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PART 3

**RIGHTS OF THIRD PARTIES; PERFECTED AND
UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY**

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§ 9-301. Persons who take priority over unperfected security interests; "lien creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) Persons entitled to priority under section 9-312;

(b) A person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) In the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts, contract rights and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest, such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

1963, c. 362, § 1.

§ 9-302. When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under section 9-305;

(b) A security interest temporarily perfected in instruments or documents without delivery under section 9-304 or in proceeds for a 10-day period under section 9-306;

(c) A purchase money security interest in farm equipment having a purchase price not in excess of \$500; but filing is required for a fixture under section 9-313;

(d) An assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(e) A security interest of a collecting bank (section 4-208) or arising under the Article on sales (see section 9-113) or covered in subsection (3).

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) Of the United States which provides for a national registration or filing of all security interests in such property; or

(b) Of this State which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

1963, c. 362, § 1.

§ 9-303. When security interest is perfected; continuity of perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.

1963, c. 362, § 1.

§ 9-304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this Article.

1963, c. 362, § 1.

§ 9-305. When possession by secured party perfects security interest without filing

A security interest in letters of credit and advices of credit (section 5-116, subsection (2), paragraph (a)), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

1963, c. 362, § 1.

§ 9-306. "Proceeds"; secured party's rights on disposition of collateral

(1) "Proceeds" include whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money checks and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor, unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest, if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor, unless

(a) A filed financing statement covering the original collateral also covers proceeds; or

(b) The security interest in the proceeds is perfected before the expiration of the 10-day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

- (a) In identifiable noncash proceeds;
- (b) In identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;
- (c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and
- (d) In all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph is
 - (i) Subject to any right of setoff; and
 - (ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

- (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
- (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.
- (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security in-

terest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

1963, c. 362, § 1.

§ 9-307. Protection of buyers of goods

(1) A buyer in ordinary course of business (section 1-201, subsection (9)); other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$500 (other than fixtures, see section 9-313), a buyer takes free of a security interest even though perfected, if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

1963, c. 362, § 1.

§ 9-308. Purchase of chattel paper and nonnegotiable instruments

A purchaser of chattel paper or a nonnegotiable instrument, who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest, has priority over a security interest which is perfected under section 9-304 (permissive filing and temporary perfection). A purchaser of chattel paper, who gives new value and takes possession of it in the ordinary course of his business, has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 9-306), even though he knows that the specific paper is subject to the security interest.

1963, c. 362, § 1.

§ 9-309. Protection of purchasers of instruments and documents

Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been negotiated (section 7-501) or a bona fide purchaser of a security (section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

1963, c. 362, § 1.

§ 9-310. Priority of certain liens arising by operation of law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

1963, c. 362, § 1.

§ 9-311. Alienability of debtor's rights: judicial process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process), notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

1963, c. 362, § 1.

§ 9-312. Priorities among conflicting security interests in the same collateral

(1) The rules of priority stated in the following sections shall govern where applicable: section 4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 9-301 on certain priorities; section 9-304 on goods covered by documents; section 9-306 on proceeds and repossessions; section 9-307 on buyers of goods; section 9-308 on possessory against nonpossessory interests in chattel paper or nonnegotiable instruments;

section 9-309 on security interests in negotiable instruments, documents or securities; section 9-310 on priorities between perfected security interests and liens by operation of law; section 9-313 on security interests in fixtures as against interests in real estate; section 9-314 on security interests in accessions as against interests in goods; section 9-315 on conflicting security interests where goods lose their identity or become part of a product; and section 9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral, if

(a) The purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) Any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) Such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests

which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) In the order of filing, if both are perfected by filing, regardless of which security interest attached first under section 9-204, subsection (1) and whether it attached before or after filing;

(b) In the order of perfection, unless both are perfected by filing, regardless of which security interest attached first under section 9-204, subsection (1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) In the order of attachment under section 9-204, subsection (1), so long as neither is perfected.

(6) For the purpose of the priority rules of subsection (5), a continuously perfected security interest shall be treated at all times as if perfected by filing, if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing, if it was originally perfected otherwise than by filing.

1963, c. 362, § 1.

§ 9-313. Priority of security interests in fixtures

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The laws of the State other than this Title determine whether and when other goods become fixtures and this Title does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate, except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate, except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not

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in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) A subsequent purchaser for value of any interest in the real estate; or

(b) A creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) A creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances; if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

1963, c. 362, § 1.

§ 9-314. Accessions

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 9-315, subsection (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole, except as stated in subsection (3) but is invalid against any person with an interest in the whole at

the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest on the whole to the extent that he makes subsequent advances; if the subsequent purchase is made, the lien by judicial proceedings is obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default, subject to the provisions of part 5, remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

1963, c. 362, § 1.

§ 9-315. Priority when goods are commingled or processed

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass, if

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

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(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.
1963, c. 362, § 1.

§ 9-316. Priority subject to subordination

Nothing in this Article prevents subordination by agreement by any person entitled to priority.

1963, c. 362, § 1.

§ 9-317. Secured party not obligated on contract of debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

1963, c. 362, § 1.

§ 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9-206, the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstand-

ing notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

1963, c. 362, § 1.