

MAINE STATE LEGISLATURE

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PART 2

**VALIDITY OF SECURITY AGREEMENT AND
RIGHTS OF PARTIES THERETO**

Sec.

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§ 9-201. General validity of security agreement

Except as otherwise provided by this Title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

1963, c. 362, § 1.

§ 9-202. Title to collateral immaterial

Each provision of this Article with regard to rights, obligations and remedies applies, whether title to collateral is in the secured party or in the debtor.

1963, c. 362, § 1.

§ 9-203. Enforceability of security interest; proceeds, formal requisites

(1) Subject to the provisions of section 4-208 on the security interest of a collecting bank and section 9-113 on a security in-

interest arising under the Article on sales, a security interest is not enforceable against the debtor or third parties, unless

(a) The collateral is in the possession of the secured party;
or

(b) The debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this Article, is also subject to the applicable provisions of Title 9, chapters 281 to 289 and chapters 321 to 327, and to Title 30, section 3051 and sections 3151 to 3155 and in the case of conflict between the provisions of this Article and any such statute the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

1963, c. 362, § 1.

§ 9-204. When security interest attaches; after-acquired property; future advances

(1) A security interest cannot attach until there is agreement (section 1-201, subsection (3)) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place, unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section, the debtor has no rights

(a) In crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) In fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) In a contract right until the contract has been made;

(d) In an account until it comes into existence.

(3) Except as provided in subsection (4), a security agreement may provide that collateral whenever acquired shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) To crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may, if so agreed, attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) To consumer goods other than accessions (section 9-314), when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

1963, c. 362, § 1.

§ 9-205. Use or disposition of collateral without accounting permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

1963, c. 362, § 1.

§ 9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article

on commercial paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods, the Article on sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

1963, c. 362, § 1.

§ 9-207. Rights and duties when collateral is in secured party's possession

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties, unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

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

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

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the

case of consumer goods, in the manner and to the extent provided in the security agreement.

1963, c. 362, § 1.

§ 9-208. Request for statement of account or list of collateral

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply, he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

1963, c. 362, § 1.