatives, May 27, 1999

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### An Act to Adopt the Model Revised Article 9 Secured Transactions.

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Submitted by the Secretary of State pursuant to Joint Rule 204.  
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.  
Cosponsored by Senator LONGLEY of Waldo.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **PART A**

6 **Sec. A-1. 11 MRSA art. 9, as amended, is repealed.**

8 **Sec. A-2. 11 MRSA art. 9-A is enacted to read:**

10 **Article 9-A**

12 **TRANSACTIONS**

14 **PART 1**

16 **GENERAL PROVISIONS**

18 **SUBPART 1**

20 **SHORT TITLE, DEFINITIONS AND GENERAL CONCEPTS**

22 **§9-1101. Short title**

24 This Article may be cited as "Uniform Commercial  
26 Code-Secured Transactions."

28 **Official Comment**

30 1. Source. This Article supersedes former Uniform  
32 Commercial Code (UCC) Article 9. As did its predecessor, it  
34 provides a comprehensive scheme for the regulation of security  
36 interests in personal property and fixtures. For the most part  
38 this Article follows the general approach and retains much of the  
40 terminology of former Article 9. In addition to describing many  
42 aspects of the operation and interpretation of this Article,  
44 these Comments explain the material changes that this Article  
46 makes to former Article 9. Former Article 9 superseded the wide  
48 variety of pre-UCC security devices. Unlike the Comments to  
50 former Article 9, however, these Comments dwell very little on  
the pre-UCC state of the law. For that reason, the Comments to  
former Article 9 will remain of substantial historical value and  
interest. They also will remain useful in understanding the  
background and general conceptual approach of this Article.

Citations to "Bankruptcy Code Section \_\_\_\_" in these  
Comments are to Title 11 of the United States Code as in effect  
on December 31, 1998.

2. Background and History. In 1990, the Permanent  
Editorial Board for the UCC with the support of its sponsors, The

2 American Law Institute and the National Conference of  
Commissioners on Uniform State Laws, established a committee to  
4 study Article 9 of the UCC. The study committee issued its  
report as of December 1, 1992, recommending the creation of a  
6 drafting committee for the revision of Article 9 and also  
recommending numerous specific changes to Article 9. Organized  
in 1993, a drafting committee met fifteen times from 1993 to  
8 1998. This Article was approved by its sponsors in 1998.

10 3. Reorganization and Renumbering; Captions; Style. This  
Article reflects a substantial reorganization of former Article 9  
12 and renumbering of most sections. New Part 4 deals with several  
aspects of third-party rights and duties that are unrelated to  
14 perfection and priority. Some of these were covered by Part 3 of  
former Article 9. Part 5 deals with filing (covered by former  
16 Part 4) and Part 6 deals with default and enforcement (covered by  
former Part 5). Appendix I contains conforming revisions to  
18 other Articles of the UCC, and Appendix II contains model  
provisions for production-money priority.

20 This Article also includes headings for the subsections as  
22 an aid to readers. Unlike section captions, which are part of  
the UCC, see Section 1-109, subsection headings are not a part of  
24 the official text itself and have not been approved by the  
sponsors. Each jurisdiction in which this Article is introduced  
26 may consider whether to adopt the headings as a part of the  
statute and whether to adopt a provision clarifying the effect,  
28 if any, to be given to the headings. This Article also has been  
conformed to current style conventions.

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

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

38 Deposit accounts. Section 9-109 [Maine cite section 9-1109]  
includes within this Article's scope deposit accounts as original  
40 collateral, except in consumer transactions. Former Article 9  
dealt with deposit accounts only as proceeds of other collateral.

42 Sales of payment intangibles and promissory notes. Section  
44 9-109 [Maine cite section 9-1109] also includes within the scope  
of this Article most sales of "payment intangibles" (defined in  
46 Section 9-102 [Maine cite section 9-1102] as general intangibles  
under which an account debtor's principal obligation is monetary)  
48 and "promissory notes" (also defined in Section 9-102 [Maine cite  
section 9-1102]). Former Article 9 included sales of accounts  
50 and chattel paper, but not sales of payment intangibles or



promissory notes. In its inclusion of sales of payment  
2 intangibles and promissory notes, this Article continues the  
drafting convention found in former Article 9; it provides that  
4 the sale of accounts, chattel paper, payment intangibles, or  
promissory notes creates a "security interest." The definition  
6 of "account" in Section 9-102 [Maine cite section 9-1102] also  
has been expanded to include various rights to payment that were  
8 general intangibles under former Article 9.

10 Health-care-insurance receivables. Section 9-109 [Maine  
cite section 9-1109] narrows Article 9's exclusion of transfers  
12 of interests in insurance policies by carving out of the  
exclusion "health-care-insurance receivables" (defined in Section  
14 9-102 [Maine cite section 9-1102]). A health-care-insurance  
receivable is included within the definition of "account" in  
16 Section 9-102 [Maine cite section 9-1102].

18 Nonpossessory statutory agricultural liens. Section 9-109  
[Maine cite section 9-1109] also brings nonpossessory statutory  
20 agricultural liens within the scope of Article 9 [Maine cite  
Article 9-A].

22 Consignments. Section 9-109 [Maine cite section 9-1109]  
24 provides that "true" consignments--bailments for the purpose of  
sale by the bailee--are security interests covered by Article 9  
26 [Maine cite Article 9-A], with certain exceptions. See Section  
9-102 [Maine cite section 9-1102] (defining "consignment").  
28 Currently, many consignments are subject to Article 9's filing  
requirements by operation of former Section 2326.

30 Supporting obligations and property securing rights to  
32 payment. This Article also addresses explicitly (i) obligations,  
such as guaranties and letters of credit, that support payment or  
34 performance of collateral such as accounts, chattel paper, and  
payment intangibles, and (ii) any property (including real  
36 property) that secures a right to payment or performance that is  
subject to an Article 9 security interest. See Sections 9-203,  
38 9-308 [Maine cite sections 9-1203, 9-1308].

40 Commercial tort claims. Section 9-109 [Maine cite section  
9-1109] expands the scope of Article 9 [Maine cite Article 9-A]  
42 to include the assignment of commercial tort claims by narrowing  
the exclusion of tort claims generally. However, this Article  
44 continues to exclude tort claims for bodily injury and other  
non-business tort claims of a natural person. See Section 9-102  
46 [Maine cite section 9-1102] (defining "commercial tort claim").

48 Transfers by States and governmental units of States.  
Section 9-109 [Maine cite section 9-1109] narrows the exclusion  
50 of transfers by States and their governmental units. It excludes

2 only transfers covered by another statute (other than a statute  
generally applicable to security interests) to the extent the  
4 statute governs the creation, perfection, priority, or  
enforcement of security interests.

6 Nonassignable general intangibles, promissory notes,  
health-care-insurance receivables, and letter-of-credit rights.  
8 This Article enables a security interest to attach to  
letter-of-credit rights, health-care-insurance receivables,  
10 promissory notes, and general intangibles, including contracts,  
permits, licenses, and franchises, notwithstanding a contractual  
12 or statutory prohibition against or limitation on assignment.  
This Article explicitly protects third parties against any  
14 adverse effect of the creation or attempted enforcement of the  
security interest. See Sections 9-408, 9-409 [Maine cite  
16 sections 9-1408 and 9-1409].

18 Subject to Sections 9-408 and 9-409 [Maine cite sections  
9-1408 and 9-1409] and two other exceptions (Sections 9-406  
20 [Maine cite section 9-1406], concerning accounts, chattel paper,  
and payment intangibles, and 9-407 [Maine cite section 9-1407],  
22 concerning interests in leased goods), Section 9-401 [Maine cite  
section 9-1401] establishes a baseline rule that the inclusion of  
24 transactions and collateral within the scope of Article 9 [Maine  
cite Article 9-A] has no effect on non-Article 9 law dealing with  
26 the alienability or inalienability of property. For example, if  
a commercial tort claim is nonassignable under other applicable  
28 law, the fact that a security interest in the claim is within the  
scope of Article 9 [Maine cite Article 9-A] does not override the  
30 other applicable law's effective prohibition of assignment.

32 b. Duties of Secured Party. This Article provides for  
expanded duties of secured parties.

34 Release of control. Section 9-208 [Maine cite 9-1208]  
36 imposes upon a secured party having control of a deposit account,  
investment property, or a letter-of-credit right the duty to  
38 release control when there is no secured obligation and no  
commitment to give value. Section 9-209 [Maine cite section  
40 9-1209] contains analogous provisions when an account debtor has  
been notified to pay a secured party.

42 Information. Section 9-210 [Maine cite section 9-1210]  
44 expands a secured party's duties to provide the debtor with  
information concerning collateral and the obligations that it  
46 secures.

48 Default and enforcement. Part 6 also includes some  
additional duties of secured parties in connection with default  
50 and enforcement. See, e.g., Section 9-616 [Maine cite section

2 9-1616] (duty to explain calculation of deficiency or surplus in  
a consumer-goods transaction).

4 c. Choice of Law. The choice-of-law rules for the law  
governing perfection, the effect of perfection or  
6 nonperfection, and priority are found in Part 3, Subpart 1  
(Sections 9-301 through 9-307 [Maine cite sections 9-1301 to  
8 9-1307]). See also Section 9-316 [Maine cite section  
9-1316].

10 Where to file: Location of debtor. This Article changes  
12 the choice-of-law rule governing perfection (i.e., where to file)  
for most collateral to the law of the jurisdiction where the  
14 debtor is located. See Section 9-301 [Maine cite section  
9-1301]. Under former Article 9, the jurisdiction of the  
16 debtor's location governed only perfection and priority of a  
security interest in accounts, general intangibles, mobile goods,  
18 and, for purposes of perfection by filing, chattel paper and  
investment property.

20 Determining debtor's location. As a baseline rule, Section  
22 9-307 [Maine cite section 9-1307] follows former Section 9-103,  
under which the location of the debtor is the debtor's place of  
24 business (or chief executive office, if the debtor has more than  
one place of business). Section 9-307 [Maine cite section  
26 9-1307] contains three major exceptions. First, a "registered  
organization," such as a corporation or limited liability  
28 company, is located in the State under whose law the debtor is  
organized, e.g., a corporate debtor's State of incorporation.  
30 Second, an individual debtor is located at his or her principal  
residence. Third, there are special rules for determining the  
32 location of the United States and registered organizations  
organized under the law of the United States.

34 Location of non-U.S. debtors. If, applying the foregoing  
36 rules, a debtor is located in a jurisdiction whose law does not  
require public notice as a condition of perfection of a  
38 nonpossessory security interest, the entity is deemed located in  
the District of Columbia. See Section 9-307 [Maine cite section  
40 9-1307]. Thus, to the extent that this Article applies to  
non-U.S. debtors, perfection could be accomplished in many cases  
42 by a domestic filing.

44 Priority. For tangible collateral such as goods and  
instruments, Section 9-301 [Maine cite section 9-1301] provides  
46 that the law applicable to priority and the effect of perfection  
or nonperfection will remain the law of the jurisdiction where  
48 the collateral is located, as under former Section 9-103 (but  
without the confusing "last event" test). For intangible

2 collateral, such as accounts, the applicable law for priority  
will be that of the jurisdiction in which the debtor is located.

4 Possessory security interests; agricultural liens.  
6 Perfection, the effect of perfection or nonperfection, and  
priority of a possessory security interest or an agricultural  
8 lien are governed by the law of the jurisdiction where the  
collateral subject to the security interest or lien is located.  
10 See Sections 9-301, 9-302 [Maine cite sections 9-1301, 9-1302].

12 Goods covered by certificates of title; deposit accounts;  
letter-of-credit rights; investment property. This Article  
14 includes several refinements to the treatment of choice-of-law  
matters for goods covered by certificates of title. See Section  
16 9-303 [Maine cite section 9-1303]. It also provides special  
choice-of-law rules, similar to those for investment property  
18 under current Articles 8 and 9, for deposit accounts (Section  
9-304) [Maine cite section 9-1304], investment property (Section  
20 9-305) [Maine cite section 9-1305], and letter-of-credit rights  
(Section 9-306) [Maine cite section 9-1306].

22 Change in applicable law. Section 9-316 [Maine cite section  
24 9-1316] addresses perfection following a change in applicable law.

26 d. Perfection. The rules governing perfection of security  
interests and agricultural liens are found in Part 3,  
28 Subpart 2 (Sections 9-308 through 9-316) [Maine cite sections  
9-1308 to 9-1316].

30 Deposit accounts; letter-of-credit rights. With certain  
32 exceptions, this Article provides that a security interest in a  
deposit account or a letter-of-credit right may be perfected only  
34 by the secured party's acquiring "control" of the deposit account  
or letter-of-credit right. See Sections 9-312, 9-314 [Maine cite  
36 sections 9-1312, 9-1314]. Under Section 9-104 [Maine cite  
section 9-1104], a secured party has "control" of a deposit  
38 account when, with the consent of the debtor, the secured party  
obtains the depository bank's agreement to act on the secured  
40 party's instructions (including when the secured party becomes  
the account holder) or when the secured party is itself the  
42 depository bank. The control requirements are patterned on  
Section 8-106, which specifies the requirements for control of  
44 investment property. Under Section 9-107 [Maine cite section  
9-1107], "control" of a letter-of-credit right occurs when the  
46 issuer or nominated person consents to an assignment of proceeds  
under Section 5-114.

48 Electronic chattel paper. Section 9-102 [Maine cite section  
50 9-1102] includes a new defined term: "electronic chattel  
paper." Electronic chattel paper is a record or records

2 consisting of information stored in an electronic medium (i.e.,  
it is not written). Perfection of a security interest in  
4 electronic chattel paper may be by control or filing. See  
Sections 9-105 [Maine cite section 9-1105] (sui generis  
6 definition of control of electronic chattel paper), 9-312 [Maine  
cite section 9-1312] (perfection by filing), 9-314 [Maine cite  
section 9-1314] (perfection by control).

8  
Investment property. The perfection requirements for  
10 "investment property" (defined in Section 9-102) [Maine cite  
section 9-1102], including perfection by control under Section  
12 9-106 [Maine cite section 9-1106], remain substantially  
unchanged. However, a new provision in Section 9-314 [Maine cite  
14 section 9-1314] is designed to ensure that a secured party  
retains control in "repledge" transactions that are typical in  
16 the securities markets.

18 Instruments, agricultural liens, and commercial tort  
claims. This Article expands the types of collateral in which a  
20 security interest may be perfected by filing to include  
instruments. See Section 9-312 [Maine cite section 9-1312].  
22 Agricultural liens and security interests in commercial tort  
claims also are perfected by filing, under this Article. See  
24 Sections 9-308, 9-310 [Maine cite sections 9-1308, 9-310].

26 Sales of payment intangibles and promissory notes.  
Although former Article 9 covered the outright sale of accounts  
28 and chattel paper, sales of most other types of receivables also  
are financing transactions to which Article 9 [Maine cite Article  
30 9-A] should apply. Accordingly, Section 9-102 [Maine cite  
section 9-1102] expands the definition of "account" to include  
32 many types of receivables (including "health-care-insurance  
receivables," defined in Section 9-102) [Maine cite section  
34 9-1102] that former Article 9 classified as "general  
intangibles." It thereby subjects to Article 9's [Maine cite  
36 Article 9-A] filing system sales of more types of receivables  
than did former Article 9. Certain sales of payment  
38 intangibles--primarily bank loan participation  
transactions--should not be subject to the Article 9 [Maine cite  
40 Article 9-A] filing rules. These transactions fall in a residual  
category of collateral, "payment intangibles" (general  
42 intangibles under which the account debtor's principal obligation  
is monetary), the sale of which is exempt from the filing  
44 requirements of Article 9 [Maine cite Article 9-A]. See Sections  
9-102, 9-109, 9-309 [Maine cite sections 9-1102, 9-1109, 9-1309]  
46 (perfection upon attachment). The perfection rules for sales of  
promissory notes are the same as those for sales of payment  
48 intangibles.

2           Possessory security interests. Several provisions of  
3 this Article address aspects of security interests involving a  
4 secured party or a third party who is in possession of the  
5 collateral. In particular, Section 9-313 [Maine cite section  
6 9-1313] resolves a number of uncertainties under former Section  
7 9-305. It provides that a security interest in collateral in the  
8 possession of a third party is perfected when the third party  
9 acknowledges in an authenticated record that it holds for the  
10 secured party's benefit. Section 9-313 [Maine cite section  
11 9-1313] also provides that a third party need not so acknowledge  
12 and that its acknowledgment does not impose any duties on it,  
13 unless it otherwise agrees. A special rule in Section 9-313  
14 [Maine cite section 9-1313] provides that if a secured party  
15 already is in possession of collateral, its security interest  
16 remains perfected by possession if it delivers the collateral to  
17 a third party and the collateral is accompanied by instructions  
18 to hold it for the secured party or to redeliver it to the  
19 secured party. Section 9-313 [Maine cite section 9-1313] also  
20 clarifies the limited circumstances under which a security  
21 interest in goods covered by a certificate of title may be  
22 perfected by the secured party's taking possession.

23           Automatic perfection. Section 9-309 [Maine cite section  
24 9-1309] lists various types of security interests as to which no  
25 public-notice step is required for perfection (e.g.,  
26 purchase-money security interests in consumer goods other than  
27 automobiles). This automatic perfection also extends to a  
28 transfer of a health-care-insurance receivable to a health-care  
29 provider. Those transfers normally will be made by natural  
30 persons who receive health-care services; there is little value  
31 in requiring filing for perfection in that context. Automatic  
32 perfection also applies to security interests created by sales of  
33 payment intangibles and promissory notes. Section 9-308 [Maine  
34 cite section 9-1308] provides that a perfected security interest  
35 in collateral supported by a "supporting obligation" (such as an  
36 account supported by a guaranty) also is a perfected security  
37 interest in the supporting obligation, and that a perfected  
38 security interest in an obligation secured by a security interest  
39 or lien on property (e.g., a real-property mortgage) also is a  
40 perfected security interest in the security interest or lien.

41           e. Priority; Special Rules for Banks and Deposit Accounts.  
42 The rules governing priority of security interests and  
43 agricultural liens are found in Part 3, Subpart 3 (Sections  
44 9-317 through 9-342) [Maine cite sections 9-1317 to  
45 9-1342]. This Article includes several new priority rules  
46 and some special rules relating to banks and deposit  
47 accounts (Sections 9-340 through 9-342) [Maine cite sections  
48 9-1340 to 9-1342].  
49

50

2 Purchase-money security interests: General; consumer-goods  
3 transactions; inventory. Section 9-103 [Maine cite section  
4 9-1103] substantially rewrites the definition of purchase-money  
5 security interest (PMSI) (although the term is not formally  
6 "defined"). The substantive changes, however, apply only to  
7 non-consumer-goods transactions. (Consumer transactions and  
8 consumer-goods transactions are discussed below in Comment 4.j.)  
9 For non-consumer-goods transactions, Section 9-103 [Maine cite  
10 section 9-1103] makes clear that a security interest in  
11 collateral may be (to some extent) both a PMSI as well as a  
12 non-PMSI, in accord with the "dual status" rule applied by some  
13 courts under former Article 9 (thereby rejecting the  
14 "transformation" rule). The definition provides an even broader  
15 conception of a PMSI in inventory, yielding a result that accords  
16 with private agreements entered into in response to the  
17 uncertainty under former Article 9. It also treats consignments  
18 as purchase-money security interests in inventory. Section 9-324  
19 [Maine cite section 9-1324] revises the PMSI priority rules, but  
20 for the most part without material change in substance. Section  
21 9-324 [Maine cite section 9-1324] also clarifies the priority  
22 rules for competing PMSIs in the same collateral.

23 Purchase-money security interests in livestock; agricultural  
24 liens. Section 9-324 [Maine cite section 9-1324] provides a  
25 special PMSI priority, similar to the inventory PMSI priority  
26 rule, for livestock. Section 9-322 [Maine cite section 9-1322]  
27 (which contains the baseline first-to-file-or-perfect priority  
28 rule) also recognizes special non-Article 9 priority rules for  
29 agricultural liens, which can override the baseline first-in-time  
30 rule.

31 Purchase-money security interests in software. Section  
32 9-324 [Maine cite section 9-1324] contains a new priority rule  
33 for a software purchase-money security interest. (Section 9-102  
34 [Maine cite section 9-1102] includes a definition of  
35 "software.") Under Section 9-103 [Maine cite section 9-1102], a  
36 software PMSI includes a PMSI in software that is used in goods  
37 that are also subject to a PMSI. (Note also that the definition  
38 of "chattel paper" has been expanded to include records that  
39 evidence a monetary obligation and a security interest in  
40 specific goods and software used in the goods.)  
41

42 Investment property. The priority rules for investment  
43 property are substantially similar to the priority rules found in  
44 former Section 9-115 [Maine cite section 9-1115], which was added  
45 in conjunction with the 1994 revisions to UCC Article 8. Under  
46 Section 9-328 [Maine cite section 9-1328], if a secured party has  
47 control of investment property (Sections 8-106, 9-106) [Maine  
48 cite section 9-1106], its security interest is senior to a  
49 security interest perfected in another manner (e.g., by filing).  
50

2 Also under Section 9-328 [Maine cite section 9-1328], security  
interests perfected by control generally rank according to the  
4 time that control is obtained or, in the case of a security  
entitlement or a commodity contract carried in a commodity  
6 account, the time when the control arrangement is entered into.  
This is a change from former Section 9-115, under which the  
8 security interests ranked equally. However, as between a  
securities intermediary's security interest in a security  
10 entitlement that it maintains for the debtor and a security  
interest held by another secured party, the securities  
intermediary's security interest is senior.

12  
14 Deposit accounts. This Article's priority rules applicable  
to deposit accounts are found in Section 9-327 [Maine cite  
section 9-1327]. They are patterned on and are similar to those  
16 for investment property in former Section 9-115 and Section 9-328  
of this Article. Under Section 9-327 [Maine cite section  
18 9-1327], if a secured party has control of a deposit account, its  
security interest is senior to a security interest perfected in  
20 another manner (i.e., as cash proceeds). Also under Section  
9-327 [Maine cite section 9-1327], security interests perfected  
22 by control rank according to the time that control is obtained,  
but as between a depository bank's security interest and one held  
24 by another secured party, the depository bank's security interest  
is senior. A corresponding rule in Section 9-340 [Maine cite  
26 section 9-1340] makes a depository bank's right of set-off  
generally senior to a security interest held by another secured  
28 party. However, if the other secured party becomes the  
depository bank's customer with respect to the deposit account,  
30 then its security interest is senior to the depository bank's  
security interest and right of set-off. Sections 9-327, 9-340  
32 [Maine cite sections 9-1327, 9-1340].

34 Letter-of-credit rights. The priority rules for security  
interests in letter-of-credit rights are found in Section 9-329  
36 [Maine cite section 9-1329]. They are somewhat analogous to  
those for deposit accounts. A security interest perfected by  
38 control has priority over one perfected in another manner (i.e.,  
as a supporting obligation for the collateral in which a security  
40 interest is perfected). Security interests in a letter-of-credit  
right perfected by control rank according to the time that  
42 control is obtained. However, the rights of a transferee  
beneficiary or a nominated person are independent and superior to  
44 the extent provided in Section 5-114. See Section 9-109(c)(4)  
[Maine cite section 9-1109, subsection (3), paragraph (d)].

46  
48 Chattel paper and instruments. Section 9-330 [Maine cite  
section 9-1330] is the successor to former Section 9-308. As  
under former Section 9-308, differing priority rules apply to  
50 purchasers of chattel paper who give new value and take



2 possession (or, in the case of electronic chattel paper, obtain  
control) of the collateral depending on whether a conflicting  
4 security interest in the collateral is claimed merely as  
proceeds. The principal change relates to the role of knowledge  
6 and the effect of an indication of a previous assignment of the  
collateral. Section 9-330 [Maine cite section 9-1330] also  
8 affords priority to purchasers of instruments who take possession  
in good faith and without knowledge that the purchase violates  
10 the rights of the competing secured party. In addition, to  
qualify for priority, purchasers of chattel paper, but not of  
instruments, must purchase in the ordinary course of business.

12  
14 Proceeds. Section 9-322 [Maine cite section 9-1322]  
contains new priority rules that clarify when a special priority  
16 of a security interest in collateral continues or does not  
continue with respect to proceeds of the collateral. Other  
refinements to the priority rules for proceeds are included in  
18 Sections 9-324 [Maine cite section 9-1324] (purchase-money  
security interest priority) and 9-330 [Maine cite section 9-1330]  
20 (priority of certain purchasers of chattel paper and instruments).

22 Miscellaneous priority provisions. This Article also  
includes (i) clarifications of selected good-faith-purchase and  
24 similar issues (Sections 9-317, 9-331) [Maine cite sections  
9-1317, 9-1331]; (ii) new priority rules to deal with the "double  
26 debtor" problem arising when a debtor creates a security interest  
in collateral acquired by the debtor subject to a security  
28 interest created by another person (Section 9-325) [Maine cite  
section 9-1325]; (iii) new priority rules to deal with the  
30 problems created when a change in corporate structure or the like  
results in a new entity that has become bound by the original  
32 debtor's after-acquired property agreement (Section 9-326) [Maine  
cite section 9-1326]; (iv) a provision enabling most transferees  
34 of funds from a deposit account or money to take free of a  
security interest (Section 9-332) [Maine cite section 9-1332];  
36 (v) substantially rewritten and refined priority rules dealing  
with accessions and commingled goods (Sections 9-335, 9-336)  
38 [Maine cite sections 9-1335, 9-1336]; (vi) revised priority rules  
for security interests in goods covered by a certificate of title  
40 (Section 9-337) [Maine cite section 9-1337]; and (vii) provisions  
designed to ensure that security interests in deposit accounts  
42 will not extend to most transferees of funds on deposit or payees  
from deposit accounts and will not otherwise "clog" the payments  
44 system (Sections 9-341, 9-342) [Maine cite sections 9-1341,  
9-1342].

46  
48 Model provisions relating to production-money security  
interests. Appendix II to this Article contains model  
definitions and priority rules relating to "production-money  
50 security interests" held by secured parties who give new value

2 used in the production of crops. Because no consensus emerged on  
the wisdom of these provisions during the drafting process, the  
sponsors make no recommendation on whether these model provisions  
4 should be enacted.

6 f. Proceeds. Section 9-102 [Maine cite section 9-1102]  
contains an expanded definition of "proceeds" of collateral  
8 which includes additional rights and property that arise out  
of collateral, such as distributions on account of  
10 collateral and claims arising out of the loss or  
nonconformity of, defects in, or damage to collateral. The  
12 term also includes collections on account of "supporting  
obligations," such as guarantees.

14 g. Part 4: Additional Provisions Relating to Third-Party  
Rights. New Part 4 contains several provisions relating to  
16 the relationships between certain third parties and the  
parties to secured transactions. It contains new Sections  
18 9-401 [Maine cite section 9-1401] (replacing former Section  
9-311) (alienability of debtor's rights), 9-402 [Maine cite  
20 section 9-1402] (replacing former Section 9-317) (secured  
party not obligated on debtor's contracts), 9-403 [Maine  
22 cite section 9-1403] (replacing former Section 9-206)  
(agreement not to assert defenses against assignee), 9-404,  
24 9-405, and 9-406 [Maine cite sections 9-1404, 9-1405 and  
9-1406] (replacing former Section 9-318) (rights acquired by  
26 assignee, modification of assigned contract, discharge of  
account debtor, restrictions on assignment of account,  
28 chattel paper, promissory note, or payment intangible  
ineffective), 9-407 [Maine cite section 9-1407] (replacing  
30 some provisions of former Section 2A-303) (restrictions on  
creation or enforcement of security interest in leasehold  
32 interest or lessor's residual interest ineffective). It  
also contains new Sections 9-408 [Maine cite section 9-1408]  
34 (restrictions on assignment of promissory notes,  
health-care-insurance receivables ineffective, and certain  
36 general intangibles ineffective) and 9-409 [Maine cite  
section 9-1409] (restrictions on assignment of  
38 letter-of-credit rights ineffective), which are discussed  
40 above.

42 h. Filing. Part 5 (formerly Part 4) of Article 9 [Maine  
cite Article 9-A] has been substantially rewritten to  
44 simplify the statutory text and to deal with numerous  
problems of interpretation and implementation that have  
46 arisen over the years.

48 Medium-neutrality. This Article is "medium-neutral"; that  
is, it makes clear that parties may file and otherwise

2 communicate with a filing office by means of records communicated  
and stored in media other than on paper.

4 Identity of person who files a record; authorization. Part  
5 is largely indifferent as to the person who effects a filing.  
6 Instead, it addresses whose authorization is necessary for a  
person to file a record with a filing office. The filing scheme  
8 does not contemplate that the identity of a "filer" will be a  
part of the searchable records. This approach is consistent  
10 with, and a necessary aspect of, eliminating signatures or other  
evidence of authorization from the system (except to the extent  
12 that filing offices may choose to employ authentication  
procedures in connection with electronic communications). As  
14 long as the appropriate person authorizes the filing, or, in the  
case of a termination statement, the debtor is entitled to the  
16 termination, it is largely insignificant whether the secured  
party or another person files any given record.

18  
20 Section 9-509 [Maine cite section 9-1509] collects in one  
place most of the rules that determine when a record may be  
22 filed. In general, the debtor's authorization is required for  
the filing of an initial financing statement or an amendment that  
24 adds collateral. With one further exception, a secured party of  
record's authorization is required for the filing of other  
26 amendments. The exception arises if a secured party has failed  
to provide a termination statement that is required because there  
28 is no outstanding secured obligation or commitment to give  
value. In that situation, a debtor is authorized to file a  
30 termination statement indicating that it has been filed by the  
debtor.

32 Financing statement formal requisites. The formal  
requisites for a financing statement are set out in Section 9-502  
34 [Maine cite section 9-1502]. A financing statement must provide  
the name of the debtor and the secured party and an indication of  
36 the collateral that it covers. Sections 9-503 and 9-506 [Maine  
cite sections 9-1503, 9-1506] address the sufficiency of a name  
38 provided on a financing statement and clarify when a debtor's  
name is correct and when an incorrect name is insufficient.  
40 Section 9-504 addresses the indication of collateral covered.  
Under Section 9-504 [Maine cite section 9-1504], a super-generic  
42 description (e.g., "all assets" or "all personal property") in a  
financing statement is a sufficient indication of the  
44 collateral. (Note, however, that a super-generic description is  
inadequate for purposes of a security agreement. See Sections  
46 9-108, 9-203.) [Maine cite sections 9-1108, 9-1203] To facilitate  
electronic filing, this Article does not require that the  
48 debtor's signature or other authorization appear on a financing  
statement. Instead, it prohibits the filing of unauthorized  
50 financing statements and imposes liability upon those who violate

2 the prohibition. See Sections 9-509, 9-626 [Maine cite sections  
2 9-1509, 9-1626].

4 Filing-office operations. Part 5 contains several  
6 provisions governing filing operations. First, it prohibits the  
6 filing office from rejecting an initial financing statement or  
8 other record for a reason other than one of the few that are  
8 specified. See Sections 9-520, 9-516 [Maine cite sections  
10 9-1520, 9-1516]. Second, the filing office is obliged to link  
10 all subsequent records (e.g., assignments, continuation  
12 statements, etc.) to the initial financing statement to which  
12 they relate. See Section 9-519 [Maine cite section 9-1519].  
14 Third, the filing office may delete a financing statement and  
14 related records from the files no earlier than one year after  
16 lapse (lapse normally is five years after the filing date), and  
16 then only if a continuation statement has not been filed. See  
18 Sections 9-515, 9-519, 9-522 [Maine cite sections 9-1515, 9-1519,  
18 9-1522]. Thus, a financing statement and related records would  
20 be discovered by a search of the files even after the filing of a  
20 termination statement. This approach helps eliminate  
22 filing-office discretion and also eases problems associated with  
22 multiple secured parties and multiple partial assignments.  
24 Fourth, Part 5 mandates performance standards for filing  
24 offices. See Sections 9-519, 9-520, 9-523 [Maine cite sections  
26 9-1519, 9-1520, 9-1523]. Fifth, it provides for the promulgation  
26 of filing-office rules to deal with details best left out of the  
28 statute and requires the filing office to submit periodic  
28 reports. See Sections 9-526, 9-527 [Maine cite sections 9-1526,  
30 9-1527].

30 Correction of records: Defaulting or missing secured  
32 parties and fraudulent filings. In some areas of the country,  
32 serious problems have arisen from fraudulent financing statements  
34 that are filed against public officials and other persons. This  
34 Article addresses the fraud problem by providing the opportunity  
36 for a debtor to file a termination statement when a secured party  
36 wrongfully refuses or fails to provide a termination statement.  
38 See Section 9-509 [Maine cite section 9-1509]. This opportunity  
38 also addresses the problem of secured parties that simply  
40 disappear through mergers or liquidations. In addition, Section  
42 9518 [Maine cite section 9-1518] affords a statutory method by  
42 which a debtor who believes that a filed record is inaccurate or  
44 was wrongfully filed may indicate that fact in the files by  
44 filing a correction statement, albeit without affecting the  
46 efficacy, if any, of the challenged record.

46 Extended period of effectiveness for certain financing  
48 statements. Section 9-515 [Maine cite section 9-1515] contains  
48 an exception to the usual rule that financing statements are  
50 effective for five years unless a continuation statement is filed

2 to continue the effectiveness for another five years. Under that  
3 section, an initial financing statement filed in connection with  
4 a "public-finance transaction" or a "manufactured-home  
5 transaction" (terms defined in Section 9-102) [Maine cite section  
6 9-1102] is effective for 30 years.

7 National form of financing statement and related forms.  
8 Section 9-521 [Maine cite section 9-1521] provides for uniform,  
9 national written forms of financing statements and related  
10 written records that must be accepted by a filing office that  
11 accepts written records.

12  
13 i. Default and Enforcement. Part 6 of Article 9 [Maine  
14 cite Article 9-A] extensively revises former Part 5.  
15 Provisions relating to enforcement of consumer-goods  
16 transactions and consumer transactions are discussed in  
17 Comment 4.j.

18 Debtor, secondary obligor; waiver. Section 9-602 [Maine  
19 cite section 9-1602] clarifies the identity of persons who have  
20 rights and persons to whom a secured party owes specified duties  
21 under Part 6. Under that section, the rights and duties are  
22 enjoyed by and run to the "debtor," defined in Section 9-102  
23 [Maine cite section 9-1102] to mean any person with a non-lien  
24 property interest in collateral, and to any "obligor." However,  
25 with one exception (Section 9-616 [Maine cite section 9-1616], as  
26 it relates to a consumer obligor), the rights and duties  
27 concerned affect non-debtor obligors only if they are "secondary  
28 obligors." "Secondary obligor" is defined in Section 9-102  
29 [Maine cite section 9-1102] to include one who is secondarily  
30 obligated on the secured obligation, e.g., a guarantor, or one  
31 who has a right of recourse against the debtor or another obligor  
32 with respect to an obligation secured by collateral. However,  
33 under Section 9-628 [Maine cite section 9-1628], the secured  
34 party is relieved from any duty or liability to any person unless  
35 the secured party knows that the person is a debtor or obligor.  
36 Resolving an issue on which courts disagreed under former Article  
37 9, this Article generally prohibits waiver by a secondary obligor  
38 of its rights and a secured party's duties under Part 6. See  
39 Section 9-602 [Maine cite section 9-1602]. However, Section  
40 9-624 [Maine cite section 9-1624] permits a secondary obligor or  
41 debtor to waive the right to notification of disposition of  
42 collateral and, in a non-consumer transaction, the right to  
43 redeem collateral, if the secondary obligor or debtor agrees to  
44 do so after default.

45 Rights of collection and enforcement of collateral. Section  
46 9-607 [Maine cite section 9-1607] explains in greater detail than  
47 former 9-502 the rights of a secured party who seeks to collect  
48 or enforce collateral, including accounts, chattel paper, and  
49

2 payment intangibles. It also sets forth the enforcement rights  
of a depository bank holding a security interest in a deposit  
4 account maintained with the depository bank. Section 9-607  
[Maine cite section 9-1607] relates solely to the rights of a  
6 secured party vis-a-vis a debtor with respect to collections and  
enforcement. It does not affect the rights or duties of third  
8 parties, such as account debtors on collateral, which are  
addressed elsewhere (e.g., Section 9-406) [Maine cite section  
10 9-1406]. Section 9-608 [Maine cite section 9-1608] clarifies the  
manner in which proceeds of collection or enforcement are to be  
12 applied.

14       Disposition of collateral: Warranties of title. Section  
9-610 [Maine cite section 9-1610] imposes on a secured party who  
disposes of collateral the warranties of title, quiet possession,  
16 and the like that are otherwise applicable under other law. It  
also provides rules for the exclusion or modification of those  
18 warranties.

20       Disposition of collateral: Notification, application  
of proceeds, surplus and deficiency, other effects. Section  
22 9-611 [Maine cite section 9-1611] requires a secured party to  
give notification of a disposition of collateral to other secured  
24 parties and lienholders who have filed financing statements  
against the debtor covering the collateral. (That duty was  
26 eliminated by the 1972 revisions to Article 9.) However, that  
section relieves the secured party from that duty when the  
28 secured party undertakes a search of the records and a report of  
the results is unreasonably delayed. Section 9-613 [Maine cite  
30 section 9-1613], which applies only to non-consumer transactions,  
specifies the contents of a sufficient notification of  
32 disposition and provides that a notification sent 10 days or more  
before the earliest time for disposition is sent within a  
34 reasonable time. Section 9-615 [Maine cite section 9-1615]  
addresses the application of proceeds of disposition, the  
36 entitlement of a debtor to any surplus, and the liability of an  
obligor for any deficiency. Section 9-619 [Maine cite section  
38 9-1619] clarifies the effects of a disposition by a secured  
party, including the rights of transferees of the collateral.

40       Rights and duties of secondary obligor. Section 9-618  
42 [Maine cite section 9-1618] provides that a secondary obligor  
obtains the rights and assumes the duties of a secured party if  
44 the secondary obligor receives an assignment of a secured  
obligation, agrees to assume the secured party's rights and  
46 duties upon a transfer to it of collateral, or becomes subrogated  
to the rights of the secured party with respect to the  
48 collateral. The assumption, transfer, or subrogation is not a  
disposition of collateral under Section 9-610 [Maine cite section  
50 9-1610], but it does relieve the former secured party of further

2 duties. Former Section 9-504(5) did not address whether a  
secured party was relieved of its duties in this situation.

4 Transfer of record or legal title. Section 9-619 [Maine  
cite section 9-1619] contains a new provision making clear that a  
6 transfer of record or legal title to a secured party is not of  
itself a disposition under Part 6. This rule applies regardless  
8 of the circumstances under which the transfer of title occurs.

10 Strict foreclosure. Section 9-620 [Maine cite section  
9-1620], unlike former Section 9-505, permits a secured party to  
12 accept collateral in partial satisfaction, as well as full  
satisfaction, of the obligations secured. This right of strict  
14 foreclosure extends to intangible as well as tangible property.  
Section 9-622 [Maine cite section 9-1622] clarifies the effects  
16 of an acceptance of collateral on the rights of junior  
claimants. It rejects the approach taken by some courts--deeming  
18 a secured party to have constructively retained collateral in  
satisfaction of the secured obligations--in the case of a secured  
20 party's unreasonable delay in the disposition of collateral.  
Instead, unreasonable delay is relevant when determining whether  
22 a disposition under Section 9-610 [Maine cite section 9-1610] is  
commercially reasonable.

24 Effect of noncompliance: "Rebuttable presumption" test.  
26 Section 9-626 [Maine cite section 9-1626] adopts the "rebuttable  
presumption" test for the failure of a secured party to proceed  
28 in accordance with certain provisions of Part 6. (As discussed  
in Comment 4.j., the test does not necessarily apply to consumer  
30 transactions.) Under this approach, the deficiency claim of a  
noncomplying secured party is calculated by crediting the obligor  
32 with the greater of the actual net proceeds of a disposition and  
the amount of net proceeds that would have been realized if the  
34 disposition had been conducted in accordance with Part 6 (e.g.,  
in a commercially reasonable manner). For non-consumer  
36 transactions, Section 9-626 [Maine cite section 9-1626] rejects  
the "absolute bar" test that some courts have imposed; that  
38 approach bars a noncomplying secured party from recovering any  
deficiency, regardless of the loss (if any) the debtor suffered  
40 as a consequence of the noncompliance.

42 "Low-price" dispositions: Calculation of deficiency and  
surplus. Section 9-615(f) [Maine cite section 9-1615, subsection  
44 (6)] addresses the problem of procedurally regular dispositions  
that fetch a low price. Subsection (f) [Maine cite subsection  
46 (6)] provides a special method for calculating a deficiency if  
the proceeds of a disposition of collateral to a secured party, a  
48 person related to the secured party, or a secondary obligor are  
"significantly below the range of proceeds that a complying  
50 disposition to a person other than the secured party, a person

2 related to the secured party, or a secondary obligor would have  
brought." ("Person related to" is defined in Section 9-102  
4 [Maine cite section 9-1102].) In these situations there is  
reason to suspect that there may be inadequate incentives to  
6 obtain a better price. Consequently, instead of calculating a  
deficiency (or surplus) based on the actual net proceeds, the  
8 deficiency (or surplus) would be calculated based on the proceeds  
that would have been received in a disposition to person other  
10 than the secured party, a person related to the secured party, or  
a secondary obligor.

12 j. Consumer Goods, Consumer-Goods Transactions, and  
Consumer Transactions. This Article (including the  
14 accompanying conforming revisions (see Appendix I)) includes  
several special rules for "consumer goods," "consumer  
16 transactions," and "consumer-goods transactions." Each term  
is defined in Section 9-102 [Maine cite section 9-1102].

18 (i) Revised Sections 2-502 and 2-716 provide a buyer  
20 of consumer goods with enhanced rights to possession of  
the goods, thereby accelerating the opportunity to  
22 achieve "buyer in ordinary course of business" status  
under Section 1-201.

24 (ii) Section 9-103(e) [Maine cite section 9-1103,  
26 subsection (5)] (allocation of payments for determining  
extent of purchase-money status), (f) [Maine cite  
28 subsection (6)] (purchase-money status not affected by  
cross-collateralization, refinancing, restructuring, or  
30 the like), and (g) [Maine cite subsection (7)] (secured  
party has burden of establishing extent of  
32 purchase-money status) do not apply to consumer-goods  
transactions. Sections 9-103 [Maine cite section  
34 9-1103] also provides that the limitation of those  
provisions to transactions other than consumer-goods  
36 transactions leaves to the courts the proper rules for  
consumer-goods transactions and prohibits the courts  
38 from drawing inferences from that limitation.

40 (iii) Section 9-108 [Maine cite section 9-1108]  
provides that in a consumer transaction a description  
42 of consumer goods, a security entitlement, securities  
account, or commodity account "only by [UCC-defined]  
44 type of collateral" is not a sufficient collateral  
description in a security agreement.

46 (iv) Sections 9-403 and 9-404 [Maine cite sections  
48 9-1403 and 9-1404] make effective the Federal Trade  
Commission's anti-holder-in-due-course rule (when



2 applicable), 16 C.F.R. Part 433, even in the absence of  
the required legend.

4 (v) The 10-day safe-harbor for notification of a  
6 disposition provided by Section 9-612 [Maine cite  
section 9-1612] does not apply in a consumer  
transaction.

8 (vi) Section 9-613 [Maine cite section 9-1613]  
10 (contents and form of notice of disposition) does not  
apply to a consumer-goods transaction.

12 (vii) Section 9-614 [Maine cite section 9-1614]  
14 contains special requirements for the contents of a  
notification of disposition and a safe-harbor, "plain  
16 English" form of notification, for consumer-goods  
transactions.

18 (viii) Section 9-616 [Maine cite section 9-1616]  
20 requires a secured party in a consumer-goods  
transaction to provide a debtor with a notification of  
22 how it calculated a deficiency at the time it first  
undertakes to collect a deficiency.

24 (ix) Section 9-620 [Maine cite section 9-1620]  
26 prohibits partial strict foreclosure with respect to  
consumer goods collateral and, unless the debtor agrees  
28 to waive the requirement in an authenticated record  
after default, in certain cases requires the secured  
30 party to dispose of consumer goods collateral which has  
been repossessed.

32 (x) Section 9-626 [Maine cite section 9-1626]  
34 ("rebuttable presumption" rule) does not apply to a  
consumer transaction. Section 9-626 [Maine cite  
36 section 9-1626] also provides that its limitation to  
transactions other than consumer transactions leaves to  
38 the courts the proper rules for consumer transactions  
and prohibits the courts from drawing inferences from  
40 that limitation.

42 k. Good Faith. Section 9-102 [Maine cite section 9-1102]  
contains a new definition of "good faith" that includes not  
44 only "honesty in fact" but also "the observance of  
reasonable commercial standards of fair dealing." The  
46 definition is similar to the ones adopted in connection with  
other, recently completed revisions of the UCC.

48 1. Transition Provisions. Part 7 (Sections 9-701 through  
50 9-707) [Maine cite sections 9-1701 to 9-1707] contains

2 transition provisions. Transition from former Article 9 to  
3 this Article will be particularly challenging in view of its  
4 expanded scope, its modification of choice-of-law rules for  
5 perfection and priority, and its expansion of the methods of  
6 perfection.

7 m. Conforming and Related Amendments to Other UCC  
8 Articles. Appendix I contains several proposed revisions to  
9 the provisions and Comments of other UCC Articles. For the  
10 most part the revisions are explained in the Comments to the  
11 proposed revisions. Cross-references in other UCC Articles  
12 to sections of Article 9 [Maine cite Article 9-A] also have  
13 been revised.

14 Article 1. Revised Section 1-201 contains revisions to the  
15 definitions of "buyer in ordinary course of business,"  
16 "purchaser," and "security interest."

17 Articles 2 and 2A. Sections 2-210, 2-326, 2-502, 2-716,  
18 2A-303, and 2A-307 have been revised to address the intersection  
19 between Articles 2 and 2A and Article 9.

20 Article 5. New Section 5-118 is patterned on Section 4210.  
21 It provides for a security interest in documents presented under  
22 a letter of credit in favor of the issuer and a nominated person  
23 on the letter of credit.

24 Article 8. Revisions to Section 8-106, which deals with  
25 "control" of securities and security entitlements, conform it to  
26 Section 8-302, which deals with "delivery." Revisions to Section  
27 8-110, which deals with a "securities intermediary's  
28 jurisdiction," conform it to the revised treatment of a  
29 "commodity intermediary's jurisdiction" in Section 9-305 [Maine  
30 cite section 9-1305]. Sections 8-301 and 8302 have been revised  
31 for clarification. Section 8-510 has been revised to conform it  
32 to the revised priority rules of Section 9-328 [Maine cite  
33 section 9-1328]. Several Comments in Article 8 also have been  
34 revised.

35 **§9-1102. Definitions and index of definitions**

36 As used in this Article, unless the context otherwise  
37 indicates, the following terms have the following meanings.

38 (1) "Accession" means goods that are physically united with  
39 other goods in such a manner that the identity of the original  
40 goods is not lost.

2           (2) "Account," except as used in "account for," means a  
3 right to payment of a monetary obligation, whether or not earned  
4 by performance:

5           (a) For property that has been or is to be sold, leased,  
6 licensed, assigned or otherwise disposed of:

7           (b) For services rendered or to be rendered:

8           (c) For a policy of insurance issued or to be issued:

9           (d) For a secondary obligation incurred or to be incurred:

10           (e) For energy provided or to be provided:

11           (f) For the use or hire of a vessel under a charter or  
12 other contract:

13           (g) Arising out of the use of a credit or charge card or  
14 information contained on or for use with the card; or

15           (h) As winnings in a lottery or other game of chance  
16 operated or sponsored by a state, governmental unit of a  
17 state or person licensed or authorized to operate the game  
18 by a state or governmental unit of a state.

19           "Account" includes health-care-insurance receivables. "Account"  
20 does not include: rights to payment evidenced by chattel paper or  
21 an instrument; commercial tort claims; deposit accounts;  
22 investment property; letter-of-credit rights or letters of  
23 credit; or rights to payment for money or funds advanced or sold,  
24 other than rights arising out of the use of a credit or charge  
25 card or information contained on or for use with the card.

26           (3) "Account debtor" means a person obligated on an  
27 account, chattel paper or general intangible. "Account debtor"  
28 does not include persons obligated to pay a negotiable  
29 instrument, even if the instrument constitutes part of chattel  
30 paper.

31           (4) "Accounting," except as used in "accounting for," means  
32 a record:

33           (a) Authenticated by a secured party;

34           (b) Indicating the aggregate unpaid secured obligations as  
35 of a date not more than 35 days earlier or 35 days later  
36 than the date of the record; and

2           (c) Identifying the components of the obligations in  
reasonable detail.

4           (5) "Agricultural lien" means an interest, other than a  
security interest, in farm products:

6           (a) That secures payment or performance of an obligation  
8           for:

10           (i) Goods or services furnished in connection with a  
12           debtor's farming operation; or

14           (ii) Rent on real property leased by a debtor in  
16           connection with its farming operation;

16           (b) That is created by statute in favor of a person that:

18           (i) In the ordinary course of its business furnished  
20           goods or services to a debtor in connection with a  
22           debtor's farming operation; or

24           (ii) Leased real property to a debtor in connection  
26           with the debtor's farming operation; and

26           (c) Whose effectiveness does not depend on the person's  
28           possession of the personal property.

28           (6) "As-extracted collateral" means:

30           (a) Oil, gas or other minerals that are subject to a  
32           security interest that:

34           (i) Is created by a debtor having an interest in the  
36           minerals before extraction; and

38           (ii) Attaches to the minerals as extracted; or

40           (b) Accounts arising out of the sale at the wellhead or  
42           minehead of oil, gas or other minerals in which the debtor  
44           had an interest before extraction.

44           (7) "Authenticate" means:

46           (a) To sign; or

48           (b) To execute or otherwise adopt a symbol or encrypt or  
50           similarly process a record in whole or in part with the  
present intent of the authenticating person to identify the  
person and adopt or accept a record.

2           (8) "Bank" means an organization that is engaged in the  
3 business of banking. "Bank" includes savings banks, savings and  
4 loan associations, credit unions and trust companies.

6           (9) "Cash proceeds" means proceeds that are money, checks,  
7 deposit accounts or the like.

8           (10) "Certificate of title" means a certificate of title  
9 with respect to which a statute provides for the security  
10 interest in question to be indicated on the certificate as a  
11 condition or result of the security interest's obtaining priority  
12 over the rights of a lien creditor with respect to the collateral.

14           (11) "Chattel paper" means a record or records that  
15 evidence both a monetary obligation and a security interest in  
16 specific goods, a security interest in specific goods and  
17 software used in the goods or a lease of specific goods.  
18 "chattel paper" does not include charters or other contracts  
19 involving the use or hire of a vessel. If a transaction is  
20 evidenced both by a security agreement or lease and by an  
21 instrument or series of instruments, the group of records taken  
22 together constitutes chattel paper.

24           (12) "Collateral" means the property subject to a security  
25 interest or agricultural lien. "Collateral" includes:

26           (a) Proceeds to which a security interest attaches;

28           (b) Accounts, chattel paper, payment intangibles and  
30 promissory notes that have been sold; and

32           (c) Goods that are the subject of a consignment.

34           (13) "Commercial tort claim" means a claim arising in tort  
35 with respect to which:

36           (a) The claimant is an organization; or

38           (b) The claimant is an individual and the claim:

40           (i) Arose in the course of the claimant's business or  
42 profession; and

44           (ii) Does not include damages arising out of personal  
45 injury to or the death of an individual.

46           (14) "Commodity account" means an account maintained by a  
47 commodity intermediary in which a commodity contract is carried  
48 for a commodity customer.

50

2           (15) "Commodity contract" means a commodity futures  
3 contract, an option on a commodity futures contract, a commodity  
4 option or another contract if the contract or option is:

5           (a) Traded on or subject to the rules of a board of trade  
6 that has been designated as a contract market for such a  
7 contract pursuant to federal commodities laws; or

8           (b) Traded on a foreign commodity board of trade, exchange  
9 or market and is carried on the books of a commodity  
10 intermediary for a commodity customer.

11           (16) "Commodity customer" means a person for which a  
12 commodity intermediary carries a commodity contract on its books.

13           (17) "Commodity intermediary" means a person that:

14           (a) Is registered as a futures commission merchant under  
15 federal commodities law; or

16           (b) In the ordinary course of its business provides  
17 clearance or settlement services for a board of trade that  
18 has been designated as a contract market pursuant to federal  
19 commodities law.

20           (18) "Communicate" means:

21           (a) To send a written or other tangible record;

22           (b) To transmit a record by any means agreed upon by the  
23 persons sending and receiving the record; or

24           (c) In the case of transmission of a record to or by a  
25 filing office, to transmit a record by any means prescribed  
26 by filing-office rule.

27           (19) "Consignee" means a merchant to which goods are  
28 delivered in a consignment.

29           (20) "Consignment" means a transaction, regardless of its  
30 form, in which a person delivers goods to a merchant for the  
31 purpose of sale and:

32           (a) The merchant:

33           (i) Deals in goods of that kind under a name other  
34 than the name of the person making delivery;

35           (ii) Is not an auctioneer; and

36

2                   (iii) Is not generally known by its creditors to be  
                  substantially engaged in selling the goods of others;

4                   (b) With respect to each delivery, the aggregate value of  
                  the goods is \$1,000 or more at the time of delivery;

6                   (c) The goods are not consumer goods immediately before  
8                   delivery; and

10                  (d) The transaction does not create a security interest  
                  that secures an obligation.

12                  (21) "Consignor" means a person that delivers goods to a  
14                  consignee in a consignment.

16                  (22) "Consumer debtor" means a debtor in a consumer  
                  transaction.

18                  (23) "Consumer goods" means goods that are used or bought  
20                  for use primarily for personal, family or household purposes.

22                  (24) "Consumer-goods transaction" means a consumer  
                  transaction in which:

24                  (a) An individual incurs an obligation primarily for  
26                  personal, family or household purposes; and

28                  (b) A security interest in consumer goods secures the  
30                  obligation.

32                  (25) "Consumer obligor" means an obligor who is an  
                  individual who incurred the obligation as part of a transaction  
34                  entered into primarily for personal, family or household purposes.

36                  (26) "Consumer transaction" means a transaction in which:

38                  (a) An individual incurs an obligation primarily for  
                  personal, family or household purposes;

40                  (b) A security interest secures the obligation; and

42                  (c) The collateral is held or acquired primarily for  
44                  personal, family or household purposes.

46                  "Consumer transaction" includes consumer-goods transactions.

48                  (27) "Continuation statement" means an amendment of a  
                  financing statement that:

- 2           (a) Identifies by its file number the initial financing  
statement to which it relates; and
- 4           (b) Indicates that it is a continuation statement for, or  
that it is filed to continue the effectiveness of, the  
6           identified financing statement.
- 8           (28) "Debtor" means:
- 10           (a) A person having an interest, other than a security  
interest or other lien, in the collateral, whether or not  
12           the person is an obligor;
- 14           (b) A seller of accounts, chattel paper, payment  
intangibles or promissory notes; or
- 16           (c) A consignee.
- 18           (29) "Deposit account" means a demand, time, savings,  
20           passbook or similar account maintained with a bank. "Deposit  
account" does not include investment property or accounts  
22           evidenced by an instrument.
- 24           (30) "Document" means a document of title or a receipt of  
the type described in section 7-201, subsection (2).
- 26           (31) "Electronic chattel paper" means chattel paper  
28           evidenced by a record or records consisting of information stored  
in an electronic medium.
- 30           (32) "Encumbrance" means a right, other than an ownership  
32           interest, in real property. "Encumbrance" includes mortgages and  
other liens on real property.
- 34           (33) "Equipment" means goods other than inventory, farm  
36           products or consumer goods.
- 38           (34) "Farm products" means goods, other than standing  
timber, with respect to which the debtor is engaged in a farming  
40           operation and that are:
- 42           (a) Crops grown, growing or to be grown, including:
- 44                   (i) Crops produced on trees, vines and bushes; and
- 46                   (ii) Aquatic goods produced in aquacultural operations;
- 48           (b) Livestock, born or unborn, including aquatic goods  
produced in aquacultural operations;
- 50



- 2           (c) Supplies used or produced in a farming operation; or
- 4           (d) Products of crops or livestock in their unmanufactured  
states.
- 6           (35) "Farming operation" means raising, cultivating,  
propagating, fattening, grazing or any other farming, livestock  
8 or aquacultural operation.
- 10          (36) "File number" means the number assigned to an initial  
financing statement pursuant to section 9-1519, subsection (1).
- 12
- 14          (37) "Filing office" means an office designated in section  
9-1501 as the place to file a financing statement.
- 16          (38) "Filing-office rule" means a rule adopted pursuant to  
section 9-1526.
- 18
- 20          (39) "Financing statement" means a record or records  
composed of an initial financing statement and any filed record  
22 relating to the initial financing statement.
- 24          (40) "Fixture filing" means the filing of a financing  
statement covering goods that are or are to become fixtures and  
26 satisfying section 9-1502, subsections (1) and (2). "Fixture  
filing" includes the filing of a financing statement covering  
28 goods of a transmitting utility that are or are to become  
fixtures.
- 30          (41) "Fixtures" means goods that have become so related to  
particular real property that an interest in them arises under  
32 real property law.
- 34          (42) "General intangible" means any personal property,  
including things in action, other than accounts, chattel paper,  
36 commercial tort claims, deposit accounts, documents, goods,  
instruments, investment property, letter-of-credit rights,  
38 letters of credit, money, and oil, gas or other minerals before  
extraction. "General intangible" includes payment intangibles  
40 and software.
- 42          (43) "Good faith" means honesty in fact and the observance  
of reasonable commercial standards of fair dealing.
- 44
- 46          (44) "Goods" means all things that are movable when a  
security interest attaches. "Goods" includes:
- 48           (a) Fixtures;

2           (b) Standing timber that is to be cut and removed under a conveyance or contract for sale;

4           (c) The unborn young of animals;

6           (d) Crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes; and

8           (e) Manufactured homes.

10           "Goods" also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods; or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

18           "Goods" does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. "Goods" also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction.

26           (45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. "Governmental unit" includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

34           (46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided.

40           (47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. "Instrument" does not include:

46           (a) Investment property;

48           (b) Letters of credit; or

50

2           (c) Writings that evidence a right to payment arising out  
3           of the use of a credit or charge card or information  
4           contained on or for use with the card.

5           (48) "Inventory" means goods, other than farm products,  
6           that:

7           (a) Are leased by a person as lessor;

8           (b) Are held by a person for sale or lease or to be  
9           furnished under a contract of service;

10           (c) Are furnished by a person under a contract of service;  
11           or

12           (d) Consist of raw materials, work in process or materials  
13           used or consumed in a business.

14           (49) "Investment property" means a security, whether  
15           certificated or uncertificated, security entitlement, securities  
16           account, commodity contract or commodity account.

17           (50) "Jurisdiction of organization," with respect to a  
18           registered organization, means the jurisdiction under whose law  
19           the organization is organized.

20           (51) "Letter-of-credit right" means a right to payment or  
21           performance under a letter of credit, whether or not the  
22           beneficiary has demanded or is at the time entitled to demand  
23           payment or performance. "Letter-of-credit right" does not  
24           include the right of a beneficiary to demand payment or  
25           performance under a letter of credit.

26           (52) "Lien creditor" means:

27           (a) A creditor that has acquired a lien on the property  
28           involved by attachment, levy or the like;

29           (b) An assignee for benefit of creditors from the time of  
30           assignment;

31           (c) A trustee in bankruptcy from the date of the filing of  
32           the petition; or

33           (d) A receiver in equity from the time of appointment.

34           (53) "Manufactured home" means a structure, transportable  
35           in one or more sections, that, in the traveling mode, is 8 body  
36           feet or more in width or 40 body feet or more in length or, when  
37           erected on site, is 320 or more square feet and that is built on  
38           erected on site, is 320 or more square feet and that is built on

2 a permanent chassis and designed to be used as a dwelling with or  
3 without a permanent foundation when connected to the required  
4 utilities. "Manufactured home" includes the plumbing, heating,  
5 air-conditioning and electrical systems contained in the  
6 structure. "Manufactured home" includes any structure that meets  
7 all of the requirements of this subsection except the size  
8 requirements and with respect to which the manufacturer  
9 voluntarily files a certification required by the United States  
10 Secretary of Housing and Urban Development and complies with the  
11 standards established under 42 United States Code.

12 (54) "Manufactured-home transaction" means a secured  
13 transaction:

14  
15 (a) That creates a purchase-money security interest in a  
16 manufactured home, other than a manufactured home held as  
17 inventory; or

18  
19 (b) In which a manufactured home, other than a manufactured  
20 home held as inventory, is the primary collateral.

21  
22 (55) "Mortgage" means a consensual interest in real  
23 property, including fixtures, that secures payment or performance  
24 of an obligation.

25  
26 (56) "New debtor" means a person that becomes bound as  
27 debtor under section 9-1203, subsection (4) by a security  
28 agreement previously entered into by another person.

29  
30 (57) "New value" means:

31  
32 (a) Money;

33  
34 (b) Money's worth in property, services or new credit; or

35  
36 (c) Release by a transferee of an interest in property  
37 previously transferred to the transferee.

38  
39 "New value" does not include an obligation substituted for  
40 another obligation.

41  
42 (58) "Noncash proceeds" means proceeds other than cash  
43 proceeds.

44  
45 (59) "Obligor" means a person that, with respect to an  
46 obligation secured by a security interest in or an agricultural  
47 lien on the collateral:

48  
49 (a) Owes payment or other performance of the obligation;  
50

2           (b) Has provided property other than the collateral to  
3           secure payment or other performance of the obligation; or

4           (c) Is otherwise accountable in whole or in part for  
5           payment or other performance of the obligation.

6  
7           "Obligor" does not include issuers or nominated persons under a  
8           letter of credit.

10           (60) "Original debtor" means a person that as debtor  
11           entered into a security agreement to which a new debtor has  
12           become bound under section 9-1203, subsection (4).

14           (61) "Payment intangible" means a general intangible under  
15           which the account debtor's principal obligation is a monetary  
16           obligation.

18           (62) "Person related to," with respect to an individual,  
19           means:

20           (a) The spouse of the individual;

22           (b) A brother, brother-in-law, sister or sister-in-law of  
24           the individual;

26           (c) An ancestor or lineal descendant of the individual or  
27           of the individual's spouse; or

28           (d) Any other relative, by blood or marriage, of the  
30           individual or the individual's spouse who shares the same  
31           home with the individual.

32           (63) "Person related to," with respect to an organization,  
34           means:

36           (a) A person directly or indirectly controlling, controlled  
37           by or under common control with the organization;

38           (b) An officer or director of, or a person performing  
40           similar functions with respect to, the organization;

42           (c) An officer or director of, or a person performing  
43           similar functions with respect to, a person described in  
44           paragraph (a);

46           (d) The spouse of an individual described in paragraph (a),  
47           (b) or (c); or

48

2 (e) An individual who is related by blood or marriage to an  
3 individual described in paragraph (a), (b), (c) or (d) and  
4 shares the same home with the individual.

6 (64) "Proceeds" means the following property:

8 (a) Whatever is acquired upon the sale, lease, license,  
9 exchange or other disposition of collateral;

10 (b) Whatever is collected on or distributed on account of  
11 collateral;

12 (c) Rights arising out of collateral;

14 (d) To the extent of the value of collateral, claims  
15 arising out of the loss, nonconformity or interference with  
16 the use of, defects or infringement of rights in or damage  
17 to the collateral; or

18 (e) To the extent of the value of collateral and to the  
19 extent payable to the debtor or the secured party, insurance  
20 payable by reason of the loss or nonconformity of, defects  
21 or infringement of rights in or damage to the collateral.

22 (65) "Promissory note" means an instrument that evidences a  
23 promise to pay a monetary obligation, does not evidence an order  
24 to pay and does not contain an acknowledgment by a bank that the  
25 bank has received for deposit a sum of money or funds.

26 (66) "Proposal" means a record authenticated by a secured  
27 party that includes the terms on which the secured party is  
28 willing to accept collateral in full or partial satisfaction of  
29 the obligation it secures pursuant to sections 9-1620, 9-1621 and  
30 9-1622.

31 (67) "Public-finance transaction" means a secured  
32 transaction in connection with which:

33 (a) Debt securities are issued;

34 (b) All or a portion of the securities issued have an  
35 initial stated maturity of at least 20 years; and

36 (c) The debtor, obligor, secured party, account debtor or  
37 other person obligated on collateral, the assignor or  
38 assignee of a secured obligation or the assignor or assignee  
39 of a security interest is a state or a governmental unit of  
40 a state.

2           (68) "Pursuant to commitment," with respect to an advance  
3 made or other value given by a secured party, means pursuant to  
4 the secured party's obligation, whether or not a subsequent event  
5 of default or other event not within the secured party's control  
6 has relieved or may relieve the secured party from its obligation.

7           (69) "Record," except as used in "for record," "of record,"  
8 "record or legal title" and "record owner," means information  
9 that is inscribed on a tangible medium or that is stored in an  
10 electronic or other medium and is retrievable in perceivable form.

11           (70) "Registered organization" means an organization  
12 organized solely under the law of a single state or of the United  
13 States and as to which the state or the United States must  
14 maintain a public record showing the organization to have been  
15 organized.

16           (71) "Secondary obligor" means an obligor to the extent  
17 that:

18           (a) The obligor's obligation is secondary; or

19           (b) The obligor has a right of recourse with respect to an  
20 obligation secured by collateral against the debtor, another  
21 obligor or property of either.

22           (72) "Secured party" means:

23           (a) A person in whose favor a security interest is created  
24 or provided for under a security agreement, whether or not  
25 any obligation to be secured is outstanding;

26           (b) A person that holds an agricultural lien;

27           (c) A consignor;

28           (d) A person to which accounts, chattel paper, payment  
29 intangibles or promissory notes have been sold;

30           (e) A trustee, indenture trustee, agent, collateral agent  
31 or other representative in whose favor a security interest  
32 or agricultural lien is created or provided for; or

33           (f) A person that holds a security interest arising under  
34 section 2-401, 2-505, 2-711, subsection (3), 2-508,  
35 subsection (5), 4-210, or 5-118.

36           (73) "Security agreement" means an agreement that creates  
37 or provides for a security interest.

2           (74) "Send," in connection with a record or notification,  
means:

4           (a) To deposit in the mail, deliver for transmission or  
6           transmit by any other usual means of communication, with  
          postage or cost of transmission provided, addressed to any  
          address reasonable under the circumstances; or

8           (b) To cause to be received within the time that it would  
10           have been received if properly sent under paragraph (a).

12           (75) "Software" means a computer program and any supporting  
14           information provided in connection with a transaction relating to  
          the program. "Software" does not include a computer program that  
          is included in the definition of goods.

16           (76) "State" means a state of the United States, the  
18           District of Columbia, Puerto Rico, the United States Virgin  
20           Islands or any territory or insular possession subject to the  
          jurisdiction of the United States.

22           (77) "Supporting obligation" means a letter-of-credit right  
24           or secondary obligation that supports the payment or performance  
          of an account, chattel paper, a document, a general intangible,  
26           an instrument or investment property.

28           (78) "Tangible chattel paper" means chattel paper evidenced  
          by a record or records consisting of information that is  
30           inscribed on a tangible medium.

32           (79) "Termination statement" means an amendment of a  
          financing statement that:

34           (a) Identifies, by its file number, the initial financing  
          statement to which it relates; and

36           (b) Indicates either that it is a termination statement or  
38           that the identified financing statement is no longer  
          effective.

40           (80) "Transmitting utility" means a person primarily  
42           engaged in the business of:

44           (a) Operating a railroad, subway, street railway or trolley  
          bus;

46           (b) Transmitting communications electrically,  
48           electromagnetically or by light;

50           (c) Transmitting goods by pipeline or sewer; or



2	<u>(d) Transmitting or producing and transmitting electricity,</u>	
	<u>steam, gas or water.</u>	
4		
6	<u>The following definitions in other Articles apply to this</u>	
	<u>Article:</u>	
8	<u>"Applicant"</u>	<u>Section 5-1102.</u>
10	<u>"Beneficiary"</u>	<u>Section 5-1102.</u>
12	<u>"Broker"</u>	<u>Section 8-1102.</u>
14	<u>"Certificated security"</u>	<u>Section 8-1102.</u>
16	<u>"Check"</u>	<u>Section 3-1104.</u>
18	<u>"Clearing corporation"</u>	<u>Section 8-1102.</u>
20	<u>"Contract for sale"</u>	<u>Section 2-106.</u>
22	<u>"Customer"</u>	<u>Section 4-104.</u>
24	<u>"Entitlement holder"</u>	<u>Section 8-1102.</u>
26	<u>"Financial asset"</u>	<u>Section 8-1102.</u>
28	<u>"Holder in due course"</u>	<u>Section 3-1302.</u>
30	<u>"Issuer" (with respect to a letter of</u>	
	<u>credit or letter-of-credit right)</u>	<u>Section 5-1102.</u>
32	<u>"Issuer" (with respect to a security)</u>	<u>Section 8-1201.</u>
34	<u>"Lease"</u>	<u>Section 2-1103.</u>
36	<u>"Lease agreement"</u>	<u>Section 2-1103.</u>
38	<u>"Lease contract"</u>	<u>Section 2-1103.</u>
40	<u>"Leasehold interest"</u>	<u>Section 2-1103.</u>
42	<u>"Lessee"</u>	<u>Section 2-1103.</u>
44	<u>"Lessee in ordinary course of business"</u>	<u>Section 2-1103.</u>
46	<u>"Lessor"</u>	<u>Section 2-1103.</u>
48	<u>"Lessor's residual interest"</u>	<u>Section 2-1103.</u>
50		

2	<u>"Letter of credit"</u>	<u>Section 5-1102.</u>
4	<u>"Merchant"</u>	<u>Section 2-104.</u>
6	<u>"Negotiable instrument"</u>	<u>Section 3-1104.</u>
8	<u>"Nominated person"</u>	<u>Section 5-1102.</u>
10	<u>"Note"</u>	<u>Section 3-1104.</u>
12	<u>"Proceeds of a letter of credit"</u>	<u>Section 5-114.</u>
14	<u>"Prove"</u>	<u>Section 3-1103.</u>
16	<u>"Sale"</u>	<u>Section 2-106.</u>
18	<u>"Securities account"</u>	<u>Section 8-1501.</u>
20	<u>"Securities intermediary"</u>	<u>Section 8-1102.</u>
22	<u>"Security"</u>	<u>Section 8-1102.</u>
24	<u>"Security certificate"</u>	<u>Section 8-1102.</u>
26	<u>"Security entitlement"</u>	<u>Section 8-1102.</u>
28	<u>"Uncertificated security"</u>	<u>Section 8-1102.</u>
30	<u>Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.</u>	

**Official Comment**

34  
36 1. Source. All terms that are defined in Article 9 [Maine  
38 cite Article 9-A] and used in more than one section are  
40 consolidated in this section. Note that the definition of  
42 "security interest" is found in Section 1-201, not in this  
44 Article, and has been revised. See Appendix I. Many of the  
46 definitions in this section are new; many others derive from  
48 those in former Section 9105. The following Comments also  
50 indicate other sections of former Article 9 that defined (or  
explained) terms.

2. Parties to Secured Transactions.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this

2 examination, this Article redefines "debtor" and adds new  
3 defined terms, "secondary obligor" and "obligor." In the  
4 context of Part 6 (default and enforcement), these  
5 definitions distinguish among three classes of persons: (i)  
6 those persons who may have a stake in the proper enforcement  
7 of a security interest by virtue of their non-lien property  
8 interest (typically, an ownership interest) in the  
9 collateral, (ii) those persons who may have a stake in the  
10 proper enforcement of the security interest because of their  
11 obligation to pay the secured debt, and (iii) those persons  
12 who have an obligation to pay the secured debt but have no  
13 stake in the proper enforcement of the security interest.  
14 Persons in the first class are debtors. Persons in the  
15 second class are secondary obligors if any portion of the  
16 obligation is secondary or if the obligor has a right of  
17 recourse against the debtor or another obligor with respect  
18 to an obligation secured by collateral. One must consult  
19 the law of suretyship to determine whether an obligation is  
20 secondary. The Restatement (3d), Suretyship and Guaranty §  
21 1 (1996), contains a useful explanation of the concept.  
22 Obligors in the third class are neither debtors nor  
23 secondary obligors. With one exception (Section 9-616  
24 [Maine cite section 9-1616], as it relates to a consumer  
25 obligor), the rights and duties in provided by Part 6 affect  
26 non-debtor obligors only if they are "secondary obligors."

27 By including in the definition of "debtor" all persons with  
28 a property interest (other than a security interest in or other  
29 lien on collateral), the definition includes transferees of  
30 collateral, whether or not the secured party knows of the  
31 transfer or the transferee's identity. Exculpatory provisions in  
32 Part 6 protect the secured party in that circumstance. See  
33 Sections 9-605 and 9-628 [Maine cite sections 9-1605 and  
34 9-1628]. The definition renders unnecessary former Section  
35 9-112, which governed situations in which collateral was not  
36 owned by the debtor. The definition also includes a "consignee,"  
37 as defined in this section, as well as a seller of accounts,  
38 chattel paper, payment intangibles, or promissory notes.

39 Secured parties and other lienholders are excluded from the  
40 definition of "debtor" because the interests of those parties  
41 normally derive from and encumber a debtor's interest. However,  
42 if in a separate secured transaction a secured party grants, as  
43 debtor, a security interest in its own interest (i.e., its  
44 security interest and any obligation that it secures), the  
45 secured party is a debtor in that transaction. This typically  
46 occurs when a secured party with a security interest in specific  
47 goods assigns chattel paper.

48 Consider the following examples:  
49

2           Example 1: Behnfeltdt borrows money and grants a security  
interest in her Miata to secure the debt. Behnfeltdt is a debtor  
4           and an obligor.

6           Example 2: Behnfeltdt borrows money and grants a security  
interest in her Miata to secure the debt. Bruno co-signs a  
8           negotiable note as maker. As before, Behnfeltdt is the debtor and  
an obligor. As an accommodation party (see Section 3-419), Bruno  
10          is a secondary obligor. Bruno has this status even if the note  
states that her obligation is a primary obligation and that she  
12          waives all suretyship defenses.

14          Example 3: Behnfeltdt borrows money on an unsecured basis.  
Bruno co-signs the note and grants a security interest in her  
16          Honda to secure her obligation. Inasmuch as Behnfeltdt does not  
have a property interest in the Honda, Behnfeltdt is not a  
18          debtor. Having granted the security interest, Bruno is the  
debtor. Because Behnfeltdt is a principal obligor, she is not a  
20          secondary obligor. Whatever the outcome of enforcement of the  
security interest against the Honda or Bruno's secondary  
22          obligation, Bruno will look to Behnfeltdt for her losses. The  
enforcement will not affect Behnfeltdt's aggregate obligations.  
24

          When the principal obligor (borrower) and the secondary  
26          obligor (surety) each has granted a security interest in  
different collateral, the status of each is determined by the  
28          collateral involved.

30          Example 4: Behnfeltdt borrows money and grants a security  
interest in her Miata to secure the debt. Bruno co-signs the  
32          note and grants a security interest in her Honda to secure her  
obligation. When the secured party enforces the security  
34          interest in Behnfeltdt's Miata, Behnfeltdt is the debtor, and Bruno  
is a secondary obligor. When the secured party enforces the  
36          security interest in the Honda, Bruno is the "debtor." As in  
Example 3, Behnfeltdt is an obligor, but not a secondary obligor.  
38

          b. "Secured Party." The secured party is the person in  
40          whose favor the security interest has been created, as  
determined by reference to the security agreement. This  
42          definition controls, among other things, which person has  
the duties and potential liability that Part 6 imposes upon  
44          a secured party. The definition of "secured party" also  
includes a "consignee," a person to which accounts, chattel  
46          paper, payment intangibles, or promissory notes have been  
sold, and the holder of an agricultural lien.  
48

          The definition of "secured party" clarifies the status of  
50          various types of representatives. Consider, for example, a

2 multi-bank facility under which Bank A, Bank B, and Bank C are  
3 lenders and Bank A serves as the collateral agent. If the  
4 security interest is granted to the banks, then they are the  
5 secured parties. If the security interest is granted to Bank A  
6 as collateral agent, then Bank A is the secured party.

7 c. Other Parties. A "consumer obligor" is defined as the  
8 obligor in a consumer transaction. Definitions of "new  
9 debtor" and "original debtor" are used in the special rules  
10 found in Sections 9-326 and 9-508 [Maine cite sections  
11 9-1326 and 9-1508].

### 12 3. Definitions Relating to Creation of a Security Interest.

13 a. "Collateral." As under former Section 9-105,  
14 "collateral" is the property subject to a security interest  
15 and includes accounts and chattel paper that have been  
16 sold. It has been expanded in this Article. The term now  
17 explicitly includes proceeds subject to a security  
18 interest. It also reflects the broadened scope of the  
19 Article. It includes property subject to an agricultural  
20 lien as well as payment intangibles and promissory notes  
21 that have been sold.

22 b. "Security Agreement." The definition of "security  
23 agreement" is substantially the same as under former Section  
24 9105—an agreement that creates or provides for a security  
25 interest. However, the term frequently was used  
26 colloquially in former Article 9 to refer to the document or  
27 writing that contained a debtor's security agreement. This  
28 Article eliminates that usage, reserving the term for the  
29 more precise meaning specified in the definition.

30 Whether an agreement creates a security interest depends not  
31 on whether the parties intend that the law characterize the  
32 transaction as a security interest but rather on whether the  
33 transaction falls within the definition of "security interest" in  
34 Section 1-201. Thus, an agreement that the parties characterize  
35 as a "lease" of goods may be a "security agreement,"  
36 notwithstanding the parties' stated intention that the law treat  
37 the transaction as a lease and not as a secured transaction.

### 38 4. Goods-Related Definitions.

39 a. "Goods"; "Consumer Goods"; "Equipment"; "Farm  
40 Products"; "Farming Operation"; "Inventory." The  
41 definition of "goods" is substantially the same as the  
42 definition in former Section 9-105. This Article also  
43 retains the four mutually-exclusive "types" of collateral  
44 that consist of goods: "consumer goods," "equipment,"  
45

2 "farm products," and "inventory." The revisions are  
primarily for clarification.

4 The classes of goods are mutually exclusive. For example,  
the same property cannot simultaneously be both equipment and  
6 inventory. In borderline cases—a physician's car or a farmer's  
truck that might be either consumer goods or equipment—the  
8 principal use to which the property is put is determinative.  
Goods can fall into different classes at different times. For  
10 example, a radio may be inventory in the hands of a dealer and  
consumer goods in the hands of a consumer. As under former  
12 Article 9, goods are "equipment" if they do not fall into another  
category.

14 The definition of "consumer goods" follows former Section  
16 9-109. The classification turns on whether the debtor uses or  
bought the goods for use "primarily for personal, family, or  
18 household purposes."

20 Goods are inventory if they are leased by a lessor or held  
by a person for sale or lease. The revised definition of  
22 "inventory" makes clear that the term includes goods leased by  
the debtor to others as well as goods held for lease. (The same  
24 result should have obtained under the former definition.) Goods  
to be furnished or furnished under a service contract, raw  
26 materials, and work in process also are inventory. Implicit in  
the definition is the criterion that the sales or leases are or  
28 will be in the ordinary course of business. For example,  
machinery used in manufacturing is equipment, not inventory, even  
30 though it is the policy of the debtor to sell machinery when it  
becomes obsolete or worn. Inventory also includes goods that are  
32 consumed in a business (e.g., fuel used in operations). In  
general, goods used in a business are equipment if they are fixed  
34 assets or have, as identifiable units, a relatively long period  
of use, but are inventory, even though not held for sale or  
36 lease, if they are used up or consumed in a short period of time  
in producing a product or providing a service.

38 Goods are "farm products" if the debtor is engaged in  
40 farming operations with respect to the goods. Animals in a herd  
of livestock are covered whether the debtor acquires them by  
42 purchase or as a result of natural increase. Products of crops  
or livestock remain farm products as long as they have not been  
44 subjected to a manufacturing process. The terms "crops" and  
"livestock" are not defined. The new definition of "farming  
46 operations" is for clarification only.

48 Crops, livestock, and their products cease to be "farm  
products" when the debtor ceases to be engaged in farming  
50 operations with respect to them. If, for example, they come into

2 the possession of a marketing agency for sale or distribution or  
3 of a manufacturer or processor as raw materials, they become  
4 inventory. Products of crops or livestock, even though they  
5 remain in the possession of a person engaged in farming  
6 operations, lose their status as farm products if they are  
7 subjected to a manufacturing process. What is and what is not a  
8 manufacturing operation is not specified in this Article. At one  
9 end of the spectrum, some processes are so closely connected with  
10 farming—such as pasteurizing milk or boiling sap to produce maple  
11 syrup or sugar—that they would not constitute manufacturing. On  
12 the other hand an extensive canning operation would be  
13 manufacturing. Once farm products have been subjected to a  
14 manufacturing operation, they normally become inventory.

15  
16 The revised definition of "farm products" clarifies the  
17 distinction between crops and standing timber and makes clear  
18 that aquatic goods produced in aquacultural operations may be  
19 either crops or livestock. Although aquatic goods that are  
20 vegetable in nature often would be crops and those that are  
21 animal would be livestock, this Article leaves the courts free to  
22 classify the goods on a case-by-case basis. See Section 9-324  
[Maine cite section 9-1324], Comment 11.

23 b. "Accession"; "Manufactured Home"; "Manufactured-Home  
24 Transaction." Other specialized definitions of goods  
25 include "accession" (see the special priority and  
26 enforcement rules in Section 9-335) [Maine cite section  
27 9-1335], and "manufactured home" (see Section 9-515 [Maine  
28 cite section 9-1515], permitting a financing statement in a  
29 "manufactured-home transaction" to be effective for 30  
30 years). The definition of "manufactured home" borrows from  
31 the federal Manufactured Housing Act, 42 U.S.C. §§ 5401 et  
32 seq., and is intended to have the same meaning.

33 c. "As-Extracted Collateral." Under this Article, oil,  
34 gas, and other minerals that have not been extracted from  
35 the ground are treated as real property, to which this  
36 Article does not apply. Upon extraction, minerals become  
37 personal property (goods) and eligible to be collateral  
38 under this Article. See the definition of "goods," which  
39 excludes "oil, gas, and other minerals before extraction."  
40 To take account of financing practices reflecting the shift  
41 from real to personal property, this Article contains  
42 special rules for perfecting security interests in minerals  
43 which attach upon extraction and in accounts resulting from  
44 the sale of minerals at the wellhead or minehead. See,  
45 e.g., Sections 9-301(6) [Maine cite section 9-1301,  
46 subsection (6)] (law governing perfection and priority);  
47 9-501 [Maine cite section 9-1501] (place of filing), 9-502  
48 [Maine cite section 9-1502] (contents of financing  
49  
50

statement), 9-519 [Maine cite section 9-1519] (indexing of records). The new term, "as-extracted collateral," refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at . . . the minehead" is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real-property law, Lender does not acquire a security interest under this Article until the oil becomes personal property, i.e., until it is extracted and becomes "goods" to which this Article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral."

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated agreement, Debtor agrees to sell to Lender the right to payment from Buyer. This right to payment is an account that constitutes "as-extracted collateral." If Lender then resells the account to Financer, Financer acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financer's collateral (the account it owns) is not "as-extracted collateral."

Example 7: Under the facts of Example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral," inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

#### 5. Receivables-related Definitions.

a. "Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral." The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as



2 general intangibles under former Article 9 are accounts  
under this Article. Thus, if they are sold, a financing  
4 statement must be filed to perfect the buyer's interest in  
them. Among the types of property that are expressly  
6 excluded from the definition is "a right to payment for  
money or funds advanced or sold." As defined in Section  
8 1-201, "money" is limited essentially to currency. As used  
in the exclusion from the definition of "account," however,  
"funds" is a broader concept (although the term is not  
10 defined). For example, when a bank-lender credits a  
borrower's deposit account for the amount of a loan, the  
12 bank's advance of funds is not a transaction giving rise to  
an account.

14  
The definition of "health-care-insurance receivable" is  
16 new. It is a subset of the definition of "account." However,  
the rules generally applicable to account debtors on accounts do  
18 not apply to insurers obligated on health-care-insurance  
receivables. See Sections 9-404(e), 9-405(d), 9-406(i)[Maine  
20 cite section 9-1404, subsection (5), section 9-1405, subsection  
(4), section 9-1406, subsection (9)].

22  
Note that certain accounts also are "as-extracted  
24 collateral." See Comment 4.c., Examples 6 and 7.

26 b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible  
Chattel Paper." "Chattel paper" consists of a monetary  
28 obligation together with a security interest in or a lease  
of specific goods if the obligation and security interest or  
30 lease are evidenced by "a record or records." The  
definition has been expanded from that found in former  
32 Article 9 to include records that evidence a monetary  
obligation and a security interest in specific goods and  
34 software used in the goods. Charters of vessels are  
expressly excluded from the definition of chattel paper;  
36 they are accounts. The term "charter" as used in this  
section includes bareboat charters, time charters,  
38 successive voyage charters, contracts of affreightment,  
contracts of carriage, and all other arrangements for the  
40 use of vessels. Under former Section 9-105, only if the  
evidence of an obligation consisted of "a writing or  
42 writings" could an obligation qualify as chattel paper. In  
this Article, traditional, written chattel paper is included  
44 in the definition of "tangible chattel paper." "Electronic  
chattel paper" is chattel paper that is stored in an  
46 electronic medium instead of in tangible form. The concept  
of an electronic medium should be construed liberally to  
48 include electrical, digital, magnetic, optical,  
electromagnetic, or any other current or similar emerging  
50 technologies.

2           The definition of electronic chattel paper does not dictate  
4           that it be created in any particular fashion. For example, a  
6           record consisting of a tangible writing may be converted to  
8           electronic form (e.g., by creating electronic images of a signed  
          writing). Or, records may be initially created and executed in  
          electronic form (e.g., a lessee might authenticate an electronic  
          record of a lease that is then stored in electronic form). In  
          either case the resulting records are electronic chattel paper.

10  
12           c. "Instrument"; "Promissory Note." The definition of  
14           "instrument" includes a negotiable instrument. As under  
16           former Section 9-105, it also includes any other right to  
18           payment of a monetary obligation that is evidenced by a  
20           writing of a type that in ordinary course of business is  
22           transferred by delivery (and, if necessary, an indorsement  
24           or assignment). Except in the case of chattel paper, the  
26           fact that an instrument is secured by a security interest or  
28           encumbrance on property does not change the character of the  
30           instrument as such or convert the combination of the  
          instrument and collateral into a separate classification of  
          personal property. The definition makes clear that rights  
          to payment arising out of credit-card transactions are not  
          instruments. The definition of "promissory note" is new,  
          necessitated by the inclusion of sales of promissory notes  
          within the scope of Article 9 [Maine cite Article 9-A]. It  
          explicitly excludes obligations arising out of "orders" to  
          pay (e.g., checks) as opposed to "promises" to pay. See  
          Section 3-104.

32           d. "General Intangible"; "Payment Intangible." "General  
34           intangible" is the residual category of personal property,  
36           including things in action, that is not included in the  
38           other defined types of collateral. Examples are various  
40           categories of intellectual property and the right to payment  
42           of a loan of funds that is not evidenced by chattel paper or  
44           an instrument. The definition has been revised to exclude  
46           commercial tort claims, deposit accounts, and  
48           letter-of-credit rights. Each of the three is a separate  
50           type of collateral. One important consequence of this  
          exclusion is that tortfeasors (commercial tort claims),  
          banks (deposit accounts), and persons obligated on letters  
          of credit (letter-or-credit rights) are not "account  
          debtors" having the rights and obligations set forth in  
          Sections 9-404, 9-405, and 9-406 [Maine cite sections  
          9-1404, 9-1405, 9-1406]. In particular, tortfeasors, banks,  
          and persons obligated on letters of credit are not obligated  
          to pay an assignee (secured party) upon receipt of the  
          notification described in Section 9-404(a) [Maine cite  
          section 9-1404, subsection (1)]. See Comment 5.h. Another

2 important consequence relates to the adequacy of the  
description in the security agreement. See Section 9-108  
4 [Maine cite section 9-1108].

6 "Payment intangible" is a subset of the definition of  
"general intangible." The sale of a payment intangible is  
subject to this Article. See Section 9-109(a)(3) [Maine cite  
8 section 9-1109, subsection (1), paragraph (c)]. Virtually any  
intangible right could give rise to a right to payment of money  
10 once one hypothesizes, for example, that the account debtor is in  
breach of its obligation. The term "payment intangible,"  
12 however, embraces only those general intangibles "under which the  
account debtor's principal obligation is a monetary obligation."  
14 (Emphasis added.)

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

26 A right to the payment of money is frequently buttressed by  
ancillary covenants, such as covenants in a purchase agreement,  
28 note, or mortgage requiring insurance on the collateral or  
forbidding removal of the collateral, or covenants to preserve  
30 the creditworthiness of the promisor, such as covenants  
restricting dividends and the like. This Article does not treat  
32 these ancillary rights separately from the rights to payment to  
which they relate. For example, attachment and perfection of an  
34 assignment of a right to payment of a monetary obligation,  
whether it be an account or payment intangible, also carries  
36 these ancillary rights.

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

44 e. "Letter-of-Credit Right." The term "letter-of-credit  
46 right" embraces the rights to payment and performance under  
a letter of credit (defined in Section 5-102). However, it  
48 does not include a beneficiary's right to demand payment or  
performance. Transfer of those rights to a transferee  
50 beneficiary is governed by Article 5. See Sections 9-107

2 [Maine cite section 9-1107], Comment 4, and 9-329 [Maine  
cite section 9-1329], Comments 3 and 4.

4 f. "Supporting Obligation." This new term covers the most  
6 common types of credit enhancements-suretyship obligations  
8 (including guarantees) and letter-of-credit rights that  
10 support one of the types of collateral specified in the  
12 definition. As explained in Comment 2.a., suretyship law  
14 determines whether an obligation is "secondary" for purposes  
16 of this definition. Section 9-109 generally excludes from  
18 this Article transfers of interests in insurance policies.  
20 However, the regulation of a secondary obligation as an  
insurance product does not necessarily mean that it is a  
"policy of insurance" for purposes of the exclusion in  
Section 9-109 [Maine cite section 9-1109]. Thus, this  
Article may cover a secondary obligation (as a supporting  
obligations), even if the obligation is issued by a  
regulated insurance company and the obligation is subject to  
regulation as an "insurance" product.

22 This Article contains rules explicitly governing attachment,  
24 perfection, and priority of security interests in supporting  
26 obligations. See Sections 9-203, 9-308, 9-310, and 9-322 [Maine  
cite sections 9-1203, 9-1308, 9-1310 and 9-1322]. These  
provisions reflect the principle that a supporting obligation is  
an incident of the collateral it supports.

28 Collections of or other distributions under a supporting  
30 obligations are "proceeds" of the supported collateral as well as  
32 "proceeds" of the supporting obligation itself. See Section  
34 9-102 [Maine cite section 9-1102] (defining "proceeds") and  
36 Comment 13.b. As such, the collections and distributions are  
38 subject to the priority rules applicable to proceeds generally.  
40 See Section 9-322 [Maine cite section 9-1322]. However, under  
42 the special rule governing security interests in a  
letter-of-credit right, a secured party's failure to obtain  
control (Section 9-107) [Maine cite section 9-1107] of a  
letter-of-credit right supporting collateral may leave its  
security interest exposed to a priming interest of a party who  
does take control. See Section 9-329 [Maine cite section 9-1329]  
(security interest in a letter-of-credit right perfected by  
control has priority over a conflicting security interest).

44 g. "Commercial Tort Claim." This term is new. A tort  
46 claim may serve as original collateral under this Article  
48 only if it is a "commercial tort claim." See Section  
50 9-109(d) [Maine cite section 9-1109, subsection (4)].  
Although security interests in commercial tort claims are  
within its scope, this Article does not override other  
applicable law restricting the assignability of a tort

2 claim. See Section 9-401 [Maine cite section 9-1401]. A  
security interest in a tort claim also may exist under this  
Article if the claim is proceeds of other collateral.

4  
6 h. "Account Debtor." An "account debtor" is a person  
obligated on an account, chattel paper, or general  
8 intangible. The account debtor's obligation often is a  
monetary obligation; however, this is not always the case.  
10 For example, if a franchisee uses its rights under a  
franchise agreement (a general intangible) as collateral,  
12 then the franchisor is an "account debtor." As a general  
matter, Article 3, and not Article 9 [Maine cite Article  
14 9-A], governs obligations on negotiable instruments.  
Accordingly, the definition of "account debtor" excludes  
16 obligors on negotiable instruments constituting part of  
chattel paper. The principal effect of this change from the  
18 definition in former Article 9 is that the rules in Sections  
9-403, 9-404, 9-405, and 9-406 [Maine cite sections 9-1403,  
20 9-1404, 9-1405, 9-1406], dealing with the rights of an  
assignee and duties of an account debtor, do not apply to an  
22 assignment of chattel paper in which the obligation to pay  
is evidenced by a negotiable instrument. (Section 9-406(d)  
24 [Maine cite section 9-1406, subsection (4)], however, does  
apply to promissory notes, including negotiable promissory  
26 notes.) Rather, the assignee's rights are governed by  
Article 3. Similarly, the duties of an obligor on a  
28 nonnegotiable instrument are governed by non-Article 9 law  
unless the nonnegotiable instrument is a part of chattel  
paper, in which case the obligor is an account debtor.

30  
32 i. Receivables Under Government Entitlement Programs. This  
Article does not contain a defined term that encompasses  
34 specifically rights to payment or performance under the many  
and varied government entitlement programs. Depending on  
36 the nature of a right under a program, it could be an  
account, a payment intangible, a general intangible other  
38 than a payment intangible, or another type of collateral.  
The right also might be proceeds of collateral (e.g., crops).

40 6. Investment-Property-Related Definitions: "Commodity  
Account"; "Commodity Contract"; "Commodity Customer"; "Commodity  
42 Intermediary"; "Investment Property." These definitions are  
substantially the same as the corresponding definitions in former  
44 Section 9-115. "Investment property" includes securities, both  
certificated and uncertificated, securities accounts, security  
46 entitlements, commodity accounts, and commodity contracts. The  
term investment property includes a "securities account" in order  
48 to facilitate transactions in which a debtor wishes to create a  
security interest in all of the investment positions held through  
50 a particular account rather than in particular positions carried

2 in the account. Former Section 9-115 was added in conjunction  
with Revised Article 8 and contained a variety of rules  
4 applicable to security interests in investment property. These  
rules have been relocated to the appropriate sections of Article  
6 9 [Maine cite Article 9-A]. See, e.g., Sections 9-203 [Maine  
cite section 9-1203] (attachment), 9-314 [Maine cite section  
8 9-1314] (perfection by control), 9-328 [Maine cite section  
9-1328] (priority).

10 The terms "security," "security entitlement," and related  
terms are defined in Section 8-102, and the term "securities  
12 account" is defined in Section 8-501. The terms "commodity  
account," "commodity contract," "commodity customer," and  
14 "commodity intermediary" are defined in this section. Commodity  
contracts are not "securities" or "financial assets" under  
16 Article 8. See Section 8-103(f). Thus, the relationship between  
commodity intermediaries and commodity customers is not governed  
18 by the indirect-holding-system rules of Part 5 of Article 8. For  
securities, Article 9 [Maine cite Article 9-A] contains rules on  
20 security interests, and Article 8 contains rules on the rights of  
transferees, including secured parties, on such matters as the  
22 rights of a transferee if the transfer was itself wrongful and  
gives rise to an adverse claim. For commodity contracts, Article  
24 9 [Maine cite Article 9-A] establishes rules on security  
interests, but questions of the sort dealt with in Article 8 for  
26 securities are left to other law.

28 The indirect-holding-system rules of Article 8 are  
sufficiently flexible to be applied to new developments in the  
30 securities and financial markets, where that is appropriate.  
Accordingly, the definition of "commodity contract" is narrowly  
32 drafted to ensure that it does not operate as an obstacle to the  
application of the Article 8 indirect-holding-system rules to new  
34 products. The term "commodity contract" covers those contracts  
that are traded on or subject to the rules of a designated  
36 contract market and foreign commodity contracts that are carried  
on the books of American commodity intermediaries. The effect of  
38 this definition is that the category of commodity contracts that  
are excluded from Article 8 but governed by Article 9 [Maine cite  
40 Article 9-A] is essentially the same as the category of contracts  
that fall within the exclusive regulatory jurisdiction of the  
42 federal Commodity Futures Trading Commission.

44 Commodity contracts are different from securities or other  
financial assets. A person who enters into a commodity futures  
46 contract is not buying an asset having a certain value and  
holding it in anticipation of increase in value. Rather the  
48 person is entering into a contract to buy or sell a commodity at  
set price for delivery at a future time. That contract may  
50 become advantageous or disadvantageous as the price of the

2 commodity fluctuates during the term of the contract. The rules  
of the commodity exchanges require that the contracts be marked  
4 to market on a daily basis; that is, the customer pays or  
receives any increment attributable to that day's price change.  
6 Because commodity customers may incur obligations on their  
contracts, they are required to provide collateral at the outset,  
known as "original margin," and may be required to provide  
8 additional amounts, known as "variation margin," during the term  
of the contract.

10  
12 The most likely setting in which a person would want to take  
a security interest in a commodity contract is where a lender who  
14 is advancing funds to finance an inventory of a physical  
commodity requires the borrower to enter into a commodity  
16 contract as a hedge against the risk of decline in the value of  
the commodity. The lender will want to take a security interest  
18 in both the commodity itself and the hedging commodity contract.  
Typically, such arrangements are structured as security interests  
20 in the entire commodity account in which the borrower carries the  
hedging contracts, rather than in individual contracts.

22 One important effect of including commodity contracts and  
commodity accounts in Article 9 [Maine cite Article 9-A] is to  
24 provide a clearer legal structure for the analysis of the rights  
of commodity clearing organizations against their participants  
26 and futures commission merchants against their customers. The  
rules and agreements of commodity clearing organizations  
28 generally provide that the clearing organization has the right to  
liquidate any participant's positions in order to satisfy  
30 obligations of the participant to the clearing corporation.  
Similarly, agreements between futures commission merchants and  
32 their customers generally provide that the futures commission  
merchant has the right to liquidate a customer's positions in  
34 order to satisfy obligations of the customer to the futures  
commission merchant.

36  
38 The main property that a commodity intermediary holds as  
collateral for the obligations that the commodity customer may  
40 incur under its commodity contracts is not other commodity  
contracts carried by the customer but the other property that the  
42 customer has posted as margin. Typically, this property will be  
securities. The commodity intermediary's security interest in  
44 such securities is governed by the rules of this Article on  
security interests in securities, not the rules on security  
interests in commodity contracts or commodity accounts.

46  
48 Although there are significant analytic and regulatory  
differences between commodities and securities, the development  
of commodity contracts on financial products in the past few  
50 decades has resulted in a system in which the commodity markets

2 and securities markets are closely linked. The rules on security  
interests in commodity contracts and commodity accounts provide a  
4 structure that may be essential in times of stress in the  
financial markets. Suppose, for example that a firm has a  
6 position in a securities market that is hedged by a position in a  
commodity market, so that payments that the firm is obligated to  
8 make with respect to the securities position will be covered by  
the receipt of funds from the commodity position. Depending upon  
10 the settlement cycles of the different markets, it is possible  
that the firm could find itself in a position where it is  
12 obligated to make the payment with respect to the securities  
position before it receives the matching funds from the commodity  
14 position. If cross-margining arrangements have not been  
developed between the two markets, the firm may need to borrow  
16 funds temporarily to make the earlier payment. The rules on  
security interests in investment property would facilitate the  
18 use of positions in one market as collateral for loans needed to  
cover obligations in the other market.

20 7. Consumer-Related Definitions: "Consumer Debtor";  
"Consumer Goods"; "Consumer-goods transaction"; "Consumer  
22 Obligor"; "Consumer Transaction." The definition of "consumer  
goods" (discussed above) is substantially the same as the  
24 definition in former Section 9-109 [Maine cite section 9-1109].  
The definitions of "consumer debtor," "consumer obligor,"  
26 "consumer-goods transaction," and "consumer transaction" have  
been added in connection with various new (and old)  
28 consumer-related provisions and to designate certain provisions  
that are inapplicable in consumer transactions.

30 "Consumer-goods transaction" is a subset of "consumer  
32 transaction." Under each definition, both the obligation secured  
and the collateral must have a personal, family, or household  
34 purpose. However, "mixed" business and personal transactions  
also may be characterized as a consumer-goods transaction or  
36 consumer transaction. Subparagraph (A) [Maine cite paragraph  
(a)] of the definition of consumer-goods transactions and clause  
38 (i) [Maine cite paragraph (a)] of the definition of consumer  
transaction are primary purposes tests. Under these tests, it is  
40 necessary to determine the primary purpose of the obligation or  
obligations secured. Subparagraph (B) [Maine cite paragraph (b)]  
42 and clause (iii) [Maine cite paragraph (c)] of these definitions  
are satisfied if any of the collateral is consumer goods, in the  
44 case of a consumer-goods transaction, or "is held or acquired  
primarily for personal, family, or household purposes," in the  
46 case of a consumer transaction. The fact that some of the  
obligations secured or some of the collateral for the obligation  
48 does not satisfy the tests (e.g., some of the collateral is  
acquired for a business purpose) does not prevent a transaction



from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b) [Maine cite section 9-1515, subsection (2)]. The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 [Maine cite section 9-1501] for a farflung public-utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

#### 9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to

2 communicate or store information include, but are not limited to,  
3 magnetic media, optical discs, digital voice messaging systems,  
4 electronic mail, audio tapes, and photographic media, as well as  
5 paper. "Record" is an inclusive term that includes all of these  
6 methods of storing or communicating information. Any "writing"  
7 is a record. A record may be authenticated. See Comment 9.b. A  
8 record may be created without the knowledge or intent of a  
particular person.

10 Like the terms "written" or "in writing," the term "record"  
11 does not establish the purposes, permitted uses, or legal effect  
12 that a record may have under any particular provision of law.  
13 Whatever is filed in the Article 9 [Maine cite Article 9-A]  
14 filing system, including financing statements, continuation  
15 statements, and termination statements, whether transmitted in  
16 tangible or intangible form, would fall within the definition.  
17 However, in some instances, statutes or filing-office rules may  
18 require that a paper record be filed. In such cases, even if  
19 this Article permits the filing of an electronic record,  
20 compliance with those statutes or rules is necessary. Similarly,  
21 a filer must comply with a statute or rule that requires a  
22 particular type of encoding or formatting for an electronic  
23 record.

24 This Article sometimes uses the terms "for record," "of  
25 record," "record or legal title," and "record owner." Some of  
26 these are terms traditionally used in real-property law. The  
27 definition of "record" in this Article now explicitly excepts  
28 these usages from the defined term. Also, this Article refers to  
29 a record that is filed or recorded in real-property recording  
30 systems to record a mortgage as a "record of a mortgage." This  
31 usage recognizes that the defined term "mortgage" means an  
32 interest in real property; it does not mean the record that  
33 evidences, or is filed or recorded with respect to, the mortgage.

36 b. "Authenticate"; "Communicate"; "Send." The terms  
37 "authenticate" and "authenticated" generally replace "sign"  
38 and "signed." "Authenticated" replaces and broadens the  
39 definition of "signed," in Section 1-201, to encompass  
40 authentication of all records, not just writings.  
41 (References to authentication of, e.g., an agreement,  
42 demand, or notification mean, of course, authentication of a  
43 record containing an agreement, demand, or notification.)  
44 The terms "communicate" and "send" also contemplate the  
45 possibility of communication by nonwritten media. These  
46 definitions include the act of transmitting both tangible  
47 and intangible records. The definition of "send" replaces,  
48 for purposes of this Article, the corresponding term in  
49 Section 1-201. The reference to "usual means of  
50 communication" in that definition contemplates an inquiry

2 into the appropriateness of the method of transmission used  
in the particular circumstances involved.

4 10. Scope-Related Definitions.

6 a. Expanded Scope of Article: "Agricultural Lien";  
"Consignment"; "Payment Intangible"; "Promissory Note."  
8 These new definitions reflect the expanded scope of Article  
9 [Maine cite Article 9-A], as provided in Section 9-109(a)  
10 [Maine cite section 9-1109, subsection (1)].

12 b. Reduced Scope of Exclusions: "Governmental Unit";  
"Health-Care-Insurance Receivable"; "Commercial Tort  
14 Claims." These new definitions reflect the reduced scope of  
the exclusions, provided in Section 9-109(c) and (d) [Maine  
16 cite section 9-1109, subsections (3) and (4)], of transfers  
by governmental debtors and assignments of interests in  
18 insurance policies and commercial tort claims.

20 11. Choice-of-Law-Related Definitions: "Certificate of  
Title"; "Governmental Unit"; "Jurisdiction of Organization";  
22 "Registered Organization"; "State." These new definitions  
reflect the changes in the law governing perfection and priority  
24 of security interests and agricultural liens provided in Part 3,  
Subpart 1.

26  
28 Not every organization that may provide information about  
itself in the public records is a "registered organization." For  
example, a general partnership is not a "registered  
30 organization," even if it files a statement of partnership  
authority under Section 303 of the Uniform Partnership Act (1994)  
32 or an assumed name ("dba") certificate. This is because the  
State under whose law the partnership is organized is not  
34 required to maintain a public record showing that the partnership  
has been organized. In contrast, corporations, limited liability  
36 companies, and limited partnerships are "registered  
organizations."

38  
40 12. Deposit-Account-Related Definitions: "Deposit  
Account"; "Bank." The revised definition of "deposit account"  
incorporates the definition of "bank," which is new. The  
42 definition derives from the definitions of "bank" in Sections  
4-105(1) and 4A-105(a)(2), which focus on whether the  
44 organization is "engaged in the business of banking."

46 Deposit accounts evidenced by Article 9 [Maine cite Article  
9-A] "instruments" are excluded from the term "deposit account."  
48 In contrast, former Section 9-105 excluded from the former  
definition "an account evidenced by a certificate of deposit."  
50 The revised definition clarifies the proper treatment of

2 nonnegotiable or uncertificated certificates of deposit. Under  
the definition, an uncertificated certificate of deposit would be  
4 a deposit account (assuming there is no writing evidencing the  
bank's obligation to pay) whereas a nonnegotiable certificate of  
6 deposit would be a deposit account only if it is not an  
"instrument" as defined in this section (a question that turns on  
8 whether the nonnegotiable certificate of deposit is "of a type  
that in ordinary course of business is transferred by delivery  
with any necessary indorsement or assignment.")

10  
12 A deposit account evidenced by an instrument is subject to  
the rules applicable to instruments generally. As a consequence,  
14 a security interest in such an instrument cannot be perfected by  
"control" (see Section 9-104 [Maine cite section 9-1104]), and  
16 the special priority rules applicable to deposit accounts (see  
Sections 9-327 and 9-340 [Maine cite sections 9-1327 and 9-1340])  
do not apply.

18  
20 The term "deposit account" does not include "investment  
property," such as securities and security entitlements. Thus,  
22 the term also does not include shares in a money-market mutual  
fund, even if the shares are redeemable by check.

24 13. Proceeds-Related Definitions: "Cash Proceeds";  
"Noncash Proceeds"; "Proceeds." The revised definition of  
26 "proceeds" expands the definition beyond that contained in former  
Section 9-306 [Maine cite section 9-1306] and resolves  
28 ambiguities in the former section.

30 a. Distributions on Account of Collateral. The phrase  
"whatever is collected on, or distributed on account of,  
32 collateral," in subparagraph (B) [Maine cite paragraph (6)],  
is broad enough to cover cash or stock dividends distributed  
34 on account of securities or other investment property that  
is original collateral. Compare former Section 9-306 ("Any  
36 payments or distributions made with respect to investment  
property collateral are proceeds."). This section rejects  
38 the holding of *Hastie v. FDIC*, 2 F.3d 1042 (10th Cir. 1993)  
(postpetition cash dividends on stock subject to a  
40 prepetition pledge are not "proceeds" under Bankruptcy Code  
Section 552(b)), to the extent the holding relies on the  
42 Article 9 [Maine cite Article 9-A] definition of "proceeds."

44 b. Distributions on Account of Supporting Obligations.  
Under subparagraph (B) [Maine cite paragraph (6)],  
46 collections on and distributions on account of collateral  
consisting of various credit-support arrangements  
48 ("supporting obligations," as defined in Section 9-102)  
[Maine cite section 9-1102] also are proceeds.  
50 Consequently, they are afforded treatment identical to

2 proceeds collected from or distributed by the obligor on the  
underlying (supported) right to payment or other  
4 collateral. Proceeds of supporting obligations also are  
proceeds of the underlying rights to payment or other  
collateral.

6  
c. Proceeds of Proceeds. The definition of "proceeds" no  
8 longer provides that proceeds of proceeds are themselves  
proceeds. That idea is expressed in the revised definition  
10 of "collateral" in Section 9-102 [Maine cite section  
9-1102]. No change in meaning is intended.

12  
d. Proceeds Received by Person Who Did Not Create Security  
14 Interest. When collateral is sold subject to a security  
interest and the buyer then resells the collateral, a  
16 question arose under former Article 9 concerning whether the  
"debtor" had "received" what the buyer received on resale  
18 and, therefore, whether those receipts were "proceeds" under  
former Section 9-306(2). This Article contains no  
20 requirement that property be "received" by the debtor for  
the property to qualify as proceeds. It is necessary only  
22 that the property be traceable, directly or indirectly, to  
the original collateral.

24  
e. Cash Proceeds and Noncash Proceeds. The definition of  
26 "cash proceeds" is substantially the same as the  
corresponding definition in former Section 9-306. The  
28 phrase "and the like" covers property that is functionally  
equivalent to "money, checks, or deposit accounts," such as  
30 some money-market accounts that are securities or part of  
securities entitlements. Proceeds other than cash proceeds  
32 are noncash proceeds.

34 14. Consignment-Related Definitions: "Consignee";  
"Consignment"; "Consignor." The definition of "consignment"  
36 excludes, in subparagraphs (B) and (C) [Maine cite paragraphs (b)  
and (c)], transactions for which filing would be inappropriate or  
38 of insufficient benefit to justify the costs. A consignment  
excluded from the application of this Article by one of those  
40 subparagraphs may still be a true consignment; however, it is  
governed by non-Article 9 law. The definition also excludes, in  
42 subparagraph (D) [Maine cite paragraph (d)], what have been  
called "consignments intended for security." These  
44 "consignments" are not bailments but secured transactions.  
Accordingly, all of Article 9 [Maine cite Article 9-A] applies to  
46 them. See Sections 1-201(37), 9-109(a)(1) [Maine cite section  
9-1109, subsection (1), paragraph (a)]. The "consignor" is the  
48 person who delivers goods to the "consignee" in a consignment.

2 The definition of "consignment" requires that the goods be  
4 delivered "to a merchant for the purpose of sale." If the goods  
6 are delivered for another purpose as well, such as milling or  
8 processing, the transaction is a consignment nonetheless because  
a purpose of the delivery is "sale." On the other hand, if a  
merchant-processor-bailee will not be selling the goods itself  
but will be delivering to buyers to which the owner-bailor agreed  
to sell the goods, the transaction would not be a consignment.

10 15. "Accounting." This definition describes the record and  
12 information that a debtor is entitled to request under Section  
9-210 [Maine cite section 9-1210].

14 16. "Document." The definition of "document" is unchanged  
16 in substance from the corresponding definitions in former Section  
9-105. See Section 1-201(15) and Comment 15.

18 17. "Encumbrance"; "Mortgage." The definitions of  
20 "encumbrance" and "mortgage" are unchanged in substance from the  
22 corresponding definitions in former Section 9-105 [Maine cite  
24 section 9-1105]. They are used primarily in the special  
real-property-related priority and other provisions relating to  
crops, fixtures, and accessions.

26 18. "Fixtures." This definition is unchanged in substance  
28 from the corresponding definition in former Section 9313. See  
Section 9-334 [Maine cite section 9-1334] (priority of security  
interests in fixtures and crops).

30 19. "Good Faith." This Article expands the definition of  
32 "good faith" to include "the observance of reasonable commercial  
34 standards of fair dealing." The definition in this section  
36 applies when the term is used in this Article, and the same  
concept applies in the context of this Article for purposes of  
the obligation of good faith imposed by Section 1-203. See  
subsection (c) [Maine cite subsection (3)].

38 20. "Lien Creditor" This definition is unchanged in  
40 substance from the corresponding definition in former Section  
9-301.

42 21. "New Value." This Article deletes former Section  
44 9108. Its broad formulation of new value, which embraced the  
46 taking of after-acquired collateral for a pre-existing claim, was  
48 unnecessary, counterintuitive, and ineffective for its original  
50 purpose of sheltering after-acquired collateral from attack as a  
voidable preference in bankruptcy. The new definition derives  
from Bankruptcy Code Section 547(a). The term is used with  
respect to temporary perfection of security interests in  
instruments, certificated securities, or negotiable documents

2 under Section 9-312(e) [Maine cite section 9-1312, subsection  
4 (5)] and with respect to chattel paper priority in Section 9-330  
6 [Maine cite section 9-1330].

8 22. "Person Related To." Section 9-615 [Maine cite section  
10 9-1615] provides a special method for calculating a deficiency or  
12 surplus when "the secured party, a person related to the secured  
14 party, or a secondary obligor" acquires the collateral at a  
16 foreclosure disposition. Separate definitions of the term are  
18 provided with respect to an individual secured party and with  
20 respect to a secured party that is an organization. The  
22 definitions are patterned on the corresponding definition in  
24 Section 1.301(32) of the Uniform Consumer Credit Code (1974).

26 23. "Proposal." This definition describes a record that is  
28 sufficient to propose to retain collateral in full or partial  
30 satisfaction of a secured obligation. See Sections 9-620, 9-621,  
32 9-622 [Maine cite sections 9-1620, 9-1621, 9-1622].

34 24. "Pursuant to Commitment." This definition is unchanged  
36 in substance from the corresponding definition in former Section  
38 9105. It is used in connection with special priority rules  
40 applicable to future advances. See Section 9-323 [Maine cite  
42 section 9-1323].

44 25. "Software." The definition of "software" is used in  
46 connection with the priority rules applicable to purchase-money  
48 security interests. See Sections 9-103, 9-324 [Maine cite  
50 sections 9-1103, 9-1324]. Software, like a payment intangible,  
is a type of general intangible for purposes of this Article.

26 26. Terminology: "Assignment" and "Transfer." In numerous  
28 provisions, this Article refers to the "assignment" or the  
30 "transfer" of property interests. These terms and their  
32 derivatives are not defined. This Article generally follows  
34 common usage by using the terms "assignment" and "assign" to  
36 refer to transfers of rights to payment, claims, and liens and  
38 other security interests. It generally uses the term "transfer"  
40 to refer to other transfers of interests in property. Except  
42 when used in connection with a letter-of-credit transaction (see  
44 Section 9-107 [Maine cite section 9-1107], Comment 4), no  
46 significance should be placed on the use of one term or the  
48 other. Depending on the context, each term may refer to the  
50 assignment or transfer of an outright ownership interest or to  
the assignment or transfer of a limited interest, such as a  
security interest.

48 **§9-1103. Purchase-money security interest; application of**  
50 **payments; burden of establishing**

2 (1) As used in this section, unless the context otherwise  
3 indicates, the following terms have the following meanings.

4 (a) "Purchase-money collateral" means goods or software  
5 that secures a purchase-money obligation incurred with  
6 respect to that collateral; and

8 (b) "Purchase-money obligation" means an obligation of an  
9 obligor incurred as all or part of the price of the  
10 collateral or for value given to enable the debtor to  
11 acquire rights in or the use of the collateral if the value  
12 is in fact so used.

14 (2) A security interest in goods is a purchase-money  
15 security interest:

16 (a) To the extent that the goods are purchase-money  
17 collateral with respect to that security interest:

20 (b) If the security interest is in inventory that is or was  
21 purchase-money collateral, also to the extent that the  
22 security interest secures a purchase-money obligation  
23 incurred with respect to other inventory in which the  
24 secured party holds or held a purchase-money security  
25 interest; and

26 (c) Also to the extent that the security interest secures a  
27 purchase-money obligation incurred with respect to software  
28 in which the secured party holds or held a purchase-money  
29 security interest.

32 (3) A security interest in software is a purchase-money  
33 security interest to the extent that the security interest also  
34 secures a purchase-money obligation incurred with respect to  
35 goods in which the secured party holds or held a purchase-money  
36 security interest if:

38 (a) The debtor acquired its interest in the software in an  
39 integrated transaction in which it acquired an interest in  
40 the goods; and

42 (b) The debtor acquired its interest in the software for  
43 the principal purpose of using the software in the goods.

44 (4) The security interest of a consignor in goods that are  
45 the subject of a consignment is a purchase-money security  
46 interest in inventory.

48 (5) In a transaction other than a consumer-goods  
49 transaction, if the extent to which a security interest is a  
50 purchase-money security interest in goods:



2 purchase-money security interest depends on the application of a  
3 payment to a particular obligation, the payment must be applied:

4 (a) In accordance with any reasonable method of application  
5 to which the parties agree;

6  
7 (b) In the absence of the parties' agreement to a  
8 reasonable method, in accordance with any intention of the  
9 obligor manifested at or before the time of payment; or

10  
11 (c) In the absence of an agreement to a reasonable method  
12 and a timely manifestation of the obligor's intention, in  
13 the following order:

14 (i) To obligations that are not secured; and

15  
16 (ii) If more than one obligation is secured, to  
17 obligations secured by purchase-money security  
18 interests in the order in which those obligations were  
19 incurred.

20  
21 (6) In a transaction other than a consumer-goods  
22 transaction, a purchase-money security interest does not lose its  
23 status as such, even if:

24  
25 (a) The purchase-money collateral also secures an  
26 obligation that is not a purchase-money obligation;

27  
28 (b) Collateral that is not purchase-money collateral also  
29 secures the purchase-money obligation; or

30  
31 (c) The purchase-money obligation has been renewed,  
32 refinanced, consolidated or restructured.

33  
34 (7) In a transaction other than a consumer-goods  
35 transaction, a secured party claiming a purchase-money security  
36 interest has the burden of establishing the extent to which the  
37 security interest is a purchase-money security interest.

38  
39 (8) The limitation of the rules in subsections (5), (6) and  
40 (7) to transactions other than consumer-goods transactions is  
41 intended to leave to the court the determination of the proper  
42 rules in consumer-goods transactions. The court may not infer  
43 from that limitation the nature of the proper rule in  
44 consumer-goods transactions and may continue to apply established  
45 approaches.

46  
47 **Official Comment**

48  
49 1. Source. Former Section 9107.

2           2. Scope of This Section. Under Section 9-309(1) [Maine  
4 cite section 9-1309, subsection (1)], a purchase-money security  
6 provide special priority rules for purchase-money security  
8 interests in a variety of contexts. This section explains when a  
security interest enjoys purchase-money status.

10           3. "Purchase-Money Collateral"; "Purchase-Money  
12 Obligation"; "Purchase-Money Security Interest." Subsection (a)  
14 [Maine cite subsection (1)] defines "purchase-money collateral"  
16 and "purchase-money obligation." These terms are essential to  
18 the description of what constitutes a purchase-money security  
20 interest under subsection (b) [Maine cite subsection (2)]. As  
22 used in subsection (a)(2) [Maine cite subsection (1), paragraph  
24 (b)], the definition of "purchase-money obligation," the "price"  
of collateral or the "value given to enable" includes obligations  
for expenses incurred in connection with acquiring rights in the  
collateral, sales taxes, duties, finance charges, interest,  
freight charges, costs of storage in transit, demurrage,  
administrative charges, expenses of collection and enforcement,  
attorney's fees, and other similar obligations.

26           The concept of "purchase-money security interest" requires a  
28 close nexus between the acquisition of collateral and the secured  
30 obligation. Thus, a security interest does not qualify as a  
purchase-money security interest if a debtor acquires property on  
unsecured credit and subsequently creates the security interest  
to secure the purchase price.

32           4. Cross-Collateralization of Purchase-Money Security  
34 Interests in Inventory. Subsection (b)(2) [Maine cite subsection  
36 (2), paragraph (b)] deals with the problem of  
cross-collateralized purchase-money security interests in  
inventory. Consider a simple example:

38           Example: Seller (S) sells an item of inventory (Item-1) to  
40 Debtor (D), retaining a security interest in Item-1 to secure  
42 Item-1's price and all other obligations, existing and future, of  
44 D to S. S then sells another item of inventory to D (Item-2),  
46 again retaining a security interest in Item-2 to secure Item-2's  
price as well as all other obligations of D to S. D then pays to  
S Item-1's price. D then sells Item-2 to a buyer in ordinary  
course of business, who takes Item-2 free of S's security  
interest.

48           Under subsection (b)(2) [Maine cite subsection (2), paragraph  
50 (b)], S's security interest in Item-1 securing Item-2's unpaid  
price would be a purchase-money security interest. This is so

2 because S has a purchase-money security interest in Item-1,  
Item-1 secures the price of (a "purchase-money obligation  
4 incurred with respect to") Item-2 ("other inventory"), and Item-2  
itself was subject to a purchase-money security interest. Note  
6 that, to the extent Item-1 secures the price of Item-2, S's  
security interest in Item-1 would not be a purchase-money  
8 security interest under subsection (b)(1) [Maine cite subsection  
(2), paragraph (a)]. The security interest in Item-1 is a  
purchase-money security interest under subsection (b)(1) [Maine  
10 cite subsection (2), paragraph (a)] only to the extent that  
Item-1 is "purchase-money collateral," i.e., only to the extent  
12 that Item-1 "secures a purchase-money obligation incurred with  
respect to that collateral" (i.e., Item-1). See subsection  
14 (a)(1) [Maine cite subsection (1), paragraph (a)].

16 5. Purchase-Money Security Interests in Goods and  
Software. Subsections (b) and (c) [Maine cite subsections (2)  
18 and (3)] limit purchase-money security interests to security  
interests in goods, including fixtures, and software. Otherwise,  
20 no change in meaning from former Section 9-107 is intended. The  
second sentence of former Section 9-115(5)(f) made the  
22 purchase-money priority rule (former Section 9-312(4))  
inapplicable to investment property. This section's limitation  
24 makes that provision unnecessary.

26 Subsection (c) [Maine cite subsection (3)] describes the  
limited circumstances under which a security interest in goods  
28 may be accompanied by a purchase-money security interest in  
software. The software must be acquired by the debtor in a  
30 transaction integrated with the transaction in which the debtor  
acquired the goods, and the debtor must acquire the software for  
32 the principal purpose of using the software in the goods.  
"Software" is defined in Section 9-102 [Maine cite section  
34 9-1102].

36 6. Consignments. Under former Section 9114, the priority  
of the consignor's interest is similar to that of a  
38 purchase-money security interest. Subsection (d) [Maine cite  
subsection (4)] achieves this result more directly, by defining  
40 the interest of a "consignor," defined in Section 9-102 [Maine  
cite section 9-1102], to be a purchase-money security interest in  
42 inventory for purposes of this Article. This drafting convention  
obviates any need to set forth special priority rules applicable  
44 to the interest of a consignor. Rather, the priority of the  
consignor's interest as against the rights of lien creditors of  
46 the consignee, competing secured parties, and purchasers of the  
goods from the consignee can be determined by reference to the  
48 priority rules generally applicable to inventory, such as  
Sections 9-317, 9-320, 9-322, and 9-324 [Maine cite sections  
50 9-1317, 9-1320, 9-1322 and 9-1324]. For other purposes,

including the rights and duties of the consignor and consignee as  
2 between themselves, the consignor would remain the owner of goods  
under a bailment arrangement with the consignee. See Section  
4 9-319 [Maine cite section 9-1319].

6 7. Provisions Applicable Only to Non-Consumer-Goods  
Transactions.

8  
a. "Dual-Status" Rule. For transactions other than  
10 consumer-goods transactions, this Article approves what some  
cases have called the "dual-status" rule, under which a  
12 security interest may be a purchase-money security interest  
to some extent and a non-purchase-money security interest to  
14 some extent. (Concerning consumer-goods transactions, see  
subsection (h) [Maine cite subsection (8)] and Comment 8.)  
16 Some courts have found this rule to be explicit or implicit  
in the words "to the extent," found in former Section 9-107  
18 and continued in subsections (b)(1) and (b)(2) [Maine cite  
subsection (2), paragraphs (a) and (b)]. The rule is made  
20 explicit in subsection (e) [Maine cite subsection (5)]. For  
non-consumer-goods transactions, this Article rejects the  
22 "transformation" rule adopted by some cases, under which any  
cross-collateralization, refinancing, or the like destroys  
24 the purchase-money status entirely.

26 Consider, for example, what happens when a \$10,000 loan  
secured by a purchase-money security interest is refinanced by  
28 the original lender, and, as part of the transaction, the debtor  
borrows an additional \$2,000 secured by the collateral.  
30 Subsection (f) [Maine cite subsection (6)] resolves any doubt  
that the security interest remains a purchase-money security  
32 interest. Under subsection (b) [Maine cite subsection (2)],  
however, it enjoys purchase-money status only to the extent of  
34 \$10,000.

36 b. Allocation of Payments. Continuing with the example, if  
the debtor makes a \$1,000 payment on the \$12,000 obligation,  
38 then one must determine the extent to which the security  
interest remains a purchase-money security interest—\$9,000  
40 or \$10,000. Subsection (e)(1) [Maine cite subsection (5),  
paragraph (a)] expresses the overriding principle,  
42 applicable in cases other than consumer-goods transactions,  
for determining the extent to which a security interest is a  
44 purchase-money security interest under these circumstances:  
freedom of contract, as limited by principle of  
46 reasonableness. An unconscionable method of application,  
for example, is not a reasonable one and so would not be  
48 given effect under subsection (e)(1) [Maine cite subsection  
(5), paragraph (a)]. In the absence of agreement,  
50 subsection (e)(2) [Maine cite subsection (5), paragraph (b)]

2 permits the obligor to determine how payments should be  
3 allocated. If the obligor fails to manifest its intention,  
4 obligations that are not secured will be paid first. (As  
5 used in this Article, the concept of "obligations that are  
6 not secured" means obligations for which the debtor has not  
7 created a security interest. This concept is different from  
8 and should not be confused with the concept of an "unsecured  
9 claim" as it appears in Bankruptcy Code Section 506(a).)  
10 The obligor may prefer this approach, because unsecured debt  
11 is likely to carry a higher interest rate than secured  
12 debt. A creditor who would prefer to be secured rather than  
unsecured also would prefer this approach.

14 After the unsecured debt is paid, payments are to be applied  
15 first toward the obligations secured by purchase-money security  
16 interests. In the event that there is more than one such  
17 obligation, payments first received are to be applied to  
18 obligations first incurred. See subsection (e)(3) [Maine cite  
19 subsection (5), paragraph (c)]. Once these obligations are paid,  
20 there are no purchase-money security interests and no additional  
21 allocation rules are needed.

22 Subsection (f) [Maine cite subsection (6)] buttresses the  
23 dual-status rule by making it clear that (in a transaction other  
24 than a consumer-goods transaction) cross-collateralization and  
25 renewals, refinancings, and restructurings do not cause a  
26 purchase-money security interest to lose its status as such. The  
27 statutory terms "renewed," "refinanced," and "restructured" are  
28 not defined. Whether the terms encompass a particular  
29 transaction depends upon whether, under the particular facts, the  
30 purchase-money character of the security interest fairly can be  
31 said to survive. Each term contemplates that an identifiable  
32 portion of the purchase-money obligation could be traced to the  
33 new obligation resulting from a renewal, refinancing, or  
34 restructuring.

36  
37 c. Burden of Proof. As is the case when the extent of a  
38 security interest is in issue, under subsection (g) [Maine  
39 cite subsection (7)] the secured party claiming a  
40 purchase-money security interest in a transaction other than  
41 a consumer-goods transaction has the burden of establishing  
42 whether the security interest retains its purchase-money  
43 status. This is so whether the determination is to be made  
44 following a renewal, refinancing, or restructuring or  
45 otherwise.

46  
47 8. Consumer-Goods Transactions; Characterization Under  
48 Other Law. Under subsection (h) [Maine cite subsection (8)], the  
49 limitation of subsections (e), (f), and (g) [Maine cite  
50 subsections (5), (6) and (7)] to transactions other than a

2 consumer-goods transactions leaves to the court the determination  
of the proper rules in consumer-goods transactions. Subsection  
4 (h) [Maine cite subsection (8)] also instructs the court not to  
draw any inference from this limitation as to the proper rules  
6 for consumer-goods transactions and leaves the court free to  
continue to apply established approaches to those transactions.

8 This section addresses only whether a security interest is a  
"purchase-money security interest" under this Article, primarily  
10 for purposes of perfection and priority. See, e.g., Sections  
9-317, 9-324 [Maine cite sections 9-1317, 9-1324]. In  
12 particular, its adoption of the dual-status rule, allocation of  
payments rules, and burden of proof standards for  
14 non-consumer-goods transactions is not intended to affect or  
influence characterizations under other statutes. Whether a  
16 security interest is a "purchase-money security interest" under  
other law is determined by that law. For example, decisions  
18 under Bankruptcy Code Section 522(f) have applied both the  
dual-status and the transformation rules. The Bankruptcy Code  
20 does not expressly adopt the state law definition of  
"purchase-money security interest." Where federal law does not  
22 defer to this Article, this Article does not, and could not,  
determine a question of federal law.

24 **§9-1103-A. Production-money crops; production-money**  
26 **obligation; production-money security interest;**  
28 **burden of establishing**

30 (1) A security interest in crops is a production-money  
security interest to the extent that the crops are  
production-money crops.

32 (2) If the extent to which a security interest is a  
34 production-money security interest depends on the application of  
a payment to a particular obligation, the payment must be applied;

36 (a) In accordance with any reasonable method of application  
38 to which the parties agree;

40 (b) In the absence of the parties' agreement to a  
42 reasonable method, in accordance with any intention of the  
obligor manifested at or before the time of payment; or

44 (c) In the absence of an agreement to a reasonable method  
46 and a timely manifestation of the obligor's intention, in  
the following order:

48 (i) To obligations that are not secured; and







2 Under subsection (a)(3) [Maine cite subsection (1),  
paragraph (c)], a secured party may obtain control by becoming  
4 the bank's "customer," as defined in Section 4-104. As the  
customer, the secured party would enjoy the right (but not  
6 necessarily the exclusive right) to withdraw funds from, or  
close, the deposit account. See Sections 4-401(a), 4-403(a).

8 Although the arrangements giving rise to control may  
themselves prevent, or may enable the secured party at its  
10 discretion to prevent, the debtor from reaching the funds on  
deposit, subsection (b) [Maine cite subsection (2)] makes clear  
12 that the debtor's ability to reach the funds is not inconsistent  
with "control."

14 Perfection by control is not available for bank accounts  
16 evidenced by an instrument (e.g., certain certificates of  
deposit), which by definition are "instruments" and not "deposit  
18 accounts." See Section 9-102 [Maine cite section 9-1102]  
(defining "deposit account" and "instrument").

20 **§9-1105. Control of electronic chattel paper**

22 A secured party has control of electronic chattel paper if  
24 the record or records comprising the chattel paper are created,  
stored and assigned in such a manner that:

26 (1) A single authoritative copy of the record or records  
28 exists that is unique, identifiable and, except as otherwise  
provided in subsections (4), (5) and (6), unalterable;

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

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

36 (4) Copies or revisions that add or change an identified  
38 assignee of the authoritative copy can be made only with the  
participation of the secured party;

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

44 (6) Any revision of the authoritative copy is readily  
46 identifiable as an authorized or unauthorized revision.

48 **Official Comment**

50 1. Source. New.

2           2. "Control" of Electronic Chattel Paper. This Article  
3 covers security interests in "electronic chattel paper," a new  
4 term defined in Section 9-102 [Maine cite section 9-1102]. This  
5 section governs how "control" of electronic chattel paper may be  
6 obtained. A secured party's control of electronic chattel paper  
7 (i) may substitute for an authenticated security agreement for  
8 purposes of attachment under Section 9-203 [Maine cite section  
9-1203], (ii) is a method of perfection under Section 9-314  
10 [Maine cite section 9-1314], and (iii) is a condition for  
11 obtaining special, non-temporal priority under Section 9-330  
12 [Maine cite section 9-1330]. Because electronic chattel paper  
13 cannot be transferred, assigned, or possessed in the same manner  
14 as tangible chattel paper, a special definition of control is  
15 necessary. In descriptive terms, this section provides that  
16 control of electronic chattel paper is the functional equivalent  
17 of possession of "tangible chattel paper" (a term also defined in  
18 Section 9-102) [Maine cite section 9-1102].

19           3. "Authoritative Copy" of Electronic Chattel Paper. One  
20 requirement for establishing control is that a particular copy be  
21 an "authoritative copy." Although other copies may exist, they  
22 must be distinguished from the authoritative copy. This may be  
23 achieved, for example, through the methods of authentication that  
24 are used or by business practices involving the marking of any  
25 additional copies. When tangible chattel paper is converted to  
26 electronic chattel paper, in order to establish that a copy of  
27 the electronic chattel paper is the authoritative copy it may be  
28 necessary to show that the tangible chattel paper no longer  
29 exists or has been permanently marked to indicate that it is not  
30 the authoritative copy.  
31

32           4. Development of Control Systems. This Article leaves to  
33 the marketplace the development of systems and procedures,  
34 through a combination of suitable technologies and business  
35 practices, for dealing with control of electronic chattel paper  
36 in a commercial context. However, achieving control under this  
37 section requires more than the agreement of interested persons  
38 that the elements of control are satisfied. For example,  
39 paragraph (4) [Maine cite paragraph (d)] contemplates that  
40 control requires that it be a physical impossibility (or  
41 sufficiently unlikely or implausible so as to approach practical  
42 impossibility) to add or change an identified assignee without  
43 the participation of the secured party (or its authorized  
44 representative). It would not be enough for the assignor merely  
45 to agree that it will not change the identified assignee without  
46 the assignee-secured party's consent. However, the standards  
47 applied to determine whether a party is in control of electronic  
48 chattel paper should not be more stringent than the standards now  
49 applied to determine whether a party is in possession of tangible  
50

2 chattel paper. Control of electronic chattel paper contemplates  
3 systems or procedures such that the secured party must take some  
4 action (either directly or through its designated custodian) to  
5 effect a change or addition to the authoritative copy. But just  
6 as a secured party does not lose possession of tangible chattel  
7 paper merely by virtue of the possibility that a person acting on  
8 its behalf could wrongfully redeliver the chattel paper to the  
9 debtor, so control of electronic chattel paper would not be  
10 defeated by the possibility that the secured party's interest  
11 could be subverted by the wrongful conduct of a person (such as a  
12 custodian) acting on its behalf.

13  
14 Systems that evolve for control of electronic chattel paper  
15 may or may not involve a third party custodian of the relevant  
16 records. However, this section and the concept of control of  
17 electronic chattel paper are not based on the same concepts as  
18 are control of deposit accounts (Section 9-104) [Maine cite  
19 section 9-1104], security entitlements, a type of investment  
20 property (Section 9-106) [Maine cite section 9-1106], and  
21 letter-of-credit rights (Section 9-107) [Maine cite section  
22 9-1107]. The rules for control of that collateral are based on  
23 existing market practices and legal and regulatory regimes for  
24 institutions such as banks and securities intermediaries.  
25 Analogous practices for electronic chattel paper are developing  
26 nonetheless. The flexible approach adopted by this section,  
27 moreover, should not impede the development of these practices  
28 and, eventually, legal and regulatory regimes, which may become  
29 analogous to those for, e.g., investment property.

30 **§9-1106. Control of investment property**

31 (1) A person has control of a certificated security,  
32 uncertificated security or security entitlement as provided in  
33 section 8-1106.

34  
35 (2) A secured party has control of a commodity contract if:

36  
37 (a) The secured party is the commodity intermediary with  
38 which the commodity contract is carried; or

39  
40 (b) The commodity customer, secured party and commodity  
41 intermediary have agreed that the commodity intermediary  
42 will apply any value distributed on account of the commodity  
43 contract as directed by the secured party without further  
44 consent by the commodity customer.

45  
46 (3) A secured party having control of all security  
47 entitlements or commodity contracts carried in a securities  
48 account or commodity account has control over the securities  
49 account or commodity account.  
50

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**Official Comment**

1. Source. Former Section 9-115(e).

2. "Control" Under Article 8. For an explanation of "control" of securities and certain other investment property, see Section 8-106, Comments 4 and 7.

3. "Control" of Commodity Contracts. This section, as did former Section 9-115(1)(e), contains provisions relating to control of commodity contracts which are analogous to those in Section 8-106 for other types of investment property.

4. Securities Accounts and Commodity Accounts. For drafting convenience, control with respect to a securities account or commodity account is defined in terms of obtaining control over the security entitlements or commodity contracts. Of course, an agreement that provides that (without further consent of the debtor) the securities intermediary or commodity intermediary will honor instructions from the secured party concerning a securities account or commodity account described as such is sufficient. Such an agreement necessarily implies that the intermediary will honor instructions concerning all security entitlements or commodity contracts carried in the account and thus affords the secured party control of all the security entitlements or commodity contracts.

**§9-1107. Control of letter-of-credit right**

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5-1114, subsection (c) or other applicable law or practice.

**Official Comment**

1. Source. New.

2. "Control" of Letter-of-Credit Right. Whether a secured party has control of a letter-of-credit right may determine the secured party's priority as against competing secured parties. See Section 9-329 [Maine cite section 9-1329]. This section provides that a secured party acquires control of a letter-of-credit right by receiving an assignment if the secured party obtains the consent of the issuer or any nominated person, such as a confirmer or negotiating bank, under Section 5-114 or other applicable law or practice. Because both issuers and

2 nominated persons may give or be obligated to give value under a  
letter of credit, this section contemplates that a secured party  
4 obtains control of a letter-of-credit right with respect to the  
issuer or a particular nominated person only to the extent that  
6 the issuer or that nominated person consents to the assignment.  
For example, if a secured party obtains control to the extent of  
8 an issuer's obligation but fails to obtain the consent of a  
nominated person, the secured party does not have control to the  
10 extent that the nominated person gives value. In many cases the  
person or persons who will give value under a letter of credit  
12 will be clear from its terms. In other cases, prudence may  
suggest obtaining consent from more than one person. The details  
14 of the consenting issuer's or nominated person's duties to pay or  
otherwise render performance to the secured party are left to the  
agreement of the parties.

16  
3. "Proceeds of a Letter of Credit." Section 5-114 follows  
18 traditional banking terminology by referring to a letter of  
credit beneficiary's assignment of its right to receive payment  
20 thereunder as an assignment of the "proceeds of a letter of  
credit." However, as the seller of goods can assign its right to  
22 receive payment (an "account") before it has been earned by  
delivering the goods to the buyer, so the beneficiary of a letter  
24 of credit can assign its contingent right to payment before the  
letter of credit has been honored. See Section 5-114(b). If the  
26 assignment creates a security interest, the security interest can  
be perfected at the time it is created. An assignment of,  
28 including the creation of a security interest in, a  
letter-of-credit right is an assignment of a present interest.

30  
4. "Transfer" vs. "Assignment." Letter-of-credit law and  
32 practice distinguish the "transfer" of a letter of credit from an  
"assignment." Under a transfer, the transferee itself becomes  
34 the beneficiary and acquires the right to draw. Whether a new,  
substitute credit is issued or the issuer advises the transferee  
36 of its status as such, the transfer constitutes a novation under  
which the transferee is the new, substituted beneficiary (but  
38 only to the extent of the transfer, in the case of a partial  
transfer).

40  
Section 5-114(e) provides that the rights of a transferee  
42 beneficiary or nominated person are independent of the  
beneficiary's assignment of the proceeds of a letter of credit  
44 and are superior to the assignee's right to the proceeds. For  
this reason, transfer does not appear in this Article as a means  
46 of control or perfection. Section 9-109(c)(4) [Maine cite  
section 9-1109, subsection (3), paragraph (d)] recognizes the  
48 independent and superior rights of a transferee beneficiary under  
Section 5-114(e); this Article does not apply to the rights of a

transferee beneficiary or nominated person to the extent that those rights are independent and superior under Section 5-114.

5. Supporting Obligation: Automatic Attachment and Perfection. A letter-of-credit right is a type of "supporting obligation," as defined in Section 9-102 [Maine cite section 9-1102]. Under Sections 9-203 and 9-308 [Maine cite sections 9-1203 and 9-1308], a security interest in a letter-of-credit right automatically attaches and is automatically perfected if the security interest in the supported obligation is a perfected security interest. However, unless the secured party has control of the letter-of-credit right or itself becomes a transferee beneficiary, it cannot obtain any rights against the issuer or a nominated person under Article 5. Consequently, as a practical matter, the secured party's rights would be limited to its ability to locate and identify proceeds distributed by the issuer or nominated person under the letter of credit.

**§9-1108. Sufficiency of description**

(1) Except as otherwise provided in subsections (3), (4) and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(a) Specific listing;

(b) Category;

(c) Except as otherwise provided in subsection (5), a type of collateral defined in this Title;

(d) Quantity;

(e) Computational or allocational formula or procedure; or

(f) Except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.



2 to include after-acquired collateral if the agreement does not  
explicitly so provide. This question is one of contract  
4 interpretation and is not susceptible to a statutory rule (other  
than a rule to the effect that it is a question of contract  
6 interpretation). Accordingly, this section contains no reference  
to descriptions of after-acquired collateral.

8 4. Investment Property. Under subsection (d) [Maine cite  
subsection (4)], the use of the wrong Article 8 terminology does  
10 not render a description invalid (e.g., a security agreement  
intended to cover a debtor's "security entitlements" is  
12 sufficient if it refers to the debtor's "securities"). Note also  
that given the broad definition of "securities account" in  
14 Section 8-501, a security interest in a securities account also  
includes all other rights of the debtor against the securities  
16 intermediary arising out of the securities account. For example,  
a security interest in a securities account would include credit  
18 balances due to the debtor from the securities intermediary,  
whether or not they are proceeds of a security entitlement.  
20 Moreover, describing collateral as a securities account is a  
simple way of describing all of the security entitlements carried  
22 in the account.

24 5. Consumer Investment Property; Commercial Tort Claims.  
Subsection (e) [Maine cite subsection (5)] requires greater  
26 specificity of description in order to prevent debtors from  
inadvertently encumbering certain property. Subsection (e)  
28 [Maine cite subsection (5)] requires that a description by  
defined "type" of collateral alone of a commercial tort claim or,  
30 in a consumer transaction, of a security entitlement, securities  
account, or commodity account, is not sufficient. For example,  
32 "all existing and after-acquired investment property" or "all  
existing and after-acquired security entitlements," without more,  
34 would be insufficient in a consumer transaction to describe a  
security entitlement, securities account, or commodity account.  
36 The reference to "only by type" in subsection (e) [Maine cite  
subsection (5)] means that a description is sufficient if it  
38 satisfies subsection (a) [Maine cite subsection (1)] and contains  
a descriptive component beyond the "type" alone. Moreover, if  
40 the collateral consists of a securities account or commodity  
account, a description of the account is sufficient to cover all  
42 existing and future security entitlements or commodity contracts  
carried in the account. See Section 9-203(h), (i) [Maine cite  
44 section 9-1203, subsections (8) and (9)].

46 Under Section 9-204 [Maine cite section 9-1204], an  
after-acquired collateral clause in a security agreement will not  
48 reach future commercial tort claims. It follows that when an  
effective security agreement covering a commercial tort claim is  
50 entered into the claim already will exist. Subsection (e) [Maine



2 cite subsection (5)] does not require a description to be  
3 specific. For example, a description such as "all tort claims  
4 arising out of the explosion of debtor's factory" would suffice,  
5 even if the exact amount of the claim, the theory on which it may  
6 be based, and the identity of the tortfeasor(s) are not  
described. (Indeed, those facts may not be known at the time.)

8 **SUBPART 2**

10 **APPLICABILITY OF Article**

12 **§9-1109. Scope**

14 (1) Except as otherwise provided in subsections (3) and  
15 (4), this Article applies to:

16 (a) A transaction, regardless of its form, that creates a  
17 security interest in personal property or fixtures by  
18 contract;

19 (b) An agricultural lien;

20 (c) A sale of accounts, chattel paper, payment intangibles  
21 or promissory notes;

22 (d) A consignment;

23 (e) A security interest arising under section 2-401, 2-505,  
24 2-711, subsection (3) or 2-1508, subsection (5), as provided  
25 in section 9-1110; and

26 (f) A security interest arising under section 4-210 or  
27 5-1118.

28 (2) The application of this Article to a security interest  
29 in a secured obligation is not affected by the fact that the  
30 obligation is itself secured by a transaction or interest to  
31 which this Article does not apply.

32 (3) This Article does not apply to the extent that:

33 (a) A statute, regulation or treaty of the United States  
34 preempts this Article;

35 (b) Another statute of this State expressly governs the  
36 creation, perfection, priority or enforcement of a security  
37 interest created by this State or a governmental unit of  
38 this State;

- 2           (c) A statute of another state, a foreign country or a  
4           governmental unit of another state or a foreign country,  
6           other than a statute generally applicable to security  
            interests, expressly governs creation, perfection, priority  
            or enforcement of a security interest created by the state,  
            country or governmental unit; or
- 8           (d) The rights of a transferee beneficiary or nominated  
10           person under a letter of credit are independent and superior  
            under section 5-1114.
- 12           (4) This Article does not apply to:
- 14           (a) A landlord's lien, other than an agricultural lien;
- 16           (b) A lien, other than an agricultural lien, given by  
18           statute or other rule of law for services or materials, but  
            section 9-1333 applies with respect to priority of the lien;
- 20           (c) An assignment of a claim for wages, salary or other  
22           compensation of an employee;
- 24           (d) A sale of accounts, chattel paper, payment intangibles  
            or promissory notes as part of a sale of the business out of  
26           which they arose;
- 28           (e) An assignment of accounts, chattel paper, payment  
            intangibles or promissory notes that is for the purpose of  
30           collection only;
- 32           (f) An assignment of a right to payment under a contract to  
            an assignee that is also obligated to perform under the  
34           contract;
- 36           (g) An assignment of a single account, payment intangible  
            or promissory note to an assignee in full or partial  
38           satisfaction of a preexisting indebtedness;
- 40           (h) A transfer of an interest in or an assignment of a  
            claim under a policy of insurance, other than an assignment  
42           by or to a health-care provider of a health-care-insurance  
            receivable and any subsequent assignment of the right to  
44           payment, but sections 9-1315 and 9-1322 apply with respect  
            to proceeds and priorities in proceeds;
- 46           (i) An assignment of a right represented by a judgment,  
            other than a judgment taken on a right to payment that was  
48           collateral;
- 50           (j) A right of recoupment or setoff, but:



2 this Article to cover agricultural liens, as defined in section  
9-102 [Maine cite section 9-1102].

4 4. Sales of Accounts, Chattel Paper, Payment Intangibles,  
6 Promissory Notes, and Other Receivables. Under subsection (a)(3)  
[Maine cite subsection (1), paragraph (c)], as under former  
8 Section 9-102, this Article applies to sales of accounts and  
chattel paper. This approach generally has been successful in  
10 avoiding difficult problems of distinguishing between  
transactions in which a receivable secures an obligation and  
12 those in which the receivable has been sold outright. In many  
commercial financing transactions the distinction is blurred.

14 Subsection (a)(3) [Maine cite subsection (1), paragraph (c)]  
expands the scope of this Article by including the sale of a  
16 "payment intangible" (defined in Section 9-102 [Maine cite  
section 9-1102] as "a general intangible under which the account  
18 debtor's principal obligation is a monetary obligation") and a  
"promissory note" (also defined in Section 9-102) [Maine cite  
20 section 9-1102]. To a considerable extent, this Article affords  
these transactions treatment identical to that given sales of  
22 accounts and chattel paper. In some respects, however, sales of  
payment intangibles and promissory notes are treated differently  
24 from sales of other receivables. See, e.g., Sections 9-309  
[Maine cite section 9-1309] (automatic perfection upon  
26 attachment), 9-408 [Maine cite section 9-1408] (effect of  
restrictions on assignment). By virtue of the expanded  
28 definition of "account" (defined in Section 9-102) [Maine cite  
section 9-1102], this Article now covers sales of (and other  
30 security interests in) "health-care-insurance receivables" (also  
defined in Section 9-102) [Maine cite section 9-1102]. Although  
32 this Article occasionally distinguishes between outright sales of  
receivables and sales that secure an obligation, neither this  
34 Article nor the definition of "security interest" (Section  
1-201(37)) delineates how a particular transaction is to be  
36 classified. That issue is left to the courts.

38 5. Transfer of Ownership in Sales of Receivables. A "sale"  
of an account, chattel paper, a promissory note, or a payment  
40 intangible includes a sale of a right in the receivable, such as  
a sale of a participation interest. The term also includes the  
42 sale of an enforcement right. For example, a "[p]erson entitled  
to enforce" a negotiable promissory note (Section 3-301) may sell  
44 its ownership rights in the instrument. See Section 3-203,  
Comment 1 ("Ownership rights in instruments may be determined by  
46 principles of the law of property, independent of Article 3,  
which do not depend upon whether the instrument was transferred  
48 under Section 3-203."). Also, the right under Section 3-309 to  
enforce a lost, destroyed, or stolen negotiable promissory note  
50 may be sold to a purchaser who could enforce that right by

2 causing the seller to provide the proof required under that  
3 section. This Article rejects decisions reaching a contrary  
4 result, e.g., *Dennis Joslin Co. v. Robinson Broadcasting*, 977 F.  
Supp. 491 (D.D.C. 1997).

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

22 Following a debtor's outright sale and transfer of ownership  
23 of a receivable, the debtor-seller retains no legal or equitable  
24 rights in the receivable that has been sold. See Section  
25 9-318(a) [Maine cite section 9-1318, subsection (1)]. This is so  
26 whether or not the buyer's security interest is perfected. (A  
27 security interest arising from the sale of a promissory note or  
28 payment intangible is perfected upon attachment without further  
29 action. See Section 9-309 [Maine cite section 9-1309].)  
30 However, if the buyer's interest in accounts or chattel paper is  
31 unperfected, a subsequent lien creditor, perfected secured party,  
32 or qualified buyer can reach the sold receivable and achieve  
33 priority over (or take free of) the buyer's unperfected security  
34 interest under Section 9-317 [Maine cite section 9-1317]. This  
35 is so not because the seller of a receivable retains rights in  
36 the property sold; it does not. Nor is this so because the  
37 seller of a receivable is a "debtor" and the buyer of a  
38 receivable is a "secured party" under this Article (they are).  
39 It is so for the simple reason that Sections 9-318(b), 9-317, and  
40 9-322 [Maine cite section 9-1318, subsection (2), section 9-1317  
41 and section 9-1322] make it so, as did former Sections 9-301 and  
42 9-312 [Maine cite sections 9-1301 and 9-1312]. Because the  
43 buyer's security interest is unperfected, for purposes of  
44 determining the rights of creditors of and purchasers for value  
45 from the debtor-seller, under Section 9-318(b) [Maine cite  
46 section 9-1318, subsection (2)] the debtor-seller is deemed to  
47 have the rights and title it sold. Section 9-317 [Maine cite  
48 section 9-1317] subjects the buyer's unperfected interest in  
49 accounts and chattel paper to that of the debtor-seller's lien  
50 creditor and other persons who qualify under that section.

2           6. Consignments. Subsection (a)(4) [Maine cite subsection  
4           (1), paragraph (d)] is new. This Article applies to every  
6           "consignment." The term, defined in Section 9-102 [Maine cite  
8           section 9-1102], includes many but not all "true" consignments  
10          (i.e., bailments for the purpose of sale). If a transaction is  
12          a "sale or return," as defined in revised Section 2-326, it is  
14          not a "consignment." In a "sale or return" transaction, the  
16          buyer becomes the owner of the goods, and the seller may obtain  
18          an enforceable security interest in the goods only by satisfying  
20          the requirements of Section 9-203 [Maine cite section 9-1203].

22           Under common law, creditors of a bailee were unable to reach  
24          the interest of the bailor (in the case of a consignment, the  
26          consignor-owner). Like former Section 2-326 and former Article  
28          9, this Article changes the common-law result; however, it does  
30          so in a different manner. For purposes of determining the rights  
32          and interests of third-party creditors of, and purchasers of the  
34          goods from, the consignee, but not for other purposes, such as  
36          remedies of the consignor, the consignee is deemed to acquire  
38          under this Article whatever rights and title the consignor had or  
40          had power to transfer. See Section 9-319 [Maine cite section  
42          9-1319]. The interest of a consignor is defined to be a security  
44          interest under revised Section 1-201(37), more specifically, a  
46          purchase-money security interest in the consignee's inventory.  
48          See Section 9-103(d) [Maine cite section 9-1103, subsection  
            (4)]. Thus, the rules pertaining to lien creditors, buyers, and  
            attachment, perfection, and priority of competing security  
            interests apply to consigned goods. The relationship between the  
            consignor and consignee is left to other law. Consignors also  
            have no duties under Part 6. See Section 9-601(g) [Maine cite  
            section 9-1601, subsection (7)].

34           Sometimes parties characterize transactions that secure an  
36          obligation (other than the bailee's obligation to returned bailed  
38          goods) as "consignments." These transactions are not  
40          "consignments" as contemplated by Section 9-109(a)(4) [Maine cite  
42          section 9-1109, subsection (1), paragraph (d)]. See Section  
44          9-102 [Maine cite section 9-1102]. This Article applies also to  
46          these transactions, by virtue of Section 9-109(a)(1) [Maine cite  
48          section 9-1109, subsection (1), paragraph (a)]. They create a  
            security interest within the meaning of the first sentence of  
            Section 1-201(37).

            This Article does not apply to bailments for sale that fall  
            outside the definition of "consignment" in Section 9-102 [Maine  
            cite section 9-1102] and that do not create a security interest  
            that secures an obligation.

2           7. Security Interest in Obligation Secured by Non-Article 9  
3 Transaction. Subsection (b) [Maine cite subsection (2)] is  
4 unchanged in substance from former Section 9-102(3) [Maine cite  
5 section 9-1102, subsection (3)]. The following example provides  
6 an illustration.

7           Example 1: O borrows \$10,000 from M and secures its  
8 repayment obligation, evidenced by a promissory note, by granting  
9 to M a mortgage on O's land. This Article does not apply to the  
10 creation of the real-property mortgage. However, if M sells the  
11 promissory note to X or gives a security interest in the note to  
12 secure M's own obligation to X, this Article applies to the  
13 security interest thereby created in favor of X. The security  
14 interest in the promissory note is covered by this Article even  
15 though the note is secured by a real-property mortgage. Also,  
16 X's security interest in the note gives X an attached security  
17 interest in the mortgage lien that secures the note and, if the  
18 security interest in the note is perfected, the security interest  
19 in the mortgage lien likewise is perfected. See Sections 9-203,  
20 9-308 [Maine cite sections 9-1203, 9-1308].

21 It also follows from subsection (b) [Maine cite subsection (2)]  
22 that an attempt to obtain or perfect a security interest in a  
23 secured obligation by complying with non-Article 9 law, as by an  
24 assignment of record of a real-property mortgage, would be  
25 ineffective. Finally, it is implicit from subsection (b) [Maine  
26 cite subsection (2)] that one cannot obtain a security interest  
27 in a lien, such as a mortgage on real property, that is not also  
28 coupled with an equally effective security interest in the  
29 secured obligation. This Article rejects cases such as *In re*  
30 *Maryville Savings & Loan Corp.*, 743 F.2d 413 (6th Cir. 1984),  
31 clarified on reconsideration, 760 F.2d 119 (1985).

32           8. Federal Preemption. Former Section 9-104(a) [Maine cite  
33 section 9-1104, subsection (1)] excluded from Article 9 [Maine  
34 cite Article 9-A] "a security interest subject to any statute of  
35 the United States, to the extent that such statute governs the  
36 rights of parties to and third parties affected by transactions  
37 in particular types of property." Some (erroneously) read the  
38 former section to suggest that Article 9 sometimes deferred to  
39 federal law even when federal law did not preempt Article 9.  
40 Subsection (c)(1) [Maine cite subsection (3), paragraph (a)]  
41 recognizes explicitly that this Article defers to federal law  
42 only when and to the extent that it must-i.e., when federal law  
43 preempts it.

44           9. Governmental Debtors. Former Section 9104(e) excluded  
45 transfers by governmental debtors. It has been revised and  
46 replaced by the exclusions in new paragraphs (2) and (3) of  
47 subsection (c) [Maine cite paragraphs (b) and (c) of subsection  
48  
49  
50

2 (3)]. These paragraphs reflect the view that Article 9 [Maine  
4 cite Article 9-A] should apply to security interests created by a  
6 State, foreign country, or a "governmental unit" (defined in  
8 Section 9-102) [Maine cite section 9-1102] of either except to  
10 the extent that another statute governs the issue in question.  
12 Under paragraph (2) [Maine cite paragraph (b)], this Article  
14 defers to all statutes of the forum State. (A forum cannot  
determine whether it should consult the choice-of-law rules in  
the forum's UCC unless it first determines that its UCC applies  
to the transaction before it.) Paragraph (3) [Maine cite  
paragraph (c)] defers to statutes of another State or a foreign  
country only to the extent that those statutes contain rules  
applicable specifically to security interests created by the  
governmental unit in question.

16 Example 2: A New Jersey state commission creates a security  
18 interest in favor of a New York bank. The validity of the  
20 security interest is litigated in New York. The relevant  
22 security agreement provides that it is governed by New York law.  
24 To the extent that a New Jersey statute contains rules peculiar  
26 to creation of security interests by governmental units  
28 generally, to creation of security interests by state  
30 commissions, or to creation of security interests by this  
particular state commission, then that law will govern. On the  
other hand, to the extent that New Jersey law provides that  
security interests created by governmental units, state  
commissions, or this state commission are governed by the law  
generally applicable to secured transactions (i.e., New Jersey's  
Article 9), then New York's Article 9 will govern.

32 Example 3: An airline that is an instrumentality of a  
34 foreign country creates a security interest in favor of a New  
36 York bank. The analysis used in the previous example would apply  
38 here. That is, if the matter is litigated in New York, New York  
law would govern except to the extent that the foreign country  
enacted a statute applicable to security interests created by  
governmental units generally or by the airline specifically.

40 The fact that New York law applies does not necessarily mean  
42 that perfection is accomplished by filing in New York. Rather,  
44 it means that the court should apply New York's Article 9,  
46 including its choice-of-law provisions. Under New York's Section  
9-301, perfection is governed by the law of the jurisdiction in  
which the debtor is located. Section 9-307 determines the  
debtor's location for choice-of-law purposes.

48 If a transaction does not bear an appropriate relation to  
50 the forum State, then that State's Article 9 [Maine cite Article  
9-A] will not apply, regardless of whether the transaction would  
be excluded by paragraph (3) [Maine cite paragraph (c)].



2           Example 4: A Belgian governmental unit grants a security  
3 interest in its equipment to a Swiss secured party. The  
4 equipment is located in Belgium. A dispute arises and, for some  
5 reason, an action is brought in a New Mexico state court.  
6 Inasmuch as the transaction bears no "appropriate relation" to  
7 New Mexico, New Mexico's UCC, including its Article 9, is  
8 inapplicable. See Section 1-105(1). New Mexico's Section  
9-109(c) on excluded transactions should not come into play.  
10 Even if the parties agreed that New Mexico law would govern, the  
11 parties' agreement would not be effective because the transaction  
12 does not bear a "reasonable relation" to New Mexico. See Section  
13 1-105(1).

14  
15           Conversely, Article 9 [Maine cite Article 9-A] will come  
16 into play only if the litigation arises in a UCC jurisdiction or  
17 if a foreign choice-of-law rule leads a foreign court to apply  
18 the law of a UCC jurisdiction. For example, if issues concerning  
19 a security interest granted by a foreign airline to a New York  
20 bank are litigated overseas, the court may be bound to apply the  
21 law of the debtor's jurisdiction and not New York's Article 9.

22  
23           10. Certain Statutory and Common-Law Liens; Interests in  
24 Real Property. With few exceptions (nonconsensual agricultural  
25 liens being one), this Article applies only to consensual  
26 security interests in personal property. Following former  
27 Section 9-104(b) and (j), paragraphs (1) and (11) of subsection  
28 (d) [Maine cite paragraphs (a) and (k) of subsection (4)] exclude  
29 landlord's liens and leases and most other interests in or liens  
30 on real property. These exclusions generally reiterate the  
31 limitations on coverage (i.e., "by contract," "in personal  
32 property and fixtures") made explicit in subsection (a)(1) [Maine  
33 cite subsection (1), paragraph (a)]. Similarly, most  
34 jurisdictions provide special liens to suppliers of many types of  
35 services and materials, either by statute or by common law. With  
36 the exception of agricultural liens, it is not necessary for this  
37 Article to provide general codification of this lien structure,  
38 which is determined in large part by local conditions and which  
39 is far removed from ordinary commercial financing. As under  
40 former Section 9-104(c), subsection (d)(2) [Maine cite subsection  
41 (4), paragraph (b)] excludes these suppliers' liens (other than  
42 agricultural liens) from this Article. However, Section 9-333  
43 [Maine cite section 9-1333] provides a rule for determining  
44 priorities between certain possessory suppliers' liens and  
45 security interests covered by this Article.

46  
47           11. Wage and Similar Claims. As under former Section  
48 9-104(d), subsection (d)(3) [Maine cite subsection (4), paragraph  
49 (c)] excludes assignments of claims for wages and the like from  
50 this Article. These assignments present important social issues

2 that other law addresses. The Federal Trade Commission has ruled  
4 that, with some exceptions, the taking of an assignment of wages  
6 or other earnings is an unfair act or practice under the Federal  
Trade Commission Act. See 16 C.F.R. Part 444. State statutes  
also may regulate such assignments.

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

22 13. Insurance. Subsection (d)(8) [Maine cite subsection  
(4), paragraph (h)] narrows somewhat the broad exclusion of  
24 interests in insurance policies under former Section 9-104(g)  
[Maine cite section 9-1104, subsection (7)]. This Article now  
26 covers assignments by or to a health-care provider of  
"health-care-insurance receivables" (defined in Section 9-102)  
28 [Maine cite section 9-1102].

30 14. Set-Off. Subsection (d)(10) [Maine cite subsection  
(4), paragraph (j)] adds two exceptions to the general exclusion  
32 of set-off rights from Article 9 under former Section 9-104(i).  
The first takes account of new Section 9-340 [Maine cite section  
34 9-1340], which regulates the effectiveness of a set-off against a  
deposit account that stands as collateral. The second recognizes  
36 Section 9-404 [Maine cite section 9-1404], which affords the  
obligor on an account, chattel paper, or general intangible the  
38 right to raise claims and defenses against an assignee (secured  
party).

40 15. Tort Claims. Subsection (d)(12) [Maine cite subsection  
42 (4), paragraph (l)] narrows somewhat the broad exclusion of  
transfers of tort claims under former Section 9-104(k). This  
44 Article now applies to assignments of "commercial tort claims"  
(defined in Section 9-102) [Maine cite section 9-1102] as well as  
46 to security interests in tort claims that constitute proceeds of  
other collateral (e.g., a right to payment for negligent  
48 destruction of the debtor's inventory). Note that once a claim  
arising in tort has been settled and reduced to a contractual  
50 obligation to pay (as in, but not limited to, a structured

2 settlement) the right to payment becomes a payment intangible and  
ceases to be a claim arising in tort.

4 This Article contains two special rules governing creation  
of a security interest in tort claims. First, a description of  
6 collateral in a security agreement as "all tort claims" is  
insufficient to meet the requirement for attachment. See Section  
8 9-108(e) [Maine cite section 9-1108, subsection (5)]. Second, no  
security interest attaches under an after-acquired property  
10 clause to a tort claim. See Section 9-204(b) [Maine cite section  
9-1204, subsection (2)]. In addition, this Article does not  
12 determine whom the tortfeasor must pay to discharge its  
obligation. Inasmuch as a tortfeasor is not an "account debtor,"  
14 the rules governing waiver of defenses and discharge of an  
obligation by an obligor (Sections 9-403, 9-404, 9-405, and  
16 9-406) [Maine cite sections 9-1403, 9-1404, 9-1405 and 9-1406]  
are inapplicable to tort-claim collateral.

18  
20 16. Deposit Accounts. Except in consumer transactions,  
deposit accounts may be taken as original collateral under this  
Article. Under former Section 9-104(1), deposit accounts were  
22 excluded as original collateral, leaving security interests in  
deposit accounts to be governed by the common law. The common  
24 law is nonuniform, often difficult to discover and comprehend,  
and frequently costly to implement. As a consequence, debtors  
26 who wished to use deposit accounts as collateral sometimes were  
precluded from doing so as a practical matter. By excluding  
28 deposit accounts from the Article's scope as original collateral  
in consumer transactions, subsection (d)(13) [Maine cite  
30 subsection (4), paragraph (m)] leaves those transactions to law  
other than this Article. However, in both consumer and  
32 non-consumer transactions, sections 9-315 and 9-322 [Maine cite  
sections 9-1315 and 9-1322] apply to deposit accounts as proceeds  
34 and with respect to priorities in proceeds.

36 This Article contains several safeguards to protect debtors  
against inadvertently encumbering deposit accounts and to reduce  
38 the likelihood that a secured party will realize a windfall from  
a debtor's deposit accounts. For example, because "deposit  
40 account" is a separate type of collateral, a security agreement  
covering general intangibles will not adequately describe deposit  
42 accounts. Rather, a security agreement must reasonably identify  
the deposit accounts that are the subject of a security interest,  
44 e.g., by using the term "deposit accounts." See Section 9-108  
[Maine cite section 9-1108]. To perfect a security interest in a  
46 deposit account as original collateral, a secured party (other  
than the bank with which the deposit account is maintained) must  
48 obtain "control" of the account either by obtaining the bank's  
authenticated agreement or by becoming the bank's customer with  
50 respect to the deposit account. See Sections 9-312(b)(1), 9-104

2 [Maine cite section 9-1312, subsection (2), paragraph (a) and  
section 9-1104]. Either of these steps requires the debtor's  
consent.

4  
6 This Article also contains new rules that determine which  
State's law governs perfection and priority of a security  
8 interest in a deposit account (Section 9-304) [Maine cite section  
9-1304], priority of conflicting security interests in and  
10 set-off rights against a deposit account (Sections 9-327, 9-340)  
[Maine cite sections 9-1327, 9-1340], the rights of transferees  
of funds from an encumbered deposit account (Section 9-332)  
12 [Maine cite section 9-1332], the obligations of the bank (Section  
9-341) [Maine cite section 9-1341], enforcement of security  
14 interests in a deposit account (Section 9-607(c)) [Maine cite  
section 9-1607, subsection (3)], and the duty of a secured party  
16 to terminate control of a deposit account (Section 9-208(b))  
[Maine cite section 9-1208, subsection (2)].

18 **§9-1110. Security interests arising under Article 2 or 2-A**

20 A security interest arising under section 2-401, 2-505,  
22 2-711, subsection (3), or 2-1508, subsection (5) is subject to  
24 this Article. However, until the debtor obtains possession of  
the goods:

26 (1) The security interest is enforceable, even if section  
28 9-1203, subsection (2), paragraph (c) has not been satisfied;

30 (2) Filing is not required to perfect the security interest;

32 (3) The rights of the secured party after default by the  
debtor are governed by Article 2 or 2-A; and

34 (4) The security interest has priority over a conflicting  
36 security interest created by the debtor.

38 **Official Comments**

40 1. Source. Former Section 9-113.

42 2. Background. Former Section 9-113, from which this  
section derives, referred generally to security interests  
44 "arising solely under the Article on Sales (Article 2) or the  
Article on Leases (Article 2A)." Views differed as to the  
46 precise scope of that section. In contrast, Section 9-110 [Maine  
cite section 9-1110] specifies the security interests to which it  
48 applies.

50 3. Security Interests Under Articles 2 and 2A. Section  
2-505 explains how a seller of goods may reserve a security

2 interest in them. Section 2-401 indicates that a reservation of  
3 title by the seller of goods, despite delivery to the buyer, is  
4 limited to reservation of a security interest. As did former  
5 Article 9, this Article governs a security interest arising  
6 solely under one of those sections; however, until the buyer  
7 obtains possession of the goods, the security interest is  
8 enforceable even in the absence of a security agreement, filing  
9 is not necessary to perfect the security interest, and the  
10 seller-secured party's rights on the buyer's default are governed  
11 by Article 2.

12 Sections 2-711(3) and 2A-508(5) create a security interest  
13 in favor of a buyer or lessee in possession of goods that were  
14 rightfully rejected or as to which acceptance was justifiably  
15 revoked. As did former Article 9, this Article governs a  
16 security interest arising solely under one of those sections;  
17 however, until the seller or lessor obtains possession of the  
18 goods, the security interest is enforceable even in the absence  
19 of a security agreement, filing is not necessary to perfect the  
20 security interest, and the secured party's (buyer's or lessee's)  
21 rights on the debtor's (seller's or lessor's) default are  
22 governed by Article 2 or 2A, as the case may be.

24 4. Priority. This section adds to former Section 9-113 a  
25 priority rule. Until the debtor obtains possession of the goods,  
26 a security interest arising under one of the specified sections  
27 of Article 2 or 2A has priority over conflicting security  
28 interests created by the debtor. Thus, a security interest  
29 arising under Section 2-401 or 2-505 has priority over a  
30 conflicting security interest in the buyer's after-acquired  
31 goods, even if the goods in question are inventory. Arguably,  
32 the same result would obtain under Section 9-322 [Maine cite  
33 section 9-1322], but even if it would not, a purchase-money-like  
34 priority is appropriate. Similarly, a security interest under  
35 Section 2-711(3) or 2A-508(5) has priority over security  
36 interests claimed by the seller's or lessor's secured lender.  
37 This result is appropriate, inasmuch as the payments giving rise  
38 to the debt secured by the Article 2 or 2A security interest are  
39 likely to be included among the lender's proceeds.

40 Example: Seller owns equipment subject to a security  
41 interest created by Seller in favor of Lender. Buyer pays for  
42 the equipment, accepts the goods, and then justifiably revokes  
43 acceptance. As long as Seller does not recover possession of the  
44 equipment, Buyer's security interest under Section 2711(3) is  
45 senior to that of Lender.

48 In the event that a security interest referred to in this  
49 section conflicts with a security interest that is created by a  
50 person other than the debtor, Section 9-325 [Maine cite section

2 9-1325] applies. Thus, if Lender's security interest in the  
3 example was created not by Seller but by the person from whom  
4 Seller acquired the goods, Section 9-325 [Maine cite section  
5 9-1325] would govern.

6 5. Relationship to Other Rights and Remedies Under Articles  
7 2 and 2A. This Article does not specifically address the  
8 conflict between (i) a security interest created by a buyer or  
9 lessee and (ii) the seller's or lessor's right to withhold  
10 delivery under Section 2-702(1), 2-703(a), or 2A-525, the  
11 seller's or lessor's right to stop delivery under Section 2-705  
12 or 2A-526, or the seller's right to reclaim under Section  
13 2-507(2) or 2-702(2). These conflicts are governed by the first  
14 sentence of Section 2-403(1), under which the buyer's secured  
15 party obtains no greater rights in the goods than the buyer had  
16 or had power to convey, or Section 2A-307(1), under which  
17 creditors of the lessee take subject to the lease contract.

18  
19 **PART 2**

20  
21 **EFFECTIVENESS OF SECURITY AGREEMENT;**  
22 **ATTACHMENT OF SECURITY INTEREST;**  
23 **RIGHTS OF PARTIES TO SECURITY AGREEMENT**

24  
25 **SUBPART 1**

26  
27 **EFFECTIVENESS AND ATTACHMENT**

28  
29 **§9-1201. General effectiveness of security agreement**

30  
31 (1) Except as otherwise provided in this Title, a security  
32 agreement is effective according to its terms between the  
33 parties, against purchasers of the collateral and against  
34 creditors.

35  
36 (2) A transaction subject to this Article is subject to  
37 provisions of Title 9-A, or to Title 30-A, sections 3960 to  
38 3964-A.

39  
40 (3) In case of conflict between this Article and a rule of  
41 law, statute or rule described in subsection (2), the rule of  
42 law, statute or rule controls. Failure to comply with a statute  
43 or rule described in subsection (2) has only the effect the  
44 statute or rule specifies.

45  
46 (4) This Article does not:

47  
48 (a) Validate any rate, charge, agreement or practice that  
49 violates a rule of law, statute or rule described in  
50 subsection (2); or



Official Comment

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1. Source. Former Section 9-202.

2. Title Immaterial. The rights and duties of parties to a secured transaction and affected third parties are provided in this Article without reference to the location of "title" to the collateral. For example, the characteristics of a security interest that secures the purchase price of goods are the same whether the secured party appears to have retained title or the debtor appears to have obtained title and then conveyed title or a lien to the secured party.

3. When Title Matters.

a. Under This Article. This section explicitly acknowledges two circumstances in which the effect of certain Article 9 [Maine cite Article 9-A] provisions turns on ownership (title). First, in some respects sales of accounts, chattel paper, payment intangibles, and promissory notes receive special treatment. See, e.g., Sections 9-207(a), 9-210(b), 9-615(e) [Maine cite section 9-1207, subsection (1), section 9-1210, subsection (2), section 9-1615, subsection (5)]. Buyers of receivables under former Article 9 were treated specially, as well. See, e.g., former Section 9502(2). Second, the remedies of a consignor under a true consignment and, for the most part, the remedies of a buyer of accounts, chattel paper, payment intangibles, or promissory notes are determined by other law and not by Part 6. See Section 9601(g) [Maine cite section 9-1601, subsection (7)].

b. Under Other Law. This Article does not determine which line of interpretation (e.g., title theory or lien theory, retained title or conveyed title) should be followed in cases in which the applicability of another rule of law depends upon who has title. If, for example, a revenue law imposes a tax on the "legal" owner of goods or if a corporation law makes a vote of the stockholders prerequisite to a corporation "giving" a security interest but not if it acquires property "subject" to a security interest, this Article does not attempt to define whether the secured party is a "legal" owner or whether the transaction "gives" a security interest for the purpose of such laws. Other rules of law or the agreement of the parties determines the location and source of title for those purposes.

**§9-1203. Attachment and enforceability of security interest;**



proceeds; supporting obligations; formal requisites

2  
4 (1) A security interest attaches to collateral when it  
6 becomes enforceable against the debtor with respect to the  
8 collateral, unless an agreement expressly postpones the time of  
10 attachment.

12 (2) Except as otherwise provided in subsections (3) through  
14 (9), a security interest is enforceable against the debtor and  
16 3rd parties with respect to the collateral only if:

18 (a) Value has been given;

20 (b) The debtor has rights in the collateral or the power to  
22 transfer rights in the collateral to a secured party; and

24 (c) One of the following conditions is met:

26 (i) The debtor has authenticated a security agreement  
28 that provides a description of the collateral and, if  
30 the security interest covers timber to be cut, a  
32 description of the land concerned;

34 (ii) The collateral is not a certificated security and  
36 is in the possession of the secured party under section  
38 9-1313 pursuant to the debtor's security agreement;

40 (iii) The collateral is a certificated security in  
42 registered form and the security certificate has been  
44 delivered to the secured party under section 8-1302  
46 pursuant to the debtor's security agreement; or

48 (iv) The collateral is deposit accounts, electronic  
chattel paper, investment property, or letter-of-credit  
rights, and the secured party has control under  
sections 9-1104, 9-1105, 9-1106 or 9-1107 pursuant to  
the debtor's security agreement.

(3) Subsection (2) is subject to section 4-210 on the  
security interest of a collecting bank, section 5-1118 on the  
security interest of a letter-of-credit issuer or nominated  
person, section 9-1110 on a security interest arising under  
Article 2 or 2-A, and section 9-1206 on security interests in  
investment property.

(4) A person becomes bound as debtor by a security  
agreement entered into by another person if, by operation of law  
other than this Article or by contract:

2           (a) The security agreement becomes effective to create a  
3           security interest in the person's property; or

4           (b) The person becomes generally obligated for the  
5           obligations of the other person, including the obligation  
6           secured under the security agreement, and acquires or  
7           succeeds to all or substantially all of the assets of the  
8           other person.

10          (5) If a new debtor becomes bound as debtor by a security  
11          agreement entered into by another person:

12           (a) The agreement satisfies subsection (2), paragraph (c)  
13           with respect to existing or after-acquired property of the  
14           new debtor to the extent the property is described in the  
15           agreement; and

16           (b) Another agreement is not necessary to make a security  
17           interest in the property enforceable.

18           (6) The attachment of a security interest in collateral  
19           gives the secured party the rights to proceeds provided by  
20           section 9-1315 and is also attachment of a security interest in a  
21           supporting obligation for the collateral.

22           (7) The attachment of a security interest in a right to  
23           payment or performance secured by a security interest or other  
24           lien on personal or real property is also attachment of a  
25           security interest in the security interest, mortgage or other  
26           lien.

27           (8) The attachment of a security interest in a securities  
28           account is also attachment of a security interest in the security  
29           entitlements carried in the securities account.

30           (9) The attachment of a security interest in a commodity  
31           account is also attachment of a security interest in the  
32           commodity contracts carried in the commodity account.

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42                   **Official Comment**

44           1. Source. Former Sections 9-203, 9-115(2), (6).

46           2. Creation, Attachment, and Enforceability. Subsection  
47           (a) [Maine cite subsection (1)] states the general rule that a  
48           security interest attaches to collateral only when it becomes  
49           enforceable against the debtor. Subsection (b) [Maine cite  
50           subsection (2)] specifies the circumstances under which a  
          security interest becomes enforceable. Subsection (b) [Maine

2 cite subsection (2)] states three basic prerequisites to the  
existence of a security interest: value (paragraph (1) [Maine  
cite paragraph (a)]), rights or power to transfer rights in  
4 collateral (paragraph (2) [Maine cite paragraph (b)]), and  
agreement plus satisfaction of an evidentiary requirement  
6 (paragraph (3) [Maine cite paragraph (c)]). When all of these  
elements exist, a security interest becomes enforceable between  
8 the parties and attaches under subsection (a) [Maine cite  
subsection (1)]. Subsection (c) [Maine cite subsection (3)]  
10 identifies certain exceptions to the general rule of subsection  
(b) [Maine cite subsection (2)].

12  
14 3. Security Agreement; Authentication. Under subsection  
(b)(3) [Maine cite subsection (2)], enforceability requires the  
debtor's security agreement and compliance with an evidentiary  
16 requirement in the nature of a Statute of Frauds. Paragraph  
(3)(A) [Maine cite paragraph (c), subparagraph (i)] represents  
18 the most basic of the evidentiary alternatives, under which the  
debtor must authenticate a security agreement that provides a  
description of the collateral. Under Section 9-102 [Maine cite  
20 section 9-1102], a "security agreement" is "an agreement that  
creates or provides for a security interest." Neither that  
22 definition nor the requirement of paragraph (3)(A) [Maine cite  
paragraph (c), subparagraph (i)] rejects the deeply rooted  
24 doctrine that a bill of sale, although absolute in form, may be  
shown in fact to have been given as security. Under this  
26 Article, as under prior law, a debtor may show by parol evidence  
that a transfer purporting to be absolute was in fact for  
28 security. Similarly, a self-styled "lease" may serve as a  
security agreement if the agreement creates a security interest.  
30 See Section 1-201(37) (distinguishing security interest from  
lease).

34 4. Possession, Delivery, or Control Pursuant to Security  
Agreement. The other alternatives in subsection (b)(3) [Maine  
36 cite subsection (2), paragraph (c)] dispense with the requirement  
of an authenticated security agreement and provide alternative  
38 evidentiary tests. Under paragraph (3)(B) [Maine cite paragraph  
(c), subparagraph (ii)], the secured party's possession  
40 substitutes for the debtor's authentication under paragraph  
(3)(A) [Maine cite paragraph (c), subparagraph (i)] if the  
42 secured party's possession is "pursuant to the debtor's security  
agreement." That phrase refers to the debtor's agreement to the  
44 secured party's possession for the purpose of creating a security  
interest. The phrase should not be confused with the phrase  
46 "debtor has authenticated a security agreement," used in  
paragraph (3)(A) [Maine cite paragraph (c), subparagraph (i)],  
48 which contemplates the debtor's authentication of a record. In  
the unlikely event that possession is obtained without the  
50 debtor's agreement, possession would not suffice as a substitute

2 for an authenticated security agreement. However, once the  
3 security interest has become enforceable and has attached, it is  
4 not impaired by the fact that the secured party's possession is  
5 maintained without the agreement of a subsequent debtor (e.g., a  
6 transferee). Possession as contemplated by Section 9-313 [Maine  
7 cite section 9-1313] is possession for purposes of subsection  
8 (b)(3)(B) [Maine cite subsection (2), paragraph (c), subparagraph  
9 (ii)], even though it may not constitute possession "pursuant to  
10 the debtor's agreement" and consequently might not serve as a  
11 substitute for an authenticated security agreement under  
12 subsection (b)(3)(A) [Maine cite subsection (2), paragraph (c),  
13 subparagraph (i)]. Subsection (b)(3)(C) [Maine cite subsection  
14 (2), paragraph (c), subparagraph (iii)] provides that delivery of  
15 a certificated security to the secured party under Section 8-301  
16 [Maine cite section 8-1302] pursuant to the debtor's security  
17 agreement is sufficient as a substitute for an authenticated  
18 security agreement. Similarly, under subsection (b)(3)(D) [Maine  
19 cite subsection (2), paragraph (c), subparagraph (iv)], control  
20 of investment property, a deposit account, electronic chattel  
21 paper, or a letter-of-credit right satisfies the evidentiary test  
22 if control is pursuant to the debtor's security agreement.

23  
24 5. Collateral Covered by Other Statute or Treaty. One  
25 evidentiary purpose of the formal requisites stated in subsection  
26 (b) [Maine cite subsection (2)] is to minimize the possibility of  
27 future disputes as to the terms of a security agreement (e.g., as  
28 to the property that stands as collateral for the obligation  
29 secured). One should distinguish the evidentiary functions of  
30 the formal requisites of attachment and enforceability (such as  
31 the requirement that a security agreement contain a description  
32 of the collateral) from the more limited goals of "notice filing"  
33 for financing statements under Part 5, explained in Section 9-502  
34 [Maine cite section 9-1502], Comment 2. When perfection is  
35 achieved by compliance with the requirements of a statute or  
36 treaty described in Section 9-311(a) [Maine cite section 9-1311,  
37 subsection (1)], such as a federal recording act or a  
38 certificate-of-title statute, the manner of describing the  
39 collateral in a registry imposed by the statute or treaty may or  
40 may not be adequate for purposes of this section and Section  
41 9-108 [Maine cite section 9-1108]. However, the description  
42 contained in the security agreement, not the description in a  
43 public registry or on a certificate of title, controls for  
44 purposes of this section.

45  
46 6. Debtor's Rights; Debtor's Power to Transfer Rights.  
47 Subsection (b)(2) [Maine cite subsection (2), paragraph (b)]  
48 conditions attachment on the debtor's having "rights in the  
49 collateral or the power to transfer rights in the collateral to a  
50 secured party." A debtor's limited rights in collateral, short  
of full ownership, are sufficient for a security interest to

2 attach. However, in accordance with basic personal property  
conveyancing principles, the baseline rule is that a security  
4 interest attaches only to whatever rights a debtor may have,  
broad or limited as those rights may be.

6 Certain exceptions to the baseline rule enable a debtor to  
transfer, and a security interest to attach to, greater rights  
8 than the debtor has. See Part 3, Subpart 3 (priority rules).  
The phrase, "or the power to transfer rights in the collateral to  
10 a secured party," accommodates those exceptions. In some cases,  
a debtor may have power to transfer another person's rights only  
12 to a class of transferees that excludes secured parties. See,  
e.g., Section 2-403(2) (giving certain merchants power to  
14 transfer an entruster's rights to a buyer in ordinary course of  
business). Under those circumstances, the debtor would not have  
16 the power to create a security interest in the other person's  
rights, and the condition in subsection (b)(2) [Maine cite  
18 subsection (2), paragraph (b)] would not be satisfied.

20 7. New Debtors. Subsection (e) [Maine cite subsection (5)]  
makes clear that the enforceability requirements of subsection  
22 (b)(3) [Maine cite subsection (2), paragraph (c)] are met when a  
new debtor becomes bound under an original debtor's security  
24 agreement. If a new debtor becomes bound as debtor by a security  
agreement entered into by another person, the security agreement  
26 satisfies the requirement of subsection (b)(3) [Maine cite  
subsection (2), paragraph (c)] as to the existing and  
28 after-acquired property of the new debtor to the extent the  
property is described in the agreement.

30 Subsection (d) [Maine cite subsection (4)] explains when a  
32 new debtor becomes bound. Persons who become bound under  
paragraph (2) [Maine cite paragraph (b)] are limited to those who  
34 both become primarily liable for the original debtor's  
obligations and succeed to (or acquire) its assets. Thus, the  
36 paragraph excludes sureties and other secondary obligors as well  
as persons who become obligated through veil piercing and other  
38 non-successorship doctrines. In many cases, paragraph (2) [Maine  
cite paragraph (b)] will exclude successors to the assets and  
40 liabilities of a division of a debtor. See also Section 9-508  
[Maine cite section 9-1508], Comment 3.

42 8. Supporting Obligations. Under subsection (f) [Maine  
44 cite subsection (6)], a security interest in a "supporting  
obligation" (defined in Section 9-102 [Maine cite section  
46 9-1102]) automatically follows from a security interest in the  
underlying, supported collateral. This result was implicit under  
48 former Article 9. Implicit in subsection (f) [Maine cite  
subsection (6)] is the principle that the secured party's  
50 interest in a supporting obligation extends to the supporting

2 obligation only to the extent that it supports the collateral in  
4 which the secured party has a security interest. Complex issues  
6 may arise, however, if a supporting obligation supports many  
8 separate obligations of a particular account debtor and if the  
10 supported obligations are separately assigned as security to  
12 several secured parties. The problems may be exacerbated if a  
supporting obligation is limited to an aggregate amount that is  
less than the aggregate amount of the obligations it supports.  
This Article does not contain provisions dealing with competing  
claims to a limited supporting obligation. As under former  
Article 9, the law of suretyship and the agreements of the  
parties will control.

14 9. Collateral Follows Right to Payment or Performance.  
16 Subsection (g) [Maine cite subsection (7)] codifies the  
18 common-law rule that a transfer of an obligation secured by a  
20 security interest or other lien on personal or real property also  
22 transfers the security interest or lien. See Restatement (3d),  
Property (Mortgages) § 5.4(a) (1997). See also Section 9-308(e)  
[Maine cite section 9-1308, subsection (5)] (analogous rule for  
perfection).

24 10. Investment Property. Subsections (h) and (i) [Maine  
26 cite subsections (8) and (9)] make clear that attachment of a  
28 security interest in a securities account or commodity account is  
also attachment in security entitlements or commodity contracts  
carried in the accounts.

30 **§9-1204. After-acquired property; future advances**

32 (1) Except as otherwise provided in subsection (2), a  
security agreement may create or provide for a security interest  
in after-acquired collateral.

34 (2) A security interest does not attach under a term  
36 constituting an after-acquired property clause to:

38 (a) Consumer goods, other than an accession when given as  
40 additional security, unless the debtor acquires rights in  
them within 10 days after the secured party gives value; or

42 (b) A commercial tort claim.

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

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**Official Comment**

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1. Source. Former Section 9-204.

2. After-acquired Property; Continuing General Lien. Subsection (a) [Maine cite subsection (1)] makes clear that a security interest arising by virtue of an after acquired property clause is no less valid than a security interest in collateral in which the debtor has rights at the time value is given. A security interest in after-acquired property is not merely an "equitable" interest; no further action by the secured party--such as a supplemental agreement covering the new collateral--is required. This section adopts the principle of a "continuing general lien" or "floating lien." It validates a security interest in the debtor's existing and (upon acquisition) future assets, even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. See Section 9-205 [Maine cite section 9-1205]. Subsection (a) [Maine cite subsection (1)], together with subsection (c) [Maine cite subsection (3)], also validates "crosscollateral" clauses under which collateral acquired at any time secures advances whenever made.

3. After-Acquired Consumer Goods. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] makes ineffective an after-acquired property clause covering consumer goods (defined in Section 9-109) [Maine cite section 9-1102], except as accessions (see Section 9-335) [Maine cite section 9-1335], acquired more than ten days after the secured party gives value. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] is unchanged in substance from the corresponding provision in former Section 9-204(2).

4. Commercial Tort Claims. Subsection (b)(2) [Maine cite subsection (2), paragraph (b)] provides that an after-acquired property clause in a security agreement does not reach future commercial tort claims. In order for a security interest in a tort claim to attach, the claim must be in existence when the security agreement is authenticated. In addition, the security agreement must describe the tort claim with greater specificity than simply "all tort claims." See Section 9-108(e) [Maine cite section 9-1108, subsection (5)].

5. Future Advances; Obligations Secured. Under subsection (c) [Maine cite subsection (3)] collateral may secure future as well as past or present advances if the security agreement so provides. This is in line with the policy of this Article toward security interests in after-acquired property under subsection (a) [Maine cite subsection (1)]. Indeed, the parties are free to agree that a security interest secures any obligation

2 whatsoever. Determining the obligations secured by collateral is  
3 solely a matter of construing the parties' agreement under  
4 applicable law. This Article rejects the holdings of cases  
5 decided under former Article 9 that applied other tests, such as  
6 whether a future advance or other subsequently incurred  
7 obligation was of the same or a similar type or class as earlier  
8 advances and obligations secured by the collateral.

10 6. Sales of Receivables. Subsections (a) and (c) [Maine  
11 cite subsections (1) and (3)] expressly validate after-acquired  
12 property and future advance clauses not only when the transaction  
13 is for security purposes but also when the transaction is the  
14 sale of accounts, chattel paper, payment intangibles, or  
15 promissory notes. This result was implicit under former Article  
16 9.

18 7. Financing Statements. The effect of after-acquired  
19 property and future advance clauses as components of a security  
20 agreement should not be confused with the requirements applicable  
21 to financing statements under this Article's system of perfection  
22 by notice filing. The references to after-acquired property  
23 clauses and future advance clauses in this section are limited to  
24 security agreements. There is no need to refer to after-acquired  
25 property or future advances or other obligations secured in a  
26 financing statement. See Section 9-502 [Maine cite section  
27 9-1502], Comment 2.

28 **§9-1205. Use or disposition of collateral permissible**

30 (1) A security interest is not invalid or fraudulent  
31 against creditors solely because:

32 (a) The debtor has the right or ability to:

34 (i) Use, commingle or dispose of all or part of the  
35 collateral, including returned or repossessed goods;

38 (ii) Collect, compromise, enforce or otherwise deal  
39 with collateral;

40 (iii) Accept the return of collateral or make  
41 repossessions; or

44 (iv) Use, commingle or dispose of proceeds; or

46 (b) The secured party fails to require the debtor to account  
47 for proceeds or replace collateral.

48 (2) This section does not relax the requirements of  
49 possession if attachment, perfection or enforcement of a security  
50 interest is required.



interest depends upon possession of the collateral by the secured party.

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#### Official Comment

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1. Source. Former Section 9-205.

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2. Validity of Unrestricted "Floating Lien." This Article expressly validates the "floating lien" on shifting collateral. See Sections 9-201, 9-204 [Maine cite section 9-1201, section 9-1204] and Comment 2. This section provides that a security interest is not invalid or fraudulent by reason of the debtor's liberty to dispose of the collateral without being required to account to the secured party for proceeds or substitute new collateral. As did former Section 9-205, this section repeals the rule of *Benedict v. Ratner*, 268 U.S. 353 (1925), and other cases which held such arrangements void as a matter of law because the debtor was given unfettered dominion or control over collateral. The *Benedict* rule did not effectively discourage or eliminate security transactions in inventory and receivables. Instead, it forced financing arrangements to be selfliquidating. Although this section repeals *Benedict*, the filing and other perfection requirements (see Part 3, Subpart 2, and Part 5) provide for public notice that overcomes any potential misleading effects of a debtor's use and control of collateral. Moreover, nothing in this section prevents the debtor and secured party from agreeing to procedures by which the secured party polices or monitors collateral or to restrictions on the debtor's dominion. However, this Article leaves these matters to agreement based on business considerations, not on legal requirements.

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3. Possessory Security Interests. Subsection (b) [Maine cite subsection (2)] makes clear that this section does not relax the requirements for perfection by possession under Section 9-315 [Maine cite section 9-1315]. If a secured party allows the debtor access to and control over collateral its security interest may be or become unperfected.

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4. Permissible Freedom for Debtor to Enforce Collateral. Former Section 9-205 referred to a debtor's "liberty . . . to collect or compromise accounts or chattel paper." This section recognizes the broader rights of a debtor to "enforce," as well as to "collect" and "compromise" collateral. This section's reference to collecting, compromising, and enforcing "collateral" instead of "accounts or chattel paper" contemplates the many other types of collateral that a debtor may wish to "collect, compromise, or enforce": e.g., deposit accounts, documents, general intangibles, instruments, investment property, and letter-of-credit rights.

2 **§9-1206. Security interest arising in purchase or delivery**  
3 **of financial asset**

4 (1) A security interest in favor of a securities  
5 intermediary attaches to a person's security entitlement if:

6 (a) The person buys a financial asset through the securities  
7 intermediary in a transaction in which the person is  
8 obligated to pay the purchase price to the securities  
9 intermediary at the time of the purchase; and

10 (b) The securities intermediary credits the financial asset  
11 to the buyer's securities account before the buyer pays the  
12 securities intermediary.

13 (2) The security interest described in subsection (1)  
14 secures the person's obligation to pay for the financial asset.

15 (3) A security interest in favor of a person that delivers  
16 a certificated security or other financial asset represented by a  
17 writing attaches to the security or other financial asset if:

18 (a) The security or other financial asset:

19 (i) In the ordinary course of business is transferred  
20 by delivery with any necessary indorsement or  
21 assignment; and

22 (ii) Is delivered under an agreement between persons  
23 in the business of dealing with such securities or  
24 financial assets; and

25 (b) The agreement calls for delivery against payment.

26 (4) The security interest described in subsection (3)  
27 secures the obligation to make payment for the delivery.

28 **Official Comment**

29 1. Source. Former 9-116.

30 2. Codification of "Broker's Lien." Depending upon a  
31 securities intermediary's arrangements with its entitlement  
32 holders, the securities intermediary may treat the entitlement  
33 holder as entitled to financial assets before the entitlement  
34 holder has actually made payment for them. For example, many  
35 brokers permit retail customers to pay for financial assets by  
36 check. The broker may not receive final payment of the check  
37 until several days after the broker has credited the customer's  
38

2 securities account for the financial assets. Thus, the customer  
3 will have acquired a security entitlement prior to payment.  
4 Subsection (a) [Maine cite subsection (1)] provides that, in such  
5 circumstances, the securities intermediary has a security  
6 interest in the entitlement holder's security entitlement. Under  
7 subsection (b) [Maine cite subsection (2)] the security interest  
8 secures the customer's obligation to pay for the financial asset  
9 in question. Subsections (a) and (b) [Maine cite subsections (1)  
10 and (2)] codify and adapt to the indirect holding system the  
11 so-called "broker's lien," which has long been recognized. See  
12 Restatement, Security § 12.

13  
14 3. Financial Assets Delivered Against Payment. Subsection  
15 (c) [Maine cite subsection (3)] creates a security interest in  
16 favor of persons who deliver certificated securities or other  
17 financial assets in physical form, such as money market  
18 instruments, if the agreed payment is not received. In some  
19 arrangements for settlement of transactions in physical financial  
20 assets, the seller's securities custodian will deliver physical  
21 certificates to the buyer's securities custodian and receive a  
22 time-stamped delivery receipt. The buyer's securities custodian  
23 will examine the certificate to ensure that it is in good order,  
24 and that the delivery matches a trade in which the buyer has  
25 instructed the seller to deliver to that custodian. If all is in  
26 order, the receiving custodian will settle with the delivering  
27 custodian through whatever funds settlement system has been  
28 agreed upon or is used by custom and usage in that market. The  
29 understanding of the trade, however, is that the delivery is  
30 conditioned upon payment, so that if payment is not made for any  
31 reason, the security will be returned to the deliverer.  
32 Subsection (c) [Maine cite subsection (3)] clarifies the rights  
33 of persons making deliveries in such circumstances. It provides  
34 the person making delivery with a security interest in the  
35 securities or other financial assets; under subsection (d) [Maine  
36 cite subsection (4)], the security interest secures the seller's  
37 right to receive payment for the delivery. Section 8-301 [Maine  
38 cite section 8-1301] specifies when delivery of a certificated  
39 security occurs; that section should be applied as well to other  
40 financial assets as well for purposes of this section.

41  
42 4. Automatic Attachment and Perfection. Subsections (a)  
43 and (c) [Maine cite subsections (1) and (3)] refer to attachment  
44 of a security interest. Attachment under this section has the  
45 same incidents (enforceability, right to proceeds, etc.) as  
46 attachment under Section 9-203 [Maine cite section 9-1203]. This  
47 section overrides the general attachment rules in Section 9-203.  
48 See Section 9-203(c) [Maine cite section 9-1203, subsection  
49 (3)]. A securities intermediary's security interest under  
50 subsection (a) [Maine cite subsection (1)] is perfected by  
control without further action. See Section 8-106 [Maine cite

2 section 8-1106] (control); 9-314 [Maine cite section 9-1314]  
(perfection). Security interests arising under subsection (c)  
4 [Maine cite subsection (3)] are automatically perfected. See  
Section 9-309(9) [Maine cite section 9-1309, subsection (9)].

6  
8 **SUBPART 2**

10 **RIGHTS AND DUTIES**

12 **§9-1207. Rights and duties of secured party having possession  
or control of collateral**

14 (1) Except as otherwise provided in subsection (4), a  
16 secured party shall use reasonable care in the custody and  
18 preservation of collateral in the secured party's possession. In  
the case of chattel paper or an instrument, reasonable care  
includes taking necessary steps to preserve rights against prior  
parties unless otherwise agreed.

20 (2) Except as otherwise provided in subsection (4), if a  
22 secured party has possession of collateral:

24 (a) Reasonable expenses, including the cost of insurance  
26 and payment of taxes or other charges, incurred in the  
28 custody, preservation, use or operation of the collateral,  
are chargeable to the debtor and are secured by the  
collateral;

30 (b) The risk of accidental loss or damage is on the debtor  
32 to the extent of a deficiency in any effective insurance  
coverage;

34 (c) The secured party shall keep the collateral  
36 identifiable, but fungible collateral may be commingled; and

38 (d) The secured party may use or operate the collateral;

40 (i) For the purpose of preserving the collateral or  
its value;

42 (ii) As permitted by an order of a court having  
44 competent jurisdiction; or

46 (iii) Except in the case of consumer goods, in the  
manner and to the extent agreed by the debtor.

48 (3) Except as otherwise provided in subsection (4), a  
50 secured party having possession of collateral or control of  
collateral under section 9-1104, 9-1105, 9-1106 or 9-1107:

- 2           (a) May hold as additional security any proceeds, except  
3           money or funds, received from the collateral;  
4  
5           (b) Shall apply money or funds received from the collateral  
6           to reduce the secured obligation, unless remitted to the  
7           debtor; and  
8  
9           (c) May create a security interest in the collateral.  
10  
11           (4) If the secured party is a buyer of accounts, chattel  
12           paper, payment intangibles or promissory notes or a consignor:  
13  
14           (a) Subsection (1) does not apply unless the secured party  
15           is entitled under an agreement:  
16  
17                   (i) To charge back uncollected collateral; or  
18  
19                   (ii) Otherwise to full or limited recourse against the  
20                   debtor or a secondary obligor based on the nonpayment  
21                   or other default of an account debtor or other obligor  
22                   on the collateral; and  
23  
24           (5) Subsections (2) and (3) do not apply.

26  
27                                   **Official Comment**

- 28           1. Source. Former Section 9-207.  
29  
30           2. Duty of Care for Collateral in Secured Party's  
31 Possession. Like former section 9-207, subsection (a) [Maine  
32 cite subsection (1)] imposes a duty of care, similar to that  
33 imposed on a pledgee at common law, on a secured party in  
34 possession of collateral. See Restatement, Security §§ 17, 18.  
35 In many cases a secured party in possession of collateral may  
36 satisfy this duty by notifying the debtor of action that should  
37 be taken and allowing the debtor to take the action itself. If  
38 the secured party itself takes action, its reasonable expenses  
39 may be added to the secured obligation. The revised definitions  
40 of "collateral," "debtor," and "secured party" in Section 9-102  
41 [Maine cite 9-1102] make this section applicable to collateral  
42 subject to an agricultural lien if the collateral is in the  
43 lienholder's possession. Under Section 1-102 the duty to  
44 exercise reasonable care may not be disclaimed by agreement,  
45 although under that section the parties remain free to determine  
46 by agreement standards that are not manifestly unreasonable as to  
47 what constitutes reasonable care. Unless otherwise agreed, for a  
48 secured party in possession of chattel paper or an instrument,  
49 reasonable care includes the preservation of rights against prior  
50

2 parties. The secured party's right to have instruments or  
documents indorsed or transferred to it or its order is dealt  
4 with in the relevant sections of Articles 3, 7, and 8. See  
Sections 3-201 [Maine cite section 3-1201], 7-506, 8-304(d)  
6 [Maine cite section 8-1304, subsection (4)].

8 3. Specific Rules When Secured Party in Possession or  
Control of Collateral. Subsections (b) and (c) [Maine cite  
10 subsections (2) and (3)] provide rules following common-law  
precedents which apply unless the parties otherwise agree. The  
12 rules in subsection (b) [Maine cite subsection (2)] apply to  
typical issues that may arise while a secured party is in  
14 possession of collateral, including expenses, insurance, and  
taxes, risk of loss or damage, identifiable and fungible  
16 collateral, and use or operation of collateral. Subsection (c)  
[Maine cite subsection (3)] contains rules that apply in certain  
18 circumstances that may arise when a secured party is in either  
possession or control of collateral. These circumstances include  
20 the secured party's receiving proceeds from the collateral and  
the secured party's creation of a security interest in the  
22 collateral.

24 4. Applicability Following Default. This section applies  
when the secured party has possession of collateral either before  
or after default. See Sections 9-601(b), 9-609 [Maine cite  
26 section 9-1601, subsection 2, section 9-1609]. Subsection  
(b)(4)(C) [Maine cite subsection (2) paragraph (d) subparagraph  
28 (iii)] limits agreements concerning the use or operation of  
collateral to collateral other than consumer goods. Under  
30 Section 9-602(1) [Maine cite section 9-1602, subsection (1)], a  
debtor cannot waive or vary that limitation.  
32

34 5. "Repledges" and Right of Redemption. Subsection (c)(3)  
[Maine cite subsection (3), paragraph (c)] eliminates the  
36 qualification in former Section 9-207 to the effect that the  
terms of a "repledge" may not "impair" a debtor's "right to  
redeem" collateral. The change is primarily for clarification.  
38 There is no basis on which to draw from subsection (c)(3) [Maine  
cite subsection (3), paragraph (c)] any inference concerning the  
40 debtor's right to redeem the collateral. The debtor enjoys that  
right under Section 9-621 [Maine cite section 9-1621]; this  
42 section need not address it. For example, if the collateral is a  
negotiable note that the secured party (SP-1) repledges to SP-2,  
44 nothing in this section suggests that the debtor (D) does not  
retain the right to redeem the note upon payment to SP-1 of all  
46 obligations secured by the note. But, as explained below, the  
debtor's unimpaired right to redeem as against the debtor's  
48 original secured party nevertheless may not be enforceable as  
against the new secured party.  
50

2 In resolving questions that arise from the creation of a  
4 security interest by SP-1, one must take care to distinguish D's  
6 rights against SP-1 from D's rights against SP-2. Once D  
8 discharges the secured obligation, D becomes entitled to the  
note; SP-1 has no legal basis upon which to withhold it. If, as  
a practical matter, SP-1 is unable to return the note because  
SP-2 holds it as collateral for SP-1's unpaid debt, then SP-1 is  
liable to D under the law of conversion.

10 Whether SP-2 would be liable to D depends on the relative  
12 priority of SP-2's security interest and D's interest. By  
14 permitting SP-1 to create a security interest in the collateral  
(repledge), subsection (c)(3) [Maine cite subsection (3),  
16 paragraph (c)] provides a statutory power for SP-1 to give SP-2 a  
18 security interest (subject, of course, to any agreement by SP-1  
20 not to give a security interest). In the vast majority of cases  
where repledge rights are significant, the security interest of  
22 the second secured party, SP-2 in the example, will be senior to  
24 the debtor's interest. By virtue of the debtor's consent or  
26 applicable legal rules, SP-2 typically would cut off D's rights  
in investment property or be immune from D's claims. See  
28 Sections 9-331 [Maine cite section 9-1331], 3-306 [Maine cite  
30 section 3-1306] (holder in due course), 8-303 [Maine cite section  
32 8-1303] (protected purchaser), 8-502 [Maine cite section 8-1502]  
34 (acquisition of a security entitlement), 8-503(e) [Maine cite  
36 section 8-1503 subsection (5)] (action by entitlement holder).  
Moreover, the expectations and business practices in some  
38 markets, such as the securities markets, are such that D's  
consent to SP-2's taking free of D's rights inheres in D's  
creation of SP-1's security interest which gives rise to SP-1's  
power under this section. In these situations, D would have no  
right to recover the collateral or recover damages from SP-2.  
Nevertheless, D would have a damage claim against SP-1 if SP-1  
had given a security interest to SP-2 in breach of its agreement  
with D. Moreover, if SP-2's security interest secures an amount  
that is less than the amount secured by SP-1's security interest  
(granted by D), then D's exercise of its right to redeem would  
provide value sufficient to discharge SP-1's obligations to SP-2.

40 For the most part this section does not change the law under  
42 former Section 9-207, although eliminating the reference to the  
debtor's right of redemption may alter the secured party's right  
44 to repledge in one respect. Former Section 9-207 could have been  
46 read to limit the secured party's statutory right to repledge  
collateral to repledge transactions in which the collateral did  
48 not secure a greater obligation than that of the original  
debtor. Inasmuch as this is a matter normally dealt with by  
50 agreement between the debtor and secured party, any change would  
appear to have little practical effect.

2           6. "Repledges" of Investment Property. The following  
3 example will aid the discussion of "repledges" of investment  
4 property.

5           Example. Debtor grants Alpha Bank a security interest in a  
6 security entitlement that includes 1000 shares of XYZ Co. stock  
7 that Debtor holds through an account with Able & Co. Alpha does  
8 not have an account with Able. Alpha uses Beta Bank as its  
9 securities custodian. Debtor instructs Able to transfer the  
10 shares to Beta, for the account of Alpha, and Able does so. Beta  
11 then credits Alpha's account. Alpha has control of the security  
12 entitlement for the 1000 shares under Section 8-106(d)[Maine cite  
13 section 8-1106, subsection (4)]. (These are the facts of Example  
14 2, Section 8-106 [Maine cite section 8-1106], Comment 4.)  
15 Although, as between Debtor and Alpha, Debtor may have become the  
16 beneficial owner of the new securities entitlement with Beta,  
17 Beta has agreed to act on Alpha's entitlement orders because, as  
18 between Beta and Alpha, Alpha has become the entitlement holder.

19           Next, Alpha grants Gamma Bank a security interest in the  
20 security entitlement with Beta that includes the 1000 shares of  
21 XYZ Co. stock. In order to afford Gamma control of the  
22 entitlement, Alpha instructs Beta to transfer the stock to  
23 Gamma's custodian, Delta Bank, which credits Gamma's account for  
24 1000 shares. At this point Gamma holds its securities  
25 entitlement for its benefit as well as that of its debtor,  
26 Alpha. Alpha's derivative rights also are for the benefit of  
27 Debtor.  
28

29           In many, probably most, situations and at any particular  
30 point in time, it will be impossible for Debtor or Alpha to  
31 "trace" Alpha's "repledge" to any particular securities  
32 entitlement or financial asset of Gamma or anyone else. Debtor  
33 would retain, of course, a right to redeem the collateral from  
34 Alpha upon satisfaction of the secured obligation. However, in  
35 the absence of a traceable interest, Debtor would retain only a  
36 personal claim against Alpha in the event Alpha failed to restore  
37 the security entitlement to Debtor. Moreover, even in the  
38 unlikely event that Debtor could trace a property interest, in  
39 the context of the financial markets, normally the operation of  
40 this section, Debtor's explicit agreement to permit Alpha to  
41 create a senior security interest, or legal rules permitting  
42 Gamma to cut off Debtor's rights or become immune from Debtor's  
43 claims would effectively subordinate Debtor's interest to the  
44 holder of a security interest created by Alpha. And, under the  
45 shelter principle, all subsequent transferees would obtain  
46 interests to which Debtor's interest also would be subordinate.  
47

48           7. Buyers of Chattel Paper and Other Receivables;  
49 Consignors. This section has been revised to reflect the fact  
50



2 that a seller of accounts, chattel paper, payment intangibles, or  
4 promissory notes retains no interest in the collateral and so is  
6 not disadvantaged by the secured party's noncompliance with the  
8 requirements of this section. Accordingly, subsection (d) [Maine  
10 cite subsection (4)] provides that subsection (a) [Maine cite  
12 subsection (1)] applies only to security interests that secure an  
14 obligation and to sales of receivables in which the buyer has  
16 recourse against the debtor. (Of course, a buyer of accounts or  
18 payment intangibles could not have "possession" of original  
20 collateral, but might have possession of proceeds, such as  
22 promissory notes or checks.) The meaning of "recourse" in this  
24 respect is limited to recourse arising out of the account  
debtor's failure to pay or other default.

16 Subsection (d) [Maine cite subsection (4)] makes subsections  
18 (b) and (c) [Maine cite subsections (2) and (3)] inapplicable to  
20 buyers of accounts, chattel paper, payment intangibles, or  
22 promissory notes and consignors. Of course, there is no reason  
24 to believe that a buyer of receivables or a consignor could not,  
for example, create a security interest or otherwise transfer an  
interest in the collateral, regardless of who has possession of  
the collateral. However, this section leaves the rights of those  
owners to law other than Article 9 [Maine cite Article 9-A].

26 **§9-1208. Additional duties of secured party having control**  
28 **of collateral**

30 (1) This section applies to cases in which there is no  
32 outstanding secured obligation and the secured party is not  
committed to make advances, incur obligations or otherwise give  
value.

34 (2) Within 10 days after receiving an authenticated demand  
36 by the debtor:

38 (a) A secured party having control of a deposit account  
under section 9-1104, subsection (1), paragraph (b) shall  
40 send to the bank with which the deposit account is  
maintained an authenticated statement that releases the bank  
42 from any further obligation to comply with instructions  
originated by the secured party;

44 (b) A secured party having control of a deposit account  
46 under section 9-1104, subsection (1), paragraph (c) shall:

48 (i) Pay the debtor the balance on deposit in the  
deposit account; or

2           (ii) Transfer the balance on deposit into a deposit  
3           account in the debtor's name;

4           (c) A secured party, other than a buyer, having control of  
5           electronic chattel paper under section 9-1105 shall:

6                   (i) Communicate the authoritative copy of the  
7                   electronic chattel paper to the debtor or its  
8                   designated custodian;

9                   (ii) If the debtor designates a custodian that is the  
10                  designated custodian with which the authoritative copy  
11                  of the electronic chattel paper is maintained for the  
12                  secured party, communicate to the custodian an  
13                  authenticated record releasing the designated custodian  
14                  from any further obligation to comply with instructions  
15                  originated by the secured party and instructing the  
16                  custodian to comply with instructions originated by the  
17                  debtor; and

18                  (iii) Take appropriate action to enable the debtor or  
19                  its designated custodian to make copies of or revisions  
20                  to the authoritative copy that add or change an  
21                  identified assignee of the authoritative copy without  
22                  the consent of the secured party;

23           (d) A secured party having control of investment property  
24           under section 8-1106, subsection (4), paragraph (b) or  
25           9-1106, subsection (2) shall send to the securities  
26           intermediary or commodity intermediary with which the  
27           security entitlement or commodity contract is maintained an  
28           authenticated record that releases the securities  
29           intermediary or commodity intermediary from any further  
30           obligation to comply with entitlement orders or directions  
31           originated by the secured party; and

32           (e) A secured party having control of a letter-of-credit  
33           right under section 9-1107 shall send to each person having  
34           an unfulfilled obligation to pay or deliver proceeds of the  
35           letter of credit to the secured party an authenticated  
36           release from any further obligation to pay or deliver  
37           proceeds of the letter of credit to the secured party.

44                                   **Official Comment**

- 46                   1. Source. New.
- 48                   2. Scope and Purpose. This section imposes duties on a  
49 secured party who has control of a deposit account, electronic  
50

chattel paper, investment property, or a letter-of-credit right.  
2 The duty to terminate the secured party's control is analogous to  
the duty to file a termination statement, imposed by Section  
4 9-513 [Maine cite section 9-1513]. Under subsection (a) [Maine  
cite subsection (1)], it applies only when there is no  
6 outstanding secured obligation and the secured party is not  
committed to give value. The requirements of this section can be  
8 varied by agreement under Section 1-102(3). For example, a  
debtor could by contract agree that the secured party may release  
10 its control of investment property under subsection (a)(1) [Maine  
cite subsection (1), paragraph (a)] more than three days  
12 following demand. Also, duties under this section should not be  
read to conflict with the terms of the collateral itself. For  
14 example, if the collateral is a time deposit account, subsection  
(b)(3) [Maine cite subsection (2), paragraph (c)] should not  
16 require a secured party with control to make an early withdrawal  
of the funds (assuming that were possible) in order to pay them  
18 over to the debtor or put them in an account in the debtor's name.

20 3. Remedy for Failure to Relinquish Control. If a secured  
party fails to comply with the requirements of subsection (b)  
22 [Maine cite subsection (2)], the debtor has the remedy set forth  
in Section 9-625(e) [Maine cite section 9-1625, subsection (5)].  
24 This remedy is identical to that applicable to failure to provide  
or file a termination statement under Section 9-513 [Maine cite  
26 section 9-1513].

28 4. Duty to Relinquish Possession. Although Section 9-207  
[Maine cite section 9-1207] addresses directly the duties of a  
30 secured party in possession of collateral, that section does not  
require the secured party to relinquish possession when the  
32 secured party ceases to hold a security interest. Under common  
law, absent agreement to the contrary, the failure to relinquish  
34 possession of collateral upon satisfaction of the secured  
obligation would constitute a conversion. Inasmuch as problems  
36 apparently have not surfaced in the absence of statutory duties  
under former Article 9 and the common-law duty appears to have  
38 been sufficient, this Article does not impose a statutory duty to  
relinquish possession.

40 **§9-1209. Duties of secured party if account debtor has been**  
42 **notified of assignment**

44 (1) Except as otherwise provided in subsection (3), this  
46 section applies if:

48 (a) There is no outstanding secured obligation; and

50 (b) The secured party is not committed to make advances,  
incur obligations or otherwise give value.

2           (2) Within 10 days after receiving an authenticated demand  
4           by the debtor, a secured party shall send to an account debtor  
6           that has received notification of an assignment to the secured  
              party as assignee under section 9-1406, subsection (1) an  
              authenticated record that releases the account debtor from any  
              further obligation to the secured party.

8  
              (3) This section does not apply to an assignment  
10           constituting the sale of an account, chattel paper or payment  
              intangible.

12  
14    **Official Comment**

16           1. Source. New.

18           2. Scope and Purpose. Like Sections 9-208 and 9-513 [Maine  
20           cite section 9-1208 and section 9-1513], which require a secured  
              party to relinquish control of collateral and to file or provide  
22           a termination statement for a financing statement, this section  
              requires a secured party to free up collateral when there no  
24           longer is any outstanding secured obligation or any commitment to  
              give value in the future. This section addresses the case in  
26           which account debtors have been notified to pay a secured party  
              to whom the receivables have been assigned. It requires the  
28           secured party (assignee) to inform the account debtors that they  
              no longer are obligated to make payment to the secured party.  
30           See subsection (b) [Maine cite subsection (2)]. It does not  
              apply to account debtors whose obligations on an account, chattel  
32           paper, or payment intangible have been sold. See subsection (c)  
              [Maine cite subsection (3)].

34           **§9-1210. Request for accounting; request regarding list of**  
36    **collateral or statement of account**

38           (1) In this section:

40           (a) "Request" means a record of a type described in  
              paragraph (b), (c) or (d);

42           (b) "Request for an accounting" means a record  
44           authenticated by a debtor requesting that the recipient  
              provide an accounting of the unpaid obligations secured by  
46           collateral and reasonably identifying the transaction or  
              relationship that is the subject of the request;

48           (c) "Request regarding a list of collateral" means a record  
50           authenticated by a debtor requesting that the recipient  
              approve or correct a list of what the debtor believes to be

2 the collateral securing an obligation and reasonably  
3 identifying the transaction or relationship that is the  
4 subject of the request; and

6 (d) "Request regarding a statement of account" means a  
7 record authenticated by a debtor requesting that the  
8 recipient approve or correct a statement indicating what the  
9 debtor believes to be the aggregate amount of unpaid  
10 obligations secured by collateral as of a specified date and  
11 reasonably identifying the transaction or relationship that  
12 is the subject of the request.

14 (2) Subject to subsections (3), (4), (5) and (6), a secured  
15 party, other than a buyer of accounts, chattel paper, payment  
16 intangibles or promissory notes or a consignor, shall comply with  
17 a request within 14 days after receipt:

18 (a) In the case of a request for an accounting, by  
19 authenticating and sending to the debtor an accounting; and

20 (b) In the case of a request regarding a list of collateral  
21 or a request regarding a statement of account, by  
22 authenticating and sending to the debtor an approval or  
23 correction.

26 (3) A secured party that claims a security interest in all  
27 of a particular type of collateral owned by the debtor may comply  
28 with a request regarding a list of collateral by sending to the  
29 debtor an authenticated record including a statement to that  
30 effect within 14 days after receipt.

32 (4) A person that receives a request regarding a list of  
33 collateral, claims no interest in the collateral when it receives  
34 the request and claimed an interest in the collateral at an  
35 earlier time shall comply with the request within 14 days after  
36 receipt by sending to the debtor an authenticated record:

38 (a) Disclaiming any interest in the collateral; and

40 (b) If known to the recipient, providing the name and  
41 mailing address of any assignee of or successor to the  
42 recipient's security interest in the collateral.

44 (5) A person that receives a request for an accounting or a  
45 request regarding a statement of account, claims no interest in  
46 the obligations when it receives the request and claimed an  
47 interest in the obligations at an earlier time shall comply with  
48 the request within 14 days after receipt by sending to the debtor  
49 an authenticated record:

50



2 4. Permitted Types of Requests for Information. Subsection  
3 (a) [Maine cite subsection (1)] contemplates that a debtor may  
4 request three types of information by submitting three types of  
5 "requests" to the secured party. First, the debtor may request  
6 the secured party to prepare and send an "accounting" (defined in  
7 Section 9-102 [Maine cite section 9-1102]). Second, the debtor  
8 may submit to the secured party a list of collateral for the  
9 secured party's approval or correction. Third, the debtor may  
10 submit to the secured party for its approval or correction a  
11 statement of the aggregate amount of unpaid secured obligations.  
12 Inasmuch as a secured party may have numerous transactions and  
13 relationships with a debtor, each request must identify the  
14 relevant transactions or relationships. Subsections (b) and (c)  
15 [Maine cite subsections (2) and (3)] require the secured party to  
16 respond to a request within 14 days following receipt of the  
17 request.

18 5. Recipients Claiming No Interest in the Transaction. A  
19 debtor may be unaware that a creditor with whom it has dealt has  
20 assigned its security interest or the secured obligation.  
21 Subsections (d) and (e) [Maine cite subsections (4) and (5)]  
22 impose upon recipients of requests under this section the duty to  
23 inform the debtor that they claim no interest in the collateral  
24 or secured obligation, respectively, and to inform the debtor of  
25 the name and mailing address of any known assignee or successor.  
26 As under subsections (b) and (c) [Maine cite subsections (2) and  
27 (3)], a response to a request under subsection (d) or (e) [Maine  
28 cite subsection (4) or (5)] is due 14 days following receipt.

30 6. Waiver; Remedy for Failure to Comply. The debtor's  
31 rights under this section may not be waived or varied. See  
32 Section 9-602(2) [Maine cite section 9-1102, subsection (2)].  
33 Section 9-625(e) [Maine cite section 9-1625, subsection (5)] sets  
34 forth the remedy for noncompliance with the requirements of this  
35 section.

36 7. Limitation on Free Responses to Requests. Under  
37 subsection (f) [Maine cite subsection (6)], during a six-month  
38 period a debtor is entitled to receive from the secured party one  
39 free response to a request. The debtor is not entitled to a free  
40 response to each type of request (i.e., three free responses)  
41 during a six-month period.

44 **PART 3**

46 **PERFECTION AND PRIORITY**

48 **SUBPART 1**

50

LAW GOVERNING PERFECTION AND PRIORITY

2  
4 §9-1301. Law governing perfection and priority of security interests

6 Except as otherwise provided in sections 9-1303 through  
8 9-1306, the following rules determine the law governing  
10 perfection, the effect of perfection or nonperfection and the  
12 priority of a security interest in collateral.

14 (1) Except as otherwise provided in this section, while a  
16 debtor is located in a jurisdiction, the local law of that  
18 jurisdiction governs perfection, the effect of perfection or  
20 nonperfection and the priority of a security interest in  
22 collateral.

24 (2) While collateral is located in a jurisdiction, the  
26 local law of that jurisdiction governs perfection, the effect of  
28 perfection or nonperfection and the priority of a possessory  
30 security interest in that collateral.

32 (3) Except as otherwise provided in subsection (4), while  
34 negotiable documents, goods, instruments, money or tangible  
36 chattel paper is located in a jurisdiction, the local law of that  
38 jurisdiction governs:

40 (a) Perfection of a security interest in the goods by  
42 filing a fixture filing;

44 (b) Perfection of a security interest in timber to be cut;  
46 and

48 (c) The effect of perfection or nonperfection and the  
50 priority of a nonpossessory security interest in the  
collateral.

(4) The local law of the jurisdiction in which the wellhead  
or minehead is located governs perfection, the effect of  
perfection or nonperfection and the priority of a security  
interest in as-extracted collateral.

**Official Comment**

1. Source. Former Sections 9-103(1)(a), (b), 9-103(3)(a),  
(b), 9-103(5), substantially modified.

2. Scope of This Subpart. Part 3, Subpart 1 (Sections  
9-301 through 9-307 [Maine cite sections 9-1301--9-1307])  
contains choice-of-law rules similar to those of former Section



2 9-103. Former Section 9-103 generally addresses which State's  
law governs "perfection and the effect of perfection or  
4 non-perfection of" security interests. See, e.g., former Section  
9-103(1)(b). This Article follows the broader and more precise  
6 formulation in former Section 9-103(6)(b), which was revised in  
connection with the promulgation of Revised Article 8 in 1994:  
8 "perfection, the effect of perfection or non-perfection, and the  
priority of" security interests. Priority, in this context,  
10 subsumes all of the rules in Part 3, including "cut off" or "take  
free" rules such as Sections 9-317(b), (c), and (d) [Maine cite  
12 section 9-1317, subsections (2), (3) and (4)], 9-320(a), (b), and  
(d) [Maine cite section 9-1320, subsections (1), (2) and (4)],  
14 and 9-332 [Maine cite section 9-1332]. This subpart does not  
address choice of law for other purposes. For example, the law  
16 applicable to issues such as attachment, validity,  
characterization (e.g., true lease or security interest), and  
18 enforcement is governed by the rules in Section 1-105; that  
governing law typically is specified in the same agreement that  
contains the security agreement. And, another jurisdiction's law  
20 may govern other third-party matters addressed in this Article.  
See Section 9-401 [Maine cite section 9-1401], Comment 3.

22  
24 3. Scope of Referral. In designating the jurisdiction  
whose law governs, this Article directs the court to apply only  
the substantive ("local") law of a particular jurisdiction and  
26 not its choice-of-law rules.

28 Example 1: Litigation over the priority of a security  
interest in accounts arises in State X. State X has adopted the  
30 official text of this Article, which provides that priority is  
determined by the local law of the jurisdiction in which the  
32 debtor is located. See Section 9-301(1) [Maine cite section  
9-1301, subsection (1)]. The debtor is located in State Y. Even  
34 if State Y has retained former Article 9 or enacted a nonuniform  
choice-of-law rule (e.g., one that provides that perfection is  
36 governed by the law of State Z), a State X court should look only  
to the substantive law of State Y and disregard State Y's  
38 choice-of-law rule. State Y's substantive law (e.g., its Section  
9-501 [Maine cite section 9-1501]) provides that financing  
40 statements should be filed in a filing office in State Y. Note,  
however, that if the identical perfection issue were to be  
42 litigated in State Y, the court would look to State Y's former  
Section 9-103 or nonuniform 9-301 and conclude that a filing in  
44 State Y is ineffective.

46 Example 2: In the preceding Example, assume that State X  
has adopted the official text of this Article, and State Y has  
48 adopted a nonuniform Section 9-301(1) under which perfection is  
governed by the whole law of State X, including its choice-of-law  
50 rules. If litigation occurs in State X, the court should look to

2 the substantive law of State Y, which provides that financing  
3 statements are to be filed in a filing office in State Y. If  
4 litigation occurs in State Y, the court should look to the law of  
5 State X, whose choice-of-law rule requires that the court apply  
6 the substantive law of State Y. Thus, regardless of the  
7 jurisdiction in which the litigation arises, the financing  
8 statement should be filed in State Y.

9  
10 4. Law Governing Perfection: General Rule. Paragraph (1)  
11 [Maine cite paragraph (a)] contains the general rule: the law  
12 governing perfection of security interests in both tangible and  
13 intangible collateral, whether perfected by filing or  
14 automatically, is the law of the jurisdiction of the debtor's  
15 location, as determined under Section 9-307 [Maine cite section  
16 9-1307].

17 Paragraph (1) [Maine cite paragraph (a)] substantially  
18 simplifies the choice-of-law rules. Former Section 9-103  
19 contained different choice-of-law rules for different types  
20 of collateral. Under Section 9-301(1) [Maine cite section  
21 9-1301, subsection (1)], the law of a single jurisdiction  
22 governs perfection with respect to most types of collateral,  
23 both tangible and intangible. Paragraph (1) [Maine cite  
24 paragraph (a)] eliminates the need for former Section  
25 9-103(1)(c), which concerned purchase-money security  
26 interests in tangible collateral that is intended to move  
27 from one jurisdiction to the other. It is likely to reduce  
28 the frequency of cases in which the governing law changes  
29 after a financing statement is properly filed. (Presumably,  
30 debtors change their own location less frequently than they  
31 change the location of their collateral.) The approach  
32 taken in paragraph (1) [Maine cite paragraph (a)] also  
33 eliminates some difficult priority issues and the need to  
34 distinguish between "mobile" and "ordinary" goods, and it  
35 reduces the number of filing offices in which secured  
36 parties must file or search when collateral is located in  
37 several jurisdictions.

38  
39 5. Law Governing Perfection: Exceptions. The general rule  
40 is subject to several exceptions. It does not apply to goods  
41 covered by a certificate of title (see Section 9-303 [Maine cite  
42 section 9-1303]), deposit accounts (see Section 9-304) [Maine  
43 cite section 9-1304], investment property (see Section 9-305  
44 [Maine cite section 9-1305]), or letter-of-credit rights (see  
45 Section 9-306 [Maine cite section 9-1306]). Nor does it apply to  
46 possessory security interests, i.e., security interests that the  
47 secured party has perfected by taking possession of the  
48 collateral (see paragraph (2) [Maine cite paragraph (b)]),  
49 security interests perfected by filing a fixture filing (see  
50 paragraph (4) [Maine cite paragraph (d)]), security interests in

2 timber to be cut (paragraph (5) [Maine cite paragraph (e)]), or  
3 security interests in as-extracted collateral (see paragraph (6)  
4 [Maine cite paragraph (f)]).

5  
6 a. Possessory Security Interests. Paragraph (2) [Maine  
7 cite paragraph (b)] applies to possessory security interests  
8 and provides that perfection is governed by the local law of  
9 the jurisdiction in which the collateral is located. This  
10 is the rule of former Section 9-103(1)(b), except paragraph  
11 (2) [Maine cite paragraph (b)] eliminates the troublesome  
12 "last event" test of former law.

13  
14 The distinction between nonpossessory and possessory  
15 security interests creates the potential for the same  
16 jurisdiction to apply two different choice-of-law rules to  
17 determine perfection in the same collateral. For example, were a  
18 secured party in possession of an instrument or document to  
19 relinquish possession in reliance on temporary perfection, the  
20 applicable law immediately would change from that of the location  
21 of the collateral to that of the location of the debtor. The  
22 applicability of two different choice-of-law rules for perfection  
23 is unlikely to lead to any material practical problems. The  
24 perfection rules of one Article 9 [Maine cite Article 9-A]  
25 jurisdiction are likely to be identical to those of another.  
26 Moreover, under paragraph (3) [Maine cite paragraph (c)], the  
27 relative priority of competing security interests in tangible  
28 collateral is resolved by reference to the law of the  
29 jurisdiction in which the collateral is located, regardless of  
30 how the security interests are perfected.

31  
32 b. Fixtures. Application of the general rule in paragraph  
33 (1) [Maine cite paragraph (a)] to perfection of a security  
34 interest in fixtures would yield strange results. For  
35 example, perfection of a security interest in fixtures  
36 located in Arizona and owned by a Delaware corporation would  
37 be governed by the law of Delaware. Although Delaware law  
38 would send one to a filing office in Arizona for the place  
39 to file a financing statement as a fixture filing, see  
40 Section 9-501 [Maine cite section 9-1501], Delaware law  
41 would not take account of local, nonuniform, real-property  
42 filing and recording requirements that Arizona law might  
43 impose. For this reason, paragraph (3)(A) [Maine cite  
44 paragraph (c), subparagraph (i)] contains a special rule for  
45 security interests perfected by a fixture filing; the law of  
46 the jurisdiction in which the fixtures are located governs  
47 perfection, including the formal requisites of a fixture  
48 filing. Under paragraph (3)(C) [Maine cite paragraph (c),  
49 subparagraph (iii)], the same law governs priority.  
50 Fixtures are "goods" as defined in Section 9-102 [Maine cite  
section 9-1102].

2 c. Timber to Be Cut. Application of the general rule in  
paragraph (1) [Maine cite paragraph (a)] to perfection of a  
4 security interest in timber to be cut would yield  
undesirable results analogous to those described with  
6 respect to fixtures. Paragraph (3)(B) [Maine cite paragraph  
(c), subparagraph (ii)] adopts a similar solution:  
8 perfection is governed by the law of the jurisdiction in  
which the timber is located. As with fixtures, under  
10 paragraph (3)(C) [Maine cite paragraph (c), subparagraph  
(iii)], the same law governs priority. Timber to be cut  
12 also is "goods" as defined in Section 9-102 [Maine cite  
section 9-1102].

14 Paragraph (3)(B) [Maine cite paragraph (c), subparagraph  
16 (ii)] applies only to "timber to be cut," not to timber that has  
been cut. Consequently, once the timber is cut, the general  
18 choice-of-law rule in paragraph (1) [Maine cite paragraph (a)]  
becomes applicable. To ensure continued perfection, a secured  
20 party should file in both the jurisdiction in which the timber to  
be cut is located and in the state where the debtor is located.  
22 The former filing would be with the office in which a real  
property mortgage would be filed, and the latter would be a  
24 central filing. See Section 9-501 [Maine cite section 9-1501].

26 d. As-Extracted Collateral. Paragraph (4) [Maine cite  
paragraph (d)] adopts the rule of former Section 9-103(5)  
28 with respect to certain security interests in minerals and  
related accounts. Like security interests in fixtures  
30 perfected by filing a fixture filing, security interests in  
minerals that are as-extracted collateral are perfected by  
32 filing in the office designated for the filing or recording  
of a mortgage on the real property. For the same reasons,  
34 the law governing perfection and priority is the law of the  
jurisdiction in which the wellhead or minehead is located.

36 6. Change in Law Governing Perfection. When the debtor  
38 changes its location to another jurisdiction, the jurisdiction  
whose law governs perfection under paragraph (1) [Maine cite  
40 paragraph (a)] changes, as well. Similarly, the law governing  
perfection of a possessory security interest in collateral under  
42 paragraph (2) [Maine cite paragraph (b)] changes when the  
collateral is removed to another jurisdiction. Nevertheless,  
44 these changes will not result in an immediate loss of  
perfection. See Section 9-316(a), (b) [Maine cite section  
46 9-1316, subsection (1), subsection (2)].

48 7. Law Governing Effect of Perfection and Priority: Goods,  
Documents, Instruments, Money, Negotiable Documents, and Tangible  
50 Chattel Paper. Under former section 9-103, the law of a single

2 jurisdiction governed both questions of perfection and those of  
3 priority. This Article generally adopts that approach. See  
4 paragraph (1) [Maine cite paragraph (a)]. But the approach may  
5 create problems if the debtor and collateral are located in  
6 different jurisdictions. For example, assume a security interest  
7 in equipment located in Pennsylvania is perfected by filing in  
8 Illinois, where the debtor is located. If the law of the  
9 jurisdiction in which the debtor is located were to govern  
10 priority, then the priority of an execution lien on goods located  
11 in Pennsylvania would be governed by rules enacted by the  
12 Illinois legislature.

13  
14 To address this problem, paragraph (3)(C) [Maine cite  
15 pargarph (c) subparagraph (iii)] divorces questions of perfection  
16 from questions of "the effect of perfection or nonperfection and  
17 the priority of a security interest." Under paragraph (3)(C)  
18 [Maine cite paragraph (c), subparagraph (iii)], the rights of  
19 competing claimants to tangible collateral are resolved by  
20 reference to the law of the jurisdiction in which the collateral  
21 is located. A similar bifurcation applied to security interests  
22 in investment property under former Section 9-103(6). See  
23 Section 9-305 [Maine cite section 9-1305].

24 Paragraph (3)(C) [Maine cite paragraph (c), subparagraph  
25 (iii)] applies the law of the situs to determine priority only  
26 with respect to goods (including fixtures), instruments, money,  
27 negotiable documents, and tangible chattel paper. Compare former  
28 Section 9-103(1), which applied the law of the location of the  
29 collateral to documents, instruments, and "ordinary" (as opposed  
30 to "mobile") goods. This Article does not distinguish among  
31 types of goods. The ordinary/mobile goods distinction appears to  
32 address concerns about where to file and search, rather than  
33 concerns about priority. There is no reason to preserve this  
34 distinction under the bifurcated approach.

35  
36 Particularly serious confusion may arise when the  
37 choice-of-law rules of a given jurisdiction result in each of two  
38 competing security interests in the same collateral being  
39 governed by a different priority rule. The potential for this  
40 confusion existed under former Section 9-103(4) with respect to  
41 chattel paper: Perfection by possession was governed by the law  
42 of the location of the paper, whereas perfection by filing was  
43 governed by the law of the location of the debtor. Consider the  
44 mess that would have been created if the language or  
45 interpretation of former Section 9-308 were to differ in the two  
46 relevant States, or if one of the relevant jurisdictions (e.g., a  
47 foreign country) had not adopted Article 9. The potential for  
48 confusion could have been exacerbated when a secured party  
49 perfected both by taking possession in the State where the  
50 collateral is located (State A) and by filing in the State where

2 the debtor is located (State B)--a common practice for some  
3 chattel paper financiers. By providing that the law of the  
4 jurisdiction in which the collateral is located governs priority,  
5 paragraph (3) [Maine cite paragraph (c)] substantially diminishes  
6 this problem.

7  
8 8. Non-U.S. Debtors. This Article applies the same  
9 choice-of-law rules to all debtors, foreign and domestic. For  
10 example, it adopts the bifurcated approach for determining the  
11 law applicable to security interests in goods and other tangible  
12 collateral. See Comment 5.a., above. The Article contains a new  
13 rule specifying the location of non-U.S. debtors for purposes of  
14 this Part. The rule appears in Section 9-307 [Maine cite section  
15 9-1307] and is explained in the Reporters' Comments following  
16 that section. Former Section 9-103(3)(c), which contained a  
17 special choice-of-law rule governing security interests created  
18 by debtors located in a non-U.S. jurisdiction, proved  
19 unsatisfactory and was deleted.

20 **§9-1302. Law governing perfection and priority of**  
21 **agricultural liens**

22  
23 While farm products are located in a jurisdiction, the local  
24 law of that jurisdiction governs perfection, the effect of  
25 perfection or nonperfection and the priority of an agricultural  
26 lien on the farm products.

27  
28 **Official Comment**

29 1. Source. New.

30  
31 2. Agricultural Liens. This section provides choice-of-law  
32 rules for agricultural liens on farm products. Perfection, the  
33 effect of perfection or nonperfection, and priority all are  
34 governed by the law of the jurisdiction in which the farm  
35 products are located. Other choice-of-law rules, including  
36 Section 1-105, determine which jurisdiction's law governs other  
37 matters, such as the secured party's rights on default. See  
38 Section 9-301 [Maine cite section 9-1301], Comment 2. Inasmuch  
39 as no agricultural lien on proceeds arises under this Article,  
40 this section does not expressly apply to proceeds of agricultural  
41 liens. However, if another statute creates an agricultural lien  
42 on proceeds, it may be appropriate for courts to apply the  
43 choice-of-law rule in this section to determine priority in the  
44 proceeds.  
45

46  
47 **§9-1303. Law governing perfection and priority of security**  
48 **interests in goods covered by certificate of title**

2       (1) This section applies to goods covered by a certificate  
3 of title, even if there is no other relationship between the  
4 jurisdiction under whose certificate of title the goods are  
5 covered and the goods or the debtor.

6       (2) Goods become covered by a certificate of title when a  
7 valid application for the certificate of title and the applicable  
8 fee are delivered to the appropriate authority. Goods cease to  
9 be covered by a certificate of title at the earlier of the time  
10 the certificate of title ceases to be effective under the law of  
11 the issuing jurisdiction or the time the goods become covered  
12 subsequently by a certificate of title issued by another  
13 jurisdiction.

14       (3) The local law of the jurisdiction under whose  
15 certificate of title the goods are covered governs perfection,  
16 the effect of perfection or nonperfection and the priority of a  
17 security interest in goods covered by a certificate of title from  
18 the time the goods become covered by the certificate of title  
19 until the goods cease to be covered by the certificate of title.

22                                   **Official Comment**

23               1. Source. Former Section 9-103(2)(a), (b), substantially  
24 revised.  
25

26               2. Scope of This Section. This section applies to "goods  
27 covered by a certificate of title." The new definition of  
28 "certificate of title" in Section 9-102 [Maine cite section  
29 9-1102] makes clear that this section applies not only to  
30 certificate-of-title statutes under which perfection occurs upon  
31 notation of the security interest on the certificate but also to  
32 those that contemplate notation but provide that perfection is  
33 achieved by another method, e.g., delivery of designated  
34 documents to an official. Subsection (a) [Maine cite subsection  
35 (1)], which is new, makes clear that this section applies to  
36 certificates of a jurisdiction having no other contacts with the  
37 goods or the debtor. This result comports with most of the  
38 reported cases on the subject and with contemporary business  
39 practices in the trucking industry.  
40

41               3. Law Governing Perfection and Priority. Subsection (c)  
42 [Maine cite subsection (3)] is the basic choice-of-law rule for  
43 goods covered by a certificate of title. Perfection and priority  
44 of a security interest are governed by the law of the  
45 jurisdiction under whose certificate of title the goods are  
46 covered from the time the goods become covered by the certificate  
47 of title until the goods cease to be covered by the certificate  
48 of title.  
49  
50

2 Normally, under the law of the relevant jurisdiction, the  
3 perfection step would consist of compliance with that  
4 jurisdiction's certificate-of-title statute and a resulting  
5 notation of the security interest on the certificate of title.  
6 See Section 9-311(b) [Maine cite section 9-1301, subsection  
7 (2)]. In the typical case of an automobile or over-the-road  
8 truck, a person who wishes to take a security interest in the  
9 vehicle can ascertain whether it is subject to any security  
10 interests by looking at the certificate of title. But  
11 certificates of title cover certain types of goods in some States  
12 but not in others. A secured party who does not realize this may  
13 extend credit and attempt to perfect by filing in the  
14 jurisdiction in which the debtor is located. If the goods had  
15 been titled in another jurisdiction, the lender would be  
16 unperfected.

18 Subsection (b) [Maine cite subsection (2)] explains when  
19 goods become covered by a certificate of title and when they  
20 cease to be covered. Goods may become covered by a certificate  
21 of title, even though no certificate of title has issued. Former  
22 Section 9-103(2)(b) provided that the law of the jurisdiction  
23 issuing the certificate ceases to apply upon "surrender" of the  
24 certificate. This Article eliminates the concept of  
25 "surrender." However, if the certificate is surrendered in  
26 conjunction with an appropriate application for a certificate to  
27 be issued by another jurisdiction, the law of the original  
28 jurisdiction ceases to apply because the goods became covered  
29 subsequently by a certificate of title from another  
30 jurisdiction. Alternatively, the law of the original  
31 jurisdiction ceases to apply when the certificate "ceases to be  
32 effective" under the law of that jurisdiction. Given the  
33 diversity in certificate-of-title statutes, the term "effective"  
34 is not defined.

36 4. Continued Perfection. The fact that the law of one  
37 State ceases to apply under subsection (b) [Maine cite subsection  
38 (2)] does not mean that a security interest perfected under that  
39 law becomes unperfected automatically. In most cases, the  
40 security interest will remain perfected. See Section 9-316(d),  
41 (e) [Maine cite section 9-1316, subsection (4), subsection (5)].  
42 Moreover, a perfected security interest may be subject to defeat  
43 by certain buyers and secured parties. See Section 9-337 [Maine  
44 cite section 9-1337].

46 5. Inventory. Compliance with a certificate-of-title  
47 statute generally is not the method of perfecting security  
48 interests in inventory. Section 9-311(d) [Maine cite section  
49 9-1311, subsection (4)] provides that a security interest created  
50 in inventory held by a person in the business of selling or



leasing goods of that kind is subject to the normal filing rules; compliance with a certificate-of-title statute is not necessary or effective to perfect the security interest. Most certificate-of-title statutes are in accord.

The following example explains the subtle relationship between this rule and the choice-of-law rules in Section 9-303 [Maine cite section 9-1303] and former Section 9-103(2):

Example: Goods are located in State A and covered by a certificate of title issued under the law of State A. The State A certificate of title is "clean"; it does not reflect a security interest. Owner takes the goods to State B and sells (trades in) the goods to Dealer, who is located (within the meaning of Section 9-307 [Maine cite section 9-1307]) in State B. As is customary, Dealer retains the duly assigned State A certificate of title pending resale of the goods. Dealer's inventory financier, SP, obtains a security interest in the goods under its after-acquired property clause.

Under Section 9-311(d) [Maine cite section 9-1311, subsection (4)] of both State A and State B, Dealer's inventory financier, SP, must perfect by filing instead of complying with a certificate-of-title statute. If Section 9-303 [Maine cite section 9-1303] were read to provide that the law applicable to perfection of SP's security interest is that of State A, because the goods are covered by a State A certificate, then SP would be required to file in State A under State A's Section 9-501 [Maine cite section 9-1501]. That result would be anomalous, to say the least, since the principle underlying Section 9-311(d) [Maine cite section 9-1311, subsection (4)] is that the inventory should be treated as ordinary goods.

Section 9-303 [Maine cite section 9-1303] (and former Section 9-103(2)) should be read as providing that the law of State B, not State A, applies. A court looking to the forum's Section 9-303(a) [Maine cite section 9-1303, subsection (1)] would find that Section 9-303 [Maine cite section 9-1303] applies only if two conditions are met: (i) the goods are covered by the certificate as explained in Section 9-303(b) [Maine cite section 9-1303, subsection (2)], i.e., application had been made for a State (here, State A) to issue a certificate of title covering the goods and (ii) the certificate is a "certificate of title" as defined in Section 9-102 [Maine cite section 9-1102], i.e., "a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor." Stated otherwise, Section 9-303 [Maine cite section 9-1303] applies only when compliance with a certificate-of-title statute, and not filing, is the appropriate method of

2 perfection. Under the law of State A, for purposes of perfecting  
3 SP's security interest in the dealer's inventory, the proper  
4 method of perfection is filing--not compliance with State A's  
5 certificate-of-title statute. For that reason, the goods are not  
6 covered by a "certificate of title," and the second condition is  
7 not met. Thus, Section 9-303 [Maine cite section 9-1303] does  
8 not apply to the goods. Instead, Section 9-301 [Maine cite  
9 section 9-1301] applies, and the applicable law is that of State  
10 B, where the debtor (dealer) is located.

11  
12 6. External Constraints on This Section. The need to  
13 coordinate Article 9 [Maine cite Article 9-A] with a variety of  
14 nonuniform certificate-of-title statutes, the need to provide  
15 rules to take account of situations in which multiple  
16 certificates of title are outstanding with respect to particular  
17 goods, and the need to govern the transition from perfection by  
18 filing in one jurisdiction to perfection by notation in another  
19 all create pressure for a detailed and complex set of rules. In  
20 an effort to minimize complexity, this Article does not attempt  
21 to coordinate Article 9 [Maine cite Article 9-A] with the entire  
22 array of certificate-of-title statutes. In particular, Sections  
23 9-303 [Maine cite section 9-1303], 9-311 [Maine cite section  
24 9-1311], and 9-316(d) and (e) [Maine cite section 9-1316,  
25 subsections (4) and (5)] assume that the certificate-of-title  
26 statutes to which they apply do not have relation-back provisions  
27 (i.e., provisions under which perfection is deemed to occur at a  
28 time earlier than when the perfection steps actually are taken).  
29 A Legislative Note to Section 9-311 [Maine cite section 9-1311]  
30 recommends the elimination of relation-back provisions in  
31 certificate-of-title statutes affecting perfection of security  
32 interests.

33  
34 Ideally, at any given time, only one certificate of title is  
35 outstanding with respect to particular goods. In fact, however,  
36 sometimes more than one jurisdiction issues more than one  
37 certificate of title with respect to the same goods. This  
38 situation results from defects in certificate-of-title laws and  
39 the interstate coordination of those laws, not from deficiencies  
40 in this Article. As long as the possibility of multiple  
41 certificates of title remains, the potential for innocent parties  
42 to suffer losses will continue. At best, this Article can  
43 identify clearly which innocent parties will bear the losses in  
44 familiar fact patterns.

45 **§9-1304. Law governing perfection and priority of security**  
46 **interests in deposit accounts**

47 (1) The local law of a bank's jurisdiction governs  
48 perfection, the effect of perfection or nonperfection and the

2 priority of a security interest in a deposit account maintained  
3 with that bank.

4 (2) The following rules determine a bank's jurisdiction for  
5 purposes of this Part.

6 (a) If an agreement between the bank and the debtor  
7 governing the deposit account expressly provides that a  
8 particular jurisdiction is the bank's jurisdiction for  
9 purposes of this Part, this Article or this Title, that  
10 jurisdiction is the bank's jurisdiction.

11 (b) If paragraph (a) does not apply and an agreement  
12 between the bank and its customer governing the deposit  
13 account expressly provides that the agreement is governed by  
14 the law of a particular jurisdiction, that jurisdiction is  
15 the bank's jurisdiction.

16 (c) If neither paragraph (a) nor paragraph (b) applies and  
17 an agreement between the bank and its customer governing the  
18 deposit account expressly provides that the deposit account  
19 is maintained at an office in a particular jurisdiction,  
20 that jurisdiction is the bank's jurisdiction.

21 (d) If none of the preceding paragraphs applies, the bank's  
22 jurisdiction is the jurisdiction in which the office  
23 identified in an account statement as the office serving the  
24 customer's account is located.

25 (e) If none of the preceding paragraphs applies, the bank's  
26 jurisdiction is the jurisdiction in which the chief  
27 executive office of the bank is located.

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34 **Official Comment**

35  
36 1. Source. New; derived from Section 8-110(e) and former  
37 Section 9-103(6).

38  
39 2. Deposit Accounts. Under this section, the law of the  
40 "bank's jurisdiction" governs perfection and priority of a  
41 security interest in deposit accounts. Subsection (b) [Maine  
42 cite subsection (2)] contains rules for determining the "bank's  
43 jurisdiction." The substance of these rules is substantially  
44 similar to that of the rules determining the "security  
45 intermediary's jurisdiction" under former Section 8-110(e),  
46 except that subsection (b)(1) [Maine cite subsection (2),  
47 paragraph (a)] provides more flexibility than the analogous  
48 provision in former Section 8-110(e)(1). Subsection (b)(1)  
49 [Maine cite subsection (2), paragraph (a)] permits the parties to  
50

2 choose the law of one jurisdiction to govern perfection and  
3 priority of security interests and a different governing law for  
4 other purposes. The parties' choice is effective, even if the  
5 jurisdiction whose law is chosen bears no relationship to the  
6 parties or the transaction. Section 8-110(e)(1) has been  
7 conformed to subsection (b)(1) [Maine cite subsection (2),  
8 paragraph (a)] of this section, and Section 9-305(b)(1) [Maine  
9 cite section 9-1305, subsection (2), paragraph (a)], concerning a  
10 commodity intermediary's jurisdiction, makes a similar departure  
11 from former Section 9-103(6)(e)(i).

12 3. Change in Law Governing Perfection. When the bank's  
13 jurisdiction changes, the jurisdiction whose law governs  
14 perfection under subsection (a) [Maine cite subsection (1)]  
15 changes, as well. Nevertheless, the change will not result in an  
16 immediate loss of perfection. See Section 9-316(f), (g) [Maine  
17 cite section 9-1316, subsection (6), subsection (7)].

18 **§9-1305. Law governing perfection and priority of security**  
19 **interests in investment property**

20 (1) Except as otherwise provided in subsection (3), the  
21 following rules apply.

22 (a) While a security certificate is located in a  
23 jurisdiction, the local law of that jurisdiction governs  
24 perfection, the effect of perfection or nonperfection and  
25 the priority of a security interest in the certificated  
26 security represented thereby.

27 (b) The local law of the issuer's jurisdiction as specified  
28 in section 8-1110, subsection 1, paragraph (d) governs  
29 perfection, the effect of perfection or nonperfection and  
30 the priority of a security interest in an uncertificated  
31 security.

32 (c) The local law of the securities intermediary's  
33 jurisdiction as specified in section 8-1110, subsection 1,  
34 paragraph (e) governs perfection, the effect of perfection  
35 or nonperfection and the priority of a security interest in  
36 a security entitlement or securities account.

37 (d) The local law of the commodity intermediary's  
38 jurisdiction governs perfection, the effect of perfection or  
39 nonperfection and the priority of a security interest in a  
40 commodity contract or commodity account.

41 (2) The following rules determine a commodity  
42 intermediary's jurisdiction for purposes of this Part.

43

2 (a) If an agreement between the commodity intermediary and  
4 commodity customer governing the commodity account expressly  
6 provides that a particular jurisdiction is the commodity  
8 intermediary's jurisdiction for purposes of this Part, this  
10 Article, or this Title, that jurisdiction is the commodity  
12 intermediary's jurisdiction.

14 (b) If paragraph (a) does not apply and an agreement  
16 between the commodity intermediary and commodity customer  
18 governing the commodity account expressly provides that the  
20 agreement is governed by the law of a particular  
22 jurisdiction, that jurisdiction is the commodity  
24 intermediary's jurisdiction.

26 (c) If neither paragraph (a) nor paragraph (b) applies and  
28 an agreement between the commodity intermediary and  
30 commodity customer governing the commodity account expressly  
32 provides that the commodity account is maintained at an  
34 office in a particular jurisdiction, that jurisdiction is  
36 the commodity intermediary's jurisdiction.

38 (d) If none of the preceding paragraphs applies, the  
40 commodity intermediary's jurisdiction is the jurisdiction in  
42 which the office identified in an account statement as the  
44 office serving the commodity customer's account is located.

46 (e) If none of the preceding paragraphs applies, the  
48 commodity intermediary's jurisdiction is the jurisdiction in  
50 which the chief executive office of the commodity  
intermediary is located.

(3) The local law of the jurisdiction in which the debtor  
is located governs:

(a) Perfection of a security interest in investment  
property by filing;

(b) Automatic perfection of a security interest in  
investment property created by a broker or securities  
intermediary; and

(c) Automatic perfection of a security interest in a  
commodity contract or commodity account created by a  
commodity intermediary.

#### Official Comment

1. Source. Former Section 9-103(6).

2. Investment Property: General Rules. This section specifies choice-of-law rules for perfection and priority of security interests in investment property. Subsection (a)(1) [Maine cite subsection (1), paragraph (a)] covers security interests in certificated securities. Subsection (a)(2) [Maine cite subsection (1), paragraph (b)] covers security interests in uncertificated securities. Subsection (a)(3) [Maine cite subsection (1), paragraph (c)] covers security interests in security entitlements and securities accounts. Subsection (a)(4) [Maine cite subsection (1), paragraph (d)] covers security interests in commodity contracts and commodity accounts. The approach of each of these paragraphs is essentially the same. They identify the jurisdiction's law that governs questions of perfection and priority by using the same principles that Article 8 uses to determine other questions concerning that form of investment property. Thus, for certificated securities, the law of the jurisdiction in which the certificate is located governs. Cf. Section 8-110(c). For uncertificated securities, the law of the issuer's jurisdiction governs. Cf. Section 8-110(a). For security entitlements and securities accounts, the law of the securities intermediary's jurisdiction governs. Cf. Section 8-110(b). For commodity contracts and commodity accounts, the law of the commodity intermediary's jurisdiction governs. Because commodity contracts and commodity accounts are not governed by Article 8, subsection (b) [Maine cite subsection (2)] contains rules that specify the commodity intermediary's jurisdiction. These are analogous to the rules in Section 8-110(e) specifying a securities intermediary's jurisdiction. Subsection (b)(1) [Maine cite subsection (2), paragraph (a)] affords the parties greater flexibility than did former Section 9-103(6)(3). See also Section 9-304(b) [Maine cite section 9-1304, subsection (2)] (bank's jurisdiction); Revised Section 8-110(e)(1) (securities intermediary's jurisdiction).

3. Investment Property: Exceptions. Subsection (c) [Maine cite subsection (3)] establishes an exception to the general rules set out in subsection (a) [Maine cite subsection (1)]. It provides that perfection of a security interest by filing, automatic perfection of a security interest in investment property created by a debtor who is a broker or securities intermediary (see Section 9-309(10) [Maine cite section 9-1309, subsection (10)]), and automatic perfection of a security interest in a commodity contract or commodity account of a debtor who is a commodity intermediary (see Section 9-309(11) [Maine cite section 9-1309, subsection (11)]) are governed by the law of the jurisdiction in which the debtor is located, as determined under Section 9-307 [Maine cite section 9-1307].

4. Examples: The following examples illustrate the rules in this section:

2           Example 1: A customer residing in New Jersey maintains a  
3 securities account with Able & Co. The agreement between the  
4 customer and Able specifies that it is governed by Pennsylvania  
5 law but expressly provides that the law of California is Able's  
6 jurisdiction for purposes of the Uniform Commercial Code.  
7 Through the account the customer holds securities of a  
8 Massachusetts corporation, which Able holds through a clearing  
9 corporation located in New York. The customer obtains a margin  
10 loan from Able. Subsection (a)(3) [Maine cite subsection (1),  
11 paragraph (c)] provides that California law--the law of the  
12 securities intermediary's jurisdiction--governs perfection and  
13 priority of the security interest, even if California has no  
14 other relationship to the parties or the transaction.

16           Example 2: A customer residing in New Jersey maintains a  
17 securities account with Able & Co. The agreement between the  
18 customer and Able specifies that it is governed by Pennsylvania  
19 law. Through the account the customer holds securities of a  
20 Massachusetts corporation, which Able holds through a clearing  
21 corporation located in New York. The customer obtains a loan  
22 from a lender located in Illinois. The lender takes a security  
23 interest and perfects by obtaining an agreement among the debtor,  
24 itself, and Able, which satisfies the requirement of Section  
25 8-106(d)(2) to give the lender control. Subsection (a)(3) [Maine  
26 cite subsection (1), paragraph (c)] provides that Pennsylvania  
27 law--the law of the securities intermediary's  
28 jurisdiction--governs perfection and priority of the security  
29 interest, even if Pennsylvania has no other relationship to the  
30 parties or the transaction.

32           Example 3: A customer residing in New Jersey maintains a  
33 securities account with Able & Co. The agreement between the  
34 customer and Able specifies that it is governed by Pennsylvania  
35 law. Through the account, the customer holds securities of a  
36 Massachusetts corporation, which Able holds through a clearing  
37 corporation located in New York. The customer borrows from SP-1,  
38 and SP-1 files a financing statement in New Jersey. Later, the  
39 customer obtains a loan from SP-2. SP-2 takes a security  
40 interest and perfects by obtaining an agreement among the debtor,  
41 itself, and Able, which satisfies the requirement of Section  
42 8-106(d)(2) to give the SP-2 control. Subsection (c) [Maine cite  
43 subsection (3)] provides that perfection of SP-1's security  
44 interest by filing is governed by the location of the debtor, so  
45 the filing in New Jersey was appropriate. Subsection (a)(3)  
46 [Maine cite subsection (1), paragraph (c)], however, provides  
47 that Pennsylvania law--the law of the securities intermediary's  
48 jurisdiction--governs all other questions of perfection and  
priority. Thus, Pennsylvania law governs perfection of SP-2's

2 security interest, and Pennsylvania law also governs the priority  
of the security interests of SP-1 and SP-2.

4 5. Change in Law Governing Perfection. When the issuer's  
jurisdiction, the securities intermediary's jurisdiction, or  
6 commodity intermediary's jurisdiction changes, the jurisdiction  
whose law governs perfection under subsection (a) [Maine cite  
8 subsection (1)] changes, as well. Similarly, the law governing  
perfection of a possessory security interest in a certificated  
10 security changes when the collateral is removed to another  
jurisdiction, see subsection (a)(1) [Maine cite subsection (1),  
12 paragraph (a)], and the law governing perfection by filing  
changes when the debtor changes its location. See subsection (c)  
14 [Maine cite subsection (3)]. Nevertheless, these changes will  
not result in an immediate loss of perfection. See Section 9-316  
16 [Maine cite section 9-1316].

18 **§9-1306. Law governing perfection and priority of security**  
**interests in letter-of-credit rights**

20 (1) Subject to subsection (3), the local law of the  
22 issuer's jurisdiction or a nominated person's jurisdiction  
governs perfection, the effect of perfection or nonperfection and  
24 the priority of a security interest in a letter-of-credit right  
if the issuer's jurisdiction or nominated person's jurisdiction  
26 is a state.

28 (2) For purposes of this Part, an issuer's jurisdiction or  
nominated person's jurisdiction is the jurisdiction whose law  
30 governs the liability of the issuer or nominated person with  
respect to the letter-of-credit right as provided in section  
32 5-116.

34 (3) This section does not apply to a security interest that  
is perfected only under section 9-1308, subsection (4).

38 **Official Comment**

40 1. Source. New; derived in part from Section 8-110(e) and  
former Section 9-103(6).

42 2. Sui Generis Treatment. This section governs the  
44 applicable law for perfection and priority of security interests  
in letter-of-credit rights, other than a security interest  
46 perfected only under Section 9-308(d) [Maine cite section 9-1308,  
subsection (4)] (i.e., as a supporting obligation). The  
48 treatment differs substantially from that provided in Section  
9-304 [Maine cite section 9-1304] for deposit accounts. The  
50 basic rule is that the law of the issuer's or nominated person's



2 (e.g., confirmer's) jurisdiction, derived from the terms of the  
letter of credit itself, controls perfection and priority, but  
4 only if the issuer's or nominated person's jurisdiction is a  
State, as defined in Section 9-102 [Maine cite section 9-1102].  
6 If the issuer's or nominated person's jurisdiction is not a  
State, the baseline rule of Section 9-301 [Maine cite section  
9-1301] applies--perfection and priority are governed by the law  
8 of the debtor's location, determined under Section 9-307 [Maine  
cite section 9-1307]. Export transactions typically involve a  
10 foreign issuer and a domestic nominated person, such as a  
confirmer, located in a State. The principal goal of this  
12 section is to reduce the likelihood that perfection and priority  
would be governed by the law of a foreign jurisdiction in a  
14 transaction that is essentially domestic from the standpoint of  
the debtor-beneficiary, its creditors, and a domestic nominated  
16 person.

18 3. Issuer's or Nominated Person's Jurisdiction. Subsection  
(b) [Maine cite subsection (2)] defers to the rules established  
20 under Section 5-116 for determination of an issuer's or nominated  
person's jurisdiction.

22 Example: An Italian bank issues a letter of credit that is  
24 confirmed by a New York bank. The beneficiary is a Connecticut  
corporation. The letter of credit provides that the issuer's  
26 liability is governed by Italian law, and the confirmation  
provides that the confirmer's liability is governed by the law of  
28 New York. Under Sections 9-306(b) [Maine cite section 9-1306,  
subsection (2)] and 5-116(a), Italy is the issuer's jurisdiction  
30 and New York is the confirmer's (nominated person's)  
jurisdiction. Because the confirmer's jurisdiction is a State,  
32 the law of New York governs perfection and priority of a security  
interest in the beneficiary's letter-of-credit right against the  
34 confirmer. See Section 9-306(a) [Maine cite section 9-1306,  
subsection (1)]. However, because the issuer's jurisdiction is  
36 not a State, the law of that jurisdiction does not govern. See  
Section 9-306(a) [Maine cite section 9-1306, subsection (1)].  
38 Rather, the choice-of-law rule in Section 9-301(1) [Maine cite  
section 9-1301, subsection (1)] applies to perfection and  
40 priority of a security interest in the beneficiary's  
letter-of-credit right against the issuer. Under that section,  
42 perfection and priority are governed by the law of the  
jurisdiction in which the debtor (beneficiary) is located. That  
44 jurisdiction is Connecticut. See Section 9-307 [Maine cite  
section 9-1307].

46 4. Scope of this Section. This section specifies only the  
48 law governing perfection, the effect of perfection or  
nonperfection, and priority of security interests. Section 5-116  
50 specifies the law governing the liability of, and Article 5 (or

2 other applicable law) deals with the rights and duties of, an  
3 issuer or nominated person. Perfection, nonperfection, and  
4 priority have no effect on those rights and duties.

5 5. Change in Law Governing Perfection. When the issuer's  
6 jurisdiction, or nominated person's jurisdiction changes, the  
7 jurisdiction whose law governs perfection under subsection (a)  
8 [Maine cite subsection (1)] changes, as well. Nevertheless,  
9 this change will not result in an immediate loss of perfection.  
10 See Section 9-316(f), (g) [Maine cite section 9-1316, subsection  
11 (6), subsection (7)].

12 **§9-1307. Location of debtor**

13 (1) In this section, "place of business" means a place  
14 where a debtor conducts its affairs.

15 (2) Except as otherwise provided in this section, the  
16 following rules determine a debtor's location:

17 (a) An debtor who is an individual is located at the  
18 individual's principal residence.

19 (b) A debtor that is an organization and has only one place  
20 of business is located at its place of business.

21 (c) A debtor that is an organization and has more than one  
22 place of business is located at its chief executive office.

23 (3) Subsection (2) applies only if a debtor's residence,  
24 place of business or chief executive office, as applicable, is  
25 located in a jurisdiction whose law generally requires  
26 information concerning the existence of a nonpossessory security  
27 interest to be made generally available in a filing, recording or  
28 registration system as a condition or result of the security  
29 interest's obtaining priority over the rights of a lien creditor  
30 with respect to the collateral. If subsection (2) does not  
31 apply, the debtor is located in the District of Columbia.

32 (4) A person that ceases to exist, have a residence or have  
33 a place of business continues to be located in the jurisdiction  
34 specified by subsections (2) and (3).

35 (5) A registered organization that is organized under the  
36 law of a state is located in that state.

37 (6) Except as otherwise provided in subsection (9), a  
38 registered organization that is organized under the law of the  
39 United States and a branch or agency of a bank that is not

2 organized under the law of the United States or a state are  
3 located:

4 (a) In the state that the law of the United States  
5 designates, if the law designates a state of location;

6  
7 (b) In the state that the registered organization, branch  
8 or agency designates, if the law of the United States  
9 authorizes the registered organization, branch or agency to  
10 designate its state of location; or

11 (c) In the District of Columbia, if neither paragraph (a)  
12 nor paragraph (b) applies.

13  
14 (7) A registered organization continues to be located in  
15 the jurisdiction specified by subsection (5) or (6)  
16 notwithstanding:

17  
18 (a) The suspension, revocation, forfeiture or lapse of the  
19 registered organization's status as such in its jurisdiction  
20 of organization; or

21  
22 (b) The dissolution, winding up or cancellation of the  
23 existence of the registered organization.

24  
25 (8) The United States is located in the District of  
26 Columbia.

27  
28 (9) A branch or agency of a bank that is not organized  
29 under the law of the United States or a state is located in the  
30 state in which the branch or agency is licensed if all branches  
31 and agencies of the bank are licensed in only one state.

32  
33 (10) A foreign air carrier under the Federal Aviation Act  
34 of 1958, as amended, is located at the designated office of the  
35 agent upon which service of process may be made on behalf of the  
36 carrier.

37  
38 (11) This section applies only for purposes of this Part.  
39

#### 40 41 **Official Comment**

42  
43  
44 1. Source. Former Section 9-103(3)(d), substantially  
45 revised.

46  
47 2. General Rules. As a general matter, the location of the  
48 debtor determines the jurisdiction whose law governs perfection  
49 of a security interest. See Sections 9-301(1) [Maine cite  
50 section 9-1301, subsection (1)], 9-305(c) [Maine cite section

2 9-1305, subsection (3)]. It also governs priority of a security  
3 interest in certain types of intangible collateral, such as  
4 accounts, electronic chattel paper, and general intangibles.  
5 This section determines the location of the debtor for  
6 choice-of-law purposes, but not for other purposes. See  
7 subsection (k) [Maine cite subsection (11)].

8 Subsection (b) [Maine cite subsection (2)] states the  
9 general rules: An individual debtor is deemed to be located at  
10 the individual's principal residence with respect to both  
11 personal and business assets. Any other debtor is deemed to be  
12 located at its place of business if it has only one, or at its  
13 chief executive office if it has more than one place of business.

14 As used in this section, a "place of business" means a place  
15 where the debtor conducts its affairs. See subsection (a) [Maine  
16 cite subsection (1)]. Thus, every organization, even  
17 eleemosynary institutions and other organizations that do not  
18 conduct "for profit" business activities, has a "place of  
19 business." Under subsection (d) [Maine cite subsection (4)], a  
20 person who ceases to exist, have a residence, or have a place of  
21 business continues to be located in the jurisdiction determined  
22 by subsection (b) [Maine cite subsection (2)].

23 The term "chief executive office" is not defined in this  
24 Section or elsewhere in the Uniform Commercial Code. "Chief  
25 executive office" means the place from which the debtor manages  
26 the main part of its business operations or other affairs. This  
27 is the place where persons dealing with the debtor would normally  
28 look for credit information, and is the appropriate place for  
29 filing. With respect to most multi-state debtors, it will be  
30 simple to determine which of the debtor's offices is the "chief  
31 executive office." Even when a doubt arises, it would be rare  
32 that there could be more than two possibilities. A secured party  
33 in such a case may protect itself by perfecting under the law of  
34 each possible jurisdiction.

35 Similarly, the term "principal residence" is not defined.  
36 If the security interest in question is a purchase-money security  
37 interest in consumer goods which is perfected upon attachment,  
38 see Section 9-309(1) [Maine cite section 9-1309, subsection (1)],  
39 the choice of law may make no difference. In other cases, when a  
40 doubt arises, prudence may dictate perfecting under the law of  
41 each jurisdiction that might be the debtor's "principal  
42 residence."

43 The general rule is subject to several exceptions, each of  
44 which is discussed below.  
45  
46  
47  
48

2 3. Non-U.S. Debtors. Under the general rules of this  
3 section, a non-U.S. debtor normally would be located in a foreign  
4 jurisdiction and, as a consequence, foreign law would govern  
5 perfection. When foreign law affords no public notice of  
6 security interests, the general rule yields unacceptable results.

7 Accordingly, subsection (c) [Maine cite subsection (3)]  
8 provides that the normal rules for determining the location of a  
9 debtor (i.e., the rules in subsection (b) [Maine cite subsection  
10 (2)]) apply only if they yield a location that is "a jurisdiction  
11 whose law generally requires information concerning the existence  
12 of a nonpossessory security interest to be made generally  
13 available in a filing, recording, or registration system as a  
14 condition or result of the security interest's obtaining priority  
15 over the rights of a lien creditor with respect to the  
16 collateral." The phrase "generally requires" is meant to include  
17 legal regimes that generally require notice in a filing or  
18 recording system as a condition of perfecting nonpossessory  
19 security interests, but which permit perfection by another method  
20 (e.g., control, automatic perfection, temporary perfection) in  
21 limited circumstances. A jurisdiction that has adopted this  
22 Article or an earlier version of this Article is such a  
23 jurisdiction. If the rules in subsection (b) [Maine cite  
24 subsection (2)] yield a jurisdiction whose law does not generally  
25 require notice in a filing or registration system, the debtor is  
26 located in the District of Columbia.

28 Example 1: Debtor is an English corporation with 7 offices  
29 in the United States and its chief executive office in London,  
30 England. Debtor creates a security interest in its accounts.  
31 Under subsection (b)(3) [Maine cite subsection (2), paragraph  
32 (c)], Debtor would be located in England. However, subsection  
33 (c) [Maine cite subsection (3)] provides that subsection (b)  
34 [Maine cite subsection (2)] applies only if English law generally  
35 conditions perfection on giving public notice in a filing,  
36 recording, or registration system. Otherwise, Debtor is located  
37 in the District of Columbia. Under Section 9-301(1) [Maine cite  
38 section 9-1301, subsection (1)], perfection, the effect of  
39 perfection, and priority are governed by the law of the  
40 jurisdiction of the debtor's location--here, England or the  
41 District of Columbia (depending on the content of English law).

42 Example 2: Debtor is an English corporation with 7 offices  
43 in the United States and its chief executive office in London,  
44 England. Debtor creates a security interest in equipment located  
45 in London. Under subsection (b)(3) [Maine cite subsection (2),  
46 paragraph (c)] Debtor would be located in England. However,  
47 subsection (c) [Maine cite subsection (3)] provides that  
48 subsection (b) [Maine cite subsection (2)] applies only if  
49 English law generally conditions perfection on giving public  
50 notice in a filing, recording, or registration system.

notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1) [Maine cite section 9-1301, subsection (1)], perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3) [Maine cite section 9-1301, subsection (3)], the law of the jurisdiction in which the collateral is located--here, England--governs priority.

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law provisions in Article 9 [Maine cite Article 9-A] (Sections 9-301 through 9-307 [Maine cite section 9-1301 through 9-1307]), will not apply. See Section 9-109 [Maine cite section 9-1109], Comment 9.

4. Registered Organizations Organized Under Law of a State. Under subsection (e) [Maine cite subsection (5)], a registered organization (e.g., a corporation or limited partnership) organized under the law of a "State" (defined in Section 9-102 [Maine cite section 9-1102]) is located in its State of organization. Subsection (g) [Maine cite subsection (7)] makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e) [Maine cite subsection (5)]. However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This section does not determine whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist--as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. Subsection (f) [Maine cite subsection (6)]

2 specifies the location of a debtor that is a registered  
organization organized under the law of the United States. It  
4 defers to law of the United States, to the extent that that law  
determines, or authorizes the debtor to determine, the debtor's  
6 location. Thus, if the law of the United States designates a  
particular State as the debtor's location, that State is the  
debtor's location for purposes of this Article's choice-of-law  
8 rules. Similarly, if the law of the United States authorizes the  
registered organization to designate its State of location, the  
10 State that the registered organization designates is the State in  
which it is located for purposes of this Article's choice-of-law  
12 rules. In other cases, the debtor is located in the District of  
Columbia.

14  
16 Subsection (f) [Maine cite subsection (6)] also determines  
the location of branches and agencies of banks that are not  
organized under the law of the United States or a State.  
18 However, if all the branches and agencies of the bank are  
licensed only in one State, then they are located in that State.  
20 See subsection (i) [Maine cite subsection (9)].

22 6. United States. To the extent that Article 9 [Maine cite  
Article 9-A] governs (see Sections 1-105, 9-109(c) [Maine cite  
24 section 9-1109, subsection (3)]), the United States is located in  
the District of Columbia for purposes of this Article's  
26 choice-of-law rules. See subsection (h) [Maine cite subsection  
(8)].

28  
30 7. Foreign Air Carriers. Subsection (j) [Maine cite  
subsection (10)] follows former Section 9-103(3)(d). To the  
extent that it is applicable, the Convention on the International  
32 Recognition of Rights in Aircraft (Geneva Convention) supersedes  
state legislation on this subject, as set forth in Section  
34 9-311(b) [Maine cite section 9-1311, subsection (2)], but some  
nations are not parties to that Convention.

## 36 SUBPART 2

### 38 PERFECTION

#### 40 §9-1308. When security interest or agricultural lien is 42 perfected; continuity of perfection

44 (1) Except as otherwise provided in this section and  
46 section 9-1309, a security interest is perfected if it has  
attached and all of the applicable requirements for perfection in  
48 sections 9-1310 to 9-1316 have been satisfied. A security  
interest is perfected when it attaches if the applicable  
requirements are satisfied before the security interest attaches.

50

2       (2) An agricultural lien is perfected if it has become  
3 effective and all of the applicable requirements for perfection  
4 in section 9-1310 have been satisfied. An agricultural lien is  
5 perfected when it becomes effective if the applicable  
6 requirements are satisfied before the agricultural lien becomes  
7 effective.

8       (3) A security interest or agricultural lien is perfected  
9 continuously if it is originally perfected by one method under  
10 this Article and is later perfected by another method under this  
11 Article, without an intermediate period when it was unperfected.

12       (4) Perfection of a security interest in collateral also  
13 perfects a security interest in a supporting obligation for the  
14 collateral.

15       (5) Perfection of a security interest in a right to payment  
16 or performance also perfects a security interest in a security  
17 interest, mortgage or other lien on personal or real property  
18 securing the right.

19       (6) Perfection of a security interest in a securities  
20 account also perfects a security interest in the security  
21 entitlements carried in the securities account.

22       (7) Perfection of a security interest in a commodity  
23 account also perfects a security interest in the commodity  
24 contracts carried in the commodity account.

25  
26  
27  
28  
29  
30   **Official Comment**

31               1. Source. Former Sections 9-303, 9-115(2).

32  
33               2. General Rule. This Article uses the term "attach" to  
34 describe the point at which property becomes subject to a  
35 security interest. The requisites for attachment are stated in  
36 Section 9-203 [Maine cite section 9-1203]. When it attaches, a  
37 security interest may be either perfected or unperfected.  
38 "Perfected" means that the security interest has attached and the  
39 secured party has taken all the steps required by this Article as  
40 specified in Sections 9-310 to 9-316 [Maine cite sections 9-1310  
41 through 9-1316]. A perfected security interest may still be or  
42 become subordinate to other interests. See, e.g., Sections  
43 9-320, 9-322 [Maine cite section 9-1320, section 9-1322].  
44 However, in general, after perfection the secured party is  
45 protected against creditors and transferees of the debtor and, in  
46 particular, against any representative of creditors in insolvency  
47 proceedings instituted by or against the debtor. See, e.g.,  
48 Section 9-317 [Maine cite section 9-1317].  
49  
50



2           Subsection (a) [Maine cite subsection (1)] explains that the  
4 time of perfection is when the security interest has attached and  
any necessary steps for perfection, such as taking possession or  
6 filing, have been taken. The "except" clause refers to the  
perfection-upon-attachment rules appearing in Section 9-309  
[Maine cite section 9-1309]. It also reflects that other  
8 subsections of this section, e.g., subsection (d) [Maine cite  
subsection (4)], contain automatic-perfection rules. If the  
10 steps for perfection have been taken in advance, as when the  
secured party files a financing statement before giving value or  
12 before the debtor acquires rights in the collateral, then the  
security interest is perfected when it attaches.

14           3. Agricultural Liens. Subsection (b) [Maine cite  
16 subsection (2)] is new. It describes the elements of perfection  
of an agricultural lien.

18           4. Continuous Perfection. The following example  
20 illustrates the operation of subsection (c) [Maine cite  
subsection (3)]:

22           Example 1: Debtor, an importer, creates a security interest  
24 in goods that it imports and the documents of title that cover  
the goods. The secured party, Bank, takes possession of a  
26 negotiable bill of lading covering certain imported goods and  
thereby perfects its security interest in the bill of lading and  
28 the goods. See Sections 9-313(a) [Maine cite section 9-1313,  
subsection (1)], 9-312(c)(1) [Maine cite section 9-1312,  
30 subsection (3), paragraph (a)]. Bank releases the bill of lading  
to the debtor for the purpose of procuring the goods from the  
32 carrier and selling them. Under Section 9-312(f) [Maine cite  
section 9-1312, subsection (6)], Bank continues to have a  
34 perfected security interest in the document and goods for 20  
days. Bank files a financing statement covering the collateral  
36 before the expiration of the 20-day period. Its security  
interest now continues perfected for as long as the filing is  
38 good.

40           If the successive stages of Bank's security interest succeed  
each other without an intervening gap, the security interest is  
42 "perfected continuously," and the date of perfection is when the  
security interest first became perfected (i.e., when Bank  
44 received possession of the bill of lading). If, however, there  
is a gap between stages--for example, if Bank does not file until  
46 after the expiration of the 20-day period specified in Section  
9-312(f) [Maine cite section 9-1312, subsection (6)] and leaves  
48 the collateral in the debtor's possession--then, the chain being  
broken, the perfection is no longer continuous. The date of  
50 perfection would now be the date of filing (after expiration of

2 the 20-day period). Bank's security interest would be vulnerable  
3 to any interests arising during the gap period which under  
4 Section 9-317 [Maine cite section 9-1317] take priority over an  
unperfected security interest.

6 5. Supporting Obligations. Subsection (d) [Maine cite  
7 subsection (4)] is new. It provides for automatic perfection of  
8 a security interest in a supporting obligation for collateral if  
9 the security interest in the collateral is perfected. This is  
10 unlikely to effect any change in the law prior to adoption of  
11 this Article.

12  
13 Example 2: Buyer is obligated to pay Debtor for goods  
14 sold. Buyer's president guarantees the obligation. Debtor  
15 creates a security interest in the right to payment (account) in  
16 favor of Lender. Under Section 9-203(f) [Maine cite section  
17 9-1203, subsection (6)], the security interest attaches to  
18 Debtor's rights under the guarantee (supporting obligation).  
19 Under subsection (d) [Maine cite subsection (4)], perfection of  
20 the security interest in the account constitutes perfection of  
21 the security interest in Debtor's rights under the guarantee.

22  
23 6. Rights to Payment Secured by Lien. Subsection (e)  
24 [Maine cite subsection (5)] is new. It deals with the situation  
25 in which a security interest is created in a right to payment  
26 that is secured by a security interest, mortgage, or other lien.

27  
28 Example 3: Owner gives to Mortgagee a mortgage on Blackacre  
29 to secure a loan. Owner's obligation to pay is evidenced by a  
30 promissory note. In need of working capital, Mortgagee borrows  
31 from Financer and creates a security interest in the note in  
32 favor of Financer. Section 9-203(g) [Maine cite section 9-1203,  
33 subsection (7)] adopts the traditional view that the mortgage  
34 follows the note; i.e., the transferee of the note acquires the  
35 mortgage, as well. This subsection adopts a similar principle:  
36 perfection of a security interest in the right to payment  
37 constitutes perfection of a security interest in the mortgage  
38 securing it.

39  
40 An important consequence of the rules in Section 9-203(g)  
41 [Maine cite section 9-1203, subsection (7)] and subsection (e)  
42 [Maine cite subsection (5)] is that, by acquiring a perfected  
43 security interest in a mortgage (or other secured) note, the  
44 secured party acquires a security interest in the mortgage (or  
45 other lien) that is senior to the rights of a person who becomes  
46 a lien creditor of the mortgagee (Article 9 debtor [Maine cite  
47 Article 9-A debtor]). See Section 9-317(a)(2) [Maine cite  
48 section 9-1317, subsection (1), paragraph (b)]. This result  
49 helps prevent the separation of the mortgage (or other lien) from  
50 the note.

2 Under this Article, attachment and perfection of a security  
4 interest in a secured right to payment do not of themselves  
6 affect the obligation to pay. For example, if the obligation is  
8 evidenced by a negotiable note, then Article 3 dictates the  
10 person whom the maker must pay to discharge the note and any lien  
12 securing it. See Section 3-602. If the right to payment is a  
14 payment intangible, then Section 9-406 [Maine cite section  
16 9-1406] determines whom the account debtor must pay.

12 Similarly, this Article does not determine who has the power  
14 to release a mortgage of record. That issue is determined by  
16 real-property law.

14 7. Investment Property. Subsections (f) and (g) [Maine  
16 cite subsection (6) and (7)] follow former Section 9-115(2).

18 **§9-1309. Security interest perfected upon attachment**

20 The following security interests are perfected when they  
22 attach:

24 (1) A purchase-money security interest in consumer goods,  
26 except as otherwise provided in section 9-1311, subsection (2)  
with respect to consumer goods that are subject to a statute or  
treaty described in section 9-1311, subsection (1);

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

34 (3) A sale of a payment intangible;

36 (4) A sale of a promissory note;

38 (5) A security interest created by the assignment of a  
40 health-care-insurance receivable to the provider of the  
health-care goods or services;

42 (6) A security interest arising under section 2-401, 2-505,  
44 2-711, subsection (3) or 2-1508, subsection (5), until the debtor  
obtains possession of the collateral;

46 (7) A security interest of a collecting bank arising under  
section 4-210;

48 (8) A security interest of an issuer or nominated person  
50 arising under section 5-1118;

2           (9) A security interest arising in the delivery of a  
financial asset under section 9-1206, subsection (3);

4           (10) A security interest in investment property created by  
a broker or securities intermediary;

6           (11) A security interest in a commodity contract or a  
commodity account created by a commodity intermediary;

10           (12) An assignment for the benefit of all creditors of the  
transferor and subsequent transfers by the assignee thereunder;  
12           and

14           (13) A security interest created by an assignment of a  
beneficial interest in a decedent's estate.

16  
18                                   **Official Comment**

20           1.   **Source.**     Derived from former Sections 9-302(1),  
9-115(4)(c), (d), 9-116.

22           2.   **Automatic Perfection.**   This section contains the  
24           perfection-upon-attachment rules previously located in former  
Sections 9-302(1), 9-115(4)(c), (d), and 9-116 [Maine cite  
26           section 9-1302, subsection (1), section 9-115, subsection (4),  
paragraph (c) and (d), and section 9-1116]. Rather than continue  
28           to state the rule by indirection, this section explicitly  
provides for perfection upon attachment.

30           3.   **Purchase-Money Security Interest in Consumer Goods.**  
Former Section 9-302(1)(d) has been revised and appears here as  
32           paragraph (1) [Maine cite paragraph (a)]. No filing or other  
step is required to perfect a purchase-money security interest in  
34           consumer goods, other than goods, such as automobiles, that are  
subject to a statute or treaty described in Section 9-311(a)  
36           [Maine cite section 9-1311, subsection (1)]. However, filing is  
required to perfect a non-purchase-money security interest in  
38           consumer goods and is necessary to prevent a buyer of consumer  
goods from taking free of a security interest under Section  
40           9-320(b) [Maine cite section 9-1320, subsection (2)]. A fixture  
filing is required for priority over conflicting interests in  
42           fixtures to the extent provided in Section 9-334 [Maine cite  
section 9-1334].

44           4.   **Rights to Payment.**   Paragraph (2) [Maine cite paragraph  
46           (b)] expands upon former Section 9-302(1)(e) by affording  
automatic perfection to certain assignments of payment  
48           intangibles as well as accounts. The purpose of paragraph (2)  
[Maine cite paragraph (b)] is to save from ex post facto  
50           invalidation casual or isolated assignments-assignments which no

2 one would think of filing. Any person who regularly takes  
3 assignments of any debtor's accounts or payment intangibles  
4 should file. In this connection Section 9-109(d)(4) through (7)  
5 [Maine cite section 9-1109, subsection (4), paragraphs (d) to  
6 (g)], which excludes certain transfers of accounts, chattel  
7 paper, payment intangibles, and promissory notes from this  
8 Article, should be consulted.

9  
10 Paragraphs (3) and (4)[Maine cite paragraphs (c) and (d)],  
11 which are new, afford automatic perfection to sales of payment  
12 intangibles and promissory notes, respectively. They reflect the  
13 practice under former Article 9. Under that Article, filing a  
14 financing statement did not affect the rights of a buyer of  
15 payment intangibles or promissory notes, inasmuch as the former  
16 Article did not cover those sales. To the extent that the  
17 exception in paragraph (2) [Maine cite paragraph (b)] covers  
18 outright sales of payment intangibles, which automatically are  
19 perfected under paragraph (3) [Maine cite paragraph (c)], the  
20 exception is redundant.

21  
22 **5. Health-Care-Insurance Receivables.** Paragraph (5) [Maine  
23 cite paragraph (e)] extends automatic perfection to assignments  
24 of health-care-insurance receivables if the assignment is made to  
25 the health-care provider that provided the health-care goods or  
26 services. The primary effect is that, when an individual assigns  
27 a right to payment under an insurance policy to the person who  
28 provided health-care goods or services, the provider has no need  
29 to file a financing statement against the individual. The normal  
30 filing requirements apply to other assignments of  
31 health-care-insurance receivables covered by this Article, e.g.,  
32 assignments from the health-care provider to a financier.

33  
34 **6. Investment Property.** Paragraph (9) [Maine cite  
35 paragraph (i)] replaces the last clause of former Section  
36 9-116(2), concerning security interests that arise in the  
37 delivery of a financial asset.

38  
39 Paragraphs (10) and (11) [Maine cite paragraphs (j) and  
40 (k)] replace former Section 9-115(4)(c) and (d), concerning  
41 secured financing of securities and commodity firms and clearing  
42 corporations. The former sections indicated that, with respect  
43 to certain security interests created by a securities  
44 intermediary or commodity intermediary, "[t]he filing of a  
45 financing statement . . . has no effect for purposes of  
46 perfection or priority with respect to that security interest."  
47 No change in meaning is intended by the deletion of the quoted  
48 phrase.

49  
50 Secured financing arrangements for securities firms are  
currently implemented in various ways. In some circumstances,

2 lenders may require that the transactions be structured as "hard  
pledges," where the securities are transferred on the books of a  
4 clearing corporation from the debtor's account to the lender's  
account or to a special pledge account for the lender where they  
6 cannot be disposed of without the specific consent of the  
lender. In other circumstances, lenders are content with  
8 so-called "agreement to pledge" or "agreement to deliver"  
arrangements, where the debtor retains the positions in its own  
10 account, but reflects on its books that the positions have been  
hypothecated and promises that the securities will be transferred  
to the secured party's account on demand.

12  
14 The perfection and priority rules of this Article are  
designed to facilitate current secured financing arrangements for  
securities firms as well as to provide sufficient flexibility to  
16 accommodate new arrangements that develop in the future. Hard  
pledge arrangements are covered by the concept of control. See  
18 Sections 9-314 [Maine cite section 9-1314], 9-106 [Maine cite  
section 9-1106], 8-106. Non-control secured financing  
20 arrangements for securities firms are covered by the automatic  
perfection rule of paragraph (10) [Maine cite paragraph (j)].  
22 Before the 1994 revision of Articles 8 and 9, agreement to pledge  
arrangements could be implemented under a provision that a  
24 security interest in securities given for new value under a  
written security agreement was perfected without filing or  
26 possession for a period of 21 days. Although the security  
interests were temporary in legal theory, the financing  
28 arrangements could, in practice, be continued indefinitely by  
rolling over the loans at least every 21 days. Accordingly, a  
30 knowledgeable creditor of a securities firm realizes that the  
firm's securities may be subject to security interests that are  
32 not discoverable from any public records. The  
automatic-perfection rule of paragraph (10) [Maine cite paragraph  
34 (j)] makes it unnecessary to engage in the purely formal practice  
of rolling over these arrangements every 21 days.

36  
38 In some circumstances, a clearing corporation may be the  
debtor in a secured financing arrangement. For example, a  
clearing corporation that settles delivery-versus-payment  
40 transactions among its participants on a net, same-day basis  
relies on timely payments from all participants with net  
42 obligations due to the system. If a participant that is a net  
debtor were to default on its payment obligation, the clearing  
44 corporation would not receive some of the funds needed to settle  
with participants that are net creditors to the system. To  
46 complete end-of-day settlement after a payment default by a  
participant, a clearing corporation that settles on a net,  
48 same-day basis may need to draw on credit lines and pledge  
securities of the defaulting participant or other securities  
50 pledged by participants in the clearing corporation to secure

2 such drawings. The clearing corporation may be the top-tier  
3 securities intermediary for the securities pledged, so that it  
4 would not be practical for the lender to obtain control. Even  
5 where the clearing corporation holds some types of securities  
6 through other intermediaries, however, the clearing corporation  
7 is unlikely to be able to complete the arrangements necessary to  
8 convey "control" over the securities to be pledged in time to  
9 complete settlement in a timely manner. However, the term  
10 "securities intermediary" is defined in Section 8102(a)(14) to  
11 include clearing corporations. Thus, the perfection rule of  
12 paragraph (10) [Maine cite paragraph (j)] applies to security  
interests in investment property granted by clearing corporations.

14 7. **Beneficial Interests in Trusts.** Under former Section  
15 9-302(1)(c), filing was not required to perfect a security  
16 interest created by an assignment of a beneficial interest in a  
17 trust. Because beneficial interests in trusts are now used as  
18 collateral with greater frequency in commercial transactions,  
19 under this Article filing is required to perfect a security  
20 interest in a beneficial interest.

22 8. **Assignments for Benefit of Creditors.** No filing or  
23 other action is required to perfect an assignment for the benefit  
24 of creditors. These assignments are not financing transactions,  
25 and the debtor ordinarily will not be engaging in further credit  
26 transactions.

28 **§9-1310. When filing required to perfect security interest or**  
29 **agricultural lien; security interests and agricultural**  
30 **liens to which filing provisions do not apply**

32 (1) Except as otherwise provided in subsection (2) and  
33 section 9-1312, subsection (2), a financing statement must be  
34 filed to perfect all security interests and agricultural liens.

36 (2) The filing of a financing statement is not necessary to  
37 perfect a security interest:

38 (a) That is perfected under section 9-1308, subsection (4),  
40 (5), (6) or (7);

42 (b) That is perfected under section 9-1309 when it attaches;

44 (c) In property subject to a statute, regulation or treaty  
45 described in section 9-1311, subsection (1);

46 (d) In goods in possession of a bailee that is perfected  
48 under section 9-1312, subsection (4), paragraph (a) or (b);

2 (e) In certificated securities, documents, goods or  
instruments that is perfected without filing or possession  
4 under section 9-1312, subsection (5), (6) or (7);

6 (f) In collateral in the secured party's possession under  
section 9-1313;

8 (g) In a certificated security that is perfected by  
10 delivery of the security certificate to the secured party  
under section 9-1313;

12 (h) In deposit accounts, electronic chattel paper,  
14 investment property or letter-of-credit rights that is  
perfected by control under section 9-1314;

16 (i) In proceeds that is perfected under section 9-1315; or

18 (j) That is perfected under section 9-1316.

20 (3) If a secured party assigns a perfected security  
22 interest or agricultural lien, a filing under this Article is not  
24 required to continue the perfected status of the security  
interest against creditors of and transferees from the original  
debtor.

26 **Official Comment**

28 1. **Source.** Former Section 9-302(1), (2).

30 2. **General Rule.** Subsection (a) [Maine cite subsection  
32 (1)] establishes a central Article 9 [Maine cite Article 9-A]  
34 principle: Filing a financing statement is necessary for  
36 perfection of security interests and agricultural liens.  
38 However, filing is not necessary to perfect a security interest  
40 that is perfected by another permissible method, see subsection  
42 (b) [Maine cite subsection (2)], nor does filing ordinarily  
perfect a security interest in a deposit account,  
letter-of-credit right, or money. See Section 9-312(b) [Maine  
cite section 9-1312, subsection (2)]. Part 5 of the Article  
deals with the office in which to file, mechanics of filing, and  
operations of the filing office.

44 3. **Exemptions from Filing.** Subsection (b) [Maine cite  
46 subsection (2)] lists the security interests for which filing is  
48 not required as a condition of perfection, because they are  
perfected automatically upon attachment (subsections (b)(2) and  
50 (b)(9) [Maine cite subsection (2), paragraphs (b) and (i)]) or  
upon the occurrence of another event (subsections (b)(1), (b)(5),  
and (b)(9) [Maine cite subsection (2), paragraphs (a), (e) and  
(i)]), because they are perfected under the law of another



2 jurisdiction (subsection (b)(10) [Maine cite subsection (2),  
paragraph (j)]), or because they are perfected by another method,  
4 such as by the secured party's taking possession or control  
(subsections (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8)  
6 [Maine cite subsection (2), paragraphs (c), (d), (e), (f), (g)  
and (h)]).

8 **4. Assignments of Perfected Security Interests.** Subsection  
10 (c) [Maine cite subsection (3)] concerns assignment of a  
perfected security interest or agricultural lien. It provides  
12 that no filing is necessary in connection with an assignment by a  
secured party to an assignee in order to maintain perfection as  
14 against creditors of and transferees from the original debtor.

16 **Example 1:** Buyer buys goods from Seller, who retains a  
security interest in them. After Seller perfects the security  
18 interest by filing, Seller assigns the perfected security  
interest to X. The security interest, in X's hands and without  
20 further steps on X's part, continues perfected against Buyer's  
transferees and creditors.

22 **Example 2:** Dealer creates a security interest in specific  
equipment in favor of Lender. After Lender perfects the security  
24 interest in the equipment by filing, Lender assigns the chattel  
paper (which includes the perfected security interest in Dealer's  
26 equipment) to X. The security interest in the equipment, in X's  
hands and without further steps on X's part, continues perfected  
28 against Dealer's transferees and creditors. However, regardless  
of whether Lender made the assignment to secure Lender's  
30 obligation to X or whether the assignment was an outright sale of  
the chattel paper, the assignment creates a security interest in  
32 the chattel paper in favor of X. Accordingly, X must take  
whatever steps may be required for perfection in order to be  
34 protected against Lender's transferees and creditors with respect  
to the chattel paper.

36 Subsection (c) [Maine cite subsection (3)] applies not only  
38 to an assignment of a security interest perfected by filing but  
also to an assignment of a security interest perfected by a  
40 method other than by filing, such as by control or by  
possession. Although subsection (c) [Maine cite subsection (3)]  
42 addresses explicitly only the absence of an additional filing  
requirement, the same result normally will follow in the case of  
44 an assignment of a security interest perfected by a method other  
than by filing. For example, as long as possession of collateral  
46 is maintained by an assignee or by the assignor or another person  
on behalf of the assignee, no further perfection steps need be  
48 taken on account of the assignment to continue perfection as  
against creditors and transferees of the original debtor. Of  
50 course, additional action may be required for perfection of the

2 assignee's interest as against creditors and transferees of the  
3 assignor.

4 Similarly, subsection (c) [Maine cite subsection (3)]  
5 applies to the assignment of a security interest perfected by  
6 compliance with a statute, regulation, or treaty under Section  
7 9-311(b) [Maine cite section 9-1311, subsection (2)], such as a  
8 certificate-of-title statute. Unless the statute expressly  
9 provides to the contrary, the security interest will remain  
10 perfected against creditors of and transferees from the original  
11 debtor, even if the assignee takes no action to cause the  
12 certificate of title to reflect the assignment or to cause its  
13 name to appear on the certificate of title. See PEB Commentary  
14 No. 12, which discusses this issue under former Section  
15 9-302(3). Compliance with the statute is "equivalent to filing"  
16 under Section 9-311(b) [Maine cite section 9-1311, subsection  
17 (2)].

18 **§9-1311. Perfection of security interests in property subject to**  
19 **certain statutes, regulations and treaties**

20  
21 (1) Except as otherwise provided in subsection (4), the  
22 filing of a financing statement is not necessary or effective to  
23 perfect a security interest in property subject to:

24  
25 (a) A statute, regulation, or treaty of the United States  
26 whose requirements for a security interest's obtaining  
27 priority over the rights of a lien creditor with respect to  
28 the property preempt section 9-1310, subsection (1);

29  
30 (b) For automobiles, trailers and motorcycles, Title 14,  
31 sections 3131 and 3132; or

32  
33 (c) A certificate-of-title statute of another jurisdiction  
34 that provides for a security interest to be indicated on the  
35 certificate as a condition or result of the security  
36 interest's obtaining priority over the rights of a lien  
37 creditor with respect to the property.

38  
39 (2) Compliance with the requirements of a statute,  
40 regulation or treaty described in subsection (1) for obtaining  
41 priority over the rights of a lien creditor is equivalent to the  
42 filing of a financing statement under this Article. Except as  
43 otherwise provided in subsection (4) and sections 9-1313 and  
44 9-1316, subsections (4) and (5) for goods covered by a  
45 certificate of title, a security interest in property subject to  
46 a statute, regulation or treaty described in subsection (1) may  
47 be perfected only by compliance with those requirements, and a  
48 security interest so perfected remains perfected notwithstanding  
49 a change in the use or transfer of possession of the collateral.  
50



2 [Maine cite section 9-1308] specifies the meaning of that term  
and a preemptive rule may use other terminology.

4 **3. State Statutes.** Subsections (a)(2) and (3) [Maine cite  
6 subsection (1), paragraphs (b) and (c)] exempt from the filing  
requirements of this Article transactions covered by State  
8 certificate-of-title statutes covering motor vehicles and the  
like. The description of certificate-of-title statutes in  
10 subsections (a)(2) and (a)(3) [Maine cite subsection (1),  
paragraphs (b) and (c)] tracks the language of the definition of  
12 "certificate of title" in Section 9-102 [Maine cite section  
9-1102]. For a discussion of the operation of state  
14 certificate-of-title statutes in interstate contexts, see the  
Comments to Section 9-303 [Maine cite section 9-1303].

16 Some states have enacted central filing statutes with  
18 respect to secured transactions in kinds of property that are of  
special importance in the local economy. Subsection (a)(2)  
20 [Maine cite subsection (1), paragraph (b)] defers to these  
statutes with respect to filing for that property.

22 **4. Inventory Covered by Certificate of Title.** Under  
24 subsection (d) [Maine cite subsection (4)], perfection of a  
security interest in the inventory of a dealer is governed by the  
26 normal perfection rules, even if the inventory is covered by a  
certificate of title. Under former Section 9-302(3), a secured  
28 party who financed a dealer may have needed to perfect by filing  
for goods held for sale and by compliance with a  
30 certificate-of-title statute for goods held for lease. In some  
cases, this may have required notation on thousands of  
32 certificates. The problem would have been compounded by the fact  
that dealers, particularly of automobiles, often do not know  
34 whether a particular item of inventory will be sold or leased.  
Under subsection (d) [Maine cite subsection (4)], notation is  
36 both unnecessary and ineffective.

38 The filing and other perfection provisions of this Article  
apply to goods covered by a certificate of title only "during any  
40 period in which collateral is inventory held for sale or lease or  
leased." If the debtor takes goods of this kind out of inventory  
42 and uses them, say, as equipment, a filed financing statement  
would not remain effective to perfect a security interest.

44 **5. Compliance with Perfection Requirements of Other  
Statute.** Subsection (b) [Maine cite subsection (2)] makes clear  
46 that compliance with the perfection requirements (i.e., the  
requirements for obtaining priority over a lien creditor), but  
48 not other requirements, of a statute, regulation, or treaty  
described in subsection (a) [Maine cite subsection (1)] is  
50 sufficient for perfection under this Article. Perfection of a

2 security interest under a such a statute, regulation, or treaty  
has all the consequences of perfection under this Article.

4 The interplay of this section with certain  
6 certificate-of-title statutes may create confusion and  
uncertainty. For example, statutes under which perfection does  
8 not occur until a certificate of title is issued will create a  
gap between the time that the goods are covered by the  
10 certificate under Section 9-303 [Maine cite section 9-1303] and  
the time of perfection. If the gap is long enough, it may result  
12 in turning some unobjectionable transactions into avoidable  
preferences under Bankruptcy Code Section 547. (The preference  
14 risk arises if more than ten days (or 20 days, in the case of a  
purchase-money security interest) passes between the time a  
security interest attaches (or the debtor receives possession of  
16 the collateral, in the case of a purchase-money security  
interest) and the time it is perfected.) Accordingly, the  
18 Legislative Note to this section instructs the legislature to  
amend the applicable certificate-of-title statute to provide that  
20 perfection occurs upon receipt by the appropriate State official  
of a properly tendered application for a certificate of title on  
22 which the security interest is to be indicated.

24 Under some certificate-of-title statutes, including the  
Uniform Motor Vehicle Certificate of Title and Anti-Theft Act,  
26 perfection generally occurs upon delivery of specified documents  
to a state official but may, under certain circumstances, relate  
28 back to the time of attachment. This relation-back feature can  
create great difficulties for the application of the rules in  
30 Sections 9-303 and 9-311(b) [Maine cite section 9-1303 and  
section 9-1311, subsection (2)]. Accordingly, the Legislative  
32 Note also recommends to legislatures that they remove any  
relation-back provisions from certificate-of-title statutes  
34 affecting security interests.

36 **6. Compliance with Perfection Requirements of Other Statute  
as Equivalent to Filing.** Under Subsection (b) [Maine cite  
38 subsection (2)], compliance with the perfection requirements  
(i.e., the requirements for obtaining priority over a lien  
40 creditor) of a statute, regulation, or treaty described in  
subsection (a) [Maine cite subsection (1)] "is equivalent to the  
42 filing of a financing statement."

44 The quoted phrase appeared in former Section 9-302(3). Its  
meaning was unclear, and many questions arose concerning the  
46 extent to which and manner in which Article 9 [Maine cite Article  
9-A] rules referring to "filing" were applicable to perfection by  
48 compliance with a certificate-of-title statute. This Article  
takes a variety of approaches for applying Article 9's [Maine  
50 cite Article 9-A's] filing rules to compliance with other

2 statutes and treaties. First, as discussed above in Comment 5,  
it leaves the determination of some rules, such as the rule  
4 establishing time of perfection (Section 9-516(a) [Maine cite  
section 9-1516, subsection (1)]), to the other statutes  
6 themselves. Second, this Article explicitly applies some Article  
9 [Maine cite Article 9-A] filing rules to perfection under other  
8 statutes or treaties. See, e.g., Section 9-505 [Maine cite  
section 9-1505]. Third, this Article makes other Article 9  
10 [Maine cite Article 9-A] rules applicable to security interests  
perfected by compliance with another statute through the  
12 "equivalent to . . . filing" provision in the first sentence of  
Section 9-311(b) [Maine cite section 9-1311, subsection (2)].  
14 The third approach is reflected for the most part in occasional  
Comments explaining how particular rules apply when perfection is  
16 accomplished under Section 9-311(b) [Maine cite section 9-1311,  
subsection (2)]. See, e.g., Section 9-310 [Maine cite section  
9-1310], Comment 4; Section 9-315 [Maine cite section 9-1315],  
18 Comment 6; Section 9-317 [Maine cite section 9-1317], Comment 8.  
The absence of a Comment indicating that a particular filing  
20 provision applies to perfection pursuant to Section 9-311(b)  
[Maine cite section 9-1311, subsection (2)] does not mean the  
22 provision is inapplicable.

24 **7. Perfection by Possession of Goods Covered by  
Certificate-of-Title Statute.** A secured party who holds a  
26 security interest perfected under the law of State A in goods  
that subsequently are covered by a State B certificate of title  
28 may face a predicament. Ordinarily, the secured party will have  
four months under State B's Section 9-316(c) and (d) [Maine cite  
30 section 9-1316, subsections (3) and (4)] in which to (re)perfect  
as against a purchaser of the goods by having its security  
32 interest noted on a State B certificate. This procedure is  
likely to require the cooperation of the debtor and any competing  
34 secured party whose security interest has been noted on the  
certificate. Comment 4(e) to former Section 9-103 observed that  
36 "that cooperation is not likely to be forthcoming from an owner  
who wrongfully procured the issuance of a new certificate not  
38 showing the out-of-state security interest, or from a local  
secured party finding himself in a priority contest with the  
40 out-of-state secured party." According to that Comment, "[t]he  
only solution for the out-of-state secured party under present  
42 certificate of title statutes seems to be to reperfect by  
possession, i.e., by repossessing the goods." But the "solution"  
44 may not have worked: Former Section 9-302(4) provided that a  
security interest in property subject to a certificate-of-title  
46 statute "can be perfected only by compliance therewith."

48 Sections 9-316(d) and (e), 9-311(c), and 9-313(b) [Maine  
cite section 9-1316, subsections (4) and (5), section 9-1311,  
50 subsection (3), and section 9-1313, subsection (2)] of this

2 Article resolve the conflict by providing that a security  
3 interest that remains perfected solely by virtue of Section  
4 9-316(e) [Maine cite section 9-1316, subsection (5)] can be  
5 (re)perfected by the secured party's taking possession of the  
6 collateral. These sections contemplate only that taking  
7 possession of goods covered by a certificate of title will work  
8 as a method of perfection. None of these sections creates a  
9 right to take possession. Section 9-609 [Maine cite section  
10 9-1609] and the agreement of the parties define the secured  
11 party's right to take possession.

12 **§9-1312. Perfection of security interests in chattel paper,**  
13 **deposit accounts, documents, goods covered by**  
14 **documents, instruments, investment property,**  
15 **letter-of-credit rights and money; perfection by**  
16 **permissive filing; temporary perfection without filing**  
17 **or transfer of possession**

18  
19 (1) A security interest in chattel paper, negotiable  
20 documents, instruments or investment property may be perfected by  
21 filing.

22  
23 (2) Except as otherwise provided in section 9-1315,  
24 subsections (3) and (4) for proceeds:

25 (a) A security interest in a deposit account may be  
26 perfected only by control under section 9-1314;

27 (b) Except as otherwise provided in section 9-1308,  
28 subsection (4), a security interest in a letter-of-credit  
29 right may be perfected only by control under section 9-1314;  
30 and

31 (c) A security interest in money may be perfected only by  
32 the secured party's taking possession under section 9-1313.

33 (3) While goods are in the possession of a bailee that has  
34 issued a negotiable document covering the goods:

35 (a) A security interest in the goods may be perfected by  
36 perfecting a security interest in the document; and

37 (b) A security interest perfected in the document has  
38 priority over any security interest that becomes perfected  
39 in the goods by another method during that time.

40 (4) While goods are in the possession of a bailee that has  
41 issued a nonnegotiable document covering the goods, a security  
42 interest in the goods may be perfected by:

43





2 long-term perfection. The rule is likely to be particularly  
3 useful in transactions involving large number of notes that a  
4 debtor uses as collateral but continues to collect from the  
5 makers. A security interest perfected by filing is subject to  
6 defeat by certain subsequent purchasers (including secured  
7 parties). Under Section 9-330(d) [Maine cite section 9-1330,  
8 subsection (4)], purchasers for value who take possession of an  
9 instrument without knowledge that the purchase violates the  
10 rights of the secured party generally would achieve priority over  
11 a security interest in the instrument perfected by filing. In  
12 addition, Section 9-331 [Maine cite section 9-1331] provides that  
13 filing a financing statement does not constitute notice that  
14 would preclude a subsequent purchaser from becoming a holder in  
due course and taking free of all claims under Section 3-306.

16 **3. Chattel Paper; Negotiable Documents.** Subsection (a)  
17 [Maine cite subsection (1)] further provides that filing is  
18 available as a method of perfection for security interests in  
19 chattel paper and negotiable documents. Tangible chattel paper  
20 is sometimes delivered to the assignee, and sometimes left in the  
21 hands of the assignor for collection. Subsection (a) [Maine cite  
22 subsection (1)] allows the assignee to perfect its security  
23 interest by filing in the latter case. Alternatively, the  
24 assignee may perfect by taking possession. See Section 9-313(a)  
25 [Maine cite section 9-1313, subsection (1)] . An assignee of  
26 electronic chattel paper may perfect by taking control. See  
27 Sections 9-314(a), 9-105 [Maine cite section 9-1314, subsection  
28 (1), section 9-1105]. The security interest of an assignee who  
29 takes possession or control may qualify for priority over a  
30 competing security interest perfected by filing. See Section  
31 9-330 [Maine cite section 9-1330].

32  
33 Negotiable documents may be, and usually are, delivered to  
34 the secured party. The secured party's taking possession will  
35 suffice as a perfection step. See Section 9-313(a) [Maine cite  
36 section 9-1313, subsection (1)]. However, as is the case with  
37 chattel paper, a security interest in a negotiable document may  
38 be perfected by filing.

40 **4. Investment Property.** A security interest in investment  
41 property, including certificated securities, uncertificated  
42 securities, security entitlements, and securities accounts, may  
43 be perfected by filing. However, security interests created by  
44 brokers, securities intermediaries, or commodity intermediaries  
45 are automatically perfected; filing is of no effect. See Section  
46 9-309(10), (11) [Maine cite section 9-1309, subsections (10) and  
47 (11)]. A security interest in all kinds of investment property  
48 also may be perfected by control, see Sections 9-314, 9-106  
49 [Maine cite section 9-1314, section 9-1106], and a security  
50 interest in a certificated security also may be perfected by the

2 secured party's taking delivery under Section 8-301. See Section  
3 9-313(a) [Maine cite section 9-1313, subsection (1)]. A security  
4 interest perfected only by filing is subordinate to a conflicting  
5 security interest perfected by control or delivery. See Section  
6 9-328(1), (5) [Maine cite section 9-1328, subsections (1), (5)].  
7 Thus, although filing is a permissible method of perfection, a  
8 secured party who perfects by filing takes the risk that the  
9 debtor has granted or will grant a security interest in the same  
10 collateral to another party who obtains control. Also,  
11 perfection by filing would not give the secured party protection  
12 against other types of adverse claims, since the Article 8  
13 adverse claim cut-off rules require control. See Section 8510.

14 **5. Deposit Accounts.** Under new subsection (b)(1) [Maine  
15 cite subsection (2), paragraph (a)] , the only method of  
16 perfecting a security interest in a deposit account as original  
17 collateral is by control. Filing is ineffective, except as  
18 provided in Section 9-315 [Maine cite section 9-1315] with  
19 respect to proceeds. As explained in Section 9-104 [Maine cite  
20 section 9-1104] , "control" can arise as a result of an agreement  
21 among the secured party, debtor, and bank, whereby the bank  
22 agrees to comply with instructions of the secured party with  
23 respect to disposition of the funds on deposit, even though the  
24 debtor retains the right to direct disposition of the funds.  
25 Thus, subsection (b)(1) [Maine cite subsection (2), paragraph  
26 (a)] takes an intermediate position between certain non-UCC law,  
27 which conditions the effectiveness of a security interest on the  
28 secured party's enjoyment of such dominion and control over the  
29 deposit account that the debtor is unable to dispose of the  
30 funds, and the approach this Article takes to securities  
31 accounts, under which a secured party who is unable to reach the  
32 collateral without resort to judicial process may perfect by  
33 filing. By conditioning perfection on "control," rather than  
34 requiring the secured party to enjoy absolute dominion to the  
35 exclusion of the debtor, subsection (b)(1) [Maine cite subsection  
36 (2), paragraph (a)] permits perfection in a wide variety of  
37 transactions, including those in which the secured party actually  
38 relies on the deposit account in extending credit and maintains  
39 some meaningful dominion over it, but does not wish to deprive  
40 the debtor of access to the funds altogether.

42 **6. Letter-of-Credit Rights.** Letter-of-credit rights  
43 commonly are "supporting obligations," as defined in Section  
44 9-102 [Maine cite section 9-1102]. Perfection as to the related  
45 account, chattel paper, document, general intangible, instrument,  
46 or investment property will perfect as to the letter-of-credit  
47 rights. See Section 9-308(d) [Maine cite section 9-1308,  
48 subsection (4)]. Subsection (b)(2) [Maine cite subsection (2),  
49 paragraph (b)] provides that, in other cases, a security interest  
50 in a letter-of-credit right may be perfected only by control.

2 "Control," for these purposes, is explained in Section 9-107  
[Maine cite section 9-1107].

4 **7. Goods Covered by Document of Title.** Subsection (c)  
[Maine cite subsection (3)] applies to goods in the possession of  
6 a bailee who has issued a negotiable document covering the  
goods. Subsection (d) [Maine cite subsection (4)] applies to  
8 goods in the possession of a bailee who has issued a  
nonnegotiable document of title, including a document of title  
10 that is "non-negotiable" under Section 7-104. Section 9-313  
[Maine cite section 9-1313] governs perfection of a security  
12 interest in goods in the possession of a bailee who has not  
issued a document of title.

14 Subsection (c) [Maine cite subsection (3)] clarifies the  
16 perfection and priority rules in former Section 9-304(2).  
Consistently with the provisions of Article 7, subsection (c)  
18 takes the position that, as long as a negotiable document  
covering goods is outstanding, title to the goods is, so to say,  
20 locked up in the document. Accordingly, a security interest in  
goods covered by a negotiable document may be perfected by  
22 perfecting a security interest in the document. The security  
interest also may be perfected by another method, e.g., by  
24 filing. The priority rule in subsection (c) [Maine cite  
subsection (3)] governs only priority between (i) a security  
26 interest in goods which is perfected by perfecting in the  
document and (ii) a security interest in the goods which becomes  
28 perfected by another method while the goods are covered by the  
document.

30 **Example 1:** While wheat is in a grain elevator and covered  
32 by a negotiable warehouse receipt, Debtor creates a security  
interest in the wheat in favor of SP-1 and SP-2. SP-1 perfects  
34 by filing a financing statement covering "wheat." Thereafter,  
SP-2 perfects by filing a financing statement describing the  
36 warehouse receipt. Subsection (c)(1) provides that SP-2's  
security interest is perfected. Subsection (c)(2) [Maine cite  
38 subsection (3), paragraph (b)] provides that SP-2's security  
interest is senior to SP-1's.

40 **Example 2:** The facts are as in Example 1, but SP-1's  
42 security interest attached and was perfected before the goods  
were delivered to the grain elevator. Subsection (c)(2) [Maine  
44 cite subsection (3), paragraph (b)] does not apply, because  
SP-1's security interest did not become perfected during the time  
46 that the wheat was in the possession of a bailee. Rather, the  
first-to-file-or-perfect priority rule applies. See Section  
48 9-322 [Maine cite section 9-1322].

2 A secured party may become "a holder to whom a negotiable  
document of title has been duly negotiated" under Section 7-501.  
4 If so, the secured party acquires the rights specified by Article  
7. Article 9 [Maine cite Article 9-A] does not limit those  
6 rights, which may include the right to priority over an  
earlier-perfected security interest. See Section 9-331(a) [Maine  
cite section 9-1331, subsection (1)].

8  
10 Subsection (d) [Maine cite subsection (4)] takes a different  
approach to the problem of goods covered by a nonnegotiable  
12 document. Here, title to the goods is not looked on as being  
locked up in the document, and the secured party may perfect its  
14 security interest directly in the goods by filing as to them.  
The subsection provides two other methods of perfection:  
16 issuance of the document in the secured party's name (as  
consignee of a straight bill of lading or the person to whom  
18 delivery would be made under a nonnegotiable warehouse receipt)  
and receipt of notification of the secured party's interest by  
the bailee. Perfection under subsection (d) [Maine cite  
20 subsection (4)] occurs when the bailee receives notification of  
the secured party's interest in the goods, regardless of who  
22 sends the notification. Receipt of notification is effective to  
perfect, regardless of whether the bailee responds. Unlike  
24 former Section 9-304(3), from which it derives, subsection (d)  
[Maine cite subsection (4)] does not apply to goods in the  
26 possession of a bailee who has not issued a document of title.  
Section 9-313(c) [Maine cite section 9-1313, subsection (3)]  
28 covers that case and provides that perfection by possession as to  
goods not covered by a document requires the bailee's  
30 acknowledgment.

32 **8. Temporary Perfection Without Having First Otherwise**  
**Perfected.** Subsection (e) [Maine cite subsection (5)] follows  
34 former Section 9-304(4) in giving perfected status to security  
interests in certificated securities, instruments, and negotiable  
36 documents for a short period (reduced from 21 to 20 days, which  
is the time period generally applicable in this Article),  
38 although there has been no filing and the collateral is in the  
debtor's possession. The 20-day temporary perfection runs from  
40 the date of attachment. There is no limitation on the purpose  
for which the debtor is in possession, but the secured party must  
42 have given "new value" (defined in Section 9-102 [Maine cite  
section 9-1102) under an authenticated security agreement.

44  
46 **9. Maintaining Perfection After Surrendering Possession.**  
There are a variety of legitimate reasons-many of them are  
described in subsections (f) and (g) [Maine cite subsections (6)  
48 and (7)]-why certain types of collateral must be released  
temporarily to a debtor. No useful purpose would be served by

2 cluttering the files with records of such exceedingly short term transactions.

4 Subsection (f) [Maine cite subsection (6)] affords the  
6 possibility of 20-day perfection in negotiable documents and  
8 goods in the possession of a bailee but not covered by a  
10 negotiable document. Subsection (g) [Maine cite subsection (7)]  
12 provides for 20-day perfection in certificated securities and  
14 instruments. These subsections derive from former Section  
16 9-305(5). However, the period of temporary perfection has been  
18 reduced from 21 to 20 days, which is the time period generally  
20 applicable in this Article, and "enforcement" has been added in  
22 subsection (g) [Maine cite subsection (7)] as one of the special  
24 and limited purposes for which a secured party can release an  
26 instrument or certificated security to the debtor and still  
remain perfected. The period of temporary perfection runs from  
the date a secured party who already has a perfected security  
interest turns over the collateral to the debtor. There is no  
new value requirement, but the turnover must be for one or more  
of the purposes stated in subsection (f) or (g) [Maine cite  
subsection (6) or (7)]. The 20-day period may be extended by  
perfecting as to the collateral by another method before the  
period expires. However, if the security interest is not  
perfected by another method until after the 20-day period  
expires, there will be a gap during which the security interest  
is unperfected.

28 Temporary perfection extends only to the negotiable document  
30 or goods under subsections (f) [Maine cite subsection (6)] and  
32 only to the certificated security or instrument under subsection  
34 (g) [Maine cite subsection (7)]. It does not extend to  
proceeds. If the collateral is sold, the security interest will  
continue in the proceeds for the period specified in Section  
9-315 [Maine cite section 9-1315].

36 Subsections (f) and (g) [Maine cite subsections (6) and (7)]  
38 deal only with perfection. Other sections of this Article govern  
40 the priority of a security interest in goods after surrender of  
42 the document covering them. In the case of a purchase-money  
security interest in inventory, priority may be conditioned upon  
giving notification to a prior inventory financier. See Section  
9-324 [Maine cite section 9-1324].

44 **§9-1313. When possession by or delivery to secured party perfects**  
46 **security interest without filing**

48 (1) Except as otherwise provided in subsection (2), a  
50 secured party may perfect a security interest in negotiable  
documents, goods, instruments, money or tangible chattel paper by  
taking possession of the collateral. A secured party may perfect

2 a security interest in certificated securities by taking delivery  
3 of the certificated securities under section 8-1301.

4 (2) With respect to goods covered by a certificate of title  
5 issued by this State, a secured party may perfect a security  
6 interest in the goods by taking possession of the goods only in  
7 the circumstances described in Section 9-1316, subsection (4).

8  
9 (3) With respect to collateral other than certificated  
10 securities and goods covered by a document, a secured party takes  
11 possession of collateral in the possession of a person other than  
12 the debtor, the secured party or a lessee of the collateral from  
13 the debtor in the ordinary course of the debtor's business, when:

14  
15 (a) The person in possession authenticates a record  
16 acknowledging that it holds possession of the collateral for  
17 the secured party's benefit; or

18  
19 (b) The person takes possession of the collateral after  
20 having authenticated a record acknowledging that it will  
21 hold possession of collateral for the secured party's  
22 benefit.

23  
24 (4) If perfection of a security interest depends upon  
25 possession of the collateral by a secured party, perfection  
26 occurs no earlier than the time the secured party takes  
27 possession and continues only while the secured party retains  
28 possession.

29  
30 (5) A security interest in a certificated security in  
31 registered form is perfected by delivery when delivery of the  
32 certificated security occurs under section 8-1301 and remains  
33 perfected by delivery until the debtor obtains possession of the  
34 security certificate.

35  
36 (6) A person in possession of collateral is not required to  
37 acknowledge that it holds possession for a secured party's  
38 benefit.

39  
40 (7) If a person acknowledges that it holds possession for  
41 the secured party's benefit:

42  
43 (a) The acknowledgment is effective under subsection (3) or  
44 section 8-1301, subsection (1), even if the acknowledgment  
45 violates the rights of a debtor; and

46  
47 (b) Unless the person otherwise agrees or law other than  
48 this Article otherwise provides, the person does not owe any  
49 duty to the secured party and is not required to confirm the  
50 acknowledgment to another person.

2           (8) A secured party having possession of collateral does  
3           not relinquish possession by delivering the collateral to a  
4           person other than the debtor or a lessee of the collateral from  
5           the debtor in the ordinary course of the debtor's business if the  
6           person was instructed before the delivery or is instructed  
7           contemporaneously with the delivery;

8  
9           (a) To hold possession of the collateral for the secured  
10           party's benefit; or

11           (b) To redeliver the collateral to the secured party.

12  
13           (9) A secured party does not relinquish possession, even if  
14           a delivery under subsection (8) violates the rights of a debtor.  
15           A person to which collateral is delivered under subsection (8)  
16           does not owe any duty to the secured party and is not required to  
17           confirm the delivery to another person unless the person  
18           otherwise agrees or law other than this Article otherwise  
19           provides.

20  
21   **Official Comment**

22           1.     **Source.**   Former Sections 9305, 9115(6).

23           2.     **Perfection by Possession.**   As under the common law of  
24           pledge, no filing is required by this Article to perfect a  
25           security interest if the secured party takes possession of the  
26           collateral.   See Section 9-310(b)(6) [Maine cite section 9-1310,  
27           subsection (2), paragraph (f)].

28           This section permits a security interest to be perfected by  
29           the taking of possession only when the collateral is goods,  
30           instruments, negotiable documents, money, or tangible chattel  
31           paper.   Accounts, commercial tort claims, deposit accounts,  
32           investment property, letter-of-credit rights, letters of credit,  
33           money, and oil, gas, or other minerals before extraction are  
34           excluded.   (But see Comment 6, below, regarding certificated  
35           securities.)   A security interest in accounts and payment  
36           intangibles—property not ordinarily represented by any writing  
37           whose delivery operates to transfer the right to payment—may  
38           under this Article be perfected only by filing.   This rule would  
39           not be affected by the fact that a security agreement or other  
40           record described the assignment of such collateral as a  
41           "pledge."   Section 9-309(2) [Maine cite section 9-1309,  
42           subsection (2)] exempts from filing certain assignments of  
43           accounts or payment intangibles which are out of the ordinary  
44           course of financing.   These exempted assignments are perfected  
45           when they attach.   Similarly, under Section 9-309(3) [Maine cite

2 section 9-1309, subsection (3)], sales of payment intangibles are  
automatically perfected.

4 3. **"Possession."** This section does not define  
"possession." In determining whether a particular person has  
6 possession, the principles of agency apply. For example, if the  
collateral clearly is in possession of an agent of the secured  
8 party for the purposes of possessing on behalf of the secured  
party, and if the agent is not also an agent of the debtor, the  
10 secured party has taken actual possession without the need to  
rely on a third-party acknowledgment. See subsection (c) [Maine  
12 cite subsection (3)] and Comments 4 and 8. However, if the agent  
is an agent of both the secured party and the debtor, prudence  
14 might suggest that the secured party obtain the agent's  
acknowledgment in order to ensure perfection by possession. The  
16 debtor cannot qualify as an agent for the secured party for  
purposes of the secured party's taking possession. And, under  
18 appropriate circumstances, a court may determine that a third  
person in possession is so closely connected to or controlled by  
20 the debtor that the debtor has retained effective possession,  
even though the third person may have agreed to take possession  
22 on behalf of the secured party. If so, the third person's taking  
possession would not constitute the secured party's taking  
24 possession and would not be sufficient for perfection. See also  
Section 9-205(b) [Maine cite section 9-1205, subsection (2)]. In  
26 a typical escrow arrangement, where the escrowee holds possession  
of collateral as agent for both the secured party and the debtor,  
28 the debtor's relationship to the escrowee is not such as to  
constitute retention of possession by the debtor.

30 4. **Goods in Possession of Third Party: Perfection.** Former  
32 Section 9-305 permitted perfection of a security interest by  
notification to a bailee in possession of collateral. This  
34 Article distinguishes between goods in the possession of a bailee  
who has issued a document of title covering the goods and goods  
36 in the possession of a third party who has not issued a  
document. Section 9-312(c) or (d) [Maine cite section 9-1312,  
38 subsection (3) or (4)] applies to the former, depending on  
whether the document is negotiable. Section 9-313(c) [Maine cite  
40 section 9-1313, subsection (3)] applies to the latter. It  
provides a method of perfection by possession when the collateral  
42 is possessed by a third person who is not the secured party's  
agent.

44 Notification of a third person does not suffice to perfect  
46 under Section 9-313(c) [Maine cite section 9-1313, subsection  
(3)]. Rather, perfection does not occur unless the third person  
48 authenticates an acknowledgment that it holds possession of the  
collateral for the secured party's benefit. Compare Section  
50 9-312(d) [Maine cite section 9-1312, subsection (4)], under which



2 receipt of notification of the security party's interest by a  
3 bailee holding goods covered by a nonnegotiable document is  
4 sufficient to perfect, even if the bailee does not acknowledge  
5 receipt of the notification. A third person may acknowledge that  
6 it will hold for the secured party's benefit goods to be received  
7 in the future. Under these circumstances, perfection by  
8 possession occurs when the third person obtains possession of the  
9 goods.

10 Under subsection (c) [Maine cite subsection (3)],  
11 acknowledgment of notification by a "lessee . . . in . . .  
12 ordinary course of . . . business" (defined in Section 2A103)  
13 does not suffice for possession. The section thus rejects the  
14 reasoning of *In re Atlantic Systems, Inc.*, 135 B.R. 463 (Bankr.  
15 S.D.N.Y. 1992) (holding that notification to debtor-lessor's  
16 lessee sufficed to perfect security interest in leased goods).  
17 See Steven O. Weise, *Perfection by Possession: The Need for an*  
18 *Objective Test*, 29 *Idaho Law Rev.* 705 (1992-93) (arguing that  
19 lessee's possession in ordinary course of debtor-lessor's  
20 business does not provide adequate public notice of possible  
21 security interest in leased goods). Inclusion of a per se rule  
22 concerning lessees is not meant to preclude a court, under  
23 appropriate circumstances, from determining that a third person  
24 is so closely connected to or controlled by the debtor that the  
25 debtor has retained effective possession. If so, the third  
26 person's acknowledgment would not be sufficient for perfection.

28 **5. No Relation Back.** Former Section 9-305 provided that a  
29 security interest is perfected by possession from the time  
30 possession is taken "without a relation back." As the Comment to  
31 former Section 9-305 observed, the relation-back theory, under  
32 which the taking of possession was deemed to relate back to the  
33 date of the original security agreement, has had little vitality  
34 since the 1938 revision of the Federal Bankruptcy Act. The  
35 theory is inconsistent with former Article 9 and with this  
36 Article. See Section 9-313(d) [Maine cite section 9-1313,  
37 subsection (4)]. Accordingly, this Article deletes the quoted  
38 phrase as unnecessary. Where a pledge transaction is  
39 contemplated, perfection dates only from the time possession is  
40 taken, although a security interest may attach, unperfected. The  
41 only exceptions to this rule are the short, 20-day periods of  
42 perfection provided in Section 9-312(e), (f) and (g) [Maine cite  
43 section 9-1312, subsections (5), (6) and (7)], during which a  
44 debtor may have possession of specified collateral in which there  
45 is a perfected security interest.

46 **6. Certificated Securities.** The second sentence of  
47 subsection (a) [Maine cite subsection (1)] reflects the  
48 traditional rule for perfection of a security interest in  
49 certificated securities. Compare Section 9-115(6) (1994 Official  
50

2 Text); Sections 8321, 8313(1)(a) (1978 Official Text); Section  
9-305 (1972 Official Text). It has been modified to refer to  
"delivery" under Section 8-301. Corresponding changes appear in  
4 Section 9-203(b) [Maine cite section 9-1203, subsection (2)].

6 Subsections (e), (f), and (g) [Maine cite subsections (5),  
(6) and (7)] , which are new, apply to a person in possession of  
8 security certificates or holding security certificates for the  
secured party's benefit under Section 8-301. For delivery to  
10 occur when a person other than a secured party holds possession  
for the secured party, the person may not be a securities  
12 intermediary.

14 Under subsection (e) [Maine cite subsection (5)], a  
possessory security interest in a certificated security remains  
16 perfected until the debtor obtains possession of the security  
certificate. This rule is analogous to that of Section 9-314(c)  
18 [Maine cite section 9-1314, subsection (3)], which deals with  
perfection of security interests in investment property by  
20 control. See Section 9-314 [Maine cite section 9-1314], Comment  
3.

22  
24 **7. Goods Covered by Certificate of Title.** Subsection (b)  
[Maine cite subsection (2)] is necessary to effect changes to the  
choice-of-law rules governing goods covered by a certificate of  
26 title. These changes are described in the Comments to Section  
9-311 [Maine cite section 9-1311]. Subsection (b) [Maine cite  
28 subsection (2)], like subsection (a) [Maine cite subsection (1)],  
does not create a right to take possession. Rather, it indicates  
30 the circumstances under which the secured party's taking  
possession of goods covered by a certificate of title is  
32 effective to perfect a security interest in the goods: the goods  
become covered by a certificate of title issued by this State at  
34 a time when the security interest is perfected by any method  
under the law of another jurisdiction.

36  
38 **8. Goods in Possession of Third Party: No Duty to  
Acknowledge; Consequences of Acknowledgment.** Subsections (f) and  
(g) [Maine cite subsections (6) and (7)] are new and address  
40 matters as to which former Article 9 was silent. They derive in  
part from Section 8-106(g). Subsection (f) [Maine cite  
42 subsection (6)] provides that a person in possession of  
collateral is not required to acknowledge that it holds for a  
44 secured party. Subsection (g)(1) [Maine cite subsection (7),  
paragraph (a)] provides that an acknowledgment is effective even  
46 if wrongful as to the debtor. Subsection (g)(2) [Maine cite  
subsection (7), paragraph (b)] makes clear that an acknowledgment  
48 does not give rise to any duties or responsibilities under this  
Article. Arrangements involving the possession of goods are  
50 hardly standardized. They include bailments for services to be

2 performed on the goods (such as repair or processing), for use  
(leases), as security (pledges), for carriage, and for storage.  
4 This Article leaves to the agreement of the parties and to any  
other applicable law the imposition of duties and  
6 responsibilities upon a person who acknowledges under subsection  
(c) [Maine cite subsection (3)]. For example, by acknowledging,  
8 a third party does not become obliged to act on the secured  
party's direction or to remain in possession of the collateral  
unless it agrees to do so or other law so provides.

10  
12 **9. Delivery to Third Party by Secured Party.** New  
subsections (h) and (i) [Maine cite subsections (8) and (9)]  
14 address the practice of mortgage warehouse lenders. These  
lenders typically send mortgage notes to prospective purchasers  
16 under cover of letters advising the prospective purchasers that  
the lenders hold security interests in the notes. These lenders  
18 relied on notification to maintain perfection under former  
9-305. Requiring them to obtain authenticated acknowledgments  
20 from each prospective purchaser under subsection (c) [Maine cite  
subsection (3)] could be unduly burdensome and disruptive of  
22 established practices. Under subsection (h) [Maine cite  
subsection (8)], when a secured party in possession itself  
24 delivers the collateral to a third party, instructions to the  
third party would be sufficient to maintain perfection by  
26 possession; an acknowledgment would not be necessary. Under  
subsection (i) [Maine cite subsection (9)], the secured party  
28 does not relinquish possession by making a delivery under  
subsection (h) [Maine cite subsection (8)], even if the delivery  
30 violates the rights of the debtor. That subsection also makes  
clear that a person to whom collateral is delivered under  
32 subsection (h) [Maine cite subsection (8)] does not owe any duty  
to the secured party and is not required to confirm the delivery  
34 to another person unless the person otherwise agrees or law other  
than this Article provides otherwise.

36 **§9-1314. Perfection by control**

38 (1) A security interest in investment property, deposit  
40 accounts, letter-of-credit rights or electronic chattel paper may  
be perfected by control of the collateral under section 9-1104,  
9-1105, 9-1106 or 9-1107.

42  
44 (2) A security interest in deposit accounts, electronic  
chattel paper, or letter-of-credit rights is perfected by control  
under section 9-1104, 9-1105 or 9-1107 when the secured party  
obtains control and remains perfected by control only while the  
secured party retains control.

2 (3) A security interest in investment property is perfected  
3 by control under section 9-1106 from the time the secured party  
4 obtains control and remains perfected by control until:

5 (a) The secured party does not have control; and

6 (b) One of the following occurs:

7 (i) If the collateral is a certificated security, the  
8 debtor has or acquires possession of the security  
9 certificate;

10 (ii) If the collateral is an uncertificated security,  
11 the issuer has registered or registers the debtor as  
12 the registered owner; or

13 (iii) If the collateral is a security entitlement, the  
14 debtor is or becomes the entitlement holder.

#### 15 **Official Comment**

16 **1. Source.** Substantially new; derived in part from former  
17 Section 9-115(4).

18 **2. Control.** This section provides for perfection by  
19 control with respect to investment property, deposit accounts,  
20 letter-of-credit rights, and electronic chattel paper. For  
21 explanations of how a secured party takes control of these types  
22 of collateral, see Sections 9-104 through 9-107 [Maine cite  
23 sections 9-1104 to section 9-1107)]. Subsection (b) [Maine cite  
24 subsection (2)] explains when a security interest is perfected by  
25 control and how long a security interest remains perfected by  
26 control. Like Section 9-313(d) [Maine cite section 9-1313,  
27 subsection (4)] and for the same reasons, subsection (b) [Maine  
28 cite subsection (2)] makes no reference to the doctrine of  
29 "relation back." See Section 9-313 [Maine cite section 9-1313],  
30 Comment 5.

31 **3. Investment Property.** Subsection (c) [Maine cite  
32 subsection (3)] provides a special rule for investment property.  
33 Once a secured party has control, its security interest remains  
34 perfected by control until the secured party ceases to have  
35 control and the debtor receives possession of collateral that is  
36 a certificated security, becomes the registered owner of  
37 collateral that is an uncertificated security, or becomes the  
38 entitlement holder of collateral that is a security entitlement.  
39 The result is particularly important in the "repledge" context.  
40 See Section 9-207 [Maine cite section 9-1207], Comment 5.

2 In a transaction in which a secured party who has control  
3 grants a security interest in investment property or sells  
4 outright the investment property, by virtue of the debtor's  
5 consent or applicable legal rules, a purchaser from the secured  
6 party typically will cut off the debtor's rights in the  
7 investment property or be immune from the debtor's claims. See  
8 Section 9-207 [Maine cite section 9-1207], Comments 5 and 6. If  
9 the investment property is a security, the debtor normally would  
10 retain no interest in the security following the purchase from  
11 the secured party, and a claim of the debtor against the secured  
12 party for redemption (Section 9-623 [Maine cite section 9-1623])  
13 or otherwise with respect to the security would be a purely  
14 personal claim. If the investment property transferred by the  
15 secured party is a financial asset in which the debtor had a  
16 security entitlement credited to a securities account maintained  
17 with the secured party as a securities intermediary, the debtor's  
18 claim against the secured party could arise as a part of its  
19 securities account notwithstanding its personal nature. (This  
20 claim would be analogous to a "credit balance" in the securities  
21 account, which is a component of the securities account even  
22 though it is a personal claim against the intermediary.) In the  
23 case in which the debtor may retain an interest in investment  
24 property notwithstanding a repledge or sale by the secured party,  
25 subsection (c) [Maine cite subsection (3)] makes clear that the  
26 security interest will remain perfected by control.

27 **§9-1315. Secured party's rights on disposition of collateral and**  
28 **in proceeds**

29 (1) Except as otherwise provided in this Article and in  
30 section 2-403, subsection (2):

31 (a) A security interest or agricultural lien continues in  
32 collateral notwithstanding sale, lease, license, exchange or  
33 other disposition thereof unless the secured party  
34 authorized the disposition free of the security interest or  
35 agricultural lien; and  
36 agricultural lien; and

37 (b) A security interest attaches to any identifiable  
38 proceeds of collateral.  
39

40 (2) Proceeds that are commingled with other property are  
41 identifiable proceeds:

42 (a) If the proceeds are goods, to the extent provided by  
43 section 9-1336; and  
44

45 (b) If the proceeds are not goods, to the extent that the  
46 secured party identifies the proceeds by a method of  
47 tracing, including application of equitable principles, that  
48 tracing, including application of equitable principles, that  
49 tracing, including application of equitable principles, that  
50 tracing, including application of equitable principles, that

2 is permitted under law other than this Article with respect  
3 to commingled property of the type involved.

4 (3) A security interest in proceeds is a perfected security  
5 interest if the security interest in the original collateral was  
6 perfected.

7 (4) A perfected security interest in proceeds becomes  
8 unperfected on the 21st day after the security interest attaches  
9 to the proceeds unless:

10 (a) The following conditions are satisfied:

11 (i) A filed financing statement covers the original  
12 collateral;

13 (ii) The proceeds are collateral in which a security  
14 interest may be perfected by filing in the office in  
15 which the financing statement has been filed; and

16 (iii) the proceeds are not acquired with cash proceeds;

17 (b) The proceeds are identifiable cash proceeds; or

18 (c) The security interest in the proceeds is perfected  
19 other than under subsection (3) when the security interest  
20 attaches to the proceeds or within 20 days thereafter.

21 (5) If a filed financing statement covers the original  
22 collateral, a security interest in proceeds that remains  
23 perfected under subsection (4), paragraph (a) becomes unperfected  
24 at the later of:

25 (a) The date when the effectiveness of the filed financing  
26 statement lapses under section 9-1515 or is terminated under  
27 section 9-1513; or

28 (b) The 21st day after the security interest attaches to  
29 the proceeds.

30 **Official Comment**

31 **1. Source.** Former Section 9-306.

32 **2. Continuation of Security Interest or Agricultural Lien**  
33 **Following Disposition of Collateral.** Subsection (a)(1) [Maine  
34 cite subsection (1), paragraph (a)], which derives from former  
35 Section 9-306(2), contains the general rule that a security  
36 interest survives disposition of the collateral. In these cases,  
37 the secured party may repossess the collateral from the  
38

2 transferee or, in an appropriate case, maintain an action for  
conversion. The secured party may claim both any proceeds and  
4 the original collateral but, of course, may have only one  
satisfaction.

6 In many cases, a purchaser or other transferee of collateral  
will take free of a security interest, and the secured party's  
8 only right will be to proceeds. For example, the general rule  
does not apply, and a security interest does not continue in  
10 collateral, if the secured party authorized the disposition, in  
the agreement that contains the security agreement or otherwise.  
12 Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]  
adopts the view of PEB Commentary No. 3 and makes explicit that  
14 the authorized disposition to which it refers is an authorized  
disposition "free of" the security interest or agricultural  
16 lien. The secured party's right to proceeds under this section  
or under the express terms of an agreement does not in itself  
18 constitute an authorization of disposition. The change in  
language from former Section 9-306(2) is not intended to address  
20 the frequently litigated situation in which the effectiveness of  
the secured party's consent to a disposition is conditioned upon  
22 the secured party's receipt of the proceeds. In that situation,  
subsection (a) [Maine cite subsection (1)] leaves the  
24 determination of authorization to the courts, as under former  
Article 9.

26 This Article contains several provisions under which a  
transferee takes free of a security interest or agricultural  
28 lien. For example, Section 9-317 [Maine cite section 9-1317]  
states when transferees take free of unperfected security  
30 interests; Sections 9-320 and 9-321 [Maine cite section 9-1320  
and section 9-1321] on goods, 9-321 [Maine cite section 9-1321]  
32 on general intangibles, 9330 [Maine cite section 9-1330] on  
chattel paper and instruments, and 9331 [Maine cite section  
34 9-1331] on negotiable instruments, negotiable documents, and  
securities state when purchasers of such collateral take free of  
36 a security interest, even though perfected and even though the  
disposition was not authorized. Section 9-332 [Maine cite  
38 section 9-1332] enables most transferees (including  
non-purchasers) of funds from a deposit account and most  
40 transferees of money to take free of a perfected security  
interest in the deposit account or money.  
42

44 Likewise, the general rule that a security interest survives  
disposition does not apply if the secured party entrusts goods  
46 collateral to a merchant who deals in goods of that kind and the  
merchant sells the collateral to a buyer in ordinary course of  
48 business. Section 2-403(2) gives the merchant the power to  
transfer all the secured party's rights to the buyer, even if the  
50 sale is wrongful as against the secured party. Thus, under

2 subsection (a)(1) [Maine cite subsection (1), paragraph (a)], an  
entrusting secured party runs the same risk as any other  
entruster.

4  
6 **3. Secured Party's Right to Identifiable Proceeds.** Under  
subsection (a)(2) [Maine cite subsection (1), paragraph (b)],  
8 which derives from former Section 9-306(2), a security interest  
attaches to any identifiable "proceeds," as defined in Section  
10 9-102 [Maine cite section 9-1102]. See also Section 9-203(f)  
[Maine cite section 9-1203, subsection (6)]. Subsection (b)  
12 [Maine cite subsection (2)] is new. It indicates when proceeds  
commingled with other property are identifiable proceeds and  
14 permits the use of whatever methods of tracing other law permits  
with respect to the type of property involved. Among the  
"equitable principles" whose use other law may permit is the  
16 "lowest intermediate balance rule." See Restatement (2d), Trusts  
§202.

18  
20 **4. Automatic Perfection in Proceeds: General Rule.** Under  
subsection (c) [Maine cite subsection (3)], a security interest  
22 in proceeds is a perfected security interest if the security  
interest in the original collateral was perfected. This Article  
24 extends the period of automatic perfection in proceeds from ten  
days to 20 days. Generally, a security interest in proceeds  
26 becomes unperfected on the 21st day after the security interest  
attaches to the proceeds. See subsection (d) [Maine cite  
subsection (4)]. The loss of perfected status under subsection  
28 (d) [Maine cite subsection (4)] is prospective only. Compare,  
e.g., Section 9-515(c) [Maine cite section 9-1515, subsection  
30 (3)] (deeming security interest unperfected retroactively).

32 **5. Automatic Perfection in Proceeds: Proceeds Acquired  
with Cash Proceeds.** Subsection (d)(1) [Maine cite subsection  
34 (4), paragraph (a)] derives from former Section 9-306(3)(a). It  
carries forward the basic rule that a security interest in  
36 proceeds remains perfected beyond the period of automatic  
perfection if a filed financing statement covers the original  
38 collateral (e.g., inventory) and the proceeds are collateral in  
which a security interest may be perfected by filing in the  
40 office where the financing statement has been filed (e.g.,  
equipment). A different rule applies if the proceeds are  
42 acquired with cash proceeds, as is the case if the original  
collateral (inventory) is sold for cash (cash proceeds) that is  
44 used to purchase equipment (proceeds). Under these  
circumstances, the security interest in the equipment proceeds  
46 remains perfected only if the description in the filed financing  
indicates the type of property constituting the proceeds (e.g.,  
48 "equipment").



2 This section reaches the same result but takes a different  
3 approach. It recognizes that the treatment of proceeds acquired  
4 with cash proceeds under former Section 9-306(3)(a) essentially  
5 was superfluous. In the example, had the filing covered  
6 "equipment" as well as "inventory," the security interest in the  
7 proceeds would have been perfected under the usual rules  
8 governing after-acquired equipment (see former Sections 9-302,  
9 9-303); paragraph (3)(a) added only an exception to the general  
10 rule. Subsection (d)(1)(C) [Maine cite subsection (4), paragraph  
11 (a), subparagraph (iii)] of this section takes a more direct  
12 approach. It makes the general rule of continued perfection  
13 inapplicable to proceeds acquired with cash proceeds, leaving  
14 perfection of a security interest in those proceeds to the  
15 generally applicable perfection rules under subsection (d)(3)  
16 [Maine cite subsection (4), paragraph (c)].

17 **Example 1:** Lender perfects a security interest in Debtor's  
18 inventory by filing a financing statement covering "inventory."  
19 Debtor sells the inventory and deposits the buyer's check into a  
20 deposit account. Debtor draws a check on the deposit account and  
21 uses it to pay for equipment. Under the "lowest intermediate  
22 balance rule," which is a permitted method of tracing in the  
23 relevant jurisdiction, see Comment 3, the funds used to pay for  
24 the equipment were identifiable proceeds of the inventory.  
25 Because the proceeds (equipment) were acquired with cash proceeds  
26 (deposit account), subsection (d)(1) [Maine cite subsection (4),  
27 paragraph (a)] does not extend perfection beyond the 20-day  
28 automatic period.

29 **Example 2:** Lender perfects a security interest in Debtor's  
30 inventory by filing a financing statement covering "all debtor's  
31 property." As in Example 1, Debtor sells the inventory, deposits  
32 the buyer's check into a deposit account, draws a check on the  
33 deposit account, and uses the check to pay for equipment. Under  
34 the "lowest intermediate balance rule," which is a permitted  
35 method of tracing in the relevant jurisdiction, see Comment 3,  
36 the funds used to pay for the equipment were identifiable  
37 proceeds of the inventory. Because the proceeds (equipment) were  
38 acquired with cash proceeds (deposit account), subsection (d)(1)  
39 [Maine cite subsection (4), paragraph (a)] does not extend  
40 perfection beyond the 20-day automatic period. However, because  
41 the financing statement is sufficient to perfect a security  
42 interest in debtor's equipment, under subsection (d)(3) [Maine  
43 cite subsection (4), paragraph (c)] the security interest in the  
44 equipment proceeds remains perfected beyond the 20-day period.  
45

46  
47 **6. Automatic Perfection in Proceeds: Lapse or Termination**  
48 **of Financing Statement During 20-Day Period; Perfection Under**  
49 **Other Statute or Treaty.** Subsection (e) [Maine cite subsection  
50 (5)] provides that a security interest in proceeds perfected

2 under subsection (d)(1) [Maine cite subsection (4), paragraph  
3 (a)] ceases to be perfected when the financing statement covering  
4 the original collateral lapses or is terminated. If the lapse or  
5 termination occurs before the 21st day after the security  
6 interest attaches, however, the security interest in the proceeds  
7 remains perfected until the 21st day. Section 9-311(b) [Maine  
8 cite section 9-1311, subsection (2)] provides that compliance  
9 with the perfection requirements of a statute or treaty described  
10 in Section 9-311(a) [Maine cite section 9-1311, subsection (1)]  
11 "is equivalent to the filing of a financing statement." It  
12 follows that collateral subject to a security interest perfected  
13 by such compliance under Section 9-311(b) [Maine cite section  
14 9-1311, subsection (2)] is covered by a "filed financing  
15 statement" within the meaning of Section 9-315(d) and (e) [Maine  
16 cite section 9-1315, subsections (4) and (5)].

17 **7. Automatic Perfection in Proceeds: Continuation of**  
18 **Perfection in Cash Proceeds.** Former Section 9-306(3)(b) provided  
19 that if a filed financing statement covered original collateral,  
20 a security interest in identifiable cash proceeds of the  
21 collateral remained perfected beyond the ten-day period of  
22 automatic perfection. Former Section 9-306(3)(c) contained a  
23 similar rule with respect to identifiable cash proceeds of  
24 investment property. Subsection (d)(2) [Maine cite subsection  
25 (4), paragraph (b)] extends the benefits of former Sections  
26 9-306(3)(b) and (3)(c) to identifiable cash proceeds of all types  
27 of original collateral in which a security interest is perfected  
28 by any method. Under subsection (d)(2) [Maine cite subsection  
29 (4), paragraph (b)], if the security interest in the original  
30 collateral was perfected, a security interest in identifiable  
31 cash proceeds will remain perfected indefinitely, regardless of  
32 whether the security interest in the original collateral remains  
33 perfected. In many cases, however, a purchaser or other  
34 transferee of the cash proceeds will take free of the perfected  
35 security interest. See, e.g., Sections 9-330(d) [Maine cite  
36 section 9-1330, subsection (4)] (purchaser of check), 9-331  
37 [Maine cite section 9-1331] (holder in due course of check),  
38 9-332 [Maine cite section 9-1322] (transferee of money or funds  
39 from a deposit account).

40 **8. Insolvency Proceedings; Returned and Repossessed Goods.**  
41 This Article deletes former Section 9-306(4), which dealt with  
42 proceeds in insolvency proceedings. Except as otherwise provided  
43 by the Bankruptcy Code, the debtor's entering into bankruptcy  
44 does not affect a secured party's right to proceeds.

45 This Article also deletes former Section 9-306(5), which  
46 dealt with returned and repossessed goods. Section 9-330 [Maine  
47 cite section 9-1330], Comments 9 to 11 explain and clarify the

2 application of priority rules to returned and repossessed goods  
as proceeds of chattel paper.

4 9. **Proceeds of Collateral Subject to Agricultural Lien.**  
This Article does not determine whether a lien extends to  
6 proceeds of farm products encumbered by an agricultural lien.  
If, however, the proceeds are themselves farm products on which  
8 an "agricultural lien" (defined in Section 9-102 [Maine cite  
section 9-1102]) arises under other law, then the  
10 agricultural-lien provisions of this Article apply to the  
agricultural lien on the proceeds in the same way in which they  
12 would apply had the farm products not been proceeds.

14 **§9-1316. Continued perfection of security interest following  
change in governing law**

16 (1) A security interest perfected pursuant to the law of  
18 the jurisdiction designated in section 9-1301, subsection (1) or  
section 9-1305, subsection (3) remains perfected until the  
20 earliest of:

22 (a) The time perfection would have ceased under the law of  
that jurisdiction;

24 (b) The expiration of 4 months after a change of the  
26 debtor's location to another jurisdiction;

28 (c) The expiration of one year after a transfer of  
collateral to a person that thereby becomes a debtor and is  
30 located in another jurisdiction; or

32 (d) The expiration of one year after a new debtor located  
in another jurisdiction becomes bound under section 9-1203,  
34 subsection (4).

36 (2) If a security interest described in subsection (1)  
becomes perfected under the law of the other jurisdiction before  
38 the earliest time or event described in that subsection, it  
remains perfected thereafter. If the security interest does not  
40 become perfected under the law of the other jurisdiction before  
the earliest time or event, it becomes unperfected and is deemed  
42 never to have been perfected as against a purchaser of the  
collateral for value.

44 (3) A possessory security interest in collateral, other  
46 than goods covered by a certificate of title and collateral, as  
extracted, consisting of goods, remains continuously perfected if:

2           (a) The collateral is located in one jurisdiction and  
3           subject to a security interest perfected under the law of  
4           that jurisdiction;

5           (b) Thereafter the collateral is brought into another  
6           jurisdiction; and

7           (c) Upon entry into the other jurisdiction, the security  
8           interest is perfected under the law of the other  
9           jurisdiction.

10           (4) Except as otherwise provided in subsection (5), a  
11           security interest in goods covered by a certificate of title that  
12           is perfected by any method under the law of another jurisdiction  
13           when the goods become covered by a certificate of title from this  
14           State remains perfected until the security interest would have  
15           become unperfected under the law of the other jurisdiction had  
16           the goods not become so covered.

17           (5) A security interest described in subsection (4) becomes  
18           unperfected as against a purchaser of the goods for value and is  
19           deemed never to have been perfected as against a purchaser of the  
20           goods for value if the applicable requirements for perfection  
21           under section 9-1311, subsection (2) or section 9-1313 are not  
22           satisfied before the earlier of:

23           (a) The time the security interest would have become  
24           unperfected under the law of the other jurisdiction had the  
25           goods not become covered by a certificate of title from this  
26           State; or

27           (b) The expiration of 4 months after the goods had become  
28           so covered.

29           (6) A security interest in deposit accounts,  
30           letter-of-credit rights or investment property that is perfected  
31           under the law of the bank's jurisdiction, the issuer's  
32           jurisdiction, a nominated person's jurisdiction, the securities  
33           intermediary's jurisdiction or the commodity intermediary's  
34           jurisdiction, as applicable, remains perfected until the earlier  
35           of:

36           (a) The time the security interest would have become  
37           unperfected under the law of that jurisdiction; or

38           (b) The expiration of 4 months after a change of the  
39           applicable jurisdiction to another jurisdiction.

40           (7) If a security interest described in subsection (6)  
41           becomes perfected under the law of the other jurisdiction before

2 the earlier of the time or the end of the period described in  
3 that subsection, it remains perfected thereafter. If the  
4 security interest does not become perfected under the law of the  
5 other jurisdiction before the earlier of that time or the end of  
6 that period, it becomes unperfected and is deemed never to have  
7 been perfected as against a purchaser of the collateral for value.

8 **Official Comment**

10 1. **Source.** Former Section 9-103(1)(d), (2)(b), (3)(e), as  
11 modified.

12 2. **Continued Perfection.** This section deals with continued  
13 perfection of security interests that have been perfected under  
14 the law of another jurisdiction. The fact that the law of a  
15 particular jurisdiction ceases to govern perfection under  
16 Sections 9-301 through 9-307 [Maine cite sections 9-1301 to  
17 9-1307] does not necessarily mean that a security interest  
18 perfected under that law automatically becomes unperfected. To  
19 the contrary: This section generally provides that a security  
20 interest perfected under the law of one jurisdiction remains  
21 perfected for a fixed period of time (four months or one year,  
22 depending on the circumstances), even though the jurisdiction  
23 whose law governs perfection changes. However, cessation of  
24 perfection under the law of the original jurisdiction cuts short  
25 the fixed period. The 4-month and one-year periods are long  
26 enough for a secured party to discover in most cases that the law  
27 of a different jurisdiction governs perfection and to reperfect  
28 (typically by filing) under the law of that jurisdiction. If a  
29 secured party properly reperfects a security interest before it  
30 becomes unperfected under subsection (a) [Maine cite subsection  
31 (1)], then the security interest remains perfected continuously  
32 thereafter. See subsection (b) [Maine cite subsection (2)].

34 **Example 1:** Debtor is a general partnership whose chief  
35 executive office is in Pennsylvania. Lender perfects a security  
36 interest in Debtor's equipment by filing in Pennsylvania on May  
37 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor  
38 moves its chief executive office to New Jersey. Lender's  
39 security interest remains perfected for four months after the  
40 move. See subsection (a)(2) [Maine cite subsection (1),  
41 paragraph (b)].

44 **Example 2:** Debtor is a general partnership whose chief  
45 executive office is in Pennsylvania. Lender perfects a security  
46 interest in Debtor's equipment by filing in Pennsylvania on May  
47 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor  
48 moves its chief executive office to New Jersey. Lender's  
49 security interest remains perfected only through May 14, 2007,  
50 when the effectiveness of the filed financing statement lapses.

2 See subsection (a)(1) [Maine cite subsection (1), paragraph  
3 (a)]. Although, under these facts, Lender would have only a  
4 short period of time to discover that Debtor had relocated and to  
5 reperfect under New Jersey law, Lender could have protected  
6 itself by filing a continuation statement in Pennsylvania before  
7 Debtor relocated. By doing so, Lender would have prevented lapse  
8 and allowed itself the full four months to discover Debtor's new  
9 location and refile there or, if Debtor is in default, to perfect  
10 by taking possession of the equipment.

11 **Example 3:** Under the facts of Example 2, Lender files a  
12 financing statement in New Jersey before the effectiveness of the  
13 Pennsylvania financing statement lapses. Under subsection (b)  
14 [Maine cite subsection (2)], Lender's security interest is  
15 continuously perfected beyond May 14, 2007, for a period  
16 determined by New Jersey's Article 9.

17 Subsection (a)(3) [Maine cite subsection (1), paragraph (c)]  
18 allows a one-year period in which to reperfect. The longer  
19 period is necessary, because, even with the exercise of due  
20 diligence, the secured party may be unable to discover that the  
21 collateral has been transferred to a person located in another  
22 jurisdiction.

23 **Example 4:** Debtor is a Pennsylvania corporation. Lender  
24 perfects a security interest in Debtor's equipment by filing in  
25 Pennsylvania. Debtor's shareholders decide to "reincorporate" in  
26 Delaware. They form a Delaware corporation (Newcorp) into which  
27 they merge Debtor. The merger effectuates a transfer of the  
28 collateral from Debtor to Newcorp, which thereby becomes a debtor  
29 and is located in another jurisdiction. Under subsection (a)(3),  
30 [Maine cite subsection (1), paragraph (c)] the security interest  
31 remains perfected for one year after the merger. If a financing  
32 statement is filed in Delaware against Newcorp within the year  
33 following the merger, then the security interest remains  
34 perfected thereafter for a period determined by Delaware's  
35 Article 9.

36 Note that although Newcorp is a "new debtor" as defined in  
37 Section 9-102, the application of subsection (a)(3) [Maine cite  
38 subsection (1), paragraph (c)] is not limited to transferees who  
39 are new debtors. Note also that, under Section 9-507, the  
40 financing statement naming Debtor remains effective even though  
41 Newcorp has become the debtor.

42 This section addresses security interests that are perfected  
43 (i.e., that have attached and as to which any required perfection  
44 step has been taken) before the debtor changes its location. It  
45 does not apply to security interests that have not attached  
46 before the location changes.

2           **Example 5:** Debtor is a Pennsylvania corporation. Debtor  
3 grants to Lender a security interest in Debtor's existing and  
4 after-acquired inventory. Lender perfects by filing in  
5 Pennsylvania. Debtor's shareholders decide to "reincorporate" in  
6 Delaware. They form a Delaware corporation (Newcorp) into which  
7 they merge Debtor. By virtue of the merger, Newcorp becomes  
8 bound by Debtor's security agreement. See Section 9-203 [Maine  
9 cite section 9-1203]. After the merger, Newcorp acquires  
10 inventory to which Lender's security interest attaches. Because  
11 Newcorp is located in Delaware, Delaware law governs perfection  
12 of a security interest in Newcorp's inventory. See Sections  
13 9-301, 9-307 [Maine cite sections 9-1301, 9-1307]. Having failed  
14 to perfect under Delaware law, Lender holds an unperfected  
15 security interest in the inventory acquired by Newcorp after the  
16 merger. The same result follows regardless of the name of the  
17 Delaware corporation (i.e., even if the Delaware corporation and  
18 Debtor have the same name).

20           **3. Retroactive Unperfection.** Subsection (b) [Maine cite  
21 subsection (2)] sets forth the consequences of the failure to  
22 reperfect before perfection ceases under subsection (a) [Maine  
23 cite subsection (1)]: the security interest becomes unperfected  
24 prospectively and, as against purchasers for value, including  
25 buyers and secured parties, but not as against donees or lien  
26 creditors, retroactively. The rule applies to agricultural  
27 liens, as well. See also Section 9-515 [Maine cite section  
28 9-1515] (taking the same approach with respect to lapse).  
29 Although this approach creates the potential for circular  
30 priorities, the alternative-retroactive unperfection against lien  
31 creditors-would create substantial and unjustifiable preference  
32 risks.

34           **Example 6:** Under the facts of Example 4, six months after  
35 the merger, Buyer bought from Newcorp some equipment formerly  
36 owned by Debtor. At the time of the purchase, Buyer took subject  
37 to Lender's perfected security interest, of which Buyer was  
38 unaware. See Section 9-315(a)(1) [Maine cite section 9-1315,  
39 subsection (1), paragraph (a)]. However, subsection (b) [Maine  
40 cite subsection (2)] provides that if Lender fails to reperfect  
41 in Delaware within a year after the merger, its security interest  
42 becomes unperfected and is deemed never to have been perfected  
43 against Buyer. Having given value and received delivery of the  
44 equipment without knowledge of the security interest and before  
45 it was perfected, Buyer would take free of the security  
46 interest. See Section 9-317(b) [Maine cite section 9-1317,  
47 subsection (2)].

48           **Example 7:** Under the facts of Example 4, one month before  
49 the merger, Debtor created a security interest in certain  
50

2 equipment in favor of Financer, who perfected by filing in  
3 Pennsylvania. At that time, Financer's security interest is  
4 subordinate to Lender's. See Section 9-322(a)(1) [Maine cite  
5 section 9-1322, subsection (1), paragraph (a)]. Financer  
6 reperfects by filing in Delaware within a year after the merger,  
7 but Lender fails to do so. Under subsection (b) [Maine cite  
8 subsection (2)], Lender's security interest is deemed never to  
9 have been perfected against Financer, a purchaser for value.  
10 Consequently, under Section 9-322(a)(2) [Maine cite section  
11 9-1322, subsection (1), paragraph (b)], Financer's security  
12 interest is now senior.

13  
14 Of course, the expiration of the time period specified in  
15 subsection (a) [Maine cite subsection (1)] does not of itself  
16 prevent the secured party from later reperfecting under the law  
17 of the new jurisdiction. If the secured party does so, however,  
18 there will be a gap in perfection, and the secured party may lose  
19 priority as a result. Thus, in Example 7, if Lender perfects by  
20 filing in Delaware more than one year under the merger, it will  
21 have a new date of filing and perfection for purposes of Section  
22 9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph  
23 (a)]. Financer's security interest, whose perfection dates back  
24 to the filing in Pennsylvania under subsection (b) [Maine cite  
25 subsection (2)], will remain senior.

26 **4. Possessory Security Interests.** Subsection (c) [Maine  
27 cite subsection (3)] deals with continued perfection of  
28 possessory security interests. It applies not only to security  
29 interests perfected solely by the secured party's having taken  
30 possession of the collateral. It also applies to security  
31 interests perfected by a method that includes as an element of  
32 perfection the secured party's having taken possession, such as  
33 perfection by taking delivery of a certificated security in  
34 registered form, see Section 9-313(a) [Maine cite section 9-1313,  
35 subsection (1)] and perfection by obtaining control over a  
36 certificated security. See Section 9-314(a) [Maine cite section  
37 9-1314, subsection (1)].

38  
39 **5. Goods Covered by Certificate of Title.** Subsections (d)  
40 and (e) [Maine cite subsections (4) and (5)] address continued  
41 perfection of a security interest in goods covered by a  
42 certificate of title. The following examples explain the  
43 operation of those subsections.

44  
45 **Example 8:** Debtor's automobile is covered by a certificate  
46 of title issued by Illinois. Lender perfects a security interest  
47 in the automobile by complying with Illinois'  
48 certificate-of-title statute. Thereafter, Debtor applies for a  
49 certificate of title in Indiana. Six months thereafter, Creditor  
50 acquires a judicial lien on the automobile. Under Section



2 9-303(b) [Maine cite section 9-1303, subsection (2)], Illinois  
4 law ceases to govern perfection; rather, once Debtor delivers the  
6 application and applicable fee to the appropriate Indiana  
8 authority, Indiana law governs. Nevertheless, under Indiana's  
10 Section 9-316(d), Lender's security interest remains perfected  
12 until it would become unperfected under Illinois law had no  
14 certificate of title been issued by Indiana. (For example,  
16 Illinois' certificate-of-title statute may provide that the  
18 surrender of an Illinois certificate of title in connection with  
20 the issuance of a certificate of title by another jurisdiction  
22 causes a security interest noted thereon to become unperfected.)  
24 If Lender's security interest remains perfected, it is senior to  
26 Creditor's judicial lien.

28 **Example 9:** Under the facts in Example 8, five months after  
30 Debtor applies for an Indiana certificate of title, Debtor sells  
32 the automobile to Buyer. Under subsection (e)(2) [Maine cite  
34 subsection (5), paragraph (b)], because Lender did not reperfect  
36 within the four months after the goods became covered by the  
38 Indiana certificate of title, Lender's security interest is  
40 deemed never to have been perfected against Buyer. Under Section  
42 9-317(b) [Maine cite section 9-1317, subsection (2)], Buyer is  
44 likely to take free of the security interest. Lender could have  
46 protected itself by perfecting its security interest either under  
48 Indiana's certificate-of-title statute, see Section 9-311 [Maine  
50 cite section 9-1311], or, if it had a right to do so under an  
agreement or Section 9-610 [Maine cite section 9-1610], by taking  
possession of the automobile. See Section 9-313(b) [Maine cite  
section 9-1313, subsection (2)].

The results in Examples 8 and 9 do not depend on the fact  
that the original perfection was achieved by notation on a  
certificate of title. Subsection (d) [Maine cite subsection (4)]  
applies regardless of the method by which a security interest is  
perfected under the law of another jurisdiction when the goods  
became covered by a certificate of title from this State.

Section 9-337 [Maine cite section 9-1337] affords protection  
to a limited class of persons buying or acquiring a security  
interest in the goods while a security interest is perfected  
under the law of another jurisdiction but after this State has  
issued a clean certificate of title.

**6. Deposit Accounts, Letter-of-Credit Rights and Investment  
Property.** Subsections (f) and (g) [Maine cite subsections (6)  
and (7)] address changes in the jurisdiction of a bank, issuer of  
an uncertificated security, issuer of or nominated person under a  
letter of credit, securities intermediary, and commodity  
intermediary. The provisions are analogous to those of  
subsections (a) and (b) [Maine cite subsections (1) and (2)].



2 general intangibles or investment property other than a  
3 certificated security takes free of a security interest if the  
4 licensee or buyer gives value without knowledge of the security  
5 interest and before it is perfected.

6 (5) Except as otherwise provided in sections 9-1320 and  
7 9-1321, if a person files a financing statement with respect to a  
8 purchase-money security interest before or within 20 days after  
9 the debtor receives delivery of the collateral, the security  
10 interest takes priority over the rights of a buyer, lessee or  
11 lien creditor that arise between the time the security interest  
12 attaches and the time of filing.

#### 14 **Official Comment**

16 1. **Source.** Former Sections 9-301, 2A-307(2).

18 2. **Scope of This Section.** As did former Section 9-301,  
19 this section lists the classes of persons who take priority over,  
20 or take free of, an unperfected security interest. Section 9-308  
21 [Maine cite section 9-1308] explains when a security interest or  
22 agricultural lien is "perfected." A security interest that has  
23 attached (see Section 9-203 [Maine cite section 9-1203]) but as  
24 to which a required perfection step has not been taken is  
25 "unperfected." Certain provisions have been moved from former  
26 Section 9-301. The definition of "lien creditor" now appears in  
27 Section 9-102 [Maine cite section 9-1102], and the rules  
28 governing priority in future advances are found in Section 9-323  
29 [Maine cite section 9-1323].

30 3. **Competing Security Interests.** Section 9-322 [Maine cite  
31 section 9-1322] states general rules for determining priority  
32 among conflicting security interests and refers to other sections  
33 that state special rules of priority in a variety of situations.  
34 The security interests given priority under Section 9-322 [Maine  
35 cite section 9-1322] and the other sections to which it refers  
36 take priority in general even over a perfected security  
37 interest. A fortiori they take priority over an unperfected  
38 security interest. Paragraph (a)(1) [Maine cite subsection (1),  
39 paragraph (a)] of this section so states.

42 4. **Filed but Unattached Security Interest vs. Lien**  
43 **Creditor.** Under former Section 9-301(1)(b), a lien creditor's  
44 rights had priority over an unperfected security interest.  
45 Perfection required attachment (former Section 9-303) and  
46 attachment required the giving of value (former Section 9-203).  
47 It followed that, if a secured party had filed a financing  
48 statement but had not yet given value, an intervening lien  
49 creditor whose lien arose after filing but before attachment of  
50 the security interest acquired rights that are senior to those of

2 the secured party who later gives value. This result comported  
with the nemo dat concept: When the security interest attached,  
4 the collateral was already subject to the judicial lien.

6 On the other hand, this result treated the first secured  
advance differently from all other advances. The special rule  
8 for future advances in former Section 9-301(4) (substantially  
reproduced in Section 9-323(b) [Maine cite section 9-1323,  
10 subsection (2)]) afforded priority to a discretionary advance  
made by a secured party within 45 days after the lien creditor's  
12 rights arose as long as the secured party was "perfected" when  
the lien creditor's lien arose-i.e., as long as the advance was  
14 not the first one and an earlier advance had been made.

16 Subsection (a)(2) [Maine cite subsection (1), paragraph (b)]  
revises former Section 9-301(1)(b) and treats the first advance  
the same as subsequent advances. That is, a judicial lien that  
18 arises after a financing statement is filed and before the  
security interest attaches and becomes perfected is subordinate  
20 to all advances secured by the security interest, even the first  
advance, except as otherwise provided in Section 9-323(b) [Maine  
22 cite section 9-1323, subsection (2)]. However, if the security  
interest becomes unperfected (e.g., because the effectiveness of  
24 the filed financing statement lapses) before the judicial lien  
arises, the security interest is subordinate. If a financing  
26 statement is filed but a security interest does not attach, then  
no priority contest arises. The lien creditor has the only claim  
28 to the property.

30 **5. Security Interest of Consignor or Receivables Buyer vs.**  
**Lien Creditor.** Section 1-201(37) defines "security interest" to  
32 include the interest of most true consignors of goods and the  
interest of most buyers of certain receivables (accounts, chattel  
34 paper, payment intangibles, and promissory notes). A consignee  
of goods or a seller of accounts or chattel paper each is deemed  
36 to have rights in the collateral which a lien creditor may reach,  
as long as the competing security interest of the consignor or  
38 buyer is unperfected. This is so even though, as between the  
consignor and the debtor-consignee, the latter has only limited  
40 rights, and, as between the buyer and debtor-seller, the latter  
does not have any rights in the collateral. See Sections 9-318  
42 [Maine cite section 9-1318] (seller), 9-319 [Maine cite section  
9-1319] (consignee). Security interests arising from sales of  
44 payment intangibles and promissory notes are automatically  
perfected. See Section 9-309 [Maine cite section 9-1309].  
46 Accordingly, a subsequent judicial lien always would be  
subordinate to the rights of a buyer of those types of  
48 receivables.

2           **6. Purchasers Other Than Secured Parties.** Subsections (b),  
3 (c), and (d) [Maine cite subsections (2), (3) and (4)] afford  
4 priority over an unperfected security interest to certain  
5 purchasers (other than secured parties) of collateral. They  
6 derive from former Sections 9-301(1)(c), 2A-307(2), and  
7 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that  
8 unperfected security interests are "subordinate" to the rights of  
9 certain purchasers. But, as former Comment 9 suggested, the  
10 practical effect of subordination in this context is that the  
11 purchaser takes free of the security interest. To avoid any  
12 possible misinterpretation, subsections (b) and (d) [Maine cite  
13 subsections (2) and (4)] of this section use the phrase "takes  
14 free."

15           Subsection (b) [Maine cite subsection (2)] governs goods, as  
16 well as intangibles of the type whose transfer is effected by  
17 physical delivery of the representative piece of paper (tangible  
18 chattel paper, documents, instruments, and security  
19 certificates). To obtain priority, a buyer must both give value  
20 and receive delivery of the collateral without knowledge of the  
21 existing security interest and before perfection. Even if the  
22 buyer gave value without knowledge and before perfection, the  
23 buyer would take subject to the security interest if perfection  
24 occurred before physical delivery of the collateral to the  
25 buyer. Subsection (c) [Maine cite subsection (3)] contains a  
26 similar rule with respect to lessees of goods. Note that a  
27 lessee of goods in ordinary course of business takes free of all  
28 security interests created by the lessor, even if perfected. See  
29 Section 9-321 [Maine cite section 9-1321].

30           Normally, there will be no question when a buyer of chattel  
31 paper, documents, instruments, or security certificates "receives  
32 delivery" of the property. See Section 1-201 (defining  
33 "delivery"). However, sometimes a buyer or lessee of goods, such  
34 as complex machinery, takes delivery of the goods in stages and  
35 completes assembly at its own location. Under those  
36 circumstances, the buyer or lessee "receives delivery" within the  
37 meaning of subsections (b) and (c) [Maine cite subsections (2)  
38 and (3)] when, after an inspection of the portion of the goods  
39 remaining with the seller or lessor, it would be apparent to a  
40 potential lender to the seller or lessor that another person  
41 might have an interest in the goods.

42           The rule of subsection (b) [Maine cite subsection (2)]  
43 obviously is not appropriate where the collateral consists of  
44 intangibles and there is no representative piece of paper whose  
45 physical delivery is the only or the customary method of  
46 transfer. Therefore, with respect to such intangibles (accounts,  
47 electronic chattel paper, general intangibles, and investment  
48 property other than certificated securities), subsection (d)

2 [Maine cite subsection (4)] gives priority to any buyer who gives  
value without knowledge, and before perfection, of the security  
4 interest. A licensee of a general intangible takes free of an  
unperfected security interest in the general intangible under the  
6 same circumstances. Note that a licensee of a general intangible  
in ordinary course of business takes rights under a nonexclusive  
license free of security interests created by the licensor, even  
8 if perfected. See Section 9-321 [Maine cite section 9-1321].

10 Unless Section 9-109 [Maine cite section 9-1109] excludes  
the transaction from this Article, a buyer of accounts, chattel  
12 paper, payment intangibles, or promissory notes is a "secured  
party" (defined in Section 9-102) [Maine cite section 9-1102],  
14 and subsections (b) and (d) [Maine cite subsections (2) and (4)]  
do not determine priority of the security interest created by the  
16 sale. Rather, the priority rules generally applicable to  
competing security interests apply. See Section 9-322 [Maine  
18 cite section 9-1322].

20 **7. Agricultural Liens.** Subsections (a), (b), and (c)  
[Maine cite subsections (1), (2) and (3)] subordinate unperfected  
22 agricultural liens in the same manner in which they subordinate  
unperfected security interests.

24 **8. Purchase-Money Security Interests.** Subsection (e)  
26 [Maine cite subsection (5)] derives from former Section  
9-301(2). It provides that, if a purchase-money security  
28 interest is perfected by filing no later than 20 days after the  
debtor receives delivery of the collateral, the security interest  
30 takes priority over the rights of buyers, lessees, or lien  
creditors which arise between the time the security interest  
32 attaches and the time of filing. Subsection (e) [Maine cite  
subsection (5)] differs from former Section 9-301(2) in two  
34 significant respects. First, subsection (e) [Maine cite  
subsection (5)] protects a purchase-money security interest  
36 against all buyers and lessees, not just against transferees in  
bulk. Second, subsection (e) [Maine cite subsection (5)]  
38 conditions this protection on filing within 20, as opposed to  
ten, days after delivery.

40 Section 9-311(b) [Maine cite section 9-1311, subsection (2)]  
42 provides that compliance with the perfection requirements of a  
statute or treaty described in Section 9-311(a) [Maine cite  
44 section 9-1311, subsection (1)] "is equivalent to the filing of a  
financing statement." It follows that a person who perfects a  
46 security interest in goods covered by a certificate of title by  
complying with the perfection requirements of an applicable  
48 certificate-of-title statute "files a financing statement" within  
the meaning of subsection (e) [Maine cite subsection (5)].

50

2 **§9-1318. No interest retained in right to payment that is sold;**  
3 **rights and title of seller of account or chattel paper**  
4 **with respect to creditors and purchasers**

6 (1) A debtor that has sold an account, chattel paper,  
7 payment intangible or promissory note does not retain a legal or  
8 equitable interest in the collateral sold.

10 (2) For purposes of determining the rights of creditors of,  
11 and purchasers for value of an account or chattel paper from, a  
12 debtor that has sold an account or chattel paper, while the  
13 buyer's security interest is unperfected, the debtor is deemed to  
14 have rights and title to the account or chattel paper identical  
15 to those the debtor sold.

16 **Official Comment**

18 1. **Source.** New.

20 2. **Sellers of Accounts, Chattel Paper, Payment Intangibles,**  
21 **and Promissory Notes.** Section 1-201(37) defines "security  
22 interest" to include the interest of a buyer of accounts, chattel  
23 paper, payment intangibles, or promissory notes. See also  
24 Section 9-109(a) [Maine cite section 9-1109, subsection (1)] and  
25 Comment 5. Subsection (a) [Maine cite subsection (1)] makes  
26 explicit what was implicit, but perfectly obvious, under former  
27 Article 9: The fact that a sale of an account or chattel paper  
28 gives rise to a "security interest" does not imply that the  
29 seller retains an interest in the property that has been sold.  
30 To the contrary, a seller of an account or chattel paper retains  
31 no interest whatsoever in the property to the extent that it has  
32 been sold. Subsection (a) [Maine cite subsection (1)] also  
33 applies to sales of payment intangibles and promissory notes,  
34 transactions that were not covered by former Article 9. Neither  
35 this Article nor the definition of "security interest" in Section  
36 1-201 provides rules for distinguishing sales transactions from  
37 those that create a security interest securing an obligation.

38 3. **Buyers of Accounts and Chattel Paper.** Another aspect of  
39 sales of accounts and chattel paper also was implicit, and  
40 equally obvious, under former Article 9: If the buyer's security  
41 interest is unperfected, then for purposes of determining the  
42 rights of certain third parties, the seller (debtor) is deemed to  
43 have all rights and title that the seller sold. The seller is  
44 deemed to have these rights even though, as between the parties,  
45 it has sold all its rights to the buyer. Subsection (b) [Maine  
46 cite subsection (2)] makes this explicit. As a consequence of  
47 subsection (b) [Maine cite subsection (2)], if the buyer's  
48 security interest is unperfected, the seller can transfer, and

2 the creditors of the seller can reach, the account or chattel  
paper as if it had not been sold.

4 **Example:** Debtor sells accounts or chattel paper to Buyer1  
and retains no interest in them. Buyer1 does not file a  
6 financing statement. Debtor then sells the same receivables to  
Buyer2. Buyer2 files a proper financing statement. Having sold  
8 the receivables to Buyer1, Debtor would not have any rights in  
the collateral so as to permit Buyer2's security (ownership)  
10 interest to attach. Nevertheless, under this section, for  
purposes of determining the rights of purchasers for value from  
12 Debtor, Debtor is deemed to have the rights that Debtor sold.  
Accordingly, Buyer2's security interest attaches, is perfected by  
14 the filing, and, under Section 9-322 [Maine cite section 9-1322],  
is senior to Buyer1's interest.

16  
18 4. **Effect of Perfection.** If the security interest of a  
buyer of accounts or chattel paper is perfected the usual result  
20 would take effect: transferees from and creditors of the seller  
could not acquire an interest in the sold accounts or chattel  
22 paper. The same result would occur if payment intangibles or  
promissory notes were sold, inasmuch as the buyer's security  
24 interest is automatically perfected under Section 9-309 [Maine  
cite section 9-1309].

26 **§9-1319. Rights and title of consignee with respect to creditors  
and purchasers**

28  
30 (1) Except as otherwise provided in subsection (2), for  
purposes of determining the rights of creditors of, and  
purchasers for value of goods from, a consignee, while the goods  
32 are in the possession of the consignee, the consignee is deemed  
to have rights and title to the goods identical to those the  
34 consignor had or had power to transfer.

36 (2) For purposes of determining the rights of a creditor of  
a consignee, law other than this Article determines the rights  
38 and title of a consignee while goods are in the consignee's  
possession if, under this Part, a perfected security interest  
40 held by the consignor would have priority over the rights of the  
creditor.

42 **Official Comment**

44 1. **Source.** New.

46  
48 2. **Consignments.** This section takes an approach to  
consignments similar to that taken by Section 9-318 [Maine cite  
section 9-1318] with respect to buyers of accounts and chattel  
50 paper. Revised Section 1-201(37) defines "security interest" to



2 include the interest of a consignor of goods under many true  
3 consignments. Section 9-319(a) [Maine cite section 9-1319,  
4 subsection (1)] provides that, for purposes of determining the  
5 rights of certain third parties, the consignee is deemed to  
6 acquire all rights and title that the consignor had, if the  
7 consignor's security interest is unperfected. The consignee  
8 acquires these rights even though, as between the parties, it  
9 purchases a limited interest in the goods (as would be the case  
10 in a true consignment, under which the consignee acquires only  
11 the interest of a bailee). As a consequence of this section,  
12 creditors of the consignee can acquire judicial liens and  
13 security interests in the goods.

14       Insofar as creditors of the consignee are concerned, this  
15 Article to a considerable extent reformulates the former law,  
16 which appeared in former Sections 2-326 and 9-114, without  
17 changing the results. However, neither Article 2 nor former  
18 Article 9 specifically addresses the rights of non-ordinary  
19 course buyers from the consignee. Former Section 9-114 contained  
20 priority rules applicable to security interests in consigned  
21 goods. Under this Article, the priority rules for purchase-money  
22 security interests in inventory apply to consignments. See  
23 Section 9-103(d) [Maine cite section 9-1103, subsection (4)].  
24 Accordingly, a special section containing priority rules for  
25 consignments no longer is needed. Section 9-317 [Maine cite  
26 section 9-1317] determines whether the rights of a judicial lien  
27 creditor are senior to the interest of the consignor, Sections  
28 9-322 and 9-324 [Maine cite sections 9-1322 and 9-1324] govern  
29 competing security interests in consigned goods, and Sections  
30 9-317, 9-315, and 9-320 [Maine cite sections 9-1317, 9-1315 and  
31 9-1320] determine whether a buyer takes free of the consignor's  
32 interest.

34       The following example explains the operation of this section:

36       **Example 1:** SP1 delivers goods to Debtor in a transaction  
37 constituting a "consignment" as defined in Section 9-102 [Maine  
38 cite section 9-1102]. SP1 does not file a financing statement.  
39 Debtor then grants a security interest in the goods to SP2. SP2  
40 files a proper financing statement. Assuming Debtor is a mere  
41 bailee, as in a "true" consignment, Debtor would not have any  
42 rights in the collateral (beyond those of a bailee) so as to  
43 permit SP2's security interest to attach to any greater rights.  
44 Nevertheless, under this section, for purposes of determining the  
45 rights of Debtor's creditors, Debtor is deemed to acquire SP1's  
46 rights. Accordingly, SP2's security interest attaches, is  
47 perfected by the filing, and, under Section 9-322 [Maine cite  
48 section 9-1322], is senior to SP1's interest.

2 3. **Effect of Perfection.** Subsection (b) [Maine cite  
3 subsection (2)] contains a special rule with respect to  
4 consignments that are perfected. If application of this Article  
5 would result in the consignor having priority over a competing  
6 creditor, then other law determines the rights and title of the  
7 consignee.

8 **Example 2:** SP1 delivers goods to Debtor in a transaction  
9 constituting a "consignment" as defined in Section 9-102 [Maine  
10 cite section 9-1102]. SP1 files a proper financing statement.  
11 Debtor then grants a security interest in the goods to SP2.  
12 Under Section 9-322 [Maine cite section 9-1322], SP-1's security  
13 interest is senior to SP-2's. Subsection (b) [Maine cite  
14 subsection (2)] indicates that, for purposes of determining  
15 SP-2's rights, other law determines the rights and title of the  
16 consignee. If, for example, a consignee obtains only the  
17 special property of a bailee, then SP-2's security interest would  
18 attach only to that special property.

19 **Example 3:** SP-1 obtains a security interest in all Debtor's  
20 existing and after-acquired inventory. SP-1 perfects its  
21 security interest with a proper filing. Then SP2 delivers goods  
22 to Debtor in a transaction constituting a "consignment" as  
23 defined in Section 9-102 [Maine cite section 9-1102]. SP2 files  
24 a proper financing statement but does not send notification to  
25 SP-1 under Section 9-324(b) [Maine cite section 9-1324,  
26 subsection (2)]. Accordingly, SP-2's security interest is junior  
27 to SP-1's under Section 9-322(a) [Maine cite section 9-1322,  
28 subsection (1)]. Under Section 9-319(a) [Maine cite section  
29 9-1319, subsection (1)], Debtor is deemed to have the consignor's  
30 rights and title, so that SP-1's security interest attaches to  
31 SP-2's ownership interest in the goods. Thereafter, Debtor  
32 grants a security interest in the goods to SP-3, and SP-3  
33 perfects by filing. Because SP-2's perfected security interest  
34 is senior to SP-3's under Section 9-322(a) [Maine cite section  
35 9-1322, subsection (1)], Section 9-319(b) [Maine cite section  
36 9-1319, subsection (2)] applies: Other law determines Debtor's  
37 rights and title to the goods insofar as SP-3 is concerned, and  
38 SP-3's security interest attaches to those rights.

39 **§9-1320. Buyer of goods**

40  
41 (1) Except as otherwise provided in subsection (5), a buyer  
42 in ordinary course of business, other than a person buying farm  
43 products from a person engaged in farming operations, takes free  
44 of a security interest created by the buyer's seller, even if the  
45 security interest is perfected and the buyer knows of its  
46 existence.  
47  
48



2 excludes from its operation buyers of "farm products"(defined in  
3 Section 9-102 [Maine cite section 9-1102]) from a person engaged  
4 in farming operations. The buyer in ordinary course of business  
5 is defined as one who buys goods "in good faith, without  
6 knowledge that the sale violates the rights of another person and  
7 in the ordinary course." Subsection (a) [Maine cite subsection  
8 (1)] provides that such a buyer takes free of a security  
9 interest, even though perfected, and even though the buyer knows  
10 the security interest exists. Reading the definition together  
11 with the rule of law results in the buyer's taking free if the  
12 buyer merely knows that a security interest covers the goods but  
13 taking subject if the buyer knows, in addition, that the sale  
14 violates a term in an agreement with the secured party.

15 As did former Section 9-307(1), subsection (a) [Maine cite  
16 subsection (1)] applies only to security interests created by the  
17 seller of the goods to the buyer in ordinary course. However,  
18 under certain circumstances a buyer in ordinary course who buys  
19 goods that were encumbered with a security interest created by a  
20 person other than the seller may take free of the security  
21 interest, as Example 2 explains. See also Comment 6, below.

22  
23 **Example 1:** Manufacturer, who is in the business of  
24 manufacturing appliances, owns manufacturing equipment subject to  
25 a perfected security interest in favor of Lender. Manufacturer  
26 sells the equipment to Dealer, who is in the business of buying  
27 and selling used equipment. Buyer buys the equipment from  
28 Dealer. Even if Buyer qualifies as a buyer in the ordinary  
29 course of business, Buyer does not take free of Lender's security  
30 interest under subsection (a) [Maine cite subsection (1)],  
31 because Dealer did not create the security interest; Manufacturer  
32 did.

33  
34 **Example 2:** Manufacturer, who is in the business of  
35 manufacturing appliances, owns manufacturing equipment subject to  
36 a perfected security interest in favor of Lender. Manufacturer  
37 sells the equipment to Dealer, who is in the business of buying  
38 and selling used equipment. Lender learns of the sale but does  
39 nothing to assert its security interest. Buyer buys the  
40 equipment from Dealer. Inasmuch as Lender's acquiescence  
41 constitutes an "entrusting" of the goods to Dealer within the  
42 meaning of Section 2-403(3) Buyer takes free of Lender's security  
43 interest under Section 2-403(2) if Buyer qualifies as a buyer in  
44 ordinary course of business.

45 **4. Buyers of Farm Products.** This section does not enable a  
46 buyer of farm products to take free of a security interest  
47 created by the seller, even if the buyer is a buyer in ordinary  
48 course of business. However, a buyer of farm products may take

2 free of a security interest under Section 1324 of the Food  
Security Act of 1985, 7 U.S.C. § 1631.

4           **5. Buyers of Consumer Goods.** Subsection (b) [Maine cite  
subsection (2)], which derives from former Section 9-307(2),  
6 deals with buyers of collateral that the debtor-seller holds as  
"consumer goods" (defined in Section 9-102 [Maine cite section  
8 9-1102]). Under Section 9-309(1) [Maine cite section 9-1309,  
subsection (1)], a purchase-money interest in consumer goods,  
10 except goods that are subject to a statute or treaty described in  
Section 9-311(a) [Maine cite section 9-1311, subsection (1)]  
12 (such as automobiles that are subject to a certificate-of-title  
statute), is perfected automatically upon attachment. There is  
14 no need to file to perfect. Under subsection (b) [Maine cite  
subsection (2)] a buyer of consumer goods takes free of a  
16 security interest, even though perfected, if the buyer buys (1)  
without knowledge of the security interest, (2) for value, (3)  
18 primarily for the buyer's own personal, family, or household  
purposes, and (4) before a financing statement is filed.  
20

22           As to purchase money security interests which are perfected  
without filing under Section 9-309(1) [Maine cite section 9-1309,  
24 subsection (1)]: A secured party may file a financing statement,  
although filing is not required for perfection. If the secured  
26 party does file, all buyers take subject to the security  
interest. If the secured party does not file, a buyer who meets  
28 the qualifications stated in the preceding paragraph takes free  
of the security interest.

30           As to security interests for which a perfection step is  
required: This category includes all nonpurchase-money security  
32 interests, and all security interests, whether or not  
purchase-money, in goods subject to a statute or treaty described  
34 in Section 9-311(a) [Maine cite section 9-1311, subsection (1)],  
such as automobiles covered by a certificate-of-title statute.  
36 As long as the required perfection step has not been taken and  
the security interest remains unperfected, not only the buyers  
38 described in subsection (b) [Maine cite subsection (2)] but also  
the purchasers described in Section 9-317 [Maine cite section  
40 9-1317] will take free of the security interest. After a  
financing statement has been filed or the perfection requirements  
42 of the applicable certificate-of-title statute have been complied  
with (compliance is the equivalent of filing a financing  
44 statement; see Section 9-311(b) [Maine cite section 9-1311,  
subsection (2)]), all subsequent buyers, under the rule of  
46 subsection (b) [Maine cite subsection (2)], are subject to the  
security interest.  
48

50           The rights of a buyer under subsection (b) [Maine cite  
subsection (2)] turn on whether a financing statement has been

2 filed against consumer goods. Occasionally, a debtor changes his  
3 or her location after a filing is made. Subsection (c) [Maine  
4 cite subsection (3)], which derives from former Section  
5 9-103(1)(d)(iii), deals with the continued effectiveness of the  
6 filing under those circumstances. It adopts the rules of  
7 Sections 9-316(a) and (b) [Maine cite section 9-1316, subsections  
8 (1) and (2)]. These rules are explained in the Comments to that  
9 section.

10 **6. Authorized Dispositions.** The limitations that  
11 subsections (a) and (b) [Maine cite subsections (1) and (2)]  
12 impose on the persons who may take free of a security interest  
13 apply of course only to unauthorized sales by the debtor. If the  
14 secured party authorized the sale in an express agreement or  
15 otherwise, the buyer takes free under Section 9-315(a) [Maine  
16 cite section 9-1315, subsection (1)] without regard to the  
17 limitations of this section. (That section also states the right  
18 of a secured party to the proceeds of a sale, authorized or  
19 unauthorized.) Moreover, the buyer also takes free if the  
20 secured party waived or otherwise is precluded from asserting its  
21 security interest against the buyer. See Section 1-103.

22 **7. Oil, Gas and Other Minerals.** Under subsection (d)  
23 [Maine cite subsection (4)], a buyer in ordinary course of  
24 business of minerals at the wellhead or minehead or after  
25 extraction takes free of a security interest created by the  
26 seller. Specifically, it provides that qualified buyers take  
27 free not only of Article 9 [Maine cite Article 9-A] security  
28 interests but also of interests "arising out of an encumbrance."  
29 As defined in Section 9-102 [Maine cite section 9-1102], the term  
30 "encumbrance" means "a right, other than an ownership interest,  
31 in real property." Thus, to the extent that a mortgage encumbers  
32 minerals not only before but also after extraction, subsection  
33 (d) [Maine cite subsection (4)] enables a buyer in ordinary  
34 course of the minerals to take free of the mortgage. This  
35 subsection does not, however, enable these buyers to take free of  
36 interests arising out of ownership interests in the real  
37 property. This issue is significant only in a minority of  
38 states. Several of them have adopted special statutes and  
39 nonuniform amendments to Article 9 to provide special protections  
40 to mineral owners, whose interests often are highly  
41 fractionalized in the case of oil and gas. See Terry I. Cross,  
42 Oil and Gas Product Liens--Statutory Security Interests for  
43 Producers and Royalty Owners Under the Statutes of Kansas, New  
44 Mexico, Oklahoma, Texas and Wyoming, 50 Consumer Fin. L. Q. Rep.  
45 418 (1996). Inasmuch as a complete resolution of the issue would  
46 require the addition of complex provisions to this Article, and  
47 there are good reasons to believe that a uniform solution would  
48 not be feasible, this Article leaves its resolution to other  
49 legislation.

2           **8. Possessory Security Interests.** Subsection (e) [Maine  
cite subsection (5)] is new. It rejects the holding of *Tanbro*  
4 *Fabrics Corp. v. Deering Milliken, Inc.*, 350 N.E.2d 590 (N.Y.  
1976) and, together with Section 9-317(b) [Maine cite section  
6 9-1317, subsection (2)], prevents a buyer of goods collateral  
8 from taking free of a security interest if the collateral is in  
the possession of the secured party. "The secured party"  
10 referred in subsection (e) [Maine cite subsection (5)] is the  
holder of the security interest referred to in subsection (a) or  
12 (b) [Maine cite subsection (1) or (2)]. Section 9-313 [Maine  
cite section 9-1313] determines whether a secured party is in  
14 possession for purposes of this section. Under some  
circumstances, Section 9-313 [Maine cite section 9-1313] provides  
16 that a secured party is in possession of collateral even if the  
collateral is in the physical possession of a third party.

18           **§9-1321. Licensee of general intangible and lessee of goods in**  
20                                   **ordinary course of business**

22           (1) In this section, "licensee in ordinary course of  
business" means a person that becomes a licensee of a general  
24 intangible in good faith, without knowledge that the license  
violates the rights of another person in the general intangible  
and in the ordinary course from a person in the business of  
26 licensing general intangibles of that kind. A person becomes a  
licensee in the ordinary course if the license to the person  
28 comports with the usual or customary practices in the kind of  
business in which the licensor is engaged or with the licensor's  
30 own usual or customary practices.

32           (2) A licensee in ordinary course of business takes its  
rights under a nonexclusive license free of a security interest  
34 in the general intangible created by the licensor, even if the  
security interest is perfected and the licensee knows of its  
36 existence.

38           (3) A lessee in ordinary course of business takes its  
leasehold interest free of a security interest in the goods  
40 created by the lessor, even if the security interest is perfected  
and the lessee knows of its existence.

42                                   **Official Comment**

44           1. **Source.** Derived from Sections 2A-103(1)(o), 2A307(3).

46           2. **Licensee in Ordinary Course.** Like the analogous rules  
48 in Section 9-320(a) [Maine cite section 9-1320, subsection (1)]  
with respect to buyers in ordinary course and subsection (c)  
50 [Maine cite subsection (3)] with respect to lessees in ordinary

2 course, the new rule in subsection (b) [Maine cite subsection  
3 (2)] reflects the expectations of the parties and the  
4 marketplace: a licensee under a nonexclusive license takes  
5 subject to a security interest unless the secured party  
6 authorizes the license free of the security interest or other,  
7 controlling law such as that of this section (protecting  
8 ordinary-course licensees) dictates a contrary result. See  
9 Sections 9-201, 9-315 [Maine cite sections 9-1201, 9-1315]. The  
10 definition of "licensee in ordinary course of business" in  
11 subsection (a) [Maine cite subsection (1)] is modeled upon that  
12 of "buyer in ordinary course of business."

13  
14 3. **Lessee in Ordinary Course.** Subsection (c) [Maine cite  
15 subsection (3)] contains the rule formerly found in Section  
16 2A-307(3). The rule works in the same way as that of Section  
17 9-320(a) [Maine cite section 9-1320, subsection (1)].

18 **§9-1322. Priorities among conflicting security interests in and**  
19 **agricultural liens on same collateral**

20  
21 (1) Except as otherwise provided in this section, priority  
22 among conflicting security interests and agricultural liens in  
23 the same collateral is determined according to the following  
24 rules.

25  
26 (a) Conflicting perfected security interests and  
27 agricultural liens rank according to priority in time of  
28 filing or perfection. Priority dates from the earlier of  
29 the time a filing covering the collateral is first made or  
30 the security interest or agricultural lien is first  
31 perfected, if there is no period thereafter when there is  
32 neither filing nor perfection.

33  
34 (b) A perfected security interest or agricultural lien has  
35 priority over a conflicting unperfected security interest or  
36 agricultural lien.

37  
38 (c) The first security interest or agricultural lien to  
39 attach or become effective has priority if conflicting  
40 security interests and agricultural liens are unperfected.

41  
42 (2) For the purposes of subsection (1), paragraph (a):

43  
44 (a) The time of filing or perfection as to a security  
45 interest in collateral is also the time of filing or  
46 perfection as to a security interest in proceeds; and

47  
48 (b) The time of filing or perfection as to a security  
interest in collateral supported by a supporting obligation



2           is also the time of filing or perfection as to a security  
3           interest in the supporting obligation.

4           (3) Except as otherwise provided in subsection (6), a  
5           security interest in collateral that qualifies for priority over  
6           a conflicting security interest under section 9-1327, 9-1328,  
7           9-1329, 9-1330, or 9-1331 also has priority over a conflicting  
8           security interest in:

10           (a) Any supporting obligation for the collateral; and

12           (b) Proceeds of the collateral if:

14                   (i) The security interest in proceeds is perfected;

16                   (ii) The proceeds are cash proceeds or of the same  
17                   type as the collateral; and

18                   (iii) In the case of proceeds that are proceeds of  
19                   proceeds, all intervening proceeds are cash proceeds,  
20                   proceeds of the same type as the collateral or an  
21                   account relating to the collateral.

24           (4) Subject to subsection (5) and except as otherwise  
25           provided in subsection (6), if a security interest in chattel  
26           paper, deposit accounts, negotiable documents, instruments,  
27           investment property or letter-of-credit rights is perfected by a  
28           method other than filing, conflicting perfected security  
29           interests in proceeds of the collateral rank according to  
30           priority in time of filing.

32           (5) Subsection (4) applies only if the proceeds of the  
33           collateral are not cash proceeds, chattel paper, negotiable  
34           documents, instruments, investment property or letter-of-credit  
35           rights.

36           (6) Subsections (1) to (5) are subject to:

38                   (a) Subsection (7) and the other provisions of this Part;

40                   (b) Section 4-210 with respect to a security interest of a  
41                   collecting bank;

44                   (c) Section 5-1118 with respect to a security interest of an  
45                   issuer or nominated person; and

46                   (d) Section 9-1110 with respect to a security interest  
47                   arising under Article 2 or 2A.



are unperfected, the first to attach has priority. Note that  
2 Section 9-708(b) [Maine cite section 9-1708, subsection (2)] may  
affect the application of subsection (a) [Maine cite subsection  
4 (1)] to a filing that occurred before the effective date of this  
Article and which would be ineffective to perfect a security  
6 interest under former Article 9 but effective under this  
Article.

8  
4. **Competing Perfected Security Interests.** When there is  
10 more than one perfected security interest, the security interests  
rank according to priority in time of filing or perfection.  
12 "Filing," of course, refers to the filing of an effective  
financing statement. "Perfection" refers to the acquisition of a  
14 perfected security interest, i.e., one that has attached and as  
to which any required perfection step has been taken. See  
16 Section 9-308 [Maine cite section 9-1308].

18 **Example 1:** On February 1, A files a financing statement  
covering a certain item of Debtor's equipment. On March 1, B  
20 files a financing statement covering the same equipment. On  
April 1, B makes a loan to Debtor and obtains a security interest  
22 in the equipment. On May 1, A makes a loan to Debtor and obtains  
a security interest in the same collateral. A has priority even  
24 though B's loan was made earlier and was perfected when made. It  
makes no difference whether A knew of B's security interest when  
26 A made its advance.

28 The problem stated in Example 1 is peculiar to a  
notice-filing system under which filing may occur before the  
30 security interest attaches (see Section 9-502 [Maine cite section  
9-1502]). The justification for determining priority by order of  
32 filing lies in the necessity of protecting the filing system—that  
is, of allowing the first secured party who has filed to make  
34 subsequent advances without each time having to check for  
subsequent filings as a condition of protection. Note, however,  
36 that this first-to-file protection is not absolute. For example,  
Section 9-324 [Maine cite section 9-1324] affords priority to  
38 certain purchase-money security interests, even if a competing  
secured party was the first to file or perfect.

40  
**Example 2:** A and B make nonpurchase-money advances secured  
42 by the same collateral. The collateral is in Debtor's  
possession, and neither security interest is perfected when the  
44 second advance is made. Whichever secured party first perfects  
its security interest (by taking possession of the collateral or  
46 by filing) takes priority. It makes no difference whether that  
secured party knows of the other security interest at the time it  
48 perfects its own.

2 The rule of subsection (a)(1) [Maine cite subsection (1),  
3 paragraph (a)], affording priority to the first to file or  
4 perfect, applies to security interests that are perfected by any  
5 method, including temporarily (Section 9-312 [Maine cite section  
6 9-1312]) or upon attachment (Section 9-309 [Maine cite section  
7 9-1309]), even though there may be no notice to creditors or  
8 subsequent purchasers and notwithstanding any common-law rule to  
9 the contrary. The form of the claim to priority, i.e., filing or  
10 perfection, may shift from time to time, and the rank will be  
11 based on the first filing or perfection as long as there is no  
12 intervening period without filing or perfection. See Section  
13 9-308(c) [Maine cite section 9-1308, subsection (3)].

14 **Example 3:** On October 1, A acquires a temporarily perfected  
15 (20-day) security interest, unfiled, in a negotiable document in  
16 the debtor's possession under Section 9-312(e) [Maine cite  
17 section 9-1312, subsection (5)]. On October 5, B files and  
18 thereby perfects a security interest that previously had attached  
19 to the same document. On October 10, A files. A has priority,  
20 even after the 20-day period expires, regardless of whether A  
21 knows of B's security interest when A files. A was the first to  
22 perfect and maintained continuous perfection or filing since the  
23 start of the 20-day period. However, the perfection of A's  
24 security interest extends only "to the extent it arises for new  
25 value given." To the extent A's security interest secures  
26 advances made by A beyond the 20-day period, its security  
27 interest would be subordinate to B's, inasmuch as B was the first  
28 to file.

30 In general, the rule in subsection (a)(1) [Maine cite  
31 subsection (1), paragraph (a)] does not distinguish among various  
32 advances made by a secured party. The priority of every advance  
33 dates from the earlier of filing or perfection. However, in rare  
34 instances, the priority of an advance dates from the time the  
35 advance is made. See Example 3 and Section 9-323 [Maine cite  
36 section 9-1323].

38 **5. Priority in After-acquired Property.** The application of  
39 the priority rules to afteracquired property must be considered  
40 separately for each item of collateral. Priority does not depend  
41 only on time of perfection but may also be based on priority in  
42 filing before perfection.

44 **Example 4:** On February 1, A makes advances to Debtor under  
45 a security agreement covering "all Debtor's machinery, both  
46 existing and after-acquired." A promptly files a financing  
47 statement. On April 1, B takes a security interest in all  
48 Debtor's machinery, existing and after-acquired, to secure an  
49 outstanding loan. The following day, B files a financing  
50 statement. On May 1, Debtor acquires a new machine. When Debtor

2 acquires rights in the new machine, both A and B acquire security  
interests in the machine simultaneously. Both security interests  
4 are perfected simultaneously. However, A has priority because A  
filed before B.

6 When after-acquired collateral is encumbered by more than  
one security interest, one of the security interests often is a  
8 purchase-money security interest that is entitled to special  
priority under Section 9-324 [Maine cite section 9-1324].

10  
12 **6. Priority in Proceeds: General Rule.** Subsection (b)(1)  
[Maine cite subsection (2), paragraph (a)] follows former Section  
9-312(6). It provides that the baseline rules of subsection (a)  
14 [Maine cite subsection (1)] apply generally to priority conflicts  
in proceeds except where otherwise provided (e.g., as in  
16 subsections (c) through (e) [Maine cite subsections (3) to  
(5)]). Under Section 9-203 [Maine cite section 9-1203],  
18 attachment cannot occur (and therefore, under Section 9-308  
[Maine cite section 9-1308], perfection cannot occur) as to  
20 particular collateral until the collateral itself comes into  
existence and the debtor has rights in it. Thus, a security  
22 interest in proceeds of original collateral does not attach and  
is not perfected until the proceeds come into existence and the  
24 debtor acquires rights in them.

26 **Example 5:** On April 1, Debtor authenticates a security  
agreement granting to A a security interest in all Debtor's  
28 existing and after-acquired inventory. The same day, A files a  
financing statement covering inventory. On May 1, Debtor  
30 authenticates a security agreement granting B a security interest  
in all Debtor's existing and future accounts. On June 1, Debtor  
32 sells inventory to a customer on 30-day unsecured credit. When  
Debtor acquires the account, B's security interest attaches to it  
34 and is perfected by B's financing statement. At the very same  
time, A's security interest attaches to the account as proceeds  
36 of the inventory and is automatically perfected. See Section  
9-315 [Maine cite section 9-1315]. Under subsection (b) [Maine  
38 cite subsection (2)] of this section, for purposes of determining  
A's priority in the account, the time of filing as to the  
40 original collateral (April 1, as to inventory) is also the time  
of filing as to proceeds (account). Accordingly, A's security  
42 interest in the account has priority over B's. Of course, had B  
filed its financing statement on before A filed (e.g., on March  
44 1), then B would have priority in the accounts.

46 Section 9-324 [Maine cite section 9-1324] governs the extent  
to which a special purchase-money priority in goods or software  
48 carries over into the proceeds of the original collateral.

2           7. **Priority in Proceeds: Special Rules.** Subsections (c),  
3 (d), and (e) [Maine cite subsections (3), (4) and (5)], which are  
4 new, provide additional priority rules for proceeds of collateral  
5 in situations where the temporal (first-in-time) rules of  
6 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] are  
7 not appropriate. These new provisions distinguish what these  
8 Comments refer to as "non-filing collateral" from what they call  
9 "filing collateral." As used in these Comments, non-filing  
10 collateral is collateral of a type for which perfection may be  
11 achieved by a method other than filing (possession or control,  
12 mainly) and for which secured parties who so perfect generally do  
13 not expect or need to conduct a filing search. More  
14 specifically, non-filing collateral is chattel paper, deposit  
15 accounts, negotiable documents, instruments, investment property,  
16 and letter-of-credit rights. Other collateral-accounts,  
17 commercial tort claims, general intangibles, goods, nonnegotiable  
18 documents, and payment intangibles-is filing collateral.

19           8. **Proceeds of Non-filing Collateral: Non-temporal**  
20 **Priority.** Subsection (c)(2) [Maine cite subsection (3),  
21 paragraph (b)] provides a baseline priority rule for proceeds of  
22 non-filing collateral which applies if the secured party has  
23 taken the steps required for non-temporal priority over a  
24 conflicting security interest in non-filing collateral (e.g.,  
25 control, in the case of deposit accounts, letter-of-credit  
26 rights, and investment property). This rule determines priority  
27 in proceeds of non-filing collateral whether or not there exists  
28 an actual conflicting security interest in the original  
29 non-filing collateral. Under subsection (c)(2) [Maine cite  
30 subsection (3), paragraph (b)], the priority in the original  
31 collateral continues in proceeds if the security interest in  
32 proceeds is perfected and the proceeds are cash proceeds or  
33 non-filing proceeds "of the same type" as the original  
34 collateral. As used in subsection (c)(2) [Maine cite subsection  
35 (3), paragraph (b)], "type" means a type of collateral defined in  
36 the Uniform Commercial Code and should be read broadly. For  
37 example, a security is "of the same type" as a security  
38 entitlement (i.e., investment property), and a promissory note  
39 is "of the same type" as a draft (i.e., an instrument).

40           **Example 6:** SP-1 perfects its security interest in  
41 investment property by filing. SP-2 perfects subsequently by  
42 taking control of a certificated security. Debtor receives cash  
43 proceeds of the security (e.g., dividends deposited into Debtor's  
44 deposit account). If the first-to-file-or-perfect rule of  
45 subsection (a)(1) were applied, SP-1's security interest in the  
46 cash proceeds would be senior, although SP-2's security interest  
47 continues perfected under Section 9-315 [Maine cite section  
48 9-1315] beyond the 20-day period of automatic perfection. This  
49 was the result under former Article 9. Under subsection (c)  
50

2 certificated security and also by filing against investment  
3 property. Debtor receives proceeds of the security consisting of  
4 a dividend check that it deposits to a deposit account. Because  
5 the check and the deposit account are cash proceeds, SP-1's and  
6 SP-2's security interests in the cash proceeds are perfected  
7 under Section 9-315 [Maine cite section 9-1315] beyond the 20-day  
8 period of automatic perfection. However, SP-2's security  
9 interest is senior under subsection (c) [Maine cite subsection  
10 (3)].

11 **Example 10:** SP-1 perfects its security interest in  
12 investment property by filing. SP-2 perfects subsequently by  
13 taking control of a certificated security and also by filing  
14 against investment property. Debtor receives an instrument as  
15 proceeds of the security. (Assume that the instrument is not  
16 cash proceeds.) Because the instrument is not of the same type  
17 as the original collateral (i.e., investment property), SP-2's  
18 security interest, although perfected by filing, does not achieve  
19 priority under subsection (c) [Maine cite subsection (3)]. Under  
20 the first-to-file-or-perfect rule of subsection (a)(1) [Maine  
21 cite subsection (1), paragraph (a)], SP-1's security interest in  
22 the proceeds is senior.

23 The proceeds of proceeds are themselves proceeds. See  
24 Section 9-102 [Maine cite section 9-1102] (defining "proceeds"  
25 and "collateral"). Sometimes competing security interests arise  
26 in proceeds that are several generations removed from the  
27 original collateral. As the following example explains, the  
28 applicability of subsection (c) [Maine cite subsection (3)] may  
29 turn on the nature of the intervening proceeds.

30 **Example 11:** SP-1 perfects its security interest in Debtor's  
31 deposit account by obtaining control. Thereafter, SP-2 files  
32 against inventory, (presumably) searches, finds no indication of  
33 a conflicting security interest, and advances against Debtor's  
34 existing and after-acquired inventory. Debtor uses funds from  
35 the deposit account to purchase inventory, which SP-1 can trace  
36 as identifiable proceeds of its security interest in Debtor's  
37 deposit account, and which SP-2 claims as original collateral.  
38 The inventory is sold and the proceeds deposited into another  
39 deposit account, as to which SP-1 has not obtained control.  
40 Subsection (c) [Maine cite subsection (3)] does not govern  
41 priority in this other deposit account. This deposit account is  
42 cash proceeds and is also the same type of collateral as SP-1's  
43 original collateral, as required by subsections (c)(2) (A) and  
44 (B) [Maine cite subsection (3), paragraph (b), subparagraphs (i)  
45 and (ii)]. However, SP-1's security interest does not satisfy  
46 subsection (c)(2) (C) [Maine cite subsection (3), paragraph (b),  
47 subparagraph (iii)] because the inventory proceeds, which  
48 intervened between the original deposit account and the deposit  
49

2 account constituting the proceeds at issue, are not cash  
3 proceeds, proceeds of the same type as the collateral (original  
4 deposit account), or an account relating to the collateral.  
5 Stated otherwise, once proceeds other than cash proceeds,  
6 proceeds of the same type as the original collateral, or an  
7 account relating to the original collateral intervene in the  
8 chain of proceeds, priority under subsection (c) [Maine cite  
9 subsection (3)] is thereafter unavailable. The special priority  
10 rule in subsection (d) [Maine cite subsection (4)] also is  
11 inapplicable to this case. See Comment 9, Example 13, below.  
12 Instead, the general first-to-file-or-perfect rule of subsections  
13 (a) and (b) [Maine cite subsections (1) and (2)] apply. Under  
14 that rule, SP-1 has priority unless its security interest in the  
15 inventory proceeds became unperfected under Section 9-315(d)  
16 [Maine cite section 9-1315, subsection (4)]. Had SP-2 filed  
17 against inventory before SP-1 obtained control of the original  
18 deposit account, the SP-2 would have had priority even if SP-1's  
19 security interest in the inventory proceeds remained perfected.

20 **9. Proceeds of Non-filing Collateral: Special Temporal**  
21 **Priority.** Under subsections (d) and (e) [Maine cite subsections  
22 (4) and (5)], if a security interest in non-filing collateral is  
23 perfected by a method other than filing (e.g., control or  
24 possession), it does not retain its priority over a conflicting  
25 security interest in proceeds that are filing collateral.  
26 Moreover, it is not entitled to priority in proceeds under the  
27 first-to file-or-perfect rule of subsections (a)(1) and (b)  
28 [Maine cite subsection (1), paragraph (a) and subsection (2)].  
29 Instead, under subsection (d) [Maine cite subsection (4)],  
30 priority is determined by a new first-to-file rule.

32 **Example 12:** SP-1 perfects its security interest in Debtor's  
33 deposit account by obtaining control. Thereafter, SP-2 files  
34 against equipment, (presumably) searches, finds no indication of  
35 a conflicting security interest, and advances against Debtor's  
36 equipment. SP-1 then files against Debtor's equipment. Debtor  
37 uses funds from the deposit account to purchase equipment, which  
38 SP-1 can trace as proceeds of its security interest in Debtor's  
39 deposit account. If the first-to-file-or-perfect rule were  
40 applied, SP-1's security interest would be senior under  
41 subsections (a)(1) and (b) [Maine cite subsection (1), paragraph  
42 (a) and subsection (2)], because it was the first to perfect in  
43 the original collateral and there was no period during which its  
44 security interest was unperfected. Under subsection (d) [Maine  
45 cite subsection (4)], however, SP-2's security interest would be  
46 senior because it filed first. This corresponds with the likely  
47 expectations of the parties.

48  
49 Note that under subsection (e) [Maine cite subsection (5)],  
50 the first-to-file rule of subsection (d) [Maine cite subsection



(4)] applies only if the proceeds in question are other than non-filing collateral (i.e., if the proceeds are filing collateral). If the proceeds are non-filing collateral, either the first-to-file-or-perfect rule under subsections (a) and (b) [Maine cite subsections (1) and (2)] or the non-temporal priority rule in subsection (c) [Maine cite subsection (3)] would apply, depending on the facts.

**Example 13:** SP-1 perfects its security interest in Debtor's deposit account by obtaining control. Thereafter, SP-2 files against inventory, (presumably) searches, finds no indication of a conflicting security interest, and advances against Debtor's existing and after-acquired inventory. Debtor uses funds from the deposit account to purchase inventory, which SP-1 can trace as identifiable proceeds of its security interest in Debtor's deposit account, and which SP-2 claims as original collateral. The inventory is sold and the proceeds deposited into another deposit account, as to which SP-1 has not obtained control. As discussed above in Comment 8, Example 11, subsection (c) [Maine cite subsection (3)] does not govern priority in this deposit account. Subsection (d) [Maine cite subsection (4)] also does not govern, because the proceeds at issue (the deposit account) are cash proceeds. See subsection (e) [Maine cite subsection (5)]. Rather, the general rules of subsections (a) and (b) [Maine cite subsections (1) and (2)] govern.

**10. Priority in Supporting Obligations.** Under subsections (b)(2) [Maine cite subsection (2), paragraph (b)] and (c)(1) [Maine cite subsection (3), paragraph (a)], a security interest having priority in collateral also has priority in a supporting obligation for that collateral. However, the rules in these subsections are subject to the special rule in Section 9-329 [Maine cite section 9-1329] governing the priority of security interests in a letter-of-credit right. See subsection (f) [Maine cite subsection (6)] . Under Section 9-329 [Maine cite section 9-1329], a secured party's failure to obtain control (Section 9-107 [Maine cite section 9-1107]) of a letter-of-credit right that serves as supporting collateral leaves its security interest exposed to a priming interest of a party who does take control.

**11. Unperfected Security Interests.** Under subsection (a)(3) [Maine cite subsection (1), paragraph (c)], if conflicting security interests are unperfected, the first to attach has priority. This rule may be of merely theoretical interest, inasmuch as it is hard to imagine a situation where the case would come into litigation without either secured party's having perfected its security interest. If neither security interest had been perfected at the time of the filing of a petition in bankruptcy, ordinarily neither would be good against the trustee in bankruptcy under the Bankruptcy Code.

2           12. **Agricultural Liens.** Statutes other than this Article  
4 may purport to grant priority to an agricultural lien as against  
6 a conflicting security interest or agricultural lien. Under  
8 subsection (g) [Maine cite subsection (7)], if another statute  
10 grants priority to an agricultural lien, the agricultural lien  
12 has priority only if the same statute creates the agricultural  
lien and the agricultural lien is perfected. Otherwise,  
subsection (a) [Maine cite subsection (1)] applies the same  
priority rules to an agricultural lien as to a security interest,  
regardless of whether the agricultural lien conflicts with  
another agricultural lien or with a security interest.

14           Inasmuch as no agricultural lien on proceeds arises under  
16 this Article, subsections (b) to (e) [Maine cite subsections (2)  
18 to (5)] do not apply to proceeds of agricultural liens. However,  
20 if an agricultural lien has priority under subsection (g) [Maine  
22 cite subsection (7)] and the statute creating the agricultural  
lien gives the secured party a lien on proceeds of the collateral  
subject to the lien, a court should apply the principle of  
subsection (g) [Maine cite subsection (7)] and award priority in  
the proceeds to the holder of the perfected agricultural lien.

24           **§9-1323. Future advances**

26           (1) Except as otherwise provided in subsection (3), for  
28 purposes of determining the priority of a perfected security  
30 interest under section 9-1322, subsection (1), paragraph (a),  
32 perfection of the security interest dates from the time an  
advance is made to the extent that the security interest secures  
an advance that:

34           (a) Is made while the security interest is perfected only:

36                   (i) Under section 9-1309 when it attaches; or

38                   (ii) Temporarily under section 9-1312, subsection (5),  
(6) or (7); and

40           (b) Is not made pursuant to a commitment entered into  
42 before or while the security interest is perfected by a  
method other than under section 9-1309 or 9-1312 subsection  
44 (5) (6) or (7).

46           (2) Except as otherwise provided in subsection (3), a  
48 security interest is subordinate to the rights of a person that  
becomes a lien creditor while the security interest is perfected  
only to the extent that it secures advances made more than 45  
50 days after the person becomes a lien creditor unless the advance  
is made:

2           (a) Without knowledge of the lien; or

4           (b) Pursuant to a commitment entered into without knowledge  
of the lien.

6           (3) Subsections (1) and (2) do not apply to a security  
interest held by a secured party that is a buyer of accounts,  
chattel paper, payment intangibles or promissory notes or a  
10 consignor.

12           (4) Except as otherwise provided in subsection (5), a buyer  
of goods other than a buyer in ordinary course of business takes  
free of a security interest to the extent that it secures  
14 advances made after the earlier of:

16           (a) The time the secured party acquires knowledge of the  
18 buyer's purchase; or

20           (b) Forty-five days after the purchase.

22           (5) Subsection (4) does not apply if the advance is made  
pursuant to a commitment entered into without knowledge of the  
24 buyer's purchase and before the expiration of the 45-day period.

26           (6) Except as otherwise provided in subsection (7), a  
lessee of goods, other than a lessee in ordinary course of  
28 business, takes the leasehold interest free of a security  
interest to the extent that it secures advances made after the  
30 earlier of:

32           (a) The time the secured party acquires knowledge of  
the lease; or

34           (b) Forty-five days after the lease contract becomes  
36 enforceable.

38           (7) Subsection (6) does not apply if the advance is made  
pursuant to a commitment entered into without knowledge of the  
40 lease and before the expiration of the 45-day period.

42                                   **Official Comment**

44           1. **Source.** Former Sections 9-312(7), 9-301(4), 9-307(3),  
2A307(4).

46           2. **Scope of This Section.** A security agreement may provide  
48 that collateral secures future advances. See Section 9-204(c)  
[Maine cite section 9-1204, subsection (3)]. This section  
50 collects all of the special rules dealing with the priority of

2 advances made by a secured party after a third party acquires an  
interest in the collateral. Subsection (a) [Maine cite  
4 subsection (1)] applies when the third party is a competing  
secured party. It replaces and clarifies former Section  
6 9-312(7). Subsection (b) [Maine cite subsection (2)] deals with  
lien creditors and replaces former Section 9-301(4). Subsections  
8 (d) and (e) [Maine cite subsections (4) and (5)] deal with buyers  
and replace former Section 9-307(3). Subsections (f) and (g)  
10 [Maine cite subsections (6) and (7)] deal with lessees and  
replace former Section 2A307(4).

12       **3. Competing Security Interests.** Under a proper reading of  
the first-to-file-or perfect rule of Section 9-322(a)(1) [Maine  
14 cite section 9-1322, subsection (1), paragraph (a)] (and former  
Section 9-312(5)), it is abundantly clear that the time when an  
16 advance is made plays no role in determining priorities among  
conflicting security interests except when a financing statement  
18 was not filed and the advance is the giving of value as the last  
step for attachment and perfection. Thus, a secured party takes  
20 subject to all advances secured by a competing security interest  
having priority under Section 9-322(a)(1) [Maine cite section  
22 9-1322, subsection (1), paragraph (a)]. This result generally  
obtains regardless of how the competing security interest is  
24 perfected and regardless of whether the advances are made  
"pursuant to commitment" (Section 9-102 [Maine cite section  
26 9-1102]). Subsection (a) [Maine cite subsection (1)] of this  
section states the only other instance when the time of an  
28 advance figures in the priority scheme in Section 9-322 [Maine  
cite section 9-1322]: when the security interest is perfected  
30 only automatically under Section 9-309 [Maine cite section  
9-1309] or temporarily under Section 9-312(e), (f), or (g) [Maine  
32 cite section 9-1312, subsection (5), (6) or (7)], and the advance  
is not made pursuant to a commitment entered into while the  
34 security interest was perfected by another method. Thus, an  
advance has priority from the date it is made only in the rare  
36 case in which it is made without commitment and while the  
security interest is perfected only temporarily under Section  
38 9-312 [Maine cite section 9-1312].

40       The new formulation in subsection (a) [Maine cite subsection  
(1)] clarifies the result when the initial advance is paid and a  
42 new ("future") advance is made subsequently. Under former  
Section 9-312(7), the priority of the new advance turned on  
44 whether it was "made while a security interest is perfected."  
This section resolves any ambiguity by omitting the quoted phrase.  
46

48       **Example 1:** On February 1, A makes an advance secured by  
machinery in the debtor's possession and files a financing  
statement. On March 1, B makes an advance secured by the same  
50 machinery and files a financing statement. On April 1, A makes a

2 further advance, under the original security agreement, against  
the same machinery. A was the first to file and so, under the  
4 first-to-file-or-perfect rule of Section 9-322(a)(1) [Maine cite  
section 9-1322, subsection (1), paragraph (a)], A's security  
6 interest has priority over B's, B both as to the February 1 and  
as to the April 1 advance. It makes no difference whether A  
8 knows of B's intervening advance when A makes the second  
advance. Note that, as long as A was the first to file or  
10 perfect, A would have priority with respect to both advances if  
either A or B had perfected by taking possession of the  
12 collateral. Likewise, A would have priority if A's April 1  
advance was not made under the original agreement with the  
debtor, but was under a new agreement.

14  
**Example 2:** On October 1, A acquires a temporarily perfected  
16 (20-day) security interest, unfiled, in a negotiable document in  
the debtor's possession under Section 9-312(e) or (f) [Maine cite  
18 section 9-1312, subsection (5) or (6)]. The security interest  
secures an advance made on that day as well as future advances.  
20 On October 5, B files and thereby perfects a security interest  
that previously had attached to the same document. On October 8,  
22 A makes an additional advance. On October 10, A files. Under  
Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1),  
24 paragraph (a)], because A was the first to perfect and maintained  
continuous perfection or filing since the start of the 20-day  
26 period, A has priority, even after the 20-day period expires.  
See Section 9-322 [Maine cite section 9-1322], Comment 4, Example  
28 3. However, under this section, for purposes of Section  
9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph  
30 (a)], to the extent A's security interest secures the October 8  
advance, the security interest was perfected on October 8.  
32 Inasmuch as B perfected on October 5, B has priority over the  
October 8 advance.

34  
The rule in subsection (a) [Maine cite subsection (1)] is  
36 more liberal toward the priority of future advances than the  
corresponding rules applicable to intervening lien creditors  
38 (subsection (b) [Maine cite subsection (2)]), buyers (subsections  
(d) and (e) [Maine cite subsections (4) and (5)] , and lessees  
40 (subsections (f) and (g) [Maine cite subsections (6) and (7)]).

42 **4. Competing Lien Creditors.** Subsection (b) [Maine cite  
subsection (2)] replaces former Section 9-301(4). It addresses  
44 the problem considered by PEB Commentary No. 2 and removes the  
ambiguity that necessitated the Commentary. Former Section  
46 9-301(4) appeared to state a general rule that a lien creditor  
has priority over a perfected security interest and is "subject  
48 to" the security interest "only" in specified circumstances.  
Because that section spoke to the making of an "advance," it  
50 arguably implied that to the extent a security interest secured

2 non-advances (expenses, interest, etc.), it was junior to the  
lien creditor's interest. Under Section 9-317(a)(2) [Maine cite  
4 section 9-1317, subsection (1), paragraph (b)], a perfected  
security interest is senior to the rights of a subsequent lien  
6 creditor. Subsection (b) [Maine cite subsection (2)] of this  
section eliminates the erroneous implication of former law by  
8 providing that a perfected security interest is subordinate only  
to the extent that the specified circumstances occur.

10 As under former Section 9-301(4), a secured party's  
knowledge does not cut short the 45-day period during which  
12 future advances can achieve priority over an intervening lien  
creditor's interest. Rather, because of the impact of the rule  
14 in subsection (b) [Maine cite subsection (2)] on the question  
whether the security interest for future advances is "protected"  
16 under Section 6323(c)(2) and (d) of the Internal Revenue Code as  
amended by the Federal Tax Lien Act of 1966, the priority of the  
18 security interest for future advances over a lien creditor is  
made absolute for 45 days regardless of knowledge of the secured  
20 party concerning the lien. If, however, the advance is made  
after the 45 days, the advance will not have priority unless it  
22 was made or committed without knowledge of the lien.

24 **5. Sales of Receivables; Consignments.** Subsections (a) and  
(b) [Maine cite subsections (1) and (2)] do not apply to outright  
26 sales of accounts, chattel paper, payment intangibles, or  
promissory notes, nor do they apply to consignments.

28 **6. Competing Buyers and Lessees.** Under subsections (d) and  
30 (e) [Maine cite subsections (4) and (5)], a buyer will not take  
subject to a security interest to the extent it secures advances  
32 made after the secured party has knowledge that the buyer has  
purchased the collateral or more than 45 days after the purchase  
34 unless the advances were made pursuant to a commitment entered  
into before the expiration of the 45-day period and without  
36 knowledge of the purchase. Subsections (f) and (g) [Maine cite  
subsection (6) and (7)] provide an analogous rule for lessees.  
38 Of course, a buyer in ordinary course who takes free of the  
security interest under Section 9-320 [Maine cite section 9-1320]  
40 and a lessee in ordinary course who takes free under Section  
9-321 [Maine cite section 9-1321] are not subject to any future  
42 advances. Subsections (d) and (e) [Maine cite subsections (4)  
and (5)] replace former Section 9-307(3), and subsections (f) and  
44 (g) [Maine cite subsections (6) and (7)] replace former Section  
2A307(4). No change in meaning is intended.

46 **§9-1324. Priority of purchase-money security interests**

48 (1) Except as otherwise provided in subsection (7), a  
50 perfected purchase-money security interest in goods other than

2 inventory or livestock has priority over a conflicting security  
3 interest in the same goods, and, except as otherwise provided in  
4 section 9-1327, a perfected security interest in its identifiable  
5 proceeds also has priority, if the purchase-money security  
6 interest is perfected when the debtor receives possession of the  
7 collateral or within 20 days thereafter.

8 (2) Subject to subsection (3) and except as otherwise  
9 provided in subsection (7), a perfected purchase-money security  
10 interest in inventory has priority over a conflicting security  
11 interest in the same inventory, has priority over a conflicting  
12 security interest in chattel paper or an instrument constituting  
13 proceeds of the inventory and in proceeds of the chattel paper,  
14 if so provided in section 9-1330, and, except as otherwise  
15 provided in section 9-1327, also has priority in identifiable  
16 cash proceeds of the inventory to the extent the identifiable  
17 cash proceeds are received on or before the delivery of the  
18 inventory to a buyer, if:

19 (a) The purchase-money security interest is perfected when  
20 the debtor receives possession of the inventory;

21 (b) The purchase-money secured party sends an authenticated  
22 notification to the holder of the conflicting security  
23 interest;

24 (c) The holder of the conflicting security interest  
25 receives the notification within 5 years before the debtor  
26 receives possession of the inventory; and

27 (d) The notification states that the person sending the  
28 notification has or expects to acquire a purchase-money  
29 security interest in inventory of the debtor and describes  
30 the inventory.

31 (3) Subsection (2), paragraphs (b) to (d) apply only if the  
32 holder of the conflicting security interest had filed a financing  
33 statement covering the same types of inventory;

34 (a) If the purchase-money security interest is perfected by  
35 filing, before the date of the filing; or

36 (b) If the purchase-money security interest is temporarily  
37 perfected without filing or possession under section 9-1312,  
38 subsection (6) before the beginning of the 20-day period  
39 thereunder.

40 (4) Subject to subsection (5) and except as otherwise  
41 provided in subsection (7), a perfected purchase-money security  
42 interest in livestock that are farm products has priority over a  
43 perfected purchase-money security interest in other livestock  
44 that are farm products.

2 conflicting security interest in the same livestock, and, except  
3 as otherwise provided in section 9-1327, a perfected security  
4 interest in their identifiable proceeds and identifiable products  
5 in their unmanufactured states also has priority, if:

6 (a) The purchase-money security interest is perfected when  
7 the debtor receives possession of the livestock;

8  
9 (b) The purchase-money secured party sends an authenticated  
10 notification to the holder of the conflicting security  
11 interest;

12  
13 (c) The holder of the conflicting security interest  
14 receives the notification within 6 months before the debtor  
15 receives possession of the livestock; and

16  
17 (d) The notification states that the person sending the  
18 notification has or expects to acquire a purchase-money  
19 security interest in livestock of the debtor and describes  
20 the livestock.

21  
22 (5) Subsection (4), paragraphs (b) to (d) apply only if the  
23 holder of the conflicting security interest had filed a financing  
24 statement covering the same types of livestock;

25  
26 (a) If the purchase-money security interest is perfected by  
27 filing, before the date of the filing; or

28  
29 (b) If the purchase-money security interest is temporarily  
30 perfected without filing or possession under section 9-1312,  
31 subsection (6), before the beginning of the 20-day period  
32 thereunder.

33  
34 (6) Except as otherwise provided in subsection (7), a  
35 perfected purchase-money security interest in software has  
36 priority over a conflicting security interest in the same  
37 collateral, and, except as otherwise provided in section 9-1327,  
38 a perfected security interest in its identifiable proceeds also  
39 has priority, to the extent that the purchase-money security  
40 interest in the goods in which the software was acquired for use  
41 has priority in the goods and proceeds of the goods under this  
42 section.

43  
44 (7) If more than one security interest qualifies for  
45 priority in the same collateral under subsection (1), (2), (4) or  
46 (6):

47  
48 (a) A security interest securing an obligation incurred as  
49 all or part of the price of the collateral has priority over  
50 a security interest securing an obligation incurred for



2 value given to enable the debtor to acquire rights in or the  
3 use of collateral; and

4 (b) In all other cases, section 9-1322, subsection (1)  
5 applies to the qualifying security interests.

6  
7 **Official Comment**

8  
9 1. **Source.** Former Section 9-312(3), (4).

10  
11 2. **Priority of Purchase-money Security Interests.** This  
12 section contains the priority rules applicable to purchase-money  
13 security interests, as defined in Section 9-103 [Maine cite  
14 section 9-1103]. It affords a special, non-temporal priority to  
15 those purchase-money security interests that satisfy the  
16 statutory conditions. In most cases, priority will be over a  
17 security interest asserted under an afteracquired property  
18 clause. See Section 9-204 [Maine cite section 9-1204] on the  
19 extent to which security interests in afteracquired property are  
20 validated.

21  
22 A purchase-money security interest can be created only in  
23 goods and software. See Section 9-103 [Maine cite section  
24 9-1103]. Section 9-324(a) [Maine cite section 9-1324, subsection  
25 (1)], which follows former Section 9-312(4), contains the general  
26 rule for purchase-money security interests in goods. It is  
27 subject to subsections (b) and (c) [Maine cite subsections (2)  
28 and (3)], which derive from former Section 9-312(3) and apply to  
29 purchase-money security interests in inventory, and subsections  
30 (d) and (e) [Maine cite subsections (4) and (5)], which apply to  
31 purchase-money security interests in livestock that are farm  
32 products. Subsection (f) [Maine cite subsection (6)] applies to  
33 purchase-money security interests in software. Subsection (g)  
34 [Maine cite subsection (7)] deals with the relatively unusual  
35 case in which a debtor creates two purchase-money security  
36 interests in the same collateral and both security interests  
37 qualify for special priority under one of the other subsections.

38  
39 Former Section 9-312(2) contained a rule affording special  
40 priority to those who provided secured credit that enabled a  
41 debtor to produce crops. This rule proved unworkable and has  
42 been eliminated from this Article. Instead, model Section  
43 9-324A [Maine cite section 9-1324-A] contains a revised  
44 production-money priority rule. That section is a model, not  
45 uniform, provision. The sponsors of the UCC have taken no  
46 position as to whether it should be enacted, instead leaving the  
47 matter for state legislatures to consider if they are so inclined.

48  
49 3. **Purchase-money Priority in Goods Other Than Inventory**  
50 **and Livestock.** Subsection (a) [Maine cite subsection (1)] states

2 a general rule applicable to all types of goods except inventory  
and farm-products livestock: the purchase-money interest takes  
4 priority if it is perfected when the debtor receives possession  
of the collateral or within 20 days thereafter. (As to the  
6 20-day "grace period," compare Section 9-317(e) [Maine cite  
section 9-1317, subsection (5)]. Former Sections 9-312(4) and  
8 9-301(2) contained a 10-day grace period.) The perfection  
requirement means that the purchase-money secured party either  
10 has filed a financing statement before that time or has a  
temporarily perfected security interest in goods covered by  
12 documents under Section 9-312(e) and (f) [Maine cite section  
9-1312, subsections (5) and (6)] which is continued in a  
14 perfected status by filing before the expiration of the 20-day  
period specified in that section. A purchase-money security  
16 interest qualifies for priority under subsection (a) [Maine cite,  
subsection (1)], even if the purchase-money secured party knows  
18 that a conflicting security interest has been created and or that  
the holder of the conflicting interest has filed a financing  
statement covering the collateral.

20  
22 Normally, there will be no question when "the debtor  
receives possession of the collateral" for purposes of subsection  
(a) [Maine cite subsection (1)]. However, sometimes a debtor  
24 buys goods and takes possession of them in stages, and then  
assembly and testing are completed (by the seller or  
26 debtor-buyer) at the debtor's location. Under those  
circumstances, the buyer "takes possession" within the meaning of  
28 subsection (a) [Maine cite subsection (1)] when, after an  
inspection of the portion of the goods in the debtor's  
30 possession, it would be apparent to a potential lender to the  
debtor that the debtor has acquired an interest in the goods  
32 taken as a whole.

34 A similar issue concerning the time when "the debtor  
receives possession" arises when a person acquires possession of  
36 goods under a transaction that is not governed by this Article  
and then later agrees to buy the goods on secured credit. For  
38 example, a person may take possession of goods as lessee under a  
lease contract and then exercise an option to purchase the goods  
40 from the lessor on secured credit. Under Section 2A-307(1),  
creditors of the lessee generally take subject to the lease  
42 contract; filing a financing statement against the lessee is  
unnecessary to protect the lessor's leasehold or residual  
44 interest. Once the lease is converted to a security interest,  
filing a financing statement is necessary to protect the seller's  
46 (former lessor's) security interest. Accordingly, the 20-day  
period in subsection (a) does not commence until a the goods  
48 become "collateral" (defined in Section 9-102 [Maine cite section  
9-1102]), i.e., until they are subject to a security interest.

50

4. **Purchase-money Security Interests in Inventory.**

2 Subsections (b) and (c) [Maine cite subsections (2) and (3)]  
4 afford a means by which a purchase-money security interest in  
6 inventory can achieve priority over an earlier-filed security  
8 interest in the same collateral. To achieve priority, the  
10 purchase-money security interest must be perfected when the  
debtor receives possession of the inventory. For a discussion of  
when "the debtor receives possession," see Comment 3, above. The  
20-day grace period of subsection (a) [Maine cite subsection (1)]  
does not apply.

12 The arrangement between an inventory secured party and its  
14 debtor typically requires the secured party to make periodic  
16 advances against incoming inventory or periodic releases of old  
18 inventory as new inventory is received. A fraudulent debtor may  
20 apply to the secured party for advances even though it has  
22 already given a purchase-money security interest in the inventory  
24 to another secured party. For this reason, subsections (b)(2)  
26 through (4) and (c) [Maine cite subsection (2), paragraphs (b) to  
28 (d) and subsection (3)] impose a second condition for the  
purchase-money security interest's achieving priority: the  
purchase-money secured party must give notification to the holder  
of a conflicting security interest who filed against the same  
item or type of inventory before the purchase-money secured party  
filed or its security interest became perfected temporarily under  
Section 9-312(e) or (f) [Maine cite section 9-1312, subsection  
(5) or (6)]. The notification requirement protects the  
non-purchase-money inventory secured party in such a situation:  
if the inventory secured party has received notification, it  
presumably will not make an advance; if it has not received  
notification (or if the other security interest does not qualify  
as purchase-money), any advance the inventory secured party may  
make ordinarily will have priority under Section 9-322 [Maine  
cite section 9-1322]. Inasmuch as an arrangement for periodic  
advances against incoming goods is unusual outside the inventory  
field, subsection (a) [Maine cite subsection (1)] does not  
contain a notification requirement.

5. **Notification to Conflicting Inventory Secured Party:**

40 **Timing.** Under subsection (b)(3) [Maine cite subsection (2),  
42 paragraph (c)] , the perfected purchase-money security interest  
44 achieves priority over a conflicting security interest only if  
46 the holder of the conflicting security interest receives a  
notification within five years before the debtor receives  
possession of the purchase-money collateral. If the debtor never  
receives possession, the five-year period never begins, and the  
purchase-money security interest has priority, even if  
48 notification is not given. However, where the purchase-money  
inventory financing began by the purchase-money secured party's  
50 possession of a negotiable document of title, to retain priority

2 the secured party must give the notification required by  
3 subsection (b) [Maine cite subsection (2)] at or before the usual  
4 time, i.e., when the debtor gets possession of the inventory,  
5 even though the security interest remains perfected for 20 days  
6 under Section 9312 (e) or (f) [Maine cite section 9-1312,  
7 subsection (5) or (6)].

8 Some people have mistakenly read former Section 9-312(3)(b)  
9 to require, as a condition of purchase-money priority in  
10 inventory, that the purchase-money secured party give the  
11 notification before it files a financing statement. Read  
12 correctly, the "before" clauses compare (i) the time when the  
13 holder of the conflicting security interest filed a financing  
14 statement with (ii) the time when the purchase-money security  
15 interest becomes perfected by filing or automatically perfected  
16 temporarily. Only if (i) occurs before (ii) must notification be  
17 given to the holder of the conflicting security interest.  
18 Subsection (c) [Maine cite subsection (3)] has been rewritten to  
19 clarify this point.

20  
21 **6. Notification to Conflicting Inventory Secured Party:**  
22 **Address.** Inasmuch as the address provided as that of the secured  
23 party on a filed financing statement is an "address that is  
24 reasonable under the circumstances," the holder of a  
25 purchase-money security interest may satisfy the requirement to  
26 "send" notification to the holder of a conflicting security  
27 interest in inventory by sending a notification to that address,  
28 even if the address is or becomes incorrect. See Section 9-102  
29 [Maine cite section 9-1102] (definition of "send"). Similarly,  
30 because the address is "held out by [the holder of the  
31 conflicting security interest] as the place for receipt of such  
32 communications [i.e., communications relating to security  
33 interests]," the holder is deemed to have "received" a  
34 notification delivered to that address. See Section 1-201(26).

35  
36 **7. Consignments.** Subsections (b) and (c) [Maine cite  
37 subsections (2) and (3)] also determine the priority of a  
38 consignor's interest in consigned goods as against a security  
39 interest in the goods created by the consignee. Inasmuch as a  
40 consignment subject to this Article is defined to be a  
41 purchase-money security interest, see Section 9-103(d) [Maine  
42 cite section 9-1103, subsection (4)], no inference concerning the  
43 nature of the transaction should be drawn from the fact that a  
44 consignor uses the term "security interest" in its notice under  
45 subsection (b)(4) [Maine cite subsection (2), paragraph (d)].  
46 Similarly, a notice stating that the consignor has delivered or  
47 expects to deliver goods, properly described, "on consignment"  
48 meets the requirements of subsection (b)(4) [Maine cite  
49 subsection (2), paragraph (d)], even if it does not contain the  
50 term "security interest," and even if the transaction

2 subsequently is determined to be a security interest. Cf.  
3 Section 9-505 [Maine cite section 9-1505] (use of "consignor" and  
4 "consignee" in financing statement).

6 **8. Priority in Proceeds: General.** When the purchase-money  
7 secured party has priority over another secured party, the  
8 question arises whether this priority extends to the proceeds of  
9 the original collateral. Subsections (a), (d) and (f) [Maine  
10 cite subsections (1), (4) and (6)] give an affirmative answer,  
11 but only as to proceeds in which the security interest is  
12 perfected (see Section 9-315 [Maine cite section 9-1315]).  
13 Although this qualification did not appear in former Section  
14 9-312(4), it was implicit in that provision.

16 In the case of inventory collateral under subsection (b)  
17 [Maine cite subsection (2)], where financing frequently is based  
18 on the resulting accounts, chattel paper, or other proceeds, the  
19 special priority of the purchase-money secured interest carries  
20 over into only certain types of proceeds. As under former  
21 Section 9-312(3), the purchase-money priority in inventory under  
22 subsection (b) [Maine cite subsection (2)] carries over into  
23 identifiable cash proceeds (defined in Section 9-102 [Maine cite  
24 section 9-1102]) received on or before the delivery of the  
25 inventory to a buyer.

26 As a general matter, also like former Section 9-312(3), the  
27 purchase-money priority in inventory does *not* carry over into  
28 proceeds consisting of accounts or chattel paper. Many parties  
29 financing inventory are quite content to protect their  
30 first-priority security interest in the inventory itself. They  
31 realize that when the inventory is sold, someone else will be  
32 financing the resulting receivables (accounts or chattel paper),  
33 and the priority for inventory will not run forward to the  
34 receivables constituting the proceeds. Indeed, the cash supplied  
35 by the receivables financier often will be used to pay the  
36 inventory financing. In some situations, the party financing the  
37 inventory on a purchase-money basis makes contractual  
38 arrangements that the proceeds of receivables financing by  
39 another be devoted to paying off the inventory security interest.

40  
41 However, the purchase-money priority in inventory *does* carry  
42 over to proceeds consisting of chattel paper and its proceeds  
43 (and also to instruments) to the extent provided in Section 9-330  
44 [Maine cite section 9-1330]. Under Section 9-330(e) [Maine cite  
45 section 9-1330, subsection (5)], the holder of a purchase-money  
46 security interest in inventory is deemed to give new value for  
47 proceeds consisting of chattel paper. Taken together, Sections  
48 9-324(b) [Maine cite section 9-1324, subsection (2)] and 9-330(e)  
49 [Maine cite section 9-1330, subsection (5)] enable a  
50 purchase-money inventory secured party to obtain priority in

2 chattel paper constituting proceeds of the inventory, even if the  
secured party does not actually give new value for the chattel  
4 paper, provided the purchase-money secured party satisfies the  
other conditions for achieving priority.

6 When the proceeds of original collateral (goods or software)  
consist of a deposit account, Section 9-327 [Maine cite section  
8 9-1327] governs priority to the extent it conflicts with the  
priority rules of this section.

10  
12 **9. Priority in Accounts Constituting Proceeds of  
Inventory.** The application of the priority rules in subsection  
14 (b) [Maine cite subsection (2)] is shown by the following  
examples:

16 **Example 1:** Debtor creates a security interest in its  
existing and after-acquired inventory in favor of SP-1, who files  
18 a financing statement covering inventory. SP-2 subsequently  
takes a purchase-money security interest in certain inventory  
20 and, under subsection (b) [Maine cite subsection (2)], achieves  
priority in this inventory over SP-1. This inventory is then  
22 sold, producing accounts. Accounts are not cash proceeds, and so  
the special purchase-money priority in the inventory does not  
24 control the priority in the accounts. Rather, the  
first-to-file-or-perfect rule of Section 9-322(a)(1) [Maine cite  
26 section 9-1322, subsection (1), paragraph (a)] applies. The time  
of SP-1's filing as to the inventory is also the time of filing  
28 as to the accounts under Section 9-322 (b) [Maine cite section  
9-1322, subsection (2)]. Assuming that each security interest in  
30 the accounts proceeds remains perfected under Section 9-315  
[Maine cite section 9-1315], SP-1 has priority as to the accounts.

32  
34 **Example 2:** In Example 1, if SP-2 had filed directly against  
accounts, the date of that filing as to accounts would be  
36 compared with the date of SP-1's filing as to the inventory. The  
first filed would prevail under Section 9-322(a)(1) [Maine cite  
section 9-1322, subsection (1), paragraph (a)].

38  
40 **Example 3:** If SP-3 had filed against accounts in Example 1  
before either SP-1 or SP-2 filed against inventory, SP-3's filing  
42 against accounts would have priority over the filings of SP-1 and  
SP-2. This result obtains even though the filings against  
44 inventory are effective to continue the perfected status of  
SP-1's and SP-2's security interest in the accounts beyond the  
46 20-day period of automatic perfection. See Section 9-315 [Maine  
cite section 9-1315]. SP-1's and SP-2's position as to the  
48 inventory does not give them a claim to accounts (as proceeds of  
the inventory) which is senior to someone who has filed earlier  
against accounts. If, on the other hand, either SP-1's or SP-2's

2 filing against the inventory preceded SP-3's filing against  
accounts, SP-1 or SP-2 would outrank SP-3 as to the accounts.

4       **10. Purchase-money Security Interests in Livestock.** New  
subsections (d) and (e) [Maine cite subsections (4) and (5)]  
6 provide a purchase-money priority rule for farm-products  
livestock. They are patterned on the purchase-money priority  
8 rule for inventory found in subsections (b) and (c) [Maine cite  
subsections (2) and (3)] and include a requirement that the  
10 purchase-money secured party notify earlier-filed parties. Two  
differences between subsections (b) and (d) [Maine cite  
12 subsections (2) and (4)] are noteworthy. First, unlike the  
purchase-money inventory lender, the purchase-money livestock  
14 lender enjoys priority in all proceeds of the collateral. Thus,  
under subsection (d) [Maine cite subsection (4)], the  
16 purchase-money secured party takes priority in accounts over an  
earlier-filed accounts financier. Second, subsection (d) [Maine  
18 cite subsection (4)] affords priority in certain products of the  
collateral as well as proceeds.

20       **11. Purchase-money Security Interests in Aquatic Farm  
22 Products.** Aquatic goods produced in aquacultural operations  
(e.g., catfish raised on a catfish farm) are farm products. See  
24 Section 9-102 [Maine cite section 9-1102] (definition of "farm  
products"). The definition does not indicate whether aquatic  
26 goods are "crops," as to which the model production money  
security interest priority in Section 9-324-A [Maine cite section  
28 9-1324-A] applies, or "livestock," as to which the purchase-money  
priority in subsection (d) [Maine cite subsection (4)] of this  
30 section applies. This Article leaves courts free to determine  
the classification of particular aquatic goods on a case-by-case  
32 basis, applying whichever priority rule makes more sense in the  
overall context of the debtor's business.

34       **12. Purchase-money Security Interests in Software.**  
36 Subsection (f) [Maine cite subsection (6)] governs the priority  
of purchase-money security interests in software. Under Section  
38 9-103(c) [Maine cite section 9-1103, subsection (3)], a  
purchase-money security interest arises in software only if the  
40 debtor acquires its interest in the software for the principal  
purpose of using the software in goods subject to a  
42 purchase-money security interest. Under subsection (f) [Maine  
cite subsection (6)], a purchase-money security interest in  
44 software has the same priority as the purchase-money security  
interest in the goods in which the software was acquired for  
46 use. This priority is determined under subsections (b) and (c)  
[Maine cite subsections (2) and (3)] (for inventory) or (a)  
48 [Maine cite subsection (1)] (for other goods).

13. **Multiple Purchase-money Security Interests.** New  
2 subsection (g) [Maine cite subsection (7)] governs priority among  
4 multiple purchase-money security interests in the same  
6 collateral. It grants priority to purchase-money security  
8 interests securing the price of collateral (i.e., created in  
10 favor of the seller) over purchase-money security interests that  
secure enabling loans. Section 7.2(c) of the Restatement (3d) of  
the Law of Property (Mortgages) (1997) adopts this rule with  
respect to real property mortgages. As Comment d to that section  
explains:

12 The equities favor the vendor. Not only does the vendor  
14 part with specific real estate rather than money, but the  
16 vendor would never relinquish it at all except on the  
18 understanding that the vendor will be able to use it to  
20 satisfy the obligation to pay the price. This is the case  
22 even though the vendor may know that the mortgagor is going  
24 to finance the transaction in part by borrowing from a third  
party and giving a mortgage to secure that obligation. In  
the final analysis, the law is more sympathetic to the  
vendor's hazard of losing real estate previously owned than  
to the third party lender's risk of being unable to collect  
from an interest in real estate that never previously  
belonged to it.

26 The first-to-file-or-perfect rule of Section 9-322 [Maine  
28 cite section 9-1322] applies to multiple purchase-money security  
interests securing enabling loans.

30 **§9-1324-A. Priority of production-money security interests and**  
32 **agricultural liens**

34 (1) Except as otherwise provided in subsections (3), (4)  
36 and (5), if the requirements of subsection (2) are satisfied, a  
38 perfected production-money security interest in production-money  
crops has priority over a conflicting security interest in the  
same crops and, except as otherwise provided in section 9-1327,  
also has priority in their identifiable proceeds.

40 (2) A production-money security interest has priority under  
42 subsection (1) if:

44 (a) The production-money security interest is perfected by  
46 filing when the production-money secured party first gives  
new value to enable the debtor to produce the crops;

48 (b) The production-money secured party sends an  
50 authenticated notification to the holder of the conflicting  
security interest not less than 10 or more than 30 days  
before the production-money secured party first gives new



2 value to enable the debtor to produce the crops if the  
3 holder had filed a financing statement covering the crops  
4 before the date of the filing made by the production-money  
5 secured party; and

6 (c) The notification states that the production-money  
7 secured party has or expects to acquire a production-money  
8 security interest in the debtor's crops and provides a  
9 description of the crops.

10  
11 (3) Except as otherwise provided in subsection (4) or (5),  
12 if more than one security interest qualifies for priority in the  
13 same collateral under subsection (1), the security interests rank  
14 according to priority in time of filing under section 9-1322,  
15 subsection (1).

16  
17 (4) To the extent that a person holding a perfected  
18 security interest in production-money crops that are the subject  
19 of a production-money security interest gives new value to enable  
20 the debtor to produce the production-money crops and the value is  
21 in fact used for the production of the production-money crops,  
22 the security interests rank according to priority in time of  
23 filing under section 9-1322, subsection (1).

24  
25 (5) To the extent that a person holds both an agricultural  
26 lien and a production-money security interest in the same  
27 collateral securing the same obligations, the rules of priority  
28 applicable to agricultural liens govern priority.

30 **Official Comment**

31  
32 1. Source. New; replaces former Section 9-312(2).  
33

34  
35 2. Priority of Production-Money Security Interests and  
36 Conflicting Security Interests. This section replaces the  
37 limited priority in crops afforded by former Section 9-312(2).  
38 That priority generally was been thought to be of little value  
39 for its intended beneficiaries. This section attempts to balance  
40 the interests of the production-money secured party with those of  
41 a secured party who has previously filed a financing statement  
42 covering the crops that are to be produced. For example, to  
43 qualify for priority under this section, the production-money  
44 secured party must notify the earlier-filed secured party prior  
45 to extending the production-money credit. The notification  
46 affords the earlier secured party the opportunity to prevent  
47 subordination by extending the credit itself. Subsection (d)  
48 [Maine cite subsection (4)] makes this explicit. If the holder  
49 of a security interest in production-money crops which conflicts  
50 with a production-money security interest gives new value for the

2 production of the crops, the security interests rank according to  
3 priority in time of filing under Section 9-322(a) [Maine cite  
4 section 9-1322, subsection (1)].

6 3. Multiple Production-Money Security Interests. In the  
7 case of multiple production-money security interests that qualify  
8 for priority under subsection (a) [Maine cite subsection (1)],  
9 the first to file has priority. See subsection (c) [Maine cite  
10 subsection (3)]. Note that only a security interest perfected by  
11 filing is entitled to production-money priority. See subsection  
12 (b)(1) [Maine cite subsection (2), paragraph (a)]. Consequently,  
13 subsection (c) [Maine cite subsection (3)] does not adopt the  
14 first-to-file-or-perfect formulation.

16 4. Holder of Agricultural Lien and Production-Money  
17 Security Interest. Subsection (e) [Maine cite subsection (5)]  
18 deals with a creditor who holds both an agricultural lien and an  
19 Article 9 [Maine cite Article 9-A] production-money security  
20 interest in the same collateral. In these cases, the priority  
21 rules applicable to agricultural liens govern. The creditor can  
22 avoid this result by waiving its agricultural lien.

24 **§9-1325. Priority of security interests in transferred collateral**

26 (1) Except as otherwise provided in subsection (2), a  
27 security interest created by a debtor is subordinate to a  
28 security interest in the same collateral created by another  
29 person if:

30 (a) The debtor acquired the collateral subject to the  
31 security interest created by the other person;

32 (b) The security interest created by the other person was  
33 perfected when the debtor acquired the collateral; and

34 (c) There is no period thereafter when the security  
35 interest is unperfected.

36 (2) Subsection (1) subordinates a security interest only if  
37 the security interest:

38 (a) Otherwise would have priority solely under section  
39 9-1322, subsection (1) or section 9-1324; or

40 (b) Arose solely under section 2-711, subsection (3) or  
41 2-1508(5), subsection (5).

48 **Official Comment**

50

1. Source. New.

2  
3 2. "Double Debtor Problem." This section addresses the  
4 "double debtor" problem, which arises when a debtor acquires  
5 property that is subject to a security interest created by  
6 another debtor.

7  
8 3. Taking Subject to Perfected Security Interest. Consider  
9 the following scenario:

10  
11 Example 1: A owns an item of equipment subject to a  
12 perfected security interest in favor of SPA. A sells the  
13 equipment to B, not in the ordinary course of business. B  
14 acquires its interest subject to SPA's security interest. See  
15 Sections 9-201, 9-315(a)(1). [Maine cite section 9-1201, section  
16 9-1315, subsection (1), paragraph (a)] Under this section, if B  
17 creates a security interest in the equipment in favor of SPB,  
18 SPB's security interest is subordinate to SPA's security  
19 interest, even if SPB filed against B before SPA filed against A,  
20 and even if SPB took a purchase-money security interest.  
21 Normally, SPB could have investigated the source of the equipment  
22 and discovered SPA's filing before making an advance against the  
23 equipment, whereas SPA had no reason to search the filings  
24 against someone other than its debtor, A.

25  
26 4. Taking Subject to Unperfected Security Interest. This  
27 section applies only if the security interest in the transferred  
28 collateral was perfected when the transferee acquired the  
29 collateral. See subsection (a)(2). [Maine cite subsection (1),  
30 paragraph (b)] If this condition is not met, then the normal  
31 priority rules apply.

32  
33 Example 2: A owns an item of equipment subject to an  
34 unperfected security interest in favor of SP-A. A sells the  
35 equipment to B, who gives value and takes delivery of the  
36 equipment without knowledge of the security interest. B takes  
37 free of the security interest. See Section 9-317(b). [Maine  
38 cite section 9-1317, subsection (2)] If B then creates a  
39 security interest in favor of SPB, no priority issue arises; SPB  
40 has the only security interest in the equipment.

41  
42 Example 3: The facts are as in Example 2, except that B  
43 knows of SPA's security interest and therefore takes the  
44 equipment subject to it. If B creates a security interest in the  
45 equipment in favor of SPB, this section does not determine the  
46 relative priority of the security interests. Rather, the normal  
47 priority rules govern. If SP-B perfects its security interest,  
48 then, under Section 9-322(a)(2) [Maine cite section 9-1322,  
49 subsection (1), paragraph (b)], SPA's unperfected security  
50 interest will be junior to SPB's perfected security interest.

2 The award of priority to SPB is premised on the belief that SPA's  
failure to file could have misled SPB.

4 5. Taking Subject to Perfected Security Interest that  
6 Becomes Unperfected. This section applies only if the security  
interest in the transferred collateral did not become unperfected  
8 at any time after the transferee acquired the collateral. See  
subsection (a)(3) [Maine cite subsection (1), paragraph (c)]. If  
this condition is not met, then the normal priority rules apply.

10 Example 4: As in Example 1, A owns an item of equipment  
12 subject to a perfected security interest in favor of SPA. A  
sells the equipment to B, not in the ordinary course of  
14 business. B acquires its interest subject to SPA's security  
interest. See Sections 9-201, 9-315(a)(1) [Maine cite section  
16 9-1201; section 9-1315, subsection (1), paragraph (a)]. B  
creates a security interest in favor of SP-B, and SP-B perfects  
18 its security interest. This section provides that SP-A's  
security interest is senior to SP-B's. However, if SP-A's  
20 financing statement lapses while SPB's security interest is  
perfected, then the normal priority rules would apply, and SPB's  
22 security interest would become senior to SP-A's security  
interest. See Sections 9-322(a)(2), 9-515(c) [Maine cite section  
24 9-1322, subsection (1), paragraph (b); section 9-1515, subsection  
(3)].

26 6. Unusual Situations. The appropriateness of the rule of  
28 subsection (a) [Maine cite subsection (1)] is most apparent when  
it works to subordinate security interests having priority under  
30 the basic priority rules of Section 9-322(a) [Maine cite section  
9-1322, subsection (1)] or the purchase-money priority rules of  
32 Section 9-324 [Maine cite section 9-1324]. The rule also works  
properly when applied to the security interest of a buyer under  
34 Section 2-711(3) or a lessee under Section 2-508(5) [Maine cite  
section 9-1508, subsection (5)]. However, subsection (a) [Maine  
36 cite subsection (1)] may provide an inappropriate resolution of  
the "double debtor" problem in some of the wide variety of other  
38 contexts in which the problem may arise. Although subsection (b)  
[Maine cite subsection (2)] limits the application of subsection  
40 (a) [Maine cite subsection (1)] to those cases in which  
subordination is known to be appropriate, courts should apply the  
42 rule in other settings, if necessary to promote the underlying  
purposes and policies of the Uniform Commercial Code. See  
44 Section 1-102(1).

46 **§9-1326. Priority of security interests created by new debtor**

48 (1) Subject to subsection (2), a security interest created  
by a new debtor that is perfected by a filed financing statement  
50 that is effective solely under section 9-1508 in collateral in

2 which a new debtor has or acquires rights is subordinate to a  
3 security interest in the same collateral that is perfected other  
4 than by a filed financing statement that is effective solely  
5 under section 9-1508.

6 (2) The other provisions of this Part determine the  
7 priority among conflicting security interests in the same  
8 collateral perfected by filed financing statements that are  
9 effective solely under section 9-1508. However, if the security  
10 agreements to which a new debtor became bound as debtor were not  
11 entered into by the same original debtor, the conflicting  
12 security interests rank according to priority in time of the new  
13 debtor's having become bound.

#### 16 Official Comment

18 1. Source. New.

20 2. Subordination of Security Interests Created by New  
21 Debtor. This section addresses the priority contests that may  
22 arise when a new debtor becomes bound by the security agreement  
23 of an original debtor and each debtor has a secured creditor.

24 Subsection (a) [Maine cite subsection (1)] subordinates the  
25 original debtor's secured party's security interest perfected  
26 against the new debtor solely under Section 9-508 [Maine cite  
27 section 9-1508]. The security interest is subordinated to  
28 security interests in the same collateral perfected by another  
29 method, e.g., by filing against the new debtor. As used in this  
30 section, "a filed financing statement that is effective solely  
31 under Section 9508 [Maine cite section 9-1508]" refers to a  
32 financing statement filed against the original debtor that  
33 continues to be effective under Section 9-508 [Maine cite section  
34 9-1508]. It does not encompass a new initial financing statement  
35 providing the name of the new debtor, even if the initial  
36 financing statement is filed to maintain the effectiveness of a  
37 financing statement under the circumstances described in Section  
38 9-508(b) [Maine cite section 9-1508, subsection (2)]. Nor does  
39 it encompass a financing statement filed against the original  
40 debtor which remains effective against collateral transferred by  
41 the original debtor to the new debtor. See Section 9-508(c)  
42 [Maine cite section 9-1508, subsection (3)]. Concerning priority  
43 contests involving transferred collateral, see Sections 9-325 and  
44 9-507 [Maine cite sections 9-1325 and 9-1507].

46 Example 1: SPX holds a perfected-by-filing security  
47 interest in X Corp's existing and after-acquired inventory, and  
48 SPZ holds a perfected-by-possession security interest in an item  
49 of Z Corp's inventory. Z Corp becomes bound as debtor by X  
50

2 Corp's security agreement (e.g., Z Corp buys X Corp's assets and  
3 assumes its security agreement). See Section 9-203(d) [Maine  
4 cite section 9-1203, subsection (4)]. Under Section 9-508 [Maine  
5 cite section 9-1508], SPX's financing statement is effective to  
6 perfect a security interest in the item of inventory in which Z  
7 Corp has rights. However, subsection (a) [Maine cite subsection  
8 (1)] provides that SPX's security interest is subordinate to  
9 SPZ's, regardless of whether SP-X's financing statement was filed  
10 before SP-Z perfected its security interest.

11  
12 Example 2: SPX holds a perfected-by-filing security  
13 interest in X Corp's existing and after-acquired inventory, and  
14 SPZ holds a perfected-by-filing security interest in Z Corp's  
15 existing and after-acquired inventory. Z Corp becomes bound as  
16 debtor by X Corp's security agreement. Subsequently, Z Corp  
17 acquires a new item of inventory. Under Section 9-508 [Maine  
18 cite section 9-1508], SPX's financing statement is effective to  
19 perfect a security interest in the new item of inventory in which  
20 Z Corp has rights. However, because SP-Z's security interest was  
21 perfected by another method, subsection (a) [Maine cite  
22 subsection (1)] provides that SPX's security interest is  
23 subordinate to SPZ's, regardless of which financing statement was  
24 filed first. This would be the case even if SP-Z filed after Z  
25 Corp became bound by X Corp's security agreement.

26 3. Other Priority Rules. Subsection (b) [Maine cite  
27 subsection (2)] addresses the priority among security interests  
28 created by the original debtor (X Corp). By invoking the other  
29 priority rules of this subpart, as applicable, subsection (b)  
30 [Maine cite subsection (2)] preserves the relative priority of  
31 security interests created by the original debtor.

32  
33 Example 3: Under the facts of Example 2, SPY also holds a  
34 perfected-by-filing security interest in X Corp's existing and  
35 after-acquired inventory. SPY filed after SPX. Inasmuch as both  
36 SP-X's and SP-Y's security interests in inventory acquired by Z  
37 Corp after it became bound are perfected solely under Section  
38 9-508 [Maine cite section 9-1508], the normal priority rules  
39 determine their relative priorities. Under the  
40 "first-to-file-or-perfect" rule of Section 9-322(a)(1) [Maine  
41 cite section 9-1322, subsection (1), paragraph (a)], SPX has  
42 priority over SPY.

43  
44 Example 4: Under the facts of Example 3, after Z Corp  
45 became bound by X Corp's security agreement, SP-Y promptly filed  
46 a new initial financing statement against Z Corp. At that time,  
47 SP-X's security interest was perfected only by virtue of its  
48 original filing against X Corp which was "effective solely under  
49 Section 9508 [Maine cite section 9-1508]." Because SP-Y's  
50 security interest no longer is perfected by a financing statement

2 that is "effective solely under Section 9508 [Maine cite section  
3 9-1508]," this section does not apply to the priority contest.  
4 Rather, the normal priority rules apply. Under Section 9-322  
5 [Maine cite section 9-1322], because SP-Y's financing statement  
6 was filed against Z Corp, the new debtor, before SP-X's, SP-Y's  
7 security interest is senior to that of SP-X. Similarly, the  
8 normal priority rules would govern priority between SP-Y and SP-Z.

10 The second sentence of subsection (b) [Maine cite subsection  
11 (2)] effectively limits the applicability of the first sentence  
12 to situations in which a new debtor has become bound by more than  
13 one security agreement entered into by the same original debtor.  
14 When the new debtor has become bound by security agreements  
15 entered into by different original debtors, the second sentence  
16 provides that priority is based on priority in time of the new  
17 debtor's becoming bound.

18 Example 5: Under the facts of Example 2, SP-W holds a  
19 perfected-by-filing security interest in W Corp's existing and  
20 after-acquired inventory. After Z Corp became bound by X Corp's  
21 security agreement in favor of SP-X, Z Corp became bound by W  
22 Corp's security agreement. Under subsection (b) [Maine cite  
23 subsection (2)], SP-W's security interest in inventory acquired  
24 by Z Corp is subordinate to that of SP-X, because Z Corp became  
25 bound under SP-X's security agreement before it became bound  
26 under SP-W's security agreement. This is the result regardless  
27 of which financing statement (SP-X's or SP-W's) was filed first.

28 The second sentence of subsection (b) [Maine cite subsection  
29 (2)] reflects the generally accepted view that priority based on  
30 the first-to-file rule is inappropriate for resolving priority  
31 disputes when the filings were made against different debtors.  
32 Like subsection (a) [Maine cite subsection (1)] and the first  
33 sentence of subsection (b) [Maine cite subsection (2)], however,  
34 the second sentence of subsection (b) [Maine cite subsection (2)]  
35 relates only to priority conflicts among security interests  
36 perfected by filed financing statements that are "effective  
37 solely under Section 9508 [Maine cite section 9-1508]."

40 Example 6: Under the facts of Example 5, after Z Corp  
41 became bound by W Corp's security agreement, SP-W promptly filed  
42 a new initial financing statement against Z Corp. At that time,  
43 SP-X's security interest was perfected only pursuant to its  
44 original filing against X Corp which was "effective solely under  
45 Section 9508 [Maine cite section 9-1508]." Because SP-W's  
46 security interest is not perfected by a financing statement that  
47 is "effective solely under Section 9-508," this section does not  
48 apply to the priority contest. Rather, the normal priority rules  
49 apply. Under Section 9-322 [Maine cite section 9-1322], because  
50 SP-W's financing statement was the first to be filed against Z

2 Corp, the new debtor, SP-W's security interest is senior to that  
of SP-X. Similarly, the normal priority rules would govern  
priority between SP-W and SP-Z.

4 **§9-1327. Priority of security interests in deposit account**

6 The following rules govern priority among conflicting  
8 security interests in the same deposit account.

10 (1) A security interest held by a secured party having  
12 control of the deposit account under section 9-1104 has priority  
14 over a conflicting security interest held by a secured party that  
does not have control.

16 (2) Except as otherwise provided in subsections (3) and  
18 (4), security interests perfected by control under section 9-1314  
rank according to priority in time of obtaining control.

20 (3) Except as otherwise provided in subsection (4), a  
22 security interest held by the bank with which the deposit account  
is maintained has priority over a conflicting security interest  
held by another secured party.

24 (4) A security interest perfected by control under section  
26 9-1104, subsection (1), paragraph (c) has priority over a  
28 security interest held by the bank with which the deposit account  
is maintained.

30 **Official Comment**

32 1. Source. New; derived from former Section 9-115(5).

34 2. Scope of This Section. This section contains the rules  
governing the priority of conflicting security interests in  
36 deposit accounts. It overrides conflicting priority rules. See  
Sections 9-322(f)(1) [Maine cite section 9-1322, subsection (6),  
38 paragraph (a)], 9-324(a), (b), (d), (f) [Maine cite section  
9-1324, subsections (1), (2), (4) and (6)]. This section does  
40 not apply to accounts evidenced by an instrument (e.g., certain  
certificates of deposit), which by definition are not "deposit  
42 accounts."

44 3. Control. Under paragraph (1) [Maine cite subsection  
(1)], security interests perfected by control (Sections 9-314,  
46 9-104 [Maine cite section 9-1314, 9-1104]) take priority over  
those perfected otherwise, e.g., as identifiable cash proceeds  
48 under Section 9-315 [Maine cite section 9-1315]. Secured parties  
for whom the deposit account is an integral part of the credit  
50 decision will, at a minimum, insist upon the right to immediate



2 access to the deposit account upon the debtor's default (i.e.,  
control). Those secured parties for whom the deposit account is  
4 less essential will not take control, thereby running the risk  
that the debtor will dispose of funds on deposit (either outright  
6 or for collateral purposes) after default but before the account  
can be frozen by court order or the secured party can obtain  
control.

8  
10 Paragraph (2) [Maine cite subsection (2)] governs the case  
(expected to be very rare) in which a bank enters into a Section  
12 9-104(a)(2) [Maine cite section 9-1104, subsection (1), paragraph  
(b)] control agreement with more than one secured party. It  
14 provides that the security interests rank according to time of  
obtaining control. If the bank is solvent and the control  
16 agreements are well drafted, the bank will be liable to each  
secured party, and the priority rule will have no practical  
effect.

18  
20 4. Priority of Bank. Under paragraph (3) [Maine cite  
subsection (3)], the security interest of the bank with which the  
22 deposit account is maintained normally takes priority over all  
other conflicting security interests in the deposit account,  
24 regardless of whether the deposit account constitutes the  
competing secured party's original collateral or its proceeds. A  
26 rule of this kind enables banks to extend credit to their  
depositors without the need to examine either the public record  
or their own records to determine whether another party might  
28 have a security interest in the deposit account.

30 A secured party who takes a security interest in the deposit  
account as original collateral can protect itself against the  
32 results of this rule in one of two ways. It can take control of  
the deposit account by becoming the bank's customer. Under  
34 paragraph (4) [Maine cite subsection (4)], this arrangement  
operates to subordinate the bank's security interest.  
36 Alternatively, the secured party can obtain a subordination  
agreement from the bank. See Section 9-339 [Maine cite section  
38 9-1339].

40 A secured party who claims the deposit account as proceeds  
of other collateral can reduce the risk of becoming junior by  
42 obtaining the debtor's agreement to deposit proceeds into a  
specific cash-collateral account and obtaining the agreement of  
44 that bank to subordinate all its claims to those of the secured  
party. But if the debtor violates its agreement and deposits  
46 funds into a deposit account other than the cash-collateral  
account, the secured party risks being subordinated.

48  
50 5. Priority in Proceeds of, and Funds Transferred from,  
Deposit Account. The priority afforded by this section does not

2 extend to proceeds of a deposit account. Rather, Section  
4 9-322(c) to (e) [Maine cite section 9-1322, subsection (3) to  
6 (5)] and the provisions referred to in Section 9-322(f) [Maine  
8 cite section 9-1322, subsection (6)] govern priorities in  
10 proceeds of a deposit account. Section 9-315(d) [Maine cite  
12 section 9-1315, subsection (4)] addresses continuation of  
14 perfection in proceeds of deposit accounts. As to funds  
16 transferred from a deposit account that serves as collateral, see  
18 Section 9-332 [Maine cite section 9-1332].

20 **§9-1328. Priority of security interests in investment property**

22 The following rules govern priority among conflicting  
24 security interests in the same investment property.

26 (1) A security interest held by a secured party having  
28 control of investment property under section 9-1106 has priority  
30 over a security interest held by a secured party that does not  
32 have control of the investment property.

34 (2) Except as otherwise provided in subsections (3) and  
36 (4), conflicting security interests held by secured parties each  
38 of which has control under section 9-1106 rank according to  
40 priority in time of:

42 (a) If the collateral is a security, obtaining control;

44 (b) If the collateral is a security entitlement carried in  
46 a securities account and:

48 (i) If the secured party obtained control under  
50 section 8-1106, subsection (4), paragraph (a), the  
secured party's becoming the person for which the  
securities account is maintained;

(ii) If the secured party obtained control under  
section 8-1106, subsection (4), paragraph (b), the  
securities intermediary's agreement to comply with the  
secured party's entitlement orders with respect to  
security entitlements carried or to be carried in the  
securities account; or

(iii) If the secured party obtained control through  
another person under section 8-1106, subsection (4),  
paragraph (c), the time on which priority would be  
based under this paragraph if the other person were the  
secured party; or

(c) If the collateral is a commodity contract carried with  
a commodity intermediary, the satisfaction of the

2           requirement for control specified in section 9-1106,  
3           subsection (2), paragraph (b) with respect to commodity  
4           contracts carried or to be carried with the commodity  
5           intermediary.

6           (3) A security interest held by a securities intermediary  
7           in a security entitlement or a securities account maintained with  
8           the securities intermediary has priority over a conflicting  
9           security interest held by another secured party.

10           (4) A security interest held by a commodity intermediary in  
11           a commodity contract or a commodity account maintained with the  
12           commodity intermediary has priority over a conflicting security  
13           interest held by another secured party.

14           (5) A security interest in a certificated security in  
15           registered form that is perfected by taking delivery under  
16           section 9-1313, subsection (1) and not by control under section  
17           9-1314 has priority over a conflicting security interest  
18           perfected by a method other than control.

19           (6) Conflicting security interests created by a broker,  
20           securities intermediary or commodity intermediary that are  
21           perfected without control under section 9-1106 rank equally.

22           (7) In all other cases, priority among conflicting security  
23           interests in investment property is governed by sections 9-1322  
24           and 9-1323.

25

#### Official Comment

26

1. Source. Former Section 9-115(5).

27

28           2. Scope of This Section. This section contains the rules  
29 governing the priority of conflicting security interests in  
30 investment property. Paragraph (1) [Maine cite subsection (1)]  
31 states the most important general rule—that a secured party who  
32 obtains control has priority over a secured party who does not  
33 obtain control. Paragraphs (2) through (4) [Maine cite  
34 subsections (2) to (4)] deal with conflicting security interests  
35 each of which is perfected by control. Paragraph (5) [Maine cite  
36 subsection (5)] addresses the priority of a security interest in  
37 a certificated security which is perfected by delivery but not  
38 control. Paragraph (6) [Maine cite subsection (6)] deals with  
39 the relatively unusual circumstance in which a broker, securities  
40 intermediary, or commodity intermediary has created conflicting  
41 security interests none of which is perfected by control.  
42 Paragraph (7) [Maine cite subsection (7)] provides that the  
43 general priority rules of Sections 9322 and 9-323 [Maine cite  
44  
45  
46  
47  
48  
49  
50

2 sections 9-1322 and 9-1323] apply to cases not covered by the  
3 specific rules in this section. The principal application of  
4 this residual rule is that the usual first in time of filing rule  
5 applies to conflicting security interests that are perfected only  
6 by filing. Because the control priority rule of paragraph (1)  
7 [Maine cite subsection (1)] provides for the ordinary cases in  
8 which persons purchase securities on margin credit from their  
9 brokers, there is no need for special rules for purchase-money  
10 security interests. See also Section 9-103 [Maine cite section  
11 9-1103] (limiting purchase-money collateral to goods and  
12 software).

13  
14 3. General Rule: Priority of Security Interest Perfected  
15 by Control. Under paragraph (1) [Maine cite subsection (1)], a  
16 secured party who obtains control has priority over a secured  
17 party who does not obtain control. The control priority rule  
18 does not turn on either temporal sequence or awareness of  
19 conflicting security interests. Rather, it is a structural rule,  
20 based on the principle that a lender should be able to rely on  
21 the collateral without question if the lender has taken the  
22 necessary steps to assure itself that it is in a position where  
23 it can foreclose on the collateral without further action by the  
24 debtor. The control priority rule is necessary because the  
25 perfection rules provide considerable flexibility in structuring  
26 secured financing arrangements. For example, at the "retail"  
27 level, a secured lender to an investor who wants the full measure  
28 of protection can obtain control, but the creditor may be willing  
29 to accept the greater measure of risk that follows from  
30 perfection by filing. Similarly, at the "wholesale" level, a  
31 lender to securities firms can leave the collateral with the  
32 debtor and obtain a perfected security interest under the  
33 automatic perfection rule of Section 9-309(a)(10) [Maine cite  
34 section 9-1309, subsection (1), paragraph (j)], but a lender who  
35 wants to be entirely sure of its position will want to obtain  
36 control. The control priority rule of paragraph (1) [Maine cite  
37 subsection (1)] is an essential part of this system of  
38 flexibility. It is feasible to provide more than one method of  
39 perfecting security interests only if the rules ensure that those  
40 who take the necessary steps to obtain the full measure of  
41 protection do not run the risk of subordination to those who have  
42 not taken such steps. A secured party who is unwilling to run  
43 the risk that the debtor has granted or will grant a conflicting  
44 control security interest should not make a loan without  
45 obtaining control of the collateral.

46 As applied to the retail level, the control priority rule  
47 means that a secured party who obtains control has priority over  
48 a conflicting security interest perfected by filing without  
49 regard to inquiry into whether the control secured party was  
50 aware of the filed security interest. Prior to the 1994

2 revisions to Articles 8 and 9, Article 9 did not permit  
3 perfection of security interests in securities by filing.  
4 Accordingly, parties who deal in securities never developed a  
5 practice of searching the UCC files before conducting securities  
6 transactions. Although filing is now a permissible method of  
7 perfection, in order to avoid disruption of existing practices in  
8 this business it is necessary to give perfection by filing a  
9 different and more limited effect for securities than for some  
10 other forms of collateral. The priority rules are not based on  
11 the assumption that parties who perfect by the usual method of  
12 obtaining control will search the files. Quite the contrary, the  
13 control priority rule is intended to ensure that, with respect to  
14 investment property, secured parties who do obtain control are  
15 entirely unaffected by filings. To state the point another way,  
16 perfection by filing is intended to affect only general creditors  
17 or other secured creditors who rely on filing. The rule that a  
18 security interest perfected by filing can be primed by a control  
19 security interest, without regard to awareness, is a consequence  
20 of the system of perfection and priority rules for investment  
21 property. These rules are designed to take account of the  
22 circumstances of the securities markets, where filing is not  
23 given the same effect as for some other forms of property. No  
24 implication is made about the effect of filing with respect to  
25 security interests in other forms of property, nor about other  
26 Article 9 [Maine cite Article 9-A] rules, e.g., Section 9330  
27 [Maine cite section 9-1330], which govern the circumstances in  
28 which security interests in other forms of property perfected by  
29 filing can be primed by subsequent perfected security interests.

30 The following examples illustrate the application of the  
31 priority rule in paragraph (1) [Maine cite subsection (1)]:

32  
33 Example 1: Debtor borrows from Alpha and grants Alpha a  
34 security interest in a variety of collateral, including all of  
35 Debtor's investment property. At that time Debtor owns 1000  
36 shares of XYZ Co. stock for which Debtor has a certificate.  
37 Alpha perfects by filing. Later, Debtor borrows from Beta and  
38 grants Beta a security interest in the 1000 shares of XYZ Co.  
39 stock. Debtor delivers the certificate, properly indorsed, to  
40 Beta. Alpha and Beta both have perfected security interests in  
41 the XYZ Co. stock. Beta has control, see Section 8-106(b)(1)  
42 [Maine cite section 8-1106, subsection (2), paragraph (a)], and  
43 hence has priority over Alpha.

44  
45 Example 2: Debtor borrows from Alpha and grants Alpha a  
46 security interest in a variety of collateral, including all of  
47 Debtor's investment property. At that time Debtor owns 1000  
48 shares of XYZ Co. stock, held through a securities account with  
49 Able & Co. Alpha perfects by filing. Later, Debtor borrows from  
50 Beta and grants Beta a security interest in the 1000 shares of

2 XYZ Co. stock. Debtor instructs Able to have the 1000 shares  
transferred through the clearing corporation to Custodian Bank,  
4 to be credited to Beta's account with Custodian Bank. Alpha and  
Beta both have perfected security interests in the XYZ Co.  
6 stock. Beta has control, see Section 8-106(d)(1) [Maine cite  
section 8-1106, subsection (4), paragraph (a)], and hence has  
priority over Alpha.

8  
10 Example 3: Debtor borrows from Alpha and grants Alpha a  
security interest in a variety of collateral, including all of  
Debtor's investment property. At that time Debtor owns 1000  
12 shares of XYZ Co. stock, which is held through a securities  
account with Able & Co. Alpha perfects by filing. Later, Debtor  
14 borrows from Beta and grants Beta a security interest in the 1000  
shares of XYZ Co. stock. Debtor, Able, and Beta enter into an  
16 agreement under which Debtor will continue to receive dividends  
and distributions, and will continue to have the right to direct  
18 dispositions, but Beta will also have the right to direct  
dispositions and receive the proceeds. Alpha and Beta both have  
20 perfected security interests in the XYZ Co. stock (more  
precisely, in the Debtor's security entitlement to the financial  
22 asset consisting of the XYZ Co. stock). Beta has control, see  
Section 8-106(d)(2) [Maine cite section 8-1106, subsection (4),  
24 paragraph (b)], and hence has priority over Alpha.

26 Example 4: Debtor borrows from Alpha and grants Alpha a  
security interest in a variety of collateral, including all of  
28 Debtor's investment property. At that time Debtor owns 1000  
shares of XYZ Co. stock, held through a securities account with  
30 Able & Co. Alpha perfects by filing. Debtor's agreement with  
Able & Co. provides that Able has a security interest in all  
32 securities carried in the account as security for any obligations  
of Debtor to Able. Debtor incurs obligations to Alpha and later  
34 defaults on the obligations to Alpha and Able. Able has control  
by virtue of the rule of Section 8-106(e) [Maine cite section  
36 8-1106, subsection (5)] that if a customer grants a security  
interest to its own intermediary, the intermediary has control.  
38 Since Alpha does not have control, Able has priority over Alpha  
under the general control priority rule of paragraph (1) [Maine  
40 cite subsection (1)].

42 4. Conflicting Security Interests Perfected by Control:  
Priority of Securities Intermediary or Commodity Intermediary.  
44 Paragraphs (2) through (4) [Maine cite subsections (2) to (4)]  
govern the priority of conflicting security interests each of  
46 which is perfected by control. The following example explains  
the application of the rules in paragraphs (3) and (4) [Maine  
48 cite subsections (3) and (4)]:

2           Example 5: Debtor holds securities through a securities  
3 account with Able & Co. Debtor's agreement with Able & Co.  
4 provides that Able has a security interest in all securities  
5 carried in the account as security for any obligations of Debtor  
6 to Able. Debtor borrows from Beta and grants Beta a security  
7 interest in 1000 shares of XYZ Co. stock carried in the account.  
8 Debtor, Able, and Beta enter into an agreement under which Debtor  
9 will continue to receive dividends and distributions and will  
10 continue to have the right to direct dispositions, but Beta will  
11 also have the right to direct dispositions and receive the  
12 proceeds. Debtor incurs obligations to Able and later defaults  
13 on the obligations to Beta and Able. Both Beta and Able have  
14 control, so the general control priority rule of paragraph (1)  
15 [Maine cite subsection (1)] does not apply. Compare Example 4.  
16 Paragraph (3) [Maine cite subsection (3)] provides that a security  
17 interest held by a securities intermediary in positions of its  
18 own customer has priority over a conflicting security interest of  
19 an external lender, so Able has priority over Beta. (Paragraph  
20 (4) [Maine cite subsection (4)] contains a parallel rule for  
21 commodity intermediaries.) The agreement among Able, Beta, and  
22 Debtor could, of course, determine the relative priority of the  
23 security interests of Able and Beta, see Section 9339 [Maine cite  
24 section 9-1339], but the fact that the intermediary has agreed to  
25 act on the instructions of a secured party such as Beta does not  
26 itself imply any agreement by the intermediary to subordinate.

27  
28           5. Conflicting Security Interests Perfected by Control:  
29 Temporal Priority. Former Section 9-115 introduced into Article  
30 9 the concept of conflicting security interests that rank  
31 equally. Paragraph (2) [Maine cite subsection (2)] of this  
32 section governs priority in those circumstances in which more  
33 than one secured party (other than a broker, securities  
34 intermediary, or commodity intermediary) has control. It  
35 replaces the equal-priority rule for conflicting security  
36 interests in investment property with a temporal rule. For  
37 securities, both certificated and uncertificated, under paragraph  
38 (2)(A) [Maine cite subsection (2), paragraph (a)] priority is  
39 based on the time that control is obtained. For security  
40 entitlements carried in securities accounts, the treatment is  
41 more complex. Paragraph (2)(B) [Maine cite subsection (2),  
42 paragraph (b)] bases priority on the timing of the steps taken to  
43 achieve control. The following example illustrates the  
44 application of paragraph (2) [Maine cite subsection (2)].

45  
46           Example 6: Debtor borrows from Alpha and grants Alpha a  
47 security interest in a variety of collateral, including all of  
48 Debtor's investment property. At that time Debtor owns a  
49 security entitlement that includes 1000 shares of XYZ Co. stock  
50 that Debtor holds through a securities account with Able & Co.  
Debtor, Able, and Alpha enter into an agreement under which

2 Debtor will continue to receive dividends and distributions, and  
3 will continue to have the right to direct dispositions, but Alpha  
4 will also have the right to direct dispositions and receive the  
5 proceeds. Later, Debtor borrows from Beta and grants Beta a  
6 security interest all its investment property, existing and  
7 after-acquired. Debtor, Able, and Beta enter into an agreement  
8 under which Debtor will continue to receive dividends and  
9 distributions, and will continue to have the right to direct  
10 dispositions, but Beta will also have the right to direct  
11 dispositions and receive the proceeds. Alpha and Beta both have  
12 perfected-by-control security interests in the security  
13 entitlement to the XYZ Co. stock by virtue of their agreements  
14 with Able. See Sections 9-314(a), 9-106(a) [Maine cite section  
15 9-1314, subsection (1), section 9-1106, subsection (1)],  
16 8-106(d)(2) [Maine cite section 8-1106, subsection (4), paragraph  
17 (b)]. Under paragraph (2)(B)(ii) [Maine cite subsection (2),  
18 paragraph (b), subparagraph (ii)], the priority of each security  
19 interest dates from the time of the secured party's agreement  
20 with Able. Because Alpha's agreement was first in time, Alpha  
21 has priority. This priority applies equally to security  
22 entitlements to financial assets credited to the account after  
the agreement was entered into.

24 The priority rule is analogous to "first-to-file" priority  
25 under Section 9-322 [Maine cite section 9-1322] with respect to  
26 after-acquired collateral. Paragraphs (2)(B)(i) and (2)(B)(iii)  
27 [Maine cite subsection (2), paragraph (b), subparagraphs (i) and  
28 (iii)] provide similar rules for security entitlements as to  
29 which control is obtained by other methods, and paragraph (2)(C)  
30 [Maine cite subsection (2), paragraph (c)] provides a similar  
31 rule for commodity contracts carried in a commodity account.  
32 Section 8-510 also has been revised to provide a temporal  
33 priority conforming to paragraph (2)(B) [Maine cite subsection  
34 (2), paragraph (b)].

36 6. Certificated Securities. A long-standing practice has  
37 developed whereby secured parties whose collateral consists of a  
38 security evidenced by a security certificate take possession of  
39 the security certificate. If the security certificate is in  
40 bearer form, the secured party's acquisition of possession  
41 constitutes "delivery" under Section 8-301(a)(1) [Maine cite  
42 section 8-1301, subsection (1), paragraph (a)], and the delivery  
43 constitutes "control" under Section 8-106(a) [Maine cite section  
44 8-1106, subsection (1)]. Comment 5 discusses the priority of  
45 security interests perfected by control of investment property.

46  
47 If the security certificate is in registered form, the  
48 secured party will not achieve control over the security unless  
49 the security certificate contains an appropriate indorsement or  
50 is (re)registered in the secured party's name. See Section



2 8-106(b) [Maine cite section 8-1106, subsection (2)]. However,  
3 the secured party's acquisition of possession constitutes  
4 "delivery" of the security certificate under Section 8-301 [Maine  
5 cite section 8-1301] and serves to perfect the security interest  
6 under Section 9-313(a) [Maine cite section 9-1313, subsection  
7 (1)], even if the security certificate has not been appropriately  
8 indorsed and has not been (re)registered in the secured party's  
9 name. A security interest perfected by this method has priority  
10 over a security interest perfected other than by control (e.g.,  
11 by filing). See paragraph (5) [Maine cite subsection (5)].

12 The priority rule stated in paragraph (5) [Maine cite  
13 subsection (5)] may seem anomalous, in that it can afford less  
14 favorable treatment to purchasers who buy collateral outright  
15 that to those who take a security interest in it. For example, a  
16 buyer of a security certificate would cut off a security interest  
17 perfected by filing only if the buyer achieves the status of a  
18 protected purchaser under Section 8-303 [Maine cite section  
19 8-1303]. The buyer would not be a protected purchaser, for  
20 example, if it does not obtain "control" under Section 8-106  
21 [Maine cite section 8-1106] (e.g., if it fails to obtain a proper  
22 indorsement of the certificate) or if it had notice of an adverse  
23 claim under Section 8-105 [Maine cite section 8-1105]. The  
24 apparent anomaly disappears, however, when one understands the  
25 priority rule not as one intended to protect careless or guilty  
26 parties, but as one that eliminates the need to conduct a search  
27 of the public records only insofar as necessary to serve the  
28 needs of the securities markets.

30 7. Secured Financing of Securities Firms. Priority  
31 questions concerning security interests granted by brokers and  
32 securities intermediaries are governed by the general  
33 control-beats-non-control priority rule of paragraph (1) [Maine  
34 cite subsection (1)], as supplemented by the special rules set  
35 out in paragraphs (2) [Maine cite subsection (2)] (temporal  
36 priority-first to control), (3) [Maine cite subsection (3)]  
37 (special priority for securities intermediary), and (6) [Maine  
38 cite subsection (6)] (equal priority for non-control). The  
39 following examples illustrate the priority rules as applied to  
40 this setting. (In all cases it is assumed that the debtor  
41 retains sufficient other securities to satisfy all customers'  
42 claims. This section deals with the relative rights of secured  
43 lenders to a securities firm. Disputes between a secured lender  
44 and the firm's own customers are governed by Section 8-511 [Maine  
45 cite section 8-1511].)

46 Example 7: Able & Co., a securities dealer, enters into  
47 financing arrangements with two lenders, Alpha Bank and Beta  
48 Bank. In each case the agreements provide that the lender will  
49 have a security interest in the securities identified on lists  
50

2 provided to the lender on a daily basis, that the debtor will  
3 deliver the securities to the lender on demand, and that the  
4 debtor will not list as collateral any securities which the  
5 debtor has pledged to any other lender. Upon Able's insolvency  
6 it is discovered that Able has listed the same securities on the  
7 collateral lists provided to both Alpha and Beta. Alpha and Beta  
8 both have perfected security interests under the  
9 automatic-perfection rule of Section 9-309(10) [Maine cite  
10 section 9-1309, subsection (10)]. Neither Alpha nor Beta has  
11 control. Paragraph (6) [Maine cite subsection (6)] provides that  
12 the security interests of Alpha and Beta rank equally, because  
13 each of them has a non-control security interest granted by a  
14 securities firm. They share pro-rata.

15  
16 Example 8: Able enters into financing arrangements, with  
17 Alpha Bank and Beta Bank as in Example 7. At some point,  
18 however, Beta decides that it is unwilling to continue to provide  
19 financing on a non-control basis. Able directs the clearing  
20 corporation where it holds its principal inventory of securities  
21 to move specified securities into Beta's account. Upon Able's  
22 insolvency it is discovered that a list of collateral provided to  
23 Alpha includes securities that had been moved to Beta's account.  
24 Both Alpha and Beta have perfected security interests; Alpha  
25 under the automatic-perfection rule of Section 9-309(10) [Maine  
26 cite section 9-1309, subsection (10)], and Beta under that rule  
27 and also the perfection-by-control rule in Section 9-314(a)  
28 [Maine cite section 9-1314, subsection (a)]. Beta has control  
29 but Alpha does not. Beta has priority over Alpha under paragraph  
30 (1) [Maine cite subsection (1)].

31  
32 Example 9: Able & Co. carries its principal inventory of  
33 securities through Clearing Corporation, which offers a "shared  
34 control" facility whereby a participant securities firm can enter  
35 into an arrangement with a lender under which the securities firm  
36 will retain the power to trade and otherwise direct dispositions  
37 of securities carried in its account, but Clearing Corporation  
38 agrees that, at any time the lender so directs, Clearing  
39 Corporation will transfer any securities from the firm's account  
40 to the lender's account or otherwise dispose of them as directed  
41 by the lender. Able enters into financing arrangements with two  
42 lenders, Alpha and Beta, each of which obtains such a control  
43 agreement from Clearing Corporation. The agreement with each  
44 lender provides that Able will designate specific securities as  
45 collateral on lists provided to the lender on a daily or other  
46 periodic basis, and that it will not pledge the same securities  
47 to different lenders. Upon Able's insolvency, it is discovered  
48 that Able has listed the same securities on the collateral lists  
provided to both Alpha and Beta. Both Alpha and Beta have  
control over the disputed securities. Paragraph (2) [Maine cite

2 subsection (2)] awards priority to whichever secured party first  
2 entered into the agreement with Clearing Corporation.

4 8. Relation to Other Law. Section 1103 provides that  
4 "unless displaced by particular provisions of this Act, the  
6 principles of law and equity . . . shall supplement its  
6 provisions." There may be circumstances in which a secured  
8 party's action in acquiring a security interest that has priority  
8 under this section constitutes conduct that is wrongful under  
10 other law. Though the possibility of such resort to other law  
10 may provide an appropriate "escape valve" for cases of egregious  
12 conduct, care must be taken to ensure that this does not impair  
12 the certainty and predictability of the priority rules. Whether  
14 a court may appropriately look to other law to impose liability  
14 upon or estop a secured party from asserting its Article 9 [Maine  
16 cite Article 9-A] priority depends on an assessment of the  
16 secured party's conduct under the standards established by such  
18 other law as well as a determination of whether the particular  
18 application of such other law is displaced by the UCC.

20  
22 Some circumstances in which other law is clearly displaced  
22 by the UCC rules are readily identifiable. Common law "first in  
24 time, first in right" principles, or correlative tort liability  
24 rules such as common law conversion principles under which a  
26 purchaser may incur liability to a person with a prior property  
26 interest without regard to awareness of that claim, are  
28 necessarily displaced by the priority rules set out in this  
28 section since these rules determine the relative ranking of  
30 security interests in investment property. So too, Article 8  
30 provides protections against adverse claims to certain purchasers  
32 of interests in investment property. In circumstances where a  
32 secured party not only has priority under Section 9328 [Maine  
34 cite section 9-1328], but also qualifies for protection against  
34 adverse claims under Section 8-303, 8-502, or 8-510 [Maine cite  
36 sections 8-1303, 8-1502 or 8-1510], resort to other law would be  
36 precluded.

38 In determining whether it is appropriate in a particular  
38 case to look to other law, account must also be taken of the  
40 policies that underlie the commercial law rules on securities  
40 markets and security interests in securities. A principal  
42 objective of the 1994 revision of Article 8 and the provisions of  
42 Article 9 [Maine cite Article 9-A] governing investment property  
44 was to ensure that secured financing transactions can be  
44 implemented on a simple, timely, and certain basis. One of the  
46 circumstances that led to the revision was the concern that  
46 uncertainty in the application of the rules on secured  
48 transactions involving securities and other financial assets  
48 could contribute to systemic risk by impairing the ability of  
50 financial institutions to provide liquidity to the markets in

2 times of stress. The control priority rule is designed to  
provide a clear and certain rule to ensure that lenders who have  
4 taken the necessary steps to establish control do not face a risk  
of subordination to other lenders who have not done so.

6 The control priority rule does not turn on an inquiry into  
the state of a secured party's awareness of potential conflicting  
8 claims because a rule under which a person's rights depended on  
that sort of after-the-fact inquiry could introduce an  
10 unacceptable measure of uncertainty. If an inquiry into  
awareness could provide a complete and satisfactory resolution of  
12 the problem in all cases, the priority rules of this section  
would have incorporated that test. The fact that they do not  
14 necessarily means that resort to other law based solely on that  
factor is precluded, though the question whether a control  
16 secured party induced or encouraged its financing arrangement  
with actual knowledge that the debtor would be violating the  
18 rights of another secured party may, in some circumstances,  
appropriately be treated as a factor in determining whether the  
20 control party's action is the kind of egregious conduct for which  
resort to other law is appropriate.

22 **§9-1329. Priority of security interests in letter-of-credit right**

24 The following rules govern priority among conflicting  
26 security interests in the same letter-of-credit right.

28 (1) A security interest held by a secured party having  
control of the letter-of-credit right under section 9-1107 has  
30 priority to the extent of its control over a conflicting security  
interest held by a secured party that does not have control.

32 (2) Security interests perfected by control under section  
34 9-1314 rank according to priority in time of obtaining control.

36 **Official Comment**

38 1. Source. New; loosely modeled after former Section  
40 9-115(5).

42 2. General Rule. Paragraph (1) [Maine cite subsection (1)]  
awards priority to a secured party who perfects a security  
44 interest directly in letter-of-credit rights (i.e., one that  
takes an assignment of proceeds and obtains consent of the issuer  
46 or any nominated person under Section 5-114(c)) over another  
conflicting security interest (i.e., one that is perfected  
48 automatically in the letter-of-credit rights as supporting  
obligations under Section 9-308(d) [Maine cite section 9-1308,  
50 subsection (4)]). This is consistent with international

2 letter-of-credit practice and provides finality to payments made  
3 to recognized assignees of letter-of-credit proceeds. If an  
4 issuer or nominated person recognizes multiple security interests  
5 in a letter-of-credit right, resulting in multiple parties having  
6 control (Section 9-107 [Maine cite section 9-1107]), under  
7 paragraph (2) [Maine cite subsection (2)] the security interests  
8 rank according to the time of obtaining control.

9  
10 3. Drawing Rights; Transferee Beneficiaries. Drawing under  
11 a letter of credit is personal to the beneficiary and requires  
12 the beneficiary to perform the conditions for drawing under the  
13 letter of credit. Accordingly, a beneficiary's grant of a  
14 security interest in a letter of credit includes the  
15 beneficiary's "letter-of-credit right" as defined in Section  
16 9-102 [Maine cite section 9-1102)] and the right to "proceeds of  
17 [the] letter of credit" as defined in Section 5-114(a), but does  
18 not include the right to demand payment under the letter of  
19 credit.

20 Section 5-114(e) provides that the "[r]ights of a transferee  
21 beneficiary or nominated person are independent of the  
22 beneficiary's assignment of the proceeds of a letter of credit  
23 and are superior to the assignee's right to the proceeds." To  
24 the extent the rights of a transferee beneficiary or nominated  
25 person are independent and superior, this Article does not  
26 apply. See Section 9-109(c) [Maine cite section 9-1109,  
27 subsection (3)].

28  
29 Under Article 5, there is in effect a novation upon the  
30 transfer with the issuer becoming bound on a new, independent  
31 obligation to the transferee. The rights of nominated persons  
32 and transferee beneficiaries under a letter of credit include the  
33 right to demand payment from the issuer. Under Section 5-114(e),  
34 their rights to payment are independent of their obligations to  
35 the beneficiary (or original beneficiary) and superior to the  
36 rights of assignees of letter of credit proceeds (Section  
37 5-114(c)) and others claiming a security interest in the  
38 beneficiary's (or original beneficiary's) letter of credit rights.

39  
40 A transfer of drawing rights under a transferable letter of  
41 credit establishes independent Article 5 rights in the transferee  
42 and does not create or perfect an Article 9 [Maine cite Article  
43 9-A] security interest in the transferred drawing rights. The  
44 definition of "letter-of-credit right" in Section 9-102 [Maine  
45 cite section 9-1102] excludes a beneficiary's drawing rights.  
46 The exercise of drawing rights by a transferee beneficiary may  
47 breach a contractual obligation of the transferee to the original  
48 beneficiary concerning when and how much the transferee may draw  
49 or how it may use the funds received under the letter of credit.  
50 If, for example, drawing rights are transferred to support a sale

2 or loan from the transferee to the original beneficiary, then the  
3 transferee would be obligated to the original beneficiary under  
4 the sale or loan agreement to account for any drawing and for the  
5 use of any funds received. The transferee's obligation would be  
6 governed by the applicable law of contracts or restitution.

7  
8 4. Secured Party-Transferee Beneficiaries. As described in  
9 Comment 3, drawing rights under letters of credit are transferred  
10 in many commercial contexts in which the transferee is not a  
11 secured party claiming a security interest in an underlying  
12 receivable supported by the letter of credit. Consequently, a  
13 transfer of a letter of credit is not a method of "perfection" of  
14 a security interest. The transferee's independent right to draw  
15 under the letter of credit and to receive and retain the value  
16 thereunder (in effect, priority) is not based on Article 9 [Maine  
17 cite Article 9-A] but on letter-of-credit law and the terms of  
18 the letter of credit. Assume, however, that a secured party does  
19 hold a security interest in a receivable that is owned by a  
20 beneficiary-debtor and supported by a transferable letter of  
21 credit. Assume further that the beneficiary-debtor causes the  
22 letter of credit to be transferred to the secured party, the  
23 secured party draws under the letter of credit, and, upon the  
24 issuer's payment to the secured party-transferee, the underlying  
25 account debtor's obligation to the original beneficiary-debtor is  
26 satisfied. In this situation, the payment to the secured  
27 party-transferee is proceeds of the receivable collected by the  
28 secured party-transferee. Consequently, the secured  
29 party-transferee would have certain duties to the debtor and  
30 third parties under Article 9 [Maine cite Article 9-A]. For  
31 example, it would be obliged to collect under the letter of  
32 credit in a commercially reasonable manner and to remit any  
33 surplus pursuant to Sections 9-607 and 9-608 [Maine cite sections  
34 9-1607 and 9-1608].

35  
36 This scenario is problematic under letter-of-credit law and  
37 practice, inasmuch as a transferee beneficiary collects in its  
38 own right arising from its own performance. Accordingly, under  
39 Section 5-114, the independent and superior rights of a  
40 transferee control over any inconsistent duties under Article 9  
41 [Maine cite Article 9-A]. A transferee beneficiary may take a  
42 transfer of drawing rights to avoid reliance on the original  
43 beneficiary's credit and collateral, and it may consider any  
44 Article 9 [Maine cite Article 9-A] rights superseded by its  
45 Article 5 rights. Moreover, it will not always be clear (i)  
46 whether a transferee beneficiary has a security interest in the  
47 underlying collateral, (ii) whether any security interest is  
48 senior to the rights of others, or (iii) whether the transferee  
49 beneficiary is aware that it holds a security interest. There  
50 will be clear cases in which the role of a transferee beneficiary  
as such is merely incidental to a conventional secured

2 financing. There also will be cases in which the existence of a  
3 security interest may have little to do with the position of a  
4 transferee beneficiary as such. In dealing with these cases and  
5 less clear cases involving the possible application of Article 9  
6 to a nominated person or a transferee beneficiary, the right to  
7 demand payment under a letter of credit should be distinguished  
8 from letter-of-credit rights. The courts also should give  
9 appropriate consideration to the policies and provisions of  
10 Article 5 and letter-of-credit practice as well as Article 9  
11 [Maine cite Article 9-A].

12 **§9-1330. Priority of purchaser of chattel paper or instrument**

13 (1) A purchaser of chattel paper has priority over a  
14 security interest in the chattel paper that is claimed merely as  
15 proceeds of inventory subject to a security interest if:

16 (a) In good faith and in the ordinary course of the  
17 purchaser's business, the purchaser gives new value and  
18 takes possession of the chattel paper or obtains control of  
19 the chattel paper under section 9-1105; and

20 (b) The chattel paper does not indicate that it has been  
21 assigned to an identified assignee other than the purchaser.

22 (2) A purchaser of chattel paper has priority over a  
23 security interest in the chattel paper that is claimed other than  
24 merely as proceeds of inventory subject to a security interest if  
25 the purchaser gives new value and takes possession of the chattel  
26 paper or obtains control of the chattel paper under section  
27 9-1105 in good faith, in the ordinary course of the purchaser's  
28 business and without knowledge that the purchase violates the  
29 rights of the secured party.

30 (3) Except as otherwise provided in section 9-1327, a  
31 purchaser having priority in chattel paper under subsection (1)  
32 or (2) also has priority in proceeds of the chattel paper to the  
33 extent that:

34 (a) Section 9-1322 provides for priority in the proceeds; or

35 (b) The proceeds consist of the specific goods covered by  
36 the chattel paper or cash proceeds of the specific goods,  
37 even if the purchaser's security interest in the proceeds is  
38 unperfected.

39 (4) Except as otherwise provided in section 9-1331,  
40 subsection (1), a purchaser of an instrument has priority over a  
41 security interest in the instrument perfected by a method other  
42 than possession if the purchaser gives value and takes possession  
43 of the instrument.

2 of the instrument in good faith and without knowledge that the  
3 purchase violates the rights of the secured party.

4 (5) For purposes of subsections (1) and (2), the holder of  
5 a purchase-money security interest in inventory gives new value  
6 for chattel paper constituting proceeds of the inventory.

7 (6) For purposes of subsections (2) and (4), if chattel  
8 paper or an instrument indicates that it has been assigned to an  
9 identified secured party other than the purchaser, a purchaser of  
10 the chattel paper or instrument has knowledge that the purchase  
11 violates the rights of the secured party.

14 **Official Comment**

16 1. Source. Former Section 9-308.

18 2. Non-Temporal Priority. This Article permits a security  
19 interest in chattel paper or instruments to be perfected either  
20 by filing or by the secured party's taking possession. This  
21 section enables secured parties and other purchasers of chattel  
22 paper (both electronic and tangible) and instruments to obtain  
23 priority over earlier-perfected security interests.

24 3. Chattel Paper. Subsections (a) and (b) [Maine cite  
25 subsections (1) and (2)] follow former Section 9-308 in  
26 distinguishing between earlier-perfected security interests in  
27 chattel paper that is claimed merely as proceeds of inventory  
28 subject to a security interest and chattel paper that is claimed  
29 other than merely as proceeds. Like former Section 9-308, this  
30 section does not elaborate upon the phrase "merely as proceeds."  
31 For an elaboration, see PEB Commentary No. 8.

34 This section makes explicit the "good faith" requirement and  
35 retains the requirements of "the ordinary course of the  
36 purchaser's business" and the giving of "new value" as conditions  
37 for priority. Concerning the last, this Article deletes former  
38 Section 9-108 and adds to Section 9-102 [Maine cite section  
39 9-1102] a completely different definition of the term "new  
40 value." Under subsection (e) [Maine cite subsection (5)], the  
41 holder of a purchase-money security interest in inventory is  
42 deemed to give "new value" for chattel paper constituting the  
43 proceeds of the inventory. Accordingly, the purchase-money  
44 secured party may qualify for priority in the chattel paper under  
45 subsection (a) or (b) [Maine cite subsection (1) or (2)],  
46 whichever is applicable, even if it does not make an additional  
47 advance against the chattel paper.

48 If a possessory security interest in tangible chattel paper  
49 or a perfected-by-control security interest in electronic chattel  
50



2 paper does not qualify for priority under this section, it may be  
3 subordinate to a perfected-by-filing security interest under  
4 Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1),  
5 paragraph (a)].

6 4. Possession. The priority afforded by this section turns  
7 in part on whether a purchaser "takes possession" of tangible  
8 chattel paper. Similarly, the governing law provisions in  
9 Section 9-301 [Maine cite section 9-1301] address both  
10 "possessory" and "nonpossessory" security interests. Two common  
11 practices have raised particular concerns. First, in some cases  
12 the parties create more than one copy or counterpart of chattel  
13 paper evidencing a single secured obligation or lease. This  
14 practice raises questions as to which counterpart is the  
15 "original" and whether it is necessary for a purchaser to take  
16 possession of all counterparts in order to "take possession" of  
17 the chattel paper. Second, parties sometimes enter into a single  
18 "master" agreement. The master agreement contemplates that the  
19 parties will enter into separate "schedules" from time to time,  
20 each evidencing chattel paper. Must a purchaser of an obligation  
21 or lease evidenced by a single schedule also take possession of  
22 the master agreement as well as the schedule in order to "take  
23 possession" of the chattel paper?

24  
25 The problem raised by the first practice is easily solved.  
26 The parties may in the terms of their agreement and by  
27 designation on the chattel paper identify only one counterpart as  
28 the original chattel paper for purposes of taking possession of  
29 the chattel paper. Concerns about the second practice also are  
30 easily solved by careful drafting. Each schedule should provide  
31 that it incorporates the terms of the master agreement, not the  
32 other way around. This will make it clear that each schedule is  
33 a "stand alone" document.

34  
35 5. Chattel Paper Claimed Merely as Proceeds. Subsection  
36 (a) [Maine cite subsection (1)] revises the rule in former  
37 Section 9-308(b) to eliminate reference to what the purchaser  
38 knows. Instead, a purchaser who meets the possession or control,  
39 ordinary course, and new value requirements takes priority over a  
40 competing security interest unless the chattel paper itself  
41 indicates that it has been assigned to an identified assignee  
42 other than the purchaser. Thus subsection (a) [Maine cite  
43 subsection (1)] recognizes the common practice of placing a  
44 "legend" on chattel paper to indicate that it has been assigned.  
45 This approach, under which the chattel paper purchaser who gives  
46 new value in ordinary course can rely on possession of  
47 unlegended, tangible chattel paper without any concern for other  
48 facts that it may know, comports with the expectations of both  
49 inventory and chattel paper financiers.

50

2           6. Chattel Paper Claimed Other Than Merely as Proceeds.  
3           Subsection (b) [Maine cite subsection (2)] eliminates the  
4           requirement that the purchaser take without knowledge that the  
5           "specific paper" is subject to the security interest and  
6           substitutes for it the requirement that the purchaser take  
7           "without knowledge that the purchase violates the rights of the  
8           secured party." This standard derives from the definition of  
9           "buyer in ordinary course of business" in Section 1-201(9). The  
10          source of the purchaser's knowledge is irrelevant. Note,  
11          however, that "knowledge" means "actual knowledge." Section  
12          1-201(25).

13  
14          In contrast to a junior secured party in accounts, who may  
15          be required in some special circumstances to undertake a search  
16          under the "good faith" requirement, see Comment 5 to Section  
17          9-331 [Maine cite section 9-1331], a purchaser of chattel paper  
18          under this section is not required as a matter of good faith to  
19          make a search in order to determine the existence of prior  
20          security interests. There may be circumstances where the  
21          purchaser undertakes a search nevertheless, either on its own  
22          volition or because other considerations make it advisable to do  
23          so, e.g., where the purchaser also is purchasing accounts.  
24          Without more, a purchaser of chattel paper who has seen a  
25          financing statement covering the chattel paper or who knows that  
26          the chattel paper is encumbered with a security interest, does  
27          not have knowledge that its purchase violates the secured party's  
28          rights. However, if a purchaser sees a statement in a financing  
29          statement to the effect that a purchase of chattel paper from the  
30          debtor would violate the rights of the filed secured party, the  
31          purchaser would have such knowledge. Likewise, under new  
32          subsection (f) [Maine cite subsection (6)], if the chattel paper  
33          itself indicates that it had been assigned to an identified  
34          secured party other than the purchaser, the purchaser would have  
35          wrongful knowledge for purposes of subsection (b) [Maine cite  
36          subsection (2)], thereby preventing the purchaser from qualifying  
37          for priority under that subsection, even if the purchaser did not  
38          have actual knowledge. In the case of tangible chattel paper,  
39          the indication normally would consist of a written legend on the  
40          chattel paper. In the case of electronic chattel paper, this  
41          Article leaves to developing market and technological practices  
42          the manner in which the chattel paper would indicate an  
43          assignment.

44          7. Instruments. Subsection (d) [Maine cite subsection (4)]  
45          contains a special priority rule for instruments. Under this  
46          subsection, a purchaser of an instrument has priority over a  
47          security interest perfected by a method other than possession  
48          (e.g., by filing, temporarily under Section 9-312(e) or (g)  
49          [Maine cite section 9-1312, subsection (5) or (7)], as proceeds  
50          under Section 9-315(d) [Maine cite section 9-1315, subsection

2 (4)], or automatically upon attachment under Section 9-309(4)  
3 [Maine cite section 9-1309, subsection (4)] if the security  
4 interest arises out of a sale of the instrument) if the purchaser  
5 gives value and takes possession of the instrument in good faith  
6 and without knowledge that the purchase violates the rights of  
7 the secured party. Generally, to the extent subsection (d)  
8 [Maine cite subsection (4)] conflicts with Section 3-306,  
9 subsection (d) governs. See Section 3-102(b). For example,  
10 notice of a conflicting security interest precludes a purchaser  
11 from becoming a holder in due course under Section 3-302 and  
12 thereby taking free of all claims to the instrument under Section  
13 3-306. However, a purchaser who takes even with knowledge of the  
14 security interest qualifies for priority under subsection (d)  
15 [Maine cite subsection (4)] if it takes without knowledge that  
16 the purchase violates the rights of the holder of the security  
17 interest. Likewise, a purchaser qualifies for priority under  
18 subsection (d) [Maine cite subsection (4)] if it takes for  
19 "value" as defined in Section 1-201, even if it does not take for  
20 "value" as defined in Section 3-303.

21 Subsection (d) [Maine cite subsection (4)] is subject to  
22 Section 9-331(a) [Maine cite section 9-1331, subsection (1)],  
23 which provides that Article 9 [Maine cite Article 9-A] does not  
24 limit the rights of a holder in due course under Article 3.  
25 Thus, in the rare case in which the purchaser of an instrument  
26 qualifies for priority under subsection (d) [Maine cite  
27 subsection (4)], but another person has the rights of a holder in  
28 due course of the instrument, the other person takes free of the  
29 purchaser's claim. See Section 3-306.

30 The rule in subsection (d) [Maine cite subsection (4)] is  
31 similar to the rules in subsections (a) and (b) [Maine cite  
32 subsections (1) and (2)], which govern priority in chattel  
33 paper. The observations in Comment 6 concerning the requirement  
34 of good faith and the phrase "without knowledge that the purchase  
35 violates the rights of the secured party" apply equally to  
36 purchasers of instruments. However, unlike a purchaser of  
37 chattel paper, to qualify for priority under this section a  
38 purchaser of an instrument need only give "value" as defined in  
39 Section 1-201; it need not give "new value." Also, the purchaser  
40 need not purchase the instrument in the ordinary course of its  
41 business.

42 Subsection (d) [Maine cite subsection (4)] applies to checks  
43 as well as notes. For example, to collect and retain checks that  
44 are proceeds (collections) of accounts free of a senior secured  
45 party's claim to the same checks, a junior secured party must  
46 satisfy the good-faith requirement (honesty in fact and the  
47 observance of reasonable commercial standards of fair dealing) of  
48 this subsection. This is the same good-faith requirement  
49

2 applicable to holders in due course. See Section 9-331 [Maine  
cite section 9-1331], Comment 5.

4 8. Priority in Proceeds of Chattel Paper. Subsection (c)  
[Maine cite subsection (3)] sets forth the two circumstances  
6 under which the priority afforded to a purchaser of chattel paper  
under subsection (a) or (b) [Maine cite subsection (1) or (2)]  
8 extends also to proceeds of the chattel paper. The first is if  
the purchaser would have priority under the normal priority rules  
10 applicable to proceeds. The second, which the following Comments  
discuss in greater detail, is if the proceeds consist of the  
12 specific goods covered by the chattel paper. Former Article 9  
generally was silent as to the priority of a security interest in  
14 proceeds when a purchaser qualifies for priority under Section  
9-308 [Maine cite section 9-1308] (but see former Section  
16 9-306(5)(b), concerning returned and repossessed goods).

18 9. Priority in Returned and Repossessed Goods. Returned  
and repossessed goods may constitute proceeds of chattel paper.  
20 The following Comments explain the treatment of returned and  
repossessed goods as proceeds of chattel paper. The analysis is  
22 consistent with that of PEB Commentary No. 5, which these  
Comments replace, and is based upon the following example:

24  
Example: SP1 has a security interest in all the inventory  
26 of a dealer in goods (Dealer); SP1's security interest is  
perfected by filing. Dealer sells some of its inventory to a  
28 buyer in the ordinary course of business (BIOCOB) pursuant to a  
conditional sales contract (chattel paper) that does not indicate  
30 that it has been assigned to SP-1. SP2 purchases the chattel  
paper from Dealer and takes possession of the paper in good  
32 faith, in the ordinary course of business, and without knowledge  
that the purchase violates the rights of SP1. Subsequently,  
34 BIOCOB returns the goods to Dealer because they are defective.  
Alternatively, Dealer acquires possession of the goods following  
36 BIOCOB's default.

38 10. Assignment of Non-Lease Chattel Paper.

40 a. Loan by SP2 to Dealer Secured by Chattel Paper (or  
Functional Equivalent Pursuant to Recourse Arrangement).

42  
(1) Returned Goods. If BIOCOB returns the goods to  
44 Dealer for repairs, Dealer is merely a bailee and  
acquires thereby no meaningful rights in the goods to  
46 which SP1's security interest could attach. (Although  
SP1's security interest could attach to Dealer's  
48 interest as a bailee, that interest is not likely to be  
of any particular value to SP1.) Dealer is the owner  
50 of the chattel paper (i.e., the owner of a right to

2 payment secured by a security interest in the goods);  
3 SP2 has a security interest in the chattel paper, as  
4 does SP1 (as proceeds of the goods under Section 9-315  
5 [Maine cite section 9-1315]). Under Section 9-330  
6 [Maine cite section 9-1330], SP2's security interest in  
7 the chattel paper is senior to that of SP1. SP2 enjoys  
8 this priority regardless of whether, or when, SP2 filed  
9 a financing statement covering the chattel paper.  
10 Because chattel paper and goods represent different  
11 types of collateral, Dealer does not have any  
12 meaningful interest in goods to which either SP1's or  
13 SP2's security interest could attach in order to secure  
14 Dealer's obligations to either creditor. See Section  
15 9-102 [Maine cite section 9-1102] (defining "chattel  
16 paper" and "goods").

17 Now assume that BIOCOB returns the goods to Dealer under  
18 circumstances whereby Dealer once again becomes the owner of the  
19 goods. This would be the case, for example, if the goods were  
20 defective and BIOCOB was entitled to reject or revoke acceptance  
21 of the goods. See Sections 2-602 (rejection), 2-608 (revocation  
22 of acceptance). Unless BIOCOB has waived its defenses as against  
23 assignees of the chattel paper, SP1's and SP2's rights against  
24 BIOCOB would be subject to BIOCOB's claims and defenses. See  
25 Sections 9-403, 9-404 [Maine cite section 9-1403, 9-1404]. SP1's  
26 security interest would attach again because the returned goods  
27 would be proceeds of the chattel paper. Dealer's acquisition of  
28 the goods easily can be characterized as "proceeds" consisting of  
29 an "in kind" collection on or distribution on account of the  
30 chattel paper. See Section 9-102 [Maine cite section 9-1102]  
31 (definition of "proceeds"). Assuming that SP1's security  
32 interest is perfected by filing against the goods and that the  
33 filing is made in the same office where a filing would be made  
34 against the chattel paper, SP1's security interest in the goods  
35 would remain perfected beyond the 20-day period of automatic  
36 perfection. See Section 9-315(e) [Maine cite section 9-1315,  
37 subsection (5)].

38 Because Dealer's newly reacquired interest in the goods is  
39 proceeds of the chattel paper, SP2's security interest also would  
40 attach in the goods as proceeds. If SP2 had perfected its  
41 security interest in the chattel paper by filing (again, assuming  
42 that filing against the chattel paper was made in the same office  
43 where a filing would be made against the goods), SP2's security  
44 interest in the reacquired goods would be perfected beyond 20  
45 days. See Section 9-315(e) [Maine cite section 9-1315,  
46 subsection (5)]. However, if SP2 had relied only on its  
47 possession of the chattel paper for perfection and had not filed  
48 against the chattel paper or the goods, SP2's security interest  
49 would be unperfected after the 20day period. See Section  
50

9-315(e) [Maine cite section 9-1315, subsection (5)].  
2 Nevertheless, SP2's unperfected security interest in the goods  
4 would be senior to SP1's security interest under Section 9-330(c)  
6 [Maine cite section 9-1330, subsection (3)]. The result in this  
priority contest is not affected by SP2's acquiescence or  
non-acquiescence in the return of the goods to Dealer.

8 (2) Repossessed Goods. As explained above, Dealer  
owns the chattel paper covering the goods, subject to  
10 security interests in favor of SP1 and SP2. In Article  
9 [Maine cite Article 9-A] parlance, Dealer has an  
12 interest in chattel paper, not goods. If Dealer, SP1,  
14 or SP2 repossesses the goods upon BIOCOP's default,  
whether the repossession is rightful or wrongful as  
16 among Dealer, SP1, or SP2, Dealer's interest will not  
change. The location of goods and the party who  
18 possesses them does not affect the fact that Dealer's  
interest is in chattel paper, not goods. The goods  
20 continue to be owned by BIOCOP. SP1's security  
interest in the goods does not attach until such time  
22 as Dealer reacquires an interest (other than a bare  
possessory interest) in the goods. For example, Dealer  
24 might buy the goods at a foreclosure sale from SP2  
(whose security interest in the chattel paper is senior  
to that of SP1); that disposition would cut off  
26 BIOCOP's rights in the goods. Section 9-617 [Maine  
cite section 9-1617].

28  
In many cases the matter would end upon sale of the goods to  
30 Dealer at a foreclosure sale and there would be no priority  
contest between SP1 and SP2; Dealer would be unlikely to buy the  
32 goods under circumstances whereby SP2 would retain its security  
interest. There can be exceptions, however. For example, Dealer  
34 may be obliged to purchase the goods from SP2 and SP2 may be  
obliged to convey the goods to Dealer, but Dealer may fail to pay  
36 SP2. Or, one could imagine that SP2, like SP1, has a general  
security interest in the inventory of Dealer. In the latter  
38 case, SP2 should not receive the benefit of any special priority  
rule, since its interest in no way derives from priority under  
40 Section 9-330 [Maine cite section 9-1330]. In the former case,  
SP2's security interest in the goods reacquired by Dealer is  
42 senior to SP1's security interest under Section 9-330 [Maine cite  
section 9-1330].

44  
b. Dealer's Outright Sale of Chattel Paper to SP2. Article  
46 9 [Maine cite Article 9-A] also applies to a transaction  
whereby SP2 buys the chattel paper in an outright sale  
48 transaction without recourse against Dealer. Sections  
1-201(37), 9-109(a) [Maine cite section 9-1109, subsection  
50 (1)]. Although Dealer does not, in such a transaction,

2 retain any residual ownership interest in the chattel paper,  
the chattel paper constitutes proceeds of the goods to which  
SP1's security interest will attach and continue following  
4 the sale of the goods. Section 9-315(a) [Maine cite section  
9-1315, subsection (1)]. Even though Dealer has not  
6 retained any interest in the chattel paper, as discussed  
above BIOCOB subsequently may return the goods to Dealer  
8 under circumstances whereby Dealer reacquires an interest in  
the goods. The priority contest between SP1 and SP2 will be  
10 resolved as discussed above; Section 9-330 [Maine cite  
section 9-1330] makes no distinction among purchasers of  
12 chattel paper on the basis of whether the purchaser is an  
outright buyer of chattel paper or one whose security  
14 interest secures an obligation of Dealer.

16 11. Assignment of Lease Chattel Paper. As defined in  
Section 9-102 [Maine cite section 9-1102], "chattel paper"  
18 includes not only writings that evidence security interests in  
specific goods but also those that evidence true leases of goods.

20  
The analysis with respect to lease chattel paper is similar  
22 to that set forth above with respect to non-lease chattel paper.  
It is complicated, however, by the fact that, unlike the case of  
24 chattel paper arising out of a sale, Dealer retains a residual  
interest in the goods. See Section 2A103(1)(q) (defining  
26 "lessor's residual interest"); In re Leasing Consultants, Inc.,  
486 F.2d 367 (2d Cir. 1973) (lessor's residual interest under  
28 true lease is an interest in goods and is a separate type of  
collateral from lessor's interest in the lease). If Dealer  
30 leases goods to a "lessee in ordinary course of business"  
(LIOCOB), then LIOCOB takes its interest under the lease (i.e.,  
32 its "leasehold interest") free of the security interest of SP1.  
See Sections 2A307(3), 2A103(1)(m) (defining "leasehold  
34 interest"), (1)(o) (defining "lessee in ordinary course of  
business"). SP1 would, however, retain its security interest in  
36 the residual interest. In addition, SP1 would acquire an  
interest in the lease chattel paper as proceeds. If Dealer then  
38 assigns the lease chattel paper to SP2, Section 9-330 [Maine cite  
section 9-1330] gives SP2 priority over SP1 with respect to the  
40 chattel paper, but not with respect to the residual interest in  
the goods. Consequently, assignees of lease chattel paper  
42 typically take a security interest in and file against the  
lessor's residual interest in goods, expecting their priority in  
44 the goods to be governed by the first-to-file-or-perfect rule of  
Section 9-322 [Maine cite section 9-1322].

46  
If the goods are returned to Dealer, other than upon  
48 expiration of the lease term, then the security interests of both  
SP1 and SP2 normally would attach to the goods as proceeds of the  
50 chattel paper. (If the goods are returned to Dealer at the

2 expiration of the lease term and the lessee has made all payments  
3 due under the lease, however, then Dealer no longer has any  
4 rights under the chattel paper. Dealer's interest in the goods  
5 consists solely of its residual interest, as to which SP2 has no  
6 claim.) This would be the case, for example, when the lessee  
7 rescinds the lease or when the lessor recovers possession in the  
8 exercise of its remedies under Article 2A. See, e.g., Section  
9 2A525. If SP2 enjoyed priority in the chattel paper under  
10 Section 9-330 [Maine cite section 9-1330], then SP2 likewise  
11 would enjoy priority in the returned goods as proceeds. This  
12 does not mean that SP2 necessarily is entitled to the entire  
13 value of the returned goods. The value of the goods represents  
14 the sum of the present value of (i) the value of their use for  
15 the term of the lease and (ii) the value of the residual  
16 interest. SP2 has priority in the former, but SP1 ordinarily  
17 would have priority in the latter. Thus, an allocation of a  
18 portion of the value of the goods to each component may be  
19 necessary. Where, as here, one secured party has a security  
20 interest in the lessor's residual interest and another has a  
21 priority security interest in the chattel paper, it may be  
22 advisable for the conflicting secured parties to establish a  
23 method for making such an allocation and otherwise to determine  
24 their relative rights in returned goods by agreement.

25 **§9-1331. Priority of rights of purchasers of instruments,**  
26 **documents and securities under other Articles;**  
27 **priority of interests in financial assets and security**  
28 **entitlements under Article 8**

29 (1) This Article does not limit the rights of a holder in  
30 due course of a negotiable instrument, a holder to which a  
31 negotiable document of title has been duly negotiated or a  
32 protected purchaser of a security. These holders or purchasers  
33 take priority over an earlier security interest, even if  
34 perfected, to the extent provided in Articles 3, 7 and 8.

35 (2) This Article does not limit the rights of or impose  
36 liability on a person to the extent that the person is protected  
37 against the assertion of an adverse claim under Article 8.

38 (3) Filing under this Article does not constitute notice of  
39 a claim or defense to the holders, or purchasers, or persons  
40 described in subsections (1) and (2).

41 **Official Comment**

42 1. Source. Former Section 9-309.



2. "Priority." In some provisions, this Article distinguishes between claimants that take collateral free of a security interest (in the sense that the security interest no longer encumbers the collateral) and those that take an interest in the collateral that is senior to a surviving security interest. See, e.g., Section 9-317 [Maine cite section 9-1317]. Whether a holder or purchaser referred to in this section takes free or is senior to a security interest depends on the whether the purchaser is a buyer of the collateral or takes a security interest in it. The term "priority" is meant to encompass both scenarios, as it does in Section 9-330 [Maine cite section 9-1330].

3. Rights Acquired by Purchasers. The rights to which this section refers are set forth in Sections 3-305 and 3-306 (holder in due course), 7-502 (holder to whom a negotiable document of title has been duly negotiated), and 8-303 (protected purchaser). The holders and purchasers referred to in this section do not always take priority over a security interest. See, e.g., Section 7-503 (affording paramount rights to certain owners and secured parties as against holder to whom a negotiable document of title has been duly negotiated). Accordingly, this section adds the clause, "to the extent provided in Articles 3, 7, and 8" to former Section 9-309.

4. Financial Assets and Security Entitlements. New subsection (b) [Maine cite subsection (2)] provides explicit protection for those who deal with financial assets and security entitlements and who are immunized from liability under Article 8. See, e.g., Sections 8-502, 8-503(e), 8-510, 8-511. The new subsection makes explicit in Article 9 [Maine cite Article 9-A] what is implicit in former Article 9 and explicit in several provisions of Article 8. It does not change the law.

5. Collections by Junior Secured Party. Under this section, a secured party with a junior security interest in receivables (accounts, chattel paper, promissory notes, or payment intangibles) may collect and retain the proceeds of those receivables free of the claim of a senior secured party to the same receivables, if the junior secured party is a holder in due course of the proceeds. In order to qualify as a holder in due course, the junior must satisfy the requirements of Section 3-302, which include taking in "good faith." This means that the junior not only must act "honestly" but also must observe "reasonable commercial standards of fair dealing" under the particular circumstances. See Section 9-102(a) [Maine cite section 9-1102]. Although "good faith" does not impose a general duty of inquiry, e.g., a search of the records in filing offices, there may be circumstances in which "reasonable commercial standards of fair dealing" would require such a search.

2 Consider, for example, a junior secured party in the  
4 business of financing or buying accounts who fails to undertake a  
6 search to determine the existence of prior security interests.  
8 Because a search, under the usages of trade of that business,  
10 would enable it to know or learn upon reasonable inquiry that  
12 collecting the accounts violated the rights of a senior secured  
14 party, the junior may fail to meet the good-faith standard. See  
16 Utility Contractors Financial Services, Inc. v. Amsouth Bank, NA,  
18 985 F.2d 1554 (11th Cir. 1993). Likewise, a junior secured party  
20 who collects accounts when it knows or should know under the  
22 particular circumstances that doing so would violate the rights  
24 of a senior secured party, because the debtor had agreed not to  
26 grant a junior security interest in, or sell, the accounts, may  
28 not meet the good-faith test. Thus, if a junior secured party  
30 conducted or should have conducted a search and a financing  
32 statement filed on behalf of the senior secured party states such  
34 a restriction, the junior's collection would not meet the  
36 good-faith standard. On the other hand, if there was a course of  
38 performance between the senior secured party and the debtor which  
40 placed no such restrictions on the debtor and allowed the debtor  
to collect and use the proceeds without any restrictions, the  
junior secured party may then satisfy the requirements for being  
a holder in due course. This would be more likely in those  
circumstances where the junior secured party was providing  
additional financing to the debtor on an on-going basis by  
lending against or buying the accounts and had no notice of any  
restrictions against doing so. Generally, the senior secured  
party would not be prejudiced because the practical effect of  
such payment to the junior secured party is little different than  
if the debtor itself had made the collections and subsequently  
paid the secured party from the debtor's general funds. Absent  
collusion, the junior secured party would take the funds free of  
the senior security interests. See Section 9-332 [Maine cite  
section 9-1332]. In contrast, the senior secured party is likely  
to be prejudiced if the debtor is going out of business and the  
junior secured party collects the accounts by notifying the  
account debtors to make payments directly to the junior. Those  
collections may not be consistent with "reasonable commercial  
standards of fair dealing."

42 Whether the junior secured party qualifies as a holder in  
44 due course is fact-sensitive and should be decided on a  
46 case-by-case basis in the light of those circumstances.  
48 Decisions such as Financial Management Services Inc. v. Familian,  
905 P.2d 506 (Ariz. App. Div. 1995) (finding holder in due course  
status) could be determined differently under this application of  
the good-faith requirement.

2 The concepts addressed in this Comment are also applicable  
to junior secured parties as purchasers of instruments under  
Section 9-330(d) [Maine cite section 9-1330, subsection (4)].  
4 See Section 9-330 [Maine cite section 9-1330], Comment 7.

6 **§9-1332. Transfer of money; transfer of funds from deposit  
account**

8  
10 (1) A transferee of money takes the money free of a  
security interest unless the transferee acts in collusion with  
the debtor in violating the rights of the secured party.

12  
14 (2) 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 debtor in violating the  
rights of the secured party.

18  
20 **Official Comment**

22 1. Source. New.

24 2. Scope of This Section. This section affords broad  
protection to transferees who take funds from a deposit account  
and to those who take money. The term "transferee" is not  
26 defined; however, the debtor itself is not a transferee. Thus  
this section does not cover the case in which a debtor withdraws  
28 money (currency) from its deposit account or the case in which a  
bank debits an encumbered account and credits another account it  
30 maintains for the debtor.

32 A transfer of funds from a deposit account, to which  
subsection (b) [Maine cite subsection (2)] applies, normally will  
34 be made by check, by funds transfer, or by debiting the debtor's  
deposit account and crediting another depositor's account.

36  
38 Example 1: Debtor maintains a deposit account with Bank A.  
The deposit account is subject to a perfected security interest  
in favor of Lender. Debtor draws a check on the account, payable  
40 to Payee. Inasmuch as the check is not the proceeds of the  
deposit account (it is an order to pay funds from the deposit  
42 account), Lender's security interest in the deposit account does  
not give rise to a security interest in the check. Payee  
44 deposits the check into its own deposit account, and Bank A pays  
it. Unless Payee acted in collusion with Debtor in violating  
46 Lender's rights, Payee takes the funds (the credits running in  
favor of Payee) free of Lender's security interest. This is true  
48 regardless of whether Payee is a holder in due course of the  
check and even if Payee gave no value for the check.

50

2 Example 2: Debtor maintains a deposit account with Bank A.  
3 The deposit account is subject to a perfected security interest  
4 in favor of Lender. At Bank B's suggestion, Debtor moves the  
5 funds from the account at Bank A to Debtor's deposit account with  
6 Bank B. Unless Bank B acted in collusion with Debtor in  
7 violating Lender's rights, Bank B takes the funds (the credits  
8 running in favor of Bank B) free from Lender's security  
9 interest. See subsection (b) [Maine cite subsection (2)].  
10 However, inasmuch as the deposit account maintained with Bank B  
11 constitutes the proceeds of the deposit account at Bank A,  
12 Lender's security interest would attach to that account as  
13 proceeds. See Section 9-315 [Maine cite section 9-1315].

14 Subsection (b) [Maine cite subsection (2)] also would apply  
15 if, in the example, Bank A debited Debtor's deposit account in  
16 exchange for the issuance of Bank A's cashier's check. Lender's  
17 security interest would attach to the cashier's check as proceeds  
18 of the deposit account, and the rules applicable to instruments  
19 would govern any competing claims to the cashier's check. See,  
20 e.g., Sections 3-306, 9-322, 9-330, 9-331 [Maine cite sections  
21 9-1322, 9-1330, 9-1331].

22 If Debtor withdraws money (currency) from an encumbered  
23 deposit account and transfers the money to a third party, then  
24 subsection (a) [Maine cite subsection (1)], to the extent not  
25 displaced by federal law relating to money, applies. It contains  
26 the same rule as subsection (b) [Maine cite subsection (2)].

28 Subsection (b) [Maine cite subsection (2)] applies to  
29 transfers of funds from a deposit account; it does not apply to  
30 transfers of the deposit account itself or of an interest  
31 therein. For example, this section does not apply to the  
32 creation of a security interest in a deposit account. Competing  
33 claims to the deposit account itself are dealt with by other  
34 Article 9 [Maine cite Article 9-A] priority rules. See Sections  
35 9-317(a), 9-327, 9-340, 9-341 [Maine cite section 9-1317,  
36 subsection (1), section 9-1327, 9-1340, 9-1341]. Similarly, a  
37 corporate merger normally would not result in a transfer of funds  
38 from a deposit account. Rather, it might result in a transfer of  
39 the deposit account itself. If so, the normal rules applicable  
40 to transferred collateral would apply; this section would not.

42 3. Policy. Broad protection for transferees helps to  
43 ensure that security interests in deposit accounts do not impair  
44 the free flow of funds. It also minimizes the likelihood that a  
45 secured party will enjoy a claim to whatever the transferee  
46 purchases with the funds. Rules concerning recovery of payments  
47 traditionally have placed a high value on finality. The  
48 opportunity to upset a completed transaction, or even to place a  
49 completed transaction in jeopardy by bringing suit against the  
50

2 transferee of funds, should be severely limited. Although the  
3 giving of value usually is a prerequisite for receiving the  
4 ability to take free from third-party claims, where payments are  
5 concerned the law is even more protective. Thus, Section  
6 3-418(c) provides that, even where the law of restitution  
7 otherwise would permit recovery of funds paid by mistake, no  
8 recovery may be had from a person "who in good faith changed  
9 position in reliance on the payment." Rather than adopt this  
10 standard, this section eliminates all reliance requirements  
11 whatsoever. Payments made by mistake are relatively rare, but  
12 payments of funds from encumbered deposit accounts (e.g., deposit  
13 accounts containing collections from accounts receivable) occur  
14 with great regularity. In the mine run of cases, unlike payment  
15 by mistake, no one would object to these payments. In the vast  
16 proportion of cases, the transferee probably would be able to  
17 show a change of position in reliance on the payment. This  
18 section does not put the transferee to the burden of having to  
19 make this proof.

20 4. "Bad Actors." To deal with the question of the "bad  
21 actor," this section borrows "collusion" language from Article  
22 8. See, e.g., Sections 8-115, 8-503(e). This is the most  
23 protective (i.e., least stringent) of the various standards now  
24 found in the UCC. Compare, e.g., Section 1-201(9) ("without  
25 knowledge that the sale . . . is in violation of the . . .  
26 security interest"); Section 1-201(19) ("honesty in fact in the  
27 conduct or transaction concerned"); Section 3-302(a)(2)(v)  
28 ("without notice of any claim").

30 5. Transferee Who Does Not Take Free. This section sets  
31 forth the circumstances under which certain transferees of money  
32 or funds take free of security interests. It does not determine  
33 the rights of a transferee who does not take free of a security  
34 interest.

36 Example 3: The facts are as in Example 2, but, in  
37 wrongfully moving the funds from the deposit account at Bank A to  
38 Debtor's deposit account with Bank B, Debtor acts in collusion  
39 with Bank B. Bank B does not take the funds free of Lender's  
40 security interest under this section. If Debtor grants a  
41 security interest to Bank B, Section 9-327 [Maine cite section  
42 9-1327] governs the relative priorities of Lender and Bank B.  
43 Under Section 9-327(3) [Maine cite section 9-1327, subsection  
44 (3)], Bank B's security interest in the Bank B deposit account is  
45 senior to Lender's security interest in the deposit account as  
46 proceeds. However, Bank B's senior security interest does not  
47 protect Bank B against any liability to Lender that might arise  
48 from Bank B's wrongful conduct.

50 **§9-1333. Priority of certain liens arising by operation of law**



2           (3) In cases not governed by subsections (4) to (8), a  
3 security interest in fixtures is subordinate to a conflicting  
4 interest of an encumbrancer or owner of the related real property  
5 other than the debtor.

6           (4) Except as otherwise provided in subsection (8), a  
7 perfected security interest in fixtures has priority over a  
8 conflicting interest of an encumbrancer or owner of the real  
9 property if the debtor has an interest of record in or is in  
10 possession of the real property and:

11           (a) The security interest is a purchase-money security  
12 interest;

13           (b) The interest of the encumbrancer or owner arises before  
14 the goods become fixtures; and

15           (c) The security interest is perfected by a fixture filing  
16 before the goods become fixtures or within 20 days  
17 thereafter.

18           (5) A perfected security interest in fixtures has priority  
19 over a conflicting interest of an encumbrancer or owner of the  
20 real property if:

21           (a) The debtor has an interest of record in the real  
22 property or is in possession of the real property and the  
23 security interest:

24           (i) Is perfected by a fixture filing before the  
25 interest of the encumbrancer or owner is of record; and

26           (ii) Has priority over any conflicting interest of a  
27 predecessor in title of the encumbrancer or owner;

28           (b) Before the goods become fixtures, the security interest  
29 is perfected by any method permitted by this Article and the  
30 fixtures are readily removable:

31           (i) Factory or office machines;

32           (ii) Equipment that is not primarily used or leased  
33 for use in the operation of the real property; or

34           (iii) Replacements of domestic appliances that are  
35 consumer goods;

36           (c) The conflicting interest is a lien on the real property  
37 obtained by legal or equitable proceedings after the  
38 goods become fixtures.

2 security interest was perfected by any method permitted by  
3 this Article; or

4 (d) The security interest is:

6 (i) Created in a manufactured home in a  
7 manufactured-home transaction; and

8 (ii) Perfected pursuant to a statute described in  
9 section 9-1311, subsection (1), paragraph (b).

12 (6) A security interest in fixtures, whether or not  
13 perfected, has priority over a conflicting interest of an  
14 encumbrancer or owner of the real property if:

16 (a) The encumbrancer or owner has, in an authenticated  
17 record, consented to the security interest or disclaimed an  
18 interest in the goods as fixtures; or

20 (b) The debtor has a right to remove the goods as against  
21 the encumbrancer or owner.

22 (7) The priority of the security interest under subsection  
23 (6)(b) continues for a reasonable time if the debtor's right to  
24 remove the goods as against the encumbrancer or owner terminates.

26 (8) A mortgage is a construction mortgage to the extent  
27 that it secures an obligation incurred for the construction of an  
28 improvement on land, including the acquisition cost of the land,  
29 if a recorded record of the mortgage so indicates. Except as  
30 otherwise provided in subsections (5) and (6), a security  
31 interest in fixtures is subordinate to a construction mortgage if  
32 a record of the mortgage is recorded before the goods become  
33 fixtures and the goods become fixtures before the completion of  
34 the construction. A mortgage has this priority to the same  
35 extent as a construction mortgage to the extent that it is given  
36 to refinance a construction mortgage.

38 (9) A perfected security interest in crops growing on real  
39 property has priority over a conflicting interest of an  
40 encumbrancer or owner of the real property if the debtor has an  
41 interest of record in or is in possession of the real property.

44 **Official Comment**

46 1. Source. Former Section 9-313.

48 2. Scope of This Section. This section contains rules  
50 governing the priority of security interests in fixtures and



2 crops as against persons who claim an interest in real property.  
3 Priority contests with other Article 9 [Maine cite Article 9-A]  
4 security interests are governed by the other priority rules of  
5 this Article. The provisions with respect to fixtures follow  
6 those of former Section 9-313. However, they have been rewritten  
7 to conform to Section 2A-309 and to prevailing style  
8 conventions. Subsections (i) and (j) [Maine cite subsection  
(9)], which apply to crops, are new.

10 3. Security Interests in Fixtures. Certain goods that are  
11 the subject of personal-property (chattel) financing become so  
12 affixed or otherwise so related to real property that they become  
13 part of the real property. These goods are called "fixtures."  
14 See Section 9-102 [Maine cite section 9-1102] (definition of  
15 "fixtures"). Some fixtures retain their personal-property  
16 nature: a security interest under this Article may be created in  
17 fixtures and may continue in goods that become fixtures. See  
18 subsection (a) [Maine cite subsection (1)]. However, if the  
19 goods are ordinary building materials incorporated into an  
20 improvement on land, no security interest in them exists.  
21 Rather, the priority of claims to the building materials are  
22 determined by the law governing claims to real property. (Of  
23 course, the fact that no security interest exists in ordinary  
24 building materials incorporated into an improvement on land does  
25 not prejudice any rights the secured party may have against the  
26 debtor or any other person who violated the secured party's  
27 rights by wrongfully incorporating the goods into real property.)

28 Thus, this section recognizes three categories of goods:  
29 (1) those that retain their chattel character entirely and are  
30 not part of the real property; (2) ordinary building materials  
31 that have become an integral part of the real property and cannot  
32 retain their chattel character for purposes of finance; and (3)  
33 an intermediate class that has become real property for certain  
34 purposes, but as to which chattel financing may be preserved.

35 To achieve priority under certain provisions of this  
36 section, a security interest must be perfected by making a  
37 "fixture filing" (defined in Section 9-102 [Maine cite section  
38 9-1102]) in the real-property records. Because the question  
39 whether goods have become fixtures often is a difficult one under  
40 applicable real-property law, a secured party may make a fixture  
41 filing as a precaution. Courts should not infer from a fixture  
42 filing that the secured party concedes that the goods are or will  
43 become fixtures.

44 4. Priority in Fixtures: General. In considering priority  
45 problems under this section, one must first determine whether  
46 real-property claimants per se have an interest in the crops or  
47 fixtures as part of real property. If not, it is immaterial, so  
48  
49  
50

2 far as concerns real property parties as such, whether a security  
interest arising under this Article is perfected or unperfected.  
4 In no event does a real-property claimant (e.g., owner or  
mortgagee) acquire an interest in a "pure" chattel just because a  
6 security interest therein is unperfected. If on the other hand  
real-property law gives real-property parties an interest in the  
8 goods, a conflict arises and this section states the priorities.

10 5. Priority in Fixtures: Residual Rule. Subsection (c)  
[Maine cite subsection (3)] states the residual priority rule,  
12 which applies only if one of the other rules does not: A  
security interest in fixtures is subordinate to a conflicting  
14 interest of an encumbrancer or owner of the related real property  
other than the debtor.

16 6. Priority in Fixtures: First to File or Record.  
Subsection (e)(1) [Maine cite subsection (5), paragraph (a)],  
18 which follows former Section 9-313(4)(b), contains the usual  
priority rule of conveyancing, that is, the first to file or  
20 record prevails. In order to achieve priority under this rule,  
however, the security interest must be perfected by a "fixture  
22 filing" (defined in Section 9-102 [Maine cite section 9-1102]),  
i.e., a filing for record in the real property records and  
24 indexed therein, so that it will be found in a real-property  
search.. The condition in subsection (e)(1)(B) [Maine cite  
26 subsection (5), paragraph (1), subparagraph (ii)], that the  
security interest must have had priority over any conflicting  
28 interest of a predecessor in title of the conflicting  
encumbrancer or owner, appears to limit to the first-in-time  
30 principle. However, this apparent limitation is nothing other  
than an expression of the usual rule that a person must be  
32 entitled to transfer what he has. Thus, if the fixture security  
interest is subordinate to a mortgage, it is subordinate to an  
34 interest of an assignee of the mortgage, even though the  
assignment is a later recorded instrument. Similarly if the  
36 fixture security interest is subordinate to the rights of an  
owner, it is subordinate to a subsequent grantee of the owner and  
38 likewise subordinate to a subsequent mortgagee of the owner.

40 7. Priority in Fixtures: Purchase-Money Security  
Interests. Subsection (d) [Maine cite subsection (4)], which  
42 follows former Section 9-313(4)(a), contains the principal  
exception to the first-to-file-or-record rule of subsection  
44 (e)(1) [Maine cite subsection (5), paragraph (a)]. It affords  
priority to purchase-money security interests in fixtures as  
46 against prior recorded real-property interests, provided that the  
purchase-money security interest is filed as a fixture filing in  
48 the real-property records before the goods become fixtures or  
within 20 days thereafter. This priority corresponds to the  
50 purchase-money priority under Section 9-324(a) [Maine cite

2 section 9-1324, subsection (1)]. (Like other 10-day periods in  
former Article 9, the 10-day period in this section has been  
4 changed to 20 days.)

6 It should be emphasized that this purchase-money priority  
against real-property interests that arise before the goods  
8 become fixtures. There is no such priority with the 20-day grace  
period as against real-property interests that arise  
10 subsequently. The fixture security interest can defeat  
subsequent real-property interests only if it is filed first and  
12 prevails under the usual conveyancing rule in subsection (e)(1)  
[Maine cite subsection (5), paragraph (a)] or one of the other  
14 rules in this section.

16 8. Priority in Fixtures: Readily Removable Goods.  
Subsection (e)(2) [Maine cite subsection (5), paragraph (b)],  
18 which derives from Section 2A-309 and former Section 9-313(4)(d),  
contains another exception to the usual first-to-file-or-rule.  
20 It affords priority to the holders of security interests in  
certain types of readily removable goods—factory and office  
22 machines, equipment that is not primarily used or leased for use  
in the operation of the real property, and (as discussed below)  
24 certain replacements of domestic appliances. This rule is made  
necessary by the confusion in the law as to whether certain  
26 machinery, equipment, and appliances become fixtures. It  
protects a secured party who, perhaps in the mistaken belief that  
28 the readily removable goods will not become fixtures, makes a UCC  
filing (or otherwise perfects under this Article) rather than  
30 making a fixture filing.

32 Frequently, under applicable law, goods of the type  
described in subsection (e)(2) [Maine cite subsection (5),  
34 paragraph (b)] will not be considered to have become part of the  
real property. In those cases, the fixture security interest  
36 does not conflict with a real-property interest, and resort to  
this section is unnecessary. However, if the goods have become  
38 part of the real property, subsection (e)(2) [Maine cite  
subsection (5), paragraph (b)] enables a fixture secured party to  
40 take priority over a conflicting real-property interest if the  
fixture security interest is perfected by a fixture filing or by  
42 any other method permitted by this Article. If perfection is by  
fixture filing, the fixture security interest would have priority  
44 over subsequently recorded real-property interests under  
subsection (e)(1) [Maine cite subsection (5), paragraph (a)] and,  
46 if the fixture security interest is a purchase-money security  
interest (a likely scenario), it would also have priority over  
48 most real property interests under the purchase-money priority of  
subsection (d) [Maine cite subsection (4)]. Note, however, that  
50 unlike the purchase-money priority rule in subsection (d) [Maine

2 cite subsection (4)], the priority rules in subsection (e) [Maine  
cite subsection (5)] override the priority given to a  
4 construction mortgage under subsection (h) [Maine cite subsection  
(8)].

6 The rule in subsection (e)(2) [Maine cite subsection (5),  
paragraph (b)] is limited to readily removable replacements of  
8 domestic appliances. It does not apply to original  
installations. Moreover, it is limited to appliances that are  
10 "consumer goods" (defined in Section 9-102 [Maine cite section  
9-1102]) in the hands of the debtor. The principal effect of the  
12 rule is to make clear that a secured party financing occasional  
replacements of domestic appliances in noncommercial,  
14 owneroccupied contexts need not concern itself with real-property  
descriptions or records; indeed, for a purchasemoney replacement  
16 of consumer goods, perfection without any filing will be  
possible. See Section 9-309(1) [Maine cite section 9-1309,  
18 subsection (a)].

20 9. Priority in Fixtures: Judicial Liens. Subsection  
(e)(3) [Maine cite subsection (5), paragraph (c)], which follows  
22 former Section 9-313(4)(d), adopts a first-in-time rule  
applicable to conflicts between a fixture security interest and a  
24 lien on the real property obtained by legal or equitable  
proceedings. Such a lien is subordinate to an earlier-perfected  
26 security interest, regardless of the method by which the security  
interest was perfected. Judgment creditors generally are not  
28 reliance creditors who search real-property records.  
Accordingly, a perfected fixture security interest takes priority  
30 over a subsequent judgment lien or other lien obtained by legal  
or equitable proceedings, even if no evidence of the security  
32 interest appears in the relevant real-property records.  
Subsection (e)(3) [Maine cite subsection (5), paragraph (c)] thus  
34 protects a perfected fixture security interest from avoidance by  
a trustee in bankruptcy under Bankruptcy Code Section 544(a),  
36 regardless of the method of perfection.

38 10. Priority in Fixtures: Manufactured Homes. A  
manufactured home may become a fixture. New subsection (e)(4)  
40 [Maine cite subsection (5), paragraph (d)] contains a special  
rule granting priority to certain security interests created in a  
42 "manufactured home" as part of a "manufactured-home transaction"  
(both defined in Section 9-102 [Maine cite section 9-1102]).  
44 Under this rule, a security interest in a manufactured home that  
becomes a fixture has priority over a conflicting interest of an  
46 encumbrancer or owner of the real property if the security  
interest is perfected under a certificate-of-title statute (see  
48 Section 9-311 [Maine cite section 9-1311]). Subsection (e)(4)  
[Maine cite subsection (5), paragraph (d)] is only one of the  
50 priority rules applicable to security interests in a manufactured

2 home that becomes a fixture. Thus, a security interest in a  
3 manufactured home which does not qualify for priority under this  
4 subsection may qualify under another.

6 11. Priority in Fixtures: Construction Mortgages. The  
7 purchase-money priority presents a difficult problem in relation  
8 to construction mortgages. The latter ordinarily will have been  
9 recorded even before the commencement of delivery of materials to  
10 the job, and therefore would take priority over fixture security  
11 interests were it not for the purchase-money priority. However,  
12 having recorded first, the holder of a construction mortgage  
13 reasonably expects to have first priority in the improvement  
14 built using the mortgagee's advances. Subsection (g) [Maine cite  
15 subsection (7)] expressly gives priority to the construction  
16 mortgage recorded before the filing of the purchase-money  
17 security interest in fixtures. A refinancing of a construction  
18 mortgage has the same priority as the construction mortgage  
19 itself. The phrase "an obligation incurred for the construction  
20 of an improvement" covers both optional advances and advances  
21 pursuant to commitment. Both types of advances have the same  
22 priority under subsection (g) [Maine cite subsection (7)].

24 The priority under this subsection applies only to goods  
25 that become fixtures during the construction period leading to  
26 the completion of the improvement. The construction priority  
27 will not apply to additions to the building made long after  
28 completion of the improvement, even if the additions are financed  
29 by the real-property mortgagee under an open-end clause of the  
30 construction mortgage. In such case, subsections (d), (e), and  
31 (f) [Maine cite subsections (4), (5) and (6)] govern.

32 Although this subsection affords a construction mortgage  
33 priority over a purchase-money security interest that otherwise  
34 would have priority under subsection (d) [Maine cite subsection  
35 (4)], the subsection is subject to the priority rules in  
36 subsections (e) and (f) [Maine cite subsections (5) and (6)].  
37 Thus, a construction mortgage may be junior to a fixture security  
38 interest perfected by a fixture filing before the construction  
39 mortgage was recorded. See subsection (e)(1) [Maine cite  
40 subsection (5), paragraph (a)].

42 12. Crops. Growing crops are "goods" in which a security  
43 interest may be created and perfected under this Article. In  
44 some jurisdictions, a mortgage of real property may cover crops,  
45 as well. In the event that crops are encumbered by both a  
46 mortgage and an Article 9 [Maine cite Article 9-A] security  
47 interest, subsection (i) [Maine cite subsection (a)] provides  
48 that the security interest has priority. States whose  
49 real-property law provides otherwise should either amend that law  
50 directly or override it by enacting subsection (j).

2     **§9-1335. Accessions**

4             (1) A security interest may be created in an accession and  
6             continues in collateral that becomes an accession.

8             (2) If a security interest is perfected when the collateral  
10            becomes an accession, the security interest remains perfected in  
12            the collateral.

14            (3) Except as otherwise provided in subsection (4), the  
16            other provisions of this Part determine the priority of a  
18            security interest in an accession.

20            (4) A security interest in an accession is subordinate to a  
22            security interest in the whole that is perfected by compliance  
24            with the requirements of a certificate-of-title statute under  
26            section 9-1311, subsection (2).

28            (5) After default, subject to Part 6, a secured party may  
30            remove an accession from other goods if the security interest in  
32            the accession has priority over the claims of every person having  
34            an interest in the whole.

36            (6) A secured party that removes an accession from other  
38            goods under subsection (5) shall promptly reimburse any holder of  
40            a security interest or other lien on, or owner of, the whole or  
42            of the other goods, other than the debtor, for the cost of repair  
44            of any physical injury to the whole or the other goods. The  
46            secured party need not reimburse the holder or owner for any  
48            diminution in value of the whole or the other goods caused by the  
              absence of the accession removed or by any necessity for  
              replacing it. A person entitled to reimbursement may refuse  
              permission to remove until the secured party gives adequate  
              assurance for the performance of the obligation to reimburse.

38   **Official Comment**

40            1. Source. Former Section 9-314.

42            2. "Accession." This section applies to an "accession," as  
44            defined in Section 9-102 [Maine cite 9-1102], regardless of the  
46            cost or difficulty of removing the accession from the other  
48            goods, and regardless of whether the original goods have come to  
              form an integral part of the other goods. This section does not  
              apply to goods whose identity has been lost. Goods of that kind  
              are "commingled goods" governed by Section 9-336 [Maine cite  
              section 9-1336]. Neither this section nor the following one

addresses the case of collateral that changes form without the addition of other goods.

3. "Accession" vs. "Other Goods." This section distinguishes among the "accession," the "other goods," and the "whole." The last term refers to the combination of the "accession" and the "other goods." If one person's collateral becomes physically united with another person's collateral, each is an "accession."

Example 1: SP-1 holds a security interest in the debtor's tractors (which are not subject to a certificate-of-title statute), and SP-2 holds a security interest in a particular tractor engine. The engine is installed in a tractor. From the perspective of SP-1, the tractor becomes an "accession" and the engine is the "other goods." From the perspective of SP-2, the engine is the "accession" and the tractor is the "other goods." The completed tractor-tractor cum engine-constitutes the "whole."

4. Scope. This section governs only a few issues concerning accessions. Subsection (a) [Maine cite subsection (1)] contains rules governing continuation of a security interest in an accession. Subsection (b) [Maine cite subsection (2)] contains a rule governing continued perfection of a security interest in goods that become an accession. Subsection (d) [Maine cite subsection (4)] contains a special priority rule governing accessions that become part of a whole covered by a certificate of title. Subsections (e) and (f) [Maine cite subsections (5) and (6)] govern enforcement of a security interest in an accession.

5. Matters Left to Other Provisions of This Article: Attachment and Perfection. Other provisions of this Article often govern accession-related issues. For example, this section does not address whether a secured party acquires a security interest in the whole if its collateral becomes an accession. Normally this will turn on the description of the collateral in the security agreement.

Example 2: Debtor owns a computer subject to a perfected security interest in favor of SP-1. Debtor acquires memory and installs it in the computer. Whether SP-1's security interest attaches to the memory depends on whether the security agreement covers it.

Similarly, this section does not determine whether perfection against collateral that becomes an accession is effective to perfect a security interest in the whole. Other provisions of this Article, including the requirements for

2 indicating the collateral covered by a financing statement,  
2 resolve that question.

4 6. Matters Left to Other Provisions of This Article:  
Priority. With one exception, concerning goods covered by a  
6 certificate of title (see subsection (d) [Maine cite subsection  
(4)]), the other provisions of this Part, including the rules  
8 governing purchase-money security interests, determine the  
priority of most security interests in an accession, including  
10 the relative priority of a security interest in an accession and  
a security interest in the whole. See subsection (c) [Maine cite  
12 subsection (3)].

14 Example 3: Debtor owns an office computer subject to a  
security interest in favor of SP-1. Debtor acquires memory and  
16 grants a perfected security interest in the memory to SP-2.  
Debtor installs the memory in the computer, at which time (one  
18 assumes) SP-1's security interest attaches to the memory. The  
first-to-file-or-perfect rule of Section 9-322 [Maine cite  
20 section 9-1322] governs priority in the memory. If, however,  
SP-2's security interest is a purchase-money security interest,  
22 Section 9-324(a) [Maine cite section 9-1324, subsection (1)]  
would afford priority in the memory to SP-2, regardless of which  
24 security interest was perfected first.

26 7. Goods Covered by Certificate of Title. This section  
does govern the priority of a security interest in an accession  
28 that is or becomes part of a whole that is subject to a security  
interest perfected by compliance with a certificate-of-title  
30 statute. Subsection (d) [Maine cite subsection (4)] provides  
that a security interest in the whole, perfected by compliance  
32 with a certificate-of-title statute, takes priority over a  
security interest in the accession. It enables a secured party  
34 to rely upon a certificate of title without having to check the  
UCC files to determine whether any components of the collateral  
36 may be encumbered. The subsection imposes a corresponding risk  
upon those who finance goods that may become part of goods  
38 covered by a certificate of title. In doing so, it reverses the  
priority that appeared reasonable to most pre-UCC courts.

40 Example 4: Debtor owns an automobile subject to a security  
42 interest in favor of SP-1. The security interest is perfected by  
notation on the certificate of title. Debtor buys tires subject  
44 to a perfected-by-filing purchase-money security interest in  
favor of SP-2 and mounts the tires on the automobile's wheels.  
46 If the security interest in the automobile attaches to the tires,  
then SP-1 acquires priority over SP-2. The same result would  
48 obtain if SP-1's security interest attached to the automobile and  
was perfected after the tires had been mounted on the wheels.

50



2 **§9-1336. Commingled goods**

4 (1) In this section, "commingled goods" means goods that  
6 are physically united with other goods in such a manner that  
8 their identity is lost in a product or mass.

10 (2) A security interest does not exist in commingled goods  
12 as such. However, a security interest may attach to a product or  
14 mass that results when goods become commingled goods.

16 (3) If collateral becomes commingled goods, a security  
18 interest attaches to the product or mass.

20 (4) If a security interest in collateral is perfected  
22 before the collateral becomes commingled goods, the security  
24 interest that attaches to the product or mass under subsection  
26 (3) is perfected.

28 (5) Except as otherwise provided in subsection (6), the  
30 other provisions of this Part determine the priority of a  
32 security interest that attaches to the product or mass under  
34 subsection (3).

36 (6) If more than one security interest attaches to the  
38 product or mass under subsection (3), the following rules  
40 determine priority.

42 (a) A security interest that is perfected under subsection  
44 (4) has priority over a security interest that is  
46 unperfected at the time the collateral becomes commingled  
48 goods.

50 (b) If more than one security interest is perfected under  
subsection (4), the security interests rank equally in  
proportion to value of the collateral at the time it became  
commingled goods.

**Official Comment**

1. Source. Former Section 9-315.

2. "Commingled Goods." Subsection (a) [Maine cite  
subsection (1)] defines "commingled goods." It is meant to  
include not only goods whose identity is lost through  
manufacturing or production (e.g., flour that has become part of  
baked goods) but also goods whose identity is lost by commingling  
with other goods from which they cannot be distinguished (e.g.,  
ball bearings).

2 3. Consequences of Becoming "Commingled Goods." By  
3 definition, the identity of the original collateral cannot be  
4 determined once the original collateral becomes commingled  
5 goods. Consequently, the security interest in the specific  
6 original collateral alone is lost once the collateral becomes  
7 commingled goods, and no security interest in the original  
8 collateral can be created thereafter except as a part of the  
9 resulting product or mass. See subsection (b) [Maine cite  
10 subsection (2)].

11  
12 Once collateral becomes commingled goods, the secured  
13 party's security interest is transferred from the original  
14 collateral to the product or mass. See subsection (c) [Maine  
15 cite subsection (3)]. If the security interest in the original  
16 collateral was perfected, the security interest in the product or  
17 mass is a perfected security interest. See subsection (d) [Maine  
18 cite subsection (4)]. This perfection continues until lapse.

19  
20 4. Priority of Perfected Security Interests That Attach  
21 Under This Section. This section governs the priority of  
22 competing security interests in a product or mass only when both  
23 security interests arise under this section. In that case, if  
24 both security interests are perfected by operation of this  
25 section (see subsections (c) and (d) [Maine cite subsections (3)  
26 and (4)]), then the security interests rank equally, in  
27 proportion to the value of the collateral at the time it became  
28 commingled goods. See subsection (f)(2) [Maine cite subsection  
29 (6), paragraph (b)].

30 Example 1: SP-1 has a perfected security interest in  
31 Debtor's eggs, which have a value of \$300 and secure a debt of  
32 \$400, and SP-2 has a perfected security interest in Debtor's  
33 flour, which has a value of \$500 and secures a debt of \$600.  
34 Debtor uses the flour and eggs to make cakes, which have a value  
35 of \$1000. The two security interests rank equally and share in  
36 the ratio of 3:5. Applying this ratio to the entire value of the  
37 product, SP-1 would be entitled to \$375 (i.e.,  $3/8 \times \$1000$ ), and  
38 SP-2 would be entitled to \$625 (i.e.,  $5/8 \times \$1000$ ).

39  
40 Example 2: Assume the facts of Example 1, except that  
41 SP-1's collateral, worth \$300, secures a debt of \$200. Recall  
42 that, if the cake is worth \$1000, then applying the ratio of 3:5  
43 would entitle SP-1 to \$375 and SP-2 to \$625. However, SP-1 is  
44 not entitled to collect from the product more than it is owed.  
45 Accordingly, SP-1's share would be only \$200, SP-2 would receive  
46 the remaining value, up to the amount it is owed (\$600).

47  
48 Example 3: Assume that the cakes in the previous examples  
49 have a value of only \$600. Again, the parties share in the ratio  
50 of 3:5. If, as in Example 1, SP-1 is owed \$400, then SP-1 is

entitled to \$225 (i.e.,  $3/8 \times \$600$ ), and SP-2 is entitled to \$375 (i.e.,  $5/8 \times \$600$ ). Debtor receives nothing. If, however, as in Example 2, SP-1 is owed only \$200, then SP-2 receives \$400.

The results in the foregoing examples remain the same, regardless of whether SP-1 or SP-2 (or each) has a purchase-money security interest.

5. Perfection: Unperfected Security Interests. The rule explained in the preceding Comment applies only when both security interests in original collateral are perfected when the goods become commingled goods. If a security interest in original collateral is unperfected at the time the collateral becomes commingled goods, subsection (f)(1) [Maine cite subsection (6), paragraph (a)] applies.

Example 4: SP-1 has a perfected security interest in the debtor's eggs, and SP-2 has an unperfected security interest in the debtor's flour. Debtor uses the flour and eggs to make cakes. Under subsection (c) [Maine cite subsection (3)], both security interests attach to the cakes. But since SP-1's security interest was perfected at the time of commingling and SP-2's was not, only SP-1's security interest in the cakes is perfected. See subsection (d) [Maine cite subsection (4)]. Under subsection (f)(1) [Maine cite subsection (6), paragraph (a)] and Section 9-322(a)(2) [Maine cite section 9-1322, subsection (1), paragraph (b)], SP-1's perfected security interest has priority over SP-2's unperfected security interest.

If both security interests are unperfected, the rule of Section 9-322(a)(3) [Maine cite section 9-1322, subsection (1), paragraph (c)] would apply.

6. Multiple Security Interests. On occasion, a single input may be encumbered by more than one security interest. In those cases, the multiple secured parties should be treated like a single secured party for purposes of determining their collective share under subsection (f)(2) [Maine cite subsection (6), paragraph (b)]. The normal priority rules would determine how that share would be allocated between them. Consider the following example, which is a variation on Example 1 above:

Example 5: SP-1A has a perfected, first-priority security interest in Debtor's eggs. SP-1B has a perfected, second-priority security interest in the same collateral. The eggs have a value of \$300. Debtor owes \$200 to SP-1A and \$200 to SP-1B. SP-2 has a perfected security interest in Debtor's flour, which has a value of \$500 and secures a debt of \$600. Debtor uses the flour and eggs to make cakes, which have a value of \$1000.

2 For purposes of subsection (f)(2) [Maine cite subsection 6,  
4 paragraph (b)], SP-1A and SP-1B should be treated like a single  
6 secured party. The collective security interest would rank  
8 equally with that of SP-2. Thus, the secured parties would share  
10 in the ratio of 3 (for SP-1A and SP-1B combined) to 5 (for  
SP-2). Applying this ratio to the entire value of the product,  
SP-1A and SP-1B in the aggregate would be entitled to \$375 (i.e.,  
3/8 x \$1000), and SP-2 would be entitled to \$625 (i.e., 5/8 x  
\$1000).

12 SP-1A and SP-1B would share the \$300 in accordance with  
14 their priority, as established under other rules. Inasmuch as  
16 SP-1A has first priority, it would receive \$200, and SP-1B would  
receive \$100.

18 7. Priority of Security Interests That Attach Other Than by  
20 Operation of This Section. Under subsection (e) [Maine cite  
22 subsection (5)], the normal priority rules determine the priority  
24 of a security interest that attaches to the product or mass other  
26 than by operation of this section. For example, assume that SP-1  
28 has a perfected security interest in Debtor's existing and  
after-acquired baked goods, and SP-2 has a perfected security  
interest in Debtor's flour. When the flour is processed into  
cakes, subsections (c) and (d) [Maine cite subsections (3) and  
(4)] provide that SP-2 acquires a perfected security interest in  
the cakes. If SP-1 filed against the baked goods before SP-2  
filed against the flour, then SP-1 will enjoy priority in the  
cakes. See Section 9-322 [Maine cite section 9-1322]  
(first-to-file-or perfect). But if SP-2 filed against the flour  
before SP-1 filed against the baked goods, then SP-2 will enjoy  
priority in the cakes to the extent of its security interest.

34 **§9-1337. Priority of security interests in goods covered by**  
36 **certificate of title**

38 If, while a security interest in goods is perfected by any  
40 method under the law of another jurisdiction, this State issues a  
42 certificate of title that does not show that the goods are  
subject to the security interest or contain a statement that they  
may be subject to security interests not shown on the certificate:

44 (1) A buyer of the goods, other than a person in the  
46 business of selling goods of that kind, takes free of the  
security interest if the buyer gives value and receives delivery  
of the goods after issuance of the certificate and without  
knowledge of the security interest; and

48 (2) The security interest is subordinate to a conflicting  
50 security interest in the goods that attaches, and is perfected

2 under section 9-1311, subsection (2), after issuance of the  
3 certificate and without the conflicting secured party's knowledge  
4 of the security interest.

6 **Official Comment**

8 1. Source. Derived from former Section 9-103(2)(d).

10 2. Protection for Buyers and Secured Parties. This section  
11 affords protection to certain good-faith purchasers for value who  
12 are likely to have relied on a "clean" certificate of title,  
13 i.e., one that neither shows that the goods are subject to a  
14 particular security interest nor contains a statement that they  
15 may be subject to security interests not shown on the  
16 certificate. Under this section, a buyer can take free of, and  
17 the holder of a conflicting security interest can acquire  
18 priority over, a security interest that is perfected by any  
19 method under the law of another jurisdiction. The fact that the  
20 security interest has been reperfected by possession under  
21 Section 9-313 [Maine cite section 9-1313] does not of itself  
22 disqualify the holder of a conflicting security interest from  
23 protection under paragraph (2) [Maine cite subsection (2)].

24 **§9-1338. Priority of security interest or agricultural lien**  
25 **perfected by filed financing statement providing**  
26 **certain incorrect information**

28 If a security interest or agricultural lien is perfected by  
29 a filed financing statement providing information described in  
30 section 9-1516, subsection (2), paragraph (e) that is incorrect  
31 at the time the financing statement is filed:

34 (1) The security interest or agricultural lien is  
35 subordinate to a conflicting perfected security interest in the  
36 collateral to the extent that the holder of the conflicting  
37 security interest gives value in reasonable reliance upon the  
38 incorrect information; and

40 (2) A purchaser, other than a secured party, of the  
41 collateral takes free of the security interest or agricultural  
42 lien to the extent that, in reasonable reliance upon the  
43 incorrect information, the purchaser gives value and, in the case  
44 of chattel paper, documents, goods, instruments or a security  
45 certificate, receives delivery of the collateral.

48 **Official Comment**

50 1. Source. New.

2           2. Effect of Incorrect Information in Financing Statement.  
3           Section 9-520(a) [Maine cite section 9-1520, subsection (1)]  
4           requires the filing office to reject financing statements that do  
5           not contain information concerning the debtor as specified in  
6           Section 9-516(b)(5) [Maine cite section 9-1516, subsection (2),  
7           paragraph (e)]. A error in this information does not render the  
8           financing statement ineffective. On rare occasions, a subsequent  
9           purchaser of the collateral (i.e., a buyer or secured party) may  
10          rely on the misinformation to its detriment. This section  
11          subordinates a security interest or agricultural lien perfected  
12          by an effective, but flawed, financing statement to the rights of  
13          a buyer or holder of a perfected security interest to the extent  
14          that, in reasonable reliance on the incorrect information, the  
15          purchaser gives value and, in the case of tangible collateral,  
16          receives delivery of the collateral. A purchaser who has not  
17          made itself aware of the information in the filing office with  
18          respect to the debtor cannot act in "reasonable reliance" upon  
19          incorrect information.

20  
21          3. Relationship to Section 9-507 [Maine cite 9-1507]. This  
22          section applies to financing statements that contain information  
23          that is incorrect at the time of filing and imposes a small risk  
24          of subordination on the filer. In contrast, Section 9-507 [Maine  
25          cite section 9-1507] deals with financing statements containing  
26          information that is correct at the time of filing but which  
27          becomes incorrect later. Except as provided in Section 9-507  
28          [Maine cite section 9-1507] with respect to changes in the  
29          debtor's name, an otherwise effective financing statement does  
30          not become ineffective if the information contained in it becomes  
31          inaccurate.

32           **§9-1339. Priority subject to subordination**

33           This Article does not preclude subordination by agreement by  
34           a person entitled to priority.

35  
36  
37   **Official Comment**

38  
39           1. Source. Former Section 9-316.

40  
41           2. Subordination by Agreement. The preceding sections deal  
42           elaborately with questions of priority. This section makes it  
43           entirely clear that a person entitled to priority may effectively  
44           agree to subordinate its claim. Only the person entitled to  
45           priority may make such an agreement: a person's rights cannot be  
46           adversely affected by an agreement to which the person is not a  
47           party.  
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**SUBPART 4**

**RIGHTS OF BANK**

**§9-1340. Effectiveness of right of recoupment or setoff against deposit account**

(1) Except as otherwise provided in subsection (3), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in subsection (3), the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under section 9-1104, subsection (1), paragraph (c), if the setoff is based on a claim against the debtor.

**Official Comment**

1. Source. New; subsection (b) [Maine cite subsection (2)] is based on a nonuniform Illinois amendment.

2. Setoff vs. Security Interest. This section resolves the conflict between a security interest in a deposit account and the bank's rights of recoupment and setoff.

Subsection (a) [Maine cite subsection (1)] states the general rule and provides that the bank may effectively exercise rights of recoupment and setoff against the secured party. Subsection (c) [Maine cite subsection (3)] contains an exception: if the secured party has control under Section 9-104(a)(3) [Maine cite section 9-1104, subsection (1), paragraph (c)] (i.e., if it has become the bank's customer), then any setoff exercised by the bank against a debt owed by the debtor (as opposed to a debt owed to the bank by the secured party) is ineffective. The bank may, however, exercise its recoupment rights effectively. This result is consistent with the priority rule in Section 9-327(4) [Maine cite section 9-1327, subsection (4)], under which the security interest of a bank in a deposit account is subordinate to that of a secured party who has control under Section 9-104(a)(3) [Maine cite section 9-1104, subsection (1), paragraph (c)].

2           This section deals with rights of setoff and recoupment that  
4 a bank may have under other law. It does not create a right of  
6 setoff or recoupment, nor is it intended to override any  
limitations or restrictions that other law imposes on the  
exercise of those rights.

8           3. Preservation of Setoff Right. Subsection (b) [Maine  
10 cite subsection 2)] makes clear that a bank may hold both a right  
of setoff against, and an Article 9 [Maine cite Article 9-A]  
12 security interest in, the same deposit account. By holding a  
security interest in a deposit account, a bank does not impair  
14 any right of setoff it would otherwise enjoy. This subsection  
does not pertain to accounts evidenced by an instrument (e.g.,  
16 certain certificates of deposit), which are excluded from the  
definition of "deposit accounts."

18       **§9-1341. Bank's rights and duties with respect to deposit account**

20           Except as otherwise provided in section 9-1340, subsection  
22 (3), and unless the bank otherwise agrees in an authenticated  
record, a bank's rights and duties with respect to a deposit  
24 account maintained with the bank are not terminated, suspended or  
modified by:

26           (1) The creation, attachment or perfection of a security  
interest in the deposit account;

28           (2) The bank's knowledge of the security interest; or

30           (3) The bank's receipt of instructions from the secured  
32 party.

34

**Official Comment**

36

1. Source. New.

38

2. Free Flow of Funds. This section is designed to prevent  
40 security interests in deposit accounts from impeding the free  
flow of funds through the payment system. Subject to two  
42 exceptions, it leaves the bank's rights and duties with respect  
to the deposit account and the funds on deposit unaffected by the  
44 creation or perfection of a security interest or by the bank's  
knowledge of the security interest. In addition, the section  
46 permits the bank to ignore the instructions of the secured party  
unless it had agreed to honor them or unless other law provides  
48 to the contrary. A secured party who wishes to deprive the  
debtor of access to funds on deposit or to appropriate those  
50 funds for itself needs to obtain the agreement of the bank,



2 utilize the judicial process, or comply with procedures set forth  
3 in other law. Section 4-303(a), concerning the effect of notice  
4 on a bank's right and duty to pay items, is not to the contrary.  
5 That section addresses only whether an otherwise effective notice  
6 comes too late; it does not determine whether a timely notice is  
7 otherwise effective.

8 3. Operation of Rule. The general rule of this section is  
9 subject to Section 9-340(c) [Maine cite section 9-1340,  
10 subsection (3)] , under which a bank's right of setoff may not be  
11 exercised against a deposit account in the secured party's name  
12 if the right is based on a claim against the debtor. This result  
13 reflects current law in many jurisdictions and does not appear to  
14 have unduly disrupted banking practices or the payments system.  
15 The more important function of this section, which is not  
16 impaired by Section 9-340 [Maine cite section 9-1340], is the  
17 bank's right to follow the debtor's (customer's) instructions  
18 (e.g., by honoring checks, permitting withdrawals, etc.) until  
19 such time as the depository institution is served with judicial  
20 process or receives instructions with respect to the funds on  
21 deposit from a secured party who has control over the deposit  
22 account.

23 4. Liability of Bank. This Article does not determine  
24 whether a bank that pays out funds from an encumbered deposit is  
25 liable to the holder of a security interest. Although the fact  
26 that a secured party has control over the deposit account and the  
27 manner by which control was achieved may be relevant to the  
28 imposition of liability, whatever rule applies generally when a  
29 bank pays out funds in which a third party has an interest would  
30 determine liability to a secured party. Often, this rule is  
31 found in a non-UCC adverse claim statute.

32 5. Certificates of Deposit. This section does not address  
33 the obligations of banks that issue instruments evidencing  
34 deposits (e.g., certain certificates of deposit).

35 **§9-1342. Bank's right to refuse to enter into or disclose**  
36 **existence of control agreement**

37 This Article does not require a bank to enter into an  
38 agreement of the kind described in section 9-1104, subsection  
39 (1), paragraph (b), even if its customer so requests or directs.  
40 A bank that has entered into such an agreement is not required to  
41 confirm the existence of the agreement to another person unless  
42 requested to do so by its customer.

43 **Official Comment**

1. Source. New; derived from Section 8-106(g).

2  
3  
4 2. Protection for Bank. This section protects banks from  
5 the need to enter into agreements against their will and from the  
6 need to respond to inquiries from persons other than their  
7 customers.

8  
9  
10 **PART 4**

11 **RIGHTS OF 3RD PARTIES**

12 **§9-1401. Alienability of debtor's rights**

13  
14 (1) Except as otherwise provided in subsection (2) and  
15 sections 9-1406, 9-1407, 9-1408 and 9-1409, whether a debtor's  
16 rights in collateral may be voluntarily or involuntarily  
17 transferred is governed by law other than this Article.

18  
19 (2) An agreement between the debtor and secured party that  
20 prohibits a transfer of the debtor's rights in collateral or  
21 makes the transfer a default does not prevent the transfer from  
22 taking effect.

23  
24  
25 **Official Comment**

26  
27 1. Source. Former Section 9-311.

28  
29 2. Scope of This Part. This Part deals with several issues  
30 affecting third parties (i.e., parties other than the debtor and  
31 the secured party). These issues are not addressed in Part 3,  
32 Subpart 3, which deals with priorities. This Part primarily  
33 addresses the rights and duties of account debtors and other  
34 persons obligated on collateral who are not, themselves, parties  
35 to a secured transaction.

36  
37 3. Governing Law. There was some uncertainty under former  
38 Article 9 as to which jurisdiction's law (usually, which  
39 jurisdiction's version of Article 9) applied to the matters that  
40 this Part addresses. Part 3, Subpart 1, does not determine the  
41 law governing these matters because they do not relate to  
42 perfection, the effect of perfection or nonperfection, or  
43 priority. However, it might be inappropriate for a designation  
44 of applicable law by a debtor and secured party under Section  
45 1-105 to control the law applicable to an independent transaction  
46 or relationship between the debtor and an account debtor.

47  
48 Consider an example under Section 9-408 [Maine cite section  
49 9-1408].  
50

2           Example 1: State X has adopted this Article; former Article  
3           9 is the law of State Y. A general intangible (e.g., a franchise  
4           agreement) between a debtor-franchisee, D, and an account  
5           debtor-franchisor, AD, is governed by the law of State Y. D  
6           grants to SP a security interest in its rights under the  
7           franchise agreement. The franchise agreement contains a term  
8           prohibiting D's assignment of its rights under the agreement. D  
9           and SP agree that their secured transaction is governed by the  
10          law of State X. Under State X's Section 9-408 [Maine cite  
11          section 9-1408], the restriction on D's assignment is ineffective  
12          to prevent the creation, attachment, or perfection of SP's  
13          security interest. State Y's former Section 9-318(4), however,  
14          does not address restrictions on the creation of security  
15          interests in general intangibles other than general intangibles  
16          for money due or to become due. Accordingly, it does not address  
17          restrictions on the assignment to SP of D's rights under the  
18          franchise agreement. The non-Article-9 law of State Y, which  
19          does address restrictions, provides that the prohibition on  
20          assignment is effective.

21           This Article does not provide a specific answer to the  
22          question of which State's law applies to the restriction on  
23          assignment in the example. However, assuming that under non-UCC  
24          choice-of-law principles the effectiveness of the restriction  
25          would be governed by the law of State Y, which governs the  
26          franchise agreement, the fact that State X's Article 9 governs  
27          the secured transaction between SP and D would not override the  
28          otherwise applicable law governing the agreement. Of course, to  
29          the extent that jurisdictions eventually adopt identical versions  
30          of this Article and courts interpret it consistently, the  
31          inability to identify the applicable law in circumstances such as  
32          those in the example may be inconsequential.

33           4. Inalienability Under Other Law. Subsection (a) [Maine  
34          cite subsection (1)] addresses the question whether property  
35          necessarily is transferable by virtue of its inclusion (i.e., its  
36          eligibility as collateral) within the scope of Article 9 [Maine  
37          cite Article 9-A]. It gives a negative answer, subject to the  
38          identified exceptions. The substance of subsection (a) [Maine  
39          cite subsection (1)] was implicit under former Article 9.

40           5. Negative Pledge Covenant. Subsection (b) [Maine cite  
41          subsection (2)] is an exception to the general rule in subsection  
42          (a) [Maine cite subsection (1)]. It makes clear that in secured  
43          transactions under this Article the debtor has rights in  
44          collateral (whether legal title or equitable) which it can  
45          transfer and which its creditors can reach. It is best explained  
46          with an example.

47

2 Example 2: A debtor, D, grants to SP a security interest to  
3 secure a debt in excess of the value of the collateral. D agrees  
4 with SP that it will not create a subsequent security interest in  
5 the collateral and that any security interest purportedly granted  
6 in violation of the agreement will be void. Subsequently, in  
7 violation of its agreement with SP, D purports to grant a  
8 security interest in the same collateral to another secured party.

9  
10 Subsection (b) [Maine cite subsection (2)] validates D's creation  
11 of the subsequent (prohibited) security interest, which might  
12 even achieve priority over the earlier security interest. See  
13 Comment 7. However, unlike some other provisions of this Part,  
14 such as Section 9-406, subsection (b) [Maine cite section 9-1406,  
15 subsection (2)] does not provide that the agreement restricting  
16 assignment itself is "ineffective." Consequently, the debtor's  
17 breach may create a default.

18 6. Rights of Lien Creditors. Difficult problems may arise  
19 with respect to attachment, levy, and other judicial procedures  
20 under which a debtor's creditors may reach collateral subject to  
21 a security interest. For example, an obligation may be secured  
22 by collateral worth many times the amount of the obligation. If  
23 a lien creditor has caused all or a portion of the collateral to  
24 be seized under judicial process, it may be difficult to  
25 determine the amount of the debtor's "equity" in the collateral  
26 that has been seized. The section leaves resolution of this  
27 problem to the courts. The doctrine of marshaling may be  
28 appropriate.

29 7. Sale of Receivables. If a debtor sells an account,  
30 chattel paper, payment intangible, or promissory note outright,  
31 as against the buyer the debtor has no remaining rights to  
32 transfer. If, however, the buyer fails to perfect its interest,  
33 then solely insofar as the rights of certain third parties are  
34 concerned, the debtor is deemed to retain its rights and title.  
35 See Section 9-318 [Maine cite section 9-1318]. The debtor has  
36 the power to convey these rights to a subsequent purchaser. If  
37 the subsequent purchaser (buyer or secured lender) perfects its  
38 interest, it will achieve priority over the earlier, unperfected  
39 purchaser. See Section 9-322(a)(1) [Maine cite section 9-1322,  
40 subsection (1), paragraph (a)].

41 **§9-1402. Secured party not obligated on contract of debtor or in**  
42 **tort**

43 The existence of a security interest, agricultural lien or  
44 authority given to a debtor to dispose of or use collateral,  
45 without more, does not subject a secured party to liability in  
46 contract or tort for the debtor's acts or omissions.

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Official Comment

1. Source. Former Section 9-317.

2. Nonliability of Secured Party. This section, like former Section 9-317, rejects theories on which a secured party might be held liable on a debtor's contracts or in tort merely because a security interest exists or because the debtor is entitled to dispose of or use collateral. This section expands former Section 9-317 to cover agricultural liens.

**§9-1403. Agreement not to assert defenses against assignee**

(1) In this section, "value" has the meaning provided in section 3-303, subsection (1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(a) For value;

(b) In good faith;

(c) Without notice of a claim of a property or possessory right to the property assigned; and

(d) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3-305, subsection (1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3-305, subsection (2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(a) The record has the same effect as if the record included such a statement; and



2 applicable definition in Section 1-201(44). Subsection (a)  
3 [Maine cite subsection (1)] addresses this question; it provides  
4 that "value" has the meaning specified in Section 3-303(a).  
5 Similarly, subsection (c) [Maine cite subsection (3)] provides  
6 that subsection (b) [Maine cite subsection (2)] does not validate  
7 an agreement with respect to defenses that could be asserted  
8 against a holder in due course under Section 9-305(b) [Maine cite  
9 section 9-1305, subsection (2)] (the so-called "real" defenses).  
10 In 1990, the definition of "holder in due course" (Section 3-302)  
11 and the articulation of the rights of a holder in due course  
12 (Sections 3-305 and 3-306) were revised substantially. This  
13 section tracks more closely the rules of Sections 3-302, 3-305,  
14 and 3-306.

15  
16 4. Relationship to Terms of Assigned Property. Former  
17 Section 9-206(2), concerning warranties accompanying the sale of  
18 goods, has been deleted as unnecessary. This Article does not  
19 regulate the terms of the account, chattel paper, or general  
20 intangible that is assigned, except insofar as the account,  
21 chattel paper, or general intangible itself creates a security  
22 interest (as often is the case with chattel paper). Thus,  
23 Article 2, and not this Article, determines whether a seller of  
24 goods makes or effectively disclaims warranties, even if the sale  
25 is secured. Similarly, other law, and not this Article,  
26 determines the effectiveness of an account debtor's undertaking  
27 to pay notwithstanding, and not to assert, any defenses or claims  
28 against an assignor-e.g., a "hell or high water" provision in the  
29 underlying agreement that is assigned. If other law gives effect  
30 to this undertaking, then, under principles of nemo dat, the  
31 undertaking would be enforceable by the assignee (secured  
32 party). If other law prevents the assignor from enforcing the  
33 undertaking, this section nevertheless might permit the assignee  
34 to do so. The right of the assignee to enforce would depend upon  
35 whether, under the particular facts, the account debtor's  
36 undertaking fairly could be construed as an agreement that falls  
37 within the scope of this section and whether the assignee meets  
38 the requirements of this section.

39  
40 5. Relationship to Federal Trade Commission Rule.  
41 Subsection (d) [Maine cite subsection (4)] is new. It applies to  
42 rights evidenced by a record that is required to contain, but  
43 does not contain, the notice set forth in Federal Trade  
44 Commission Rule 433, 16 C.F.R. Part 433 (the  
45 "Holder-in-Due-Course Regulations"). Under this subsection, an  
46 assignee of such a record takes subject to the consumer account  
47 debtor's claims and defenses to the same extent as it would have  
48 if the writing had contained the required notice. Thus,  
49 subsection (d) [Maine cite subsection (4)] effectively renders  
50 waiver-of-defense clauses ineffective in the transactions with  
consumers to which it applies.

2           6. Relationship to Other Law. Like former Section  
3 9-206(1), this section takes no position on the enforceability of  
4 waivers of claims and defenses by consumer account debtors,  
5 leaving that question to other law. However, the reference to  
6 "law other than this article" in subsection (e) [Maine cite  
7 subsection (5)] encompasses administrative rules and regulations;  
8 the reference in former Section 9-206(1) that it replaces  
9 ("statute or decision") arguably did not.

10  
11           This section does not displace other law that gives effect  
12 to a non-consumer account debtor's agreement not to assert  
13 defenses against an assignee, even if the agreement would not  
14 qualify under subsection (b) [Maine cite subsection (2)]. See  
15 subsection (f) [Maine cite subsection (6)]. It validates, but  
16 does not invalidate, agreements made by a non-consumer account  
17 debtor. This section also does not displace other law to the  
18 extent that the other law permits an assignee, who takes an  
19 assignment with notice of a claim of a property or possessory  
20 right, a defense, or a claim in recoupment, to enforce an account  
21 debtor's agreement not to assert claims and defenses against the  
22 assignor (e.g., a "hell-or-high-water" agreement). See Comment  
23 4. It also does not displace an assignee's right to assert that  
24 an account debtor is estopped from asserting a claim or defense.  
25 Nor does this section displace other law with respect to waivers  
26 of potential future claims and defenses that are the subject of  
27 an agreement between the account debtor and the assignee.  
28 Finally, it does not displace Section 1-107, concerning waiver of  
29 a breach that allegedly already has occurred.

30  
31 **§9-1404. Rights acquired by assignee; claims and defenses**  
32 **against assignee**

33  
34           (1) Unless an account debtor has made an enforceable  
35 agreement not to assert defenses or claims, and subject to  
36 subsections (2) through (5), the rights of an assignee are  
37 subject to:

38           (a) All terms of the agreement between the account debtor  
39 and assignor and any defense or claim in recoupment arising  
40 from the transaction that gave rise to the contract; and

41           (b) Any other defense or claim of the account debtor  
42 against the assignor that accrues before the account debtor  
43 receives a notification of the assignment authenticated by  
44 the assignor or the assignee.

45           (2) Subject to subsection (3) and except as otherwise  
46 provided in subsection (4), the claim of an account debtor



2 against an assignor may be asserted against an assignee under  
3 subsection (1) only to reduce the amount the account debtor owes.

4 (3) This section is subject to law other than this Article  
5 that establishes a different rule for an account debtor who is an  
6 individual and who incurred the obligation primarily for  
7 personal, family or household purposes.

8  
9  
10 (4) In a consumer transaction, if a record evidences the  
11 account debtor's obligation, law other than this Article requires  
12 that the record include a statement to the effect that the  
13 account debtor's recovery against an assignee with respect to  
14 claims and defenses against the assignor may not exceed amounts  
15 paid by the account debtor under the record, and the record does  
16 not include such a statement, the extent to which a claim of an  
17 account debtor against the assignor may be asserted against an  
18 assignee is determined as if the record included such a statement.

19  
20 (5) This section does not apply to an assignment of a  
21 health-care-insurance receivable.

22  
23 **Official Comment**

24  
25 1. Source. Former Section 9-318(1).

26  
27 2. Purpose; Rights of Assignee in General. Subsection (a)  
28 [Maine cite subsection (1)], like former Section 9-318(1),  
29 provides that an assignee generally takes an assignment subject  
30 to defenses and claims of an account debtor. Under subsection  
31 (a)(1) [Maine cite subsection (1), paragraph (a)], if the account  
32 debtor's defenses on an assigned claim arise from the transaction  
33 that gave rise to the contract with the assignor, it makes no  
34 difference whether the defense or claim accrues before or after  
35 the account debtor is notified of the assignment. Under  
36 subsection (a)(2) [Maine cite subsection (1), paragraph (b)], the  
37 assignee takes subject to other defenses or claims only if they  
38 accrue before the account debtor has been notified of the  
39 assignment. Of course, an account debtor may waive its right to  
40 assert defenses or claims against an assignee under Section 9-403  
41 [Maine cite section 9-1403] or other applicable law. Subsection  
42 (a) [Maine cite subsection (1)] tracks Section 3-305(a)(3) more  
43 closely than its predecessor.

44  
45 3. Limitation on Affirmative Claims. Subsection (b) [Maine  
46 cite subsection (2)] is new. It limits the claim that the  
47 account debtor may assert against an assignee. Borrowing from  
48 Section 3-305(a)(3) and cases construing former Section 9318,  
49 subsection (b) generally does not afford the account debtor the  
50 right to an affirmative recovery from an assignee.

2           4. Consumer Account Debtors; Relationship to Federal Trade  
Commission Rule. Subsections (c) and (d) [Maine cite subsections  
4           (3) and (4)] also are new. Subsection (c) [Maine cite subsection  
6           (3)] makes clear that the rules of this section are subject to  
8           other law establishing special rules for consumer account  
10           debtors. An "account debtor who is an individual" as used in  
12           subsection (c) [Maine cite subsection (3)] includes individuals  
14           who are jointly or jointly and severally obligated. Subsection  
16           (d) [Maine cite subsection (4)] applies to rights evidenced by a  
18           record that is required to contain, but does not contain, the  
notice set forth in Federal Trade Commission Rule 433, 16 C.F.R.  
Part 433 (the "Holder-in-Due-Course Regulations"). Under  
subsection (d) [Maine cite subsection (4)], a consumer account  
debtor has the same right to an affirmative recovery from an  
assignee of such a record as the consumer would have had against  
the assignee had the record contained the required notice.

20           5. Scope; Application to "Account Debtor." This section  
22           deals only with the rights and duties of "account debtors"-and  
24           for the most part only with account debtors on accounts, chattel  
26           paper, and payment intangibles. Subsection (e) [Maine cite  
28           subsection (5)] provides that the obligation of an insurer with  
30           respect to a health-care-insurance receivable is governed by  
32           other law. References in this section to an "account debtor"  
34           include account debtors on collateral that is proceeds. Neither  
36           this section nor any other provision of this Article, including  
38           Sections 9-408 and 9-409 [Maine cite sections 9-1408 and 9-1409],  
40           provides analogous regulation of the rights and duties of other  
42           obligors on collateral, such as the maker of a negotiable  
instrument (governed by Article 3), the issuer of or nominated  
person under a letter of credit (governed by Article 5), or the  
issuer of a security (governed by Article 8). Article 9 [Maine  
cite Article 9-A] leaves those rights and duties untouched;  
however, Section 9-409 [Maine cite section 9-1409] deals with the  
special case of letters of credit. When chattel paper is  
composed in part of a negotiable instrument, the obligor on the  
instrument is not an "account debtor," and Article 3 governs the  
rights of the assignee of the chattel paper with respect to the  
issues that this section addresses. See, e.g., Section 3-601  
(dealing with discharge of an obligation to pay a negotiable  
instrument).

44           **§9-1405. Modification of assigned contract**

46           (1) A modification of or substitution for an assigned  
48           contract is effective against an assignee if made in good faith.  
50           The assignee acquires corresponding rights under the modified or  
substituted contract. The assignment may provide that the

2 modification or substitution is a breach of contract by the  
3 assignor. This subsection is subject to subsections (2) through  
4 (4).

6 (2) Subsection (1) applies to the extent that:

8 (a) The right to payment or a part thereof under an  
9 assigned contract has not been fully earned by performance;  
10 or

12 (b) The right to payment or a part thereof has been fully  
13 earned by performance and the account debtor has not  
14 received notification of the assignment under section  
15 9-1406, subsection (1).

16 (3) This section is subject to law other than this Article  
17 that establishes a different rule for an account debtor who is an  
18 individual and who incurred the obligation primarily for  
19 personal, family or household purposes.

20 (4) This section does not apply to an assignment of a  
21 health-care-insurance receivable.

#### 24 **Official Comment**

26  
28 1. Source. Former Section 9-318(2).

30 2. Modification of Assigned Contract. The ability of  
31 account debtors and assignors to modify assigned contracts can be  
32 important, especially in the case of government contracts and  
33 complex contractual arrangements (e.g., construction contracts)  
34 with respect to which modifications are customary. Subsections  
35 (a) and (b) [Maine cite subsections (1) and (2)] provide that  
36 good-faith modifications of assigned contracts are binding  
37 against an assignee to the extent that (i) the right to payment  
38 has not been fully earned or (ii) the right to payment has been  
39 earned and notification of the assignment has not been given to  
40 the account debtor. Former Section 9-318(2) did not validate  
41 modifications of fully-performed contracts under any  
42 circumstances, whether or not notification of the assignment had  
43 been given to the account debtor. Subsection (a) [Maine cite  
44 subsection (1)] protects the interests of assignees by (i)  
45 limiting the effectiveness of modifications to those made in good  
46 faith, (ii) affording the assignee with corresponding rights  
47 under the contract as modified, and (iii) recognizing that the  
48 modification may be a breach of the assignor's agreement with the  
49 assignee.

2 3. Consumer Account Debtors. Subsection (c) [Maine cite  
3 subsection (3)] is new. It makes clear that the rules of this  
4 section are subject to other law establishing special rules for  
5 consumer account debtors.

6 4. Account Debtors on Health-Care-Insurance Receivables.  
7 Subsection (d) [Maine cite subsection (4)] also is new. It  
8 provides that this section does not apply to an assignment of a  
9 health-care-insurance receivable. The obligation of an insurer  
10 with respect to a health-care-insurance receivable is governed by  
11 other law.

12

13 **§9-1406. Discharge of account debtor; notification of**  
14 **assignment; identification and proof of assignment;**  
15 **restrictions on assignment of accounts, chattel paper,**  
16 **payment intangibles, and promissory notes ineffective**  
17

18

19 (1) Subject to subsections (2) through (9), an account  
20 debtor on an account, chattel paper, or a payment intangible may  
21 discharge its obligation by paying the assignor until, but not  
22 after, the account debtor receives a notification, authenticated  
23 by the assignor or the assignee, that the amount due or to become  
24 due has been assigned and that payment is to be made to the  
25 assignee. After receipt of the notification, the account debtor  
26 may discharge its obligation by paying the assignee and may not  
27 discharge the obligation by paying the assignor.

28

29 (2) Subject to subsection (8), notification is ineffective  
30 under subsection (1):

31 (a) If it does not reasonably identify the rights assigned:

32 (b) To the extent that an agreement between an account  
33 debtor and a seller of a payment intangible limits the  
34 account debtor's duty to pay a person other than the seller  
35 and the limitation is effective under law other than this  
36 Article; or  
37

38 (c) At the option of an account debtor, if the notification  
39 notifies the account debtor to make less than the full  
40 amount of any installment or other periodic payment to the  
41 assignee, even if:  
42

43

44 (i) Only a portion of the account, chattel paper or  
45 general intangible has been assigned to that assignee;

46 (ii) A portion has been assigned to another assignee;  
47 or  
48

49  
50

2                   (iii) The account debtor knows that the assignment to  
3                   that assignee is limited.

4                   (3) Subject to subsection (8), if requested by the account  
5                   debtor, an assignee shall seasonably furnish reasonable proof  
6                   that the assignment has been made. Unless the assignee complies,  
7                   the account debtor may discharge its obligation by paying the  
8                   assignor, even if the account debtor has received a notification  
9                   under subsection (1).

10                   (4) Except as otherwise provided in subsection (5) and  
11                   sections 2-1303 and 9-1407, and subject to subsection (8), a term  
12                   in an agreement between an account debtor and an assignor or in a  
13                   promissory note is ineffective to the extent that it:

14                   (a) Prohibits, restricts or requires the consent of the  
15                   account debtor or person obligated on the promissory note to  
16                   the assignment or transfer of, or the creation, attachment,  
17                   perfection or enforcement of a security interest in, the  
18                   account, chattel paper, payment intangible or promissory  
19                   note; or

20                   (b) Provides that the creation, attachment, perfection or  
21                   enforcement of the security interest may give rise to a  
22                   default, breach, right of recoupment, claim, defense,  
23                   termination, right of termination or remedy under the  
24                   account, chattel paper, payment intangible or promissory  
25                   note.

26                   (5) Subsection (4) does not apply to the sale of a payment  
27                   intangible or promissory note.

28                   (6) Except as otherwise provided in sections 2-1303 and  
29                   9-1407 and subject to subsections (8) and (9), a rule of law,  
30                   statute, or regulation that prohibits, restricts or requires the  
31                   consent of a government, governmental body or official, or  
32                   account debtor to the assignment or transfer of, or creation of a  
33                   security interest in, an account or chattel paper is ineffective  
34                   to the extent that the rule of law, statute or regulation:

35                   (a) Prohibits, restricts or requires the consent of the  
36                   government, governmental body or official, or account debtor  
37                   to the assignment or transfer of, or the creation,  
38                   attachment, perfection or enforcement of a security interest  
39                   in the account or chattel paper; or

40                   (b) Provides that the creation, attachment, perfection or  
41                   enforcement of the security interest may give rise to a  
42                   default, breach, right of recoupment, claim, defense,  
43                   termination, right of termination or remedy under the  
44                   account, chattel paper, payment intangible or promissory  
45                   note.



2 it probably does not change the rule that applied under former  
3 Article 9. Former Section 9-318(3) referred to the account  
4 debtor's obligation to "pay," indicating that the subsection was  
5 limited to account debtors on accounts, chattel paper, and other  
6 payment obligations.

7 3. Limitations on Effectiveness of Notification.  
8 Subsection (b) [Maine cite subsection (2)] contains some special  
9 rules concerning the effectiveness of a notification under  
10 subsection (a) [Maine cite subsection (1)].

11 Subsection (b)(1) [Maine cite subsection (2), paragraph (a)]  
12 tracks former Section 9-318(3) by making ineffective a  
13 notification that does not reasonably identify the rights  
14 assigned. A reasonable identification need not identify the  
15 right to payment with specificity, but what is reasonable also is  
16 not left to the arbitrary decision of the account debtor. If an  
17 account debtor has doubt as to the adequacy of a notification, it  
18 may not be safe in disregarding the notification unless it  
19 notifies the assignee with reasonable promptness as to the  
20 respects in which the account debtor considers the notification  
21 defective.

22 Subsection (b)(2) [Maine cite subsection (2), paragraph  
23 (b)], which is new, applies only to sales of payment  
24 intangibles. It makes a notification ineffective to the extent  
25 that other law gives effect to an agreement between an account  
26 debtor and a seller of a payment intangible that limits the  
27 account debtor's duty to pay a person other than the seller.  
28 Payment intangibles are substantially less fungible than accounts  
29 and chattel paper. In some (e.g., commercial bank loans),  
30 account debtors customarily and legitimately expect that they  
31 will not be required to pay any person other than the financial  
32 institution that has advanced funds.

33 It has become common in financing transactions to assign  
34 interests in a single obligation to more than one assignee.  
35 Requiring an account debtor that owes a single obligation to make  
36 multiple payments to multiple assignees would be unnecessarily  
37 burdensome. Thus, under subsection (b)(3) [Maine cite subsection  
38 (2), paragraph (c)], an account debtor that is notified to pay an  
39 assignee less than the full amount of any installment or other  
40 periodic payment has the option to treat the notification as  
41 ineffective, ignore the notice, and discharge the assigned  
42 obligation by paying the assignor. Some account debtors may not  
43 realize that the law affords them the right to ignore certain  
44 notices of assignment with impunity. By making the notification  
45 ineffective at the account debtor's option, subsection (b)(3)  
46 [Maine cite subsection (2), paragraph (c)] permits an account  
47 debtor to pay the assignee in accordance with the notice and  
48  
49  
50

2 thereby to satisfy its obligation pro tanto. Under subsection  
(g) [Maine cite subsection (7)], the rights and duties created by  
3 subsection (b)(3) [Maine cite subsection (2), paragraph (c)]  
4 cannot be waived or varied.

6 4. Proof of Assignment. Subsection (c) [Maine cite  
subsection (3)] links payment with discharge, as in subsection  
8 (a) [Maine cite subsection (1)]. It follows former Section  
9-318(3) in referring to the right of the account debtor to pay  
10 the assignor if the requested proof of assignment is not  
seasonably forthcoming. Even if the proof is not forthcoming,  
12 the notification of assignment would remain effective, so that,  
in the absence of reasonable proof of the assignment, the account  
14 debtor could discharge the obligation by paying either the  
assignee or the assignor. Of course, if the assignee did not in  
16 fact receive an assignment, the account debtor cannot discharge  
its obligation by paying a putative assignee who is a stranger.  
18 The observations in Comment 3 concerning the reasonableness of an  
identification of a right to payment also apply here. An account  
20 debtor that questions the adequacy of proof submitted by an  
assignor would be well advised to promptly inform the assignor of  
22 the defects.

24 An account debtor may face another problem if its obligation  
becomes due while the account debtor is awaiting reasonable proof  
26 of the assignment that it has requested from the assignee. This  
section does not excuse the account debtor from timely compliance  
28 with its obligations. Consequently, an account debtor that has  
received a notification of assignment and who has requested  
30 reasonable proof of the assignment may discharge its obligation  
by paying the assignor at the time (or even earlier if reasonably  
32 necessary to avoid risk of default) when a payment is due, even  
if the account debtor has not yet received a response to its  
34 request for proof. On the other hand, after requesting  
reasonable proof of the assignment, an account debtor may not  
36 discharge its obligation by paying the assignor substantially in  
advance of the time that the payment is due unless the assignee  
38 has failed to provide the proof seasonably.

40 5. Contractual Restrictions on Assignment. Former Section  
9-318(4) rendered ineffective an agreement between an account  
42 debtor and an assignor which prohibited assignment of an account  
(whether outright or to secure an obligation) or prohibited a  
44 security assignment of a general intangible for the payment of  
money due or to become due. Subsection (d) [Maine cite  
46 subsection (4)] essentially follows former Section 9-318(4), but  
expands the rule of free assignability to chattel paper (subject  
48 to Sections 2-1303 and 9-407 [Maine cite section 9-1407]) and  
promissory notes and explicitly overrides both restrictions and  
50 prohibitions of assignment. The policies underlying the



2 ineffectiveness of contractual restrictions under this section  
3 build on common-law developments that essentially have eliminated  
4 legal restrictions on assignments of rights to payment as  
5 security and other assignments of rights to payment such as  
6 accounts and chattel paper. Any that might linger for accounts  
7 and chattel paper are addressed by new subsection (f) [Maine cite  
8 subsection (6)]. See Comment 6.

9  
10 Former Section 9-318(4) did not apply to a sale of a payment  
11 intangible (as described in the former provision, "a general  
12 intangible for money due or to become due") but did apply to an  
13 assignment of a payment intangible for security. Subsection (e)  
14 [Maine cite subsection (5)] continues this approach and also  
15 makes subsection (d) [Maine cite subsection (4)] inapplicable to  
16 sales of promissory notes. Section 9-408 [Maine cite section  
17 9-1408] addresses anti-assignment clauses with respect to sales  
18 of payment intangibles and promissory notes.

19  
20 Like former Section 9-318(4), subsection (d) [Maine cite  
21 subsection (4)] provides that anti-assignment clauses are  
22 "ineffective." The quoted term means that the clause is of no  
23 effect whatsoever; the clause does not prevent the assignment  
24 from taking effect between the parties and the prohibited  
25 assignment does not constitute a default under the agreement  
26 between the account debtor and assignor. However, subsection (d)  
27 [Maine cite subsection (4)] does not override terms that do not  
28 directly prohibit, restrict, or require consent to an assignment  
29 but which might, nonetheless, present a practical impairment of  
30 the assignment. Properly read, however, subsection (d) [Maine  
31 cite subsection (4)] reaches only covenants that prohibit,  
32 restrict, or require consents to assignments; it does not  
33 override all terms that might "impair" an assignment in fact.

34 Example: Buyer enters into an agreement with Seller to buy  
35 equipment that Seller is to manufacture according to Buyer's  
36 specifications. Buyer agrees to make a series of prepayments  
37 during the construction process. In return, Seller agrees to set  
38 aside the prepaid funds in a special account and to use the funds  
39 solely for the manufacture of the designated equipment. Seller  
40 also agrees that it will not assign any of its rights under the  
41 sale agreement with Buyer. Nevertheless, Seller grants to  
42 Secured Party a security interest in its accounts. Seller's  
43 anti-assignment agreement is ineffective under subsection (d)  
44 [Maine cite subsection (4)]; its agreement concerning the use of  
45 prepaid funds, which is not a restriction or prohibition on  
46 assignment, is not. However, if Secured Party notifies Buyer to  
47 make all future payments directly to Secured Party, Buyer will be  
48 obliged to do so under subsection (a) [Maine cite subsection (1)]  
49 if it wishes the payments to discharge its obligation. Unless  
50 Secured Party releases the funds to Seller so that Seller can

2 comply with its use-of-funds covenant, Seller will be in breach  
of that covenant.

4 In the example, there appears to be a plausible business purpose  
6 for the use-of-funds covenant. However, a court may conclude  
that a covenant with no business purpose other than imposing an  
8 impediment to an assignment actually is a direct restriction that  
is rendered ineffective by subsection (d) [Maine cite subsection  
(4)].

10  
12 6. Legal Restrictions on Assignment. Former Section  
9-318(4), like subsection (d) [Maine cite subsection (4)] of this  
14 section, addressed only contractual restrictions on assignment.  
The former section was grounded on the reality that legal, as  
16 opposed to contractual, restrictions on assignments of rights to  
payment had largely disappeared. New subsection (f) [Maine cite  
18 subsection (6)] codifies this principle of free assignability for  
accounts and chattel paper. For the most part the discussion of  
contractual restrictions in Comment 5 applies as well to legal  
20 restrictions rendered ineffective under subsection (f) [Maine  
cite subsection (6)].

22  
24 7. Multiple Assignments. This section, like former Section  
9-318, is not a complete codification of the law of assignments  
of rights to payment. In particular, it is silent concerning  
26 many of the ramifications for an account debtor in cases of  
multiple assignments of the same right. For example, an assignor  
28 might assign the same receivable to multiple assignees (which  
assignments could be either inadvertent or wrongful). Or, the  
30 assignor could assign the receivable to assignee-1, which then  
might re-assign it to assignee-2, and so forth. The rights and  
32 duties of an account debtor in the face of multiple assignments  
and in other circumstances not resolved in the statutory text are  
34 left to the common-law rules. See, e.g., Restatement (2d),  
Contracts §§ 338(3), 339. The failure of former Article 9 to  
36 codify these rules does not appear to have caused problems.

38 8. Consumer Account Debtors. Subsection (h) [Maine cite  
39 subsection (8)] is new. It makes clear that the rules of this  
40 section are subject to other law establishing special rules for  
consumer account debtors.

42  
44 9. Account Debtors on Health-Care-Insurance Receivables.  
Subsection (i) [Maine cite subsection (9)] also is new. The  
46 obligation of an insurer with respect to a health-care-insurance  
receivable is governed by other law. Section 9-408 [Maine cite  
48 section 9-1408] addresses contractual and legal restrictions on  
the assignment of a health-care-insurance receivable.

50

2 **§9-1407. Restrictions on creation or enforcement of security**  
3 **interest in leasehold interest or in lessor's residual**  
4 **interest**

6 (1) Except as otherwise provided in subsection (2), a term  
7 in a lease agreement is ineffective to the extent that it:

8 (a) Prohibits, restricts or requires the consent of a party  
9 to the lease to the creation, attachment, perfection or  
10 enforcement of a security interest in an interest of a party  
11 under the lease contract or in the lessor's residual  
12 interest in the goods; or

14 (b) Provides that the creation, attachment, perfection or  
15 enforcement of the security interest may give rise to a  
16 default, breach, right of recoupment, claim, defense,  
17 termination, right of termination or remedy under the lease.

18 (2) Except as otherwise provided in section 2-1303,  
19 subsection (7), a term described in subsection (1), paragraph (b)  
20 is effective to the extent that there is:

22 (a) A transfer by the lessee of the lessee's right of  
23 possession or use of the goods in violation of the term; or

24 (b) A delegation of a material performance of either party  
25 to the lease contract in violation of the term.

28 (3) The creation, attachment, perfection or enforcement of  
29 a security interest in the lessor's interest under the lease  
30 contract or the lessor's residual interest in the goods is not a  
31 transfer that materially impairs the lessee's prospect of  
32 obtaining return performance or materially changes the duty of or  
33 materially increases the burden or risk imposed on the lessee  
34 within the purview of section 2-1303, subsection (4) unless, and  
35 then only to the extent that, enforcement actually results in a  
36 delegation of material performance of the lessor.

38  
39  
40 **Official Comment**

42 1. Source. Section 2-1303.

44 2. Restrictions on Assignment Generally Ineffective. Under  
45 subsection (a) [Maine cite subsection (1)] , as under former  
46 Section 2-1303, subsection (3), a term in a lease agreement which  
47 prohibits or restricts the creation of a security interest  
48 generally is ineffective. This reflects the general policy of  
49 Section 9-406(d) [Maine cite section 9-1406 (d)] and former  
50 Section 9-318(4). This section has been conformed in several

2 respects to analogous provisions in Sections 9-406, 9-408, and  
3 9-409 [Maine cite sections 9-1406, 9-1408 and 9-1409], including  
4 the substitution of "ineffective" for "not enforceable" and the  
5 substitution of "creation, attachment, perfection, or enforcement  
6 of a security interest" for "creation or enforcement of a  
7 security interest."

8 3. Exceptions for Certain Transfers and Delegations.  
9 Subsection (b) [Maine cite subsection (2)] provides exceptions to  
10 the general ineffectiveness of restrictions under subsection (a)  
11 [Maine cite subsection (1)]. A term that otherwise is  
12 ineffective under subsection (a)(2) [Maine cite subsection (1),  
13 paragraph (b)] is effective to the extent that a lessee transfers  
14 its right to possession and use of goods or if either party  
15 delegates material performance of the lease contract in violation  
16 of the term. However, under subsection (c) [Maine cite  
17 subsection (3)], as under former Section 2-1303(3), a lessor's  
18 creation of a security interest in its interest in a lease  
19 contract or its residual interest in the leased goods is not a  
20 material impairment under Section 2-1303(4) (former Section  
21 2-1303(5)), absent an actual delegation of the lessor's material  
22 performance. The terms of the lease contract determine whether  
23 the lessor, in fact, has any remaining obligations to perform.  
24 If it does, it is then necessary to determine whether there has  
25 been an actual delegation of "material performance." See Section  
26 2-1303, Comments 3 and 4.

28 **§9-1408. Restrictions on assignment of promissory notes,  
29 health-care-insurance receivables and certain general  
30 intangibles ineffective**

31 (1) Except as otherwise provided in subsection (2), a term  
32 in a promissory note or in an agreement between an account debtor  
33 and a debtor that relates to a health-care-insurance receivable  
34 or a general intangible, including a contract, permit, license or  
35 franchise, and which term prohibits, restricts or requires the  
36 consent of the person obligated on the promissory note or the  
37 account debtor to, the assignment or transfer of, or creation,  
38 attachment or perfection of a security interest in, the  
39 promissory note, health-care-insurance receivable or general  
40 intangible, is ineffective to the extent that the term:

41 (a) Would impair the creation, attachment or perfection of  
42 a security interest; or

43 (b) Provides that the creation, attachment or perfection of  
44 the security interest may give rise to a default, breach,  
45 right of recoupment, claim, defense, termination right of

2           termination, or remedy under the promissory note,  
health-care-insurance receivable or general intangible.

4           (2) Subsection (1) applies to a security interest in a  
payment intangible or promissory note only if the security  
6 interest arises out of a sale of the payment intangible or  
promissory note.

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

18           (a) Would impair the creation, attachment or perfection of  
20 a security interest; or

22           (b) Provides that the creation, attachment or perfection of  
the security interest may give rise to a default, breach,  
24 right of recoupment, claim, defense, termination right of  
termination or remedy under the promissory note,  
26 health-care-insurance receivable or general intangible.

28           (4) To the extent that a term in a promissory note or in an  
agreement between an account debtor and a debtor that relates to  
30 a health-care-insurance receivable or general intangible or a  
rule of law, statute or regulation described in subsection (3)  
32 would be effective under law other than this Article but is  
ineffective under subsection (1) or (3), the creation, attachment  
34 or perfection of a security interest in the promissory note,  
health-care-insurance receivable or general intangible:

36           (a) Is not enforceable against the person obligated on the  
38 promissory note or the account debtor;

40           (b) Does not impose a duty or obligation on the person  
obligated on the promissory note or the account debtor;

42           (c) Does not require the person obligated on the promissory  
note or the account debtor to recognize the security  
44 interest, pay or render performance to the secured party or  
accept payment or performance from the secured party;  
46

48           (d) Does not entitle the secured party to use or assign the  
debtor's rights under the promissory note,  
50 health-care-insurance receivable or general intangible,

2 including any related information or materials furnished to  
3 the debtor in the transaction giving rise to the promissory  
4 note, health-care-insurance receivable or general intangible;

6 (e) Does not entitle the secured party to use, assign,  
7 possess or have access to any trade secrets or confidential  
8 information of the person obligated on the promissory note  
9 or the account debtor; and

10 (f) Does not entitle the secured party to enforce the  
11 security interest in the promissory note,  
12 health-care-insurance receivable or general intangible.

14  
15 **Official Comment**

16  
17 1. Source. New.

18  
19 2. Free Assignability. This section makes ineffective any  
20 attempt to restrict the assignment of a general intangible,  
21 health-care-insurance receivable, or promissory note, whether the  
22 restriction appears in the terms of a promissory note or the  
23 agreement between an account debtor and a debtor (subsection (a)  
24 [Maine cite subsection (1)]) or in a rule of law, including a  
25 statute or governmental rule or regulation (subsection (c) [Maine  
26 cite subsection (3)]). This result allows the creation,  
27 attachment, and perfection of a security interest in a general  
28 intangible, such as an agreement for the nonexclusive license of  
29 software, as well as sales of certain receivables, such as a  
30 health-care-insurance receivable (which is an "account"), payment  
31 intangible, or promissory note, without giving rise to a default  
32 or breach by the assignor or from triggering a remedy of the  
33 account debtor or person obligated on a promissory note. This  
34 enhances the ability of certain debtors to obtain credit. On the  
35 other hand, subsection (d) [Maine cite subsection (4)] protects  
36 the other party—the "account debtor" on a general intangible or  
37 the person obligated on a promissory note—from adverse effects  
38 arising from the security interest. It leaves the account  
39 debtor's or obligated person's rights and obligations unaffected  
40 in all material respects if a restriction rendered ineffective by  
41 subsection (a) or (c) [Maine cite subsection (1) or (3)] would be  
42 effective under law other than Article 9 [Maine cite Article 9-A].

44 Example 1: A term of an agreement for the nonexclusive  
45 license of computer software prohibits the licensee from  
46 assigning any of its rights as licensee with respect to the  
47 software. The agreement also provides that an attempt to assign  
48 rights in violation of the restriction is a default entitling the  
49 licensor to terminate the license agreement. The licensee, as  
50 debtor, grants to a secured party a security interest in its

rights under the license and in the computers in which it is  
2 installed. Under this section, the term prohibiting assignment  
and providing for a default upon an attempted assignment is  
4 ineffective to prevent the creation, attachment, or perfection of  
the security interest or entitle the licensor to terminate the  
6 license agreement. However, under subsection (d) [Maine cite  
subsection (4)], the secured party (absent the licensor's  
8 agreement) is not entitled to enforce the license or to use,  
assign, or otherwise enjoy the benefits of the licensed software,  
10 and the licensor need not recognize (or pay any attention to) the  
secured party. Even if the secured party takes possession of the  
12 computers on the debtor's default, the debtor would remain free  
to remove the software from the computer, load it on another  
14 computer, and continue to use it, if the license so permits. If  
the debtor does not remove the software, other law may require  
16 the secured party to remove it before disposing of the computer.  
Disposition of the software with the computer could violate an  
18 effective prohibition on enforcement of the security interest.  
See subsection (d) [Maine cite subsection (4)].

20  
3. Nature of Debtor's Interest. Neither this section nor  
22 any other provision of this Article determines whether a debtor  
has a property interest. The definition of the term "security  
24 interest" provides that it is an "interest in personal  
property." See Section 1-201(37). Ordinarily, a debtor can  
26 create a security interest in collateral only if it has "rights  
in the collateral." See Section 9-203(b) [Maine cite section  
28 9-1203, subsection (2)]. Other law determines whether a debtor  
has a property interest ("rights in the collateral") and the  
30 nature of that interest. For example, the nonexclusive license  
addressed in Example 1 may not create any property interest  
32 whatsoever in the intellectual property (e.g., copyright) that  
underlies the license and that effectively enables the licensor  
34 to grant the license. The debtor's property interest may be  
confined solely to its interest in the promises made by the  
36 licensor in the license agreement (e.g., a promise not to sue the  
debtor for its use of the software).

38  
4. Scope: Sales of Payment Intangibles and Other General  
40 Intangibles; Assignments Unaffected by this Section. Subsections  
(a) and (c) [Maine cite subsections (1) and (3)] render  
42 ineffective restrictions on assignments only "to the extent" that  
the assignments restrict the "creation, attachment, or perfection  
44 of a security interest," including sales of payment intangibles  
and promissory notes. This section does not render ineffective a  
46 restriction on an assignment that does not create a security  
interest. For example, if the debtor in Comment 2, Example 1  
48 purported to assign the license to another entity that would use  
the computer software itself, other law would govern the  
50 effectiveness of the anti-assignment provisions.

2           Subsection (a) [Maine cite subsection (1)] applies to a  
3 security interest in payment intangibles only if the security  
4 interest arises out of sale of the payment intangibles.  
5 Contractual restrictions directed to security interests in  
6 payment intangibles which secure an obligation are subject to  
7 Section 9-406(d) [Maine cite section 9-1406, subsection (4)].  
8 Subsection (a) [Maine cite subsection (1)] also deals with sales  
9 of promissory notes which also create security interests. See  
10 Section 9-109(a) [Maine cite section 9-1109, subsection (1)].  
11 Subsection (c) [Maine cite subsection (3)] deals with all  
12 security interests in payment intangibles or promissory notes,  
13 whether or not arising out of a sale.

14  
15           Subsection (a) [Maine cite subsection (1)] does not render  
16 ineffective any term, and subsection (c) [Maine cite subsection  
17 (3)] does not render ineffective any law, statute or regulation,  
18 that restricts outright sales of general intangibles other than  
19 payment intangibles. They deal only with restrictions on  
20 security interests. The only sales of general intangibles that  
21 create security interests are sales of payment intangibles.

22  
23           5. Terminology: "Account Debtor"; "Person Obligated on a  
24 Promissory Note." This section uses the term "account debtor" as  
25 it is defined in Section 9-102 [Maine cite section 9-1102]. The  
26 term refers to the party, other than the debtor, to a general  
27 intangible, including a permit, license, franchise, or the like,  
28 and the person obligated on a health-care-insurance receivable,  
29 which is a type of account. The definition of "account debtor"  
30 does not limit the term to persons who are obligated to pay under  
31 a general intangible. Rather, the term includes all persons who  
32 are obligated on a general intangible, including those who are  
33 obligated to render performance in exchange for payment. In some  
34 cases, e.g., the creation of a security interest in a  
35 franchisee's rights under a franchise agreement, the principal  
36 payment obligation may be owed by the debtor (franchisee) to the  
37 account debtor (franchisor). This section also refers to a  
38 "person obligated on a promissory note," inasmuch as those  
39 persons do not fall within the definition of "account debtor."

40  
41           Example 2: A licensor and licensee enter into an agreement  
42 for the nonexclusive license of computer software. The  
43 licensee's interest in the license agreement is a general  
44 intangible. If the licensee grants to a secured party a security  
45 interest in its rights under the license agreement, the licensee  
46 is the debtor and the licensor is the account debtor. On the  
47 other hand, if the licensor grants to a secured party a security  
48 interest in its right to payment (an account) under the license  
49 agreement, the licensor is the debtor and the licensee is the  
50 account debtor. (This section applies to the security interest



2 in the general intangible but not to the security interest in the  
account, which is not a health-care-insurance receivable.)

4 6. Effects on Account Debtors and Persons Obligated on  
Promissory Notes. Subsections (a) and (c) [Maine cite  
6 subsections (1) and (3)] affect two classes of persons. These  
subsections affect account debtors on general intangibles and  
8 health-care-insurance receivables and persons obligated on  
promissory notes. Subsection (c) [Maine cite subsection (3)]  
10 also affects governmental entities that enact or determine rules  
of law. However, subsection (d) [Maine cite subsection (4)]  
12 ensures that these affected persons are not affected adversely.  
That provision removes any burdens or adverse effects on these  
14 persons for which any rational basis could exist to restrict the  
effectiveness of an assignment or to exercise any remedies. For  
16 this reason, the effects of subsections (a) and (c) [Maine cite  
subsections (1) and (3)] are immaterial insofar as those persons  
18 are concerned.

20 Subsection (a) [Maine cite subsection (1)] does not override  
terms that do not directly prohibit, restrict, or require consent  
22 to an assignment but which might, nonetheless, present a  
practical impairment of the assignment. Properly read, however,  
24 this section, like Section 9-406(d) [Maine cite section 9-1406,  
subsection (4)], reaches only covenants that prohibit, restrict,  
26 or require consents to assignments; it does not override all  
terms that might "impair" an assignment in fact.

28  
30 Example 3: A licensor and licensee enter into an agreement  
for the nonexclusive license of valuable business software. The  
license agreement includes terms (i) prohibiting the licensee  
32 from assigning its rights under the license, (ii) prohibiting the  
licensee from disclosing to anyone certain information relating  
34 to the software and the licensor, and (iii) deeming prohibited  
assignments and prohibited disclosures to be defaults. The  
36 licensee wishes to obtain financing and, in exchange, is willing  
to grant a security interest in its rights under the license  
38 agreement. The secured party, reasonably, refuses to extend  
credit unless the licensee discloses the information that it is  
40 prohibited from disclosing under the license agreement. The  
secured party cannot determine the value of the proposed  
42 collateral in the absence of this information. Under this  
section, the terms of the license prohibiting the assignment  
44 (grant of the security interest) and making the assignment a  
default are ineffective. However, the nondisclosure covenant is  
46 not a term that prohibits the assignment or creation of a  
security interest in the license. Consequently, the  
48 nondisclosure term is enforceable even though the practical  
effect is to restrict the licensee's ability to use its rights  
50 under the license agreement as collateral.

2 The nondisclosure term also would be effective in the factual  
3 setting of Comment 2, Example 1. If the secured party's  
4 possession of the computers loaded with software would put it in  
5 a position to discover confidential information that the debtor  
6 was prohibited from disclosing, the licensor should be entitled  
7 to enforce its rights against the secured party. Moreover, the  
8 licensor could have required the debtor to obtain the secured  
9 party's agreement that (i) it would immediately return all copies  
10 of software loaded on the computers and that (ii) it would not  
11 examine or otherwise acquire any information contained in the  
12 software. This section does not prevent an account debtor from  
13 protecting by agreement its independent interests that are  
14 unrelated to the "creation, attachment, or perfection" of a  
15 security interest. In Example 1, moreover, the secured party is  
16 not in possession of copies of software by virtue of its security  
17 interest or in connection with enforcing its security interest in  
18 the debtor's license of the software. Its possession is  
19 incidental to its possession of the computers, in which it has a  
20 security interest. Enforcing against the secured party a  
21 restriction relating to the software in no way interferes with  
22 its security interest in the computers.

24 7. Effect in Assignor's Bankruptcy. This section could  
25 have a substantial effect if the assignor enters bankruptcy.  
26 Roughly speaking, Bankruptcy Code Section 552 invalidates  
27 security interests in property acquired after a bankruptcy  
28 petition is filed, except to the extent that the postpetition  
29 property constitutes proceeds of prepetition collateral.  
30

32 Example 4: A debtor is the owner of a cable television  
33 franchise that, under applicable law, cannot be assigned without  
34 the consent of the municipal franchisor. A lender wishes to  
35 extend credit to the debtor, provided that the credit is secured  
36 by the debtor's "going business" value. To secure the loan, the  
37 debtor grants a security interest in all its existing and  
38 after-acquired property. The franchise represents the principal  
39 value of the business. The municipality refuses to consent to  
40 any assignment for collateral purposes. If other law were given  
41 effect, the security interest in the franchise would not attach;  
42 and if the debtor were to enter bankruptcy and sell the business,  
43 the secured party would receive but a fraction of the business's  
44 value. Under this section, however, the security interest would  
45 attach to the franchise. As a result, the security interest  
46 would attach to the proceeds of any sale of the franchise while a  
47 bankruptcy is pending. However, this section would protect the  
48 interests of the municipality by preventing the secured party  
49 from enforcing its security interest to the detriment of the  
50 municipality.

2 8. Effect Outside of Bankruptcy. The principal effects of  
3 this section will take place outside of bankruptcy. Compared to  
4 the relatively few debtors that enter bankruptcy, there are many  
5 more that do not. By making available previously unavailable  
6 property as collateral, this section should enable debtors to  
7 obtain additional credit. For purposes of determining whether to  
8 extend credit, under some circumstances a secured party may  
9 ascribe value to the collateral to which its security interest  
10 has attached, even if this section precludes the secured party  
11 from enforcing the security interest without the agreement of the  
12 account debtor or person obligated on the promissory note. This  
13 may be the case where the secured party sees a likelihood of  
14 obtaining that agreement in the future. This may also be the  
15 case where the secured party anticipates that the collateral will  
16 give rise to a type of proceeds as to which this section would  
not apply.

18 Example 5: Under the facts of Example 4, the debtor does  
19 not enter bankruptcy. Perhaps in exchange for a fee, the  
20 municipality agrees that the debtor may transfer the franchise to  
21 a buyer. As consideration for the transfer, the debtor receives  
22 from the buyer its check for part of the purchase price and its  
23 promissory note for the balance. The security interest attaches  
24 to the check and promissory note as proceeds. See Section  
25 9-315(a)(2) [Maine cite section 9-1315, subsection (1), paragraph  
26 (b)]. This section does not apply to the security interest in  
27 the check, which is not a promissory note, health-care-insurance  
28 receivable, or general intangible. Nor does it apply to the  
29 security interest in the promissory note, inasmuch as it was not  
30 sold to the secured party.

32 9. Contrary Federal Law. This section does not override  
33 federal law to the contrary. However, it does reflect an  
34 important policy judgment that should provide a template for  
35 future federal law reforms.

38 **§9-1409. Restrictions on assignment of letter-of-credit rights**  
39 **ineffective**

40 (1) A term in a letter of credit or a rule of law, statute,  
41 regulation, custom or practice applicable to the letter of credit  
42 that prohibits, restricts or requires the consent of an  
43 applicant, issuer or nominated person to a beneficiary's  
44 assignment of or creation of a security interest in a  
45 letter-of-credit right is ineffective to the extent that the term  
46 or rule of law, statute, regulation, custom or practice:

48 (a) Would impair the creation, attachment or perfection of  
49 a security interest in the letter-of-credit right; or

2           (b) Provides that the creation, attachment or perfection of  
4           the security interest may give rise to a default, breach,  
          right of recoupment, claim, defense, termination, right of  
          termination or remedy under the letter-of-credit right.

6  
8           (2) To the extent that a term in a letter of credit is  
10          ineffective under subsection (1) but would be effective under law  
12          other than this Article or a custom or practice applicable to the  
14          letter of credit, to the transfer of a right to draw or otherwise  
          demand performance under the letter of credit or to the  
          assignment of a right to proceeds of the letter of credit, the  
          creation, attachment or perfection of a security interest in the  
          letter-of-credit right:

16          (a) Is not enforceable against the applicant, issuer,  
18          nominated person or transferee beneficiary;

20          (b) Imposes no duties or obligations on the applicant,  
          issuer, nominated person or transferee beneficiary; and

22          (c) Does not require the applicant, issuer, nominated  
24          person or transferee beneficiary to recognize the security  
          interest, pay or render performance to the secured party or  
          accept payment or other performance from the secured party.

28                                      **Official Comment**

30           1. Source. New.

32           2. Purpose and Relevance. This section, patterned on  
34           Section 9-408 [Maine cite section 9-1408], limits the  
36           effectiveness of attempts to restrict the creation, attachment,  
38           or perfection of a security interest in letter-of-credit rights,  
40           whether the restriction appears in the letter of credit or a rule  
42           of law, custom, or practice applicable to the letter of credit.  
44           It protects the creation, attachment, and perfection of a  
46           security interest while preventing these events from giving rise  
48           to a default or breach by the assignor or from triggering a  
          remedy or defense of the issuer or other person obligated on a  
          letter of credit. Letter-of-credit rights are a type of  
          supporting obligation. See Section 9-102 [Maine cite section  
          9-1102]. Under Sections 9-203 and 9-308 [Maine cite sections  
          9-1203 and 9-1308], a security interest in a supporting  
          obligation attaches and is perfected automatically if the  
          security interest in the supported obligation attaches and is  
          perfected. See Section 9-107 [Maine cite section 9-1107],  
          Comment 5. The automatic attachment and perfection under Article  
50           9 [Maine cite Article 9-A] would be anomalous or misleading if,

2 under other law (e.g., Article 5), a restriction on transfer or  
assignment were effective to block attachment and perfection.

4 3. Relationship to Letter-of-Credit Law. Although  
6 restrictions on an assignment of a letter of credit are  
ineffective to prevent creation, attachment, and perfection of a  
8 security interest, subsection (b) [Maine cite subsection (2)]  
protects the issuer and other parties from any adverse effects of  
10 the security interest by preserving letter-of-credit law and  
practice that limits the right of a beneficiary to transfer its  
12 right to draw or otherwise demand performance (Section 5-112) and  
limits the obligation of an issuer or nominated person to  
14 recognize a beneficiary's assignment of letter-of-credit proceeds  
(Section 5-114). Thus, this section's treatment of  
16 letter-of-credit rights differs from this Article's treatment of  
instruments and investment property. Moreover, under Section  
18 9-109(c)(4) [Maine cite section 9-1109, subsection (3), paragraph  
(d)], this Article does not apply to the extent that the rights  
20 of a transferee beneficiary or nominated person are independent  
and superior under Section 5-114, thereby preserving the  
22 "independence principle" of letter-of-credit law.

24 **PART 5**  
26 **FILING**  
28 **SUBPART 1**  
**FILING OFFICE; CONTENTS AND**  
**EFFECTIVENESS OF FINANCING STATEMENT**

30 **§9-1501. Filing office**

32 (1) Except as otherwise provided in subsection (2), if the  
34 local law of this State governs perfection of a security interest  
or agricultural lien, the office in which to file a financing  
36 statement to perfect the security interest or agricultural lien  
is:

38 (a) The office designated for the filing or recording of a  
40 record of a mortgage on the related real property, if:

42 (i) The collateral is as-extracted collateral or  
timber to be cut; or

44 (ii) The financing statement is filed as a fixture  
46 filing and the collateral is goods that are or are to  
become fixtures; or

48 (b) The office of the Secretary of State, in all other  
cases, including a case in which the collateral is goods

2           that are or are to become fixtures and the financing  
3           statement is not filed as a fixture filing.

4           (2) The office in which to file a financing statement to  
5           perfect a security interest in collateral, including fixtures, of  
6           a transmitting utility is the office of the Secretary of State.  
7           The financing statement also constitutes a fixture filing as to  
8           the collateral indicated in the financing statement that is or is  
9           to become fixtures.

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#### Official Comment

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1. Source. Derived from former Section 9-401.

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2. Where to File. Subsection (a) [Maine cite subsection (1)] indicates where in a given State a financing statement is to be filed. Former Article 9 afforded each State three alternative approaches, depending on the extent to which the State desires central filing (usually with the Secretary of State), local filing (usually with a county office), or both. As Comment 1 to former Section 9-401 observed, "The principal advantage of statewide filing is ease of access to the credit information which the files exist to provide. Consider for example the national distributor who wishes to have current information about the credit standing of the thousands of persons he sells to on credit. The more completely the files are centralized on a statewide basis, the easier and cheaper it becomes to procure credit information; the more the files are scattered in local filing units, the more burdensome and costly." Local filing increases the net costs of secured transactions also by increasing uncertainty and the number of required filings. Any benefit that local filing may have had in the 1950's is now insubstantial. Accordingly, this Article dictates central filing for most situations, while retaining local filing for real-estate-related collateral and special filing provisions for transmitting utilities.

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3. Minerals and Timber. Under subsection (a)(1) [Maine cite subsection (1), paragraph (a)], a filing in the office where a record of a mortgage on the related real property would be filed will perfect a security interest in as-extracted collateral. Inasmuch as the security interest does not attach until extraction, the filing continues to be effective after extraction. A different result occurs with respect to timber to be cut, however. Unlike as-extracted collateral, standing timber may be goods before it is cut. See Section 9-102 [Maine cite section 9-1102] (defining "goods"). Once cut, however, it is no longer timber to be cut, and the filing in the real-property-mortgage office ceases to be effective. The timber

2 then becomes ordinary goods, and filing in the office specified  
3 in subsection (a)(2) [Maine cite subsection (1), paragraph (b)]  
4 is necessary for perfection. Note also that after the timber is  
5 cut the law of the debtor's location, not the location of the  
6 timber, governs perfection under Section 9-301 [Maine cite  
7 section 9-1301].

8 4. Fixtures. There are two ways in which a secured party  
9 may file a financing statement to perfect a security interest in  
10 goods that are or are to become fixtures. It may file in the  
11 Article 9 records, as with most other goods. See subsection  
12 (a)(2)[Maine cite subsection (1), paragraph (b)]. Or it may file  
13 the financing statement as a "fixture filing," defined in Section  
14 9-102 [Maine cite section 9-1102], in the office in which a  
15 record of a mortgage on the related real property would be  
16 filed. See subsection(a)(1)(B) [Maine cite subsection (1),  
17 paragraph (a), subparagraph (ii)].

18 5. Transmitting Utilities. The usual filing rules do not  
19 apply well for a transmitting utility (defined in Section 9-102)  
20 [Maine cite section 9-1102]. Many preUCC statutes provided  
21 special filing rules for railroads and in some cases for other  
22 public utilities, to avoid the requirements for filing with legal  
23 descriptions in every county in which such debtors had property.  
24 Former Section 9-401(5) recreated and broadened these provisions,  
25 and subsection (b) [Maine cite subsection (2)] follows this  
26 approach. The nature of the debtor will inform persons searching  
27 the record as to where to make a search.

30 **§9-1502. Contents of financing statement; record of mortgage**  
31 **as financing statement; time of filing financing**  
32 **statement**

34 (1) Subject to subsection (2), a financing statement is  
35 sufficient only if it:

36 (a) Provides the name of the debtor;

38 (b) Provides the name of the secured party or a  
40 representative of the secured party; and

42 (c) Indicates the collateral covered by the financing  
43 statement.

44 (2) Except as otherwise provided in section 9-1501,  
45 subsection (2), to be sufficient, a financing statement that  
46 covers as-extracted collateral or timber to be cut, or which is  
47 filed as a fixture filing and covers goods that are or are to  
48 become fixtures, must satisfy subsection (1) and also:

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- 2           (a) Indicate that it covers this type of collateral;  
4           (b) Indicate that it is to be filed in the real property records;  
6           (c) Provide a description of the real property to which the collateral is related; and  
8           (d) If the debtor does not have an interest of record in the real property, provide the name of a record owner.  
10  
12           (3) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:  
14  
16           (a) The record indicates the goods or accounts that it covers;  
18           (b) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;  
20           (c) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and  
22           (d) The record is recorded.  
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26           (4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.  
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**Official Comment**

1. Source. Former Section 9-402(1), (5), (6).

2. "Notice Filing." This section adopts the system of "notice filing." What is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement). The financing statement may be filed before the security interest attaches or thereafter. See subsection (d) [Maine cite subsection (4)]. See also Section 9-308(a) [Maine cite section 9-1308, subsection (1)] (contemplating situations in which a financing statement is filed before a security interest attaches).



2 The notice itself indicates merely that a person may have a  
3 security interest in the collateral indicated. Further inquiry  
4 from the parties concerned will be necessary to disclose the  
5 complete state of affairs. Section 9-210 [Maine cite section  
6 9-1210] provides a statutory procedure under which the secured  
7 party, at the debtor's request, may be required to make  
8 disclosure. However, in many cases, information may be  
9 forthcoming without the need to resort to the formalities of that  
10 section.

11 Notice filing has proved to be of great use in financing  
12 transactions involving inventory, accounts, and chattel paper,  
13 because it obviates the necessity of refileing on each of a series  
14 of transactions in a continuing arrangement under which the  
15 collateral changes from day to day. However, even in the case of  
16 filings that do not necessarily involve a series of transactions  
17 (e.g., a loan secured by a single item of equipment), a financing  
18 statement is effective to encompass transactions under a security  
19 agreement not in existence and not contemplated at the time the  
20 notice was filed, if the indication of collateral in the  
21 financing statement is sufficient to cover the collateral  
22 concerned. Similarly, a financing statement is effective to  
23 cover afteracquired property of the type indicated and to perfect  
24 with respect to future advances under security agreements,  
25 regardless of whether after-acquired property or future advances  
26 are mentioned in the financing statement and even if not in the  
27 contemplation of the parties at the time the financing statement  
28 was authorized to be filed.

29 3. Debtor's Signature; Required Authorization. Subsection  
30 (a) [Maine cite subsection (1)] sets forth the simple formal  
31 requirements for an effective financing statement. These  
32 requirements are: (1) the debtor's name; (2) the name of a  
33 secured party or representative of the secured party; and (3) an  
34 indication of the collateral.

35 Whereas former Section 9-402(1) required the debtor's  
36 signature to appear on a financing statement, this Article  
37 contains no signature requirement. The elimination of the  
38 signature requirement facilitates paperless filing. (However, as  
39 PEB Commentary No. 15 indicates, a paperless financing statement  
40 was sufficient under former Article 9.) Elimination of the  
41 signature requirement also makes the exceptions provided by  
42 former Section 9-402(2) unnecessary.

43 The fact that this Article does not require that an  
44 authenticating symbol be contained in the public record does not  
45 mean that all filings are authorized. Rather, Section 9-509(a)  
46 [Maine cite section 9-1509, subsection (1)] entitles a person to  
47 file an initial financing statement, an amendment that adds  
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49  
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2 collateral, or an amendment that adds a debtor only if the debtor  
authorizes the filing, and Section 9-509(d) [Maine cite section  
4 9-1509, subsection (4)] entitles a person other than the debtor  
to file a termination statement only if the secured party of  
6 record authorizes the filing. Of course, a filing has legal  
effect only to the extent it is authorized. See Section 9-510  
[Maine cite section 9-1510].

8  
10 Law other than this Article, including the law with respect  
to ratification of past acts, generally determines whether a  
12 person has the requisite authority to file a record under this  
Article. See Section 1-103. However, under Section 9-509(b)  
14 [Maine cite section 9-1509, subsection (2)], the debtor's  
authentication of (or becoming bound by) a security agreement  
16 ipso facto constitutes the debtor's authorization of the filing  
of a financing statement covering the collateral described in the  
security agreement. The secured party need not obtain a separate  
18 authorization.

20 Section 9-625 [Maine cite section 9-1625] provides a remedy  
for unauthorized filings. Making an unauthorized filing also may  
22 give rise to civil or criminal liability under other law. In  
addition, this Article contains provisions that assist in the  
24 discovery of unauthorized filings and the amelioration of their  
practical effect. For example, Section 9-518 [Maine cite section  
26 9-1518] provides a procedure whereby a person may add to the  
public record a statement to the effect that a financing  
28 statement indexed under the person's name was wrongfully filed,  
and Section 9-509(d) [Maine cite section 9-1509, subsection (4)]  
30 entitles any person to file a termination statement if the  
secured party of record fails to comply with its obligation to  
32 file or send one to the debtor, the debtor authorizes the filing,  
and the termination statement so indicates. However, the filing  
34 office is neither obligated nor permitted to inquire into issues  
of authorization. See Section 9-520(a) [Maine cite section  
36 9-1520, subsection (1)].

38 4. Certain Other Requirements. Subsection (a) [Maine cite  
subsection (1)] deletes other provisions of former Section  
40 9-402(1) because they seem unwise (real-property description for  
financing statements covering crops), unnecessary (adequacy of  
42 copies of financing statements), or both (copy of security  
agreement as financing statement). In addition, the filing  
44 office must reject a financing statement lacking certain other  
information formerly required as a condition of perfection (e.g.,  
46 an address for the debtor or secured party). See Sections  
9-516(b), 9-520(a) [Maine cite section 9-1516, subsection (2),  
48 section 9-1520, subsection (1)]. However, if the filing office  
accepts the record, it is effective nevertheless. See Section  
50 9-520(c) [Maine cite section 9-1520, subsection (3)].

2           5. Real-Property-Related Filings. Subsection (b) [Maine  
4 cite subsection (2)] contains the requirements for financing  
statements filed as fixture filings and financing statements  
6 covering timber to be cut or minerals and minerals-related  
accounts constituting as-extracted collateral. A description of  
8 the related real property must be sufficient to reasonably  
identify it. See Section 9-108 (Maine cite section 9-1108].  
10 This formulation rejects the view that the real property  
description must be by metes and bounds, or otherwise conforming  
12 to traditional real-property practice in conveyancing, but, of  
course, the incorporation of such a description by reference to  
14 the recording data of a deed, mortgage or other instrument  
containing the description should suffice under the most  
16 stringent standards. The proper test is that a description of  
real property must be sufficient so that the financing statement  
18 will fit into the real-property search system and be found by a  
real-property searcher. Under the optional language in  
20 subsection (b)(3) [Maine cite subsection (2), paragraph (c)], the  
test of adequacy of the description is whether it would be  
22 adequate in a record of a mortgage of the real property. As  
suggested in the Legislative Note, more detail may be required if  
24 there is a tract indexing system or a land registration system.

26           If the debtor does not have an interest of record in the  
real property, a real-property-related financing statement must  
28 show the name of a record owner, and Section 9-519(d) [Maine cite  
section 9-1519, subsection (4)] requires the financing statement  
to be indexed in the name of that owner. This requirement also  
30 enables financing statements covering as-extracted collateral or  
timber to be cut and financing statements filed as fixture  
32 filings to fit into the real-property search system.

34           6. Record of Mortgage Effective as Financing Statement.  
Subsection (c) [Maine cite subsection (3)] explains when a record  
36 of a mortgage is effective as a financing statement filed as a  
fixture filing or to cover timber to be cut or as-extracted  
38 collateral. Use of the term "record of a mortgage" recognizes  
that in some systems the record actually filed is not the record  
40 pursuant to which a mortgage is created. Moreover, "mortgage" is  
defined in Section 9-102 [Maine cite section 9-1102] as an  
42 "interest in real property," not as the record that creates or  
evidences the mortgage or the record that is filed in the public  
44 recording systems. A record creating a mortgage may also create  
a security interest with respect to fixtures (or other goods) in  
46 conformity with this Article. A single agreement creating a  
mortgage on real property and a security interest in chattels is  
48 common and useful for certain purposes. Under subsection (c)  
[Maine cite subsection (3)], the recording of the record  
50 evidencing a mortgage (if it satisfies the requirements for a

2 financing statement) constitutes the filing of a financing  
statement as to the fixtures (but not, of course, as to other  
4 goods). Section 9-515(g) [Maine cite section 9-1515, subsection  
(7)] makes the usual fiveyear maximum life for financing  
6 statements inapplicable to mortgages that operate as fixture  
filings under Section 9-502(c) [Maine cite section 9-1502,  
8 subsection (3)]. Such mortgages are effective for the duration  
of the real-property recording.

10 Of course, if a combined mortgage covers chattels that are  
not fixtures, a regular financing statement filing is necessary  
12 with respect to the chattels, and subsection (c) [Maine cite  
subsection (3)] is inapplicable. Likewise, a financing statement  
14 filed as a "fixture filing" is not effective to perfect a security  
interest in personal property other than fixtures.

16 In some cases it may be difficult to determine whether goods  
18 are or will become fixtures. Nothing in this Part prohibits the  
filing of a "precautionary" fixture filing, which would provide  
20 protection in the event goods are determined to be fixtures. The  
fact of filing should not be a factor in the determining whether  
22 goods are fixtures. Cf. Section 9-505(b) [Maine cite section  
9-1505, subsection (2)].

24 **§9-1503. Name of debtor and secured party**

26 (1) A financing statement sufficiently provides the name of  
28 the debtor:

30 (a) If the debtor is a registered organization, only if the  
32 financing statement provides the name of the debtor  
indicated on the public record of the debtor's jurisdiction  
34 of organization that shows the debtor to have been organized;

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

40 (c) If the debtor is a trust or a trustee acting with  
respect to property held in trust, only if the financing  
42 statement:

44 (i) Provides the name specified for the trust in its  
organic documents or, if no name is specified, provides  
the name of the settlor and additional information  
46 sufficient to distinguish the debtor from other trusts  
having one or more of the same settlors; and  
48

2 (ii) Indicates, in the debtor's name or otherwise,  
3 that the debtor is a trust or is a trustee acting with  
4 respect to property held in trust; and

6 (d) In other cases:

8 (i) If the debtor has a name, only if it provides the  
9 individual or organizational name of the debtor; and

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

14 (2) A financing statement that provides the name of the  
15 debtor in accordance with subsection (1) is not rendered  
16 ineffective by the absence of:

18 (a) A trade name or other name of the debtor; or

20 (b) Unless required under subsection (1), paragraph (d),  
21 subparagraph (i), names of partners, members, associates or  
22 other persons comprising the debtor.

24 (3) A financing statement that provides only the debtor's  
25 trade name does not sufficiently provide the name of the debtor.

28 (4) Failure to indicate the representative capacity of a  
29 secured party or representative of a secured party does not  
30 affect the sufficiency of a financing statement.

32 (5) A financing statement may provide the name of more than  
33 one debtor and the name of more than one secured party.

#### 34 **Official Comment**

36  
37 1. Source. Subsections (a)(4)(A), (b), and (c) [Maine cite  
38 subsection (1), paragraph (d), subparagraph (i), subsections (2)  
39 and (3)] derive from former Section 9-402(7); otherwise, new.

40  
41 2. Debtor's Name. The requirement that a financing  
42 statement provide the debtor's name is particularly important.  
43 Financing statements are indexed under the name of the debtor,  
44 and those who wish to find financing statements search for them  
45 under the debtor's name. Subsection (a) [Maine cite subsection  
46 (1)] explains what the debtor's name is for purposes of a  
47 financing statement. If the debtor is a "registered  
48 organization" (defined in Section 9-102 [Maine cite section  
49 9-1102] so as to ordinarily include corporations, limited  
50 partnerships, and limited liability companies), then the debtor's

2 name is the name shown on the public records of the debtor's  
3 "jurisdiction of organization" (also defined in Section 9-102  
4 [Maine cite section 9-1102]). Subsections (a)(2) and (a)(3)  
5 [Maine cite subsection (1), paragraphs (b) and (c)] contain  
6 special rules for decedent's estates and common-law trusts.  
7 (Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]  
8 applies to business trusts that are registered organizations.)

10 Subsection (a)(4)(A) [Maine cite subsection (1), paragraph  
11 (d), subparagraph (i)] essentially follows the first sentence of  
12 former Section 9-402(7). Section 1-201(28) defines the term  
13 "organization," which appears in subsection (a)(4) [Maine cite  
14 subsection (1), paragraph (d)], very broadly, to include all  
15 legal and commercial entities as well as associations that lack  
16 the status of a legal entity. Thus, the term includes  
17 corporations, partnerships of all kinds, business trusts, limited  
18 liability companies, unincorporated associations, personal  
19 trusts, governments, and estates. If the organization has a  
20 name, that name is the correct name to put on a financing  
21 statement. If the organization does not have a name, then the  
22 financing statement should name the individuals or other entities  
23 who comprise the organization.

24 Together with subsections (b) and (c) [Maine cite  
25 subsections (2) and (3)], subsection (a) [Maine cite subsection  
26 (1)] reflects the view prevailing under former Article 9 that the  
27 actual individual or organizational name of the debtor on a  
28 financing statement is both necessary and sufficient, whether or  
29 not the financing statement provides trade or other names of the  
30 debtor and, if the debtor has a name, whether or not the  
31 financing statement provides the names of the partners, members,  
32 or associates who comprise the debtor.

34 Note that, even if the name provided in an initial financing  
35 statement is correct, the filing office nevertheless must reject  
36 the financing statement if it does not identify an individual  
37 debtor's last name (e.g., if it is not clear whether the debtor's  
38 name is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C)  
39 [Maine cite section 9-1516, subsection (2), paragraph (c),  
40 subparagraph (iii)].

42 3. Secured Party's Name. New subsection (d) [Maine cite  
43 subsection (4)] makes clear that when the secured party is a  
44 representative, a financing statement is sufficient if it names  
45 the secured party, whether or not it indicates any representative  
46 capacity. Similarly, a financing statement that names a  
47 representative of the secured party is sufficient, even if it  
48 does not indicate the representative capacity.

2 Example: Debtor creates a security interest in favor of  
3 Bank X, Bank Y, and Bank Z, but not to their representative, the  
4 collateral agent (Bank A). The collateral agent is not itself a  
5 secured party. See Section 9-102 [Maine cite section 9-1102].  
6 Under Sections 9-502(a) [Maine cite section 9-1502, subsection  
7 (1)] and 9-503(d)[Maine cite section 9-1503, subsection (4)],  
8 however, a financing statement is effective if it names as  
9 secured party Bank A and not the actual secured parties, even if  
10 it omits Bank A's representative capacity.

11 Each person whose name is provided in an initial financing  
12 statement as the name of the secured party or representative of  
13 the secured party is a secured party of record. See Section  
14 9-511 [Maine cite section 9-1511].

15 4. Multiple Names. Subsection (e) [Maine cite subsection  
16 (5)] makes explicit what is implicit under former Article 9: a  
17 financing statement may provide the name of more than one debtor  
18 and secured party. See Section 1-102(5)(a) (words in the  
19 singular include the plural). With respect to records relating  
20 to more than one debtor, see Section 9-520(d) [Maine cite section  
21 9-1520, subsection (4)]. With respect to financing statements  
22 providing the name of more than one secured party, see Sections  
23 9-509(e) [Maine cite section 9-1509, subsection (5)] and 9-510(b)  
24 [Maine cite section 9-1510, subsection (2)].

25 **§9-1504. Indication of collateral**

26 A financing statement sufficiently indicates the collateral  
27 that it covers only if the financing statement provides:

28 (1) A description of the collateral pursuant to section  
29 9-1108; or

30 (2) An indication that the financing statement covers all  
31 assets or all personal property.

32 **Official Comment**

33 1. Source. Former Section 9-402(1).

34 2. Indication of Collateral. To comply with Section  
35 9-502(a) [Maine cite section 9-1502, subsection (1)], a financing  
36 statement must "indicate" the collateral it covers. This section  
37 explains what suffices for an indication.

38 Paragraph (1) [Maine cite paragraph (a)] provides that a  
39 "description" of the collateral (as the term is explained in  
40 Section 9-108 [Maine cite section 9-1108]) suffices as an

2 indication for purposes of the sufficiency of a financing  
statement.

4 Debtors sometimes create a security interest in all, or  
6 substantially all, of their assets. To accommodate this  
practice, paragraph (2) [Maine cite paragraph (b)] expands the  
8 class of sufficient collateral references to embrace "an  
10 indication that the financing statement covers all assets or all  
personal property." If the property in question belongs to the  
12 debtor and is personal property, any searcher will know that the  
property is covered by the financing statement. Of course,  
14 regardless of its breadth, a financing statement has no effect  
with respect to property indicated but to which a security  
16 interest has not attached. Note that a broad statement of this  
kind (e.g., "all debtor's personal property") would not be a  
18 sufficient "description" for purposes of a security agreement.  
See Sections 9-203(b)(3)(A) [Maine cite section 9-1203,  
20 subsection (2), paragraph (c), subparagraph (i)], 9-108 [Maine  
cite section 9-1108]. It follows that a somewhat narrower  
22 description than "all assets," e.g., "all assets other than  
automobiles," is sufficient for purposes of this section, even if  
it does not suffice for purposes of a security agreement.

24 **§9-1505. Filing and compliance with other statutes and**  
26 **treaties for consignments, leases, other bailments**  
**and other transactions**

28 (1) A consignor, lessor, or other bailor of goods, a  
licensor or a buyer of a payment intangible or promissory note  
30 may file a financing statement, or may comply with a statute or  
treaty described in section 9-1311, subsection (1), using the  
32 terms "consignor," "consignee," "lessor," "lessee," "bailor,"  
"bailee," "licensor," "licensee," "owner," "registered owner,"  
34 "buyer" or "seller," or words of similar import, instead of the  
terms "secured party" and "debtor."

36  
38 (2) This part applies to the filing of a financing  
statement under subsection (1) and, as appropriate, to compliance  
40 that is equivalent to filing a financing statement under section  
9-1311, subsection (2), but the filing or compliance is not of  
42 itself a factor in determining whether the collateral secures an  
obligation. If it is determined for another reason that the  
44 collateral secures an obligation, a security interest held by the  
consignor, lessor, bailor, licensor, owner or buyer that attaches  
46 to the collateral is perfected by the filing or compliance.

48 **Official Comment**

50 1. Source. Former Section 9-408.



2           2.    Precautionary Filing.   Occasionally, doubts arise  
concerning whether a transaction creates a relationship to which  
4   this Article or its filing provisions apply. For example,  
questions may arise over whether a "lease" of equipment in fact  
6   creates a security interest or whether the "sale" of payment  
intangibles in fact secures an obligation, thereby requiring  
8   action to perfect the security interest. This section, which  
derives from former Section 9-408 [Maine cite section 9-1408],  
10   affords the option of filing of a financing statement with  
appropriate changes of terminology but without affecting the  
12   substantive question of classification of the transaction.

14           3.    Changes from Former Section 9-408. This section expands  
the rule of Section 9-408 to embrace more generally other  
16   bailments and transactions, as well as sales transactions,  
primarily sales of payment intangibles and promissory notes. It  
18   provides the same benefits for compliance with a statute or  
treaty described in Section 9-311(a) [Maine cite section 9-1311,  
20   subsection (1)] that former Section 9-408 provided for filing, in  
connection with the use of terms such as "lessor," consignor,"  
22   etc. The references to "owner" and "registered owner" are  
intended to address, for example, the situation where a putative  
24   lessor is the registered owner of an automobile covered by a  
certificate of title and the transaction is determined to create  
26   a security interest. Although this section provides that the  
security interest is perfected, the relevant certificate-of-title  
28   statute may expressly provide to the contrary or may be  
ambiguous. If so, it may be necessary or advisable to amend the  
30   certificate-of-title statute to ensure that perfection of the  
security interest will be achieved.

32           As does Section 1-201, former Article 9 referred to  
34   transactions, including leases and consignments, "intended as  
security." This misleading phrase created the erroneous  
36   impression that the parties to a transaction can dictate how the  
law will classify it (e.g., as a bailment or as a security  
38   interest) and thus affect the rights of third parties. This  
Article deletes the phrase wherever it appears. Subsection (b)  
40   [Maine cite subsection (2)] expresses the principle more  
precisely by referring to a security interest that "secures an  
42   obligation."

44           4.    Consignments. Although a "true" consignment is a  
bailment, the filing and priority provisions of former Article 9  
46   applied to "true" consignments. See former Sections 2-326(3),  
9-114. A consignment "intended as security" created a security  
48   interest that was in all respects subject to former Article 9.  
This Article subsumes most true consignments under the rubric of  
50   "security interest." See Sections 9-102 [Maine cite section

2 9-1102] (definition of "consignment"), 9-109(a)(4) [Maine cite  
3 section 9-1109, subsection (1), paragraph (d)], 1-201(37)  
4 (definition of "security interest"). Nevertheless, it maintains  
5 the distinction between a (true) "consignment," as to which only  
6 certain aspects of Article 9 [Maine cite Article 9-A] apply, and  
7 a so-called consignment that actually "secures an obligation," to  
8 which Article 9 [Maine cite Article 9-A] applies in full. The  
9 revisions to this section reflect the change in terminology.

10 **§9-1506. Effect of errors or omissions**

12 (1) A financing statement substantially satisfying the  
13 requirements of this part is effective, even if it has minor  
14 errors or omissions, unless the errors or omissions make the  
15 financing statement seriously misleading.

16 (2) Except as otherwise provided in subsection (3), a  
17 financing statement that fails sufficiently to provide the name  
18 of the debtor in accordance with section 9-1503, subsection (1)  
19 is seriously misleading.

22 (3) If a search of the records of the filing office under  
23 the debtor's correct name, using the filing office's standard  
24 search logic, if any, would disclose a financing statement that  
25 fails sufficiently to provide the name of the debtor in  
26 accordance with section 9-1503, subsection (1), the name provided  
27 does not make the financing statement seriously misleading.

28 (4) For purposes of section 9-1508, subsection (2), the  
29 "debtor's correct name" in subsection (3) means the correct name  
30 of the new debtor.

32  
34 **Official Comment**

36 1. Source. Former Section 9-402(8).

38 2. Errors. Like former Section 9-402(8), subsection (a)  
39 [Maine cite subsection (1)] is in line with the policy of this  
40 Article to simplify formal requisites and filing requirements.  
41 It is designed to discourage the fanatical and impossibly refined  
42 reading of statutory requirements in which courts occasionally  
43 have indulged themselves. Subsection (a) [Maine cite subsection  
44 (1)] provides the standard applicable to indications of  
45 collateral. Subsections (b) and (c) [Maine cite subsections (2)  
46 and (3)], which are new, concern the effectiveness of financing  
47 statements in which the debtor's name is incorrect. Subsection  
48 (b) [Maine cite subsection (2)] contains the general rule: a  
49 financing statement that fails sufficiently to provide the  
50 debtor's name in accordance with Section 9-503(a) [Maine cite

2 section 9-1503, subsection (1)] is seriously misleading as a  
3 matter of law. Subsection (c) [Maine cite subsection (3)]  
4 provides an exception: If the financing statement nevertheless  
5 would be discovered in a search under the debtor's correct name,  
6 using the filing office's standard search logic, if any, then as  
7 a matter of law the incorrect name does not make the financing  
8 statement seriously misleading. A financing statement that is  
9 seriously misleading under this section is ineffective even if it  
10 is disclosed by (i) using a search logic other than that of the  
11 filing office to search the official records, or (ii) using the  
12 filing office's standard search logic to search a data base other  
13 than that of the filing office.

14 In addition to requiring the debtor's name and an indication  
15 of the collateral, Section 9-502(a) [Maine cite section 9-1502,  
16 subsection (1)] requires a financing statement to provide the  
17 name of the secured party or a representative of the secured  
18 party. Inasmuch as searches are not conducted under the secured  
19 party's name, and no filing is needed to continue the perfected  
20 status of security interest after it is assigned, an error in the  
21 name of the secured party or its representative will not be  
22 seriously misleading. However, in an appropriate case, an error  
23 of this kind may give rise to an estoppel in favor of a  
24 particular holder of a conflicting claim to the collateral. See  
25 Section 1-103.

26  
27 3. New Debtors. Subsection (d) [Maine cite subsection (4)]  
28 provides that, in determining the extent to which a financing  
29 statement naming an original debtor is effective against a new  
30 debtor, the sufficiency of financing statement should be tested  
31 against the name of the new debtor.

32 **§9-1507. Effect of certain events on effectiveness of**  
33 **financing statement**

34  
35 (1) A filed financing statement remains effective with  
36 respect to collateral that is sold, exchanged, leased, licensed  
37 or otherwise disposed of and in which a security interest or  
38 agricultural lien continues, even if the secured party knows of  
39 or consents to the disposition.

40  
41 (2) Except as otherwise provided in subsection (3) and  
42 section 9-1508, a financing statement is not rendered ineffective  
43 if, after the financing statement is filed, the information  
44 provided in the financing statement becomes seriously misleading  
45 under section 9-1506.

46  
47 (3) If a debtor so changes its name that a filed financing  
48 statement becomes seriously misleading under section 9-1506;  
49

50

2           (a) The financing statement is effective to perfect a  
security interest in collateral acquired by the debtor  
4           before, or within 4 months after, the change; and

6           (b) The financing statement is not effective to perfect a  
security interest in collateral acquired by the debtor more  
8           than 4 months after the change, unless an amendment to the  
10           financing statement that renders the financing statement not  
seriously misleading is filed within 4 months after the  
change.

12   **Official Comment**

14                       1. Source. Former Section 9-402(7).

16                       2. Scope of Section. This section deals with situations in  
18                       which the information in a proper financing statement becomes  
20                       inaccurate after the financing statement is filed. Compare  
22                       Section 9-338 [Maine cite section 9-1338], which deals with  
24                       situations in which a financing statement contains a particular  
                      kind of information concerning the debtor (i.e., the information  
                      described in Section 9-516(b)(5) [Maine cite section 9-1516,  
                      subsection (2), paragraph (e)]) that is incorrect at the time it  
                      is filed.

26                       3. Post-Filing Disposition of Collateral. Under subsection  
28                       (a) [Maine cite subsection (1)], a financing statement remains  
30                       effective even if the collateral is sold or otherwise disposed  
32                       of. This subsection clarifies the third sentence of former  
34                       Section 9-402(7) by providing that a financing statement remains  
36                       effective following the disposition of collateral only when the  
38                       security interest or agricultural lien continues in that  
                      collateral. This result is consistent with the conclusion of PEB  
                      Commentary No. 3. Normally, a security interest does continue  
                      after disposition of the collateral. See Section 9-315(a) [Maine  
                      cite section 9-1315, subsection (1)]. Law other than this  
                      Article determines whether an agricultural lien survives  
                      disposition of the collateral.

40                       As a consequence of the disposition, the collateral may be  
42                       owned by a person other than the debtor against whom the  
44                       financing statement was filed. Under subsection (a) [Maine cite  
46                       subsection (1)], the secured party remains perfected even if it  
48                       does not correct the public record. For this reason, any person  
50                       seeking to determine whether a debtor owns collateral free of  
                      security interests must inquire as to the debtor's source of  
                      title and, if circumstances seem to require it, search in the  
                      name of a former owner. Subsection (a) [Maine cite subsection  
                      (1)] addresses only the sufficiency of the information contained  
                      in the financing statement. A disposition of collateral may

2 result in loss of perfection for other reasons. See Section  
9-316 [Maine cite section 9-1316].

4 Example: Dee Corp. is an Illinois corporation. It creates  
a security interest in its equipment in favor of Secured Party.  
6 Secured Party files a proper financing statement in Illinois.  
Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania  
8 corporation, subject to the security interest. The security  
interest continues, see Section 9-315(a) [Maine cite section  
10 9-1315, subsection (1)], and remains perfected, see Section  
9-507(a) [Maine cite section 9-1507, subsection (1)],  
12 notwithstanding that the financing statement is filed under "D"  
(for Dee Corp.) and not under "B." However, because Bee Corp. is  
14 located in Pennsylvania and not Illinois, see Section 9-307  
[Maine cite section 9-1307], unless Secured Party perfects under  
16 Pennsylvania law within one year after the transfer, its security  
interest will become unperfected and will be deemed to have been  
18 unperfected against purchasers of the collateral. See Section  
9-316 [Maine cite section 9-1316].

20  
22 4. Other Post-Filing Changes. Subsection (b) [Maine cite  
subsection (2)] provides that, as a general matter, post-filing  
changes that render a financing statement inaccurate and  
24 seriously misleading have no effect on a financing statement.  
The financing statement remains effective. It is subject to two  
26 exceptions: Section 9-508 [Maine cite section 9-1508] and  
Section 9-507(c) [Maine cite section 9-1507, subsection (3)].  
28 Section 9-508 [Maine cite section 9-1508] addresses the  
effectiveness of a financing statement filed against an original  
30 debtor when a new debtor becomes bound by the original debtor's  
security agreement. It is discussed in the Comments to that  
32 section. Section 9-507(c) [Maine cite section 9-1507, subsection  
3] addresses a "pure" change of the debtor's name, i.e., a change  
34 that does not implicate a new debtor. It clarifies former  
Section 9-402(7). If a name change renders a filed financing  
36 statement seriously misleading, the financing statement is not  
effective as to collateral acquired more than four months after  
38 the change, unless before the expiration of the four months an  
amendment is filed that specifies the debtor's new correct name  
40 (or provides an incorrect name that renders the financing  
statement not seriously misleading under Section 9-506 [Maine  
42 cite section 9-1506]). As under former Section 9-402(7), the  
original financing statement would continue to be effective with  
44 respect to collateral acquired before the name change as well as  
collateral acquired within the four-month period.

46  
48 **§9-1508. Effectiveness of financing statement if new debtor  
becomes bound by security agreement**

2       (1) Except as otherwise provided in this section, a filed  
3       financing statement naming an original debtor is effective to  
4       perfect a security interest in collateral in which a new debtor  
5       has or acquires rights to the extent that the financing statement  
6       would have been effective had the original debtor acquired rights  
7       in the collateral.

8       (2) If the difference between the name of the original  
9       debtor and that of the new debtor causes a filed financing  
10       statement that is effective under subsection (1) to be seriously  
11       misleading under section 9-1506:

12               (a) The financing statement is effective to perfect a  
13               security interest in collateral acquired by the new debtor  
14               before, and within 4 months after, the new debtor becomes  
15               bound under section 9-1203, subsection (4); and

16               (b) The financing statement is not effective to perfect a  
17               security interest in collateral acquired by the new debtor  
18               more than 4 months after the new debtor becomes bound under  
19               section 9-1203, subsection (4) unless an initial financing  
20               statement providing the name of the new debtor is filed  
21               before the expiration of that time.

22       (3) This section does not apply to collateral as to which a  
23       filed financing statement remains effective against the new  
24       debtor under section 9-1507, subsection (1).

25  
26  
27  
28  
29                               **Official Comment**

30               1. Source. New.

31               2. The Problem. Section 9-203(d) and (e) [Maine cite  
32               section 9-1203, subsections (4) and (5)] and this section deal  
33               with situations where one party (the "new debtor") becomes bound  
34               as debtor by a security agreement entered into by another person  
35               (the "original debtor"). These situations often arise as a  
36               consequence of changes in business structure. For example, the  
37               original debtor may be an individual debtor who operates a  
38               business as a sole proprietorship and then incorporates it. Or,  
39               the original debtor may be a corporation that is merged into  
40               another corporation. Under both former Article 9 and this  
41               Article, collateral that is transferred in the course of the  
42               incorporation or merger normally would remain subject to a  
43               perfected security interest. See Sections 9-315(a), 9-507(a)  
44               [Maine cite section 9-1315, subsection (1), and section 9-1507,  
45               subsection (1)]. Former Article 9 was less clear with respect to  
46               whether an after-acquired property clause in a security agreement  
47               signed by the original debtor would be effective to create a  
48

2 security interest in property acquired by the new corporation or  
the merger survivor and, if so, whether a financing statement  
4 filed against the original debtor would be effective to perfect  
the security interest. This section and Sections 9-203(d) and  
6 (e) [Maine cite section 9-1203, subsections (4) and (5)] are a  
clarification.

8 3. How New Debtor Becomes Bound. Normally, a security  
interest is unenforceable unless the debtor has authenticated a  
10 security agreement describing the collateral. See Section  
9-203(b) [Maine cite section 9-1203, subsection (2)]. New  
12 Section 9-203(e) [Maine cite section 9-1203, subsection (5)]  
creates an exception, under which a security agreement entered  
14 into by one person is effective with respect to the property of  
another. This exception comes into play if a "new debtor"  
16 becomes bound as debtor by a security agreement entered into by  
another person (the "original debtor"). (The quoted terms are  
18 defined in Section 9-102 [Maine cite section 9-1102].) If a new  
debtor does become bound, then the security agreement entered  
20 into by the original debtor satisfies the security-agreement  
requirement of Section 9-203(b)(3) [Maine cite section 9-1203,  
22 subsection (2), paragraph (c)] as to existing or after-acquired  
property of the new debtor to the extent the property is  
24 described in the security agreement. In that case, no other  
agreement is necessary to make a security interest enforceable in  
26 that property. See Section 9-203(e) [Maine cite section 9-1203,  
subsection (5)].

28 Section 9-203(d) [Maine cite section 9-1203, subsection (4)]  
explains when a new debtor becomes bound by an original debtor's  
30 security agreement. Under Section 9-203(d)(1) [Maine cite  
section 9-1203, subsection (4), paragraph (a)], a new debtor  
32 becomes bound as debtor if, by contract or operation of other  
law, the security agreement becomes effective to create a  
34 security interest in the new debtor's property. For example, if  
the applicable corporate law of mergers provides that when A Corp  
36 merges into B Corp, B Corp becomes a debtor under A Corp's  
security agreement, then B Corp would become bound as debtor  
38 following such a merger. Similarly, B Corp would become bound as  
debtor if B Corp contractually assumes A's obligations under the  
40 security agreement.

42 Under certain circumstances, a new debtor becomes bound for  
44 purposes of this Article even though it would not be bound under  
other law. Under Section 9-203(d)(2) [Maine cite section 9-1203,  
46 subsection (4), paragraph (b)], a new debtor becomes bound when,  
by contract or operation of other law, it (i) becomes obligated  
48 not only for the secured obligation but also generally for the  
obligations of the original debtor and (ii) acquires or succeeds  
50 to substantially all the assets of the original debtor. For

2 example, some corporate laws provide that, when two corporations  
merge, the surviving corporation succeeds to the assets of its  
4 merger partner and "has all liabilities" of both corporations.  
In the case where, for example, A Corp merges into B Corp (and A  
6 Corp ceases to exist), some people have questioned whether A  
Corp's grant of a security interest in its existing and  
8 after-acquired property becomes a "liability" of B Corp, such  
that B Corp's existing and after-acquired property becomes  
subject to a security interest in favor of A Corp's lender. Even  
10 if corporate law were to give a negative answer, under Section  
9-203(d)(2) [Maine cite section 9-1203, subsection (4), paragraph  
12 (b)], B Corp would become bound for purposes of Section 9-203(e)  
[Maine cite section 9-1203, subsection (5)] and this section.  
14 The "substantially all of the assets" requirement of Section  
9-203(d)(2) [Maine cite section 9-1203, subsection (4), paragraph  
16 (b)] excludes sureties and other secondary obligors as well as  
persons who become obligated through veil piercing and other  
18 non-successorship doctrines. In most cases, it will exclude  
successors to the assets and liabilities of a division of a  
20 debtor.

22 4. When Financing Statement Effective Against New Debtor.  
Subsection (a) [Maine cite subsection (1)] provides that a filing  
24 against the original debtor is effective to perfect a security  
interest in collateral that a new debtor has at the time it  
26 becomes bound by the original debtor's security agreement and  
collateral that it acquires before the expiration of four months  
28 after the new debtor becomes bound. Under subsection (b) [Maine  
cite subsection (2)], however, if the filing against the original  
30 debtor is seriously misleading as to the new debtor's name, the  
filing is effective as to collateral acquired by the new debtor  
32 after the four-month period only if a person files during the  
four-month period an initial financing statement providing the  
34 name of the new debtor. Compare Section 9-507(c) [Maine cite  
section 9-1507, subsection (3)] (four-month period of  
36 effectiveness with respect to collateral acquired by a debtor  
after the debtor changes its name).

38 5. Transferred Collateral. This section does not apply to  
40 collateral transferred by the original debtor to a new debtor.  
Under those circumstances, the filing against the original debtor  
42 continues to be effective until it lapses. See subsection (c)  
[Maine cite subsection (3)]; Section 9-507(a) [Maine cite section  
44 9-1507, subsection (1)].

46 6. Priority. Section 9-326 [Maine cite section 9-1326]  
governs the priority contest between a secured creditor of the  
48 original debtor and a secured creditor of the new debtor.

50 **§9-1509. Persons entitled to file a record**



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(1) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement or amendment that adds a debtor to a financing statement only if:

(a) The debtor authorizes the filing in an authenticated record; or

(b) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(a) The collateral described in the security agreement; and

(b) Property that becomes collateral under section 9-1315, subsection (1), paragraph (b), whether or not the security agreement expressly covers proceeds.

(3) By acquiring collateral in which a security interest or agricultural lien continues under section 9-1315, subsection 1, paragraph (a), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 9-1315, subsection (1), paragraph (b).

(4) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) The secured party of record authorizes the filing; or

(b) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9-1513, subsection (1) or (3), the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(5) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (4).

**Official Comment**

1. Source. New.

2

2. Scope and Approach of This Section. This section  
4 collects in one place most of the rules determining whether a  
6 record may be filed. Section 9-510 [Maine cite section 9-1510]  
8 explains the extent to which a filed record is effective. Under  
10 these sections, the identity of the person who effects a filing  
12 is immaterial. The filing scheme contemplated by this Part does  
14 not contemplate that the identity of a "filer" will be a part of  
16 the searchable records. This is consistent with, and a necessary  
18 aspect of, eliminating signatures or other evidence of  
20 authorization from the system. (Note that the 1972 amendments to  
22 this Article eliminated the requirement that a financing  
statement contain the signature of the secured party.) As long  
as the appropriate person authorizes the filing, or, in the case  
of a termination statement, the debtor is entitled to the  
termination, it is insignificant whether the secured party or  
another person files any given record. The question of  
authorization is one for the court, not the filing office.  
However, a filing office may choose to employ authentication  
procedures in connection with electronic communications, e.g., to  
verify the identity of a filer who seeks to charge the filing fee.

24 3. Unauthorized Filings. Records filed in the filing  
office do not require signatures for their effectiveness.  
26 Subsection (a)(1) [Maine cite subsection (1), paragraph (a)]  
substitutes for the debtor's signature on a financing statement  
28 the requirement that the debtor authorize in an authenticated  
record the filing of an initial financing statement or an  
30 amendment that adds collateral. Also, under subsection (a)(1)  
[Maine cite subsection (1), paragraph (a)], if an amendment adds  
32 a debtor, the debtor who is added must authorize the amendment.  
A person who files an unauthorized record in violation of  
34 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] is  
liable under Section 9-625 [Maine cite section 9-1625] for actual  
36 and statutory damages. Of course, a filed financing statement is  
ineffective to perfect a security interest if the filing is not  
38 authorized. See Section 9-510(a) [Maine cite section 9-1510,  
subsection (1)]. Law other than this Article, including the law  
40 with respect to ratification of past acts, generally determines  
whether a person has the requisite authority to file a record  
42 under this section. See Sections 1-103, 9-502 [Maine cite  
section 9-1502], Comment 3.

44

4. Ipso Facto Authorization. Under subsection (b) [Maine  
46 cite subsection (2)], the authentication of a security agreement  
ipso facto constitutes the debtor's authorization of the filing  
48 of a financing statement covering the collateral described in the  
security agreement. The secured party need not obtain a separate  
50 authorization. Similarly, a new debtor's becoming bound by a

2 security agreement ipso facto constitutes the new debtor's  
3 authorization of the filing of a financing statement covering the  
4 collateral described in the security agreement by which the new  
5 debtor has become bound. And, under subsection (c) [Maine cite  
6 subsection (3)], the acquisition of collateral in which a  
7 security interest continues after disposition under Section  
8 9-315(a)(1) [Maine cite section 9-1315, subsection (1), paragraph  
9 (a)] ipso facto constitutes an authorization to file an initial  
10 financing statement against the person who acquired the  
11 collateral. The authorization to file an initial financing  
12 statement also constitutes an authorization to file a record  
13 covering actual proceeds of the original collateral, even if the  
14 security agreement is silent as to proceeds.

15  
16 Example 1: Debtor authenticates a security agreement  
17 creating a security interest in Debtor's inventory in favor of  
18 Secured Party. Secured Party files a financing statement  
19 covering inventory and accounts. The financing statement is  
20 authorized insofar as it covers inventory and unauthorized  
21 insofar as it covers accounts. (Note, however, that the  
22 financing statement will be effective to perfect a security  
23 interest in accounts constituting proceeds of the inventory to  
24 the same extent as a financing statement covering only  
inventory.)

25  
26 Example 2: Debtor authenticates a security agreement  
27 creating a security interest in Debtor's inventory in favor of  
28 Secured Party. Secured Party files a financing statement  
29 covering inventory. Debtor sells some inventory, deposits the  
30 buyer's payment into a deposit account, and withdraws the funds  
31 to purchase equipment. As long as the equipment can be traced to  
32 the inventory, the security interest continues in the equipment.  
33 See Section 9-315(a)(2) [Maine cite section 9-1315, subsection  
34 (1), paragraph (b)]. However, because the equipment was acquired  
35 with cash proceeds, the financing statement becomes ineffective  
36 to perfect the security interest in the equipment on the 21st day  
37 after the security interest attaches to the equipment unless  
38 Secured Party continues perfection beyond the 20-day period by  
39 filing a financing statement against the equipment or amending  
40 the filed financing statement to cover equipment. See Section  
41 9-315(d) [Maine section 9-1315, subsection (4)]. Debtor's  
42 authentication of the security agreement authorizes the filing of  
43 an initial financing statement or amendment covering the  
44 equipment, which is "property that becomes collateral under  
45 Section 9-315(a)(2) [Maine section 9-1315, subsection 1,  
46 paragraph (b)]." See Section 9-509(b)(2) [Maine cite section  
9-1509, subsection (2), paragraph (b)].

47  
48  
49 5. Agricultural Liens. Under subsection (a)(2) [Maine cite  
50 subsection (1), paragraph (b)], the holder of an agricultural

2 lien may file a financing statement covering collateral subject  
to the lien without obtaining the debtor's authorization.  
4 Because the lien arises as matter of law, the debtor's consent is  
not required. A person who files an unauthorized record in  
6 violation of this subsection is liable under Section 9-625(e)  
[Maine cite section 9-1625, subsection (5)] for a statutory  
penalty and damages.

8  
6. Amendments; Termination Statements Authorized by  
10 Debtor. Most amendments may not be filed unless the secured  
party of record, as determined under Section 9-511 [Maine cite  
12 section 9-1511], authorizes the filing. See subsection (d)(1).  
[Maine cite subsection (4), paragraph (a)]. However, under  
14 subsection (d)(2) [Maine cite subsection 4, paragraph (b)], the  
authorization of the secured party of record is not required for  
16 the filing of a termination statement if the secured party of  
record failed to send or file a termination statement as required  
18 by Section 9-513 [Maine cite section 9-1513], the debtor  
authorizes it to be filed, and the termination statement so  
20 indicates.

22 7. Multiple Secured Parties of Record. Subsection (e)  
[Maine cite subsection (5)] deals with multiple secured parties  
24 of record. It permits each secured party of record to authorize  
the filing of amendments. However, Section 9-510(b) [Maine cite  
26 section 9-1510, subsection (2)] protects the rights and powers of  
one secured party of record from the effects of filings made by  
28 another secured party of record. See Section 9-510 [Maine cite  
section 9-1510], Comment 3.

30  
8. Successor to Secured Party of Record. A person may  
32 succeed to the powers of the secured party of record by operation  
of other law, e.g., the law of corporate mergers. In that case,  
34 the successor has the power to authorize filings within the  
meaning of this section.

36 **§9-1510. Effectiveness of filed record**

38  
40 (1) A filed record is effective only to the extent that it  
was filed by a person that may file it under section 9-1509.

42 (2) A record authorized by one secured party of record does  
not affect the financing statement with respect to another  
44 secured party of record.

46 (3) A continuation statement that is not filed within the  
6-month period prescribed by section 9-1515, subsection (4) is  
48 ineffective.

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Official Comment

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1. Source. New.

2. Ineffectiveness of Unauthorized or Overbroad Filings. Subsection (a) [Maine cite subsection (1)] provides that a filed financing statement is effective only to the extent it was filed by a person entitled to file it.

Example 1: Debtor authorizes the filing of a financing statement covering inventory. Under Section 9-509 [Maine cite section 9-1509], the secured party may file a financing statement covering only inventory; it may not file a financing statement covering other collateral. The secured party files a financing statement covering inventory and equipment. This section provides that the financing statement is effective only to the extent the secured party may file it. Thus, the financing statement is effective to perfect a security interest in inventory but ineffective to perfect a security interest in equipment.

3. Multiple Secured Parties of Record. Section 9-509(e) [Maine cite section 9-1509, subsection (5)] permits any secured party of record to authorize the filing of most amendments. Subsection (b) [Maine cite subsection (2)] of this section prevents a filing authorized by one secured party of record from affecting the rights and powers of another secured party of record without the latter's consent.

Example 2: Debtor creates a security interest in favor of A and B. The filed financing statement names A and B as the secured parties. An amendment deleting some collateral covered by the financing statement is filed pursuant to B's authorization. Although B's security interest in the deleted collateral becomes unperfected, A's security interest remains perfected in all the collateral.

Example 3: Debtor creates a security interest in favor of A and B. The financing statement names A and B as the secured parties. A termination statement is filed pursuant to B's authorization. Although the effectiveness of the financing statement terminates with respect to B's security interest, A's rights are unaffected. That is, the financing statement continues to be effective to perfect A's security interest.

4. Continuation Statements. A continuation statement may be filed only within the six months immediately before lapse. See Section 9-515(d) [Maine cite section 9-1515, subsection (4)]. The filing office is obligated to reject a continuation statement that is filed outside the six-month period. See

2 Sections 9-520(a) [Maine cite section 9-1520, subsection (1)],  
3 9-516(b)(7) [Maine cite section 9-1516, subsection (2), paragraph  
4 (g)]. Subsection (c) [Maine cite subsection (3)] provides that  
5 if the filing office fails to reject a continuation statement  
6 that is not filed in a timely manner, the continuation statement  
7 is ineffective nevertheless.

8 **§9-1511. Secured party of record**

10 (1) A secured party of record with respect to a financing  
11 statement is a person whose name is provided as the name of the  
12 secured party or a representative of the secured party in an  
13 initial financing statement that has been filed. If an initial  
14 financing statement is filed under section 9-1514, subsection  
15 (1), the assignee named in the initial financing statement is the  
16 secured party of record with respect to the financing statement.

18 (2) If an amendment of a financing statement that provides  
19 the name of a person as a secured party or a representative of a  
20 secured party is filed, the person named in the amendment is a  
21 secured party of record. If an amendment is filed under section  
22 9-1514, subsection (2), the assignee named in the amendment is a  
23 secured party of record.

24 (3) A person remains a secured party of record until the  
25 filing of an amendment of the financing statement that deletes  
26 the person.

28  
29  
30 **Official Comment**

32 1. Source. New.

34 2. Secured Party of Record. This new section explains how  
35 the secured party of record is to be determined. If SP-1 is  
36 named as the secured party in an initial financing statement, it  
37 is the secured party of record. Similarly, if an initial  
38 financing statement reflects a total assignment from SP-0 to  
39 SP-1, then SP-1 is the secured party of record. See subsection  
40 (a) [Maine cite subsection (1)]. If, subsequently, an amendment  
41 is filed assigning SP-1's status to SP-2, then SP-2 becomes the  
42 secured party of record in place of SP-1. The same result  
43 obtains if a subsequent amendment deletes the reference to SP-1  
44 and substitutes therefor a reference to SP-2. If, however, a  
45 subsequent amendment adds SP-2 as a secured party but does not  
46 purport to remove SP-1 as a secured party, then SP-2 and SP-1  
47 each is a secured party of record. See subsection (b) [Maine  
48 cite subsection (2)]. An amendment purporting to remove the only  
49 secured party of record without providing a successor is  
50 ineffective. See Section 9-512(e) [Maine cite section 9-1512,

2 subsection (5)]. At any point in time, all effective records  
3 that comprise a financing statement must be examined to determine  
4 the person or persons that have the status of secured party of  
5 record.

6 3. Successor to Secured Party of Record. Application of  
7 other law may result in a person succeeding to the powers of a  
8 secured party of record. For example, if the secured party of  
9 record (A) merges into another corporation (B) and the other  
10 corporation (B) survives, other law may provide that B has all of  
11 A's powers. In that case, B is authorized to take all actions  
12 under this Part that A would have been authorized to take.  
13 Similarly, acts taken by a person who is authorized under  
14 generally applicable principles of agency to act on behalf of the  
15 secured party of record are effective under this Part.

16 **§9-1512. Amendment of financing statement**

17  
18 (1) Subject to Section 9-1509, a person may add or delete  
19 collateral covered by, continue or terminate the effectiveness of  
20 or, subject to subsection (5), otherwise amend the information  
21 provided in a financing statement by filing an amendment that:

22  
23 (a) Identifies, by its file number, the initial financing  
24 statement to which the amendment relates; and

25  
26 (b) If the amendment relates to an initial financing  
27 statement filed in a filing office described in section  
28 9-1501, subsection (1), paragraph (a), provides the date and  
29 time that the initial financing statement was filed and the  
30 information specified in section 9-1502, subsection (2).

31  
32 (2) Except as otherwise provided in section 9-1515, the  
33 filing of an amendment does not extend the period of  
34 effectiveness of the financing statement.

35  
36 (3) A financing statement that is amended by an amendment  
37 that adds collateral is effective as to the added collateral only  
38 from the date of the filing of the amendment.

39  
40 (4) A financing statement that is amended by an amendment  
41 that adds a debtor is effective as to the added debtor only from  
42 the date of the filing of the amendment.

43  
44 (5) An amendment is ineffective to the extent it:

45  
46 (a) Purports to delete all debtors and fails to provide the  
47 name of a debtor to be covered by the financing statement; or  
48

2                   (b) Purports to delete all secured parties of record and  
3                   fails to provide the name of a new secured party of record.

4  
5                   **Official Comment**

6                   1. Source. Former 9-402(4).

8                   2. Changes to Financing Statements. This section addresses  
9 changes to financing statements, including addition and deletion  
10 of collateral. Although termination statements, assignments, and  
11 continuation statements are types of amendment, this Article  
12 follows former Article 9 and contains separate sections  
13 containing additional provisions applicable to particular types  
14 of amendments. See Section 9-513 [Maine cite section 9-1513]  
15 (termination statements); 9-514 [Maine cite section 9-1514]  
16 (assignments); 9-515 [Maine cite section 9-1515] (continuation  
17 statements). One should not infer from this separate treatment  
18 that this Article requires a separate amendment to accomplish  
19 each change. Rather, a single amendment would be legally  
20 sufficient to, e.g., add collateral and continue the  
21 effectiveness of the financing statement.

22  
23                   3. Amendments. An amendment under this Article may  
24 identify only the information contained in a financing statement  
25 that is to be changed; alternatively, it may take the form of an  
26 amended and restated financing statement. The latter would  
27 state, for example, that the financing statement "is amended and  
28 restated to read as follows: . . ." References in this Part to  
29 an "amended financing statement" are to a financing statement as  
30 amended by an amendment using either technique.  
31

32                   This section revises former Section 9-402(4) to permit  
33 secured parties of record to make changes in the public record  
34 without the need to obtain the debtor's signature. However, the  
35 filing of an amendment that adds collateral or adds a debtor must  
36 be authorized by the debtor or it will not be effective. See  
37 Sections 9-509(a), 9-510(a) [Maine cite section 9-1509,  
38 subsection (1), section 9-1510, subsection (1)].  
39

40                   4. Amendment Adding Debtor. An amendment that adds a  
41 debtor is effective, provided that the added debtor authorizes  
42 the filing. See Section 9-509(a) [Maine cite section 9-1509,  
43 subsection (1)]. However, filing an amendment adding a debtor to  
44 a previously filed financing statement affords no advantage over  
45 filing an initial financing statement against that debtor and may  
46 be disadvantageous. With respect to the added debtor, for  
47 purposes of determining the priority of the security interest,  
48 the time of filing is the time of the filing of the amendment,  
49 not the time of the filing of the initial financing statement.  
50



2 See subsection (d) [Maine cite subsection (4)]. However, the  
effectiveness of the financing statement lapses with respect to  
4 added debtor at the time it lapses with respect to the original  
debtor. See subsection (b) [Maine cite subsection (2)].

6 5. Deletion of All Debtors or Secured Parties of Record.  
Subsection (e) [Maine cite subsection (5)] assures that there  
8 will be a debtor and secured party of record for every financing  
statement.

10 Example: A filed financing statement names A and B as  
12 secured parties of record and covers inventory and equipment. An  
amendment deletes equipment and purports to delete A and B as  
14 secured parties of record without adding a substitute secured  
party. The amendment is ineffective to the extent it purports to  
16 delete the secured parties of record but effective with respect  
to the deletion of collateral. As a consequence, the financing  
18 statement, as amended, covers only inventory, but A and B remain  
as secured parties of record.

20 **§9-1513. Termination statement**

22 (1) A secured party shall cause the secured party of record  
24 for a financing statement to file a termination statement for the  
financing statement if the financing statement covers consumer  
26 goods and:

28 (a) There is no obligation secured by the collateral  
covered by the financing statement and no commitment to make  
30 an advance, incur an obligation or otherwise give value; or

32 (b) The debtor did not authorize the filing of the initial  
financing statement.

34 (2) To comply with subsection (1), a secured party shall  
36 cause the secured party of record to file the termination  
statement:

38 (a) Within one month after there is no obligation secured  
40 by the collateral covered by the financing statement and no  
commitment to make an advance, incur an obligation or  
42 otherwise give value; or

44 (b) If earlier, within 20 days after the secured party  
receives an authenticated demand from a debtor.

46 (3) In cases not governed by subsection (1), within 20 days  
48 after a secured party receives an authenticated demand from a  
debtor, the secured party shall cause the secured party of record  
50 for a financing statement to send to the debtor a termination

2 statement for the financing statement or file the termination  
3 statement in the filing office if:

4 (a) Except in the case of a financing statement covering  
5 accounts or chattel paper that has been sold or goods that  
6 are the subject of a consignment, there is no obligation  
7 secured by the collateral covered by the financing statement  
8 and no commitment to make an advance, incur an obligation or  
9 otherwise give value;

10 (b) The financing statement covers accounts or chattel  
11 paper that has been sold but as to which the account debtor  
12 or other person obligated has discharged its obligation;

13 (c) The financing statement covers goods that were the  
14 subject of a consignment to the debtor but are not in the  
15 debtor's possession; or

16 (d) The debtor did not authorize the filing of the initial  
17 financing statement.

18 (4) Except as otherwise provided in section 9-1510, upon  
19 the filing of a termination statement with the filing office, the  
20 financing statement to which the termination statement relates  
21 ceases to be effective.

22  
23 **Official Comment**

24  
25 1. Source. Former Section 9-404.

26  
27 2. Duty to File or Send. This section specifies when a  
28 secured party must cause the secured party of record to file or  
29 send to the debtor a termination statement for a financing  
30 statement. Because most financing statements expire in five  
31 years unless a continuation statement is filed (Section 9515)  
32 [Maine cite section 9-1515], no compulsion is placed on the  
33 secured party to file a termination statement unless demanded by  
34 the debtor, except in the case of consumer goods. Because many  
35 consumers will not realize the importance to them of clearing the  
36 public record, an affirmative duty is put on the secured party in  
37 that case. But many purchase-money security interests in  
38 consumer goods will not be filed, except for motor vehicles. See  
39 Section 9309(1) [Maine cite section 9-1309, subsection (1)].  
40 Under Section 9-311(b) [Maine cite section 9-1311, subsection  
41 (2)], compliance with a certificate-of-title statute is  
42 "equivalent to the filing of a financing statement under this  
43 article." Thus, this section applies to a certificate of title  
44 unless the section is superseded by a certificate-of-title  
45 statute that contains a specific rule addressing a secured  
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2 party's duty to cause a notation of a security interest to be  
removed from a certificate of title. In the context of a  
4 certificate of title, however, the secured party could comply  
with this section by causing the removal itself or providing the  
6 debtor with documentation sufficient to enable the debtor to  
effect the removal.

8 Subsections (a) and (b) [Maine cite subsections (1) and (2)]  
apply to a financing statement covering consumer goods.  
10 Subsection (c) [Maine cite subsection (3)] applies to other  
financing statements. Subsection (a) and (c) [Maine cite  
12 subsections (1) and (3)] each makes explicit what was implicit  
under former Article 9: If the debtor did not authorize the  
14 filing of a financing statement in the first place, the secured  
party of record should file or send a termination statement. The  
16 liability imposed upon a secured party that fails to comply with  
subsection (a) or (c) [Maine cite subsection (1) or (3)] is  
18 identical to that imposed for the filing of an unauthorized  
financing statement or amendment. See Section 9-625(e) [Maine  
20 cite section 9-1625, subsection (5)].

22 3. "Bogus" Filings. A secured party's duty to send a  
termination statement arises when the secured party "receives" an  
24 authenticated demand from the debtor. In the case of an  
unauthorized financing statement, the person named as debtor in  
26 the financing statement may have no relationship with the named  
secured party and no reason to know the secured party's address.  
28 Inasmuch as the address in the financing statement is "held out  
by [the person named as secured party in the financing statement]  
30 as the place for receipt of such communications [i.e.,  
communications relating to security interests]," the putative  
32 secured party is deemed to have "received" a notification  
delivered to that address. See Section 1-201(26). If a  
34 termination statement is not forthcoming, the person named as  
debtor itself may authorize the filing of a termination  
36 statement, which will be effective if it indicates that the  
person authorized it to be filed. See Sections 9-509(d)(2),  
38 9-510(c) [Maine cite section 9-1509, subsection (4), paragraph  
(b), section 9-1510, subsection (3)].

40 4. Buyers of Receivables. Applied literally, former  
42 Section 9-404(1) would have required many buyers of receivables  
to file a termination statement immediately upon filing a  
44 financing statement because "there is no outstanding secured  
obligation and no commitment to make advances, incur obligations,  
46 or otherwise give value." Subsections (c)(1) and (2) [Maine cite  
subsection (3), paragraphs (a) and (b)] remedy this problem.  
48 While the security interest of a buyer of accounts or chattel  
paper (B-1) is perfected, the debtor is not deemed to retain an  
50 interest in the sold receivables and thus could transfer no

2 interest in them to another buyer (B-2) or to a lien creditor  
4 (LC). However, for purposes of determining the rights of the  
6 debtor's creditors and certain purchasers of accounts or chattel  
8 paper from the debtor, while B-1's security interest is  
10 unperfected, the debtor-seller is deemed to have rights in the  
12 sold receivables, and a competing security interest or judicial  
14 lien may attach to those rights. See Sections 9-318, 9-109  
16 [Maine cite section 9-1318, section 9-1109], Comment 5. Suppose  
18 that B-1's security interest in certain accounts and chattel  
20 paper is perfected by filing, but the effectiveness of the  
22 financing statement lapses. Both before and after lapse, B-1  
collects some of the receivables. After lapse, LC acquires a  
lien on the accounts and chattel paper. B-1's unperfected  
security interest in the accounts and chattel paper is  
subordinate to LC's rights. See Section 9-317(a)(2) [Maine cite  
section 9-1317, subsection (1), paragraph (b)]. But collections  
on accounts and chattel paper are not "accounts" or "chattel  
paper." Even if B-1's security interest in the accounts and  
chattel paper is or becomes unperfected, neither the debtor nor  
LC acquires rights to the collections that B-1 collects (and  
owns) before LC acquires a lien.

24 5. Effect of Filing. Subsection (d) [Maine cite subsection  
26 (4)] states the effect of filing a termination statement: the  
28 related financing statement ceases to be effective. If one of  
30 several secured parties of record files a termination statement,  
32 subsection (d) [Maine cite subsection (4)] applies only with  
34 respect to the rights of the person who authorized the filing of  
36 the termination statement. See Section 9-510(b) [Maine cite  
38 section 9-1510, subsection (2)]. The financing statement remains  
effective with respect to the rights of the others. However,  
even if a financing statement is terminated (and thus no longer  
is effective) with respect to all secured parties of record, the  
financing statement, including the termination statement, will  
remain of record until at least one year after it lapses with  
respect to all secured parties of record. See Section 9-519(g)  
[Maine cite section 9-1519, subsection (7)].

40 **§9-1514. Assignment of powers of secured party of record**

42 (1) Except as otherwise provided in subsection (3), an  
44 initial financing statement may reflect an assignment of all of  
46 the secured party's power to authorize an amendment to the  
financing statement by providing the name and mailing address of  
the assignee as the name and address of the secured party.

48 (2) Except as otherwise provided in subsection (3), a  
secured party of record may assign of record all or part of its  
power to authorize an amendment to a financing statement by

2 filing in the filing office an amendment of the financing  
3 statement that:

4 (a) Identifies, by its file number, the initial financing  
5 statement to which it relates;

6 (b) Provides the name of the assignor; and

7 (c) Provides the name and mailing address of the assignee.

8  
9  
10  
11 (3) An assignment of record of a security interest in a  
12 fixture covered by a record of a mortgage that is effective as a  
13 financing statement filed as a fixture filing under section  
14 9-1502, subsection (3) may be made only by an assignment of  
15 record of the mortgage in the manner provided by the laws of this  
16 State other than this Title.

17  
18 **Official Comment**

19  
20 1. Source. Former Section 9-405.

21  
22 2. Assignments. This section provides a permissive device  
23 whereby a secured party of record may effectuate an assignment of  
24 its power to affect a financing statement. It may also be useful  
25 for a secured party who has assigned all or part of its security  
26 interest or agricultural lien and wishes to have the fact noted  
27 of record, so that inquiries concerning the transaction would be  
28 addressed to the assignee. See Section 9-502 [Maine cite section  
29 9-1502], Comment 2. Upon the filing of an assignment, the  
30 assignee becomes the "secured party of record" and may authorize  
31 the filing of a continuation statement, termination statement, or  
32 other amendment. Note that under Section 9310(c) [Maine cite  
33 section 9-1310, subsection (3)] no filing of an assignment is  
34 required as a condition of continuing the perfected status of the  
35 security interest against creditors and transferees of the  
36 original debtor. However, if an assignment is not filed, the  
37 assignor remains the secured party of record, with the power  
38 (even if not the right) to authorize the filing of effective  
39 amendments. See Sections 9-511(c), 9-509(d) [Maine cite section  
40 9-1511, subsection (3), section 9-1509, subsection (4)].

41  
42 Where a record of a mortgage is effective as a financing  
43 statement filed as a fixture filing (Section 9502(c) [Maine cite  
44 section 9-1502, subsection (3)]), then an assignment of record of  
45 the security interest may be made only in the manner in which an  
46 assignment of record of the mortgage may be made under local  
47 real-property law.  
48

2           3. Comparison to Prior Law. Most of the changes reflected  
3 in this section are for clarification or to embrace  
4 medium-neutral drafting. As a general matter, this section  
5 preserves the opportunity given by former Section 9-405 to assign  
6 a security interest of record in one of two different ways.  
7 Under subsection (a) [Maine cite subsection (1)], a secured party  
8 may assign all of its power to affect a financing statement by  
9 naming an assignee in the initial financing statement. The  
10 secured party of record may accomplish the same result under  
11 subsection (b) [Maine cite subsection (2)] by making a subsequent  
12 filing. Subsection (b) [Maine cite subsection (2)] also may be  
13 used for an assignment of only some of the secured party of  
14 record's power to affect a financing statement, e.g., the power  
15 to affect the financing statement as it relates to particular  
16 items of collateral or as it relates to an undivided interest in  
17 a security interest in all the collateral. An initial financing  
18 statement may not be used to change the secured party of record  
19 under these circumstances. However, an amendment adding the  
20 assignee as a secured party of record may be used.

21 **§9-1515. Duration and effectiveness of financing statement;**  
22 **effect of lapsed financing statement**

23           (1) Except as otherwise provided in subsections (2), (5),  
24 (6) and (7), a filed financing statement is effective for a  
25 period of 5 years after the date of filing.

26           (2) Except as otherwise provided in subsections (5), (6)  
27 and (7), an initial financing statement filed in connection with  
28 a public-finance transaction or manufactured-home transaction is  
29 effective for a period of 30 years after the date of filing if it  
30 indicates that it is filed in connection with a public-finance  
31 transaction or manufactured-home transaction.

32           (3) The effectiveness of a filed financing statement lapses  
33 on the expiration of the period of its effectiveness unless  
34 before the lapse a continuation statement is filed pursuant to  
35 subsection (4). Upon lapse, a financing statement ceases to be  
36 effective and any security interest or agricultural lien that was  
37 perfected by the financing statement becomes unperfected, unless  
38 the security interest is perfected otherwise. If the security  
39 interest or agricultural lien becomes unperfected upon lapse, it  
40 is deemed never to have been perfected as against a purchaser of  
41 the collateral for value.

42           (4) A continuation statement may be filed only within 6  
43 months before the expiration of the 5-year period specified in  
44 subsection (1) or the 30-year period specified in subsection (2),  
45 whichever is applicable.

46



2 only with respect to purchasers for value; unlike former Section  
9-403(2), it does not apply with respect to lien creditors.

4 Example 1: SP-1 and SP-2 both hold security interests in  
the same collateral. Both security interests are perfected by  
6 filing. SP-1 filed first and has priority under Section  
9322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph  
8 (a)]. The effectiveness of SP-1's filing lapses. As long as  
SP-2's security interest remains perfected thereafter, SP-2 is  
10 entitled to priority over SP-1's security interest, which is  
deemed never to have been perfected as against a purchaser for  
12 value (SP-2). See Section 9-322(a)(2) [Maine cite section  
9-1322, subsection (1), paragraph (b)].

14 Example 2: SP holds a security interest perfected by  
16 filing. On July 1, LC acquires a judicial lien on the  
collateral. Two weeks later, the effectiveness of the financing  
18 statement lapses. Although the security interest becomes  
unperfected upon lapse, it was perfected when LC acquired its  
20 lien. Accordingly, notwithstanding the lapse, the perfected  
security interest has priority over the rights of LC, who is not  
22 a purchaser. See Section 9-317(a)(2) [Maine cite section 9-1317,  
subsection (1), paragraph (b)].

24 4. Effect of Debtor's Bankruptcy. Under former Section  
26 9-403(2), lapse was tolled if the debtor entered bankruptcy or  
another insolvency proceeding. Nevertheless, being unaware that  
28 insolvency proceedings had been commenced, filing offices  
routinely removed records from the files as if lapse had not been  
30 tolled. Subsection (c) [Maine cite subsection (3)] deletes the  
former tolling provision and thereby imposes a new burden on the  
32 secured party: to be sure that a financing statement does not  
lapse during the debtor's bankruptcy. The secured party can  
34 prevent lapse by filing a continuation statement, even without  
first obtaining relief from the automatic stay. See Bankruptcy  
36 Code Section 362(b)(3). Of course, if the debtor enters  
bankruptcy before lapse, the provisions of this Article with  
38 respect to lapse would be of no effect to the extent that federal  
bankruptcy law dictates a contrary result (e.g., to the extent  
40 that the Bankruptcy Code determines rights as of the date of the  
filing of the bankruptcy petition).

42 5. Continuation Statements. Subsection (d) [Maine cite  
44 subsection (4)] explains when a continuation statement may be  
filed. A continuation statement filed at a time other than that  
46 prescribed by subsection (d) [Maine cite subsection (4)] is  
ineffective, see Section 9-510(c) [Maine cite section 9-1510,  
48 subsection (3)], and the filing office may not accept it. See  
Sections 9-520(a), 9-516(b) [Maine cite section 9-1520,  
50 subsection (1), section 9-1516, subsection (2)]. Subsection (e)



2 [Maine cite subsection (5)] specifies the effect of a  
continuation statement and provides for successive continuation  
statements.

4  
6 **§9-1516. What constitutes filing; effectiveness of filing**

8 (1) Except as otherwise provided in subsection (2),  
communication of a record to a filing office and tender of the  
filing fee or acceptance of the record by the filing office  
10 constitutes filing.

12 (2) Filing does not occur with respect to a record that a  
filing office refuses to accept because:

14 (a) The record is not communicated by a method or medium of  
16 communication authorized by the filing office;

18 (b) An amount equal to or greater than the applicable  
20 filing fee is not tendered;

22 (c) The filing office is unable to index the record because:

24 (i) In the case of an initial financing statement, the  
record does not provide a name for the debtor;

26 (ii) In the case of an amendment or correction  
28 statement, the record:

30 (A) Does not identify the initial financing  
statement as required by section 9-1512 or 9-1518,  
as applicable; or

32 (B) Identifies an initial financing statement  
34 whose effectiveness has lapsed under section  
36 9-1515;

38 (iii) In the case of an initial financing statement  
that provides the name of a debtor identified as an  
individual or an amendment that provides a name of a  
debtor identified as an individual that was not  
40 previously provided in the financing statement to which  
42 the record relates, the record does not identify the  
debtor's last name; or

44 (iv) In the case of a record filed in the filing  
46 office described in section 9-1501, subsection (1),  
paragraph (a), the record does not provide a sufficient  
48 description of the real property to which it relates;

2 (d) In the case of an initial financing statement or an  
4 amendment that adds a secured party of record, the record  
does not provide a name and mailing address for the secured  
party of record;

6 (e) In the case of an initial financing statement or an  
8 amendment that provides a name of a debtor that was not  
previously provided in the financing statement to which the  
amendment relates, the record does not:

10 (i) Provide a mailing address for the debtor;

12 (ii) Indicate whether the debtor is an individual or  
14 an organization; or

16 (iii) If the financing statement indicates that the  
18 debtor is an organization, provide:

20 (A) A type of organization for the debtor;

22 (B) A jurisdiction of organization for the  
debtor; or

24 (C) An organizational identification number for  
26 the debtor or indicate that the debtor has none;

28 (f) In the case of an assignment reflected in an initial  
financing statement under section 9-1514, subsection (1) or  
30 an amendment filed under section 9-1514, subsection (2), the  
record does not provide a name and mailing address for the  
32 assignee; or

34 (g) In the case of a continuation statement, the record is  
not filed within the 6-month period prescribed by section  
36 9-1515, subsection (4).

38 (3) For purposes of subsection (2):

40 (a) A record does not provide information if the filing  
office is unable to read or decipher the information; and

42 (b) A record that does not indicate that it is an amendment  
or identify an initial financing statement to which it  
44 relates, as required by section 9-1512, 9-1514 or 9-1518, is  
an initial financing statement.

46 (4) A record that is communicated to the filing office with  
48 tender of the filing fee, but which the filing office refuses to  
accept for a reason other than one set forth in subsection (2),  
50 is effective as a filed record except as against a purchaser of

2 the collateral that gives value in reasonable reliance upon the  
3 absence of the record from the files.

4  
5 **Official Comment**

6  
7 1. Source. Subsection (a) [Maine cite subsection (1)]:  
8 former Section 9-403(1); the remainder is new.

10 2. What Constitutes Filing. Subsection (a) [Maine cite  
11 subsection (1)] deals generically with what constitutes filing of  
12 a record, including an initial financing statement and amendments  
13 of all kinds (e.g., assignments, termination statements, and  
14 continuation statements). It follows former Section 9-403(1),  
15 under which either acceptance of a record by the filing office or  
16 presentation of the record and tender of the filing fee  
17 constitutes filing.

18  
19 3. Effectiveness of Rejected Record. Subsection (b) [Maine  
20 cite subsection (2)] provides an exclusive list of grounds upon  
21 which the filing office may reject a record. See Section  
22 9-520(a)[Maine cite section 9-1520, subsection (1)]. Although  
23 some of these grounds would also be grounds for rendering a filed  
24 record ineffective (e.g., an initial financing statement does not  
25 provide a name for the debtor), many others would not be (e.g.,  
26 an initial financing statement does not provide a mailing address  
27 for the debtor or secured party of record). Neither this section  
28 nor Section 9-520 [Maine cite section 9-1520] requires or  
29 authorizes the filing office to determine, or even consider, the  
30 accuracy of information provided in a record. For example, the  
31 State A filing office may not reject under subsection (b)(5)(C)  
32 [Maine cite subsection (2), paragraph (e), subparagraph (iii)] an  
33 initial financing statement indicating that the debtor is a State  
34 A corporation and providing a three-digit organizational  
35 identification number, even if all State A organizational  
36 identification numbers contain at least five digits and two  
37 letters.

38  
39 A financing statement or other record that is communicated  
40 to the filing office but which the filing office refuses to  
41 accept provides no public notice, regardless of the reason for  
42 the rejection. However, this section distinguishes between  
43 records that the filing office rightfully rejects and those that  
44 it wrongfully rejects. A filer is able to prevent a rightful  
45 rejection by complying with the requirements of subsection (b)  
46 [Maine cite subsection (2)]. No purpose is served by giving  
47 effect to records that justifiably never find their way into the  
48 system, and subsection (b) [Maine cite subsection (2)] so  
49 provides.

2 Subsection (d) [Maine cite subsection (4)] deals with the  
3 filing office's unjustified refusal to accept a record. Here,  
4 the filer is in no position to prevent the rejection and as a  
5 general matter should not be prejudiced by it. Although  
6 wrongfully rejected records generally are effective, subsection  
7 (d) [Maine cite subsection (4)] contains a special rule to  
8 protect a third-party purchaser of the collateral (e.g., a buyer  
9 or competing secured party) who gives value in reliance upon the  
10 apparent absence of the record from the files. As against a  
11 person who searches the public record and reasonably relies on  
12 what the public record shows, subsection (d) [Maine cite  
13 subsection (4)] imposes upon the filer the risk that a record  
14 failed to make its way into the filing system because of the  
15 filing office's wrongful rejection of it. (Compare Section 9-517  
16 [Maine cite subsection 9-1517], under which a mis-indexed  
17 financing statement is fully effective.) This risk is likely to  
18 be small, particularly when a record is presented electronically,  
19 and the filer can guard against this risk by conducting a  
20 post-filing search of the records. Moreover, Section 9-520(b)  
21 [Maine cite section 9-1520, subsection (2)] requires the filing  
22 office to give prompt notice of its refusal to accept a record  
23 for filing.

24 4. Method or Medium of Communication. Rejection pursuant  
25 to subsection (b)(1) [Maine cite subsection (2), paragraph (a)]  
26 for failure to communicate a record properly should be understood  
27 to mean noncompliance with procedures relating to security,  
28 authentication, or other communication-related requirements that  
29 the filing office may impose. Subsection (b)(1) [Maine cite  
30 subsection (2), paragraph (a)] does not authorize a filing office  
31 to impose additional substantive requirements. See Section 9-520  
32 [Maine cite section 9-1520], Comment 2.

34 5. Address for Secured Party of Record. Under subsection  
35 (b)(4) [Maine cite subsection (2), paragraph (d)] and Section  
36 9-520(a) [Maine cite section 9-1520, subsection (1)], the lack of  
37 a mailing address for the secured party of record requires the  
38 filing office to reject an initial financing statement. The  
39 failure to include an address for the secured party of record no  
40 longer renders a financing statement ineffective. See Section  
41 9-502(a) [Maine cite section 9-1502, subsection (1)]. The  
42 function of the address is not to identify the secured party of  
43 record but rather to provide an address to which others can send  
44 required notifications, e.g., of a purchase-money security  
45 interest in inventory or of the disposition of collateral.  
46 Inasmuch as the address shown on a filed financing statement is  
47 an "address that is reasonable under the circumstances," a person  
48 required to send a notification to the secured party may satisfy  
49 the requirement by sending a notification to that address, even  
50 if the address is or becomes incorrect. See Section 9-102 [Maine

2 cite section 9-1102] (definition of "send"). Similarly, because  
4 the address is "held out by [the secured party] as the place for  
6 receipt of such communications [i.e., communications relating to  
security interests]," the secured party is deemed to have  
received a notification delivered to that address. See Section  
1-201(26).

8 6. Uncertainty Concerning Individual Debtor's Last Name.  
10 Subsection (b)(3)(C) [Maine cite subsection (2), paragraph (c),  
subparagraph (iii)] requires the filing office to reject an  
12 initial financing statement or amendment adding an individual  
debtor if the office cannot index the record because it does not  
14 identify the debtor's last name (e.g., it is unclear whether the  
debtor's name is Elton John or John Elton).

16 7. Inability of Filing Office to Read or Decipher  
18 Information. Under subsection (c)(1) [Maine cite subsection (3),  
paragraph (a)], if the filing office cannot read or decipher  
20 information, the information is not provided by a record for  
purposes of subsection (b) [Maine cite subsection (2)].

22 8. Classification of Records. For purposes of subsection  
24 (b) [Maine cite subsection (2)], a record that does not indicate  
it is an amendment or identify an initial financing statement to  
26 which it relates is deemed to be an initial financing statement.  
See subsection (c)(2) [Maine cite subsection (3), paragraph (b)].

28 9. Effectiveness of Rejectable But Unrejected Record.  
30 Section 9-520(a) [Maine cite section 9-1520, subsection (1)]  
requires the filing office to refuse to accept an initial  
32 financing statement for a reason set forth in subsection (b)  
[Maine cite subsection (2)]. However, if the filing office  
34 accepts such a financing statement nevertheless, the financing  
statement generally is effective if it complies with the  
36 requirements of Section 9-502(a) and (b) [Maine cite section  
9-1502, subsections (1) and (2)]. See Section 9-520(c) [Maine  
38 cite section 1520, subsection (3)]. Similarly, an otherwise  
effective financing statement generally remains so even though  
40 the information in the financing statement becomes incorrect.  
See Section 9-507(b) [Maine cite section 9-1507, subsection  
42 (2)]. (Note that if the information required by subsection  
(b)(5) [Maine cite subsection (2), paragraph (e)] is incorrect  
44 when the financing statement is filed, Section 9-338 [Maine cite  
section 9-1338] applies.)

46 **§9-1517. Effect of indexing errors**

48 The failure of the filing office to index a record correctly  
50 does not affect the effectiveness of the filed record.

2

## Official Comment

4

1. Source. New.

6

2. Effectiveness of Mis-Indexed Records. This section provides that the filing office's error in mis-indexing a record does not render ineffective an otherwise effective record. As did former Section 9-401, this section imposes the risk of filing-office error on those who search the files rather than on those who file.

8

10

12

### §9-1518. Claim concerning inaccurate or wrongfully filed record

14

(1) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

16

18

20

(2) A correction statement must:

22

(a) Identify the record to which it relates by:

24

(i) The file number assigned to the initial financing statement to which the record relates; and

26

28

(ii) If the correction statement relates to a record filed in a filing office described in section 9-1501, subsection (1), paragraph (a), the date and time that the initial financing statement was filed and the information specified in section 9-1502, subsection (2);

30

32

(b) Indicate that it is a correction statement; and

34

36

(c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

38

40

42

## Official Comment

44

1. Source. New.

46

2. Correction Statements. Former Article 9 did not afford a nonjudicial means for a debtor to correct a financing statement or other record that was inaccurate or wrongfully filed. Subsection (a) [Maine cite subsection (1)] affords the debtor the right to file a correction statement. Among other requirements,

48

50

2 the correction statement must provide the basis for the debtor's  
3 belief that the public record should be corrected. See  
4 subsection (b) [Maine cite subsection (2)]. These provisions,  
5 which resemble the analogous remedy in the Fair Credit Reporting  
6 Act, 15 U.S.C. § 1681i, afford an aggrieved person the  
7 opportunity to state its position on the public record. They do  
8 not permit an aggrieved person to change the legal effect of the  
9 public record. Thus, although a filed correction statement  
10 becomes part of the "financing statement," as defined in Section  
11 9-102 [Maine cite section 9-1102], the filing does not affect the  
12 effectiveness of the initial financing statement or any other  
13 filed record. See subsection (c) [Maine cite subsection (3)].

14 This section does not displace other provisions of this  
15 Article that impose liability for making unauthorized filings or  
16 failing to file or send a termination statement. See Section  
17 9-625(e) [Maine cite section 9-1625, subsection (5)]. Nor does  
18 it displace any available judicial remedies.

20 3. Resort to Other Law. This Article cannot provide a  
21 satisfactory or complete solution to problems caused by misuse of  
22 the public records. The problem of "bogus" filings is not  
23 limited to the UCC filing system but extends to the real-property  
24 records, as well. A summary judicial procedure for correcting  
25 the public record and criminal penalties for those who misuse the  
26 filing and recording systems are likely to be more effective and  
27 put less strain on the filing system than provisions authorizing  
28 or requiring action by filing and recording offices.

30 **SUBPART 2**

32 **DUTIES AND OPERATION OF FILING OFFICE**

34 **§9-1519. Numbering, maintaining and indexing records;**  
35 **communicating information provided in records**

36 (1) For each record filed in a filing office, the filing  
37 office shall:

40 (a) Assign a unique number to the filed record;

42 (b) Create a record that bears the number assigned to the  
43 filed record and the date and time of filing;

44 (c) Maintain the filed record for public inspection; and

46 (d) Index the filed record in accordance with subsections  
48 (3), (4) and (5).

2           (2) A file number assigned after January 1, 2002 must  
3           include a digit that:

4           (a) Is mathematically derived from or related to the other  
5           digits of the file number; and

6           (b) Aids the filing office in determining whether a number  
7           communicated as the file number includes a single-digit or  
8           transpositional error.

9           (3) Except as otherwise provided in subsections (4) and  
10           (5), the filing office shall:

11           (a) Index an initial financing statement according to the  
12           name of the debtor and index all filed records relating to  
13           the initial financing statement in a manner that associates  
14           with one another an initial financing statement and all  
15           filed records relating to the initial financing statement;  
16           and

17           (b) Index a record that provides a name of a debtor that  
18           was not previously provided in the financing statement to  
19           which the record relates also according to the name that was  
20           not previously provided.

21           (4) If a financing statement is filed as a fixture filing  
22           or covers as-extracted collateral or timber to be cut, it must be  
23           filed and the filing office shall index it:

24           (a) Under the names of the debtor and of each owner of  
25           record shown on the financing statement as if they were the  
26           mortgagors under a mortgage of the real property described;  
27           and

28           (b) To the extent that the law of this State provides for  
29           indexing of records of mortgages under the name of the  
30           mortgagee, under the name of the secured party as if the  
31           secured party were the mortgagee thereunder, or, if indexing  
32           is by description, as if the financing statement were a  
33           record of a mortgage of the real property described.

34           (5) If a financing statement is filed as a fixture filing  
35           or covers as-extracted collateral or timber to be cut, the filing  
36           office shall index an assignment filed under section 9-1514,  
37           subsection (1) or an amendment filed under section 9-1514,  
38           subsection (2):

39           (a) Under the name of the assignor as grantor; and



2 (b) To the extent that the law of this State provides for  
3 indexing a record of the assignment of a mortgage under the  
4 name of the assignee, under the name of the assignee.

6 (6) The filing office shall maintain a capability:

8 (a) To retrieve a record by the name of the debtor and:

10 (i) If the filing office is described in section  
11 9-1501, subsection (1), paragraph (a), by the file  
12 number assigned to the initial financing statement to  
13 which the record relates and the date and time that the  
14 record was filed; or

16 (ii) If the filing office is described in section  
17 9-1501, subsection (1), paragraph (b), by the file  
18 number assigned to the initial financing statement to  
19 which the record relates; and

20 (b) To associate and retrieve with one another an initial  
21 financing statement and each filed record relating to the  
22 initial financing statement.

24 (7) The filing office may not remove a debtor's name from  
25 the index until one year after the effectiveness of a financing  
26 statement naming the debtor lapses under section 9-1515 with  
27 respect to all secured parties of record.

28 (8) The filing office shall perform the acts required by  
29 subsections (1) to (5) at the time and in the manner prescribed  
30 by filing-office rule, but not later than 2 business days after  
31 the filing office receives the record in question.

34 (9) Subsections (2) and (8) do not apply to a filing office  
35 described in section 9-1501, subsection (1), paragraph (a).

38 **Official Comment**

40 1. Source. Former Sections 9-403(4), (7), 9-405(2).

42 2. Filing Office's Duties. Subsections (a) through (e)  
43 [Maine cite subsections (1) through (5)] set forth the duties of  
44 the filing office with respect to filed records. Subsection (h),  
45 which is new, imposes a minimum standard of performance for those  
46 duties. Prompt indexing is crucial to the effectiveness of any  
47 filing system. An accepted but un-indexed record affords no  
48 public notice. Subsection (f) [Maine cite subsection (6)]  
requires the filing office to maintain appropriate storage and

2 retrieval facilities, and subsection (g) [Maine cite subsection  
(7)] contains minimum requirements for the retention of records.

4 3. File Number. Subsection (a)(1) [Maine cite subsection  
6 (1), paragraph (a)] requires the filing office to assign a unique  
8 number to each filed record. That number is the "file number"  
only if the record is an initial financing statement. See  
Section 9-102 [Maine cite section 9-1102].

10 4. Time of Filing. Subsection (a)(2) [Maine cite  
12 subsection (1), paragraph (b)] and Section 9-523 [Maine cite  
14 section 9-1523] refer to the "date and time" of filing. The  
16 statutory text does not contain any instructions to a filing  
office as to how the time of filing is to be determined. The  
method of determining or assigning a time of filing is an  
appropriate matter for filling-office rules to address.

18 5. Related Records. Subsections (c) and (f) [Maine cite  
20 subsections (3) and (6)] are designed to ensure that an initial  
22 financing statement and all filed records relating to it are  
24 associated with one another, indexed under the name of the  
debtor, and retrieved together. To comply with subsection (f)  
[Maine cite subsection (6)], a filing office (other than a  
real-property recording office in a State that enacts subsection  
(f) [Maine cite subsection (6)], Alternative B) must be capable  
26 of retrieving records in each of two ways: by the name of the  
debtor and by the file number of the initial financing statement  
28 to which the record relates.

30 6. Prohibition on Deleting Names from Index. This Article  
32 contemplates that the filing office will not delete the name of a  
debtor from the index until at least one year passes after the  
34 effectiveness of the financing statement lapses as to all secured  
parties of record. See subsection (g) [Maine cite subsection  
(7)]. This rule applies even if the filing office accepts an  
36 amendment purporting to delete or modify the name of a debtor or  
terminate the effectiveness of the financing statement. If an  
38 amendment provides a modified name for a debtor, the amended name  
should be added to the index, see subsection (c)(2) [Maine cite  
40 subsection (3), paragraph (b)], but the pre-amendment name should  
42 remain in the index.

44 Compared to former Article 9, the rule in subsection (g)  
[Maine cite subsection (7)] increases the amount of information  
46 available to those who search the public records. The rule also  
contemplates that searchers-not the filing office-will determine  
48 the significance and effectiveness of filed records.

50 **§9-1520. Acceptance and refusal to accept record**

2 (1) A filing office shall refuse to accept a record for  
3 filing for a reason set forth in section 9-1516, subsection (2)  
4 and may refuse to accept a record for filing only for a reason  
5 set forth in section 9-1516, subsection (2).

6 (2) If a filing office refuses to accept a record for  
7 filing, it shall communicate to the person that presented the  
8 record the fact of and reason for the refusal and the date and  
9 time the record would have been filed had the filing office  
10 accepted it. The communication must be made at the time and in  
11 the manner prescribed by filing-office rule but, in the case of a  
12 filing office described in section 9-1501, subsection (1),  
13 paragraph (b), in no event more than 2 business days after the  
14 filing office receives the record.

15 (3) A filed financing statement satisfying section 9-1502,  
16 subsection (1) and (2) is effective even if the filing office is  
17 required to refuse to accept it for filing under subsection (1).  
18 However, section 9-1338 applies to a filed financing statement  
19 providing information described in section 9-1516, subsection  
20 (2), paragraph (e) that is incorrect at the time the financing  
21 statement is filed.  
22

23 (4) If a record communicated to a filing office provides  
24 information that relates to more than one debtor, this part  
25 applies to each debtor separately.  
26

28

#### Official Comment

30

1. Source. New.

32

33 2. Refusal to Accept Record for Filing. In some States,  
34 filing offices considered themselves obligated by former Article  
35 9 to review the form and content of a financing statement and to  
36 refuse to accept those that they determine are legally  
37 insufficient. Some filing offices imposed requirements for or  
38 conditions to filing that do not appear in the statute. Under  
39 this section, the filing office is not expected to make legal  
40 judgments and is not permitted to impose additional conditions or  
41 requirements.

42

43 Subsection (a) [Maine cite subsection (1)] both prescribes  
44 and limits the bases upon which the filing office must and may  
45 reject records by reference to the reasons set forth in Section  
46 9-516(b) [Maine cite subsection 9-1516, subsection (2)]. For the  
47 most part, the bases for rejection are limited to those that  
48 prevent the filing office from dealing with a record that it  
49 receives—because some the requisite information (e.g., the  
50 debtor's name) is missing or cannot be deciphered, because the

2 record is not communicated by a method (e.g., it is MIME- rather  
than UU-encoded) or medium (e.g., it is written rather than  
4 electronic) that the filing office accepts, or because the filer  
fails to tender an amount equal to or greater than the filing fee.

6 3. Consequences of Accepting Rejectable Record. Section  
9-516(b) [Maine cite section 9-1516, subsection (2)] includes  
8 among the reasons for rejecting an initial financing statement  
the failure to give certain information that is not required as a  
10 condition of effectiveness. In conjunction with Section  
9-516(b)(5) [Maine cite section 9-1516, subsection (2), paragraph  
12 (e)], this section requires the filing office to refuse to accept  
a financing statement that is legally sufficient to perfect a  
14 security interest under Section 9-502 [Maine cite section 9-1502]  
but does not contain a mailing address for the debtor, does not  
16 disclose whether the debtor is an individual or an organization  
(e.g., a partnership or corporation) or, if the debtor is an  
18 organization, does not give certain specified information  
concerning the organization. The information required by Section  
20 9-516(b)(5) [Maine cite section 9-1516, subsection (2), paragraph  
(e)] assists searchers in weeding out "false positives," i.e.,  
22 records that a search reveals but which do not pertain to the  
debtor in question. It assists filers by helping to ensure that  
24 the debtor's name is correct and that the financing statement is  
filed in the proper jurisdiction.

26  
28 If the filing office accepts a financing statement that does  
not give this information at all, the filing is fully effective.  
Section 9-520(c) [Maine cite section 9-1520, subsection (3)].  
30 The financing statement also generally is effective if the  
information is given but is incorrect; however, Section 9-338  
32 [Maine cite section 9-1338] affords protection to buyers and  
holders of a perfected security interests who gives value in  
34 reasonable reliance upon the incorrect information.

36 4. Filing Office's Duties with Respect to Rejected Record.  
Subsection (b) [Maine cite subsection (2)] requires the filing  
38 office to communicate the fact of rejection and the reason  
therefor within a fixed period of time. Inasmuch as a rightfully  
40 rejected record is ineffective and a wrongfully rejected record  
is not fully effective, prompt communication concerning any  
42 rejection is important.

44 5. Partial Effectiveness of Record. Under subsection (d)  
[Maine cite subsection (4)], the provisions of this Part apply to  
46 each debtor separately. Thus, a filing office may reject an  
initial financing statement or other record as to one named  
48 debtor but accept it as to the other.

2 Example: An initial financing statement is communicated to  
the filing office. The financing statement names two debtors,  
4 John Smith and Jane Smith. It contains all of the information  
described in Section 9-516(b)(5) [Maine cite section 9-1516,  
6 subsection (2), paragraph (e)] with respect to John but lacks  
some of the information with respect to Jane. The filing office  
8 must accept the financing statement with respect to John, reject  
it with respect to Jane, and notify the filer of the rejection.

10 **§9-1521. Uniform form of written financing statement and**  
12 **amendment**

14 (1) A filing office that accepts written records may not  
refuse to accept a written initial financing statement in the  
16 following form and format except for a reason set forth in  
section 9-1516, subsection (2):

18 UCC FINANCING STATEMENT

20 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

22 A. NAME AND PHONE OF CONTACT AT FILER [optional]

24 \_\_\_\_\_

26 B. SEND ACKNOWLEDGMENT TO: (Name and Address)

28 \_\_\_\_\_

30 \_\_\_\_\_

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

32

34 1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name  
(1a or 1b) - Do not abbreviate or combine names

36 1a. ORGANIZATION'S NAME

38 \_\_\_\_\_

40 OR 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

42 \_\_\_\_\_

44 1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

46 \_\_\_\_\_



2 OR 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

4

6 3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

8

10 4. This FINANCING STATEMENT covers the following collateral:

12

14 5. ALTERNATIVE DESIGNATION [if applicable]: [ ] LESSEE/LESSOR

16 [ ] CONSIGNEE/CONSIGNOR [ ] BAILEE/BAILOR [ ] SELLER/BUYER

18 [ ] AG. LIEN [ ] NON-UCC FILING

20 6. [ ] This FINANCING STATEMENT is to be filed (for record)

22 (or recorded) in the REAL ESTATE RECORDS.

24 Attach Addendum [if applicable]

26 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)

28 [ ] All Debtors [ ] Debtor 1 [ ] Debtor 2

30 [ADDITIONAL FEE] [optional]

32

34 8. OPTIONAL FILER REFERENCE DATA

36

38 FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT (FORM UCC 1)  
(REV. 07/29/98)

40

[BACK OF FORM]

42

UCC FINANCING STATEMENT ADDENDUM

44

Follow instructions (front and back) CAREFULLY

46

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

2  
4  
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---

9a. ORGANIZATION'S NAME

---

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

10. MISCELLANEOUS:

---

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

---

OR 11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

---

11d. TAX ID NO. ADD'L INFO. RE 11e. TYPE OF ORGANIZATION  
SSN OR EIN ORGANIZATION  
DEBTOR

---

11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID  
NO., if any

[ ] NONE

---

12. [ ] ADDITIONAL SECURED PARTY'S or [ ] ASSIGNOR S/P'S NAME  
- insert only one name (12a or 12b)



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44

12a. ORGANIZATION'S NAME

\_\_\_\_\_

OR 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

\_\_\_\_\_

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

\_\_\_\_\_

13. This FINANCING STATEMENT covers [ ] timber to be cut or [ ]  
as-extracted collateral, or is filed as a [ ] fixture  
filing.

14. Description of real estate:

\_\_\_\_\_

15. Name and address of a RECORD OWNER of the above-described  
real estate (if Debtor does not have record interest):

\_\_\_\_\_

16. Additional collateral description:

\_\_\_\_\_

17. Check **only** if applicable and check **only** one box:  
Debtor is a [ ] Trust or [ ] Trustee acting with respect  
to property held in trust or [ ] Decedent's Estate

18. Check **only** if applicable and check **only** one box:

[ ] Debtor is a TRANSMITTING UTILITY

[ ] Filed in connection with a Manufactured-Home  
Transaction - effective 30 years

[ ] Filed in connection with a Public-Finance Transaction -  
effective 30 years

FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT

(FORM UCC 1Ad) (REV. 07/29/98)

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(2) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-1516, subsection (2):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME AND PHONE OF CONTACT AT FILER [optional]

\_\_\_\_\_

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NO.

1b.  This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

\_\_\_\_\_

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

2           [ ] CHANGE name and/or address: Give current record name  
3 in item 6a or 6b; also give new name (if name change) in item 7a  
4 or 7b and/or new address (if address change) in item 7c.

6           [ ] DELETE name: Give record name to be deleted in item 6a  
7 or 6b.

8           [ ] ADD name: Complete item 7a or 7b, and also item 7c;  
9 also complete items 7d-7g (if applicable).

10 6. CURRENT RECORD INFORMATION:

12           6a. ORGANIZATION'S NAME

14 \_\_\_\_\_  
16 OR 6b. INDIVIDUAL'S LAST NAME   FIRST NAME   MIDDLE NAME   SUFFIX

18 \_\_\_\_\_  
20 7. CHANGED (NEW) OR ADDED INFORMATION:

22           7a. ORGANIZATION'S NAME

24 \_\_\_\_\_  
26 OR 7b. INDIVIDUAL'S LAST NAME   FIRST NAME   MIDDLE NAME   SUFFIX

28 \_\_\_\_\_  
30 7c. MAILING ADDRESS   CITY   STATE   POSTAL CODE   COUNTRY

32 \_\_\_\_\_  
34 7d. TAX ID NO.   ADD'L INFO. RE   7e. TYPE OF ORGANIZATION  
36 SSN OR EIN   ORGANIZATION  
38 DEBTOR

40 \_\_\_\_\_  
42 7f. JURISDICTION OF                   7g. ORGANIZATIONAL ID NO.,  
44 ORGANIZATION                           if any

44 \_\_\_\_\_ [ ] NONE

46 8. AMENDMENT (COLLATERAL CHANGE): check only one box

2 Describe collateral [ ] deleted or [ ] added, or give  
entire [ ] restated collateral description, or describe  
collateral [ ] assigned.  
4

6  
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT  
8 (name of assignor, if this is an Assignment). If this is an  
Amendment authorized by a Debtor that adds collateral or adds the  
10 authorizing Debtor, or if this is a Termination authorized by a  
Debtor, check here [ ] and enter name of DEBTOR authorizing this  
12 Amendment.

14 9a. ORGANIZATION'S NAME

16

18 OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

20

22 10. OPTIONAL FILE REFERENCE DATA

24

26 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT  
(FORM UCC3) (REV. 07/29/98)

28

[BACK OF FORM]

30

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

32

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

34

36 11. INITIAL FINANCING STATEMENT FILE NO. (same as item 1a on  
Amendment form)

38

40 12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on  
Amendment form)

42

44 12a. ORGANIZATION'S NAME

2 OR 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

4

6 13. USE THIS SPACE FOR ADDITIONAL INFORMATION

8

10

THIS SPACE IS FOR FILING OFFICE USE ONLY

12

14 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT  
ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

16 (3) A form that a filing office may not refuse to accept  
18 under subsection (1) or (2) must conform to the format prescribed  
for the form by the National Conference of Commissioners on  
20 Uniform State Laws.

20

22

**Official Comment**

24

1. Source. New.

26

2. "Safe Harbor" Written Forms. Although Section 9-520  
28 [Maine cite section 9-1520] limits the bases upon which the  
filing office can refuse to accept records, this section provide  
30 sample written forms that must be accepted in every filing office  
in the country, as long as the filing office's rules permit it to  
32 accept written communications. By completing one of the forms in  
this section, a secured party can be certain that the filing  
office is obligated to accept it.

34

The forms in this section are based upon national financing  
36 statement forms that were in use under former Article 9. Those  
forms were developed over an extended period and reflect the  
38 comments and suggestions of filing officers, secured parties and  
their counsel, and service companies. The formatting of those  
40 forms and of the ones in this section has been designed to reduce  
error by both filers and filing offices.

42

A filing office that accepts written communications may not  
44 reject, on grounds of form or format, a filing using these  
forms. Although filers are not required to use the forms, they  
46 are encouraged and can be expected to do so, inasmuch as the  
forms are well designed and avoid the risk of rejection on the  
48 basis of form or format. As their use expands, the forms will  
rapidly become familiar to both filers and filing-office

2 personnel. Filing offices may and should encourage the use of  
these forms by declaring them to be the "standard" (but not  
4 exclusive) forms for each jurisdiction, albeit without in any way  
suggesting that alternative forms are unacceptable.

6 The multi-purpose form in subsection (b) [Maine cite  
subsection (2)] covers changes with respect to the debtor, the  
8 secured party, the collateral, and the status of the financing  
statement (termination and continuation). A single form may be  
10 used for several different types of amendments at once (e.g.,  
both to change a debtor's name and continue the effectiveness of  
12 the financing statement).

14 **§9-1522. Maintenance and destruction of records**

16 (1) The filing office shall maintain a record of the  
information provided in a filed financing statement for at least  
one year after the effectiveness of the financing statement has  
lapsed under section 9-1515 with respect to all secured parties  
of record. The record must be retrievable by using the name of  
the debtor and:

22 (a) If the record was filed in the filing office described  
in section 9-1501, subsection (1), paragraph (a), by using  
the file number assigned to the initial financing statement  
to which the record relates and the date and time that the  
record was filed; or

28 (b) If the record was filed in the filing office described  
in section 9-1501, subsection (1), paragraph (b), by using  
the file number assigned to the initial financing statement  
to which the record relates.

34 (2) Except to the extent that a statute governing  
disposition of public records provides otherwise, the filing  
office immediately may destroy any written record evidencing a  
financing statement. However, if the filing office destroys a  
written record, it shall maintain another record of the financing  
statement that complies with subsection (1).

42 **Official Comment**

44 1. Source. Former Section 9-403(3), revised substantially.

46 2. Maintenance of Records. Section 9-523 [Maine cite  
section 9-1523] requires the filing office to provide information  
48 concerning certain lapsed financing statements. Accordingly,  
subsection (a) [Maine cite subsection (1)] requires the filing  
50 office to maintain a record of the information in a financing

2 statement for at least one year after lapse. During that time,  
3 the filing office may not delete any information with respect to  
4 a filed financing statement; it may only add information. This  
5 approach relieves the filing office from any duty to determine  
6 whether to substitute or delete information upon receipt of an  
7 amendment. It also assures searchers that they will receive all  
8 information with respect to financing statements filed against a  
9 debtor and thereby be able themselves to determine the state of  
10 the public record.

11 The filing office may maintain this information in any  
12 medium. Subsection (b) [Maine cite subsection (2)] permits the  
13 filing office immediately to destroy written records evidencing a  
14 financing statement, provided that the filing office maintains  
15 another record of the information contained in the financing  
16 statement as required by subsection (a) [Maine cite subsection  
17 (1)].

18 **§9-1523. Information from filing office; sale or license of**  
19 **records**

20  
21 (1) If a person that files a written record requests an  
22 acknowledgment of the filing, the filing office shall send to the  
23 person an image of the record showing the number assigned to the  
24 record pursuant to section 9-1519, subsection (1), paragraph (a)  
25 and the date and time of the filing of the record. However, if  
26 the person furnishes a copy of the record to the filing office,  
27 the filing office may instead:

28  
29 (a) Note upon the copy the number assigned to the record  
30 pursuant to section 9-1519, subsection (1), paragraph (a)  
31 and the date and time of the filing of the record; and

32  
33 (b) Send the copy to the person.

34  
35 (2) If a person files a record other than a written record,  
36 the filing office shall communicate to the person an  
37 acknowledgment that provides:

38  
39 (a) The information in the record;

40  
41 (b) The number assigned to the record pursuant to section  
42 9-1519, subsection (1), paragraph (a); and

43  
44 (c) The date and time of the filing of the record.

45  
46 (3) The filing office shall communicate or otherwise make  
47 available in a record the following information to any person  
48 that requests it:

2 (a) Whether there is on file on a date and time specified  
3 by the filing office, but not a date earlier than 3 business  
4 days before the filing office receives the request, any  
5 financing statement that:

6 (i) Designates a particular debtor;

8 (ii) Has not lapsed under section 9-1515 with respect  
9 to all secured parties of record; and

10 (iii) If the request so states, has lapsed under  
11 section 9-1515 and a record of which is maintained by  
12 the filing office under section 9-1522, subsection (1);

14 (b) The date and time of filing of each financing  
15 statement; and

17 (c) The information provided in each financing statement.

20 (4) In complying with its duty under subsection (3), the  
21 filing office may communicate information in any medium.  
22 However, if requested, the filing office shall communicate  
23 information by issuing its written certificate.

24 (5) The filing office shall perform the acts required by  
25 subsections (1) to (4) at the time and in the manner prescribed  
26 by filing-office rule, but, in the case of a filing office  
27 described in section 9-1501, subsection (1), paragraph (b), not  
28 later than 2 business days after the filing office receives the  
29 request.

32 (6) At least weekly, the filing office described in section  
33 9-1501, subsection (1), paragraph (b) shall offer to sell or  
34 license to the public on a nonexclusive basis, in bulk, copies of  
35 all records filed in it under this part, in every medium from  
36 time to time available to the filing office.

38 **Official Comment**

40 1. Source. Former Section 9-407; subsections (d) and (e)  
41 [Maine cite subsections (4) and (5)] are new.

44 2. Filing Office's Duty to Provide Information. Former  
45 Section 9-407, dealing with obtaining information from the filing  
46 office, was bracketed to suggest to legislatures that its  
47 enactment was optional. Experience has shown that the method by  
48 which interested persons can obtain information concerning the  
49 public records should be uniform. Accordingly, the analogous  
50 provisions of this Article are not in brackets.



2 Most of the other changes from former Section 9-407 are for  
clarification, to embrace medium-neutral drafting, or to impose  
4 standards of performance on the filing office.

6 3. Acknowledgments of Filing. Subsections (a) and (b)  
[Maine cite subsections (1) and (2)] require the filing office to  
8 acknowledge the filing of a record. Under subsection (a) [Maine  
cite subsection (1)], the filing office is required to  
10 acknowledge the filing of a written record only upon request of  
the filer. Subsection (b) [Maine cite subsection (2)] requires  
12 the filing office to acknowledge the filing of a non-written  
record even in the absence of a request from the filer.

14 4. Response to Search Request. Subsection (c)(3) [Maine  
16 cite subsection 3, paragraph (c)] requires the filing office to  
provide "the information contained in each financing statement"  
18 to a person who requests it. This requirement can be satisfied  
by providing copies, images, or reports. The requirement does  
20 not in any manner inhibit the filing office from also offering to  
provide less than all of the information (presumably for a lower  
22 fee) to a person who asks for less. Thus, subsection (c) [Maine  
cite subsection (3)] accommodates the practice of providing only  
24 the type of record (e.g., initial financing statement,  
continuation statement), number assigned to the record, date and  
26 time of filing, and names and addresses of the debtor and secured  
party when a requesting person asks for no more (i.e., when the  
28 person does not ask for copies of financing statements). In  
contrast, the filing office's obligation under subsection (b)  
30 [Maine cite subsection (2)] to provide an acknowledgment  
containing "the information contained in the record" is not  
32 defined by a customer's request. Thus unless the filer  
stipulates otherwise, to comply with subsection (b) [Maine cite  
34 subsection (2)] the filing office's acknowledgment must contain  
all of the information in a record.

36 Subsection (c) [Maine cite subsection (3)] assures that a  
38 minimum amount of information about filed records will be  
available to the public. It does not preclude a filing office  
40 from offering additional services.

42 5. Lapsed and Terminated Financing Statements. This  
section reflects the policy that terminated financing statements  
44 will remain part of the filing office's data base. The filing  
office may remove from the data base only lapsed financing  
46 statements, and then only when at least a year has passed after  
lapse. See Section 9-519(g) [Maine cite section 9-1519,  
48 subsection (7)]. Subsection (c)(1)(C) [Maine cite subsection  
(3), paragraph (a), subparagraph (iii)] requires a filing office

2 to conduct a search and report as to lapsed financing statements  
that have not been removed from the data base, when requested.

4 6. Search by Debtor's Address. Subsection (c)(1)(A) [Maine  
cite subsection (3), paragraph (a), subparagraph (i)]  
6 contemplates that, by making a single request, a searcher will  
receive the results of a search of the entire public record  
8 maintained by any given filing office. Addition of the bracketed  
language in subsection (c)(1)(A) [Maine cite subsection (3),  
10 paragraph (a), subparagraph (i)] would permit a search report  
limited to financing statements showing a particular address for  
12 the debtor, but only if the search request is so limited. With  
or without the bracketed language, this subsection does not  
14 permit the filing office to compel a searcher to limit a request  
by address.

16  
18 7. Medium of Communication; Certificates. Former Article 9  
provided that the filing office respond to a request for  
information by providing a certificate. The principle of  
20 medium-neutrality would suggest that the statute not require a  
written certificate. Subsection (d) [Maine cite subsection (4)]  
22 follows this principle by permitting the filing office to respond  
by communicating "in any medium." By permitting communication  
24 "in any medium," subsection (d) [Maine cite subsection (4)] is  
not inconsistent with a system in which persons other than filing  
26 office staff conduct searches of the filing office's (computer)  
records.

28  
30 Some searchers find it necessary to introduce the results of  
their search into evidence. Because official written  
32 certificates might be introduced into evidence more easily than  
official communications in another medium, subsection (d) [Maine  
cite subsection (4)] affords States the option of requiring the  
34 filing office to issue written certificates upon request. The  
alternative bracketed language in subsection (d) [Maine cite  
36 subsection (4)] recognizes that some States may prefer to permit  
the filing office to respond in another medium, as long as the  
38 response can be admitted into evidence in the courts of that  
State without extrinsic evidence of its authenticity.

40  
42 8. Performance Standard. The utility of the filing system  
depends on the ability of searchers to get current information  
quickly. Accordingly, subsection (e) [Maine cite subsection (5)]  
44 requires that the filing office respond to a request for  
information no later than two business days after it receives the  
46 request. The information contained in the response must be  
current as of a date no earlier than three business days before  
48 the filing office receives the request. See subsection (c)(1)  
[Maine cite subsection (3), paragraph (a)]. The failure of the  
50 filing office to comply with performance standards, such as

2 subsection (e) [Maine cite subsection (5)], has no effect on the  
private rights of persons affected by the filing of records.

4 9. Sales of Records in Bulk. Subsection (f) [Maine cite  
6 subsection (6)], which is new, mandates that the appropriate  
official or the filing office sell or license the filing records  
8 to the public in bulk, on a nonexclusive basis, in every medium  
available to the filing office. The details of implementation  
are left to filing-office rules.

10 **§9-1524. Delay by filing office**

12 Delay by the filing office beyond a time limit prescribed by  
14 this part is excused if:

16 (1) The delay is caused by interruption of communication or  
18 computer facilities, war, emergency conditions, failure of  
equipment or other circumstances beyond control of the filing  
office; and

20 (2) The filing office exercises reasonable diligence under  
22 the circumstances.

24 **Official Comment**

26 Source. New; derived from Section 4-109.

28 **§9-1525. Fees**

30 (1) Except as otherwise provided in subsection (5), the fee  
32 for filing and indexing a record under this part, other than an  
initial financing statement of the kind described in section  
34 9-1502, subsection (3) is:

36 (a) Twenty dollars if the record is communicated in writing  
and consists of one or 2 pages;

38 (b) Forty dollars if the record is communicated in writing  
40 and consists of more than 2 pages; and

42 (c) Ten dollars if the record is communicated by another  
44 medium authorized by filing-office rule.

46 (2) Except as otherwise provided in subsection (5), the fee  
for filing and indexing an initial financing statement of the  
48 kind described in section 9-1502, subsection (3) is:

2 (a) Sixty dollars if the financing statement indicates that  
3 it is filed in connection with a public-finance transaction;  
4 and

6 (b) Sixty dollars if the financing statement indicates that  
7 it is filed in connection with a manufactured-home  
8 transaction.

10 (3) The number of names required to be indexed does not  
11 affect the amount of the fee in subsections (1) and (2).

12 (4) The fee for responding to a request for information  
13 from the filing office, including for communicating whether there  
14 is on file any financing statement naming a particular debtor, is:

16 (a) Twenty dollars if the request is communicated in  
17 writing; and

18 (b) Ten dollars if the request is communicated by another  
20 medium authorized by filing-office rule.

22 (5) This section does not require a fee with respect to a  
23 record of a mortgage that is effective as a financing statement  
24 filed as a fixture filing or as a financing statement covering  
25 as-extracted collateral or timber to be cut under section 9-1502,  
26 subsection (3). However, the recording and satisfaction fees  
27 that otherwise would be applicable to the record of the mortgage  
28 apply.

#### 30 Official Comment

32 1. Source. Various sections of former Part 4.

34 2. Fees. This section contains all fee requirements for  
35 filing, indexing, and responding to requests for information.  
36 Uniformity in the fee structure (but not necessarily in the  
37 amount of fees) makes this Article easier for secured parties to  
38 use and reduces the likelihood that a filed record will be  
39 rejected for failure to pay at least the correct amount of the  
40 fee. See Section 9-516(b)(2) [Maine cite section 9-1516,  
41 subsection (2), paragraph (b)].

42 The costs of processing electronic records are less than  
43 those with respect to written records. Accordingly, this section  
44 mandates a lower fee as an incentive to file electronically and  
45 imposes the additional charge (if any) for multiple debtors only  
46 with respect to written records. When written records are used,  
47 this Article encourages the use of the uniform forms in Section  
48 9-521 [Maine cite section 9-1521]. The fee for filing these  
49 forms should be no greater than the fee for other written records.  
50

2 To make the relevant information included in a filed record  
3 more accessible once the record is found, this section mandates a  
4 higher fee for longer written records than for shorter ones.  
5 Finally, recognizing that financing statements naming more than  
6 one debtor are most often filed against a husband and wife, any  
7 additional charge for multiple debtors applies to records filed  
8 with respect to more than two debtors, rather than with respect  
9 to more than one.

10 **§9-1526. Filing-office rules**

12 (1) The Secretary of State shall adopt and publish rules to  
13 implement this Article. The filing-office rules must be:

14 (a) Consistent with this Article; and

15 (b) Adopted and published in accordance with Title 5,  
16 chapter 375.

17 Rules adopted pursuant to this section are routine technical  
18 rules as defined in Title 5, chapter 375, subchapter II-A.

19 (2) To keep the filing-office rules and practices of the  
20 filing office in harmony with the rules and practices of filing  
21 offices in other jurisdictions that enact substantially this part  
22 and to keep the technology used by the filing office compatible  
23 with the technology used by filing offices in other jurisdictions  
24 that enact substantially this part, the Secretary of State, so  
25 far as is consistent with the purposes, policies and provisions  
26 of this Article, in adopting, amending and repealing  
27 filing-office rules, shall:

28 (a) Consult with filing offices in other jurisdictions that  
29 enact substantially this part; and

30 (b) Consult the most recent version of the Model Rules  
31 promulgated by the International Association of Corporate  
32 Administrators or any successor organization; and

33 (c) Take into consideration the rules and practices of and  
34 the technology used by filing offices in other jurisdictions  
35 that enact substantially this part.

36 **Official Comment**

37 1. Source. New; subsection (b) [Maine cite subsection (2)]  
38 derives in part from the Uniform Consumer Credit Code (1974).  
39

2           2. Rules Required. Operating a filing office is a  
3 complicated business, requiring many more rules and procedures  
4 than this Article can usefully provide. Subsection (a) [Maine  
5 cite subsection (1)] requires the adoption of rules to carry out  
6 the provisions of Article 9 [Maine cite Article 9-A]. The  
7 filing-office rules must be consistent with the provisions of the  
8 statute and adopted in accordance with local procedures. The  
9 publication requirement informs secured parties about  
10 filing-office practices, aids secured parties in evaluating  
11 filing-related risks and costs, and promotes regularity of  
12 application within the filing office.

13  
14           3. Importance of Uniformity. In today's national economy,  
15 uniformity of the policies and practices of the filing offices  
16 will reduce the costs of secured transactions substantially. The  
17 International Association of Corporate Administrators (IACA),  
18 referred to in subsection (b) [Maine cite subsection (2)], is an  
19 organization whose membership includes filing officers from every  
20 State. These individuals are responsible for the proper  
21 functioning of the Article 9 [Maine cite Article 9-A] filing  
22 system and have worked diligently to develop model filing-office  
23 rules, with a view toward efficiency and uniformity.

24           Although uniformity is an important desideratum, subsection  
25 (a) [Maine cite subsection (1)] affords considerable flexibility  
26 in the adoption of filing-office rules. Each State may adopt a  
27 version of subsection (a) [Maine cite subsection (1)] that  
28 reflects the desired relationship between the statewide filing  
29 office described in Section 9-501(a)(2) [Maine cite 9-1501,  
30 subsection (1), paragraph (b)] and the local filing offices  
31 described in Section 9-501(a)(1) [Maine cite section 9-1501,  
32 subsection (1), paragraph (a)] and that takes into account the  
33 practices of its filing offices. Subsection (a) [Maine cite  
34 subsection (1)] need not designate a single official or agency to  
35 adopt rules applicable to all filing offices, and the rules  
36 applicable to the statewide filing office need not be identical  
37 to those applicable to the local filing office. For example,  
38 subsection (a) [Maine cite subsection (1)] might provide for the  
39 statewide filing office to adopt filing-office rules, and, if not  
40 prohibited by other law, the filing office might adopt one set of  
41 rules for itself and another for local offices. Or, subsection  
42 (a) [Maine cite subsection (1)] might designate one official or  
43 agency to adopt rules for the statewide filing office and another  
44 to adopt rules for local filing offices.

46

**PART 6**

48

**DEFAULT**

50

SUBPART 1

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DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

§9-1601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes

(1) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-1602, those provided by agreement of the parties. A secured party:

(a) May reduce a claim to judgment or foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under section 9-1104, 9-1105, 9-1106 or 9-1107 has the rights and duties provided in section 9-1207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in subsection (7) and section 9-1605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) The date of perfection of the security interest or agricultural lien in the collateral;

(b) The date of filing a financing statement covering the collateral; or

(c) Any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

2           (7) Except as otherwise provided in section 9-1607,  
3           subsection (3), this part imposes no duties upon a secured party  
4           that is a consignor or is a buyer of accounts, chattel paper,  
5           payment intangibles or promissory notes.

6  
7                                   **Official Comment**

8  
9           1. Source. Former Section 9-501(1), (2), (5).

10  
11           2. Enforcement: In General. The rights of a secured party  
12 to enforce its security interest in collateral after the debtor's  
13 default are an important feature of a secured transaction. (Note  
14 that the term "rights," as defined in Section 1-201, includes  
15 "remedies.") This Part provides those rights as well as certain  
16 limitations on their exercise for the protection of the  
17 defaulting debtor, other creditors, and other affected persons.  
18 However, subsections (a) and (d) [Maine cite subsections (1) and  
19 (4)] make clear that the rights provided in this Part do not  
20 exclude other rights provided by agreement.

21           3. When Remedies Arise. Under subsection (a) [Maine cite  
22 subsection (1)] the secured party's rights arise "[a]fter  
23 default." As did former Section 9501, this Article leaves to the  
24 agreement of the parties the circumstances giving rise to a  
25 default. This Article does not determine whether a secured  
26 party's post-default conduct can constitute a waiver of default  
27 in the face of an agreement stating that such conduct shall not  
28 constitute a waiver. Rather, it continues to leave to the  
29 parties' agreement, as supplemented by law other than this  
30 Article, the determination whether a default has occurred or has  
31 been waived. See Section 1-103.

32  
33           4. Possession of Collateral; Section 9-207 [Maine cite  
34 section 9-1207]. After a secured party takes possession of  
35 collateral following a default, there is no longer any  
36 distinction between a security interest that before default was  
37 nonpossessory and a security interest that was possessory before  
38 default, as under a common-law pledge. This Part generally does  
39 not distinguish between the rights of a secured party with a  
40 nonpossessory security interest and those of a secured party with  
41 a possessory security interest. However, Section 9-207 [Maine  
42 cite section 9-1207] addresses rights and duties with respect to  
43 collateral in a secured party's possession. Under subsection (b)  
44 [Maine cite subsection (2)] of this section, Section 9-207 [Maine  
45 cite section 9-1207] applies not only to possession before  
46 default but also to possession after default. Subsection (b)  
47 [Maine cite subsection (2)] also has been conformed to Section  
48 9-207 [Maine cite section 9-1207], which, unlike former Section  
49 9-207, applies to secured parties having control of collateral.  
50



2           5. Cumulative Remedies. Former Section 9-501(1) provided  
4 that the secured party's remedies were cumulative, but it did not  
6 explicitly provide whether the remedies could be exercised  
8 simultaneously. Subsection (c) [Maine cite subsection (3)]  
10 permits the simultaneous exercise of remedies if the secured  
12 party acts in good faith. The liability scheme of Subpart 2  
14 affords redress to an aggrieved debtor or obligor. Moreover,  
16 permitting the simultaneous exercise of remedies under subsection  
18 (c) [Maine cite subsection (3)] does not override any non-UCC  
20 law, including the law of tort and statutes regulating collection  
22 of debts, under which the simultaneous exercise of remedies in a  
24 particular case constitutes abusive behavior or harassment giving  
26 rise to liability.

28           6. Judicial Enforcement. Under subsection (a) [Maine cite  
30 subsection (1)] a secured party may reduce its claim to judgment  
32 or foreclose its interest by any available procedure outside this  
34 Article under applicable law. Subsection (e) [Maine cite  
36 subsection (5)] generally follows former Section 9-501(5). It  
38 makes clear that any judicial lien that the secured party may  
40 acquire against the collateral effectively is a continuation of  
42 the original security interest (if perfected) and not the  
44 acquisition of a new interest or a transfer of property on  
46 account of a preexisting obligation. Under former Section  
48 9-501(5), the judicial lien was stated to relate back to the date  
of perfection of the security interest. Subsection (e) [Maine  
cite subsection (5)], however, provides that the lien relates  
back to the earlier of the date of filing or the date of  
perfection. This provides a secured party who enforces a  
security interest by judicial process with the benefit of the  
"first-to-file-or-perfect" priority rule of Section 9-322(a)(1)  
[Maine cite section 9-1322, subsection (1), paragraph (a)].

34           7. Agricultural Liens. Part 6 provides parallel treatment  
36 for the enforcement of agricultural liens and security  
38 interests. Because agricultural liens are statutory rather than  
40 consensual, this Article does draw a few distinctions between  
42 these liens and security interests. Under subsection (e) [Maine  
44 cite subsection (5)], the statute creating an agricultural lien  
46 would govern whether and the date to which an execution lien  
48 relates back. Section 9-606 [Maine cite section 9-1606] explains  
when a "default" occurs in the agricultural lien context.

44           8. Execution Sales. Subsection (f) [Maine cite subsection  
46 (6)] also follows former Section 9-501(5). It makes clear that  
48 an execution sale is an appropriate method of foreclosure  
contemplated by this Part. However, the sale is governed by  
other law and not by this Article, and the limitations under

2 Section 9-610 [Maine cite section 9-1610] on the right of a  
secured party to purchase collateral do not apply.

4 9. Sales of Receivables; Consignments. Subsection (g)  
[Maine cite subsection (7)] provides that, except as provided in  
6 Section 9-607(c) [Maine cite section 9-1607, subsection (3)], the  
duties imposed on secured parties do not apply to buyers of  
8 accounts, chattel paper, payment intangibles, or promissory  
notes. Although denominated "secured parties," these buyers own  
10 the entire interest in the property sold and so may enforce their  
rights without regard to the seller ("debtor") or the seller's  
12 creditors. Likewise, a true consignor may enforce its ownership  
interest under other law without regard to the duties that this  
14 Part imposes on secured parties. Note, however, that Section  
9-615 [Maine cite section 9-1615] governs cases in which a  
16 consignee's secured party (other than a consignor) is enforcing a  
security interest that is senior to the security interest (i.e.,  
18 ownership interest) of a true consignor.

20 **§9-1602. Waiver and variance of rights and duties**

22 Except as otherwise provided in section 9-1624, to the  
24 extent that they give rights to a debtor or obligor and impose  
duties on a secured party, the debtor or obligor may not waive or  
26 vary the rules stated in the following listed sections:

28 (1) Section 9-1207, subsection (2), paragraph (d),  
subparagraph (iii), which deals with use and operation of the  
30 collateral by the secured party;

32 (2) Section 9-1210, which deals with requests for an  
accounting and requests concerning a list of collateral and  
34 statement of account;

36 (3) Section 9-1607, subsection (3), which deals with  
collection and enforcement of collateral;

38 (4) Section 9-1608, subsection (1) and section 9-1615,  
subsection (3) to the extent that they deal with application or  
40 payment of noncash proceeds of collection, enforcement or  
disposition;

42 (5) Section 9-1608, subsection (1) and section 9-1615,  
subsection (4) to the extent that they require accounting for or  
44 payment of surplus proceeds of collateral;

46 (6) Section 9-1609 to the extent that it imposes upon a  
48 secured party that takes possession of collateral without  
judicial process the duty to do so without breach of the peace;  
50



2 Section 9-207(c)(4)(C) [Maine cite section 9-1207, subsection  
3 (3), paragraph (d), subparagraph (iii)], which deals with the use  
4 and operation of consumer goods, (ii) the right to a response to  
5 a request for an accounting, concerning a list of collateral, or  
6 concerning a statement of account (Section 9-210) [Maine cite  
7 section 9-1210], (iii) the duty to collect collateral in a  
8 commercially reasonable manner (Section 9-607) [Maine cite  
9 section 9-1607], (iv) the implicit duty to refrain from a breach  
10 of the peace in taking possession of collateral under Section  
11 9-609 [Maine cite section 9-1609], (v) the duty to apply noncash  
12 proceeds of collection or disposition in a commercially  
13 reasonable manner (Sections 9-608 and 9-615) [Maine cite sections  
14 9-1608 and 9-1615], (vi) the right to a special method of  
15 calculating a surplus or deficiency in certain dispositions to a  
16 secured party, a person related to secured party, or a secondary  
17 obligor (Section 9-615) [Maine cite section 9-1615], (vii) the  
18 duty to give an explanation of the calculation of a surplus or  
19 deficiency (Section 9-616) [Maine cite 9-1616], (viii) the right  
20 to limitations on the effectiveness of certain waivers (Section  
21 9-624) [Maine cite section 9-1624], and (ix) the right to hold a  
22 secured party liable for failure to comply with this Article  
23 (Sections 9-625 and 9-626) [Maine cite section 9-1625 and  
24 9-1626]. For clarity and consistency, this Article uses the term  
25 "waive or vary" instead of "renounc[e] or modify[]," which  
26 appeared in former Section 9-504(3).

27 This section provides generally that the specified rights  
28 and duties "may not be waived or varied" However, it does not  
29 restrict the ability of parties to agree to settle, compromise,  
30 or renounce claims for past conduct that may have constituted a  
31 violation or breach of those rights and duties, even if the  
32 settlement involves an express "waiver."

33 4. Waiver by Debtors and Obligors. The restrictions on  
34 waiver contained in this section apply to obligors as well as  
35 debtors. This resolves a question under former Article 9 as to  
36 whether secondary obligors, assuming that they were "debtors" for  
37 purposes of former Part 5, were permitted to waive, under the law  
38 of suretyship, rights and duties under that Part.

39 5. Certain Post-Default Waivers. Section 9-624 [Maine cite  
40 section 9-1624] permits post-default waivers in limited  
41 circumstances. These waivers must be made in agreements that are  
42 authenticated. Under Section 1-201, an "'agreement' means the  
43 bargain of the parties in fact." In considering waivers under  
44 Section 9-624 [Maine cite section 9-1624] and analogous  
45 agreements in other contexts, courts should carefully scrutinize  
46 putative agreements that appear in records that also address many  
47 additional or unrelated matters.  
48  
49  
50

2 **§9-1603. Agreement on standards concerning rights and duties**

4 (1) The parties may determine by agreement the standards  
6 measuring the fulfillment of the rights of a debtor or obligor  
8 and the duties of a secured party under a rule stated in section  
10 9-1602 if the standards are not manifestly unreasonable.

12 (b) Subsection (1) does not apply to the duty under section  
14 9-1609 to refrain from breaching the peace.

16 **Official Comment**

18 1. Source. Former Section 9-501(3).

20 2. Limitation on Ability to Set Standards. Subsection (a)  
22 [Maine cite subsection (1)], like former Section 9-501(3),  
24 permits the parties to set standards for compliance with the  
rights and duties under this Part if the standards are not  
"manifestly unreasonable." Under subsection (b) [Maine cite  
subsection (2)], the parties are not permitted to set standards  
measuring fulfillment of the secured party's duty to take  
collateral without breaching the peace.

26 **§9-1604. Procedure if security agreement covers real property or**  
28 **fixtures**

30 (1) If a security agreement covers both personal and real  
32 property, a secured party may proceed:

34 (a) Under this part as to the personal property without  
36 prejudicing any rights with respect to the real property; or

38 (b) As to both the personal property and the real property  
40 in accordance with the rights with respect to the real  
42 property, in which case the other provisions of this part do  
44 not apply.

46 (2) Subject to subsection (3), if a security agreement  
48 covers goods that are or become fixtures, a secured party may  
50 proceed:

(a) Under this part; or

(b) In accordance with the rights with respect to real  
property, in which case the other provisions of this part do  
not apply.

(3) Subject to the other provisions of this part, if a  
secured party holding a security interest in fixtures has

2 priority over all owners and encumbrancers of the real property,  
3 the secured party, after default, may remove the collateral from  
4 the real property.

6 (4) A secured party that removes collateral shall promptly  
7 reimburse any encumbrancer or owner of the real property, other  
8 than the debtor, for the cost of repair of any physical injury  
9 caused by the removal. The secured party need not reimburse the  
10 encumbrancer or owner for any diminution in value of the real  
11 property caused by the absence of the goods removed or by any  
12 necessity of replacing them. A person entitled to reimbursement  
13 may refuse permission to remove until the secured party gives  
14 adequate assurance for the performance of the obligation to  
15 reimburse.

#### 16 **Official Comment**

18 1. Source. Former Sections 9-501(4), 9-313(8).

20 2. Real-Property-Related Collateral. The collateral in  
22 many transactions consists of both real and personal property.  
23 In the interest of simplicity, speed, and economy, subsection (a)  
24 [Maine cite subsection (1)], like former Section 9-501(4),  
25 permits (but does not require) the secured party to proceed as to  
26 both real and personal property in accordance with its rights and  
27 remedies with respect to the real property. Subsection (a)  
28 [Maine cite subsection (1)] also makes clear that a secured party  
29 who exercises rights under Part 6 with respect to personal  
30 property does not prejudice any rights under real-property law.

32 This Article does not address certain other  
33 real-property-related problems. In a number of States, the  
34 exercise of remedies by a creditor who is secured by both real  
35 property and non-real property collateral is governed by special  
36 legal rules. For example, under some anti-deficiency laws,  
37 creditors risk loss of rights against personal property  
38 collateral if they err in enforcing their rights against the real  
39 property. Under a "one-form-of-action" rule (or rule against  
40 splitting a cause of action), a creditor who judicially enforces  
41 a real property mortgage and does not proceed in the same action  
42 to enforce a security interest in personalty may (among other  
43 consequences) lose the right to proceed against the personalty.  
44 Although statutes of this kind create impediments to enforcement  
45 of security interests, this Article does not override these  
46 limitations under other law.

48 3. Fixtures. Subsection (b) [Maine cite subsection (2)] is  
49 new. It makes clear that a security interest in fixtures may be  
50 enforced either under real-property law or under any of the

2 applicable provisions of Part 6, including sale or other  
3 disposition either before or after removal of the fixtures (see  
4 subsection (c) [Maine cite subsection (3)]). Subsection (b)  
5 [Maine cite subsection (2)] also serves to overrule cases holding  
6 that a secured party's only remedy after default is the removal  
7 of the fixtures from the real property. See, e.g., Maplewood  
8 Bank & Trust v. Sears, Roebuck & Co., 625 A.2d 537 (N.J. Super.  
9 Ct. App. Div. 1993).

10 Subsection (c) [Maine cite subsection (3)] generally follows  
11 former Section 9-313(8). It gives the secured party the right to  
12 remove fixtures under certain circumstances. A secured party  
13 whose security interest in fixtures has priority over owners and  
14 encumbrancers of the real property may remove the collateral from  
15 the real property. However, subsection (d) [Maine cite  
16 subsection (4)] requires the secured party to reimburse any owner  
17 (other than the debtor) or encumbrancer for the cost of repairing  
18 any physical injury caused by the removal. This right to  
19 reimbursement is implemented by the last sentence of subsection  
20 (d) [Maine cite subsection (4)], which gives the owner or  
21 encumbrancer a right to security or indemnity as a condition for  
22 giving permission to remove.

24 **§9-1605. Unknown debtor or secondary obligor**

26 A secured party does not owe a duty based on its status as  
27 secured party:

28 (1) To a person that is a debtor or obligor unless the  
29 secured party knows:

32 (a) That the person is a debtor or obligor;

34 (b) The identity of the person; and

36 (c) How to communicate with the person; or

38 (2) To a secured party or lienholder that has filed a  
39 financing statement against a person unless the secured party  
40 knows:

42 (a) That the person is a debtor; and

44 (b) The identity of the person.

46 **Official Comment**

48 1. Source. New.

50





2           (c) May enforce the obligations of an account debtor or  
4           other person obligated on collateral and exercise the rights  
6           of the debtor with respect to the obligation of the account  
8           debtor or other person obligated on collateral to make  
          payment or otherwise render performance to the debtor and  
          with respect to any property that secures the obligations of  
          the account debtor or other person obligated on the  
          collateral;

10           (d) If it holds a security interest in a deposit account  
12           perfected by control under section 9-1104, subsection (1),  
14           paragraph (a), may apply the balance of the deposit account  
          to the obligation secured by the deposit account; and

16           (e) If it holds a security interest in a deposit account  
18           perfected by control under section 9-1104, subsection (1),  
20           paragraph (c) or (d), may instruct the bank to pay the  
          balance of the deposit account to or for the benefit of the  
          secured party.

22           (2) If necessary to enable a secured party to exercise  
24           under subsection (1), paragraph (c) the right of a debtor to  
          enforce a mortgage nonjudicially, the secured party may record in  
          the office in which a record of the mortgage is recorded:

26           (a) A copy of the security agreement that creates or  
28           provides for a security interest in the obligation secured  
          by the mortgage; and

30           (b) The secured party's sworn affidavit in recordable form  
32           stating that:

34                   (i) A default has occurred; and

36                   (ii) The secured party is entitled to enforce the  
                  mortgage nonjudicially.

38           (3) A secured party shall proceed in a commercially  
40           reasonable manner if the secured party:

42           (a) Undertakes to collect from or enforce an obligation of  
44           an account debtor or other person obligated on collateral;  
          and

46           (b) Is entitled to charge back uncollected collateral or  
48           otherwise to full or limited recourse against the debtor or  
          a secondary obligor.

50           (4) A secured party may deduct from the collections made  
          pursuant to subsection (3) reasonable expenses of collection and

2 enforcement, including reasonable attorney's fees and legal  
3 expenses incurred by the secured party.

4 (5) This section does not determine whether an account  
5 debtor, bank or other person obligated on collateral owes a duty  
6 to a secured party.

8  
9 **Official Comment**

10  
11 1. Source. Former Section 9-502; subsections (b), (d), and  
12 (e) [Maine cite subsections (2), (4) and (5)] are new.

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

32  
33 3. Scope. The scope of this section is broader than that  
34 of former Section 9-502. It applies not only to collections from  
35 account debtors and obligors on instruments but also to  
36 enforcement more generally against all persons obligated on  
37 collateral. It explicitly provides for the secured party's  
38 enforcement of the debtor's rights in respect of the account  
39 debtor's (and other third parties') obligations and for the  
40 secured party's enforcement of supporting obligations with  
41 respect to those obligations. (Supporting obligations are  
42 components of the collateral under Section 9-203(f) [Maine cite  
43 section 9-1203, subsection (6)].) The rights of a secured party  
44 under subsection (a) [Maine cite subsection (1)] include the  
45 right to enforce claims that the debtor may enjoy against  
46 others. For example, the claims might include a breach-  
47 of-warranty claim arising out of a defect in equipment that is  
48 collateral or a secured party's action for an injunction against  
49 infringement of a patent that is collateral. Those claims  
50

typically would be proceeds of original collateral under Section 9-315 [Maine cite section 9-1315].

4           4. Collection and Enforcement Before Default. Like Part 6  
generally, this section deals with the rights and duties of  
6 secured parties following default. However, as did former  
Section 9-502 with respect to collection rights, this section  
8 also applies to the collection and enforcement rights of secured  
parties even if a default has not occurred, as long as the debtor  
10 has so agreed. It is not unusual for debtors to agree that  
secured parties are entitled to collect and enforce rights  
12 against account debtors prior to default.

14           5. Collections by Junior Secured Party. A secured party  
who holds a security interest in a right to payment may exercise  
16 the right to collect and enforce under this section, even if the  
security interest is subordinate to a conflicting security  
18 interest in the same right to payment. Whether the junior  
secured party has priority in the collected proceeds depends on  
20 whether the junior secured party qualifies for priority as a  
purchaser of an instrument (e.g., the account debtor's check)  
22 under Section 9-330(d) [Maine cite section 9-1330, subsection  
(4)], as a holder in due course of an instrument under Sections  
24 3-305 and 9-331(a) [Maine cite section 9-1331, subsection (1)],  
or as a transferee of money under Section 9-332(a) [Maine cite  
26 section 9-1332, subsection (1)]. See Sections 9-330 [Maine cite  
section 9-1330], Comment 7, 9-331, Comment 5, and 9-332 [Maine  
28 cite section 9-1332, subsection (1)].

30           6. Relationship to Rights and Duties of Persons Obligated  
on Collateral. This section permits a secured party to collect  
32 and enforce obligations included in collateral in its capacity as  
a secured party. It is not necessary for a secured party first  
34 to become the owner of the collateral pursuant to a disposition  
or acceptance. However, the secured party's rights, as between  
36 it and the debtor, to collect from and enforce collateral against  
account debtors and others obligated on collateral under  
38 subsection (a) [Maine cite subsection (1)] are subject to Section  
9-341 [Maine cite section 9-1341], Part 4, and other applicable  
40 law. Neither this section nor former Section 9-502 should be  
understood to regulate the duties of an account debtor or other  
42 person obligated on collateral. Subsection (e) [Maine cite  
subsection (5)] makes this explicit. For example, the secured  
44 party may be unable to exercise the debtor's rights under an  
instrument if the debtor is in possession of the instrument, or  
46 under a non-transferable letter of credit if the debtor is the  
beneficiary. Unless a secured party has control over a  
48 letter-of-credit right and is entitled to receive payment or  
performance from the issuer or a nominated person under Article  
50 5, its remedies with respect to the letter-of-credit right may be

2 limited to the recovery of any identifiable proceeds from the  
debtor. This section establishes only the baseline rights of the  
4 secured party vis-a-vis the debtor-the secured party is entitled  
to enforce and collect after default or earlier if so agreed.

6 7. Deposit Account Collateral. Subsections (a)(4) and (5)  
[Maine cite subsection (1), paragraphs (d) and (e)] set forth the  
8 self-help remedy for a secured party whose collateral is a  
deposit account. Subsection (a)(4) [Maine cite subsection (1),  
10 paragraph (d)] addresses the rights of a secured party that is  
the bank with which the deposit account is maintained. That  
12 secured party automatically has control of the deposit account  
under Section 9-104(a)(1) [Maine cite section 9-1104, subsection  
14 (1), paragraph (a)]. After default, and otherwise if so agreed,  
the bank/secured party may apply the funds on deposit to the  
16 secured obligation.

18 If a security interest of a third party is perfected by  
control (Section 9-104(a)(2) or (a)(3) [Maine cite section  
20 9-1104, subsection (1), paragraph (b) or (c)]), then after  
default, and otherwise if so agreed, the secured party may  
22 instruct the bank to pay out the funds in the account. If the  
third party has control under Section 9-104(a)(3) [Maine cite  
24 section 9-1104, subsection (1), paragraph (c)], the depository  
institution is obliged to obey the instruction because the  
26 secured party is its customer. See Section 4-401. If the third  
party has control under Section 9-104(a)(2) [Maine cite section  
28 9-1104, subsection (1), paragraph (b)], the control agreement  
determines the depository institution's obligation to obey.  
30

32 If a security interest in a deposit account is unperfected,  
or is perfected by filing by virtue of the proceeds rules of  
Section 9-315 [Maine cite section 9-1315], the depository  
34 institution ordinarily owes no obligation to obey the secured  
party's instructions. See Section 9-341 [Maine cite section  
36 9-1341]. To reach the funds without the debtor's cooperation,  
the secured party must use an available judicial procedure.  
38

40 8. Rights Against Mortgagor of Real Property. Subsection  
(b) [Maine cite subsection (2)] addresses the situation in which  
the collateral consists of a mortgage note (or other obligation  
42 secured by a mortgage on real property). After the debtor's  
(mortgagee's) default, the secured party (assignee) may wish to  
44 proceed with a nonjudicial foreclosure of the mortgage securing  
the note but may be unable to do so because it has not become the  
46 assignee of record. The assignee/secured party may not have  
taken a recordable assignment at the commencement of the  
48 transaction (perhaps the mortgage note in question was one of  
hundreds assigned to the secured party as collateral). Having  
50 defaulted, the mortgagee may be unwilling to sign a recordable

2 assignment. This section enables the secured party (assignee) to  
3 become the assignee of record by recording in the applicable  
4 real-property records the security agreement and an affidavit  
5 certifying default. Of course, the secured party's rights derive  
6 from those of its debtor. Subsection (b) [Maine cite subsection  
7 (2)] would not entitle the secured party to proceed with a  
8 foreclosure unless the mortgagor also were in default or the  
9 debtor (mortgagee) otherwise enjoyed the right to foreclose.

10 9. Commercial Reasonableness. Subsection (c) [Maine cite  
11 subsection (3)] provides that the secured party's collection and  
12 enforcement rights under subsection (a) [Maine cite subsection  
13 (1)] must be exercised in a commercially reasonable manner.  
14 These rights include the right to settle and compromise claims  
15 against the account debtor. The secured party's failure to  
16 observe the standard of commercial reasonableness could render it  
17 liable to an aggrieved person under Section 9-625 [Maine cite  
18 section 9-1625], and the secured party's recovery of a deficiency  
19 would be subject to Section 9-626 [Maine cite section 9-1626].  
20 Subsection (c) [Maine cite subsection (3)] does not apply if, as  
21 is characteristic of most sales of accounts, chattel paper,  
22 payment intangibles, and promissory notes, the secured party  
23 (buyer) has no right of recourse against the debtor (seller) or a  
24 secondary obligor. However, if the secured party does have a  
25 right of recourse, the commercial-reasonableness standard applies  
26 to collection and enforcement even though the assignment to the  
27 secured party was a "true" sale. The obligation to proceed in a  
28 commercially reasonable manner arises because the collection  
29 process affects the extent of the seller's recourse liability,  
30 not because the seller retains an interest in the sold collateral  
31 (the seller does not).

32 10. Attorney's Fees and Legal Expenses. The phrase  
33 "reasonable attorney's fees and legal expenses," which appears in  
34 subsection (d) [Maine cite subsection (4)], includes only those  
35 fees and expenses incurred in proceeding against account debtors  
36 or other third parties. The secured party's right to recover  
37 these expenses from the collections arises automatically under  
38 this section. The secured party also may incur other attorney's  
39 fees and legal expenses in proceeding against the debtor or  
40 obligor. Whether the secured party has a right to recover those  
41 fees and expenses depends on whether the debtor or obligor has  
42 agreed to pay them, as is the case with respect to attorney's  
43 fees and legal expenses under Sections 9-608(a)(1)(A) [Maine cite  
44 section 9-1608, subsection (1), paragraph (a), subparagraph (i)]  
45 and 9-615(a)(1) [Maine cite section 9-1615, subsection (1),  
46 paragraph (a)]. The parties also may agree to allocate a portion  
47 of the secured party's overhead to collection and enforcement  
48 under subsection (d) [Maine cite subsection (4)] or Section  
49 9-608(a) [Maine cite section 9-1608, subsection (1)].  
50

2 §9-1608. Application of proceeds of collection or enforcement;  
4 liability for deficiency and right to surplus

6 (1) If a security interest or agricultural lien secures  
8 payment or performance of an obligation, the following rules  
10 apply.

12 (a) A secured party shall apply or pay over for application  
14 the cash proceeds of collection or enforcement under this  
16 section in the following order to:

18 (i) The reasonable expenses of collection and  
20 enforcement and, to the extent provided for by  
22 agreement and not prohibited by law, reasonable  
24 attorney's fees and legal expenses incurred by the  
26 secured party;

28 (ii) The satisfaction of obligations secured by the  
30 security interest or agricultural lien under which the  
32 collection or enforcement is made; and

34 (iii) The satisfaction of obligations secured by any  
36 subordinate security interest in or other lien on the  
38 collateral subject to the security interest or  
40 agricultural lien under which the collection or  
42 enforcement is made if the secured party receives an  
44 authenticated demand for proceeds before distribution  
46 of the proceeds is completed.

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

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

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

(2) If the underlying transaction is a sale of accounts,  
chattel paper, payment intangibles or promissory notes, the

2 debtor is not entitled to any surplus, and the obligor is not  
3 liable for any deficiency.

4  
5 **Official Comment**

6  
7 1. Source. Subsection (a) [Maine cite subsection (1)] is  
8 new; subsection (b) [Maine cite subsection (2)] derives from  
9 former Section 9-502(2).

10  
11 2. Modifications of Prior Law. Subsections (a) and (b)  
12 [Maine cite subsections (1) and (2)] modify former Section  
13 9-502(2) by explicitly providing for the application of proceeds  
14 recovered by the secured party in substantially the same manner  
15 as provided in Section 9-615(a) and (e) [Maine cite section  
16 9-1615, subsections (1) and (5)] for dispositions of collateral.

17  
18 3. Surplus and Deficiency. Subsections (a)(4) and (b)  
19 [Maine cite subsection (1), paragraph (d) and subsection (2)]  
20 omit, as unnecessary, the references contained in former Section  
21 9-502(2) to agreements varying the baseline rules on surplus and  
22 deficiency. The parties are always free to agree that an obligor  
23 will not be liable for a deficiency, even if the collateral  
24 secures an obligation, and that an obligor is liable for a  
25 deficiency, even if the transaction is a sale of receivables.  
26 For parallel provisions, see Section 9-615(d) and (e) [Maine cite  
27 section 9-1615, subsections (4) and (5)].

28  
29 4. Noncash Proceeds. Subsection (a)(3) [Maine cite  
30 subsection (1), paragraph (c)] addresses the situation in which  
31 an enforcing secured party receives noncash proceeds.

32  
33 Example: An enforcing secured party receives a promissory  
34 note from an account debtor who is unable to pay an account when  
35 it is due. The secured party accepts the note in exchange for  
36 extending the date on which the account debtor's obligation is  
37 due. The secured party may wish to credit its debtor (the  
38 assignor) with the principal amount of the note upon receipt of  
39 the note, but probably will prefer to credit the debtor only as  
40 and when the note is paid.

41  
42 Under subsection (a)(3), [Maine cite subsection (1), paragraph  
43 (c)] the secured party is under no duty to apply the note or its  
44 value to the outstanding obligation unless its failure to do so  
45 would be commercially unreasonable. If the secured party does  
46 apply the note to the outstanding obligation, however, it must do  
47 so in a commercially reasonable manner. The parties may provide  
48 for the method of application of noncash proceeds by agreement,  
49 if the method is not manifestly unreasonable. See Section 9-603  
50 [Maine cite section 9-1603]. This section does not explain when

2 the failure to apply noncash proceeds would be commercially  
unreasonable; it leaves that determination to case-by-case  
4 adjudication. In the example, the secured party appears to have  
accepted the account debtor's note in order to increase the  
6 likelihood of payment and decrease the likelihood that the  
account debtor would dispute its obligation. Under these  
8 circumstances, it may well be commercially reasonable for the  
secured party to credit its debtor's obligations only as and when  
10 cash proceeds are collected from the account debtor, especially  
given the uncertainty that attends the account debtor's eventual  
12 payment. For an example of a secured party's receipt of noncash  
proceeds in which it may well be commercially unreasonable for  
14 the secured party to delay crediting its debtor's obligations  
with the value of noncash proceeds, see Section 9-615 [Maine cite  
16 section 9-1615], Comment 3.

18 When the secured party is not required to "apply or pay over  
for application noncash proceeds," the proceeds nonetheless  
20 remain collateral subject to this Article. If the secured party  
were to dispose of them, for example, appropriate notification  
22 would be required (see Section 9-611 [Maine cite section  
9-1611]), and the disposition would be subject to the standards  
24 provided in this Part (see Section 9-610 [Maine cite section  
9-1610]). Moreover, a secured party in possession of the noncash  
26 proceeds would have the duties specified in Section 9-207 [Maine  
cite section 9-1207].

28 5. No Effect on Priority of Senior Security Interest. The  
application of proceeds required by subsection (a) [Maine cite  
30 subsection (1)] does not affect the priority of a security  
interest in collateral which is senior to the interest of the  
32 secured party who is collecting or enforcing collateral under  
Section 9-607 [Maine cite section 9-1607]. Although subsection  
34 (a) [Maine cite subsection (1)] imposes a duty to apply proceeds  
to the enforcing secured party's expenses and to the satisfaction  
36 of the secured obligations owed to it and to subordinate secured  
parties, that duty applies only among the enforcing secured party  
38 and those persons. Concerning the priority of a junior secured  
party who collects and enforces collateral, see Section 9-607  
40 [Maine cite section 9-1607], Comment 5.

42 **§9-1609. Secured party's right to take possession after default**

- 44 (1) After default, a secured party:
- 46 (a) May take possession of the collateral; and
- 48 (b) Without removal, may render equipment unusable and  
50 dispose of collateral on a debtor's premises under section  
9-1610.





in connection with taking possession of collateral, see Section  
2 9-625 [Maine cite section 9-1625], Comment 3.

4 5. Multiple Secured Parties. More than one secured party  
may be entitled to take possession of collateral under this  
6 section. Conflicting rights to possession among secured parties  
are resolved by the priority rules of this Article. Thus, a  
8 senior secured party is entitled to possession as against a  
junior claimant. Non-UCC law governs whether a junior secured  
10 party in possession of collateral is liable to the senior in  
conversion. Normally, a junior who refuses to relinquish  
12 possession of collateral upon the demand of a secured party  
having a superior possessory right to the collateral would be  
14 liable in conversion.

16 6. Secured Party's Right to Disable and Dispose of  
Equipment on Debtor's Premises. In the case of some collateral,  
18 such as heavy equipment, the physical removal from the debtor's  
plant and the storage of the collateral pending disposition may  
20 be impractical or unduly expensive. This section follows former  
Section 9-503 by providing that, in lieu of removal, the secured  
22 party may render equipment unusable or may dispose of collateral  
on the debtor's premises. Unlike former Section 9-503, however,  
24 this section explicitly conditions these rights on the debtor's  
default. Of course, this section does not validate unreasonable  
26 action by a secured party. Under Section 9-610 [Maine cite  
section 9-1610], all aspects of a disposition must be  
28 commercially reasonable.

30 7. Debtor's Agreement to Assemble Collateral. This section  
follows former Section 9-503 also by validating a debtor's  
32 agreement to assemble collateral and make it available to a  
secured party at a place that the secured party designates.  
34 Similar to the treatment of agreements to permit collection prior  
to default under Section 9-607 [Maine cite section 9-1607] and  
36 former 9-502, however, this section validates these agreements  
whether or not they are conditioned on the debtor's default. For  
38 example, a debtor might agree to make available to a secured  
party, from time to time, any instruments or negotiable documents  
40 that the debtor receives on account of collateral. A court  
should not infer from this section's validation that a debtor's  
42 agreement to assemble and make available collateral would not be  
enforceable under other applicable law.

44 8. Agreed Standards. Subject to the limitation imposed by  
46 Section 9-603(b) [Maine cite section 9-1603, subsection (2)],  
this section's provisions concerning agreements to assemble and  
48 make available collateral and a secured party's right to disable  
equipment and dispose of collateral on a debtor's premises are

likely topics for agreement on standards as contemplated by  
Section 9-603 [Maine cite section 9-1603].

**§9-1610. Disposition of collateral after default**

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

(2) Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If it is commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) At a public disposition; or

(b) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition" or uses words of similar import.

**Official Comment**

1. Source. Former Section 9-504(1), (3)

2  
3. Commercially Reasonable Dispositions. Subsection (a)  
4 [Maine cite subsection (1)] follows former Section 9-504 by  
5 permitting a secured party to dispose of collateral in a  
6 commercially reasonable manner following a default. Although  
7 subsection (b) [Maine cite subsection (2)] permits both public  
8 and private dispositions, "every aspect of a disposition . . .  
9 must be commercially reasonable." This section encourages  
10 private dispositions on the assumption that they frequently will  
11 result in higher realization on collateral for the benefit of all  
12 concerned. Subsection (a) [Maine cite subsection (1)] does not  
13 restrict dispositions to sales; collateral may be sold, leased,  
14 licensed, or otherwise disposed. Section 9-627 [Maine cite  
15 section 9-1627] provides guidance for determining the  
16 circumstances under which a disposition is "commercially  
17 reasonable."

18  
4. Time of Disposition. This Article does not specify a  
19 period within which a secured party must dispose of collateral.  
20 This is consistent with this Article's policy to encourage  
21 private dispositions through regular commercial channels. It  
22 may, for example, be prudent not to dispose of goods when the  
23 market has collapsed. Or, it might be more appropriate to sell a  
24 large inventory in parcels over a period of time instead of in  
25 bulk. Of course, under subsection (b) [Maine cite subsection  
26 (2)] every aspect of a disposition of collateral must be  
27 commercially reasonable. This requirement explicitly includes  
28 the "method, manner, time, place and other terms." For example,  
29 if a secured party does not proceed under Section 9-620 [Maine  
30 cite section 9-1620] and holds collateral for a long period of  
31 time without disposing of it, and if there is no good reason for  
32 not making a prompt disposition, the secured party may be  
33 determined not to have acted in a "commercially reasonable"  
34 manner. See also Section 1-203 (general obligation of good  
35 faith).

36  
5. Pre-Disposition Preparation and Processing. Former  
37 Section 9-504(1) appeared to give the secured party the choice of  
38 disposing of collateral either "in its then condition or  
39 following any commercially reasonable preparation or  
40 processing." Some courts held that the "commercially reasonable"  
41 standard of former Section 9-504(3) nevertheless could impose an  
42 affirmative duty on the secured party to process or prepare the  
43 collateral prior to disposition. Subsection (a) [Maine cite  
44 subsection (1)] retains the substance of the quoted language.  
45 Although courts should not be quick to impose a duty of  
46 preparation or processing on the secured party, subsection (a)  
47 [Maine cite subsection (1)] does not grant the secured party the  
48 right to dispose of the collateral "in its then condition" under  
49  
50

2 all circumstances. A secured party may not dispose of collateral  
3 "in its then condition" when, taking into account the costs and  
4 probable benefits of preparation or processing and the fact that  
5 the secured party would be advancing the costs at its risk, it  
6 would be commercially unreasonable to dispose of the collateral  
7 in that condition.

8 5. Disposition by Junior Secured Party. Disposition rights  
9 under subsection (a) [Maine cite subsection (1)] are not limited  
10 to first-priority security interests. Rather, any secured party  
11 as to whom there has been a default enjoys the right to dispose  
12 of collateral under this subsection. The exercise of this right  
13 by a secured party whose security interest is subordinate to that  
14 of another secured party does not of itself constitute a  
15 conversion or otherwise give rise to liability in favor of the  
16 holder of the senior security interest. Section 9-615 [Maine  
17 cite section 9-1615] addresses application of the proceeds of a  
18 disposition by a junior secured party. Under Section 9-615(a)  
19 [Maine cite section 9-1615, subsection (1)], a junior secured  
20 party owes no obligation to apply the proceeds of disposition to  
21 the satisfaction of obligations secured by a senior security  
22 interest. Section 9-615(g) [Maine cite section 9-1615,  
23 subsection (7)] builds on this general rule by protecting certain  
24 juniors from claims of a senior concerning cash proceeds of the  
25 disposition. Even if a senior were to have a non-Article 9 claim  
26 to proceeds of a junior's disposition, Section 9-615(g) [Maine  
27 cite section 9-1615, subsection (7)] would protect a junior that  
28 acts in good faith and without knowledge that its actions violate  
29 the rights of a senior party. Because the disposition by a  
30 junior would not cut off a senior's security interest or other  
31 lien (see Section 9-617 [Maine cite section 9-1617]), in many  
32 (probably most) cases the junior's receipt of the cash proceeds  
33 would not violate the rights of the senior.

34  
35 The holder of a senior security interest is entitled, by  
36 virtue of its priority, to take possession of collateral from the  
37 junior secured party and conduct its own disposition, provided  
38 that the senior enjoys the right to take possession of the  
39 collateral from the debtor. See Section 9-609 [Maine cite  
40 section 9-1609]. The holder of a junior security interest  
41 normally must notify the senior secured party of an impending  
42 disposition. See Section 9-611 [Maine cite section 9-1611].  
43 Regardless of whether the senior receives a notification from the  
44 junior, the junior's disposition does not of itself discharge the  
45 senior's security interest. See Section 9-617 [Maine cite  
46 section 9-1617]. Unless the senior secured party has authorized  
47 the disposition free and clear of its security interest, the  
48 senior's security interest ordinarily will survive the  
49 disposition by the junior and continue under Section 9-315(a)  
50 [Maine cite section 9-1315, subsection (1)]. If the senior

2 enjoys the right to repossess the collateral from the debtor, the  
2 senior likewise may recover the collateral from the transferee.

4 When a secured party's collateral is encumbered by another  
4 security interest or other lien, one of the claimants may seek to  
6 invoke the equitable doctrine of marshaling. As explained by the  
6 Supreme Court, that doctrine "rests upon the principle that a  
8 creditor having two funds to satisfy his debt, may not by his  
8 application of them to his demand, defeat another creditor, who  
10 may resort to only one of the funds." Meyer v. United States,  
10 375 U.S. 233, 236 (1963), quoting Sowell v. Federal Reserve Bank,  
12 268 U.S. 449, 45657 (1925). The purpose of the doctrine is "to  
12 prevent the arbitrary action of a senior lienor from destroying  
14 the rights of a junior lienor or a creditor having less  
14 security." Id. at 237. Because it is an equitable doctrine,  
16 marshaling "is applied only when it can be equitably fashioned as  
16 to all of the parties" having an interest in the property. Id.  
18 This Article leaves courts free to determine whether marshaling  
18 is appropriate in any given case. See Section 1-103.

20  
22 6. Security Interests of Equal Rank. Sometimes two  
22 security interests enjoy the same priority. This situation may  
24 arise by contract, e.g., pursuant to "equal and ratable"  
24 provisions in indentures, or by operation of law. See Section  
26 9-328(6) [Maine cite section 9-1328, subsection (6)]. This  
26 Article treats a security interest having equal priority like a  
28 senior security interest in many respects. Assume, for example,  
28 that SPX and SPY enjoy equal priority, SPW is senior to them, and  
30 SPZ is junior. If SPX disposes of the collateral under this  
30 section, then (i) SPW's and SPY's security interests survive the  
32 disposition but SPZ's does not, see Section 9-617 [Maine cite  
32 section 9-1617], and (ii) neither SPW nor SPY is entitled to  
34 receive a distribution of proceeds, but SPZ is. See Section  
34 9-615(a)(3) [Maine cite section 9-1615, subsection (1), paragraph  
36 (c)].

36  
38 When one considers the ability to obtain possession of the  
38 collateral, a secured party with equal priority is unlike a  
40 senior secured party. As the senior secured party, SPW should  
40 enjoy the right to possession as against SPX. See Section 9-609  
42 [Maine cite section 9-1609], Comment 5. If SPW takes possession  
42 and disposes of the collateral under this section, it is entitled  
44 to apply the proceeds to satisfy its secured claim. SPY,  
44 however, should not have such a right to take possession from  
46 SPX; otherwise, once SPY took possession from SPX, SPX would have  
46 the right to get possession from SPY, which would be obligated to  
48 redeliver possession to SPX, and so on. Resolution of this  
48 problem is left to the parties and, if necessary, the courts.

2           7. Public vs. Private Dispositions. This Part maintains  
4           two distinctions between "public" and other dispositions: (i)  
6           the secured party may buy at the former, but normally not at the  
8           latter (Section 9-610(c) [Maine cite section 9-1610, subsection  
10           (3)]), and (ii) the debtor is entitled to notification of "the  
12           time and place of a public disposition" and notification of "the  
14           time after which" a private disposition or other intended  
16           disposition is to be made (Section 9-613(1)(E) [Maine cite  
18           section 9-1613, subsection (1), paragraph (e)]). It does not  
20           retain the distinction under former Section 9-504(4), under which  
22           transferees in a noncomplying public disposition could lose  
          protection more easily than transferees in other noncomplying  
          dispositions. Instead, Section 9-617(b) [Maine cite section  
          9-1617, subsection (2)] adopts a unitary standard. Although the  
          term is not defined, as used in this Article, a "public  
          disposition" is one at which the price is determined after the  
          public has had a meaningful opportunity for competitive bidding.  
          "Meaningful opportunity" is meant to imply that some form of  
          advertisement or public notice must precede the sale (or other  
          disposition) and that the public must have access to the sale  
          (disposition).

24           8. Investment Property. Dispositions of investment  
26           property may be regulated by the federal securities laws.  
28           Although a "public" disposition of securities under this Article  
30           may implicate the registration requirements of the Securities Act  
32           of 1933, it need not do so. A disposition that qualifies for a  
34           "private placement" exemption under the Securities Act of 1933  
          nevertheless may constitute a "public" disposition within the  
          meaning of this section. Moreover, the "commercially reasonable"  
          requirements of subsection (b) [Maine cite subsection (2)] need  
          not prevent a secured party from conducting a foreclosure sale  
          without the issuer's compliance with federal registration  
          requirements.

36           9. "Recognized Market." A "recognized market," as used in  
38           subsection (c) [Maine cite subsection (3)] and Section 9-611(d)  
40           [Maine cite section 9-1611, subsection (4)], is one in which the  
42           items sold are fungible and prices are not subject to individual  
44           negotiation. For example, the New York Stock Exchange is a  
          recognized market. A market in which prices are individually  
          negotiated or the items are not fungible is not a recognized  
          market, even if the items are the subject of widely disseminated  
          price guides or are disposed of through dealer auctions.

46           10. Relevance of Price. While not itself sufficient to  
48           establish a violation of this Part, a low price suggests that a  
50           court should scrutinize carefully all aspects of a disposition to  
          ensure that each aspect was commercially reasonable. Note also  
          that even if the disposition is commercially reasonable, Section

2 9-615(f) [Maine cite section 9-1615, subsection (6)] provides a  
4 special method for calculating a deficiency or surplus if (i) the  
6 transferee in the disposition is the secured party, a person  
8 related to the secured party, or a secondary obligor, and (ii)  
the amount of proceeds of the disposition is significantly below  
the range of proceeds that a complying disposition to a person  
other than the secured party, a person related to the secured  
party, or a secondary obligor would have brought.

10 11. Warranties. Subsection (d) [Maine cite subsection (4)]  
12 affords the transferee in a disposition under this section the  
14 benefit of any title, possession, quiet enjoyment, and similar  
16 warranties that would have accompanied the disposition by  
18 operation of non-Article 9 law had the disposition been conducted  
20 under other circumstances. For example, the Article 2 warranty  
of title would apply to a sale of goods, the analogous warranties  
of Article 2A would apply to a lease of goods, and any common-law  
warranties of title would apply to dispositions of other types of  
collateral. See, e.g., Restatement (2d), Contracts § 333  
(warranties of assignor).

22 Subsection (e) [Maine cite subsection (5)] explicitly  
24 provides that these warranties can be disclaimed either under  
26 other applicable law or by communicating a record containing an  
28 express disclaimer. The record need not be written, but an oral  
30 communication would not be sufficient. See Section 9-102 [Maine  
cite section 9-1102] (definition of "record"). Subsection (f)  
[Maine cite subsection (6)] provides a sample of wording that  
will effectively exclude the warranties in a disposition under  
this section, whether or not the exclusion would be effective  
under non-Article 9 law.

32 The warranties incorporated by subsection (d) [Maine cite  
34 subsection (4)] are those relating to "title, possession, quiet  
36 enjoyment, and the like." Depending on the circumstances, a  
38 disposition under this section also may give rise to other  
40 statutory or implied warranties, e.g., warranties of quality or  
42 fitness for purpose. Law other than this Article determines  
44 whether such other warranties apply to a disposition under this  
section. Other law also determines issues relating to disclaimer  
of such warranties. For example, a foreclosure sale of a car by  
a car dealer could give rise to an implied warranty of  
merchantability (Section 2-314) unless effectively disclaimed or  
modified (Section 2-316).

46 This section's approach to these warranties conflicts with  
48 the former Comment to Section 2-312. This Article rejects the  
baseline assumption that commercially reasonable dispositions  
under this section are out of the ordinary commercial course or



2 peculiar. The Comment to Section 2-312 has been revised  
2 accordingly.

4 **§9-1611. Notification before disposition of collateral**

6 (1) In this section, "notification date" means the earlier  
8 of the date on which:

10 (a) A secured party sends to the debtor and any secondary  
12 obligor an authenticated notification of disposition; or

14 (b) The debtor and any secondary obligor waive the right to  
16 notification.

18 (2) Except as otherwise provided in subsection (4), a  
20 secured party that disposes of collateral under section 9-1610  
22 shall send to the persons specified in subsection (3) a  
24 reasonable authenticated notification of disposition.

26 (3) To comply with subsection (2), the secured party shall  
28 send an authenticated notification of disposition to:

30 (a) The debtor;

32 (b) Any secondary obligor; and

34 (c) If the collateral is other than consumer goods:

36 (i) Any other person from which the secured party has  
38 received, before the notification date, an  
40 authenticated notification of a claim of an interest in  
42 the collateral;

44 (ii) Any other secured party or lienholder that, 10  
46 days before the notification date, held a security  
48 interest in or other lien on the collateral perfected  
50 by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of  
that date; and

(C) Was filed in the appropriate office in which  
to file a financing statement against the debtor  
covering the collateral as of that date; and

(iii) Any other secured party that, 10 days before the  
notification date, held a security interest in the  
collateral perfected by compliance with a statute.

2                   regulation or treaty described in section 9-1311,  
3                   subsection (1).

4                   (4) Subsection (2) does not apply if the collateral is  
5                   perishable or threatens to decline speedily in value or is of a  
6                   type customarily sold on a recognized market.

7                   (5) A secured party complies with the requirement for  
8                   notification prescribed by subsection (3), paragraph (c),  
9                   subparagraph (ii) if:

10                   (a) Not later than 20 days or earlier than 30 days before  
11                   the notification date, the secured party requests, in a  
12                   commercially reasonable manner, information concerning  
13                   financing statements indexed under the debtor's name in the  
14                   office indicated in subsection (3), paragraph (c),  
15                   subparagraph (ii); and

16                   (b) Before the notification date, the secured party:  
17                   (i) Did not receive a response to the request for  
18                   information; or

19                   (ii) Received a response to the request for  
20                   information and sent an authenticated notification of  
21                   disposition to each secured party or other lienholder  
22                   named in that response whose financing statement  
23                   covered the collateral.

24                   **Official Comment**

25                   1. Source. Former Section 9-504(3).

26                   2. Reasonable Notification. This section requires a  
27                   secured party who wishes to dispose of collateral under Section  
28                   9-610 [Maine cite section 9-1610] to send "a reasonable  
29                   authenticated notification of disposition" to specified  
30                   interested persons, subject to certain exceptions. The  
31                   notification must be reasonable as to the manner in which it is  
32                   sent, its timeliness (i.e., a reasonable time before the  
33                   disposition is to take place), and its content. See Sections  
34                   9-612 [Maine cite section 9-1612] (timeliness of notification),  
35                   9-613 [Maine cite section 9-1613] (contents of notification  
36                   generally), 9-614 [Maine cite section 9-1614] (contents of  
37                   notification in consumer-goods transactions).

38                   3. Notification to Debtors and Secondary Obligors. This  
39                   section imposes a duty to send notification of a disposition not  
40                   only to the debtor but also to any secondary obligor.

2 Subsections (b) and (c) [Maine cite subsections (2) and (3)]  
3 resolve an uncertainty under former Article 9 by providing that  
4 secondary obligors (sureties) are entitled to receive  
5 notification of an intended disposition of collateral, regardless  
6 of who created the security interest in the collateral. If the  
7 surety created the security interest, it would be the debtor. If  
8 it did not, it would be a secondary obligor. (This Article also  
9 resolves the question of the secondary obligor's ability to  
10 waive, pre-default, the right to notification-waiver generally is  
11 not permitted. See Section 9-602 [Maine cite section 9-1602]).  
12 Section 9-605 [Maine cite section 9-1605] relieves a secured  
13 party from any duty to send notification to a debtor or secondary  
14 obligor unknown to the secured party.

15 Under subsection (b) [Maine cite subsection (2)], the  
16 principal obligor (borrower) is not always entitled to  
17 notification of disposition.

18 Example: Behnfeltd borrows on an unsecured basis, and Bruno  
19 grants a security interest in her car to secure the debt.  
20 Behnfeltd is a primary obligor, not a secondary obligor. As  
21 such, she is not entitled to notification of disposition under  
22 this section.

23  
24 4. Notification to Other Secured Parties. Prior to the  
25 1972 amendments to Article 9, former Section 9-504(3) required  
26 the enforcing secured party to send reasonable notification of  
27 the disposition:

28  
29 except in the case of consumer goods to any other person who  
30 has a security interest in the collateral and who has duly filed  
31 a financing statement indexed in the name of the debtor in this  
32 State or who is known by the secured party to have a security  
33 interest in the collateral.

34  
35 The 1972 amendments eliminated the duty to give notice to secured  
36 parties other than those from whom the foreclosing secured party  
37 had received written notice of a claim of an interest in the  
38 collateral.

39  
40 Many of the problems arising from dispositions of collateral  
41 encumbered by multiple security interests can be ameliorated or  
42 solved by informing all secured parties of an intended  
43 disposition and affording them the opportunity to work with one  
44 another. To this end, subsection (c)(3)(B) [Maine cite  
45 subsection (3), paragraph (c), subparagraph (ii)] expands the  
46 duties of the foreclosing secured party to include the duty to  
47 notify (and the corresponding burden of searching the files to  
48 discover) certain competing secured parties. The subsection  
49 imposes a search burden that in some cases may be greater than  
50

2 the pre1972 burden on foreclosing secured parties but certainly  
is more modest than that faced by a new secured lender.

4 To determine who is entitled to notification, the  
foreclosing secured party must determine the proper office for  
6 filing a financing statement as of a particular date, measured by  
reference to the "notification date," as defined in subsection  
8 (a) [Maine cite subsection (1)]. This determination requires  
reference to the choice-of-law provisions of Part 3. The secured  
10 party must ascertain whether any financing statements covering  
the collateral and indexed under the debtor's name, as the name  
12 existed as of that date, in fact were filed in that office. The  
foreclosing secured party generally need not notify secured  
14 parties whose effective financing statements have become more  
difficult to locate because of changes in the location of the  
16 debtor, proceeds rules, or changes in the debtor's name.

18 Under subsection (c)(3)(C) [Maine cite subsection (3),  
paragraph (c), subparagraph (iii)], the secured party also must  
20 notify a secured party who has perfected a security interest by  
complying with a statute or treaty described in Section 9-311(a)  
22 [Maine cite section 9-1311, subsection (1)], such as a  
certificate-of-title statute.

24 Subsection (e) [Maine cite subsection (5)] provides a "safe  
26 harbor" that takes into account the delays that may be attendant  
to receiving information from the public filing offices. It  
28 provides, generally, that the secured party will be deemed to  
have satisfied its notification duty under subsection (c)(3)(B)  
30 [Maine cite subsection (3), paragraph (c), subparagraph (ii)] if  
it requests a search from the proper office at least 20 but not  
32 more than 30 days before sending notification to the debtor and  
if it also sends a notification to all secured parties (and other  
34 lienholders) reflected on the search report. The secured party's  
duty under subsection (c)(3)(B) [Maine cite subsection (3),  
36 paragraph (c), subparagraph (ii)] also will be satisfied if the  
secured party requests but does not receive a search report  
38 before the notification is sent to the debtor. Thus, if  
subsection (e) [Maine cite subsection (5)] applies, a secured  
40 party who is entitled to notification under subsection (c)(3)(B)  
[Maine cite subsection (3), paragraph (c), subparagraph (ii)] has  
42 no remedy against a foreclosing secured party who does not send  
the notification. The foreclosing secured party has complied  
44 with the notification requirement. Subsection (e) [Maine cite  
subsection (5)] has no effect on the requirements of the other  
46 paragraphs of subsection (c) [Maine cite subsection (3)]. For  
example, if the foreclosing secured party received a notification  
48 from the holder of a conflicting security interest in accordance  
with subsection (c)(3)(A) [Maine cite subsection (3), paragraph  
50 (c), subparagraph (i)] but failed to send to the holder a

2 notification of the disposition, the holder of the conflicting  
security interest would have the right to recover any loss under  
Section 9-625(b) [Maine cite section 9-1625, subsection (2)].

4  
5. Authentication Requirement. Subsections (b) and (c)  
6 [Maine cite subsections (2) and (3)] explicitly provide that a  
notification of disposition must be "authenticated." Some cases  
8 read former Section 9-504(3) as validating oral notification.

10 6. Second Try. This Article leaves to judicial resolution,  
based upon the facts of each case, the question whether the  
12 requirement of "reasonable notification" requires a "second try,"  
i.e., whether a secured party who sends notification and learns  
14 that the debtor did not receive it must attempt to locate the  
debtor and send another notification.

16 7. Recognized Market; Perishable Collateral. New  
18 subsection (d) [Maine cite subsection (4)] makes it clear that  
there is no obligation to give notification of a disposition in  
20 the case of perishable collateral or collateral customarily sold  
on a recognized market (e.g., marketable securities). Former  
22 Section 9-504(3) might be read (incorrectly) to relieve the  
secured party from its duty to notify a debtor but not from its  
24 duty to notify other secured parties in connection with  
dispositions of such collateral.

26 8. Failure to Conduct Notified Disposition. Nothing in  
28 this Article prevents a secured party from electing not to  
conduct a disposition after sending a notification. Nor does  
30 this Article prevent a secured party from electing to send a  
revised notification if its plans for disposition change. This  
32 assumes, however, that the secured party acts in good faith, the  
revised notification is reasonable, and the revised plan for  
34 disposition and any attendant delay are commercially reasonable.

36 9. Waiver. A debtor or secondary obligor may waive the  
right to notification under this section only by a post-default  
38 authenticated agreement. See Section 9-624(a) [Maine cite  
section 9-1624, subsection (1)].

40 **§9-1612. Timeliness of notification before disposition of**  
42 **collateral**

44 (1) Except as otherwise provided in subsection (2), whether  
a notification is sent within a reasonable time is a question of  
46 fact.

48 (2) In a transaction other than a consumer transaction, a  
notification of disposition sent after default and 10 days or  
50 more before the earliest time of disposition set forth in the

2 notification is sent within a reasonable time before the  
3 disposition.

4  
5 **Official Comment**

6 1. Source. New.

8  
9 2. Reasonable Notification. Section 9-611(b) [Maine cite  
10 section 9-1611, subsection (2)] requires the secured party to  
11 send a "reasonable authenticated notification." Under that  
12 section, as under former Section 9-504(3), one aspect of a  
13 reasonable notification is its timeliness. This generally means  
14 that the notification must be sent at a reasonable time in  
15 advance of the date of a public disposition or the date after  
16 which a private disposition is to be made. A notification that  
17 is sent so near to the disposition date that a notified person  
18 could not be expected to act on or take account of the  
19 notification would be unreasonable.

20  
21 3. Timeliness of Notification: Safe Harbor. The 10-day  
22 notice period in subsection (b) [Maine cite subsection (2)] is  
23 intended to be a "safe harbor" and not a minimum requirement. To  
24 qualify for the "safe harbor" the notification must be sent after  
25 default. A notification also must be sent in a commercially  
26 reasonable manner. See Section 9-611(b) [Maine cite section  
27 9-1611, subsection (2)] ("reasonable authenticated  
28 notification"). Those requirements prevent a secured party from  
29 taking advantage of the "safe harbor" by, for example, giving the  
30 debtor a notification at the time of the original extension of  
31 credit or sending the notice by surface mail to a debtor overseas.

32 **§9-1613. Contents and form of notification before disposition of**  
33 **collateral: general**

34  
35 Except in a consumer-goods transaction, the following rules  
36 apply.

37  
38 (1) The contents of a notification of disposition are  
39 sufficient if the notification:

40  
41 (a) Describes the debtor and the secured party;

42  
43 (b) Describes the collateral that is the subject of the  
44 intended disposition;

45  
46 (c) States the method of intended disposition;  
47  
48

2           (d) States that the debtor is entitled to an accounting of  
3           the unpaid indebtedness and states the charge, if any, for  
4           an accounting; and

5           (e) States the time and place of a public sale or the time  
6           after which any other disposition is to be made.

7           (2) Whether the contents of a notification that lacks any  
8           of the information specified in subsection (1) are nevertheless  
9           sufficient is a question of fact.

10          (3) The contents of a notification providing substantially  
11          the information specified in subsection (1) are sufficient, even  
12          if the notification includes:

13               (a) Information not specified by that subsection; or

14               (b) Minor errors that are not seriously misleading.

15          (4) A particular phrasing of the notification is not  
16          required.

17          (5) The following form of notification or the form  
18          appearing in section 9-1614, subsection (3), when completed,  
19          provides sufficient information:

20                               **NOTIFICATION OF DISPOSITION OF COLLATERAL**

21            To:                        [Name of debtor, obligor or other person  
22                                        to which the notification is sent]

23            From:                      [Name, address, and telephone number of  
24                                        secured party]

25            Name of Debtor(s): [Include only if debtor(s) not addressee]

26                                      [For a public disposition:]

27            We will sell [or lease or license, as applicable] the  
28            [describe collateral] [to the highest qualified bidder] in public  
29            as follows:

30                                      Day and Date: \_\_\_\_\_

31                                      Time:                        \_\_\_\_\_

32                                      Place:                        \_\_\_\_\_

33                                      [For a private disposition:]

2 We will sell [or lease or license, as applicable] the  
[describe collateral] privately sometime after [day and date].

4 You are entitled to an accounting of the unpaid indebtedness  
secured by the property that we intend to sell [or lease or  
6 license, as applicable] [for a charge of \$ \_\_\_\_\_]. You may  
request an accounting by calling us at [telephone number].

8  
10 [End of Form]

12 **Official Comment**

14 1. Source. New.

16 2. Contents of Notification. To comply with the  
18 "reasonable authenticated notification" requirement of Section  
20 9-611(b) [Maine cite section 9-1611, subsection (2)], the  
22 contents of a notification must be reasonable. Except in a  
24 consumer-goods transaction, the contents of a notification that  
26 includes the information set forth in paragraph (1) [Maine cite  
28 paragraph (a)] are sufficient as a matter of law, unless the  
30 parties agree otherwise. (The reference to "time" of disposition  
32 means here, as it did in former Section 9-504(3), not only the  
34 hour of the day but also the date.) Although a secured party may  
36 choose to include additional information concerning the  
38 transaction or the debtor's rights and obligations, no additional  
40 information is required unless the parties agree otherwise. A  
notification that lacks some of the information set forth in  
paragraph (1) [Maine cite paragraph (a)] nevertheless may be  
sufficient if found to be reasonable by the trier of fact, under  
paragraph (2) [Maine cite paragraph (b)]. A properly completed  
sample form of notification in paragraph (5) [Maine cite  
paragraph (e)] or in Section 9-614(a)(3) [Maine cite section  
9-1614, subsection (1), paragraph (c)] is an example of a  
notification that would contain the information set forth in  
paragraph (1) [Maine cite paragraph (a)]. Under paragraph (4)  
[Maine cite paragraph (d)], however, no particular phrasing of  
the notification is required.

42 **§9-1614. Contents and form of notification before disposition of**  
**collateral: consumer-goods transaction**

44 In a consumer-goods transaction, the following rules apply.

46 (1) A notification of disposition must provide the  
following information:

48 (a) The information specified in section 9-1613, subsection  
50 (1);





2 You can get the property back at any time before we sell it by  
4 paying us the full amount you owe (not just the past due  
6 payments), including our expenses. To learn the exact amount you  
8 must pay, call us at [telephone number].

10 If you want us to explain to you in writing how we have figured  
12 the amount that you owe us, you may call us at [telephone number]  
14 [or write us at [secured party's address]] and request a written  
16 explanation. [We will charge you \$ \_\_\_\_\_ for the explanation if  
18 we sent you another written explanation of the amount you owe us  
20 within the last 6 months.]

22 If you need more information about the sale, call us at  
24 [telephone number] [or write us at [secured party's address]].

26 We are sending this notice to the following other people who have  
28 an interest in [describe collateral] or who owe money under your  
30 agreement.

32 [Names of all other debtors and obligors, if any]

34 [End of Form]

36 (4) A notification in the form of subsection (3) is  
38 sufficient, even if additional information appears at the end of  
40 the form.

42 (5) A notification in the form of subsection (3) is  
44 sufficient, even if it includes errors in information not  
46 required by subsection (1), unless the error is misleading with  
48 respect to rights arising under this Article.

50 (6) If a notification under this section is not in the form  
of subsection (3), law other than this Article determines the  
effect of including information not required by subsection (1).

38

#### **Official Comment**

40

1. Source. New.

42

44 2. Notification in Consumer-Goods Transactions. Paragraph  
46 (1) [Maine cite subsection (1)] sets forth the information  
48 required for a reasonable notification in a consumer-goods  
transaction. A notification that lacks any of the information  
set forth in paragraph (1) [Maine cite subsection (1)] is  
insufficient as a matter of law. Compare Section 9-613(2) [Maine  
cite section 9-1613, subsection (2)], under which the trier of  
fact may find a notification to be sufficient even if it lacks

2 some information listed in paragraph (1) [Maine cite subsection  
2 (1)] of that section.

4 3. Safe-Harbor Form of Notification; Errors in  
Information. Although paragraph (2) [Maine cite subsection (2)]  
6 provides that a particular phrasing of a notification is not  
required, paragraph (3) [Maine cite subsection (3)] specifies a  
8 safe-harbor form that, when properly completed, satisfies  
paragraph (1) [Maine cite subsection (1)]. Paragraphs (4), (5),  
10 and (6) [Maine cite subsections (4), (5) and (6)] contain special  
rules applicable to erroneous and additional information. Under  
12 paragraph (4) [Maine cite subsection (4)], a notification in the  
safe-harbor form specified in paragraph (3) [Maine cite  
14 subsection (3)] is not rendered insufficient if it contains  
additional information at the end of the form. Paragraph (5)  
16 [Maine cite subsection (5)] provides that non-misleading errors  
in information contained in a notification are permitted if the  
18 safe-harbor form is used and if the errors are in information not  
required by paragraph (1) [Maine cite subsection (1)]. Finally,  
20 if a notification is in a form other than the paragraph (3)  
[Maine cite subsection (3)] safe-harbor form, other law  
22 determines the effect of including in the notification  
information other than that required by paragraph (1) [Maine cite  
24 subsection (1)].

26 **§9-1615. Application of proceeds of disposition; liability for**  
28 **deficiency and right to surplus**

30 (1) A secured party shall apply or pay over for application  
the cash proceeds of disposition in the following order to:

32 (a) The reasonable expenses of retaking, holding, preparing  
for disposition, processing and disposing and, to the extent  
34 provided for by agreement and not prohibited by law,  
reasonable attorney's fees and legal expenses incurred by  
36 the secured party;

38 (b) The satisfaction of obligations secured by the security  
interest or agricultural lien under which the disposition is  
40 made;

42 (c) The satisfaction of obligations secured by any  
subordinate security interest in or other subordinate lien  
44 on the collateral if:

46 (i) The secured party receives from the holder of the  
subordinate security interest or other lien an  
48 authenticated demand for proceeds before distribution  
of the proceeds is completed; and

50

2           (ii) In a case in which a consignor has an interest in  
3           the collateral, the subordinate security interest or  
4           other lien is senior to the interest of the consignor;  
5           and

6           (d) A secured party that is a consignor of the collateral  
7           if the secured party receives from the consignor an  
8           authenticated demand for proceeds before distribution of the  
9           proceeds is completed.

10           (2) If requested by a secured party, a holder of a  
11           subordinate security interest or other lien shall furnish  
12           reasonable proof of the interest or lien within a reasonable  
13           time. Unless the holder does so, the secured party need not  
14           comply with the holder's demand under subsection (1), paragraph  
15           (c).

16           (3) A secured party need not apply or pay over for  
17           application noncash proceeds of disposition under this section  
18           unless the failure to do so would be commercially unreasonable.  
19           A secured party that applies or pays over for application noncash  
20           proceeds shall do so in a commercially reasonable manner.

21           (4) If the security interest under which a disposition is  
22           made secures payment or performance of an obligation, after  
23           making the payments and applications required by subsection (1)  
24           and permitted by subsection (3):

25           (a) Unless subsection (1), paragraph (d) requires the  
26           secured party to apply or pay over cash proceeds to a  
27           consignor, the secured party shall account to and pay a  
28           debtor for any surplus; and

29           (b) The obligor is liable for any deficiency.

30           (5) If the underlying transaction is a sale of accounts,  
31           chattel paper, payment intangibles or promissory notes:

32           (a) The debtor is not entitled to any surplus; and

33           (b) The obligor is not liable for any deficiency.

34           (6) The surplus or deficiency following a disposition is  
35           calculated based on the amount of proceeds that would have been  
36           realized in a disposition complying with this part to a  
37           transferee other than the secured party, a person related to the  
38           secured party or a secondary obligor if:

39

2           (a) The transferee in the disposition is the secured party,  
3           a person related to the secured party or a secondary  
4           obligor; and

6           (b) The amount of proceeds of the disposition is  
7           significantly below the range of proceeds that a complying  
8           disposition to a person other than the secured party, a  
9           person related to the secured party or a secondary obligor  
10           would have brought.

12           (7) A secured party that receives cash proceeds of a  
13           disposition in good faith and without knowledge that the receipt  
14           violates the rights of the holder of a security interest or other  
15           lien that is not subordinate to the security interest or  
16           agricultural lien under which the disposition is made;

18           (a) Takes the cash proceeds free of the security interest  
19           or other lien;

21           (b) Is not obligated to apply the proceeds of the  
22           disposition to the satisfaction of obligations secured by  
23           the security interest or other lien; and

25           (c) Is not obligated to account to or pay the holder of the  
26           security interest or other lien for any surplus.

#### 28                                   **Official Comment**

30           1. Source. Former Section 9-504(1), (2).

32           2. Application of Proceeds. This section contains the  
33           rules governing application of proceeds and the debtor's  
34           liability for a deficiency following a disposition of  
35           collateral. Subsection (a) [Maine cite subsection (1)] sets  
36           forth the basic order of application. The proceeds are applied  
37           first to the expenses of disposition, second to the obligation  
38           secured by the security interest that is being enforced, and  
39           third, in the specified circumstances, to interests that are  
40           subordinate to that security interest.

42           Subsections (a) and (d) [Maine cite subsections (1) and (4)]  
43           also address the right of a consignor to receive proceeds of a  
44           disposition by a secured party whose interest is senior to that  
45           of the consignor. Subsection (a) [Maine cite subsection (1)]  
46           requires the enforcing secured party to pay excess proceeds first  
47           to subordinate secured parties or lienholders whose interests are  
48           senior to that of a consignor and, finally, to a consignor.  
49           Inasmuch as a consignor is the owner of the collateral, secured  
50           parties and lienholders whose interests are junior to the

2 consignor's interest will not be entitled to any proceeds. In  
3 like fashion, under subsection (d)(1) [Maine cite subsection (4),  
4 paragraph (a)] the debtor is not entitled to a surplus when the  
5 enforcing secured party is required to pay over proceeds to a  
6 consignor.

7  
8 3. Noncash Proceeds. Subsection (c) [Maine cite subsection  
9 (3)] addresses the application of noncash proceeds of a  
10 disposition, such as a note or lease. The explanation in Section  
11 9-608 [Maine cite section 9-1608], Comment 4, generally applies  
12 to this subsection.

13  
14 Example: A secured party in the business of selling or  
15 financing automobiles takes possession of collateral (an  
16 automobile) following its debtor's default. The secured party  
17 decides to sell the automobile in a private disposition under  
18 Section 9-610 [Maine cite section 9-1610] and sends appropriate  
19 notification under Section 9-611 [Maine cite section 9-1611].  
20 After undertaking its normal credit investigation and in  
21 accordance with its normal credit policies, the secured party  
22 sells the automobile on credit, on terms typical of the credit  
23 terms normally extended by the secured party in the ordinary  
24 course of its business. The automobile stands as collateral for  
25 the remaining balance of the price. The noncash proceeds  
26 received by the secured party are chattel paper. The secured  
27 party may wish to credit its debtor (the assignor) with the  
28 principal amount of the chattel paper or may wish to credit the  
29 debtor only as and when the payments are made on the chattel  
30 paper by the buyer.

31  
32 Under subsection (c) [Maine cite subsection (3)], the secured  
33 party is under no duty to apply the noncash proceeds (here, the  
34 chattel paper) or their value to the secured obligation unless  
35 its failure to do so would be commercially unreasonable. If a  
36 secured party elects to apply the chattel paper to the  
37 outstanding obligation, however, it must do so in a commercially  
38 reasonable manner. The facts in the example indicate that it  
39 would be commercially unreasonable for the secured party to fail  
40 to apply the value of the chattel paper to the original debtor's  
41 secured obligation. Unlike the example in Comment 4 to Section  
42 9-608 [Maine cite section 9-1608], the noncash proceeds received  
43 in this example are of the type that the secured party regularly  
44 generates in the ordinary course of its financing business in  
45 nonforeclosure transactions. The original debtor should not be  
46 exposed to delay or uncertainty in this situation. Of course,  
47 there will be many situations that fall between the examples  
48 presented in the Comment to Section 9-608 [Maine cite section  
49 9-1608] and in this Comment. This Article leaves their  
50 resolution to the court based on the facts of each case.

2 One would expect that where noncash proceeds are or may be  
3 material, the secured party and debtor would agree to more  
4 specific standards in an agreement entered into before or after  
5 default. The parties may agree to the method of application of  
6 noncash proceeds if the method is not manifestly unreasonable.  
7 See Section 9-603 [Maine cite section 9-1603].

8 When the secured party is not required to "apply or pay over  
9 for application noncash proceeds," the proceeds nonetheless  
10 remain collateral subject to this Article. See Section 9-608  
11 [Maine cite section 9-1608], Comment 4.

12 4. Surplus and Deficiency. Subsection (d) [Maine cite  
13 subsection (4)] deals with surplus and deficiency. It revises  
14 former Section 9-504(2) by imposing an explicit requirement that  
15 the secured party "pay" the debtor for any surplus, while  
16 retaining the secured party's duty to "account." Inasmuch as the  
17 debtor may not be an obligor, subsection (d) [Maine cite  
18 subsection (4)] provides that the obligor (not the debtor) is  
19 liable for the deficiency. The special rule governing surplus  
20 and deficiency when receivables have been sold likewise takes  
21 into account the distinction between a debtor and an obligor.  
22 Subsection (d) [Maine cite subsection (4)] also addresses the  
23 situation in which a consignor has an interest that is  
24 subordinate to the security interest being enforced.

25 5. Collateral Under New Ownership. When the debtor sells  
26 collateral subject to a security interest, the original debtor  
27 (creator of the security interest) is no longer a debtor inasmuch  
28 as it no longer has a property interest in the collateral; the  
29 buyer is the debtor. See Section 9-102 [Maine cite section  
30 9-1102]. As between the debtor (buyer of the collateral) and the  
31 original debtor (seller of the collateral), the debtor (buyer)  
32 normally would be entitled to the surplus following a  
33 disposition. Subsection (d) [Maine cite subsection (4)]  
34 therefore requires the secured party to pay the surplus to the  
35 debtor (buyer), not to the original debtor (seller) with which it  
36 has dealt. But, because this situation typically arises as a  
37 result of the debtor's wrongful act, this Article does not expose  
38 the secured party to the risk of determining ownership of the  
39 collateral. If the secured party does not know about the buyer  
40 and accordingly pays the surplus to the original debtor, the  
41 exculpatory provisions of this Article exonerate the secured  
42 party from liability to the buyer. See Sections 9-605, 9-628(a),  
43 (b) [Maine cite section 9-1605 and section 9-1628, subsections  
44 (1), (2)]. If a debtor sells collateral free of a security  
45 interest, as in a sale to a buyer in ordinary course of business  
46 (see Section 9-320(a) [Maine cite section 9-1320, subsection  
47 (1)]), the property is no longer collateral and the buyer is not  
48 a debtor.  
49  
50

2           6. Certain "Low-Price" Dispositions. Subsection (f) [Maine  
3 cite subsection (6)] provides a special method for calculating a  
4 deficiency or surplus when the secured party, a person related to  
5 the secured party (defined in Section 9-102 [Maine cite section  
6 9-1102]), or a secondary obligor acquires the collateral at a  
7 foreclosure disposition. It recognizes that when the foreclosing  
8 secured party or a related party is the transferee of the  
9 collateral, the secured party sometimes lacks the incentive to  
10 maximize the proceeds of disposition. As a consequence, the  
11 disposition may comply with the procedural requirements of this  
12 Article (e.g., it is conducted in a commercially reasonable  
13 manner following reasonable notice) but nevertheless fetch a low  
14 price.

16           Subsection (f) [Maine cite subsection (6)] adjusts for this  
17 lack of incentive. If the proceeds of a disposition of  
18 collateral to a secured party, a person related to the secured  
19 party, or a secondary obligor are "significantly below the range  
20 of proceeds that a complying disposition to a person other than  
21 the secured party, a person related to the secured party, or a  
22 secondary obligor would have brought," then instead of  
23 calculating a deficiency (or surplus) based on the actual net  
24 proceeds, the calculation is based upon the amount that would  
25 have been received in a commercially reasonable disposition to a  
26 person other than the secured party, a person related to the  
27 secured party, or a secondary obligor. Subsection (f) [Maine  
28 cite subsection (6)] thus rejects the view that the secured  
29 party's receipt of such a price necessarily constitutes  
30 noncompliance with Part 6. However, such a price may suggest the  
31 need for greater judicial scrutiny. See Section 9-610 [Maine  
32 cite section 9-1610], Comment 10.

34           7. "Person Related To." Section 9-102 [Maine cite section  
35 9-1102] defines "person related to." That term is a key element  
36 of the system provided in subsection (f) [Maine cite subsection  
37 (6)] for low-price dispositions. One part of the definition  
38 applies when the secured party is an individual, and the other  
39 applies when the secured party is an organization. The  
40 definition is patterned closely on the corresponding definition  
41 in Section 1.301(32) of the Uniform Consumer Credit Code.

42           **§9-1616. Explanation of calculation of surplus or deficiency**

44           (1) In this section:

46           (a) "Explanation" means a writing that:

48                   (i) States the amount of the surplus or deficiency;

50



2           (ii) Provides an explanation in accordance with  
3           subsection (3) of how the secured party calculated the  
4           surplus or deficiency;

6           (iii) States, if applicable, that future debits,  
7           credits, charges including additional credit service  
8           charges or interest, rebates and expenses may affect  
9           the amount of the surplus or deficiency; and

10          (iv) Provides a telephone number or mailing address  
11          from which additional information concerning the  
12          transaction is available; and

14          (b) "Request" means a record:

16           (i) Authenticated by a debtor or consumer obligor;

18           (ii) Requesting that the recipient provide an  
19           explanation; and

20           (iii) Sent after disposition of the collateral under  
21           section 9-1610.

24          (2) In a consumer-goods transaction in which the debtor is  
25          entitled to a surplus or a consumer obligor is liable for a  
26          deficiency under section 9-1615, the secured party shall:

28           (a) Send an explanation to the debtor or consumer obligor,  
29           as applicable, after the disposition and:

30           (i) Before or when the secured party accounts to the  
31           debtor and pays any surplus or first makes written  
32           demand on the consumer obligor after the disposition  
33           for payment of the deficiency; and

34           (ii) Within 14 days after receipt of a request; or

36           (b) In the case of a consumer obligor who is liable for a  
37           deficiency, within 14 days after receipt of a request, send  
38           to the consumer obligor a record waiving the secured party's  
39           right to a deficiency.

40          (3) To comply with subsection (1), paragraph (a),  
41          subparagraph (ii), a writing must provide the following  
42          information in the following order:

43           (a) The aggregate amount of obligations secured by the  
44           security interest under which the disposition was made and,  
45           if the amount reflects a rebate of unearned interest or  
46           if the amount reflects a rebate of unearned interest or  
47           if the amount reflects a rebate of unearned interest or  
48           if the amount reflects a rebate of unearned interest or

2 credit service charge, an indication of that fact,  
calculated as of a specified date:

4 (i) If the secured party takes or receives possession  
of the collateral after default, not more than 35 days  
6 before the secured party takes or receives possession;  
8 or

10 (ii) If the secured party takes or receives possession  
of the collateral before default or does not take  
12 possession of the collateral, not more than 35 days  
before the disposition;

14 (b) The amount of proceeds of the disposition;

16 (c) The aggregate amount of the obligations after deducting  
the amount of proceeds;

18 (d) The amount, in the aggregate or by type, and types of  
20 expenses, including expenses of retaking, holding, preparing  
for disposition, processing and disposing of the collateral,  
22 and attorney's fees secured by the collateral that are known  
to the secured party and relate to the current disposition;

24 (e) The amount, in the aggregate or by type, and types of  
26 credits, including rebates of interest or credit service  
charges, to which the obligor is known to be entitled and  
28 that are not reflected in the amount in paragraph (a); and

30 (f) The amount of the surplus or deficiency.

32 (4) A particular phrasing of the explanation is not  
required. An explanation complying substantially with the  
34 requirements of subsection (1) is sufficient, even if it includes  
minor errors that are not seriously misleading.

36 (5) A debtor or consumer obligor is entitled without charge  
38 to one response to a request under this section during any  
6-month period in which the secured party did not send to the  
40 debtor or consumer obligor an explanation pursuant to subsection  
(2), paragraph (a). The secured party may require payment of a  
42 charge not exceeding \$25 for each additional response.

44

#### Official Comment

46

1. Source. New.

48

50 2. Duty to Send Information Concerning Surplus or  
Deficiency. This section reflects the view that, in every

2 consumer-goods transaction, the debtor or obligor is entitled to  
3 know the amount of a surplus or deficiency and the basis upon  
4 which the surplus or deficiency was calculated. Under subsection  
5 (b)(1) [Maine cite subsection (2), paragraph (a)], a secured  
6 party is obligated to provide this information (an "explanation,"  
7 defined in subsection (a)(1) [Maine cite subsection (1),  
8 paragraph (a)]) no later than the time that it accounts for and  
9 pays a surplus or the time of its first written attempt to  
10 collect the deficiency. The obligor need not make a request for  
11 an accounting in order to receive an explanation. A secured  
12 party who does not attempt to collect a deficiency in writing or  
13 account for and pay a surplus has no obligation to send an  
14 explanation under subsection (b)(1) [Maine cite subsection (2),  
15 paragraph (a)] and, consequently, cannot be liable for  
16 noncompliance.

17 A debtor or secondary obligor need not wait until the  
18 secured party commences written collection efforts in order to  
19 receive an explanation of how a deficiency or surplus was  
20 calculated. Subsection (b)(2) [Maine cite subsection (2),  
21 paragraph (b)] obliges the secured party to send an explanation  
22 within 14 days after it receives a "request" (defined in  
23 subsection (a)(2) [Maine cite subsection (1), paragraph (b)]).

24  
25 3. Explanation of Calculation of Surplus or Deficiency.  
26 Subsection (c) [Maine cite subsection (3)] contains the  
27 requirements for how a calculation of a surplus or deficiency  
28 must be explained in order to satisfy subsection (a)(1)(B) [Maine  
29 cite subsection (1), paragraph (a), subparagraph (ii)]. It gives  
30 a secured party some discretion concerning rebates of interest or  
31 credit service charges. The secured party may include these  
32 rebates in the aggregate amount of obligations secured, under  
33 subsection (c)(1) [Maine cite subsection (3), paragraph (a)], or  
34 may include them with other types of rebates and credits under  
35 subsection (c)(5) [Maine cite subsection (3), paragraph (e)].  
36 Rebates of interest or credit service charges are the only types  
37 of rebates for which this discretion is provided. If the secured  
38 party provides an explanation that includes rebates of  
39 pre-computed interest, its explanation must so indicate. The  
40 expenses and attorney's fees to be described pursuant to  
41 subsection (c)(4) [Maine cite subsection (3), paragraph (d)] are  
42 those relating to the most recent disposition, not those that may  
43 have been incurred in connection with earlier enforcement efforts  
44 and which have been resolved by the parties.

45  
46 4. Liability for Noncompliance. A secured party who fails  
47 to comply with subsection (b)(2) [Maine cite subsection (2),  
48 paragraph (b)] is liable for any loss caused plus \$500. See  
49 Section 9-625(b), (c), (e)(6) [Maine cite section 9-1625,  
50 subsection (2), subsection (3), subsection (5), paragraph (f)].

2 A secured party who fails to send an explanation under subsection  
3 (b)(1) [Maine cite subsection (2), paragraph (a)] is liable for  
4 any loss caused plus, if the noncompliance was "part of a  
5 pattern, or consistent with a practice of noncompliance," \$500.  
6 See Section 9-625(b), (c), (e)(5) [Maine cite section 9-1625,  
7 subsection (2), subsection (3), subsection (5), paragraph (e)].  
8 However, a secured party who fails to comply with this section is  
9 not liable for statutory minimum damages under Section  
10 9-625(c)(2) [Maine cite section 9-1625, subsection (3), paragraph  
11 (b)]. See Section 9-628(d) [Maine cite section 9-1628,  
12 subsection (4)].

13 **§9-1617. Rights of transferee of collateral**

14 (1) A secured party's disposition of collateral after  
15 default:

16 (a) Transfers to a transferee for value all of the debtor's  
17 rights in the collateral;

18 (b) Discharges the security interest under which the  
19 disposition is made; and

20 (c) discharges any subordinate security interest or other  
21 subordinate lien.

22 (2) A transferee that acts in good faith takes free of the  
23 rights and interests described in subsection (1), even if the  
24 secured party fails to comply with this Article or the  
25 requirements of any judicial proceeding.

26 (3) If a transferee does not take free of the rights and  
27 interests described in subsection (1), the transferee takes the  
28 collateral subject to:

29 (a) The debtor's rights in the collateral;

30 (b) The security interest or agricultural lien under which  
31 the disposition is made; and

32 (c) Any security interest or other lien.

33 **Official Comment**

34 1. Source. Former Section 9504(4).

35 2. Title Taken by Good-Faith Transferee. Subsection (a)  
36 [Maine cite subsection (1)] sets forth the rights acquired by  
37 persons who qualify under subsection (b)-transferees [Maine cite  
38

2 subsection (2) - transferees] who act in good faith. Such a  
person is a "transferee," inasmuch as a buyer at a foreclosure  
4 sale does not meet the definition of "purchaser" in Section 1-201  
(the transfer is not, vis-a-vis the debtor, "voluntary"). By  
virtue of the expanded definition of the term "debtor" in Section  
6 9-102 [Maine cite section 9-1102], subsection (a) [Maine cite  
subsection (1)] makes clear that the ownership interest of a  
8 person who bought the collateral subject to the security interest  
is terminated by a subsequent disposition under this Part. Such  
10 a person is a debtor under this Article. Under former Article 9,  
the result arguably was the same, but the statute was less  
12 clear. Under subsection (a) [Maine cite subsection (1)], a  
disposition normally discharges the security interest being  
14 foreclosed and any subordinate security interests and other liens.

16 A disposition has the effect specified in subsection (a)  
[Maine cite subsection (1)], even if the secured party fails to  
18 comply with this Article. An aggrieved person (e.g., the holder  
of a subordinate security interest to whom a notification  
20 required by Section 9-611 [Maine cite section 9-1611] was not  
sent) has a right to recover any loss under Section 9-625(b)  
22 [Maine cite section 9-1625, subsection (2)].

24 3. Unitary Standard in Public and Private Dispositions.  
Subsection (b) [Maine cite subsection (2)] now contains a unitary  
26 standard that applies to transferees in both private and public  
dispositions--acting in good faith. However, this change from  
28 former Section 9-504(4) should not be interpreted to mean that a  
transferee acts in good faith even though it has knowledge of  
30 defects or buys in collusion, standards applicable to public  
dispositions under the former section. Properly understood,  
32 those standards were specific examples of the absence of good  
faith.

34 4. Title Taken by Nonqualifying Transferee. Subsection (c)  
36 [Maine cite subsection (3)] specifies the consequences for a  
transferee who does not qualify for protection under subsections  
38 (a) and (b) [Maine cite subsections (1) and (2)] (i.e., a  
transferee who does not act in good faith). The transferee takes  
40 subject to the rights of the debtor, the enforcing secured party,  
and other security interests or other liens.

42 **§9-1618. Rights and duties of certain secondary obligors**

44 (1) A secondary obligor acquires the rights and becomes  
46 obligated to perform the duties of the secured party after the  
secondary obligor:

48 (a) Receives an assignment of a secured obligation from the  
50 secured party;



2 subsection (a)(1) [Maine cite subsection (1), paragraph (a)] is  
not implicated. Similarly, subsection (a)(3) [Maine cite  
4 subsection (1), paragraph (c)] applies only when the secondary  
obligor is subrogated to the secured party's rights with respect  
6 to collateral. Thus, this subsection will not be implicated if a  
secondary obligor discharges the debtor's unsecured obligation  
8 for a post-disposition deficiency. Similarly, if the secured  
party disposes of some of the collateral and the secondary  
10 obligor thereafter discharges the remaining obligation,  
subsection (a) [Maine cite subsection (1)] applies only with  
12 respect to rights and duties concerning the remaining collateral,  
and, under subsection (b) [Maine cite subsection (2)], the  
subrogation is not a disposition of the remaining collateral.  
14

As discussed more fully in Comment 3, a secondary obligor  
16 may receive a transfer of collateral in a disposition under  
Section 9-610 [Maine cite section 9-1610] in exchange for a  
18 payment that is applied against the secured obligation.  
However, a secondary obligor who pays and receives a transfer of  
20 collateral does not necessarily become subrogated to the rights  
of the secured party as contemplated by subsection (a)(3) [Maine  
22 cite subsection (1), paragraph (c)]. Only to the extent the  
secondary obligor makes a payment in satisfaction of its  
24 secondary obligation would it become subrogated. To the extent  
its payment constitutes the price of the collateral in a Section  
26 9-610 [Maine cite section 9-1610] disposition by the secured  
party, the secondary obligor would not be subrogated. Thus, if  
28 the amount paid by the secondary obligor for the collateral in a  
Section 9-610 [Maine cite section 9-1610] disposition is itself  
30 insufficient to discharge the secured obligation, but the  
secondary obligor makes an additional payment that satisfies the  
32 remaining balance, the secondary obligor would be subrogated to  
the secured party's deficiency claim. However, the duties of the  
34 secured party as such would have come to an end with respect to  
that collateral. In some situations the capacity in which the  
36 payment is made may be unclear. Accordingly, the parties should  
in their relationship provide clear evidence of the nature and  
38 circumstances of the payment by the secondary obligor.

40 3. Transfer of Collateral to Secondary Obligor. It is  
possible for a secured party to transfer collateral to a  
42 secondary obligor in a transaction that is a disposition under  
Section 9-610 [Maine cite section 9-1610] and that establishes a  
44 surplus or deficiency under Section 9-615 [Maine cite section  
9-1615]. Indeed, this Article includes a special rule, in  
46 Section 9-615(f) [Maine cite section 9-1615, subsection (6)], for  
establishing a deficiency in the case of some dispositions to,  
48 inter alia, secondary obligors. This Article rejects the view,  
which some may have ascribed to former Section 9-504(5), that a  
50 transfer of collateral to a recourse party can never constitute a

2 disposition of collateral which discharges a security interest.  
3 Inasmuch as a secured party could itself buy collateral at its  
4 own public sale, it makes no sense to prohibit a recourse party  
ever from buying at the sale.

6 4. Timing and Scope of Obligations. Under subsection (a)  
7 [Maine cite subsection (1)], a recourse party acquires rights and  
8 incurs obligations only "after" one of the specified  
9 circumstances occurs. This makes clear that when a successor  
10 assignee, transferee, or subrogee becomes obligated it does not  
11 assume any liability for earlier actions or inactions of the  
12 secured party whom it has succeeded unless it agrees to do so.  
13 Once the successor becomes obligated, however, it is responsible  
14 for complying with the secured party's duties thereafter. For  
15 example, if the successor is in possession of collateral, then it  
16 has the duties specified in Section 9-207 [Maine cite section  
9-1207].

18 Under subsection (b) [Maine cite subsection (2)], the same  
19 event (assignment, transfer, or subrogation) that gives rise to  
20 rights to, and imposes obligations on, a successor relieves its  
21 predecessor of any further duties under this Article. For  
22 example, if the security interest is enforced after the secured  
23 obligation is assigned, the assignee-but not the assignor-has the  
24 duty to comply with this Part. Similarly, the assignment does  
25 not excuse the assignor from liability for failure to comply with  
26 duties that arose before the event or impose liability on the  
27 assignee for the assignor's failure to comply.

30 **§9-1619. Transfer of record or legal title**

32 (1) In this section, "transfer statement" means a record  
33 authenticated by a secured party stating:

34 (a) That the debtor has defaulted in connection with an  
35 obligation secured by specified collateral;

36 (b) That the secured party has exercised its post-default  
37 remedies with respect to the collateral;

38 (c) That, by reason of the exercise, a transferee has  
39 acquired the rights of the debtor in the collateral; and

40 (d) The name and mailing address of the secured party,  
41 debtor and transferee.

42 (2) A transfer statement entitles the transferee to the  
43 transfer of record of all rights of the debtor in the collateral  
44 specified in the statement in any official filing, recording,  
45 registration or certificate-of-title system covering the



2 collateral. If a transfer statement is presented with the  
3 applicable fee and request form to the official or office  
4 responsible for maintaining the system, the official or office  
5 shall:

6 (a) Accept the transfer statement;

8 (b) Promptly amend its records to reflect the transfer; and

10 (c) If applicable, issue a new appropriate certificate of  
11 title in the name of the transferee.

12 (3) A transfer of the record or legal title to collateral  
13 to a secured party under subsection (2) or otherwise is not of  
14 itself a disposition of collateral under this Article and does  
15 not of itself relieve the secured party of its duties under this  
16 Article.

18 **Official Comment**

20 1. Source. New.

22 2. Transfer of Record or Legal Title. Potential buyers of  
23 collateral that is covered by a certificate of title (e.g., an  
24 automobile) or is subject to a registration system (e.g., a  
25 copyright) typically require as a condition of their purchase  
26 that the certificate or registry reflect their ownership. In  
27 many cases, this condition can be met only with the consent of  
28 the record owner. If the record owner is the debtor and, as may  
29 be the case after the default, the debtor refuses to cooperate,  
30 the secured party may have great difficulty disposing of the  
31 collateral.

32 Subsection (b) [Maine cite subsection (2)] provides a simple  
33 mechanism for obtaining record or legal title, for use primarily  
34 when other law does not provide one. Of course, use of this  
35 mechanism will not be effective to clear title to the extent that  
36 subsection (b) [Maine cite subsection (2)] is preempted by  
37 federal law. Subsection (b) [Maine cite subsection (2)]  
38 contemplates a transfer of record or legal title to a third  
39 party, following a secured party's exercise of its disposition or  
40 acceptance remedies under this Part, as well as a transfer by a  
41 debtor to a secured party prior to the secured party's exercise  
42 of those remedies. Under subsection (c) [Maine cite subsection  
43 (3)], a transfer of record or legal title (under subsection (b)  
44 [Maine cite subsection (2)] or under other law) to a secured  
45 party prior to the exercise of those remedies merely puts the  
46 secured party in a position to pass legal or record title to a  
47 transferee at foreclosure. A secured party who has obtained  
48 record or legal title retains its duties with respect to  
49

2 enforcement of its security interest, and the debtor retains its  
rights as well.

4 3. Title-Clearing Systems Under Other Law. Applicable  
6 non-UCC law (e.g., a certificate-of-title statute, federal  
registry rules, or the like) may provide a means by which the  
8 secured party may obtain or transfer record or legal title for  
the purpose of a disposition of the property under this Article.  
10 The mechanism provided by this section is in addition to any  
title-clearing provision under law other than this Article.

12 **§9-1620. Acceptance of collateral in full or partial**  
14 **satisfaction of obligation; compulsory**  
**disposition of collateral**

16 (1) Except as otherwise provided in subsection (7), a  
18 secured party may accept collateral in full or partial  
satisfaction of the obligation it secures only if:

20 (a) The debtor consents to the acceptance under subsection  
22 (3);

24 (b) The secured party does not receive, within the time set  
forth in subsection (4), a notification of objection to the  
26 proposal authenticated by:

28 (i) A person to which the secured party was required  
to send a proposal under section 9-1621; or

30 (ii) Any other person, other than the debtor, holding  
32 an interest in the collateral subordinate to the  
security interest that is the subject of the proposal;

34 (c) If the collateral is consumer goods, the collateral is  
36 not in the possession of the debtor when the debtor consents  
to the acceptance; and

38 (d) Subsection (5) does not require the secured party to  
40 dispose of the collateral or the debtor waives the  
requirement pursuant to section 9-1624.

42 (2) A purported or apparent acceptance of collateral under  
44 this section is ineffective unless:

46 (a) The secured party consents to the acceptance in an  
authenticated record or sends a proposal to the debtor; and

48 (b) The conditions of subsection (1) are met.

50 (3) For purposes of this section:

2           (a) A debtor consents to an acceptance of collateral in  
4           partial satisfaction of the obligation it secures only if  
              the debtor agrees to the terms of the acceptance in a record  
6           authenticated after default; and

8           (b) A debtor consents to an acceptance of collateral in  
              full satisfaction of the obligation it secures only if the  
10           debtor agrees to the terms of the acceptance in a record  
              authenticated after default or the secured party:

12                   (i) Sends to the debtor after default a proposal that  
                    is unconditional or subject only to a condition that  
14                   collateral not in the possession of the secured party  
                    be preserved or maintained;

16                   (ii) In the proposal, proposes to accept collateral in  
18                   full satisfaction of the obligation it secures; and

20                   (iii) Does not receive a notification of objection  
22                   authenticated by the debtor within 20 days after the  
24                   proposal is sent.

26           (4) To be effective under subsection (1), paragraph (b), a  
              notification of objection must be received by the secured party:

28                   (a) In the case of a person to which the proposal was sent  
30                   pursuant to section 9-1621 within 20 days after notification  
                    was sent to that person; and

32                   (b) In other cases:

34                           (i) Within 20 days after the last notification was  
                            sent pursuant to section 9-1621; or

36                           (ii) If a notification was not sent, before the debtor  
38                           consents to the acceptance under subsection (3).

40           (5) A secured party that has taken possession of collateral  
42           shall dispose of the collateral pursuant to section 9-1610 within  
              the time specified in subsection (6) if:

44                   (a) Sixty percent of the cash price has been paid in the  
46                   case of a purchase-money security interest in consumer  
                    goods; or

48                   (b) Sixty percent of the principal amount of the obligation  
50                   secured has been paid in the case of a nonpurchase-money  
                    security interest in consumer goods.

2           (6) To comply with subsection (5), the secured party shall  
3 dispose of the collateral:

4           (a) Within 90 days after taking possession; or

5           (b) Within any longer period to which the debtor and all  
6 secondary obligors have agreed in an agreement to that  
7 effect entered into and authenticated after default.

8           (7) In a consumer transaction, a secured party may not  
9 accept collateral in partial satisfaction of the obligation it  
10 secures.

#### 11   Official Comment

12           1. Source. Former Section 9-505.

13           2. Overview. This section and the two sections following  
14 deal with strict foreclosure, a procedure by which the secured  
15 party acquires the debtor's interest in the collateral without  
16 the need for a sale or other disposition under Section 9-610  
17 [Maine cite section 9-1610]. Although these provisions derive  
18 from former Section 9-505, they have been entirely reorganized  
19 and substantially rewritten. The more straightforward approach  
20 taken in this Article eliminates the fiction that the secured  
21 party always will present a "proposal" for the retention of  
22 collateral and the debtor will have a fixed period to respond.  
23 By eliminating the need (but preserving the possibility) for  
24 proceeding in that fashion, this section eliminates much of the  
25 awkwardness of former Section 9-505. It reflects the belief that  
26 strict foreclosures should be encouraged and often will produce  
27 better results than a disposition for all concerned.

28           Subsection (a) [Maine cite subsection (1)] sets forth the  
29 conditions necessary to an effective acceptance (formerly,  
30 retention) of collateral in full or partial satisfaction of the  
31 secured obligation. Section 9-621 [Maine cite section 9-1621]  
32 requires in addition that a secured party who wishes to proceed  
33 under this section notify certain other persons who have or claim  
34 to have an interest in the collateral. Unlike the failure to  
35 meet the conditions in subsection (a) [Maine cite subsection  
36 (1)], under Section 9-622(b) [Maine cite section 9-1622,  
37 subsection (2)] the failure to comply with the notification  
38 requirement of Section 9-621 [Maine cite section 9-1621] does not  
39 render the acceptance of collateral ineffective. Rather, the  
40 acceptance can take effect notwithstanding the secured party's  
41 noncompliance. A person to whom the required notice was not sent  
42 has the right to recover damages under Section 9-625(b) [Maine  
43 cite section 9-1625, subsection (2)]. Section 9-622(a) [Maine  
44

2 cite section 9-1622, subsection (1)] sets forth the effect of an  
acceptance of collateral.

4 3. Conditions to Effective Acceptance. Subsection (a)  
6 [Maine cite subsection (1)] contains the conditions necessary to  
the effectiveness of an acceptance of collateral. Subsection  
8 (a)(1) [Maine cite subsection (1), paragraph (a)] requires the  
debtor's consent. Under subsections (c)(1) and (c)(2) [Maine  
10 cite subsection (3), paragraphs (a) and (b)], the debtor may  
consent by agreeing to the acceptance in writing after default.  
12 Subsection (c)(2) [Maine cite subsection (3), paragraph  
(b)] contains an alternative method by which to satisfy the  
14 debtor's-consent condition in subsection (a)(1) [Maine cite  
subsection (1), paragraph (a)]. It follows the  
16 proposal-and-objection model found in former Section 9-505: The  
debtor consents if the secured party sends a proposal to the  
18 debtor and does not receive an objection within 20 days. Under  
subsection (c)(1) [Maine cite subsection (3), paragraph (a)],  
20 however, that silence is not deemed to be consent with respect to  
acceptances in partial satisfaction. Thus, a secured party who  
22 wishes to conduct a "partial strict foreclosure" must obtain the  
debtor's agreement in a record authenticated after default. In  
24 all other respects, the conditions necessary to an effective  
partial strict foreclosure are the same as those governing  
26 acceptance of collateral in full satisfaction. (But see  
subsection (g) [Maine cite subsection (7)], prohibiting partial  
28 strict foreclosure of a security interest in consumer  
transactions.)

30 The time when a debtor consents to a strict foreclosure is  
significant in several circumstances under this section and the  
32 following one. See Sections 9-620(a)(1), (d)(2) [Maine cite  
section 9-1620, subsection (1), paragraph (a), subsection (4),  
34 paragraph (b)], 9-621(a)(1), (a)(2), (a)(3) [Maine cite section  
9-1621, subsection (1), paragraphs (a), (b) and (c)]. For  
36 purposes of determining the time of consent, a debtor's  
conditional consent constitutes consent.

38 Subsection (a)(2) [Maine cite subsection (1), paragraph (b)]  
40 contains the second condition to the effectiveness of an  
acceptance under this section-the absence of a timely objection  
42 from a person holding a junior interest in the collateral or from  
a secondary obligor. Any junior party-secured party or  
44 lienholder-is entitled to lodge an objection to a proposal, even  
if that person was not entitled to notification under Section  
46 9-621 [Maine cite section 9-1621]. Subsection (d) [Maine cite  
subsection (4)], discussed below, indicates when an objection is  
48 timely.

2 Subsections (a)(3) and (a)(4) [Maine cite subsection (1),  
paragraphs (c) and (d)] contain special rules for transactions in  
4 which consumers are involved. See Comment 12.

6 4. Proposals. Section 9-102 [Maine cite section 9-1102]  
defines the term "proposal." It is necessary to send a  
8 "proposal" to the debtor only if the debtor does not agree to an  
acceptance in an authenticated record as described in subsection  
10 (c)(1) or (c)(2)[Maine cite subsection (3), paragraph (a) or  
(b)]. Section 9-621(a) [Maine cite section 9-1621, subsection  
12 (1)] determines whether it is necessary to send a proposal to  
third parties. A proposal need not take any particular form as  
14 long as it sets forth the terms under which the secured party is  
willing to accept collateral in satisfaction. A proposal to  
16 accept collateral should specify the amount (or a means of  
calculating the amount, such as by including a per diem accrual  
18 figure) of the secured obligations to be satisfied, state the  
conditions (if any) under which the proposal may be revoked, and  
20 describe any other applicable conditions. Note, however, that a  
conditional proposal generally requires the debtor's agreement in  
22 order to take effect. See subsection (c) [Maine cite subsection  
(3)].

24 5. Secured Party's Agreement; No "Constructive" Strict  
Foreclosure. The conditions of subsection (a) [Maine cite  
26 subsection (1)] relate to actual or implied consent by the debtor  
and any secondary obligor or holder of a junior security interest  
28 or lien. To ensure that the debtor cannot unilaterally cause an  
acceptance of collateral, subsection (b) [Maine cite subsection  
30 (2)] provides that compliance with these conditions is necessary  
but not sufficient to cause an acceptance of collateral. Rather,  
32 under subsection (b) [Maine cite subsection (2)], acceptance does  
not occur unless, in addition, the secured party consents to the  
34 acceptance in an authenticated record or sends to the debtor a  
proposal. For this reason, a mere delay in collection or  
36 disposition of collateral does not constitute a "constructive"  
strict foreclosure. Instead, delay is a factor relating to  
38 whether the secured party acted in a commercially reasonable  
manner for purposes of Section 9-607 or 9-610 [Maine cite section  
40 9-1607 or section 9-1610]. A debtor's voluntary surrender of  
collateral to a secured party and the secured party's acceptance  
42 of possession of the collateral does not, of itself, necessarily  
raise an implication that the secured party intends or is  
44 proposing to accept the collateral in satisfaction of the secured  
obligation under this section.

46 6. When Acceptance Occurs. This section does not impose  
48 any formalities or identify any steps that a secured party must  
take in order to accept collateral once the conditions of  
50 subsections (a) and (b) [Maine cite subsections (1) and (2)] have

2 been met. Absent facts or circumstances indicating a contrary  
4 intention, the fact that the conditions have been met provides a  
6 sufficient indication that the secured party has accepted the  
8 collateral on the terms to which the secured party has consented  
10 or proposed and the debtor has consented or failed to object.  
12 Following a proposal, acceptance of the collateral normally is  
14 automatic upon the secured party's becoming bound and the time  
16 for objection passing. As a matter of good business practice, an  
enforcing secured party may wish to memorialize its acceptance  
following a proposal, such as by notifying the debtor that the  
strict foreclosure is effective or by placing a written record to  
that effect in its files. The secured party's agreement to  
accept collateral is self-executing and cannot be breached. The  
secured party is bound by its agreement to accept collateral and  
by any proposal to which the debtor consents.

18 7. No Possession Requirement. This section eliminates the  
20 requirement in former Section 9-505 that the secured party be "in  
22 possession" of collateral. It clarifies that intangible  
24 collateral, which cannot be possessed, may be subject to a strict  
foreclosure under this section. However, under subsection (a)(3)  
[Maine cite subsection (1), paragraph (c)], if the collateral is  
consumer goods, acceptance does not occur unless the debtor is  
not in possession.

26 8. When Objection Timely. Subsection (d) [Maine cite  
28 subsection (4)] explains when an objection is timely and thus  
prevents an acceptance of collateral from taking effect. An  
objection by a person to which notification was sent under  
30 Section 9-621 [Maine cite section 9-1621] is effective if it is  
received by the secured party within 20 days from the date the  
32 notification was sent to that person. Other objecting parties  
(i.e., third parties who are not entitled to notification) may  
34 object at any time within 20 days after the last notification is  
sent under Section 9-621 [Maine cite section 9-1621]. If no such  
36 notification is sent, third parties must object before the debtor  
agrees to the acceptance in writing or is deemed to have  
38 consented by silence. The former may occur any time after  
default, and the latter requires a 20day waiting period. See  
40 subsection (c) [Maine cite subsection (3)].

42 9. Applicability of Other Law. This section does not  
44 purport to regulate all aspects of the transaction by which a  
secured party may become the owner of collateral previously owned  
46 by the debtor. For example, a secured party's acceptance of a  
motor vehicle in satisfaction of secured obligations may require  
48 compliance with the applicable motor vehicle certificate-of-title  
law. State legislatures should conform those laws so that they  
50 mesh well with this section and Section 9-610 [Maine cite section  
9-1610], and courts should construe those laws and this section

2 harmoniously. A secured party's acceptance of collateral in the  
possession of the debtor also may implicate statutes dealing with  
4 a seller's retention of possession of goods sold.

6 10. Accounts, Chattel Paper, Payment Intangibles, and  
Promissory Notes. If the collateral is accounts, chattel paper,  
8 payment intangibles, or promissory notes, then a secured party's  
acceptance of the collateral in satisfaction of secured  
10 obligations would constitute a sale to the secured party. That  
sale normally would give rise to a new security interest (the  
12 ownership interest) under Sections 1-201(37) and 9-109 [Maine  
cite section 9-1109]. In the case of accounts and chattel paper,  
14 the new security interest would remain perfected by a filing that  
was effective to perfect the secured party's original security  
16 interest. In the case of payment intangibles or promissory  
notes, the security interest would be perfected when it  
18 attaches. See Section 9-309 [Maine cite 9-1309]. However, the  
procedures for acceptance of collateral under this section  
20 satisfy all necessary formalities and a new security agreement  
authenticated by the debtor would not be necessary.

22 11. Role of Good Faith. Section 1-203 imposes an  
obligation of good faith on a secured party's enforcement under  
24 this Article. This obligation may not be disclaimed by  
agreement. See Section 1-102. Thus, a proposal and acceptance  
26 made under this section in bad faith would not be effective. For  
example, a secured party's proposal to accept marketable  
28 securities worth \$1,000 in full satisfaction of indebtedness in  
the amount of \$100, made in the hopes that the debtor might  
30 inadvertently fail to object, would be made in bad faith. On the  
other hand, in the normal case proposals and acceptances should  
32 be not second-guessed on the basis of the "value" of the  
collateral involved. Disputes about valuation or even a clear  
34 excess of collateral value over the amount of obligations  
satisfied do not necessarily demonstrate the absence of good  
36 faith.

38 12. Special Rules in Consumer Cases. Subsection (e) [Maine  
cite subsection (5)] imposes an obligation on the secured party  
40 to dispose of consumer goods under certain circumstances.  
Subsection (f) [Maine cite subsection (6)] explains when a  
42 disposition that is required under subsection (e) [Maine cite  
subsection (5)] is timely. An effective acceptance of collateral  
44 cannot occur if subsection (e) [Maine cite subsection (5)]  
requires a disposition unless the debtor waives this requirement  
46 pursuant to Section 9-624(b) [Maine cite section 9-1624,  
subsection (2)]. Moreover, a secured party who takes possession  
48 of collateral and unreasonably delays disposition violates  
subsection (e) [Maine cite subsection (5)], if applicable, and  
50 may also violate Section 9-610 [Maine cite section 9-1610] or



2 other provisions of this Part. Subsection (e) [Maine cite  
3 subsection (5)] eliminates as superfluous the express statutory  
4 reference to "conversion" found in former Section 9-505.  
5 Remedies available under other law, including conversion, remain  
6 available under this Article in appropriate cases. See Sections  
7 1-103, 1-106.

8 Subsection (g) [Maine cite subsection (7)] prohibits  
9 the secured party in consumer transactions from accepting  
10 collateral in partial satisfaction of the obligation it secures.  
11 If a secured party attempts an acceptance in partial satisfaction  
12 in a consumer transaction, the attempted acceptance is void.

14 **§9-1621. Notification of proposal to accept collateral**

16 (1) A secured party that desires to accept collateral in  
17 full or partial satisfaction of the obligation it secures shall  
18 send its proposal to:

20 (a) Any person from which the secured party has received,  
21 before the debtor consented to the acceptance, an  
22 authenticated notification of a claim of an interest in the  
23 collateral;

24 (b) Any other secured party or lienholder that, 10 days  
25 before the debtor consented to the acceptance, held a  
26 security interest in or other lien on the collateral  
27 perfected by the filing of a financing statement that:

30 (i) Identified the collateral;

32 (ii) Was indexed under the debtor's name as of that  
33 date; and

34 (iii) Was filed in the office or offices in which to  
35 file a financing statement against the debtor covering  
36 the collateral as of that date; and

37 (c) Any other secured party that, 10 days before the debtor  
38 consented to the acceptance, held a security interest in the  
39 collateral perfected by compliance with a statute,  
40 regulation or treaty described in section 9-1311, subsection  
41 (1).

42 (2) A secured party that desires to accept collateral in  
43 partial satisfaction of the obligation it secures shall send its  
44 proposal to any secondary obligor in addition to the persons  
45 described in subsection (1).

50 **Official Comment**

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1. Source. Former Section 9-505.

2. Notification Requirement. Subsection (a) [Maine cite subsection (1)] specifies three classes of competing claimants to whom the secured party must send notification of its proposal: (i) those who notify the secured party that they claim an interest in the collateral, (ii) holders of certain security interests and liens who have filed against the debtor, and (iii) holders of certain security interests who have perfected by compliance with a statute (including a certificate-of-title statute), regulation, or treaty described in Section 9-311(a) [Maine cite section 9-1311, subsection (1)]. With regard to (ii), see Section 9-611 [Maine cite section 9-1611], Comment 4. Subsection (b) [Maine cite subsection (2)] also requires notification to any secondary obligor if the proposal is for acceptance in partial satisfaction.

Unlike Section 9-611 [Maine cite section 9-1611], this section contains no "safe harbor," which excuses an enforcing secured party from notifying certain secured parties and other lienholders. This is because, unlike Section 9-610 [Maine section 9-1610], which requires that a disposition of collateral be commercially reasonable, Section 9-620 [Maine cite section 9-1620] permits the debtor and secured party to set the amount of credit the debtor will receive for the collateral subject only to the requirement of good faith. An effective acceptance discharges subordinate security interests and other subordinate liens. See Section 9-622 [Maine cite section 9-1622]. If collateral is subject to several liens securing debts much larger than the value of the collateral, the debtor may be disinclined to refrain from consenting to an acceptance by the holder of the senior security interest, even though, had the debtor objected and the senior disposed of the collateral under Section 9-610 [Maine cite section 9-1610], the collateral may have yielded more than enough to satisfy the senior security interest (but not enough to satisfy all the liens). Accordingly, this section imposes upon the enforcing secured party the risk of the filing office's errors and delay. The holder of a security interest who is entitled to notification under this section but does not receive it has the right to recover under Section 9-625(b) [Maine cite section 9-1625, subsection (2)] any loss resulting from the enforcing secured party's noncompliance with this section.

**§9-1622. Effect of acceptance of collateral**

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:



2 complies with this Article. Thus, subordinate interests are  
3 discharged regardless of whether a proposal was required to be  
4 sent or, if required, was sent. However, a secured party's  
5 failure to send a proposal or otherwise to comply with this  
6 Article may subject the secured party to liability under Section  
7 9-625 [Maine cite section 9-1625].

8 **§9-1623. Right to redeem collateral**

10 (1) A debtor, any secondary obligor or any other secured  
11 party or lienholder may redeem collateral.

12 (2) To redeem collateral, a person shall tender:

14 (a) Fulfillment of all obligations secured by the  
15 collateral; and

16 (b) The reasonable expenses and attorney's fees described  
17 in section 9-1615, subsection (1), paragraph (a).

18 (3) A redemption may occur at any time before a secured  
19 party:

20 (a) Has collected collateral under section 9-1607;

21 (b) Has disposed of collateral or entered into a contract  
22 for its disposition under section 9-1610; or

23 (c) Has accepted collateral in full or partial satisfaction  
24 of the obligation it secures under section 9-1622.

25 **Official Comment**

26 1. Source. Former Section 9-506.

27 2. Redemption Right. Under this section, as under former  
28 Section 9-506, the debtor or another secured party may redeem  
29 collateral as long as the secured party has not collected  
30 (Section 9-607 [Maine cite section 9-1607]), disposed of or  
31 contracted for the disposition of (Section 9-610 [Maine cite  
32 section 9-1610]), or accepted (Section 9-620 [Maine cite section  
33 9-1620]) the collateral. Although this section generally follows  
34 former Section 9506, it extends the right of redemption to  
35 holders of nonconsensual liens. To redeem the collateral a  
36 person must tender fulfillment of all obligations secured, plus  
37 certain expenses. If the entire balance of a secured obligation  
38 has been accelerated, it would be necessary to tender the entire  
39 balance. A tender of fulfillment obviously means more than a new  
40 promise to perform an existing promise. It requires payment in  
41 full of all monetary obligations then due and performance in full  
42

2 of all other obligations then matured. If unmatured secured  
obligations remain, the security interest continues to secure  
them (i.e., as if there had been no default).

4  
6 3. Redemption of Remaining Collateral Following Partial  
Enforcement. Under Section 9-610 [Maine cite section 9-1610] a  
secured party may make successive dispositions of portions of its  
8 collateral. These dispositions would not affect the debtor's,  
another secured party's, or a lienholder's right to redeem the  
10 remaining collateral.

12 4. Effect of "Repledging." Section 9-207 [Maine cite  
section 9-1207] generally permits a secured party having  
14 possession or control of collateral to create a security interest  
in the collateral. As explained in the Comments to that section,  
16 the debtor's right (as opposed to its practical ability) to  
redeem collateral is not affected by, and does not affect, the  
18 priority of a security interest created by the debtor's secured  
party.

20 **§9-1624. Waiver**

22  
24 (1) A debtor or secondary obligor may waive the right to  
notification of disposition of collateral under section 9-1611  
only by an agreement to that effect entered into and  
26 authenticated after default.

28 (2) A debtor may waive the right to require disposition of  
collateral under section 9-1620, subsection (5) only by an  
30 agreement to that effect entered into and authenticated after  
default.

32  
34 (3) Except in a consumer-goods transaction, a debtor or  
secondary obligor may waive the right to redeem collateral under  
section 9-1623 only by an agreement to that effect entered into  
36 and authenticated after default.

38 **Official Comment**

40 1. Source. Former Sections 9-504(3), 9-505, 9-506.

42 2. Waiver. This section is a limited exception to Section  
9-602 [Maine cite section 9-1602], which generally prohibits  
44 waiver by debtors and obligors. It makes no provision for waiver  
of the rule prohibiting a secured party from buying at its own  
46 private disposition. Transactions of this kind are equivalent to  
"strict foreclosures" and are governed by Sections 9-620, 9-621,  
48 and 9-622 [Maine cite sections 9-1620, 9-1621 and 9-1622].

50 **SUBPART 2**

**NONCOMPLIANCE WITH ARTICLE**

**§9-1625. Remedies for secured party's failure to comply with Article**

(1) If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4) and (6), a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply with a request under section 9-1210 may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in section 9-1628:

(a) A person that, at the time of the failure, was a debtor, was an obligor or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under section 9-1626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9-1626 may not otherwise recover under subsection (2) for noncompliance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(a) Fails to comply with section 9-1208;

(b) Fails to comply with section 9-1209;

(c) Files a record that the person is not entitled to file under section 9-1509, subsection (1);

2 (d) Fails to cause the secured party of record to file or  
3 send a termination statement as required by section 9-1513,  
4 subsection (1) or (3);

5 (e) Fails to comply with section 9-1616, subsection (2),  
6 paragraph (a) and whose failure is part of a pattern, or  
7 consistent with a practice, of noncompliance; or

8 (f) Fails to comply with section 9-1616, subsection (2),  
9 paragraph (b).

10  
11 (6) A debtor or consumer obligor may recover damages under  
12 subsection (2) and, in addition, \$500 in each case from a person  
13 that, without reasonable cause, fails to comply with a request  
14 under section 9-1210. A recipient of a request under section  
15 9-1210 that never claimed an interest in the collateral or  
16 obligations that are the subject of a request under that section  
17 has a reasonable excuse for failure to comply with the request  
18 within the meaning of this subsection.

19  
20 (7) If a secured party fails to comply with a request  
21 regarding a list of collateral or a statement of account under  
22 section 9-1210, the secured party may claim a security interest  
23 only as shown in the statement included in the request as against  
24 a person that is reasonably misled by the failure.

#### 25 **Official Comment**

26  
27 1. Source. Former Section 9-507.

28  
29 2. Remedies for Noncompliance; Scope. Subsections (a) and  
30 (b) [Maine cite subsections (1) and (2)] provide the basic  
31 remedies afforded to those aggrieved by a secured party's failure  
32 to comply with this Article. Like all provisions that create  
33 liability, they are subject to Section 9-628 [Maine cite section  
34 9-1628], which should be read in conjunction with Section 9-605  
35 [Maine cite section 9-1605]. The principal limitations under  
36 this Part on a secured party's right to enforce its security  
37 interest against collateral are the requirements that it proceed  
38 in good faith (Section 1-203), in a commercially reasonable  
39 manner (Sections 9-607 and 9-610 [Maine cite sections 9-1607 and  
40 9-1610]), and, in most cases, with reasonable notification  
41 (Sections 9-611 through 9-614 [Maine cite sections 9-1611 to  
42 9-1614]). Following former Section 9-507, under subsection (a)  
43 [Maine cite subsection (1)] an aggrieved person may seek  
44 injunctive relief, and under subsection (b) [Maine cite  
45 subsection (2)] the person may recover damages for losses caused  
46 by noncompliance. Unlike former Section 9-507, however,  
47 subsections (a) and (b) [Maine cite subsections (1) and (2)] are  
48 not limited to noncompliance with provisions of this Part of  
49  
50

2 Article 9 [Maine cite Article 9-A]. Rather, they apply to  
3 noncompliance with any provision of this Article. The change  
4 makes this section applicable to noncompliance with Sections  
5 9-207 [Maine cite section 9-1207] (duties of secured party in  
6 possession of collateral), 9-208 [Maine cite section 9-1208]  
7 (duties of secured party having control over deposit account),  
8 9-209 [Maine cite section 9-1209] (duties of secured party if  
9 account debtor has been notified of an assignment), 9-210 [Maine  
10 cite section 9-1210] (duty to comply with request for accounting,  
11 etc.), 9-509(a) [Maine cite section 9-1509, subsection (1)] (duty  
12 to refrain from filing unauthorized financing statement), and  
13 9-513(a) or (c) [Maine cite section 9-1513, subsection (1) or  
14 (3)] (duty to provide termination statement). Subsection (a)  
15 [Maine cite subsection (1)] also modifies the first sentence of  
16 former Section 9-507(1) by adding the references to "collection"  
17 and "enforcement." Subsection (c)(2) [Maine cite subsection (3),  
18 paragraph (b)], which gives a minimum damage recovery in  
19 consumer-goods transactions, applies only to noncompliance with  
20 the provisions of this Part.

21  
22 3. Damages for Noncompliance with This Article. Subsection  
23 (b) [Maine cite subsection (2)] sets forth the basic remedy for  
24 failure to comply with the requirements of this Article: a  
25 damage recovery in the amount of loss caused by the  
26 noncompliance. Subsection (c) [Maine cite subsection (3)]  
27 identifies who may recover under subsection (b) [Maine cite  
28 subsection (2)]. It affords a remedy to any aggrieved person who  
29 is a debtor or obligor. However, a principal obligor who is not  
30 a debtor may recover damages only for noncompliance with Section  
31 9-616 [Maine cite section 9-1616], inasmuch as none of the other  
32 rights and duties in this Article run in favor of such a  
33 principal obligor. Such a principal obligor could not suffer any  
34 loss or damage on account of noncompliance with rights or duties  
35 of which it is not a beneficiary. Subsection (c) [Maine cite  
36 subsection (3)] also affords a remedy to an aggrieved person who  
37 holds a competing security interest or other lien, regardless of  
38 whether the aggrieved person is entitled to notification under  
39 Part 6. The remedy is available even to holders of senior  
40 security interests and other liens. The exercise of this remedy  
41 is subject to the normal rules of pleading and proof. A person  
42 who has delegated the duties of a secured party but who remains  
43 obligated to perform them is liable under this subsection. The  
44 last sentence of subsection (d) [Maine cite subsection (4)]  
45 eliminates the possibility of double recovery or other  
46 over-compensation arising out of a reduction or elimination of a  
47 deficiency under Section 9-626 [Maine cite section 9-1626], based  
48 on noncompliance with the provisions of this Part relating to  
49 collection, enforcement, disposition, or acceptance. Assuming no  
50 double recovery, a debtor whose deficiency is eliminated under  
Section 9-626 [Maine cite section 9-1626] may pursue a claim for



2 a surplus. Because Section 9-626 [Maine cite section 9-1626]  
4 does not apply to consumer transactions, the statute is silent as  
to whether a double recovery or other over-compensation is  
possible in a consumer transaction.

6 Damages for violation of the requirements of this Article,  
8 including Section 9-609 [Maine cite section 9-1609], are those  
reasonably calculated to put an eligible claimant in the position  
10 that it would have occupied had no violation occurred. See  
12 Section 1-106. Subsection (b) [Maine cite subsection (2)]  
supports the recovery of actual damages for committing a breach  
14 of the peace in violation of Section 9-609 [Maine cite section  
9-1609], and principles of tort law supplement this subsection.  
16 See Section 1-103. However, to the extent that damages in tort  
compensate the debtor for the same loss dealt with by this  
Article, the debtor should be entitled to only one recovery.

18 4. Minimum Damages in Consumer-Goods Transactions.  
20 Subsection (c)(2) [Maine cite subsection (3), paragraph (b)]  
provides a minimum, statutory, damage recovery for a debtor and  
22 secondary obligor in a consumer-goods transaction. It is  
patterned on former Section 9-507(1) and is designed to ensure  
24 that every noncompliance with the requirements of Part 6 in a  
consumer-goods transaction results in liability, regardless of  
26 any injury that may have resulted. Subsection (c)(2) [Maine cite  
subsection (3), paragraph (b)] leaves the treatment of statutory  
28 damages as it was under former Article 9. A secured party is not  
liable for statutory damages under this subsection more than once  
30 with respect to any one secured obligation. See Section 9-628(e)  
[Maine cite section 9-1628, subsection (5)]. Nor is a secured  
32 party liable under this subsection for failure to comply with  
Section 9-616 [Maine cite section 9-1616]. See Section 9-628(d)  
34 [Maine cite section 9-1628, subsection (4)].

36 Following former Section 9-507(1), this Article does not  
include a definition or explanation of the terms "credit service  
38 charge," "principal amount," "time-price differential," or "cash  
price," as used in subsection (c)(2) [Maine cite subsection (3),  
40 paragraph (b)]. It leaves their construction and application to  
the court, taking into account the subsection's purpose of  
42 providing a minimum recovery in consumer-goods transactions.

44 5. Supplemental Damages. Subsections (e) and (f) [Maine  
cite subsections (5) and (6)] provide damages that supplement the  
46 recovery, if any, under subsection (b) [Maine cite subsection  
(2)]. Subsection (e) [Maine cite subsection (5)] imposes an  
48 additional \$500 liability upon a person who fails to comply with  
the provisions specified in that subsection, and subsection (f)  
50 [Maine cite subsection (6)] imposes like damages on a person who,  
without reasonable excuse, fails to comply with a request for an

2 accounting or a request regarding a list of collateral or  
statement of account under Section 9-210 [Maine cite section  
4 9-1210]. However, under subsection (f) [Maine cite subsection  
6 (6)], a person has a reasonable excuse for the failure if the  
person never claimed an interest in the collateral or obligations  
that were the subject of the request.

8 6. Estoppel. Subsection (g) [Maine cite subsection (7)]  
limits the extent to which a secured party who fails to comply  
10 with a request regarding a list of collateral or statement of  
account may claim a security interest.

12 **§9-1626. Action in which deficiency or surplus is in issue**

14 (1) In an action arising from a transaction, other than a  
16 consumer transaction, in which the amount of a deficiency or  
surplus is in issue, the following rules apply.

18 (a) A secured party need not prove compliance with the  
20 provisions of this part relating to collection, enforcement,  
disposition or acceptance unless the debtor or a secondary  
22 obligor places the secured party's compliance in issue.

24 (b) If the secured party's compliance is placed in issue,  
26 the secured party has the burden of establishing that the  
collection, enforcement, disposition or acceptance was  
28 conducted in accordance with this part.

30 (c) Except as otherwise provided in section 9-1628, if a  
secured party fails to prove that the collection,  
32 enforcement, disposition or acceptance was conducted in  
accordance with the provisions of this part relating to  
34 collection, enforcement, disposition or acceptance, the  
liability of a debtor or a secondary obligor for a  
36 deficiency is limited to an amount by which the sum of the  
secured obligation, expenses and attorney's fees exceeds the  
38 greater of:

40 (i) The proceeds of the collection, enforcement,  
disposition or acceptance; or

42 (ii) The amount of proceeds that would have been  
44 realized had the noncomplying secured party proceeded  
in accordance with the provisions of this part relating  
46 to collection, enforcement, disposition or acceptance.

48 (d) For purposes of paragraph (c), subparagraph (ii), the  
amount of proceeds that would have been realized is equal to  
the sum of the secured obligation, expenses and attorney's



2 transactions other than consumer transactions. Under paragraph  
3 (1) [Maine cite paragraph (a)], the secured party need not prove  
4 compliance with the relevant provisions of this Part as part of  
5 its prima facie case. If, however, the debtor or a secondary  
6 obligor raises the issue (in accordance with the forum's rules of  
7 pleading and practice), then the secured party bears the burden  
8 of proving that the collection, enforcement, disposition, or  
9 acceptance complied. In the event the secured party is unable to  
10 meet this burden, then paragraph (3) [Maine cite paragraph (c)]  
11 explains how to calculate the deficiency. Under this rebuttable  
12 presumption rule, the debtor or obligor is to be credited with  
13 the greater of the actual proceeds of the disposition or the  
14 proceeds that would have been realized had the secured party  
15 complied with the relevant provisions. If a deficiency remains,  
16 then the secured party is entitled to recover it. The references  
17 to "the secured obligation, expenses, and attorney's fees" in  
18 paragraphs (3) and (4) [Maine cite paragraphs (c) and (d)]  
19 embrace the application rules in Sections 9-608(a) and 9-615(a)  
20 [Maine cite section 9-1608, subsection (1) and section 9-1615,  
21 subsection (1)].

22 Unless the secured party proves that compliance with the  
23 relevant provisions would have yielded a smaller amount, under  
24 paragraph (4) [Maine cite paragraph (d)] the amount that a  
25 complying collection, enforcement, or disposition would have  
26 yielded is deemed to be equal to the amount of the secured  
27 obligation, together with expenses and attorney's fees. Thus,  
28 the secured party may not recover any deficiency unless it meets  
29 this burden.

30  
31 4. Consumer Transactions. Although subsection (a) [Maine  
32 cite subsection (1)] adopts a version of the rebuttable  
33 presumption rule for transactions other than consumer  
34 transactions, with certain exceptions Part 6 does not specify the  
35 effect of a secured party's noncompliance in consumer  
36 transactions. (The exceptions are the provisions for the  
37 recovery of damages in Section 9-625 [Maine cite section  
38 9-1625].) Subsection (b) [Maine cite section (2)] provides that  
39 the limitation of subsection (a) [Maine cite subsection (1)] to  
40 transactions other than consumer transactions is intended to  
41 leave to the court the determination of the proper rules in  
42 consumer transactions. It also instructs the court not to draw  
43 any inference from the limitation as to the proper rules for  
44 consumer transactions and leaves the court free to continue to  
45 apply established approaches to those transactions.

46  
47 Courts construing former Section 9-507 disagreed about the  
48 consequences of a secured party's failure to comply with the  
49 requirements of former Part 5. Three general approaches  
50 emerged. Some courts have held that a noncomplying secured party

2 may not recover a deficiency (the "absolute bar" rule). A few  
3 courts held that the debtor can offset against a claim to a  
4 deficiency all damages recoverable under former Section 9-507  
5 resulting from the secured party's noncompliance (the "offset"  
6 rule). A plurality of courts considering the issue held that the  
7 noncomplying secured party is barred from recovering a deficiency  
8 unless it overcomes a rebuttable presumption that compliance with  
9 former Part 5 would have yielded an amount sufficient to satisfy  
10 the secured debt. In addition to the nonuniformity resulting  
11 from court decisions, some States enacted special rules governing  
12 the availability of deficiencies.

13  
14 5. Burden of Proof When Section 9-615(f) [Maine cite  
15 section 9-1615, subsection (6)] Applies. In a non-consumer  
16 transaction, subsection (a)(5) [Maine cite subsection (1),  
17 paragraph (e)] imposes upon a debtor or obligor the burden of  
18 proving that the proceeds of a disposition are so low that, under  
19 Section 9-615(f) [Maine cite section 9-1615, subsection (6)], the  
20 actual proceeds should not serve as the basis upon which a  
21 deficiency or surplus is calculated. Were the burden placed on  
22 the secured party, then debtors might be encouraged to challenge  
23 the price received in every disposition to the secured party, a  
24 person related to the secured party, or a secondary obligor.

25  
26 6. Delay in Applying This Section. There is an inevitable  
27 delay between the time a secured party engages in a noncomplying  
28 collection, enforcement, disposition, or acceptance and the time  
29 of a subsequent judicial determination that the secured party did  
30 not comply with Part 6. During the interim, the secured party,  
31 believing that the secured obligation is larger than it  
32 ultimately is determined to be, may continue to enforce its  
33 security interest in collateral. If some or all of the secured  
34 indebtedness ultimately is discharged under this section, a  
35 reasonable application of this section would impose liability on  
36 the secured party for the amount of any excess, unwarranted  
recoveries but would not make the enforcement efforts wrongful.

37 **§9-1627. Determination of whether conduct was commercially**  
38 **reasonable**

39  
40 (1) The fact that a greater amount could have been obtained  
41 by a collection, enforcement, disposition or acceptance at a  
42 different time or in a different method from that selected by the  
43 secured party is not of itself sufficient to preclude the secured  
44 party from establishing that the collection, enforcement,  
45 disposition or acceptance was made in a commercially reasonable  
46 manner.

47  
48 (2) A disposition of collateral is made in a commercially  
49 reasonable manner if the disposition is made:



2 related to the secured party, or a secondary obligor. It  
contains a special rule for calculating a deficiency or surplus  
4 in a complying disposition that yields a price that is  
"significantly below the range of proceeds that a complying  
6 disposition to a person other than the secured party, a person  
related to the secured party, or a secondary obligor would have  
brought."

8  
3. Determination of Commercial Reasonableness; Advance  
10 Approval. It is important to make clear the conduct and  
procedures that are commercially reasonable and to provide a  
12 secured party with the means of obtaining, by court order or  
negotiation with a creditors' committee or a representative of  
14 creditors, advance approval of a proposed method of enforcement  
as commercially reasonable. This section contains rules that  
16 assist in that determination and provides for advance approval in  
appropriate situations. However, none of the specific methods of  
18 disposition specified in subsection (b) [Maine cite subsection  
(2)] is required or exclusive.

20  
4. "Recognized Market." As in Sections 9-610(c) and  
22 9-611(d) [Maine cite section 9-1610, subsection (3) and section  
9-1611, subsection (4)], the concept of a "recognized market" in  
24 subsections (b)(1) and (2) [Maine cite subsection (1), paragraphs  
(a) and (b)] is quite limited; it applies only to markets in  
26 which there are standardized price quotations for property that  
is essentially fungible, such as stock exchanges.

28  
**§9-1628. Nonliability and limitation on liability of secured  
30 party; liability of secondary obligor**

32 (1) Unless a secured party knows that a person is a debtor  
or obligor, knows the identity of the person and knows how to  
34 communicate with the person:

36 (a) The secured party is not liable to the person or to a  
secured party or lienholder that has filed a financing  
38 statement against the person for failure to comply with this  
Article; and

40 (b) The secured party's failure to comply with this Article  
42 does not affect the liability of the person for a deficiency.

44 (2) A secured party is not liable because of its status as  
secured party:

46 (a) To a person that is a debtor or obligor, unless the  
48 secured party knows:

50 (i) That the person is a debtor or obligor;





2 if the secured party's belief is based on its reasonable reliance  
on a representation of the type specified in subsection (c)(1) or  
4 (c)(2) [Maine cite subsection (3), paragraph (1) or (2)], then  
this Article should be applied as if the facts reasonably  
6 believed and reasonably relied upon were true. For example, if a  
secured party reasonably believed that a transaction was a  
8 non-consumer transaction and its belief was based on reasonable  
reliance on the debtor's misrepresentation that the collateral  
10 secured an obligation incurred for business purposes, the  
rebuttable presumption rule would apply under 9-626(b) [Maine  
12 cite section 9-1626, subsection (2)]. Of course, if the secured  
party's belief is not reasonable or, even if reasonable, is not  
14 based on reasonable reliance on the debtor's misrepresentation,  
this limitation on liability is inapplicable.

16 3. Inapplicability of Statutory Damages to Section 9-616,  
Subsection (d) [Maine cite section 9-1616, subsection (4)]  
18 excludes noncompliance with Section 9-616 [Maine cite section  
9-1616] entirely from the scope of statutory damage liability  
20 under Section 9-625(c)(2) [Maine cite section 9-1625, subsection  
(3), paragraph (b)].

22 4. Single Liability for Statutory Minimum Damages.  
24 Subsection (e) [Maine cite subsection (5)] ensures that a secured  
party will incur statutory damages only once in connection with  
26 any one secured obligation.

28 **PART 7**  
**TRANSITION**

30 **§9-1701. Effective date**

32 This Article takes effect on July 1, 2001.

34 **Official Comment**

36 A uniform law as complex as Article 9 [Maine cite Article  
38 9-A] necessarily gives rise to difficult problems and  
uncertainties during the transition to the new law. As is  
40 customary for uniform laws, this Article is based on the general  
assumption that all States will have enacted substantially  
42 identical versions. While always important, uniformity is  
essential to the success of this Article. If former Article 9 is  
44 in effect in some jurisdictions, and this Article is in effect in  
others, horrendous complications may arise. For example, the  
46 proper place in which to file to perfect a security interest (and  
thus the status of a particular security interest as perfected or  
48 unperfected) would depend on whether the matter was litigated in  
a State in which former Article 9 was in effect or a State in  
50 which this Article was in effect. Accordingly, this section

2 contemplates that States will adopt a uniform effective date for  
3 this Article. Any one State's failure to adopt the uniform  
4 effective date will greatly increase the cost and uncertainty  
5 surrounding the transition.

6 Other problems arise from transactions and relationships  
7 that were entered into under former Article 9 or under non-UCC  
8 law and which remain outstanding on the effective date of this  
9 Article. The difficulties arise primarily because this Article  
10 expands the scope of former Article 9 to cover additional types  
11 of collateral and transactions and because it provides new  
12 methods of perfection for some types of collateral, different  
13 priority rules, and different choice-of-law rules governing  
14 perfection and priority. This Section and the other sections in  
15 this Part address primarily this second set of problems.

16 **§9-1702. Savings clause**

17  
18 (1) Except as otherwise provided in this part, this Article  
19 applies to a transaction or lien within its scope, even if the  
20 transaction or lien was entered into or created before this  
21 Article takes effect.

22  
23 (2) Except as otherwise provided in subsection (c) and  
24 sections 9-1703 to 9-1708:

25  
26 (a) Transactions and liens that were not governed by former  
27 Article 9, were validly entered into or created before this  
28 Article takes effect and would be subject to this Article if  
29 they had been entered into or created after this Article  
30 takes effect and the rights, duties and interests flowing  
31 from those transactions and liens remain valid after this  
32 Article takes effect; and

33  
34 (b) The transactions and liens may be terminated,  
35 completed, consummated and enforced as required or permitted  
36 by this Article or by the law that otherwise would apply if  
37 this Article had not taken effect.

38  
39 (3) This Article does not affect an action, case or  
40 proceeding commenced before this Article takes effect.

41 **Official Comment**

42  
43  
44 1. Pre-Effective-Date Transactions. Subsection (a) [Maine  
45 cite subsection (1)] contains the general rule that this Article  
46 applies to transactions, security interests, and other liens  
47 within its scope (see Section 9-109 [Maine cite section 9-1109]),  
48 even if the transaction or lien was entered into or created  
49 before the effective date. Thus, secured transactions entered  
50

2 into under former Article 9 must be terminated, completed,  
3 consummated, and enforced under this Article. Subsection (b)  
4 [Maine cite subsection (2)] is an exception to the general rule.  
5 It applies to valid, pre-effective-date transactions and liens  
6 that were not governed by former Article 9 but would be governed  
7 by this Article if they had been entered into or created after  
8 this Article takes effect. Under subsection (b) [Maine cite  
9 subsection (2)], these valid transactions, such as the creation  
10 of agricultural liens and security interests in commercial tort  
11 claims, retain their validity under this Article and may be  
12 terminated, completed, consummated, and enforced under this  
13 Article. However, these transactions also may be terminated,  
14 completed, consummated, and enforced by the law that otherwise  
15 would apply had this Article not taken effect.

16 2. Judicial Proceedings Commenced Before Effective Date.  
17 As is usual in transition provisions, subsection (c) [Maine cite  
18 subsection (3)] provides that this Article does not affect  
19 litigation pending on the effective date.

20 **§9-1703. Security interest perfected before effective date**

21 (1) A security interest that is enforceable immediately  
22 before this Article takes effect and would have priority over the  
23 rights of a person that becomes a lien creditor at that time is a  
24 perfected security interest under this Article if, when this  
25 Article takes effect, the applicable requirements for  
26 enforceability and perfection under this Article are satisfied  
27 without further action.

28 (2) Except as otherwise provided in section 9-1705, if,  
29 immediately before this Article takes effect, a security interest  
30 is enforceable and would have priority over the rights of a  
31 person that becomes a lien creditor at that time, but the  
32 applicable requirements for enforceability or perfection under  
33 this Article are not satisfied when this Article takes effect,  
34 the security interest:

35 (a) Is a perfected security interest for one year after  
36 this Article takes effect;

37 (b) Remains enforceable thereafter only if the security  
38 interest becomes enforceable under section 9-1203 before the  
39 year expires; and

40 (c) Remains perfected thereafter only if the applicable  
41 requirements for perfection under this Article are satisfied  
42 before the year expires.

43 **Official Comment**

2           1. Perfected Security Interests Under Former Article 9 and  
This Article. This section deals with security interests that  
4 are perfected (i.e., that are enforceable and have priority over  
the rights of a lien creditor) under former Article 9 or other  
6 applicable law immediately before this Article takes effect.  
Subsection (a) [Maine cite subsection (1)] provides, not  
8 surprisingly, that if the security interest would be a perfected  
security interest under this Article (i.e., if the transaction  
10 satisfies this Article's requirements for enforceability  
(attachment) and perfection), no further action need be taken for  
12 the security interest to be a perfected security interest.

14           2. Security Interests Enforceable and Perfected Under  
Former Article 9 but Unenforceable or Unperfected Under This  
16 Article. Subsection (b) [Maine cite subsection (2)] deals with  
security interests that are enforceable and perfected under  
18 former Article 9 or other applicable law immediately before this  
Article takes effect but do not satisfy the requirements for  
20 enforceability (attachment) or perfection under this Article.  
Except as otherwise provided in Section 9-705 [Maine cite section  
22 9-1705], these security interests are perfected security  
interests for one year after the effective date. If the security  
24 interest satisfies the requirements for attachment and perfection  
within that period, the security interest remains perfected  
26 thereafter. If the security interest satisfies only the  
requirements for attachment within that period, the security  
28 interest becomes unperfected at the end of the one-year period.

30           Example 1: A pre-effective-date security agreement in a  
consumer transaction covers "all securities accounts." The  
32 security interest is properly perfected. The collateral  
description was adequate under former Article 9 (see former  
34 Section 9-115(3)) but is insufficient under this Article (see  
Section 9-108(e)(2) [Maine cite section 9-1108, subsection (5),  
36 paragraph (b)]). Unless the debtor authenticates a new security  
agreement describing the collateral other than by "type" (or  
38 Section 9-203(b)(3) [Maine cite section 9-1203, subsection (2),  
paragraph (c)] otherwise is satisfied) within the one-year period  
40 following the effective date, the security interest becomes  
unenforceable at the end of that period.

42  
44           Other examples under former Article 9 or other applicable law  
that may be effective as attachment or enforceability steps but  
46 may be ineffective under this Article include an oral agreement  
to sell a payment intangible or possession by virtue of a  
48 notification to a bailee under former Section 9-305. Neither the  
oral agreement nor the notification would satisfy the revised  
Section 9-203 [Maine cite section 9-1203] requirements for  
50 attachment.

2           Example 2: A pre-effective-date possessory security  
4 interest in instruments is perfected by a bailee's receipt of  
6 notification under former 9-305. The bailee has not, however,  
8 acknowledged that it holds for the secured party's benefit under  
10 revised Section 9-313 [Maine cite section 9-1313]. Unless the  
bailee authenticates a record acknowledging that it holds for the  
secured party (or another appropriate perfection step is taken)  
within the one-year period following the effective date, the  
security interest becomes unperfected at the end of that period.

12           3. Interpretation of Pre-Effective-Date Security  
14 Agreements. Section 9-102 [Maine cite section 9-1102] defines  
16 "security agreement" as "an agreement that creates or provides  
18 for a security interest." Under Section 1-201(3), an "agreement"  
20 is a "bargain of the parties in fact." If parties to a  
pre-effective-date security agreement describe the collateral by  
using a term defined in former Article 9 in one way and defined  
in this Article in another way, in most cases it should be  
presumed that the bargain of the parties contemplated the meaning  
of the term under former Article 9.

22           Example 3: A pre-effective-date security agreement covers  
24 "all accounts" of a debtor. As defined under former Article 9,  
an "account" did not include a right to payment for lottery  
26 winnings. These rights to payment are "accounts" under this  
Article, however. The agreement of the parties presumptively  
28 created a security interest in "accounts" as defined in former  
Article 9. A different result might be appropriate, for example,  
30 if the security agreement explicitly contemplated future changes  
in the article 9 [Maine cite Article 9-A] definitions of types of  
32 collateral-e.g., "'Accounts' means 'accounts' as defined in the  
UCC Article 9 of [State X], as that definition may be amended  
34 from time to time." Whether a different approach is appropriate  
in any given case depends on the bargain of the parties, as  
36 determined by applying ordinary principles of contract  
construction.

38           **§9-1704. Security interest unperfected before effective date**

40           A security interest that is enforceable immediately before  
42 this Article takes effect but which would be subordinate to the  
44 rights of a person that becomes a lien creditor at that time:

46           (1) Remains an enforceable security interest for one year  
48 after this Article takes effect;

48           (2) Remains enforceable thereafter if the security interest  
50 becomes enforceable under section 9-1203 when this Article takes  
effect or within one year thereafter; and

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(3) Becomes perfected:

(a) Without further action, when this Article takes effect if the applicable requirements for perfection under this Article are satisfied before or at that time; or

(b) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**Official Comment**

This section deals with security interests that are enforceable but unperfected (i.e., subordinate to the rights of a person who becomes a lien creditor) under former Article 9 or other applicable law immediately before this Article takes effect. These security interests remain enforceable for one year after the effective date, and thereafter if the appropriate steps for attachment under this Article are taken before the one-year period expires. (This section's treatment of enforceability is the same as that of Section 9-703 [Maine cite section 9-1703].) The security interest becomes a perfected security interest on the effective date if, at that time, the security interest satisfies the requirements for perfection under this Article. If the security interest does not satisfy the requirements for perfection until sometime thereafter, it becomes a perfected security interest at that later time.

Example: A security interest has attached under former Article 9 but is unperfected because the filed financing statement covers "all of debtor's personal property" and controlling case law in the applicable jurisdiction has determined that this identification of collateral in a financing statement is insufficient. Upon the effective date of this Article, the financing statement becomes sufficient under Section 9-504(2) [Maine cite section 9-1504, subsection (2)]. On that date the security interest becomes perfected. (This assumes, of course, that the financing statement is filed in the proper filing office under this Article.)

**§9-1705. Effectiveness of action taken before effective date**

(1) If action, other than the filing of a financing statement, is taken before this Article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Article takes effect, the action is effective to perfect a security interest that attaches under this Article within one year after this Article takes effect. An attached security interest becomes

2 unperfected one year after this Article takes effect unless the  
3 security interest becomes a perfected security interest under  
4 this Article before the expiration of that period.

6 (2) The filing of a financing statement before this Article  
7 takes effect is effective to perfect a security interest to the  
8 extent the filing would satisfy the applicable requirements for  
9 perfection under this Article.

10 (3) This Article does not render ineffective an effective  
11 financing statement that, before this Article takes effect, is  
12 filed and satisfies the applicable requirements for perfection  
13 under the law of the jurisdiction governing perfection as  
14 provided in former section 9-103. However, except as otherwise  
15 provided in subsections (4) and (5) and section 9-1706, the  
16 financing statement ceases to be effective at the earlier of:

18 (a) The time the financing statement would have ceased to  
19 be effective under the law of the jurisdiction in which it  
20 is filed; or

22 (b) June 30, 2006.

24 (4) The filing of a continuation statement after this  
25 Article takes effect does not continue the effectiveness of the  
26 financing statement filed before this Article takes effect.  
27 However, upon the timely filing of a continuation statement after  
28 this Article takes effect and in accordance with the law of the  
29 jurisdiction governing perfection as provided in part 3, the  
30 effectiveness of a financing statement filed in the same office  
31 in that jurisdiction before this Article takes effect continues  
32 for the period provided by the law of that jurisdiction.

34 (5) Subsection (3), paragraph (b) applies to a financing  
35 statement that, before this Article takes effect, is filed  
36 against a transmitting utility and satisfies the applicable  
37 requirements for perfection under the law of the jurisdiction  
38 governing perfection as provided in former section 9-103 only to  
39 the extent that Part 3 provides that the law of a jurisdiction  
40 other than jurisdiction in which the financing statement is filed  
41 governs perfection of a security interest in collateral covered  
42 by the financing statement.

44 (6) A financing statement that includes a financing  
45 statement filed before this Article takes effect and a  
46 continuation statement filed after this Article takes effect is  
47 effective only to the extent that it satisfies the requirements  
48 of part 5 for an initial financing statement.

50 **Official Comment**

2           1. General. This section addresses primarily the situation  
4 in which the perfection step is taken under former Article 9 or  
6 other applicable law before the effective date of this Article,  
8 but the security interest does not attach until after that date.

10           2. Perfection Other Than by Filing. Subsection (a) [Maine  
12 cite subsection (1)] applies when the perfection step is a step  
14 other than the filing of a financing statement. If the step that  
16 would be a valid perfection step under former Article 9 or other  
18 law is taken before this Article takes effect, and if a security  
20 interest attaches within one year after this Article takes  
22 effect, then the security interest becomes a perfected security  
24 interest upon attachment. However, the security interest becomes  
26 unperfected one year after the effective date unless the  
28 requirements for attachment and perfection under this Article are  
30 satisfied within that period.

32           3. Perfection by Filing: Ineffective Filings Made  
34 Effective. Subsection (b) [Maine cite subsection (2)] deals with  
36 financing statements that were filed under former Article 9 and  
38 which would not have perfected a security interest under the  
40 former Article (because, e.g., they did not accurately describe  
42 the collateral or were filed in the wrong place), but which would  
44 perfect a security interest under this Article. Under subsection  
46 (b) [Maine cite subsection (2)], such a financing statement is  
48 effective to perfect a security interest to the extent it  
50 complies with this Article. Subsection (b) [Maine cite  
subsection (2)] applies regardless of the reason for the filing.  
For example, a secured party need not wait until the effective  
date to respond to the change this Article makes with respect to  
the jurisdiction whose law governs perfection of certain security  
interests. Rather, a secured party may wish to prepare for this  
change by filing a financing statement before the effective date  
in the jurisdiction whose law governs perfection under this  
Article. When this Article takes effect, the filing becomes  
effective to perfect a security interest (assuming the filing  
satisfies the perfection requirements of this Article). Note,  
however, that Section 9-706 [Maine cite section 9-1706]  
determines whether a financing statement filed before the  
effective date operates to continue the effectiveness of a  
financing statement filed in another office before the effective  
date.

          4. Perfection by Filing: Change in Applicable Law.  
Subsection (c) [Maine cite subsection (3)] provides that a  
financing statement filed in the proper jurisdiction under former  
Section 9-103 remains effective for all purposes, despite the  
fact that Part 3 of this Article would require filing of a  
financing statement in a different jurisdiction. This means



2 that, during the early years of this Article's effectiveness, it  
3 may be necessary to search the files not only in the jurisdiction  
4 whose law governs perfection under this Article but also (if  
5 different) in the jurisdiction(s) whose law governed perfection  
6 under former Article 9. To limit this burden, subsection (c)  
7 [Maine cite subsection (3)] provides that a financing statement  
8 filed in the jurisdiction determined by former Section 9-103  
9 becomes ineffective at the earlier of the time it would become  
10 ineffective under the law of that jurisdiction or June 30, 2006.  
11 The June 30, 2006, limitation addresses some nonuniform versions  
12 of former Article 9 that extended the effectiveness of a  
13 financing statement beyond five years. Note that a financing  
14 statement filed before the effective date may remain effective  
15 beyond June 30, 2006, if subsection (d) [Maine cite subsection  
16 (4)] (concerning continuation statements) or (e) [Maine cite  
17 subsection (5)] (concerning transmitting utilities) or Section  
18 9-706 [Maine cite section 9-1706] (concerning initial financing  
19 statements that operate to continue pre-effective-date financing  
20 statements) so provides.

21  
22 Subsection (c) [Maine cite subsection (3)] is an exception  
23 to Section 9-703(b) [Maine cite section 9-1703, subsection (2)].  
24 Under the general rule in Section 9-703(b) [Maine cite section  
25 9-1703, subsection (2)], a security interest that is enforceable  
26 and perfected on the effective date of this Article is a  
27 perfected security interest for one year after this Article takes  
28 effect, even if the security interest is not enforceable under  
29 this Article and the applicable requirements for perfection under  
30 this Article have not been met. However, in some cases  
31 subsection (c) [Maine cite subsection (3)] may shorten the  
32 one-year period of perfection; in others, if the security  
33 interest is enforceable under Section 9-203 [Maine cite section  
34 9-1203], it may extend the period of perfection. A financing  
35 statement that remains effective under subsection (c) [Maine cite  
36 subsection (3)] may be amended (but generally may not be  
37 continued) after this Article takes effect by filing an amendment  
38 in the office where the financing statement was filed.

39  
40 Example 1: On July 3, 1996, D, a State X corporation,  
41 creates a security interest in certain manufacturing equipment  
42 located in State Y. On July 6, 1996, SP perfects a security  
43 interest in the equipment under former Article 9 by filing in the  
44 office of the State Y Secretary of State. See former Section  
45 9-103(1)(b). This Article takes effect in States X and Y on July  
46 1, 2001. Under Section 9-705(c) [Maine cite section 9-1705,  
47 subsection (3)], the financing statement remains effective for  
48 the first five days of July, 2001, after which it lapses. See  
49 former Section 9-403. Had SP continued the effectiveness of the  
50 financing statement by filing a continuation statement in State Y  
under former Article 9 before July 1, 2001, the financing

statement would have remained effective to perfect the security interest through June 30, 2006. See subsection (c)(2) [Maine cite subsection (3), paragraph (b)]. Alternatively, SP could have filed an initial financing statement in State X under subsection (b) [Maine cite subsection (2)] or Section 9-706 [Maine cite section 9-1706] before the State Y financing statement lapsed. Had SP done so, the security interest would have remained perfected without interruption until the State X financing statement lapsed.

5. Continuing Effectiveness of Filed Financing Statement. A financing statement filed before the effective date of this Article may be continued only by filing in the State and office designated by this Article. This result is accomplished in the following manner: Subsection (d) [Maine cite subsection (4)] indicates that, as a general matter, a continuation statement filed after the effective date of this Article does not continue the effectiveness of a financing statement filed under the law designated by former Section 9-103. Instead, an initial financing statement must be filed under Section 9-706 [Maine cite section 9-1706]. The second sentence of subsection (d) [Maine cite subsection (4)] contains an exception to the general rule. It provides that a continuation statement is effective to continue the effectiveness of a financing statement filed before this Article takes effect if this Article prescribes not only the same jurisdiction but also the same filing office.

Example 2: On November 8, 2000, D, a State X corporation, creates a security interest in certain manufacturing equipment located in State Y. On November 15, 2000, SP perfects a security interest in the equipment under former Article 9 by filing in office of the State Y Secretary of State. See former Section 9-103(1)(b). This Article takes effect in States X and Y on July 1, 2001. Under Section 9-705(c) [Maine cite section 9-1705, subsection (3)], the financing statement ceases to be effective in November, 2005, when it lapses. See Section 9-515 [Maine cite section 9-1515]. Under this Article, the law of D's location (State X, see Section 9-307 [Maine cite section 9-1307]) governs perfection. See Section 9-301 [Maine cite section 9-1301]. Thus, the filing of a continuation statement in State Y after the effective date would not continue the effectiveness of the financing statement. See subsection (d) [Maine cite subsection (4)]. However, the effectiveness of the financing statement could be continued under Section 9-706 [Maine cite section 9-1706].

Example 3: The facts are as in Example 2, except that D is a State Y corporation. Assume State Y adopted former Section 9-401(1) (second alternative). State Y law governs perfection under Part 3 of this Article. (See Sections 9-301, 9-307 [Maine

2 cite sections 9-1301, 9-1307].) Under the second sentence of  
3 subsection (d) [Maine cite subsection (4)], the timely filing of  
4 a continuation statement in accordance with the law of State Y  
5 continues the effectiveness of the financing statement.

6 Example 4: The facts are as in Example 3, except that the  
7 collateral is equipment used in farming operations and, in  
8 accordance with former Section 9-401(1) (second alternative) as  
9 enacted in State Y, the financing statement was filed in State Y,  
10 in the office of the Shelby County Recorder of Deeds. Under this  
11 Article, a continuation statement must be filed in the office of  
12 the State Y Secretary of State. See Section 9-501(a)(2) [Maine  
13 cite section 9-1501, subsection (1), paragraph (b)]. Under the  
14 second sentence of subsection (d) [Maine cite subsection (4)],  
15 the timely filing of a continuation statement in accordance with  
16 the law of State Y operates to continue a pre-effective-date  
17 financing statement only if the continuation statement is filed  
18 in the same office as the financing statement. Accordingly, the  
19 continuation statement is not effective in this case, but the  
20 financing statement may be continued under Section 9-706 [Maine  
21 cite section 9-1706].  
22

23 Example 5: The facts are as in Example 3, except that State  
24 Y enacted former Section 9-401(1) (third alternative). As  
25 required by former Section 9-401(1), SP filed financing  
26 statements in both the office of the State Y Secretary of State  
27 and the office of the Shelby County Recorder of Deeds. Under  
28 this Article, a continuation statement must be filed in the  
29 office of the State Y Secretary of State. See Section  
30 9-501(a)(2) [Maine cite section 9-1501, subsection (1), paragraph  
31 (b)]. The timely filing of a continuation statement in that  
32 office after this Article takes effect would be effective to  
33 continue the effectiveness of the financing statement (and thus  
34 continue the perfection of the security interest), even if the  
35 financing statement filed with the County Recorder lapses.  
36

37 6. Continuation Statements. In some cases, this Article  
38 reclassifies collateral covered by a financing statement filed  
39 under former Article 9. For example, collateral consisting of  
40 the right to payment for real property sold would be a "general  
41 intangible" under the former Article but an "account" under this  
42 Article. To continue perfection under those circumstances, a  
43 continuation statement must comply with the normal requirements  
44 for a continuation statement. See Section 9-515 [Maine cite  
45 section 9-1515]. In addition, the pre-effective-date financing  
46 statement and continuation statement, taken together, must  
47 satisfy the requirements of this Article concerning the  
48 sufficiency of the debtor's name, secured party's name, and  
49 indication of collateral. See subsection (f) [Maine cite  
50 subsection (6)].

2 Example 6: A pre-effective-date financing statement covers  
4 "all general intangibles" of a debtor. As defined under former  
6 Article 9, a "general intangible," would include rights to  
8 payment for lottery winnings. These rights to payment are  
10 "accounts" under this Article, however. A post-effective-date  
12 continuation statement will not continue the effectiveness of the  
14 pre-effective-date financing statement with respect to lottery  
16 winnings unless it amends the indication of collateral covered to  
include lottery winnings (e.g., by adding "accounts," "rights to  
payment for lottery winnings," or the like). If the continuation  
statement does not amend the indication of collateral, the  
continuation statement will be effective to continue the  
effectiveness of the financing statement only with respect to  
"general intangibles" as defined in this Article.

18 Example 7: The facts are as in Example 6, except that the  
20 pre-effective-date financing statement covers "all accounts and  
22 general intangibles." Even though rights to payment for lottery  
24 winnings are "general intangibles" under former Article 9 and  
26 "accounts" under this Article, a post-effective-date continuation  
statement would continue the effectiveness of the  
pre-effective-date financing statement with respect to lottery  
winnings. There would be no need to amend the indication of  
collateral covered, inasmuch as the indication ("accounts")  
satisfies the requirements of this Article.

28 **§9-1706. When initial financing statement suffices to**  
30 **continue effectiveness of financing statement**

32 (1) The filing of an initial financing statement in the  
34 office specified in section 9-1501 continues the effectiveness of  
a financing statement filed before this Article takes effect if:

36 (a) The filing of an initial financing statement in that  
38 office would be effective to perfect a security interest  
under this Article;

40 (b) The pre-effective-date financing statement was filed in  
42 an office in another state or another office in this State;  
and

44 (c) The initial financing statement satisfies subsection  
(3).

46 (2) The filing of an initial financing statement under  
48 subsection (1) continues the effectiveness of the  
pre-effective-date financing statement;

2 (a) If the initial financing statement is filed before this  
3 Article takes effect, for the period provided in former  
4 section 9-403 with respect to a financing statement; and

5 (b) If the initial financing statement is filed after this  
6 Article takes effect, for the period provided in section  
7 9-1515 with respect to an initial financing statement.

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10 (3) To be effective for purposes of subsection (1), an  
11 initial financing statement must:

12 (a) Satisfy the requirements of Part 5 for an initial  
13 financing statement;

14  
15 (b) Identify the pre-effective-date financing statement by  
16 indicating the office in which the financing statement was  
17 filed and providing the dates of filing and file numbers, if  
18 any, of the financing statement and of the most recent  
19 continuation statement filed with respect to the financing  
20 statement; and

21 (c) Indicate that the pre-effective-date financing  
22 statement remains effective.

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25 **Official Comment**

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27  
28 1. Continuation of Financing Statements Not Filed in Proper  
29 Filing Office Under This Article. This section deals with  
30 continuing the effectiveness of financing statements that are  
31 filed in the proper State and office under former Article 9, but  
32 which would be filed in the wrong State or in the wrong office of  
33 the proper State under this Article. Section 9-705(d) [Maine  
34 cite section 9-1705, subsection (4)] provides that, under these  
35 circumstances, filing a continuation statement after the  
36 effective date of this Article in the office designated by former  
37 Article 9 would not be effective. This section provides the  
38 means by which the effectiveness of such a financing statement  
39 can be continued if this Article governs perfection under the  
40 applicable choice-of-law rule: filing an initial financing  
41 statement in the office specified by Section 9-501 [Maine cite  
42 section 9-1501].

43  
44 Although it has the effect of continuing the effectiveness  
45 of a pre-effective-date financing statement, an initial financing  
46 statement described in this section is not a continuation  
47 statement. Rather, it is governed by the rules applicable to  
48 initial financing statements. (However, the debtor need not  
49 authorize the filing. See Section 9-707 [Maine cite section  
50 9-1707].) Unlike a continuation statement, the initial financing  
statement described in this section may be filed any time during

2 the effectiveness of the pre-effective-date financing  
3 statement-even before this Article is enacted- and not only  
4 within the six months immediately prior to lapse. In contrast to  
5 a continuation statement, which extends the lapse date of a filed  
6 financing statement for five years, the initial financing  
7 statement has its own lapse date, which bears no relation to the  
8 lapse date of the pre-effective-date financing statement whose  
9 effectiveness the initial financing statement continues. See  
10 subsection (b) [Maine cite subsection (2)].

11  
12 As subsection (a) [Maine cite subsection (1)] makes clear,  
13 the filing of an initial financing statement under this section  
14 continues the effectiveness of a pre-effective-date financing  
15 statement. If the effectiveness of a pre-effective-date  
16 financing statement lapses before the initial financing statement  
17 is filed, the effectiveness of the pre-effective-date financing  
18 statement cannot be continued. Rather, unless the security  
19 interest is perfected otherwise, there will be a period during  
20 which the security interest is unperfected before becoming  
21 perfected again by the filing of the initial financing statement  
22 under this section.

23  
24 If an initial financing statement is filed under this  
25 section before the effective date of this Article, it takes  
26 effect when this Article takes effect (assuming that it is  
27 ineffective under former Article 9). Note, however, that former  
28 Article 9 determines whether the filing office is obligated to  
29 accept such an initial financing statement. For the reason given  
30 in the preceding paragraph, an initial financing statement filed  
31 before the effective date of this Article does not continue the  
32 effectiveness of a pre-effective-date financing statement unless  
33 the latter remains effective on the effective date of this  
34 Article. Thus, for example, if the effectiveness of the  
35 pre-effective-date financing statement lapses before this Article  
36 takes effect, the initial financing statement would not continue  
its effectiveness.

37  
38 2. Requirements of Initial Financing Statement Filed in  
39 Lieu of Continuation Statement. Subsection (c) [Maine cite  
40 subsection (3)] sets forth the requirements for the initial  
41 financing statement under subsection (a) [Maine cite subsection  
42 (1)]. These requirements are needed to inform searchers that the  
43 initial financing statement operates to continue a financing  
44 statement filed elsewhere and to enable searchers to locate and  
45 discover the attributes of the other financing statement. A  
46 single initial financing statement may continue the effectiveness  
47 of more than one financing statement filed before this Article's  
48 effective date. See Section 1-102(5)(a) (words in the singular  
49 include the plural). If under this Article the collateral is of  
50 a type different from its type under former Article 9 as would be

2 the case, e.g., with a right to payment of lottery winnings (a  
"general intangible" under former Article 9 and an "account"  
4 under this Article), then subsection (c) [Maine cite subsection  
(3)] requires that the initial financing statement indicate the  
type under this Article.

6  
8 **§9-1707. Persons entitled to file initial financing statement  
or continuation statement**

10 A person may file an initial financing statement or a  
continuation statement under this part if:

12 (1) The secured party of record authorizes the filing; and

14 (2) The filing is necessary under this part:

16 (a) To continue the effectiveness of a financing statement  
18 filed before this Article takes effect; or

20 (b) To perfect or continue the perfection of a security  
22 interest.

24 **Official Comment**

26 This section permits a secured party to file an initial  
financing statement or continuation statement necessary under  
this Part to continue the effectiveness of a financing statement  
28 filed before this Article takes effect or to perfect or otherwise  
continue the perfection of a security interest. Because a filing  
30 described in this section typically operates to continue the  
effectiveness of a financing statement whose filing the debtor  
32 already has authorized, this section does not require  
authorization from the debtor.

34 **§9-1708. Priority**

36 (1) This Article determines the priority of conflicting  
38 claims to collateral. However, if the relative priorities of the  
40 claims were established before this Article takes effect, former  
Article 9 determines priority.

42 (2) For purposes of section 9-1322, subsection (1), the  
44 priority of a security interest that becomes enforceable under  
46 section 9-1203 of this Article dates from the time this Article  
48 takes effect if the security interest is perfected under this  
50 Article by the filing of a financing statement before this  
Article takes effect that would not have been effective to  
perfect the security interest under former Article 9. This  
subsection does not apply to conflicting security interests, each  
of which is perfected by the filing of such a financing statement.

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**Official Comment**

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1. Law Governing Priority. Ordinarily, this Article determines the priority of conflicting claims to collateral. However, when the relative priorities of the claims were established before this Article takes effect, former Article 9 governs.

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Example 1: In 1999, SP1 obtains a security interest in a right to payment for goods sold ("account"). SP1 fails to file a financing statement. This Article takes effect on July 1, 2001. Thereafter, on August 1, 2001, D creates a security interest in the same account in favor of SP2, who files a financing statement. This Article determines the relative priorities of the claims. SP-2's security interest has priority under Section 9-322(a)(1) [Maine cite section 9-1322, subsection (1), paragraph (a)].

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Example 2: In 1999, SP1 obtains a security interest in a right to payment for goods sold ("account"). SP1 fails to file a financing statement. In 2000, D creates a security interest in the same account in favor of SP2, who likewise fails to file a financing statement. This Article takes effect on July 1, 2001. Because the relative priorities of the security interests were established before the effective date of this Article, former Article 9 governs priority, and SP-1's security interest has priority under former Section 9-312(5)(b).

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Example 3: The facts are as in Example 2, except that, on August 1, 2001, SP-2 files a proper financing statement under this Article. Until August 1, 2001, the relative priorities of the security interests were established before the effective date of this Article, as in Example 2. However, by taking the affirmative step of filing a financing statement, SP-2 established anew the relative priority of the conflicting claims after the effective date. Thus, this Article determines priority. SP-2's security interest has priority under Section 9-322(a)(1). [Maine cite section 9-1322, subsection (1), paragraph (a)]

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As Example 3 illustrates, relative priorities that are "established" before the effective date do not necessarily remain unchanged following the effective date. Of course, unlike priority contests among unperfected security interests, some priorities are established permanently, e.g., the rights of a buyer of property who took free of a security interest under former Article 9.

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2 One consequence of the rule in subsection (a) [Maine cite  
3 subsection (1)] is that the mere taking effect of this Article  
4 does not of itself adversely affect the priority of conflicting  
claims to collateral.

6 Example 4: In 1999, SP1 obtains a security interest in a  
7 right to payment for lottery winnings (a "general intangible" as  
8 defined in former Article 9 but an "account" as defined in this  
9 Article). SP1's security interest is unperfected because its  
10 filed financing statement covers only "accounts." In 2000, D  
11 creates a security interest in the same right to payment in favor  
12 of SP2, who files a financing statement covering "accounts and  
13 general intangibles." Before this Article takes effect on July  
14 1, 2001, SP2's perfected security interest has priority over  
15 SP1's unperfected security interest under former 9-312(5).  
16 Because the relative priorities of the security interests were  
17 established before the effective date of this Article, former  
18 Article 9 continues to govern priority after this Article takes  
19 effect. Thus, SP-2's priority is not adversely affected by this  
20 Article's having taken effect.

22 Note that were this Article to govern priority, SP2 would become  
23 subordinated to SP-1 under Section 9-322(a)(1) [Maine cite  
24 section 9-1322, subsection (1), paragraph (a)], even though  
25 nothing changes other than this Article's having taken effect.  
26 Under Section 9-704 [Maine cite section 9-1704], SP-1's security  
27 interest would become perfected; the financing statement covering  
28 "accounts" adequately covers the lottery winnings and complies  
29 with the other perfection requirements of this Article, e.g., it  
30 is filed in the proper office.

32 Example 5: In 1999, SP1 obtains a security interest in a  
33 right to payment for lottery winnings—a "general intangible" (as  
34 defined under former Article 9). SP1's security interest is  
35 unperfected because its filed financing statement covers only  
36 "accounts." In 2000, D creates a security interest in the same  
37 right to payment in favor of SP2, who makes the same mistake and  
38 also files a financing statement covering only "accounts."  
39 Before this Article takes effect on July 1, 2001, SP1's  
40 unperfected security interest has priority over SP2's unperfected  
41 security interest, because SP-1's security interest was the first  
42 to attach. See former Section 9-312(5)(b). Because the relative  
43 priorities of the security interests were established before the  
44 effective date of this Article, former Article 9 continues to  
45 govern priority after this Article takes effect. Although  
46 Section 9704 [Maine cite section 9-1704] makes both security  
47 interests perfected for purposes of this Article, both are  
48 unperfected under former Article 9, which determines their  
49 relative priorities.  
50

2           2. Financing Statements Ineffective Under Former Article 9  
3 but Effective Under This Article. If this Article determines  
4 priority, subsection (b) [Maine cite subsection (2)] may apply.  
5 It deals with the case in which a filing that occurs before the  
6 effective date of this Article would be ineffective to perfect a  
7 security interest under former Article 9 but effective under this  
8 Article. For purposes of Section 9-322(a) [Maine cite section  
9-1322, subsection (1)], the priority of a security interest that  
10 attaches after this Article takes effect and is perfected in this  
11 manner dates from the time this Article takes effect.

12           Example 6: In 1999, SP1 obtains a security interest in D's  
13 existing and after-acquired instruments and files a financing  
14 statement covering "instruments." In 2000, D grants a security  
15 interest in its existing and after-acquired accounts in favor of  
16 SP2, who files a financing statement covering "accounts." After  
17 this Article takes effect on July 1, 2001, one of D's account  
18 debtors gives D a negotiable note to evidence its obligation to  
19 pay an overdue account. Under the first-to-file-or-perfect rule  
20 in Section 9-322(a) [Maine cite section 9-1322, subsection (1)],  
21 SP1 would have priority in the instrument, which constitutes  
22 SP2's proceeds. SP1's filing in 1999 was earlier than SP2's in  
23 2000. However, subsection (b) [Maine cite subsection (2)]  
24 provides that, for purposes of Section 9-322(a) [Maine cite  
25 section 9-1322, subsection (1)], SP1's priority dates from the  
26 time this Article takes effect (July 1, 2001). Under Section  
27 9-322(b) [Maine cite section 9-1322, subsection (2)], SP2's  
28 priority with respect to the proceeds (instrument) dates from its  
29 filing as to the original collateral (accounts). Accordingly,  
30 SP2's security interest would be senior.

31           Subsection (b) [Maine cite subsection (2)] does not apply to  
32 conflicting security interests each of which is perfected by a  
33 pre-effective-date filing that was not effective under former  
34 Article 9 but is effective under this Article.

35  
36           Example 7: In 1999, SP1 obtains a security interest in D's  
37 existing and after-acquired instruments and files a financing  
38 statement covering "instruments." In 2000, D grants a security  
39 interest in its existing and after-acquired instruments in favor  
40 of SP2, who files a financing statement covering "instruments."  
41 After this Article takes effect on July 1, 2001, one of D's  
42 account debtors gives D a negotiable note to evidence its  
43 obligation to pay an overdue account. Under the  
44 first-to-file-or-perfect rule in Section 9-322(a) [Maine cite  
45 section 9-1322, subsection (1)], SP1 would have priority in the  
46 instrument. Both filings are effective under this Article, see  
47 Section 9-705(b) [Maine cite section 9-1705, subsection (2)], and  
48 SP1's filing in 1999 was earlier than SP2's in 2000. Subsection  
49 (b) [Maine cite subsection (2)] does not change this result.  
50

2           **Sec. A-3. Legislative intent.** This Act is the Maine enactment of  
4 the Uniform Commercial Code, Article 9 as revised by the National  
6 Conference of Commissioners on Uniform State Laws. The text of  
8 the uniform act has been changed to conform to Maine statutory  
10 conventions and the article is enacted as Article 9-A. Unless  
otherwise noted in a Maine comment, the changes are technical in  
nature and it is the intent of the Legislature that this Act be  
interpreted as substantively the same as the revised Article 9 of  
the uniform act.

12           **Sec. A-4. Effective date.** This Part takes effect July 1, 2001.

14

## PART B

16

18           **Sec. B-1. 11 MRSA §1-105, sub-§(2),** as amended by PL 1997, c.  
429, Pt. C, §2, is further amended to read:

20           (2) When one of the following provisions of this Title  
22 specifies the applicable law, that provision governs a contrary  
agreement only to the extent permitted by the law (including the  
conflict of laws rules) so specified:

24

Rights of creditors against sold goods. Section 2-402.

26

Applicability of the Article on Leases. Sections 2-1105 and  
2-1106.

28

30           Applicability of the Article on Bank Deposits and  
Collections. Section 4-102.

32

34           Governing law in the Article on Funds Transfers. Section  
4-1507.

36

Letters of Credit. Section 5-1116.

38

Applicability of the Article on Investment Securities.  
Section 8-1110.

40

42           ~~Perfection---provisions---of---the---Article---on---Secured  
Transactions,--Section-9-103,~~

44

Law governing perfection, the effect of perfection or  
nonperfection and the priority of security interests and  
agricultural liens. Sections 9-1301 to 9-1307.

46

48

**Official Comment**

2           6.   ~~Section--9-103~~ Sections 9-301 to 9-307 [Maine cite  
3   sections 9-1301 to 9-1307] should be consulted as to the rules  
4   for perfection of security interests and ~~the-effects~~ agricultural  
5   liens, the effect of perfection and nonperfection, and priority.

6           **Sec. B-2. 11 MRSA §1-201, sub-§(9)**, as amended by PL 1979, c.  
7   541, Pt. A, §100, is further amended to read:

8           **(9) Buyer in ordinary course of business.** "Buyer in  
9   ordinary course of business" means a person ~~who that buys goods~~  
10   in good faith ~~and,~~ without knowledge that the sale ~~to him is in~~  
11   ~~violation of~~ violates the ownership rights ~~or security interest~~  
12   of ~~a third party~~ another person in the goods ~~buys,~~ and in the  
13   ordinary course from a person, ~~other than a pawnbroker,~~ in the  
14   business of selling goods of that kind ~~but does not include a~~  
15   ~~pawnbroker.~~ ~~All persons who sell minerals or the like, including~~  
16   ~~oil and gas, at wellhead or minehead shall be deemed to be~~  
17   ~~persons~~ A person buys goods in the ordinary course if the sale to  
18   the person comports with the usual or customary practices in the  
19   kind of business in which the seller is engaged or with the  
20   seller's own usual or customary practices. A person that sells  
21   oil, gas or other minerals at the wellhead or minehead is a  
22   person in the business of selling goods of that kind. "Buying" A  
23   "buyer in ordinary course of business" may be buy for cash or, by  
24   exchange of other property or on secured or unsecured credit and  
25   includes receiving may acquire goods or documents of title under  
26   a preexisting contract for sale but does not include a transfer  
27   in bulk or as security for or in total or partial satisfaction of  
28   a money debt. Only a buyer that takes possession of the goods or  
29   has a right to recover the goods from the seller under Article 2  
30   may be a "buyer in ordinary course of business." A person that  
31   acquires goods in a transfer in bulk or as security for or in  
32   total or partial satisfaction of a money debt is not a "buyer in  
33   ordinary course of business."

34           **Sec. B-3. 11 MRSA §1-201, sub-§(32)** is amended to read:

35           **(32) Purchase.** "Purchase" includes taking by sale,  
36   discount, negotiation, mortgage, pledge, lien, security interest,  
37   issue or reissue, gift or any other voluntary transaction  
38   creating an interest in property.

39           **Sec. B-4. 11 MRSA §1-201, sub-§(37)**, as corrected by RR 1991,  
40   c. 2, §35, is amended by amending the first paragraph to read:

41           **(37) Security interest.** "Security interest" means an  
42   interest in personal property or fixtures that secures payment or  
43   performance of an obligation. ~~The retention or reservation of~~  
44   ~~title by a seller of goods notwithstanding shipment or delivery~~

2 to--the--buyer--(section--2-401)--is--limited--in--effect--to--a  
reservation-of-a-"security-interest." The term also includes any  
4 interest of a consignor and a buyer of accounts or, chattel  
paper, which a payment intangible or a promissory note in a  
6 transaction that is subject to Article 9 9-A. The special  
property interest of a buyer of goods on identification of such  
8 goods to a contract for sale under section 2-401 is not a  
"security interest", but a buyer may also acquire a "security  
10 interest" by complying with Article 9 9-A. ~~Unless a lease or~~  
~~consignment--is--intended--as--security,--reservation--of--title~~  
12 ~~thereunder is not a "security interest" but a consignment is in~~  
any event ~~subject to the provisions on consignment sales (section~~  
14 ~~2-326).~~ Except as otherwise provided in section 2-505, the right  
of a seller or lessor of goods under Article 2 or 2-A to retain  
or acquire possession of the goods is not a "security interest,"  
16 but a seller or lessor may also acquire a "security interest" by  
complying with Article 9-A. The retention or reservation of  
18 title by a seller of goods notwithstanding shipment or delivery  
to the buyer (section 2-401) is limited in effect to a  
20 reservation of a "security interest."

22 **Official Comment**

24 9. "Buyer in Ordinary Course of Business." From Section 1,  
Uniform Trust Receipts Act. The definition has been expanded to  
26 make clear the type of person protected. Its major significance  
lies in Section 2-403 and in the Article on Secured Transactions  
28 (Article 9 [Maine cite Article 9-A]).

30 ~~The reference to minerals and the like makes clear that a~~  
~~buyer in ordinary course buying minerals under the circumstances~~  
32 ~~described takes free of a prior mortgage created by the sellers.~~  
~~See Comment to Section 9103.~~

34 ~~A pawnbroker cannot be a buyer in ordinary course of~~  
36 ~~business because the person from whom he buys goods (or acquires~~  
ownership ~~after foreclosing an initial pledge) is typically an~~  
38 ~~ordinary user and not a person engaged in selling goods of that~~  
kind.

40 The first sentence of paragraph (9) makes clear that a buyer  
42 from a pawnbroker cannot be a buyer in ordinary course of  
business. The second sentence tracks Section 6-102(1)(m). It  
44 explains what it means to buy "in the ordinary course." The  
penultimate sentence prevents a buyer that does not have the  
46 right to possession as against the seller from being a buyer in  
ordinary course of business. Concerning when a buyer obtains  
48 possessory rights, see Sections 2-502 and 2-716. However, the  
penultimate sentence is not intended to affect a buyer's status  
50 as a buyer in ordinary course of business in cases (such as a

2 "drop shipment") involving delivery by the seller to a person  
3 buying from the buyer or a donee from the buyer. The requirement  
4 relates to whether as against the seller the buyer or one taking  
5 through the buyer has possessory rights.

6 32. "Purchase." Section 58, Uniform Warehouse Receipts  
7 Act; Section 76, Uniform Sales Act; Section 53, Uniform Bills  
8 of Lading Act; Section 22, Uniform Stock Transfer Act; Section  
9 1, Uniform Trust Receipts Act. Rephrased. With the addition of  
10 taking "by . . . security interest," the revised definition makes  
11 explicit what formerly was implicit.

12 37. "Security Interest." See Section 1, Uniform Trust  
13 Receipts Act. ~~The present definition is elaborated, in view~~  
14 ~~especially of the complete coverage of the subject in Article 9.~~  
15 ~~Notice that in view of the Article the term includes the interest~~  
16 ~~of certain outright buyers of certain kinds of property. Section~~  
17 ~~1201(37) is being amended at the same time that the Article on~~  
18 ~~Leases (Article 2A) is being promulgated as an amendment to this~~  
19 ~~Act. The definition of "security interest" was revised in~~  
20 connection with the promulgation of Article 2A and also to take  
21 account of the expanded scope of Article 9 [Maine cite article  
22 9-A] as revised in the 1998 Official Text. It includes the  
23 interest of a consignor and the interest of a buyer of accounts,  
24 chattel paper, payment intangibles, or promissory notes. See  
25 Section 9-109 [Maine cite section 9-1109]. It also makes clear  
26 that, with certain exceptions, in rem rights of sellers and  
27 lessors under Articles 2 and 2A are not "security interests."  
28 Among the rights that are not security interests are the right to  
29 withhold delivery under Section 2-702(1), 2-703(a), or 2A-525  
30 [Maine cite section 2-1525], the right to stop delivery under  
31 Section 2-705 or 2A-526 [Maine cite section 2-1526], and the  
32 right to reclaim under Section 2-507(2) or 2-702(2).

34 **Sec. B-5. 11 MRSA §2-103, sub-§(3) is amended to read:**

35 (3) The following definitions in other Articles apply to  
36 this Article:

37 "Check." Section 3-104.  
38 "Consignee." Section 7-102.  
39 "Consignor." Section 7-102.  
40 "Consumer goods." Section 9-109 9-1102.  
41 "Dishonor." Section 3-507 3-1502.  
42 "Draft." Section 3-104.

43 **Sec. B-6. 11 MRSA §2-210, sub-§(2) is amended to read:**

44 (2) Unless Except as otherwise provided in section 9-1406,  
45 unless otherwise agreed, all rights of either seller or buyer can

2 be assigned except where the assignment would materially change  
the duty of the other party, or increase materially the burden or  
4 risk imposed on him the buyer or seller by his the contract, or  
impair materially his the chance of obtaining return  
6 performance. A right to damages for breach of the whole contract  
or a right arising out of the assignor's due performance of his  
the assignor's entire obligation can be assigned despite  
8 agreement otherwise.

10 **Sec. B-7. 11 MRSA §2-210, sub-§(2-A)** is enacted to read:

12 (2-A) The creation, attachment, perfection or enforcement  
14 of a security interest in the seller's interest under a contract  
is not a transfer that materially changes the duty of or  
16 increases materially the burden or risk imposed on the buyer or  
impairs materially the buyer's chance of obtaining return  
18 performance within the purview of subsection (2) unless, and then  
only to the extent that, enforcement actually results in a  
20 delegation of material performance of the seller. Even in that  
event, the creation, attachment, perfection and enforcement of  
22 the security interest remain effective, but:

24 (i) The seller is liable to the buyer for damages  
caused by the delegation to the extent that the damages  
26 could not reasonably be prevented by the buyer; and

28 (ii) A court having jurisdiction may grant other  
appropriate relief, including cancellation of the  
30 contract for sale or an injunction against enforcement  
of the security interest or consummation of the  
32 enforcement.

34 **Official Comment**

36 3. Under subsection (2) rights which are no longer executory  
such as a right to damages for breach ~~of a right to payment of an~~  
38 ~~"account" as defined in the Article on Secured Transactions~~  
(~~Article 9~~) may be assigned although the agreement prohibits  
40 assignment. In such cases no question of delegation of any  
performance is involved. ~~The assignment of a "contract right" as~~  
42 ~~defined in the Article on Secured Transactions (Article 9) is not~~  
~~covered by this subsection.~~ Subsection (2) is subject to Section  
44 9-406 [Maine cite section 9-1406], which makes rights to payment  
for goods sold ("accounts"), whether or not earned, freely  
46 alienable notwithstanding a contrary agreement or rule of law.

48 **Official Comment for §2-312**

50 5. Subsection (2) recognizes that sales by sheriffs,  
executors, certain foreclosing lienors and persons similarly

2 situated are may be so out of the ordinary commercial course that  
3 their peculiar character is immediately apparent to the buyer and  
4 therefore no personal obligation is imposed upon the seller who  
5 is purporting to sell only an unknown or limited right. This  
6 subsection does not touch upon and leaves open all questions of  
7 restitution arising in such cases, when a unique article so sold  
8 is reclaimed by a third party as the rightful owner.

10 Foreclosure sales under Article 9 [Maine cite Article 9-A]  
11 are another matter. Section 9-610 [Maine cite section 9-1610]  
12 provides that a disposition of collateral under that section  
13 includes warranties such as those imposed by this section on a  
14 voluntary disposition of property of the kind involved.  
15 Consequently, unless properly excluded under subsection (2) or  
16 under the special provisions for exclusion in Section 9-610  
17 [Maine cite section 9-1610], a disposition under Section 9-610  
18 [Maine cite section 9-1610] of collateral consisting of goods  
19 includes the warranties imposed by subsection (1) and, if  
20 applicable, subsection (3).

22 **Sec. B-8. 11 MRSA §2-326 is amended to read:**

24 **§2-326. Sale on approval and sale or return; rights of  
creditors**

26 (1) Unless otherwise agreed, if delivered goods may be  
27 returned by the buyer even though they conform to the contract,  
28 the transaction is:

30 (a) A "sale on approval," if the goods are delivered  
31 primarily for use; and

32 (b) A "sale or return," if the goods are delivered  
33 primarily for resale.

34 (2) ~~Except as provided in subsection (3),~~ Goods held  
35 on approval are not subject to the claims of the buyer's  
36 creditors until acceptance; goods held on sale or return are  
37 subject to such claims while in the buyer's possession.

38 ~~(3) -- Where goods are delivered to a person for sale and such~~  
39 ~~person maintains a place of business at which he deals in goods~~  
40 ~~of the kind involved, under a name other than the name of the~~  
41 ~~person making delivery, then with respect to claims of creditors~~  
42 ~~of the person conducting the business the goods are deemed to be~~  
43 ~~on sale or return. The provisions of this subsection are~~  
44 ~~applicable even though an agreement purports to reserve title to~~  
45 ~~the person making delivery until payment or resale or uses such~~  
46 ~~words as "on consignment" or "on memorandum." However, this~~  
47 ~~subsection is not applicable if the person making delivery~~  
48 ~~is a merchant in the goods involved and the buyer is not a~~  
49 ~~merchant in the goods involved.~~  
50



2 (a)---Complies--with--an--applicable--law--providing--for--a  
4 consignee's-interest-or-the-like-to-be-evidenced-by-a-signat  
er

6 (b)--Establishes--that--the--person--conducting--the--business--is  
8 generally-known-by-his-creditors-to-be-substantially-engaged  
in-selling-the-goods-of-others;-or

10 (c)--Complies--with--the--filing--provisions--of--the--Article--on  
12 secured-transactions-(Article-9).

14 (4) Any "or return" term of a contract for sale is to be  
16 treated as a separate contract for sale within the statute of  
18 frauds section of this Article (section 2-201) and as  
contradicting the sale aspect of the contract within the  
provisions of this Article on parol or extrinsic evidence  
(section 2-202).

#### 20 Official Comment

22 1. A Both a "sale on approval" or and a "sale or return" is  
24 distinct should be distinguished from other types of transactions  
with which they frequently have frequently been confused. The  
26 type-of-"sale-on-approval," "on-trial" or "on-satisfaction"-dealt  
A "sale on approval," sometimes also called a sale "on trial" or  
28 "on satisfaction," deals with a contract under which the seller  
undertakes a particular-business risk in order to satisfy his its  
prospective buyer with the appearance or performance of the goods  
30 in-question that are sold. The goods are delivered to the  
proposed purchaser but they remain the property of the seller  
32 until the buyer accepts them. The price has already been  
agreed. The buyer's willingness to receive and test the goods is  
34 the consideration for the seller's engagement to deliver and  
sell. The-type-of-"sale-or-return"-involved-herein A "sale or  
36 return," on the other hand, typically is a sale to a merchant  
whose unwillingness to buy is overcome only by the seller's  
38 engagement to take back the goods (or any commercial unit of  
goods) in lieu of payment if they fail to be resold. A sale or  
40 return is a present sale of goods which may be undone at the  
buyer's option. Accordingly, subsection (2) provides that goods  
42 delivered on approval are not subject to the prospective buyer's  
creditors until acceptance, and goods delivered in a sale or  
44 return are subject to the buyer's creditors while in the buyer's  
possession.

46  
48 These two transactions are so strongly delineated in  
practice and in general understanding that every presumption runs  
against a delivery to a consumer being a "sale or return" and

2 against a delivery to a merchant for resale being a "sale on approval."

4       2. The right to return goods for failure to conform to the  
6 contract of sale does not make the transaction a "sale on  
8 approval" or "sale or return" and has nothing to do with this  
10 section ~~and the following section or Section 2-327~~. The present  
12 This section is not concerned with remedies for breach of  
14 contract. It deals instead with a power given by the contract to  
turn back the goods even though they are wholly as warranted.  
This section nevertheless presupposes that a contract for sale is  
contemplated by the parties, although that contract may be of the  
particular character ~~here described that this section addresses~~  
(i.e., a sale on approval or a sale or return).

16       Where ~~the~~ If a buyer's obligation as a buyer is conditioned  
18 not on its personal approval but on the article's passing a  
20 described objective test, the risk of loss by casualty pending  
22 the test is properly the seller's and proper return is at its  
expense. On the point of "satisfaction" as meaning "reasonable  
satisfaction" where when an industrial machine is involved, this  
Article takes no position.

24       ~~2. Pursuant to the general policies of this Act which~~  
26 ~~require good faith not only between the parties to the sales~~  
28 ~~contract, but as against interested third parties, subsection (3)~~  
30 ~~resolves all reasonable doubts as to the nature of the~~  
32 ~~transaction in favor of the general creditors of the buyer. As~~  
34 ~~against such creditors words such as "on consignment" or "on~~  
36 ~~memorandum", with or without words of reservation of title in the~~  
38 ~~seller, are disregarded when the buyer has a place of business at~~  
40 ~~which he deals in goods of the kind involved. A necessary~~  
42 ~~exception is made where the buyer is known to be engaged~~  
primarily in selling the goods of others or is selling under a  
relevant sign law, or the seller complies with the filing  
provisions of Article 9 as if his interest were a security  
interest. However, there is no intent in this Section to narrow  
the protection afforded to third parties in any jurisdiction  
which has a selling Factors Act. The purpose of the exception is  
merely to limit the effect of the present subsection itself, in  
the absence of any such Factors Act, to cases in which creditors  
of the buyer may reasonably be deemed to have been misled by the  
secret reservation.

44       3. Subsection (4) (3) resolves a conflict in the  
46 pre-existing preUCC case law by ~~reognition~~ recognizing that an  
48 "or return" provision is so definitely at odds with any ordinary  
50 contract for sale of goods that ~~where written agreements are~~ if a  
written agreement is involved it the "or return" term must be  
contained in a written memorandum. The "or return" aspect of a

2 sales contract must be treated as a separate contract under the  
Statute of Frauds section and as contradicting the sale insofar  
as questions of parol or extrinsic evidence are concerned.

4  
6 4. Certain true consignment transactions were dealt with in  
former Sections 2-326(3) and 9-114 [Maine cite section 9-1114].  
8 These provisions have been deleted and have been replaced by new  
provisions in Article 9 [Maine cite article 9-A]. See, e.g.,  
10 Sections 9-109(a)(4); 9-103(b); 9-319 [Maine cite section 9-1109,  
subsection (1), paragraph (d); section 9-1103, subsection (2);  
section 9-1319].

12  
14 **Sec. B-9. 11 MRSA §2-502** is repealed and the following  
enacted in its place:

16 **§2-502. Buyer's right to goods on seller's repudiation,**  
18 **failure to deliver or insolvency**

20 (1) Subject to subsections (2) and (3) and even though the  
goods have not been shipped, a buyer who has paid a part or all  
22 of the price of goods in which the buyer has a special property  
under the provisions of section 2-501 may, on making and keeping  
24 good a tender of any unpaid portion of the price of the goods,  
recover the goods from the seller if:

26 (a) In the case of goods bought for personal, family or  
household purposes, the seller repudiates or fails to  
28 deliver as required by the contract; or

30 (b) In all cases, the seller becomes insolvent within 10  
days after receipt of the first installment on the price of  
32 the goods.

34 (2) The buyer's right to recover the goods under subsection  
(1), paragraph (a) vests upon acquisition of a special property,  
36 even if the seller had not then repudiated or failed to deliver.

38 (3) If the identification creating the buyer's special  
property has been made by the buyer, the buyer acquires the right  
40 to recover the goods only if they conform to the contract for  
sale.

42  
44 **Official Comment**

46 1. This section gives an additional right to the buyer as a  
result of identification of the goods to the contract in the  
manner provided in Section 2-501. The buyer is given a right to  
48 recover the goods on--the--seller's--insolvency--occurring,  
conditioned upon making and keeping good a tender of any unpaid  
50 portion of the price, in two limited circumstances. First, the

2 buyer may recover goods bought for personal, family, or household  
3 purposes if the seller repudiates the contract or fails to  
4 deliver the goods. Second, in any case, the buyer may recover  
5 the goods if the seller becomes insolvent within 10 days after he  
6 the seller receives the first installment on their price. The  
7 buyer's right to recover the goods under this section is an  
8 exception to the usual rule, under which the disappointed buyer  
9 must resort to an action to recover damages.

10 2. The question of whether the buyer also acquires a  
11 security interest in identified goods and has rights to the goods  
12 when insolvency takes place after the ten-day period provided in  
13 this section depends upon compliance with the provisions of the  
14 Article on Secured Transactions (Article 9 [Maine cite Article  
15 9-A]).

16 3. Under subsection (2), the buyer's right to recover  
17 consumer goods under subsection (1)(a) vests upon acquisition of  
18 a special property, which occurs upon identification of the goods  
19 to the contract. See Section 2-501. Inasmuch as a secured party  
20 normally acquires no greater rights in its collateral than its  
21 debtor had or had power to convey, see Section 2-403(1) (first  
22 sentence), a buyer who acquires a right to recover under this  
23 section will take free of a security interest created by the  
24 seller if it attaches to the goods after the goods have been  
25 identified to the contract. The buyer will take free, even if  
26 the buyer does not buy in ordinary course and even if the  
27 security interest is perfected. Of course, to the extent that  
28 the buyer pays the price after the security interest attaches,  
29 the payments will constitute proceeds of the security interest.

30 3. 4. Subsection (2) (3) is included to preclude the  
31 possibility of unjust enrichment, which ~~exists~~ would exist if the  
32 buyer were permitted to recover goods even though they were  
33 greatly superior in quality or quantity to that called for by the  
34 contract for sale.  
35

36 **Sec. B-10. 11 MRSA §2-716, sub-§(3) is amended to read:**

37 (3) The buyer has a right of replevin for goods identified  
38 to the contract if after reasonable effort he the buyer is unable  
39 to effect cover for such goods or the circumstances reasonably  
40 indicate that such effort will be unavailing, or if the goods  
41 have been shipped under reservation and satisfaction of the  
42 security interest in them has been made or tendered. In the case  
43 of goods bought for personal, family or household purposes, the  
44 buyer's right of replevin vests upon acquisition of a special  
45 property, even if the seller had not then repudiated or failed to  
46 deliver.

47

2 Official Comment

4 3. The legal remedy of replevin is given to the buyer in  
6 cases in which cover is reasonably unavailable and goods have  
8 been identified to the contract. This is in addition to the  
10 buyer's right to recover identified goods ~~en--the--seller's~~  
12 ~~insolvency--(Section--2-502)~~ under Section 2-502. For consumer  
14 goods, the buyer's right to replevin vests upon the buyer's  
16 acquisition of a special property, which occurs upon  
18 identification of the goods to the contract. See Section 2501.  
20 Inasmuch as a secured party normally acquires no greater rights  
22 in its collateral that its debtor had or had power to convey, see  
Section 2-403(1) (first sentence), a buyer who acquires a right  
of replevin under subsection (3) will take free of a security  
interest created by the seller if it attaches to the goods after  
the goods have been identified to the contract. The buyer will  
take free, even if the buyer does not buy in ordinary course and  
even if the security interest is perfected. Of course, to the  
extent that the buyer pays the price after the security interest  
attaches, the payments will constitute proceeds of the security  
interest.

24 **Sec. B-11. 11 MRSA §2-1103, sub-§(3)**, as enacted by PL 1991, c.  
26 805, §4, is amended to read:

28 (3) The following definitions in other Articles apply to  
this Article:

30 "Account."	Section 9- <del>106</del> <u>9-1102</u> , subsection (2).
32 "Between merchants."	Section 2-104, subsection (3).
34 "Buyer."	Section 2-103, subsection (1), paragraph (a).
36 "Chattel paper."	Section 9- <del>105</del> <u>9-1102</u> , subsection (1), <del>paragraph-(b)</del> (11).
40 "Consumer goods."	Section 9- <del>109</del> <u>9-1102</u> , subsection (1) (23).
42 "Document."	Section 9- <del>105</del> <u>9-1102</u> , subsection (1), <del>paragraph-(f)</del> (30).
44 "Entrusting."	Section 2-403, subsection (3).
46 "General intangibles 48 intangible."	Section 9- <del>106</del> <u>9-1102</u> , subsection (42).

2	"Good faith."	Section 2-103, subsection (1), paragraph (b).
4		
6	"Instrument."	Section <del>9-105</del> <u>9-1102</u> , subsection (1), <del>paragraph-(i)</del> (47).
8	"Merchant."	Section 2-104, subsection (1).
10	"Mortgage."	Section <del>9-105</del> <u>9-1102</u> , subsection (1), <del>paragraph-(j)</del> (55).
12		
14	"Pursuant to commitment."	Section <del>9-105</del> <u>9-1102</u> , subsection (1), <del>paragraph-(k)</del> (60).
16	"Receipt."	Section 2-103, subsection (1), paragraph (c).
18		
20	"Sale."	Section 2-106, subsection (1).
22	"Sale on approval."	Section 2-326.
24	"Sale or return."	Section 2-326.
26	"Seller."	Section 2-103, subsection (1), paragraph (d).

28       **Sec. B-12. 11 MRSA §2-1303, sub-§§(1) and (2)**, as enacted by PL  
30       1991, c. 805, §4, are amended to read:

32       (1) As used in this section, "creation of a security  
34       interest" includes the sale of a lease contract that is subject  
to Article 9 9-A, section ~~9-102~~ 9-1109, subsection (1), paragraph  
(b) (c).

36       (2) Except as provided in ~~subsections~~ subsection (3) and  
38       (4) section 9-1407, a provision in a lease agreement that:  
40       prohibits the voluntary or involuntary transfer, including a  
42       transfer by sale, sublease, creation or enforcement of a security  
44       interest, or attachment, levy or other judicial process, of an  
interest of a party under the lease contract or of the lessor's  
residual interest in the goods; or makes such a transfer an event  
of default, gives rise to the rights and remedies provided in  
subsection (5), but a transfer that is prohibited or is an event  
of default under the lease agreement is otherwise effective.

46       **Sec. B-13. 11 MRSA §2-1303, sub-§(3)**, as enacted by PL 1991, c.  
48       805, §4, is repealed.

2           **Sec. B-14. 11 MRSA §2-1303, sub-§(5)**, as enacted by PL 1991, c.  
805, §4, is amended to read:

4           (5) Subject to ~~subsections~~ subsection (3) and ~~(4)~~ section  
6           9-1407:

8           (a) If a transfer is made which is made an event of default  
10           under a lease agreement, the party to the lease contract not  
making the transfer, unless that party waives the default or  
12           otherwise agrees, has the rights and remedies described in  
section 2-1501, subsection (2); and

14           (b) If paragraph (a) is not applicable and if a transfer is  
made that is prohibited under a lease agreement or  
16           materially impairs the prospect of obtaining return  
performance by, materially changes the duty of, or  
18           materially increases the burden or risk imposed on, the  
other party to the lease contract, unless the party not  
20           making the transfer agrees at any time to the transfer in  
the lease contract or otherwise, then, except as limited by  
contract:

22                   (i) The transferor is liable to the party not making  
24                   the transfer for damages caused by the transfer to the  
extent that the damages could not reasonably be  
26                   prevented by the party not making the transfer; and

28                   (ii) A court having jurisdiction may grant other  
appropriate relief, including cancellation of the lease  
30                   contract or an injunction against the transfer.

32                                   **Official Comment**

34           1. Subsection (2) states a rule, consistent with Section  
9-311 ~~9-401(b)~~ [Maine cite section 9-1401, subsection (2)], that  
36           voluntary and involuntary transfers of an interest of a party  
under the lease contract or of the lessor's residual interest,  
38           including by way of the creation or enforcement of a security  
interest, are effective, notwithstanding a provision in the lease  
40           agreement prohibiting the transfer or making the transfer an  
event of default. Although the transfers are effective, the  
42           provision in the lease agreement is nevertheless enforceable, but  
only as provided in subsection ~~(5)~~ (4). Under subsection ~~(5)~~ (4)  
44           the prejudiced party is limited to the remedies on "default under  
the lease contract" in this Article and, except as limited by  
46           this Article, as provided in the lease agreement, if the transfer  
has been made an event of default. Section 2A-501(2). Usually,  
48           there will be a specific provision to this effect or a general  
provision making a breach of a covenant an event of default. In  
50           those cases where the transfer is prohibited, but not made an

2 event of default, the prejudiced party may recover damages; or,  
4 if the damage remedy would be ineffective adequately to protect  
6 that party, the court can order cancellation of the lease  
8 contract or enjoin the transfer. This rule that such provisions  
generally are enforceable is subject to ~~subsections (3) and (4)~~  
subsection (3) and Section 9-407 [Maine cite section 9-1407],  
which make such provisions unenforceable in certain instances.

10 2. ~~The first such instance is described in subsection (3).~~  
A Under Section 9-407, [Maine cite section 9-1407] a provision in  
12 a lease agreement which prohibits the creation or enforcement of  
a security interest, including sales of lease contracts subject  
14 to Article 9 (~~Sections 9-102(1)(b) and 9-104(f)~~ Section  
9-109(a)(3)) [Maine cite section 9-1109, subsection (1),  
paragraph (c)], or makes it an event of default is generally not  
16 enforceable, reflecting the policy of Section 9-406 [Maine cite  
section 9-1406] and former Section 9-318(4). However, ~~inasmuch~~  
18 ~~as the creation of a security interest includes the sale of a~~  
~~lease contract, if there are then unperformed duties on the part~~  
20 ~~of the lessor/seller, there could be a delegation of duties in~~  
~~the sale, and, if such a delegation actually takes place and is~~  
22 ~~of a material performance, a provision in a lease agreement~~  
~~prohibiting it or making it an event of default would be~~  
24 ~~enforceable, giving rise to the rights and remedies stated in~~  
~~subsection (5). The statute does not define "material." The~~  
26 ~~parties may set standards to determine its meaning. The term is~~  
~~intended to exclude delegations of matters such as accounting to~~  
28 ~~a professional accountant and the performance of, as opposed to~~  
~~the responsibility for, maintenance duties to a person in the~~  
30 ~~maintenance service industry.~~

32 3. ~~For similar reasons, the lessor is entitled to protect~~  
~~its residual interest in the goods by prohibiting anyone but the~~  
34 ~~lessee from possessing or using them. Accordingly, under~~  
~~subsection (3) if there is an actual transfer by the lessee of~~  
36 ~~its right of possession or use of the goods in violation of a~~  
~~provision in the lease agreement, such a provision likewise is~~  
38 ~~enforceable, giving rise to the rights and remedies stated in~~  
~~subsection (5). A transfer of the lessee's right of possession~~  
40 ~~or use of the goods resulting from the enforcement of a security~~  
~~interest granted by the lessee in its leasehold interest is a~~  
42 ~~"transfer by the lessee" under this subsection.~~

44 4. ~~Finally, subsection (3) protects against a claim that the~~  
~~creation or enforcement of a security interest in the lessor's~~  
46 ~~interest under the lease contract or in the residual interest is~~  
~~a transfer that materially impairs the prospect of obtaining~~  
48 ~~return performance by, materially changes the duty of, or~~  
~~materially increases the burden or risk imposed on the lessee so~~  
50 ~~as to give rise to the rights and remedies stated in subsection~~



2 (5), unless the transfer involves an actual delegation of a  
material performance of the lessor.

4 5. While it is not likely that a transfer by the lessor of  
6 its right to payment under the lease contract would impair at a  
8 future time the ability of the lessee to obtain the performance  
10 due the lessee under the lease contract from the lessor, if under  
12 the circumstances reasonable grounds for insecurity as to  
receiving that performance arise, the lessee may employ the  
provision of this Article for demanding adequate assurance of due  
performance and has the remedy provided in that circumstance.  
Section 2A-401.

14 6. Sections 9-206 and 9-318(1) through (3) also are  
16 relevant. Section 9-206 sanctions an agreement by a lessee not  
to assert certain types of claims or defenses against the  
18 lesser's assignee. Section 9-318(1) through (3) deal with, among  
20 other things, the other party's rights against the assignee where  
22 Section 9-206(1) does not apply. Since the definition of  
24 contract under Section 1-201(11) includes a lease agreement, the  
26 definition of account debtor under Section 9-105(1)(a) includes a  
28 lessee of goods. As a result, Section 9-206 applies to lease  
agreements, and there is no need to restate these sections in  
this Article. The reference to "defenses or claims arising out  
of a sale" in Section 9-318(1) should be interpreted broadly to  
include defenses or claims arising out of a lease inasmuch as  
that section codifies the common-law rule with respect to  
contracts, including lease contracts.

30 7. 3. Subsection (4) (3) is based upon Section 2-210(2) and  
32 Section 9-318(4) 9-406 [Maine cite section 9-1406]. It makes  
unenforceable a prohibition against transfers of certain rights  
34 to payment or a provision making the transfer an event of  
36 default. It also provides that such transfers do not materially  
impair the prospect of obtaining return performance by,  
38 materially change the duty of, or materially increase the burden  
or risk imposed on, the other party to the lease contract so as  
40 to give rise to the rights and remedies stated in subsection (5)  
42 (4). Accordingly, a transfer of a right to payment cannot be  
44 prohibited or made an event of default, or be one that materially  
impairs performance, changes duties or increases risk, if the  
46 right is already due or will become due without further  
performance being required by the party to receive payment.  
48 Thus, a lessor can transfer the right to future payments under  
the lease contract, including by way of a grant of a security  
50 interest, and the transfer will not give rise to the rights and  
remedies stated in subsection (5) (4) if the lessor has no  
remaining performance under the lease contract. The mere fact  
that the lessor is obligated to allow the lessee to remain in  
possession and to use the goods as long as the lessee is not in

2 default does not mean that there is "remaining performance" on  
the part of the lessor. Likewise, the fact that the lessor has  
4 potential liability under a "nonoperating" lease contract for  
breaches of warranty does not mean that there is "remaining  
6 performance". In contrast, the lessor would have "remaining  
performance" under a lease contract requiring the lessor to  
8 regularly maintain and service the goods or to provide "upgrades"  
of the equipment on a periodic basis in order to avoid  
10 obsolescence. The basic distinction is between a mere potential  
duty to respond which is not "remaining performance," and an  
12 affirmative duty to render stipulated performance. Although the  
distinction may be difficult to draw in some cases, it is  
14 instructive to focus on the difference between "operating" and  
"nonoperating" leases as generally understood in the  
16 marketplace. Even if there is "remaining performance" under a  
lease contract, a transfer for security of a right to payment  
18 that is made an event of default or that is in violation of a  
prohibition against transfer does not give rise to the rights and  
20 remedies under subsection ~~(5)~~ (4) if it does not constitute an  
actual delegation of a material performance under ~~subsection-(3)~~  
Section 9-407 [Maine cite section 9-1407].

22  
24 ~~8.~~ 4. The application of either the rule of ~~subsection-(3)~~  
Section 9-407 [Maine cite section 9-1407] or the rule of  
26 subsection ~~(4)~~ (3) to the grant by the lessor of a security  
interest in the lessor's right to future payment under the lease  
28 contract may produce the same result. Both ~~subsections~~  
provisions generally protect security transfers by the lessor in  
30 particular because the creation by the lessor of a security  
interest or the enforcement of that interest generally will not  
32 prejudice the lessee's rights if it does not result in a  
delegation of the lessor's duties. To the contrary, the receipt  
34 of loan proceeds or relief from the enforcement of an antecedent  
debt normally should enhance the lessor's ability to perform its  
36 duties under the lease contract. Nevertheless, there are  
circumstances where relief might be justified. For example, if  
38 ownership of the goods is transferred pursuant to enforcement of  
a security interest to a party whose ownership would prevent the  
40 lessee from continuing to possess the goods, relief might be  
warranted. See 49 U.S.C. § 1401(a) and (b) which places  
42 limitations on the operation of aircraft in the United States  
based on the citizenship or corporate qualification of the  
44 registrant.

46 9. 5. Relief on the ground of material prejudice when the  
lease agreement does not prohibit the transfer or make it an  
48 event of default should be afforded only in extreme  
circumstances, considering the fact that the party asserting  
material prejudice did not insist upon a provision in the lease  
50 agreement that would protect against such a transfer.

2           10. 6. Subsection ~~(5)~~ (4) implements the rule of subsection  
4           (2). Subsection (2) provides that, even though a transfer is  
6           effective, a provision in the lease agreement prohibiting it or  
8           making it an event of default may be enforceable as provided in  
10          subsection ~~(5)~~ (4). See *Brummond v. First National Bank of*  
12          *Clovis*, 656 P.2d 884, 35 U.C.C.Rep.Serv. (Callaghan) 1311  
14          (N.Mex.1983), stating the analogous rule for Section 9-311 [Maine  
16          cite section 9-1311]. If the transfer prohibited by the lease  
18          agreement is made an event of default, then, under subsection  
20          ~~5(a)~~ (4)(a), unless the default is waived or there is an  
22          agreement otherwise, the aggrieved party has the rights and  
24          remedies referred to in Section 2A-501(2), viz. those in this  
26          Article and, except as limited in the Article, those provided in  
28          the lease agreement. In the unlikely circumstance that the lease  
30          agreement prohibits the transfer without making a violation of  
            the prohibition an event of default or, even if there is no  
            prohibition against the transfer, and the transfer is one that  
            materially impairs performance, changes duties, or increases risk  
            (for example, a sublease or assignment to a party using the goods  
            improperly or for an illegal purpose), then subsection ~~5(b)~~  
            (4)(b) is applicable. In that circumstance, unless the party  
            aggrieved by the transfer has otherwise agreed in the lease  
            contract, such as by assenting to a particular transfer or to  
            transfers in general, or agrees in some other manner, the  
            aggrieved party has the right to recover damages from the  
            transferor and a court may, in appropriate circumstances, grant  
            other relief, such as cancellation of the lease contract or an  
            injunction against the transfer.

32          11. 7. If a transfer gives rise to the rights and remedies  
34          provided in subsection ~~(5)~~ (4), the transferee as an alternative  
36          may propose, and the other party may accept, adequate cure or  
38          compensation for past defaults and adequate assurance of future  
40          due performance under the lease contract. Subsection ~~(5)~~ (4)  
            does not preclude any other relief that may be available to a  
            party to the lease contract aggrieved by a transfer subject to an  
            enforceable prohibition, such as an action for interference with  
            contractual relations.

42          12. 8. Subsection ~~(8)~~ (7) requires that a provision in a  
44          consumer lease prohibiting a transfer, or making it an event of  
46          default, must be specific, written and conspicuous. See Section  
            1-201(10). This assists in protecting a consumer lessee against  
            surprise assertions of default.

48          13. 9. Subsection ~~(6)~~ (5) is taken almost verbatim from the  
50          provisions of Section ~~2-210(4)~~ 2-210(5). The subsection states a  
            rule of construction that distinguishes a commercial assignment,  
            which substitutes the assignee for the assignor as to rights and

2 duties, and an assignment for security or financing assignment,  
3 which substitutes the assignee for the assignor only as to  
4 rights. Note that the assignment for security or financing  
5 assignment is a subset of all security interests. Security  
6 interest is defined to include "any interest of a buyer of \_\_\_  
7 chattel paper". Section 1-201(37). Chattel paper is defined to  
8 include a lease. Section 9-105(1)(b) 9-102 [Maine cite section  
9-1102]. Thus, a buyer of leases is the holder of a security  
10 interest in the leases. That conclusion should not influence  
11 this issue, as the policy is quite different. Whether a buyer of  
12 leases is the holder of a commercial assignment, or an assignment  
13 for security or financing assignment should be determined by the  
14 language of the assignment or the circumstances of the assignment.

15 **Sec. B-15. 11 MRSA §2-1307**, as enacted by PL 1991, c. 805,  
16 §4, is repealed and the following enacted in its place:

17 **§2-1307. Priority of liens arising by attachment or**  
18 **levy on, security interests in and other**  
19 **claims to goods**

20 (1) Except as otherwise provided in section 2-1306, a  
21 creditor of a lessee takes subject to the lease contract.

22 (2) Except as otherwise provided in subsection (3) and in  
23 sections 2-1306 and 2-1308, a creditor of a lessor takes subject  
24 to the lease contract unless the creditor holds a lien that  
25 attached to the goods before the lease contract became  
26 enforceable.

27 (5) Except as otherwise provided in section 9-1317, 9-1321  
28 and 9-1323, a lessee takes a leasehold interest subject to a  
29 security interest held by a creditor of the lessor.

30 **Official Comment**

31 3. To take priority over the lease contract, and the  
32 interests derived therefrom, the creditor must come within one of  
33 three exceptions the exception stated within the rule. First, in  
34 subsection (2)(a) or within one of the provisions of Article 9  
35 [Maine cite Article 9-A] mentioned in subsection (3). Subsection  
36 (2) provides that where the creditor holds a lien (Section  
37 2A-103(1)(r)) that attached before the lease contract became  
38 enforceable (Section 2A-301), the creditor does not take subject  
39 to the lease. Second, ~~subsection (2)(b) provides that when the~~  
40 ~~creditor holds a security interest (Section 1-201(37)), whether~~  
41 ~~or not perfected, the creditor has priority over a lessee who did~~  
42 ~~not give value (Section 1-201(44)) and receive delivery of the~~  
43 ~~goods without knowledge (Section 1-201(25)) of the security~~  
44 ~~interest. As to other lessees, under subsection (2)(c) a secured~~  
45

2 creditor holding a perfected security interest before the time  
the lease contract became enforceable (Section 2A-301) does not  
4 take subject to the lease. With respect to this provision, the  
lessee in these circumstances is treated like a buyer so that  
6 perfection of a purchase money security interest does not relate  
back (Section 9-301). Subsection (3) provides that a lessee  
takes its leasehold interest subject to a security interest  
8 except as otherwise provided in Sections 9-317, 9-321, or 9-323  
[Maine cite section 9-1317, 9-1321 or 9-1323].

10  
12 4. The rules of this section operate in favor of whichever  
party to the lease contract may enforce it, even if one party  
perhaps may not, e.g., under Section 2A-201(1)(b).

14  
16 5. The rules stated in subsections (2)(b) and (c), and the  
rule in subsection (3), are is best understood by reviewing a  
hypothetical. Assume that a merchant engaged in the business of  
18 selling and leasing musical instruments obtained possession of a  
truck load of musical instruments on deferred payment terms from  
20 a supplier of musical instruments on January 6. To secure  
payment of such credit the merchant granted the supplier a  
22 security interest in the instruments; the security interest was  
perfected by filing on January 15. The merchant, as lessor,  
24 entered into a lease to an individual of one of the musical  
instruments supplied by the supplier; the lease became  
26 enforceable on January 10. Under subsection (2)(b) the lessee  
will prevail (assuming the lessee qualifies thereunder) unless  
28 subsection (c) provides otherwise. Under the rule stated in  
subsection (2)(c) a priority dispute between the supplier, as the  
30 lessor's secured creditor, and the lessee would be determined by  
ascertaining on January 10 (the day the lease became enforceable)  
32 the validity and perfected status of the security interest in the  
musical instrument and the enforceability of the lease contract  
34 by the lessee. Nothing more appearing, under the rule stated in  
subsection (2)(c), the supplier's security interest in the  
36 musical instrument would not have priority over the lease  
contract. Moreover, subsection (2) states that its rules are  
38 subject to the rules of subsections (3) and (4). Under this  
hypothetical the lessee should qualify as a "lessee in the  
40 ordinary course of business". Section 2A-103(1)(c). Subsection  
(3) also makes clear that the lessee in the ordinary course of  
42 business will win even if he or she knows of the existence of the  
supplier's security interest.

44  
46 6. Subsections (3) and (4), which are modeled on the  
provisions of Section 9-307(1) and (3), respectively, state two  
48 exceptions to the priority rule stated in subsection (2) with  
respect to a creditor who holds a security interest. The lessee  
in the ordinary course of business will be treated in the same  
50 fashion as the buyer in the ordinary course of business, given a

2 ~~priority dispute with a secured creditor over goods subject to a~~  
3 ~~lease contract.~~

4 **Sec. B-16. 11 MRSA §2-1309, sub-§(1), ¶(b),** as enacted by PL  
5 1991, c. 805, §4, is amended to read:

6 (b) A "fixture filing" is the filing, in the office where a  
7 record of a mortgage on the real estate would be filed or  
8 recorded, of a financing statement covering goods that are  
9 or are to become fixtures and conforming to the requirements  
10 of section 9-402 9-1502, subsection-~~(5)~~ subsections (1) and  
11 (2);

12  
13 **Sec. B-17. 11 MRSA §4-208, sub-§(3), ¶(a)** is amended to read:

14 (a) No security agreement is necessary to make the security  
15 interest enforceable (section 9-203 9-1203, subsection ~~(1)~~  
16 (2), paragraph ~~(b)~~ (c), subparagraph (i)); and

17  
18 **Sec. B-18. 11 MRSA §5-1118** is enacted to read:

19 **§5-1118. Security interest of issuer or nominated person**

20 (1) An issuer or nominated person has a security interest  
21 in a document presented under a letter of credit to the extent  
22 that the issuer or nominated person honors or gives value for the  
23 presentation.

24 (2) So long as and to the extent that an issuer or  
25 nominated person has not been reimbursed or has not otherwise  
26 recovered the value given with respect to a security interest in  
27 a document under subsection (1), the security interest continues  
28 and is subject to Article 9-A, but:

29 (a) A security agreement is not necessary to make the  
30 security interest enforceable under section 9-1203,  
31 subsection (2), paragraph (c);

32 (b) If the document is presented in a medium other than a  
33 written or other tangible medium, the security interest is  
34 perfected; and

35 (c) If the document is presented in a written or other  
36 tangible medium and is not a certificated security, chattel  
37 paper, a document of title, an instrument or a letter of  
38 credit, the security interest is perfected and has priority  
39 over a conflicting security interest in the document so long  
40 as the debtor does not have possession of the document.

## Official Comment

2

4       1. This section gives the issuer of a letter of credit or a  
6       nominated person thereunder an automatic perfected security  
8       interest in a "document" (as that term is defined in Section  
10       5-102(a)(6)). The security interest arises only if the document  
12       is presented to the issuer or nominated person under the letter  
14       of credit and only to the extent of the value that is given.  
16       This security interest is analogous to that awarded to a  
18       collecting bank under Section 4-210. Subsection (b) contains  
20       special rules governing the security interest arising under this  
22       section. In all other respects, a security interest arising  
24       under this section is subject to Article 9 [Maine cite Article  
26       9-A]. See Section 9-109 [Maine cite section 9-1109]. Thus, for  
28       example, a security interest arising under this section may give  
30       rise to a security interest in proceeds under Section 9-315  
32       [Maine cite section 9-1315].

18

20       2. Subsection (b)(1) makes a security agreement unnecessary  
22       to the creation of a security interest under this section. Under  
24       subsection (b)(2), a security interest arising under this section  
26       is perfected if the document is presented in a medium other than  
28       a written or tangible medium. Documents that are written and  
30       that are not an otherwise-defined type of collateral under  
32       Article 9 (e.g., an invoice or inspection certificate) may be  
34       goods, in which an issuer or nominated person could perfect its  
36       security interest by possession. Because the definition of  
38       document in Section 5-102(a)(6) includes records (e.g.,  
40       electronic records) that may not be goods, subsection (b)(2)  
42       provides for automatic perfection (i.e., without filing or  
44       possession).

32

34       Under subsection (b)(3), if the document (i) is in a written  
36       or tangible medium, (ii) is not a certificated security, chattel  
38       paper, a document of title, an instrument, or a letter of credit,  
40       and (iii) is not in the debtor's possession, the security  
42       interest is perfected and has priority over a conflicting  
44       security interest. If the document is a type of tangible  
46       collateral that subsection (b)(3) excludes from its perfection  
48       and priority rules, the issuer or nominated person must comply  
50       with the normal method of perfection (e.g., possession of an  
      instrument) and is subject to the applicable Article 9 [Maine  
      cite Article 9-A] priority rules. Documents to which subsection  
      (b)(3) applies may be important to an issuer or nominated  
      person. For example, a confirmer who pays the beneficiary must  
      be assured that its rights to all documents are not impaired. It  
      will find it necessary to present all of the required documents  
      to the issuer in order to be reimbursed. Moreover, when a  
      nominated person sends documents to an issuer in connection with  
      the nominated person's reimbursement, that activity is not a

2 collection, enforcement, or disposition of collateral under  
3 Article 9 [Maine cite Article 9-A].

4 One purpose of this section is to protect an issuer or  
5 nominated person from claims of a beneficiary's creditors. It is  
6 a fallback provision inasmuch as issuers and nominated persons  
7 frequently may obtain and perfect security interests under the  
8 usual Article 9 [Maine cite Article 9-A] rules, and, in many  
9 cases, the documents will be owned by the issuer, nominated  
10 person, or applicant.

11 **Sec. B-19. 11 MRSA §7-503, sub-§(1), ¶(a)** is amended to read:

12  
13 (a) Delivered or entrusted them or any document of title  
14 covering them to the bailor or his the bailor's nominee with  
15 actual or apparent authority to ship, store or sell or with  
16 power to obtain delivery under this Article (section 7-403)  
17 or with power of disposition under this Title (sections  
18 2-403 and 9-307 9-1320) or other statute or rule of law; nor

19  
20 **Official Comment §8-1102**

21  
22 7. "Entitlement holder." This term designates those who  
23 hold financial assets through intermediaries in the indirect  
24 holding system. Because many of the rules of Part 5 impose  
25 duties on securities intermediaries in favor of entitlement  
26 holders, the definition of entitlement holder is, in most cases,  
27 limited to the person specifically designated as such on the  
28 records of the intermediary. The last sentence of the definition  
29 covers the relatively unusual cases where a person may acquire a  
30 security entitlement under Section 8501 even though the person  
31 may not be specifically designated as an entitlement holder on  
32 the records of the securities intermediary.

33  
34 A person may have an interest in a security entitlement, and  
35 may even have the right to give entitlement orders to the  
36 securities intermediary with respect to it, even though the  
37 person is not the entitlement holder. For example, a person who  
38 holds securities through a securities account in its own name may  
39 have given discretionary trading authority to another person,  
40 such as an investment adviser. Similarly, the control provisions  
41 in Section 8-106 and the related provisions in Article 9 [Maine  
42 cite Article 9-A] are designed to facilitate transactions in  
43 which a person who holds securities through a securities account  
44 uses them as collateral in an arrangement where the securities  
45 intermediary has agreed that if the secured party so directs the  
46 intermediary will dispose of the positions. In such  
47 arrangements, the debtor remains the entitlement holder but has  
48 agreed that the secured party can initiate entitlement orders.



2 Moreover, an entitlement holder may be acting for another person  
4 as a nominee, agent, trustee, or in another capacity. Unless the  
6 entitlement holder is itself acting as a securities intermediary  
8 for the other person, in which case the other person would be an  
entitlement holder with respect to the securities entitlement,  
the relationship between an entitlement holder and another person  
for whose benefit the entitlement holder holds a securities  
entitlement is governed by other law.

10 8. "Entitlement order." This term is defined as a  
12 notification communicated to a securities intermediary directing  
14 transfer or redemption of the financial asset to which an  
16 entitlement holder has a security entitlement. The term is used  
18 in the rules for the indirect holding system in a fashion  
20 analogous to the use of the terms "indorsement" and "instruction"  
22 in the rules for the direct holding system. If a person directly  
24 holds a certificated security in registered form and wishes to  
26 transfer it, the means of transfer is an indorsement. If a  
28 person directly holds an uncertificated security and wishes to  
30 transfer it, the means of transfer is an instruction. If a  
32 person holds a security entitlement, the means of disposition is  
34 an entitlement order. An entitlement order includes a direction  
under Section 8-508 [Maine cite section 8-1508] to the securities  
intermediary to transfer a financial asset to the account of the  
entitlement holder at another financial intermediary or to cause  
the financial asset to be transferred to the entitlement holder  
in the direct holding system (e.g., the delivery of a securities  
certificate registered in the name of the former entitlement  
holder). As noted in Comment 7, an entitlement order need not be  
initiated by the entitlement holder in order to be effective, so  
long as the entitlement holder has authorized the other party to  
initiate entitlement orders. See Section 8-107(b) [Maine cite  
section 8-1107].

36 **Sec. B-20. 11 MRSA §8-1103, sub-§(6),** as enacted by PL 1997, c.  
429, Pt. B, §2, is amended to read:

38 (6) A commodity contract, as defined in section 9-115  
40 9-1102, subsection (15), is not a security or a financial asset.

42 **Sec. B-21. 11 MRSA §8-1106, sub-§§(4) and (6),** as enacted by PL  
1997, c. 429, Pt. B, §2, are amended to read:

44 (4) A purchaser has control of a security entitlement if:

46 (a) The purchaser becomes the entitlement holder; ~~or~~

48 (b) The securities intermediary has agreed that it will  
50 comply with entitlement orders originated by the purchaser  
without further consent by the entitlement holder; or



2 securities under Section 8-301. Of course, the acknowledging  
3 person cannot be the debtor.

4 This section specifies only the minimum requirements that  
5 such an arrangement must meet to confer "control"; the details of  
6 the arrangement can be specified by agreement. The arrangement  
7 might cover all of the positions in a particular account or  
8 subaccount, or only specified positions. There is no requirement  
9 that the control party's right to give entitlement orders be  
10 exclusive. The arrangement might provide that only the control  
11 party can give entitlement orders, or that either the entitlement  
12 holder or the control party can give entitlement orders. See  
13 subsection (f).

14 The following examples illustrate the rules application of  
15 subsection (d):

16 Example 1. Debtor grants Alpha Bank a security interest in  
17 a security entitlement that includes 1000 shares of XYZ Co. stock  
18 that Debtor holds through an account with Able & Co. Alpha also  
19 has an account with Able. Debtor instructs Able to transfer the  
20 shares to Alpha, and Able does so by crediting the shares to  
21 Alpha's account. Alpha Bank has control of the 1000 shares  
22 under subsection (d)(1). Although Debtor may have become the  
23 beneficial owner of the new securities entitlement, as between  
24 Debtor and Alpha, Able has agreed to act on Alpha's entitlement  
25 orders because, as between Able and Alpha,--because Alpha Bank--is  
26 has become the entitlement holder. See Section 8-506.

27 Example 2. Debtor grants Alpha Bank a security interest in  
28 a security entitlement that includes 1000 shares of XYZ Co. stock  
29 that Debtor holds through an account with Able & Co. Alpha Bank  
30 does not have an account with Able. Alpha Bank uses Beta as its  
31 securities custodian. Debtor instructs Able to transfer the  
32 shares to Beta, for the account of Alpha Bank, and Able does so.  
33 Alpha Bank has control of the 1000 shares under subsection  
34 (d)(1). As in Example 1, although Debtor may have become the  
35 beneficial owner of the new securities entitlement, as between  
36 Debtor and Alpha, Beta has agreed to act on Alpha's entitlement  
37 orders because, as between Beta and Alpha, because Alpha is  
38 has become the entitlement holder.

39 Example 3. Debtor grants Alpha Bank a security interest in  
40 a security entitlement that includes 1000 shares of XYZ Co. stock  
41 that Debtor holds through an account with Able & Co. Debtor,  
42 Able, and Alpha Bank enter into an agreement under which Debtor  
43 will continue to receive dividends and distributions, and will  
44 continue to have the right to direct dispositions, but Alpha Bank  
45 also has the right to direct dispositions. Alpha Bank has  
46 control of the 1000 shares under subsection (d)(2).  
47  
48  
49  
50

2           Example 4. Able & Co., a securities dealer, grants Alpha  
3 Bank a security interest in a security entitlement that includes  
4 1000 shares of XYZ Co. stock that Able holds through an account  
5 with Clearing Corporation. Able causes Clearing Corporation to  
6 transfer the shares into Alpha-Bank's Alpha's account at Clearing  
7 Corporation. As in Example 1, Alpha Bank has control of the 1000  
8 shares under subsection (d)(1).

10           Example 5. Able & Co., a securities dealer, grants Alpha  
11 Bank a security interest in a security entitlement that includes  
12 1000 shares of XYZ Co. stock that Able holds through an account  
13 with Clearing Corporation. Alpha Bank does not have an account  
14 with Clearing Corporation. It holds its securities through Beta  
15 Bank, which does have an account with Clearing Corporation. Able  
16 causes Clearing Corporation to transfer the shares into Beta  
17 Bank's Beta's account at Clearing Corporation. Beta Bank  
18 credits the position to Alpha's account with Beta Bank. As in  
19 Example 2, Alpha Bank has control of the 1000 shares under  
20 subsection (d)(1).

22           Example 6. Able & Co. a securities dealer, grants Alpha  
23 Bank a security interest in a security entitlement that includes  
24 1000 shares of XYZ Co. stock that Able holds through an account  
25 with Clearing Corporation. Able causes Clearing Corporation to  
26 transfer the shares into a pledge account, pursuant to an  
27 agreement under which Able will continue to receive dividends,  
28 distributions, and the like, but Alpha Bank has the right to  
29 direct dispositions. As in Example 3, Alpha Bank has control of  
30 the 1000 shares under subsection (d)(2).

32           Example 7. Able & Co. a securities dealer, grants Alpha  
33 Bank a security interest in a security entitlement that includes  
34 1000 shares of XYZ Co. stock that Able holds through an account  
35 with Clearing Corporation. Able, Alpha, and Clearing Corporation  
36 enter into an agreement under which Clearing Corporation will act  
37 on instructions from Alpha with respect to the XYZ Co. stock  
38 carried in Able's account, but Able will continue to receive  
39 dividends, distributions, and the like, and will also have the  
40 right to direct dispositions. As in Example 3, Alpha Bank has  
41 control of the 1000 shares under subsection (d)(2).

42           Example 8. Able & Co. a securities dealer, holds a wide  
43 range of securities through its account at Clearing Corporation.  
44 Able enters into an arrangement with Alpha Bank pursuant to which  
45 Alpha provides financing to Able secured by securities identified  
46 as the collateral on lists provided by Able to Alpha on a daily  
47 or other periodic basis. Able, Alpha, and Clearing Corporation  
48 enter into an agreement under which Clearing Corporation agrees  
49 that if at any time Alpha directs Clearing Corporation to do so,  
50

2 Clearing Corporation will transfer any securities from Able's  
4 account at Alpha's instructions. Because Clearing Corporation  
6 has agreed to act on Alpha's instructions with respect to any  
8 securities carried in Able's account, at the moment that Alpha's  
security interest attaches to securities listed by Able, Alpha  
obtains control of those securities under subsection (d)(2).  
There is no requirement that Clearing Corporation be informed of  
which securities Able has pledged to Alpha.

10 Example 9. Debtor grants Alpha Bank a security interest in  
12 a security entitlement that includes 1000 shares of XYZ Co. stock  
14 that Debtor holds through an account with Able & Co. Beta Bank  
16 agrees with Alpha to act as Alpha's collateral agent with respect  
18 to the security entitlement. Debtor, Able, and Beta enter into  
20 an agreement under which Debtor will continue to receive  
22 dividends and distributions, and will continue to have the right  
24 to direct dispositions, but Beta also has the right to direct  
dispositions. Because Able has agreed that it will comply with  
entitlement orders originated by Beta without further consent by  
Debtor, Beta has control of the security entitlement (see Example  
3). Because Beta has control on behalf of Alpha, Alpha also has  
control under subsection (d)(3). It is not necessary for Able to  
enter into an agreement directly with Alpha or for Able to be  
aware of Beta's agency relationship with Alpha.

26 7. The term "control" is used in a particular defined  
28 sense. The requirements for obtaining control are set out in  
30 this section. The concept is not to be interpreted by reference  
32 to similar concepts in other bodies of law. In particular, the  
34 requirements for "possession" derived from the common law of  
36 pledge are not to be used as a basis for interpreting subsection  
(c)(2) or (d)(2). Those provisions are designed to supplant the  
concepts of "constructive possession" and the like. A principal  
purpose of the "control" concept is to eliminate the uncertainty  
and confusion that results from attempting to apply common law  
possession concepts to modern securities holding practices.

38 The key to the control concept is that the purchaser has the  
40 present ability to have the securities sold or transferred  
42 without further action by the transferor. There is no  
44 requirement that the powers held by the purchaser be exclusive.  
46 For example, in a secured lending arrangement, if the secured  
48 party wishes, it can allow the debtor to retain the right to make  
50 substitutions, or to direct the disposition of the uncertificated  
security or security entitlement, or otherwise to give  
instructions or entitlement orders. (As explained in Section  
8-102, Comment 8, an entitlement order includes a direction under  
Section 8-508 to the securities intermediary to transfer a  
financial asset to the account of the entitlement holder at  
another financial intermediary or to cause the financial asset to

2 be transferred to the entitlement holder in the direct holding  
3 system (e.g., by delivery of a securities certificate registered  
4 in the name of the former entitlement holder). Subsection (f)  
5 is included to make clear the general point stated in subsection  
6 subsections (c) and (d) that the test of control is whether the  
7 purchaser has obtained the requisite power, not whether the  
8 debtor has retained other powers. There is no implication that  
9 retention by the debtor of powers other than those mentioned in  
10 subsection (f) is inconsistent with the purchaser having  
11 control. Nor is there a requirement that the purchaser's powers  
12 be unconditional, provided that further consent of the  
13 entitlement holder is not a condition.

14 Example 10. Debtor grants to Alpha Bank and to Beta Bank a  
15 security interest in a security entitlement that includes 1000  
16 shares of XYZ Co. stock that Debtor holds through an account with  
17 Able & Co. By agreement among the parties, Alpha's security  
18 interest is senior and Beta's is junior. Able agrees to act on  
19 the entitlement orders of either Alpha or Beta. Alpha and Beta  
20 each has control under subsection (d)(2). Moreover, Beta has  
21 control notwithstanding a term of Able's agreement to the effect  
22 that Able's obligation to act on Beta's entitlement orders is  
23 conditioned on the Alpha's consent. The crucial distinction is  
24 that Able's agreement to act on Beta's entitlement orders is not  
25 conditioned on Debtor's further consent.

26 Example 11. Debtor grants to Alpha Bank a security interest  
27 in a security entitlement that includes 1000 shares of XYZ Co.  
28 stock that Debtor holds through an account with Able & Co. Able  
29 agrees to act on the entitlement orders of Alpha, but Alpha's  
30 right to give entitlement orders to the securities intermediary  
31 is conditioned on the Debtor's default. Alternatively, Alpha's  
32 right to give entitlement orders is conditioned upon Alpha's  
33 statement to Able that Debtor is in default. Because Able's  
34 agreement to act on Beta's entitlement orders is not conditioned  
35 on Debtor's further consent, Alpha has control of the securities  
36 entitlement under either alternative.

37 In many situations, it will be better practice for both the  
38 securities intermediary and the purchaser to insist that any  
39 conditions relating in any way to the entitlement holder be  
40 effective only as between the purchaser and the entitlement  
41 holder. That practice would avoid the risk that the securities  
42 intermediary could be caught between conflicting assertions of  
43 the entitlement holder and the purchaser as to whether the  
44 conditions in fact have been met. Nonetheless, the existence of  
45 unfulfilled conditions effective against the intermediary would  
46 not preclude the purchaser from having control.  
47

2           **Sec. B-22. 11 MRSA §8-1110, sub-§(5)**, as enacted by PL 1997, c.  
429, Pt. B, §2, is amended to read:

4           (5)     The following rules determine a "securities  
6 intermediary's jurisdiction" for purposes of this section.

8           (a)     If an agreement between the securities intermediary and  
10 its entitlement holder ~~specifies that it is governed by the~~  
12 ~~law of a particular jurisdiction governing the securities~~  
14 ~~account expressly provides that a particular jurisdiction is~~  
16 ~~the securities intermediary's jurisdiction for purposes of~~  
18 ~~this part, this Article or this Title, that jurisdiction is~~  
20 the securities intermediary's jurisdiction.

22           (a-1)  If ~~paragraph (a) does not apply and an agreement~~  
24 ~~between the securities intermediary and its entitlement~~  
26 ~~holder governing the securities account expressly provides~~  
28 ~~that the agreement is governed by the law of a particular~~  
30 ~~jurisdiction, that jurisdiction is the securities~~  
32 ~~intermediary's jurisdiction.~~

34           (b)     If ~~neither paragraph (a) nor (a-1) applies and an~~  
36 ~~agreement between the securities intermediary and its~~  
38 ~~entitlement holder does not specify the governing law as~~  
40 ~~provided in paragraph (a) but governing the securities~~  
42 ~~account expressly specifies provides that the securities~~  
44 ~~account is maintained at an office in a particular~~  
46 ~~jurisdiction, that jurisdiction is the securities~~  
intermediary's jurisdiction.

48           (c)     If ~~an agreement between the securities intermediary and~~  
its ~~entitlement holder does not specify a jurisdiction as~~  
provided ~~in paragraph (a) or (b) none of the preceding~~  
paragraphs apply, the securities intermediary's jurisdiction  
is the jurisdiction in which ~~is located~~ the office  
identified in an account statement as the office serving the  
entitlement holder's account is located.

(d)     If ~~an agreement between the securities intermediary and~~  
its ~~entitlement holder does not specify a jurisdiction as~~  
provided ~~in paragraph (a) or (b) and an account statement~~  
does ~~not identify an office serving the entitlement holder's~~  
account ~~as provided in paragraph (c) none of the preceding~~  
paragraphs apply, the securities intermediary's jurisdiction  
is the jurisdiction in which ~~is located~~ the chief executive  
office of the securities intermediary is located.

Official Comment

2           3. Subsection (b) provides that the law of the securities  
intermediary's jurisdiction governs the issues concerning the  
indirect holding system that are dealt with in Article 8.  
4 Paragraphs (1) and (2) cover the matters dealt with in the  
Article 8 rules defining the concept of security entitlement and  
6 specifying the duties of securities intermediaries. Paragraph  
(3) provides that the law of the security intermediary's  
8 jurisdiction determines whether the intermediary owes any duties  
to an adverse claimant. Paragraph (4) provides that the law of  
10 the security intermediary's jurisdiction determines whether  
adverse claims can be asserted against entitlement holders and  
12 others.

14           Subsection (e) determines what is a "securities  
intermediary's jurisdiction." The policy of subsection (b) is to  
16 ensure that a securities intermediary and all of its entitlement  
holders can look to a single, readily-identifiable body of law to  
18 determine their rights and duties. Accordingly, subsection (e)  
sets out a sequential series of tests to facilitate  
20 identification of that body of law. Paragraph (1) of subsection  
(e) permits specification of the ~~governing--law~~ securities  
22 intermediary's jurisdiction by agreement. In the absence of such  
a specification, the law chosen by the parties to govern the  
24 securities account determines the securities intermediary's  
jurisdiction. See paragraph (2). Because the policy of this  
26 section is to enable parties to determine, in advance and with  
certainty, what law will apply to transactions governed by this  
28 Article, the validation of the parties' selection of governing  
law by agreement is not conditioned upon a determination that the  
30 jurisdiction whose law is chosen bear a "reasonable relation" to  
the transaction. See Section 4A-507; compare Section 1-105(1).  
32 That is also true with respect to the similar provisions in  
subsection (d) of this section and in Section 9103(6) 9-305  
34 [Maine cite section 9-1305]. The remaining paragraphs in  
subsection (e) contain additional default rules for determining  
36 the securities intermediary's jurisdiction.

38           5. The following examples illustrate how a court in a  
jurisdiction which has enacted this section would determine the  
40 governing law:

42           Example 1. John Doe, a resident of Kansas, maintains a  
securities account with Able & Co. Able is incorporated in  
44 Delaware. Its chief executive offices are located in Illinois.  
The office where Doe transacts business with Able is located in  
46 Missouri. The agreement between Doe and Able specifies that ~~it~~  
~~is--governed--by~~ Illinois law is the securities intermediary's  
48 (Able's) jurisdiction. Through the account, Doe holds securities  
of a Colorado corporation, which Able holds through Clearing  
50 Corporation. The rules of Clearing Corporation provide that the



rights and duties of Clearing Corporation and its participants are governed by New York law. Subsection (a) specifies that a controversy concerning the rights and duties as between the issuer and Clearing Corporation is governed by Colorado law. Subsections (b) and (e) specify that a controversy concerning the rights and duties as between the Clearing Corporation and Able is governed by New York law, and that a controversy concerning the rights and duties as between Able and Doe is governed by Illinois law.

7. The choice of law provisions concerning security interests in securities and security entitlements are set out in Section 9-103(6) 9-305 [Maine cite section 9-1305].

**Sec. B-23. 11 MRSA §8-1301, sub-§(1), ¶(c),** as enacted by PL 1997, c. 429, Pt. B, §2, is amended to read:

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been specially indorsed to the purchaser by an effective indorsement is:~~

(i) Registered in the name of the purchaser;

(ii) Payable to the order of the purchaser; or

(iii) Specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

#### Official Comment

2. Subsection (a) defines delivery with respect to certificated securities. Paragraph (1) deals with simple cases where purchasers themselves acquire physical possession of certificates. Paragraphs (2) and (3) of subsection (a) specify the circumstances in which delivery to a purchaser can occur although the certificate is in the possession of a person other than the purchaser. Paragraph (2) contains the general rule that a purchaser can take delivery through another person, so long as the other person is actually acting on behalf of the purchaser or acknowledges that it is holding on behalf of the purchaser. Paragraph (2) does not apply to acquisition of possession by a securities intermediary, because a person who holds securities through a securities account acquires a security entitlement, rather than having a direct interest. See Section 8-501. Subsection (a)(3) specifies the limited circumstances in which delivery of security certificates to a securities intermediary is treated as a delivery to the customer. Note that delivery is a

2 method of perfecting a security interest in a certificated  
3 security. See Section 9-313(a), (e) [Maine cite section 9-1313,  
4 subsection (1), (5)].

6 **Sec. B-24. 11 MRSA §8-1302, sub-§(1)**, as enacted by PL 1997, c.  
7 429, Pt. B, §2, is amended to read:

8 (1) Except as otherwise provided in subsections (2) and  
9 (3), ~~upon---delivery~~ a purchaser of a certificated or  
10 uncertificated security ~~to--a--purchaser,--the--purchaser~~ acquires  
11 all rights in the security that the transferor had or had power  
12 to transfer.

14 **Official Comment**

16 1. Subsection (a) provides that ~~if~~ a purchaser of a  
17 certificated or uncertificated security is--delivered--(Section  
18 8301)--to--a--purchaser--in--a--transfer,--the--purchaser acquires all  
19 rights that the transferor had or had power to transfer. This  
20 statement of the familiar "shelter" principle is qualified by the  
21 exceptions that a purchaser of a limited interest acquires only  
22 that interest, subsection (b), and that a person who does not  
23 qualify as a protected purchaser cannot improve its position by  
24 taking from a subsequent protected purchaser, subsection (c).

26 2. Although this section provides that a purchaser acquires  
27 a property interest in a certificated or uncertificated security  
28 ~~upon--"delivery,"~~ it does not state that a person can acquire an  
29 interest in a security only by delivery purchase. Article 8 also  
30 is not a comprehensive codification of all of the law governing  
31 the creation or transfer of interests in securities by purchase.  
32 For example, the grant of a security interest is a transfer of a  
33 property interest, but the formal steps necessary to effectuate  
34 such a transfer are governed by Article 9 [Maine cite article  
35 9-A] not by Article 8. Under the Article 9 [Maine cite article  
36 9-A] rules, a security interest in a certificated or  
37 uncertificated security can be created by execution of a security  
38 agreement under Section 9-203 [Maine cite section 9-1203] and can  
39 be perfected by filing. A transfer of an Article 9 [Maine cite  
40 article 9-A] security interest can be implemented by an Article 8  
41 delivery, but need not be.

42 Similarly, Article 8 does not determine whether a property  
43 interest in certificated or uncertificated security is acquired  
44 under other law, such as the law of gifts, trusts, or equitable  
45 remedies. Nor does Article 8 deal with transfers by operation of  
46 law. For example, transfers from decedent to administrator, from  
47 ward to guardian, and from bankrupt to trustee in bankruptcy are  
48 governed by other law as to both the time they occur and the  
49 substance of the transfer. The Article 8 rules do, however,

2 determine whether the issuer is obligated to recognize the rights  
that a third party, such as a transferee, may acquire under other  
4 law. See Sections 8-207, 8-401, and 8-404.

6 **Official Comment §8-1502**

8 3. The following examples illustrate the operation of  
Section 8-502.

10 Example 4. Debtor holds XYZ Co. shares in a securities  
account with Able & Co. As collateral for a loan from Bank,  
12 Debtor grants Bank a security interest in the security  
entitlement to the XYZ Co. shares. Bank perfects by a method  
14 which leaves Debtor with the ability to dispose of the shares.  
See Section 9-115 9-312 [Maine cite section 9-1312]. In  
16 violation of the security agreement, Debtor sells the XYZ Co.  
shares and absconds with the proceeds. Assume - implausibly -  
18 that Bank is able to trace the XYZ Co. shares and show that the  
"same shares" ended up in Buyer's securities account with Baker &  
20 Co. Section 8-502 precludes any action by Bank against Buyer,  
whether framed in constructive trust or other theory, provided  
22 that Buyer acquired the security entitlement for value and  
without notice of adverse claims.

24 Example 6. Debtor grants Alpha Co. a security interest in a  
26 security entitlement that includes 1000 shares of XYZ Co. stock  
that Debtor holds through an account with Able & Co. Alpha also  
28 has an account with Able. Debtor instructs Able to transfer the  
shares to Alpha, and Able does so by crediting the shares to  
30 Alpha's account. Alpha has control of the 1000 shares under  
Section 8-106(d). (The facts to this point are identical to  
32 those in Section 8-106, Comment 4, Example 1, except that Alpha  
Co. was Alpha Bank.) Alpha next grants Beta Co. a security  
34 interest in the 1000 shares included in Alpha's security  
entitlement. See Section 9-207(c)(3)[Maine cite section 9-1207,  
36 subsection (3), paragraph (c)]. Alpha instructs Able to transfer  
the shares to Gamma Co., Beta's custodian. Able does so, and  
38 Gamma credits the 1000 shares to Beta's account. Beta now has  
control under Section 8-106(d). By virtue of Debtor's explicit  
40 permission or by virtue of the permission inherent in Debtor's  
creation of a security interest in favor of Alpha and Alpha's  
42 resulting power to grant a security interest under Section 9-207  
[Maine cite section 9-1207], Debtor has no adverse claim to  
44 assert against Beta, assuming implausibly that Debtor could  
"trace" an interest to the Gamma account. Moreover, even, if  
46 Debtor did hold an adverse claim, if Beta did not have notice of  
Debtor's claim, Section 8-502 will preclude any action by Debtor  
48 against Beta, whether framed in constructive trust or other  
theory.

50



2 same principle as the Article 9 [Maine cite Article 9-A] priority  
rule for investment property, that is, control trumps  
4 non-control. Indeed, the most significant category of  
conflicting "purchasers" may be secured parties. Priority  
6 questions for security interests, however, are governed by the  
rules in Article 9 [Maine cite Article 9-A]. Subsection (c)  
8 applies only to cases not covered by the Article 9 [Maine cite  
Article 9-A] rules. It is intended primarily for disputes over  
10 conflicting claims arising out of repurchase agreement  
transactions that are not covered by the other rules set out in  
Articles 8 and 9 [Maine cite Article 9-A].

12 The following example illustrates subsection (c):

14 Example 4. Dealer holds securities through an account at  
Alpha Bank. Alpha Bank in turns holds through a clearing  
16 corporation account. Dealer transfers securities to RP1 in a  
"hold in custody" repo transaction. Dealer then transfers the  
18 same securities to RP2 in another repo transaction. The repo to  
RP2 is implemented by transferring the securities from Dealer's  
20 regular account at Alpha Bank to a special account maintained by  
Alpha Bank for Dealer and RP2. The agreement among Dealer, RP2,  
22 and Alpha Bank provides that Dealer can make substitutions for  
the securities but RP2 can direct Alpha Bank to sell any  
24 securities held in the special account. Dealer becomes  
insolvent. RP1 claims a prior interest in the securities  
26 transferred to RP2.

28 In this example Dealer remained the entitlement holder but  
30 agreed that RP2 could initiate entitlement orders to Dealer's  
security intermediary, Alpha Bank. If RP2 had become the  
32 entitlement holder, the adverse claim rule of Section 8-502 would  
apply. Even if RP2 does not become the entitlement holder, the  
34 arrangement among Dealer, Alpha Bank, and RP2 does suffice to  
give RP2 control. Thus, under Section 8-510(c), RP2 has priority  
36 over RP1, because RP2 is a purchaser who obtained control, and  
RP1 is a purchaser who did not obtain control. The same result  
38 could be reached under Section 8-510(a) which provides that RP1's  
earlier in time interest cannot be asserted as an adverse claim  
40 against RP2. The same result would follow under the Article 9  
[Maine cite Article 9-A] priority rules if the interests of RP1  
42 and RP2 are characterized as "security interests," see Section  
9-~~115(5)(a)~~ 9-328(1) [Maine cite section 9-1328, subsection  
44 (1)]. The main point of the rules of Section 8-510(c) is to  
ensure that there will be clear rules to cover the conflicting  
46 claims of RP1 and RP2 without characterizing their interests as  
Article 9 [Maine cite Article 9-A] security interests.

48 The priority rules in Article 9 [Maine cite Article 9-A] for  
50 conflicting security interests also include a default temporal

2 priority rule of ~~pro-rata-treatment~~ for cases where multiple  
3 secured parties have obtained control but omitted to specify  
4 their respective rights by agreement. See Section 9-~~115(5)(b)~~  
5 9-328(2) [Maine cite section 9-1328, subsection (2)] and Comment  
6 6 5 to Section 9-~~115~~ 9-328 [Maine cite section 9-1328]. Because  
7 the purchaser priority rule in Section 8-510(c) is intended to  
8 track the Article 9 [Maine cite Article 9-A] priority rules, it  
9 too has a pre-rata temporal priority rule for cases where  
10 multiple non-secured party purchasers have obtained control but  
11 omitted to specify their respective rights by agreement. The  
12 rule is patterned on Section 9-328(2) [Maine cite section 1328,  
13 subsection (2)].

14 5. If a securities intermediary itself is a purchaser,  
15 subsection (d) provides that it has priority over the interest of  
16 another purchaser who has control. Article 9 [Maine cite Article  
17 9-A] contains a similar rule. See Section 9-328(3) [Maine cite  
18 section 9-1328, subsection (3)].

20 **Sec. B-26. Effective date.** This Part takes effect July 1, 2001.

22 **PART C**

24 **Sec. C-1. Rules.** Notwithstanding that Parts A and B of this  
26 Act do not take effect until July 1, 2001, the Secretary of State  
27 may adopt rules in accordance with the Maine Revised Statutes,  
28 Title 5, chapter 375 that are necessary to carry out this Act in  
29 preparation for the effective date of July 1, 2001 of Article  
30 9-A. Rules adopted pursuant to this section are routine  
31 technical rules for the purposes of Title 5, chapter 375,  
32 subchapter II-A.

34 **SUMMARY**

36 This bill enacts changes recommended by the National  
38 Conference of Commissioners on Uniform State Laws as revisions to  
39 the Uniform Commercial Code, Article 9, on secured transactions.  
40 Part A of this bill repeals the Maine Revised Statutes, Title 11,  
41 Article 9 and enacts a new Title 11, Article 9-A to accomplish  
42 those revisions. Part B of this bill makes necessary conforming  
43 amendments and recommended changes to the Uniform Commercial Code  
44 to provide consistency with the new Article 9-A. Parts A and B  
45 take effect July 1, 2001. Part C gives the Secretary of State  
46 rulemaking authority to adopt rules prior to July 1, 2001 to  
carry out Article 9-A as soon as it is in effect.