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Revised Article 9 (UCC) Study Group

Final Report

to the

Joint Standing Committee on Judiciary

January 3, 2000

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I. Introduction

The National Conference of Commissioners on Uniform State Laws and the American Law Institute approved a complete rewrite of Article 9 (Secured Transactions) of the Uniform Commercial Code in 1998. In the fall of 1998, the Model Act was disseminated to each state, to be introduced and adopted with a common effective date of July 1, 2001.

In Maine, the Model Act was submitted by the Secretary of State, pursuant to Joint Rule 204, and was introduced in the first regular session of the 119th Legislature as LD 2245, "An Act to Adopt the Model Revised Article 9 Secured Transactions". The bill was then referenced to the Joint Standing Committee on Judiciary. In order to ensure that this complex and important legislation receive proper scrutiny, the Joint Standing Committee on Judiciary requested and received authorization to carry over LD 2245 to the second regular session, and requested Secretary of State Dan A. Gwadosky to convene a study group to identify issues for discussion by the Committee and develop recommendations for possible amendments to the bill. The Secretary of State selected a study group of eleven professionals (hereafter called the "Secretary of State Group"), representing the legal, financial, business and consumer interests in this State, who met 4 times in the fall of 1999.

Concurrently, a group of nine members from the Business, Bankruptcy and Consumer and Financial Institutions Sections of the Maine State Bar Association (hereafter called the "Maine Bar Group") also assembled to begin a comprehensive review of Revised Article 9. Two attorneys, Richard P. Hackett of Pierce, Atwood, and F. Bruce Sleeper, of Jensen, Baird, Gardner and Henry, were members of both groups and acted as liaisons between the groups during the review process.

The Maine Bar Group examined Parts 1-4 and 6-9 of the bill; while the Secretary of State Group assessed Part 5 (Filing) and the accompanying Model Administrative Rules (to be adopted by the Secretary of State after LD 2245 is enacted), as well as reviewed and made final recommendations from the work of the Maine Bar Group.

This report and suggested amendments to LD 2245 reflect the efforts of both study groups.

II. Executive Summary of Recommendations

Both study groups recommend adoption of the Uniform Act, with the exception of the non-uniform provisions, specific Maine commentary and technical corrections proposed in the attached reports:

Appendix 1	Maine Bar Group's Memorandum on Revised Article 9 with "Proposed Revisions to New Article 9 and Related Maine Commentary"
Appendix 2	Secretary of State Group's "Proposed Revisions to New Article 9 and Related Maine Commentary with Conforming Amendment to Title 29-A"
Appendix 3	Secretary of State Group's "Corrections or Amendments to LD 2245 from Report of Choices Made from the Model Act"
Appendix 4	"Cross-reference Corrections to 11 MRSA, Article 9-A"

III. Areas of Non-Unanimity in Recommendations

With the exception of two provisions, identified in the Maine Bar Group's "Proposed Revisions to New Article 9" as Sections Q and R, both study groups were in unanimous agreement to present these amendments to the Legislature.

A majority of both groups agreed with the proposed non-uniform provisions in Section Q (9-1507) and R (9-1508). However, a strong minority favored the Uniform Act provisions in these two areas, particularly in 9-1508, as being more reasonable.

The two positions represent a policy decision as to whether the old or the new creditor is in a better position to determine the name of the debtor (9-1507) or a change in the form of the debtor (9-1508), in order to ascertain whether there is a prior security interest in the collateral. The following is a discussion by the main proponent and opponent of the non-uniform recommendations in this report.

§ 9-1507(3). The argument for non-uniformity (by Bruce Sleeper):

In order to be enforceable against most third parties, a security interest must be perfected, usually by the filing of a financing statement with the Secretary of State's office. Other creditors then have the ability to determine whether their debtor has previously given another creditor a prior security interest in the collateral now being offered to the new creditor. The later creditor will ordinarily be able to search the records using the name of the debtor. Problems, however, can arise where the debtor has changed its name. In such an instance, the later creditor might only search under the new name and not find a statement filed before the name change has occurred.

In many instances, there is insufficient collateral value to fully protect both the old and the new creditor. Therefore, it must be determined which party should have priority, since the party with a junior position will be at a greater risk of loss than the party with the senior position. Both the current and proposed uniform versions of Article 9 provide that the first creditor's security interest filed under the debtor's old name will remain valid with respect to property acquired by the debtor no later than 4 months after the name change takes effect. It will not, however, cover later acquired property unless the new and old names are so similar that a search under the old name would also find statements filed under the new one. This places the risk of loss upon the creditor who filed under the old name and would require the prior creditor to continue to monitor its debtor throughout the term of the secured obligation in order to ensure that its filing is updated upon the occurrence of a name change.

The proposed non-uniform provision would reverse this, placing the risk of loss upon the new creditor. The theory behind this recommendation is that it is easier and less expensive for a creditor to obtain information from a debtor at the time a loan is being made (when a creditor ordinarily is already investigating the debtor for credit worthiness and other relevant characteristics) than it is to require an existing creditor to monitor the name of the debtor throughout the term of the secured obligation. In addition, the new creditor has the opportunity to investigate the name of the debtor at a time when it has not yet made a loan and has no funds at risk. The protection offered the prior creditor would, however, be limited, to provide that any continuation of the financing statement (something that will usually occur only once every five years) must show the debtor's new name. This would require that the creditor update itself as to the legal name of the debtor only once every five years, rather than on a continuous basis. In addition, this merely continues Maine's non-uniform version of § 9-402 of current Article 9, which was amended in 1978 to reach this same result.

§ 9-1507(3). The argument for uniformity (by Tom Ward):

As it was taken from the Uniform Version of Revised Article 9, Section 9-1507(3) of LD 2245 puts a limit on the continued effectiveness of a financing statement relative to property acquired by the debtor *after it has changed its name in a way that makes the old statement seriously misleading*. Under the Uniform rule, the old misleading statement continues to work to "perfect" the security interest in after-acquired property of the debtor for four months after the name change. Thereafter, collateral acquired is not "perfected" unless a new non-misleading financing statement is filed during the four-month grace period.

The Maine Bar Group has recommended that a non-uniform rule be substituted for the four-month rule as it now stands in section 9-1507(3). Under the non-uniform proposal a financing statement that is properly filed to begin with does not lose its effectiveness as to the debtor's after-acquired property because the debtor changes its name, even if the new name makes the statement "seriously misleading." The effectiveness of the old financing statement is limited to its own natural duration, however. A continuation statement must be filed under the new name. Filing of a continuation statement under the old, now misleading, name would not be effective.

The Maine Bar Group proposal continues Maine's existing non-uniform rule on this point. The policy behind both the current and proposed non-uniform language is based in the belief that the risk of a debtor's misleading name change is better placed on subsequent searchers than on existing secured creditors who were properly filed at the outset. If subsequent searchers are indeed in a better position to acquire information concerning the debtor's prior names than the position existing secured parties are in to monitor name change activity, the non-uniform rule makes sense. While the point is arguable, the non-uniform position on section 9-1507(3) is a reasonable one. A name change does not, by itself, involve reallocations of capital or equity in the debtor's enterprise. These changes often occur without a ripple in existing business patterns. Credit extenders who come along later might well be charged with inquiry, and even some investigation, into a prospective debtor's prior names.

§ 9-1508(2). The argument for non-uniformity (by Bruce Sleeper):

New Article 9 provides that in certain instances a new party can become subject to a security interest given by a prior debtor. Such a "new debtor" can, for example, become subject to the security interest where the new debtor has merged with the old debtor, or where the new debtor, in connection with the purchase of substantially all of the old debtor's assets, has agreed to become generally liable for the old debtor's obligations. The uniform version of new Article 9 provides that a financing statement filed naming the old debtor will only cover property acquired by the new debtor no later than 4 months after the new debtor becomes bound, unless the names of the old and the new debtor are so similar that a search under one name would also find financing statements filed under the other name.

Once again, the question is whether the old creditor (filed under the old name) or the new creditor (filed under the new name) should bear the risk of a change in the debtor. In many instances, it would be difficult, if not impossible, for a new creditor to determine whether a merger or acquisition had occurred, since such might not be reflected in the public records for that new entity. However, where such an occurrence would be contained in the public organizational records of the new debtor, then it is easily discoverable by the new creditor at the time that it enters into a secured transaction. Therefore, it is recommended that the section be changed to provide that the financing statement would be effective against the new debtor so long as: (1) the new debtor is the type of entity (such as a corporation, limited partnership or limited liability company or partnership) for which organizational files are required to be maintained in a public office; (2) the transaction causing the new debtor to become liable is reflected in those records; and (3) the appropriate place to file a financing statement against the new debtor is the same place to file a financing statement against the old debtor. Again, the financing statement filed in the name of the old debtor would remain effective only until it needed to be continued. This would require creditors to monitor the activities of their debtor only once every five years rather than continuously during the term of the secured obligation.

§ 9-1508(2). The argument for uniformity (by Tom Ward):

Section 9-1508(2) of LD 2245 also contains a four-month rule derived from the Uniform Version of Revised Article 9. The situation covered in section 9-1508(2) involves more than a mere name change, however. This second four-month rule applies when a "new debtor" has emerged because the original debtor has changed its ownership form or its existing corporate structure. [Examples would include an individual debtor doing business as a sole proprietor who later incorporates or an original corporate debtor that later merges into a "new debtor" corporation.]

When the "new debtor" is bound by the original debtor's security agreement [Section 9-1203(d)&(e)] the old security agreement will continue to "perfect" collateral acquired by the new debtor, unless the new debtor's new name makes the old financing statement "seriously misleading." Even after it has been rendered seriously misleading, the old financing statement works to "perfect" as to collateral acquired before and within four months after the new debtor becomes bound on the original debtor's agreement. Thereafter, the security interest in collateral acquired by the new debtor will be unperfected unless a proper "new debtor" financing statement is filed within the four-month grace period.

The Maine Bar Group has proposed non-uniform language for section 9-1508(2) that eliminates this four-month rule as well. Under this proposed substitute language, the financing statement would remain effective until it expired, even if the new debtor's name was seriously misleading, *unless* the precipitating change to a corporate form or to a new corporate structure has the effect of changing the debtor's location so that filing in a new jurisdiction would be required.

The argument for the non-uniform language is much less compelling here than in the case of a mere name change in section 9-1507(3). There are two strong arguments against the proposal for a non-uniform change in section 9-1508(2).

1. Changes in the debtor's form or structure tend to affect capital and equity positions in a way that existing secured creditors should be charged with monitoring. As distinguished from the simple name change situation, here the existing lender may be the most efficient risk avoider.
2. As it stands, the non-uniform proposal requires the existing secured creditor to monitor changes in the debtor's form or structure because these changes could alter the debtor's "location." The state of incorporation is the critical factor in locating a corporate debtor under the Revisions. If prudent monitoring by the existing secured party already requires awareness of these form and structure changes by the debtor, the Uniform rule seems to be a better allocation of risk. The obligation to discover a misleading name change and file a correct financing statement should be on the party who must already monitor the debtor in order to protect against a change in location.

IV. Summary of Proposed Revisions to New Article 9 (Maine Bar Group)

Of the 28 recommendations made by the Maine Bar Group:

1. 6 are Maine Comment only, which clarify the reading of the uniform provision: (sections B, C, E, F, M, O).

2. 10 are non-uniform provisions or Maine Comment or both, that address necessary statutory reference corrections and may fairly be called technical corrections: (sections K, N, P, S, T, U, V, Z, AA, BB).

3. 4 are non-uniform provisions that provide consistency with other Maine laws and are not significant deviations from the uniform law: (sections A, G, W, X).

4. 1 is an optional provision, that adds definitions related to production-money security, in order to be consistent with other optional uniform provisions already included in LD 2245. This provision is in fact the uniform version for this option: (section D).

5. 7 are more substantive non-uniform provisions: (sections H, I, J, L, Q, R, Y).

H - increases the time that a secured party has to release a lien on demand of a debtor, from 10 days to 20 days.

I - increases the time that a secured party has to respond to a request for an accounting, from 14 days to 20 days.

J - retains a current Maine non-uniform provision regarding the automatic perfection of a security interest in consumer goods (purchase money security interest). Under the previous and proposed Uniform Act, there is automatic perfection. Under current Maine law, there is automatic perfection up to an amount financed of $2,000. Under Maine's proposed non-uniform provision, the cap stays, but is raised to $10,000, and is applied to individual consumer goods acquired, not multiple goods in a single transaction.

L – adopts the uniform provision, but notes that we are not continuing Maine's former non-uniform provision that allowed buyers of timber, logs and pulpwood to take such goods subject to a security interest created by the seller.

Q – retains a current Maine non-uniform 4-month rule provision for a change of name of the debtor, that makes the new secured party responsible for determining the debtor's history of names. This new version requires the old secured party to update the correctness of names when filing a continuation statement. This represents a compromise between the old Maine non-uniform rule and the uniform approach, which puts all the burden on the old secured party.

R – retains a current Maine non-uniform 4-month rule provision for change of entity form of a debtor that is a Maine registered organization (merger, consolidation or conversion), when that new organization remains within Maine. Again, the new secured party will be responsible under this non-uniform provision, to determine the debtor's history of names and forms, rather than the existing secured party.

Y - deviates from the uniform provision by adopting the "rebuttable presumption" rule for both consumer and non-consumer transactions. The "rebuttable presumption" rule allows non-compliant secured parties the opportunity to rebut with appropriate evidence the presumption that there would not have been any deficiency had the secured party complied with the default provisions of the Code. Although this is a non-uniform provision within the confines of Revised Article 9, it in fact brings Maine into conformity with the majority of states, which already apply the rule to consumer transactions.

V. Summary of Proposed Revisions to New Article 9 (Secretary of State Group)

Of the 9 recommendations made by the Secretary of State Group:

1. 2 are Maine Comment only, that clarify the reading of the uniform provision: (sections CC, GG).

2. 2 are non-uniform provisions that provide clarification or consistency and are not significant deviations from the uniform law: (sections DD, EE).

DD – clarifies that a super-generic collateral description (such as "all equipment") used in a financing statement, may not be a sufficient description for the underlying security agreement.

EE – substitutes the designation "book and page" for "file number, date and time" as the means of accessing Registry of Deeds recordings. It further eliminates the requirement that county filings have to restate the description of the real property and other information provided in the initial filing, because Maine's Registry of Deeds recording system makes such information unnecessary to locate the original filing (only the unique "book and page" designation is needed).

3. 2 are non-uniform provisions that retain the current procedures and fees for recordings at the Registry of Deeds: (sections HH, II).

HH - exempts the Registry of Deeds from complying with the new provisions governing how information is supplied from their records and retains their current statutory requirements.

II – retains the current fee structure for Registry of Deeds recordings, as provided in 33 M.R.S.A. section 751.

4. 3 are more substantive non-uniform recommendations: (sections FF, JJ, KK).

FF – changes the time from "1 month" to "60 days" for a secured party to terminate a filing when there has been no demand for termination from the debtor. This provides consistency with a recently amended Maine statute for release of a mortgage within 60 days with no demand by a debtor. (The penalty for non-termination is $500, as compared with the current penalty of $25, so both study groups believed that the additional time was warranted.)

JJ – eliminates Model Act section (9-527) that required the Secretary of State to report annually to the Governor and Legislature on the extent to which our filing office rules are in compliance with the Model Rules. As the Rules are designated to be routine technical, and the fees and most of the substantive provisions are already required by statute, the annual reporting requirement was not deemed necessary.

KK – makes a conforming amendment to 29-A M.R.S.A. section 702. Two of the changes in this amendment bring Maine's Title provisions into compliance with Revised Article 9. First, the "relation back" provision is removed in order to avoid conflict with the new Uniform Act. Second, the "4-month" rule provisions which were based on the old Article 9 rules, are now obsolete. These are being replaced with an incorporation by reference to the new rules in Revised Article 9. The third change keeps our current non-uniform exception to the Revised Article 9 rules, and retains the special treatment that Maine has for out-of-state, over-the-road trailers that use Maine as a "safe harbor" for registration and titling.

VI. Summary of Corrections or Amendments to LD 2245 from Report of Choices Made from the Model Act of Revised Article 9

There were 30 places in the Model Act that offered a choice of language. The following summarizes the main changes being recommended in this report:

b. We originally selected the option of implementing the "check digit" numbering process at the later date of January 1, 2002 (6 months after the effective date of Revised Article 9). However, the study group recommends implementation by July 1, 2001, when the rest of the law becomes effective.

d - f. After review by the Secretary of State's Group, and further analysis of current fees and filing volumes, some adjustments to the proposed fees are being recommended to encourage electronic filing but still keep the bill revenue-neutral.

VII. Cross-reference Corrections to 11 MRSA, Article 9-A

This report amends 31 cross-references in other statutes to the appropriate citations in Revised Article 9 and contains technical corrections only. These represent the obvious cross-references that we could find to Title 11, Article 9. However, there may be other Titles that refer to secured transactions but that are not specifically cross-referenced; such corrections would need to be made as they are discovered.

VIII. Other Resources from the Review Process

In the course of the review by each study group, members prepared analyses of various parts of Revised Article 9 that highlighted changes in the law on secured transactions. Copies of these analyses are not included with this report, but are available upon request.

To assist the Committee in understanding the overall impact of Revised Article 9, and the major changes that have been made, the Maine Bar Group provided a summary prepared by the National Conference of Commissioners on Uniform State Laws that includes the key revisions to prior Article 9. This summary is attached as Appendix 5.

Appendix 1

MEMORANDUM

TO: Julie L. Flynn, Deputy Secretary of State

FROM: Laurie A. Dart, Esq. – Eaton, Peabody, Bradford & Veague
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Norman Rattey, Esq. – Skelton, Taintor & Abbott
Christopher H. Roney, Esq. – Finance Authority of Maine
F. Bruce Sleeper, Esq. – Jensen, Baird, Gardner & Henry

RE: **Bar Committee Report on Revised Article 9**

DATE: December 30, 1999

As you know, the National Conference of Commissioners on Uniform State Laws and the American Law Institute recently approved a complete rewrite of Article 9, Secured Transactions. Revised Article 9 was introduced in Maine during the last legislative session and was held over for consideration during the upcoming term. If adopted, the legislation has a proposed effective date of July 1, 2001.

Revised Article 9 embodies a complex statutory structure that is of paramount importance to commercial and consumer finance transactions in the State. Consequently, in June of this year, in consultation with you and the committee appointed by the Secretary of State's office to study Revised Article 9, a committee of nine (9) members from the Business, Bankruptcy and Consumer and Financial Institutions sections of the Maine State Bar Association began a comprehensive review of Revised Article 9. Our goal was to study each part of Revised Article 9, to identify issues of particular relevance to commercial and consumer finance in Maine, to highlight industries and/or constituencies particularly affected by the proposed revisions, to recommend non-uniform provisions and/or Maine comments where appropriate, and ultimately to recommend approval or disapproval of the legislation. Our group, which included lawyers that represent a wide range of commercial and consumer interests in the State, met a total of seven (7) times and at each meeting conducted a detailed review of individual parts of Revised Article 9.

Based on our review of the proposed legislation, we recommend adoption of the Uniform Act, with the proposed non-uniform provisions and specific Maine comments set forth in our report, which is attached hereto as Exhibit A. Our report identifies, either in the proposed non-uniform provision or in the proposed Maine comment, changes in Article 9 that appear to affect particular constituencies as well as changes in existing Maine law. Although in individual cases certain interest groups may have been favored, in general Revised Article 9 does not produce a clear or consistent list of "winners" and "losers". Rather, Revised Article 9 represents a simpler yet more comprehensive statutory regime for governing secured transactions that should be adopted in Maine.

As noted above, in the course of our review individual committee members prepared analyses of the various sections of Revised Article 9. In these analyses, committee members attempted to identify those provisions that represent new developments in the law of secured transactions as well as, in appropriate cases, an identification of parties affected by such changes. Insofar as these summaries may be helpful to you or committee members, we have attached copies of such summaries as Exhibit B.

We believe that Revised Article 9 represents an appropriate expansion of the types of collateral and transactions covered by the Uniform Commercial Code and simplifies and clarifies a number of important rules relating to the creation, perfection, priority and enforcement of security interests in secured transactions. We have attached as Exhibit C a summary prepared by the National Conference of Commissioners on Uniform State Laws that succinctly identifies the key revisions to prior Article 9 and the principal advantages of Revised Article 9. We also recommend that you review this summary in your deliberations on the legislation.

We appreciate very much the assistance the members of the Secretary of State's committee has provided throughout this process and we stand ready to assist you in any way we can during the legislative process.

#16568

EXHIBIT A

PROPOSED REVISIONS TO NEW ARTICLE 9 AND RELATED MAINE COMMENTARY

A. Modification to the Definition of Bank in Section 9-1102(8)

1. Proposed Non-Uniform Provision:

The definition of "Bank" in Section 9-1102(8) should be revised to add the following sentence: "Bank also includes any financial institution organized under Title 9-B of the Maine Revised Statutes Annotated, or any successor title."

2. Maine Comment:

"The definition of "Bank" was expanded to include all universal banks and limited purposes banks organized under Title 9-B. Several of these institutions have, or may have, limited powers that include maintaining deposit accounts but they are not engaged in the business of banking. This non-uniform provision ensures that deposit accounts with such institutions would be governed by this Article."

B. Maine Comment Relating to Aquatic Goods in Comments to Section 9-1102(34)

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

The last paragraph of Official Comment 4(a) to this section, as well as Official Comment 11 to Section 9-1324, state that the courts are to determine on a case-by-case basis whether particular aquatic goods constitute "crops" or "livestock." If the item is determined to be a "crop," then it may be the subject of a production-money security interest; if it is "livestock," then it cannot. See Section 9-1324-A. Suppliers of feed and other items on credit for the growing of aquaculture goods (as well as lenders who finance purchases of these items) who take security interests in the goods will, therefore, be unable to determine with certainty the priority that they will have in the aquatic goods. This is an unacceptable level of uncertainty for, among others, Maine's growing aquaculture industry. Therefore, the above-referenced Official Comments should be disregarded to the extent that they leave the classification of aquatic goods as "crops" or "livestock" undetermined. Instead, it is intended that

aquatic goods that most closely approximate plants will be classified as "crops," while those that are animal in nature will be classified as "livestock."

C. Maine Comment to Section 9-1102(44)(d)

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

Section 9-1102(44)(d) provides that "goods" include "crops" even if the crops are produced on trees, vines or bushes. "Crops" may also include certain aquatic goods. It is intended that the reference to "trees, vines or bushes" in Section 9-1102(44)(d) also includes aquatic goods that are crops, even if those aquatic goods are not produced on trees, vines and bushes, but are, instead, produced on some other item in a manner analogous to the way in which terrestrial crops are produced on trees, vines or bushes. The overall principle to be applied is that "aquatic goods" that are "crops" are, for the purposes of this Article 9, to be treated in the same manner as terrestrial "crops."

D. Definitions Pertaining to Production Money Security Interests

1. Proposed Non-Uniform Provision:

In view of our proposal to include Section 9-1324A, an optional provision in the Uniform Act that relates to the priority of production-money security interests and agricultural liens, Section 9-1102 needs to be amended to include the following definitions:

"(65) Production money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) "Production of crops" includes tilling and otherwise preparing land or other growth medium for growing, planting, cultivating, fertilizing, irrigating, harvesting,

and gathering crops, and protecting them from damage or disease.

Please note that the numerical sequence in Section 9-1102 needs to be revised accordingly and all cross-references to the renumbered definitions adjusted accordingly.[1]

2. Maine Comment:

None required.

E. Maine Comment on Registered Organizations as Defined in Section 9-1102

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

Although no modification to the Uniform Act is proposed, the following Maine Comment should be added to the second full paragraph of paragraph 11 of the comments to Section 9-1102:

"In addition, the Secretary of State is or may not be required to maintain a public record on all private and special act corporations organized under Maine law. Lenders and practitioners should pay particular care when dealing with such entities in secured transactions."

F. Proposed Modification to Section 9-1103(8)

1. Proposed Non-Uniform Provision:

None.

1

The renumbering in Section 9-1102 required by the addition of the definitions pertaining to production - money security interests raises the issue of identifying all cross-references affected by the renumbering. We did not have the NCCUSL Enactment Guide available to us, but we have been advised that the Enactment Guide contains recommendations on how to avoid a renumbering of the definitions in Section 9-1102. We certainly agree that renumbering should be avoided if possible and recommend that you consult the Enactment Code.

2. Maine Comment:

Section 9-1103(8) provides that the courts will determine the proper rules in consumer-goods transactions. Of course, pursuant to Section 9-1201(3), this provision is subject to other statutory mandates. See, e.g., 9-A M.R.S.A. Section 3-303.

G. Proposed Modification to Section 9-201(b)

1. Proposed Non-Uniform Provision:

Section 9-1201(b) provides that a transaction subject to Article 9 is also subject to relevant state consumer laws. The proposed amendment reinstates model act language making the list of applicable consumer laws nonexclusive and expands the list referenced in the legislation as follows:

"A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, including Title 9-A, Title 30-A sections 3960 to 3964-A and Title 32, sections 11001 to 110054."

2. Maine Comment:

With the exception of Section 9-1626, the Maine Act follows the uniform approach, leaving consumer protection rules found in other laws unchanged. As in the Uniform Act, the section provides a nonexclusive list of relevant consumer laws and indicates that they supersede Article 9 rules when applicable by their own terms.

H. Proposed Modification to Section 9-1208 and Section 9-1209 – Duties of a Secured Party Having Control of Collateral, Etc.

1. Proposed Non-Uniform Provision:

Section 9-1208 imposes duties on a secured party to release, within 10 days of receiving a request from a debtor, the secured party's rights in deposit accounts, electronic chattel paper, and investment property if there is no outstanding secured obligation or commitment to advance funds or give value. Section 9-1209 imposes duties on a secured party who has notified an account debtor of an assignment to inform the account debtor of the fulfillment or discharge of debtor's obligations to secured party. Failure to comply subjects the secured party to penalties under Section 9-1625. The Committee believed that the response time (10 days) is too short given the administrative burden on lenders and potential penalties for failure to comply. In view of these

factors, the Committee recommends deleting the references to 10 days in Sections 9-1208 and 9-1209, and substituting therefor 20 days.

2. Maine Comment:

None required.

I. Proposed Modification to Section 9-1210

1. Proposed Non-Uniform Provision:

Section 9-1210 requires secured lenders to respond to a request for an accounting, a list of collateral or a statement of accounts in 14 days. For the same reasons outlined above in Part H(1), the Committee recommends deleting all references to 14 days in Section 9-1210 and substituting therefor 20 days.

2. Maine Comment:

None required.

J. Proposed Revision to Automatic Perfection Rules

1. Proposed Non-Uniform Provision:

Section 9-1309 provides certain rules regarding the automatic perfection of a security interest in certain collateral, i.e., the security interest is perfected upon attachment. Under Revised Article 9, as under the prior Uniform Act, the automatic perfection rules extend to purchase money security interests in consumer goods. Existing Maine law contains a non-uniform provision that provides for automatic perfection of a security interest in consumer goods where the amount financed is less than $2,000.00. The Committee believes that the non-uniform provision should be retained but the cap increased to $10,000.00 and the language in existing Section 9-302(d) revised to clarify that the cap applies to the individual consumer good acquired, not multiple goods in a single transaction. We propose that Section 9-1309(1) be revised to read as follows:

Purchase-money security interest in a consumer good having a purchase price of $10,000 or less, 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);

2. Maine Comment:

This provision continues Maine's non-uniform filing requirement for purchase money security interests in consumer goods. The new law changes the dollar minimum for filing requirements from $2,000.00 to $10,000.00 and clarifies that the limit applies to the price of individual items financed. Filing may also be advisable for goods costing less than $10,000.00 in view of the rule in subsection 9-1320(2), which permits a good faith purchaser from the consumer to defeat an unfiled security interest under most circumstances.

K. Correct Reference to Maine Title Law

1. Proposed Non-Uniform Provision:

Section 9-1311(1)(b) should be deleted and the following substituted therefor:

"(b) Title 29-A, Chapter 7."

2. Maine Comment:

Official Comment 4 to this section indicates that a filed financing statement would be sufficient to perfect a security interest in a titled good only if that good were inventory held for sale or lease. This is true only if the item remains covered by a titling act even when it is put to a particular use. For example, Maine's Certificate of Title Act provides that it does not apply to a motor vehicle held as a demonstrator or test vehicle by a dealer. See 29-A M.R.S.A. Section 652(2). This would be true even if that vehicle had previously been titled. In such an instance, the provisions of Section 9-1311(1)(b) would not apply (since the vehicle would not then be subject to the referenced statute) and the normal perfection provisions for non-titled goods would apply to the vehicle during the period in which it is used as a demonstrator or testing vehicle.

L. Buyer of Goods - Section 9-1320

1. Proposed Non-Uniform Provision:

None, but please note that in adopting the Uniform Act provision as presented we are deleting a non-uniform provision in former Section 9-307 that treated a purchaser of timber, logs or pulpwood from a person engaged in timbering operations, or from a person dealing such goods, the same as a purchaser of farm products from a person engaged in farming operations.

Thus, under the prior Section 9-307, buyers of timber, logs and pulpwood took such goods subject to a security interest created by the seller. No such protection to the secured lender financing timber operations is afforded by the uniform act.

2. Maine Comment:

"In a title theory state such as Maine, the mortgagee is deemed to be the legal owner of the real estate. In such cases, the ownership interest referenced in Official Comment No. 7 relates to the mortgagor, not to the mortgagee."

M. Maine Comment on Aquatic Goods

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

Official Comment 11 to this section, as well as the last paragraph of Official Comment 4(a) to Section 9-1102, state that the courts are to determine on a case-by-case basis whether particular aquatic goods constitute "crops" or "livestock." If the item is determined to be a "crop," then it may be the subject of a production-money security interest; if it is "livestock," then it cannot. See Section 9-1324-A. Suppliers of feed and other items on credit for the growing of aquaculture goods (as well as lenders who finance purchases of these items) who take security interests in the goods will, therefore, be unable to determine with certainty the priority that they will have in the aquatic goods. This is an unacceptable level of uncertainty for, among others, Maine's growing aquaculture industry. Therefore, the above-referenced Official Comments should be disregarded to the extent that they leave the classification of aquatic goods as "crops" or "livestock" undetermined. Instead, it is intended that aquatic goods that most closely approximate plants will be classified as "crops," while those that are animal in nature will be classified as "livestock."

N. Reference Correction

1. Proposed Non-Uniform Provision:

The reference to "2-1508(5)" in Section 9-1325 should be deleted and 2-1508 substituted therefor.

2. Maine Comment:

None required.

O. Clarification of Limitation on Agreement not to Assert Defenses Against Assignees

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

The Maine Consumer Credit Code requires in certain circumstances that an assignee of a consumer credit transaction is subject to certain claims and defenses. Paragraph 6 to the comments to Section 9-1403 should be modified to add the following:

As provided in Section 9-1201(3), the provisions of Title 9-A take priority over the provisions of this Article. This limitation is also suggested in a more limited form in Section 9-1403(5). Title 9-A provides that in certain instances, the assignee of a seller or lessor in a consumer sale or consumer lease is subject to defenses that might be raised against the original seller or lessor notwithstanding an agreement to the contrary. See 9-A M.R.S.A. Section 3-403. See also 9-A M.R.S.A. Sections 5-201(1) (providing for penalties or a damage award where the agreement limits rights of the consumer against assignee to less than what is provided in Section 3-403), 8-209 (making assignees liable for certain Truth-in-Lending violations). These provisions, as well as other provisions of Maine law, modify, limit, or void certain parts of Section 9-1403 of new Article 9.

P. Reference Correction

1. Proposed Non-Uniform Provision:

The reference to general intangibles in Section 9-1406(2)(c)(i) should be changed to payment intangibles.

2. Maine Comment:

None required.

Q. Effect of Change in Debtor's Name - Section 9-1507

1. Proposed Non-Uniform Provision:

Current Maine law contains a non-uniform provision in the cases when the debtor's name is changed by failing to incorporate the uniform four month rule. The Committee believes that the policy promoted by the non-uniform provision is sound and should be continued in Revised Article 9. A majority of the Committee believes that a secured party should be obligated to determine the debtor's true name at the time the secured party continues its financing statement and that, therefore, continuation statements should, in order to be effective, include any amendments to the prior financing statement that may be necessary to reflect the debtor's new name. A majority of the Committee believes that such a requirement is not unduly burdensome or costly for secured parties. A minority of the Committee believes that the first lender should not be so burdened at the time of filing a continuation statement but would shift the burden to the new secured lender to determine its debtor's prior names and search under those names as well as the debtor's current name in order to determine the priority of its new security interest. Consequently, a majority of the Committee believes that Section 9-1507(3) should be revised to read as follows:

> If a debtor changes its name, then a financing statement filed under the debtor's former name prior to the effective date of the name change remains effective to perfect a security interest to the same extent as if that financing statement was amended to provide the debtor's new name even if the previously filed financing statement would otherwise become seriously misleading under Section 9-1506. In such circumstances, the previously filed financing statement may be continued under the debtor's prior name, but such continuation is not effective to perfect a security interest in property acquired more than four (4) months after such continuation is filed, unless an amendment that renders the financing statement not seriously misleading is filed within the four (4) month period.

2. Maine Comment:

Maine has adopted a non-uniform provision stating that a change of a debtor's name does not affect the efficacy of a financing statement filed before the effective date of the name change under the debtor's prior name. When a name change becomes effective will be determined by law outside of this Article. This change was made because as a policy matter it is simpler and more convenient to have secured creditors who are making new filings

determine the former name of the debtor for purposes of performing a search of the records than it is to require a secured creditor to continuously monitor its debtor for any potential name changes. On the other hand, there appears to be little reason that a secured creditor should not be required to determine its debtor's actual name at the time its financing statement is continued and modify its financing statement accordingly, if necessary. This requirement also has the advantage of ensuring that the public records are kept at least somewhat up to date under debtors' current names. Given this non-uniform change, Official Comment 4 to this section does not apply under Maine's version of this Article.

R. Effect of Change in Debtor's Name - Continued - Section 9-1508:

1. Proposed Non-Uniform Provision:

For the policy rationale stated above, Section 9-1508(2) is amended to read as follows:

(2) If the new debtor is a registered organization and becomes subject to a security interest pursuant to Section 9-1203(4) by reason of a merger, consolidation or a change in the form of entity of the original debtor that is reflected in the public records relating to the new debtor's organization maintained by the governmental unit referenced in Section 9-1102(73), then a financing statement filed under the original debtor's former name before the effective date of the merger, consolidation or change in the form of entity remains effective to perfect a security interest in collateral acquired by the new debtor to the same extent as if that financing statement was amended to provide the new debtor's name even if the difference between the new debtor's name and that of the original debtor causes a filed financing statement that is effective under subsection (1) to become seriously misleading only if the place to file a financing statement against the new debtor for such collateral is, pursuant to Part 3 of this Article, the same jurisdiction in which the financing statement against the original debtor is filed. In all other instances, if the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) to be seriously misleading under Section 9-1506:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under Section 9-1203, subsection (4); and

(b) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than 4 months after the new debtor becomes bound under Section 9-1203, subsection (4) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

2. Maine Comment.

As under Section 9-1507, Maine has adopted a non-uniform provision stating that perfection of a security interest against an original debtor is effective against the new debtor so long as the place for filing against the original debtor is the same as for filing against the new debtor, even if the difference in the names of the new debtor and the original debtor is great enough as to make the financing statement filed against the original debtor misleading pursuant to Section 9-1506. However, this provision is effective only if the relationship between the old debtor and the new debtor can be determined from an examination of the public records that relate to the organization of the new debtor. This change was made because as a policy matter it is simpler and more convenient to have secured creditors who are making new filings, and who can find the name of the old debtor through an examination of public records relating to the organization of the new debtor, search for financing statements under the name of both the original debtor and the new debtor, than it is to require a secured creditor to continuously monitor its original debtor in order to ensure that a new debtor has not emerged. Given this non-uniform change, Official Comment 4 to this section does not apply under Maine's version of this Article.

S. Correction to Reference in Official Comment

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

In Paragraph 3 of the Official Comment to Section 9-1602, the reference to Section 9-207(c)(4)(C) should be changed to (b)(4)(C), and the corresponding reference to subsection (3) for the Maine cite should be changed to (2).

T. Correction to Statutory Reference

1. Proposed Non-Uniform Provision:

In Section 9-1603, subsection (b) should be changed to (2).

2. Maine Comment:

None.

U. Modification to Section 9-1608

1. Proposed Non-Uniform Provision:

The words "under this section" should be deleted from subsection 9-1608(a).

2. Maine Comment:

None required.

V. Modification to Section 9-1613

1. Proposed Non-Uniform Provision:

The reference to "public sale" in Section 9-1613(1)(3) should be deleted and "public disposition" substituted therefor.

2. Maine Comment:

None.

W. Revisions to Proposed Form of Notification Before Disposition of Consumer Goods

1. Proposed Non-Uniform Provision:

The safe harbor notice in Section 9-1614 is potentially confusing to those required to prepare the same. The Committee believes that the first line of the notice should be revised to read as follows:

[Name and address or addresses of intended recipient]

In addition, the bracketed sentence beginning on line 10 of page 405 should be deleted to conform to Maine law.

2. Maine Comment:

None.

X. Revisions to Conform to Maine UCCC

1. Proposed Non-Uniform Provision:

The last sentence of Section 9-1616(5) should be deleted so as to conform to the Maine UCCC.

2. Maine Comment:

None.

Y. Establishment of a Rebuttal Presumption Rule in Consumer Transactions

1. Proposed Non-Uniform Provision:

Revised Article 9 adopts the "rebuttable presumption" rule only for non-consumer transactions, leaving the courts to develop the proper rule for consumer transactions. The Official Comment explicitly prohibits a court from inferring the appropriate standard for consumer transactions from the Code rule for non-consumer transactions. The Maine courts have heretofore followed the rule adopted by a distinct minority of jurisdictions, imposing an "absolute bar" on deficiencies in all transactions (consumer and non-consumer) where the secured party has failed to adhere to the requirements of the default provisions of the Code, while the vast majority of other jurisdictions already follow the "rebuttable presumption" rule in both non-consumer and consumer transactions, allowing non-compliant secured parties the opportunity to rebut with appropriate evidence the presumption that there would not have been any deficiency had the secured party complied with the default provisions of the Code. The Committee recommends that Maine join the majority of jurisdictions by revising Section 9-1626 as follows:

"Section 9-1626(1) should be revised by deleting the words and symbols ", other than a consumer transaction,", and by deleting Section 9-1626(2) in its entirety.

2. Maine Comment:

The Maine Code deviates from the Uniform Code by adopting the "rebuttable presumption" rule for both non-consumer and consumer transactions, while the Uniform Code adopts the "rebuttable presumption" rule only for non-consumer transactions, leaving the courts to develop and apply the proper rule for consumer transactions. Indeed, the Uniform Code explicitly prohibits courts from inferring the appropriate standard for consumer transactions from the Code for non-consumer transactions. The Maine courts have heretofore followed the rule adopted by a minority of jurisdictions, imposing an "absolute bar" on deficiencies in all transactions (consumer and non-consumer) where the secured party has failed to adhere to the requirements of the default provisions of the Code, while the majority of other jurisdictions already follow the "rebuttable presumption" rule in both non-consumer and consumer transactions, allowing non-compliant secured parties the opportunity to rebut with appropriate evidence the presumption that there would not have been any deficiency had the secured party complied with the default provisions of the Code. Accordingly, the new Maine Code provision changes existing Maine law, and brings Maine law into conformity with the laws of a majority of other jurisdictions. Official Comment 4 to Section 9-1626 is not applicable in Maine.

Z. Cross-Reference Correction

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

In the Official Comment on Section 2-326, the reference to Section 9-1103, subsection 2, should be changed to Section 9-1103, subsection 4.

AA. Missing Title

1. At the beginning of the Official Comment to Section 8-1102, the legislation omits the required introductory language.

BB. Reference Change

1. In the Official Comment to Section 8-1510, the reference to subsection (c) should be changed to (3) to conform to the proper Maine law references.

Appendix 2

PROPOSED REVISIONS TO NEW ARTICLE 9
AND RELATED MAINE COMMENTARY
WITH CONFORMING AMENDMENT TO TITLE 29-A

Prepared by the Secretary of State Study Group

NOTE: This document is designed to begin where the Maine Bar Study Group's Report on "Proposed Revisions to New Article 9" concludes; therefore, sections are designated accordingly.

CC. Maine Comment on Designation of Filing Offices and Identification of Filings Recorded in the Registry of Deeds in Section 9-1501

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

For purposes of clarity, references in Part 5 of the uniform law to "the filing office described in section 9-1501, subsection (1), paragraph (a)," have been changed to refer to the "Registry of Deeds", for fixture filings and other county-level filings.[1] Similarly, uniform code references to "filing" or "file for record" have been changed to "record" or "recorded" where the context involves a county filing.[2] Any reference in this Part to "filing" in a county Registry of Deeds means and refers to the ordinary process of recording under Title 33, unless the context clearly otherwise requires.

Throughout this Part, uniform code language requiring a searcher or other person designating a particular Registry of Deeds filing to provide the file number and the date and time of recording of that filing has been changed to a requirement to provide book and page information, as book and page allow any filing to be located in a county Registry of Deeds, without more information.

In addition, references in Part 5 of the uniform law to "the office described in section 9-1501, subsection (1), paragraph (b)," have been changed to "the office of the Secretary of State".[3]

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[1] Sections 9-1512(1)(b); 9-1516(2)(c)(iv); 9-1518(2)(a)(ii); 9-1519(6)(a)(i); 9-1519(9) and 9-1522(1)(a).

[2] Sections 9-1501(1)(a)(ii); 9-1502(2)(b); 9-1502(3)(c); 9-1512(1)(b); 9-1514(3); 9-1515(7) – 2 places; 9-1516(2)(c)(iv); 9-1518(2)(a)(ii) – 2 places; 9-1519(4) – 2 places; 9-1519(5) – 3 places; 9-1519(6)(a)(i); 9-1522(1)(a) – 2 places and 9-1525(5).

[3] Sections 9-1519(6)(a)(ii); 9-1520(2); 9-1522(1)(b); 9-1523(5) and 9-1523(6).

DD. Proposed Modification to Section 9-1504.

1. Proposed Non-Uniform Provision:

Add a subsection 3 to section 9-1504, as follows:

(3) an indication by the type of collateral defined in this Title, irrespective of whether such an indication would make possible the identification of the collateral in the manner necessary for a sufficient description pursuant to section 9-1108.

2. Maine Comment:

As was the case under former section 9-402(1), a financing statement that indicates the type of collateral covered is sufficient even though such an indication, by itself, may not satisfy the sufficiency requirements for a security agreement under section 9-1108.

EE. Proposed Modification to Section 9-1512(1) (a) and (b)

1. Proposed Non-Uniform Provision:

Change the word "and" to "or" at the end of section 9-1512(1)(a); and amend section 9-1512(1)(b) by replacing the words "date and time that" with the words "book and page at which", and by striking the words "and the information specified in section 9-1502, subsection (2),".

2. Maine Comment:

The uniform code requirements for information necessary to amend a county-level filing have been modified in the Maine Code. Subsection (1)(b) requires only a book and page cross reference to the initial filing in order to amend information in that filing. Subsection (1)(b) omits uniform code requirements to restate the description of the real property and other information provided in an initial filing under section 9-1502(2), because Maine's recording system makes such information unnecessary in order to locate the original filing. Similar changes have been made to uniform code requirements in section 9-1518(2)(a)(ii); and with respect only to the book and page cross reference, in sections 9-1519(6)(a)(i) and 9-1522(1)(a).

FF. Proposed Modification to Section 9-1513(2)(a)

1. Proposed Non-Uniform Provision:

In section 9-1513(2)(a), a secured party must file a termination statement within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value. The Study Group recommends changing this time period from "one month" to "60 days" to agree with a similar time frame for the discharge of mortgages.

2. Maine Comment:

The time period for release of a filing was changed to correspond with a recently enacted amendment to 33 M.R.S.A. section 551, which governs the release of a mortgage when there has been no demand by the debtor for a release. This creates an uniform set of rules for when a lienholder must file a termination statement or discharge a mortgage if there is no demand by the debtor.

GG. Maine Comment to Section 9-1519

1. Proposed Non-Uniform Provision:

None.

2. Maine Comment:

The Registry of Deeds assigns an unique book and page number which satisfies the requirements of a unique number under section 9-1519(1)(a).

Also see Official Comment in section 9-1501 regarding reference to Registry of Deeds filings and use of the book and page information to reference a filing at that location.

HH. Information from the Filing Office in Section 9-1523

1. Proposed Non-Uniform Provision:

The following language is added to exempt the Registry of Deeds from the provisions of section 9-1523:

(7) The requirements of this section do not apply to information obtained from the Registry of Deeds.

d. **9-1525(1)** – Amends the fee structure for filing and indexing a record as follows:

(a) ~~Twenty~~ Fifteen dollars if the record is communicated in writing and consists of one or 2 pages;

(b) ~~Forty~~ Thirty dollars if the record is communicated in writing and consists of more than 2 pages; and

(c) Ten dollars if the record is communicated by another medium authorized by filing-office rule.

- The original choice was $20 for a 1-2 page written filing; $40 for a written filing of more than 2 pages (the Model Act suggests that this be twice the fee for the 1-2 page written filing); and $10 if communicated via some other medium (the Model Act suggests that this be ½ the fee for the 1-2 page written filing).

- After an evaluation of the current number of filings and fees, the Secretary of State is recommending that the fees be changed to $15 for a 1-2 page written filing; $30 for a written filing of more than 2 pages and $10 for filings communicated via other medium. Such a fee structure would still provide an incentive for electronic filing, but would allow this bill to be revenue neutral based on current volumes.

e. **1925(2)** - Amends the fee structure for filing and indexing a record for public-finance or manufactured-home transactions as follows:

(a) Sixty dollars if the financing statement indicates that it is filed in connection with a public-finance transaction; and

(b) ~~Sixty~~ Forty dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

- The original choice was to set a higher initial fee (of $60) for both public-finance transactions and manufactured-home transactions, as the UCC liens will have 30 year terms, and will not need to be continued.

- The Study Group recommends changing the fee to $40 for manufactured-home transactions. The usual term of a manufactured-home loan is 15 years. Thus, a $40 fee is comparable to the total fees currently paid for a manufactured-home lien (a $20 fee for the initial financing statement, plus $10 each for 2 continuation filings); and keeps this provision revenue neutral. Also, since the UCC filing fees for manufactured-homes are often passed onto the consumer by financial institutions, a lower fee directly benefits the consumer.

f. **9-1525(4)** - Amends the fee structure for responding to requests for information from the filing office as follows:

(4) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(a) Twenty dollars if the request is communicated in writing; and

(b) ~~Ten~~ Twelve dollars if the request is communicated by another medium authorized by filing-office rule.

- The original choice of fees was: (a) $ 20 if the request is communicated in writing; and (b) $ 10 if the request is communicated by another medium (the Model Act suggests that this be ½ the fee for a written communication).

- Again, after further study of the current number of searches and the current tiered fee system for searches and communications, the Secretary of State is recommending that the fee for "requests communicated by another medium" be $12 instead of $10. Although this does not keep to the 2 to 1 ratio recommended in the Model Act, it still provides an incentive for electronic searches, but maintains revenue neutrality based on current volumes.

Appendix 4

Cross-reference Corrections
to 11 MRSA, Article 9-A

Sec. 1. 7 MRSA §1022, sub-§1, ¶G is amended to read:

G. Name and address of any person designated as a secured party on a financing statement naming the seller as debtor filed in accordance with Title 11, section ~~9-401~~ 9-1501, covering the potatoes or rotation crops, if any;

Sec. 2. 9-A MRSA §2-201, sub-§9-A is amended to read:

9-A. Notwithstanding any other provision of law, the finance charge on a consumer credit sale of a motor vehicle, as defined in this section, that is sold on or after January 1, 1994 may not exceed 18% per year on the unpaid balance of the amount financed. For the purposes of this section, "motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, except agricultural machinery and any other devices that do not constitute consumer goods, as defined in Title 11, section ~~9-109, subsection 1~~ 9-1102, subsection (23).

Sec. 3. 9-A MRSA §3-206, sub-§1, ¶C is amended to read:

C. Notices required under Title 11, Article ~~9~~ 9-A; and

Sec. 4. 10 MRSA §1045-A, sub-§2 is amended to read:

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other document may mortgage or assign the mortgage of the project, or any part, and create a lien upon or security interest in any or all of the project. In the event of a default with respect to the revenue obligation securities, the trustee, mortgagee or other person may be authorized by the trust agreement or other document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or, from time to time, to lease the property in accordance with law. Any security interest granted by the authority under this chapter may be created and perfected in accordance with the Uniform Commercial Code, Title 11, Article ~~9~~ 9-A~~, notwithstanding Title 11, section 9-104, subsection 5~~.

Sec. 5. 10 MRSA §1065, sub-§2 is amended to read:

10 § 1065. Trust agreements; resolutions

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other financial document may mortgage the project or any part and

create a lien upon any or all of the real or personal property of the project. In the event of a default with respect to the revenue obligation securities, the trustee or mortgagee may be authorized by the trust agreement or financial document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or, from time to time, to lease the property in accordance with law. Any security interest granted by a municipality under this chapter may be created and perfected in accordance with the provisions of the Uniform Commercial Code, Article ~~9~~ 9-A~~, notwithstanding the provisions of Title 11, section 9-104, subsection 5~~.

Sec. 6. 10 MRSA §3322, sub-§4 is amended to read:

4. Inventory. "Inventory" shall have the same meaning as defined in Title~~-11~~ 11, section ~~9-109, subsection (4)~~ 9-1102, subsection (48).

Sec. 7. 10 MRSA §3802, sub-§2, as repealed and replaced by PL 1999, c. 88, is amended to read:

2. Fees. The fee for filing a lien under this section is the same as under Title 11, section ~~9-403, subsection (5)~~ 9-1525.

Sec. 8. 10 MRSA §4001 is amended to read:

10 § 4001. Sale

Whoever has a lien on personal property in his possession which is not covered by Title 11, ~~article 9~~ Article 9-A may enforce it by a sale thereof in the manner provided for in the contract creating such lien, if in writing, or as hereinafter provided for in this chapter.

Sec. 9. 13 MRSA §1746, sub-§1 is amended to read:

1. Creation of security interest. Security interests in shares of cooperative affordable housing corporations may be created, perfected and enforced in the same manner as security interests in certificated securities under Title 11, ~~articles 8 and 9~~ Articles 8-A and 9-A. A lender may perfect such a security interest by possession of shares or by any other method under which security interests in certificated securities may be perfected pursuant to Title 11, ~~article 8~~ Article 8-A.

Sec. 10. 14 MRSA §3131, sub-§3 is amended to read:

3. Notice of turnover order and sale. The judgment creditor shall give notice of any turnover order or sale to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property when the interest is recorded, possessory or

of which the judgment creditor has actual knowledge. He shall provide notice of sale to the judgment debtor. In the case of a turnover order, the notice shall include a copy of the order, the name and address of the judgment creditor and the name and address of the attorney, if any, representing the judgment creditor in the disclosure proceeding. Notice of a turnover order shall be provided within 30 days after the entry of the turnover order. In the case of a sale, the notice shall be of the type which a secured creditor is required to provide to a debtor in a sale of secured property subject to Title 11, section ~~9-504, subsection (3)~~ 9-1611, and shall be provided at the time required under that section. If the judgment creditor fails to provide the required notice of sale or turnover order to others, the creditor shall be liable to the 3rd parties for any loss caused by the failure.

Sec. 11. 14 MRSA §3131, sub-§5 is amended to read:

5. Method and effect of sale. Sale of the property may be by public or private sale and by any method which is commercially reasonable. The judgment creditor may buy at any sale at which a secured party could buy if the sale occurred pursuant to Title 11, section ~~9-504, subsection (3)~~ 9-1610. The sale shall have the effect accorded dispositions under Title 11, section ~~9-504, subsection (4)~~ 9-1617, whether the property is real or personal.

Sec. 12. 14 MRSA §3131, sub-§9 is amended to read:

9. Lien. An order entered pursuant to this section shall constitute a lien against the property which is the subject of the order and against the proceeds of any disposition of the property by the judgment debtor which occurs at any time after entry of the order. The lien shall extend to proceeds of any disposition of the property, real or personal, subject to the lien of the judgment creditor to the extent that a secured party would have an interest in the proceeds under Title 11, section ~~9-306~~ 9-1315, subsection (1). The lien shall be for the full amount of the unpaid judgment, interest and costs, and shall become perfected as to 3rd parties on the earlier of:

A. The time the judgment creditor or purchaser takes possession of the property;

B. If the property is real estate, the time when an attested copy of the turnover or sale order is filed with the registry of deeds where a mortgage would be filed to be duly perfected;

C. If the property is personalty against which a security interest may be perfected by filing pursuant to Title 11, the time when an attested copy of the turnover or sale order is filed ~~with the filing officer where a filing would be required under Title 11, section 9-401~~ in the office of the Secretary of State;

D. If the property is a motor vehicle for which a certificate of title is required, the time when an attested copy of the turnover or sale order is delivered to the office

of the Secretary of State where notice would be delivered pursuant to Title 29-A, section 665, subsection 1; or

E. If the judgment creditor or purchaser takes possession of the property, or if an order is recorded, filed or delivered pursuant to this subsection during the pendency of any properly perfected prejudgment or post-judgment attachment obtained in the underlying action, or any judgment lien created pursuant to section 4651, the time when the attachment or lien was duly perfected against the property.

Sec. 13. 14 MRSA §3132 is amended to read:

14 § 3132. Possessory lien

When it is shown at a hearing under this chapter that the judgment debtor owns or otherwise has an interest in personal property in which a security interest may be perfected only by possession as set forth in Title 11, ~~article 8 or 9~~ Article 8-A or 9-A, upon request of the judgment creditor, the court shall order a lien on the judgment debtor's interest in so much of such property as is not exempt from attachment and execution pursuant to sections 4421 to 4426, and as will satisfy the unpaid judgment plus interest and costs. Any lien ordered under this section shall be perfected as to 3rd parties as of the time the judgment creditor takes possession of the property or the document evidencing the property.

Any lien ordered under this section shall extend to the proceeds of any disposition of any property subject to the lien of the judgment creditor which occurs at any time after entry of the lien order to the same extent that a secured party would have an interest in such proceeds pursuant to Title 11, section ~~9-306~~ 9-1315, subsection (1). The court is given equitable power to make all appropriate orders, including, but not limited to, turnover orders, to assist the judgment creditor in perfecting a lien under this section and to effectuate or compel obedience to any orders issued pursuant to this section.

Sec. 14. 14 MRSA §3579, sub-§5, ¶B is amended to read:

B. Enforcement of a security interest in compliance with the Uniform Commercial Code, Title 11, Article ~~9~~ 9-A.

Sec. 15. 14 MRSA §4151, 2nd ¶ is amended to read:

Following the entry of judgment in a civil action and prior to the issuance of a writ of execution upon the judgment, any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the ~~proper place pursuant to~~ office of the Secretary of State, with respect to

property a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A ~~section 9-401, subsection (1)~~ , of an attested copy of the court order awarding judgment. Fees for the recording of the order shall be as otherwise provided for similar documents. Notwithstanding section 4454, the filing shall constitute perfection of the attachment. The party whose property has been so attached shall be immediately notified by certified letter, mailed by the plaintiff to the party's last known address, which shall inform the party that an attachment has been filed against the party's real or personal property and shall specify the registry of deeds or office of the Secretary of State in which the attachment has been recorded.

Sec. 16. 14 MRSA §4154 is amended to read:

14 § 4154. Optional method of attachment

Any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the ~~proper place pursuant to~~ office of the Secretary of State, with respect to property a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A ~~section 9-401, subsection (1)~~ , of an attested copy of the court order approving the real or personal property attachment, provided that the order shall be filed within 30 days after the order approving the attachment, or within such additional time as the court may allow upon a timely motion. Fees for the recording of the order shall be as otherwise provided for similar documents. Notwithstanding section 4454, the filing shall constitute perfection of the attachment and service of a copy of the court's order shall be made upon the defendant in accordance with the Maine Rules of Civil Procedure pertaining to service of writs of attachment.

Sec. 17. 14 MRSA §4651-A, sub-§2 is amended to read:

2. Lien on personal property. The filing of an execution duly issued by any court of this State or an attested copy thereof ~~with~~ in the ~~proper place or places for perfecting a security interest in personal property pursuant to Title 11, section 9-401, subsections (1) and (5)~~ office of the Secretary of State within one year after issuance of the execution shall create a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in personal property which is not exempt from attachment and execution and which is of a type against which a security interest could be perfected by the filing ~~pursuant to Title 11, section 9-401~~ of a financing statement with the office of the Secretary of State.

Sec. 18. 19-A MRSA §2357, sub-§2 is amended to read:

2. Filing. For real property, a lien is perfected when a notice of support lien is filed in the registry of deeds of the county or counties in which the real property is

located. For personal property, including motor vehicles or other items for which a certificate of ownership is issued by the Secretary of State, the lien is perfected when a notice of support lien is delivered to the Secretary of State. The Secretary of State shall mark, hold and index the notice of support lien as if it were a financing statement within the meaning of Title 11, section ~~9-402~~ 9-1102 (39). The notice of support lien must state the name and address of the responsible parent, the amount of the child support debt accrued, the date of the decision or notice of debt by which the debt was assessed and the name and address of the authorized agent of the department who issued the notice.

Sec. 19. 20-A MRSA §10956, last ¶ is amended to read:

All expenses incurred in carrying out the trust agreement, financing document or resolution may be treated as a part of the cost of the operation of a project. All pledges of revenues under this chapter shall be valid and binding from the time when the pledge is made. All such revenues so pledged and received by the university shall immediately be subject to the lien of the pledges without any physical delivery of them or further action under the Uniform Commercial Code, Title 11, or otherwise. The lien of those pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the university irrespective of whether the parties have notice of the liens, and the liens shall automatically, without further action, be perfected and have the same status as a security interest perfected under the Uniform Commercial Code, Title 11, Article ~~9~~ 9-A.

Sec. 20. 30-A MRSA §5706, sub-§2 is amended to read:

2. Repurchase agreements. In repurchase agreements with respect to obligations of the United States Government, as defined in section 5712, subsection 1, as long as the market value of the underlying obligation is equal to or greater than the amount of the municipality's investment and either the municipality's security entitlement with respect to the underlying obligation is created pursuant to the provisions of Title 11, article 8-A and other applicable law or the municipality's security interest is perfected pursuant to the provisions of Title 11, ~~article 9~~ Article 9-A and other applicable law, except that, if the term of the repurchase agreement is not in excess of 96 hours, the municipality's security interest with respect to the underlying obligation need not be perfected as long as an executed Public Securities Association form of master repurchase agreement is on file with the counterparty prior to the date of the transaction;

Sec. 21. 33 MRSA §203 is amended to read:

33 § 203. Need for acknowledgment

Deeds and all other written instruments before recording in the registries of deeds, except those issued by a court of competent jurisdiction and duly attested by the proper officer thereof, and excepting plans and notices of foreclosure of mortgages and certain

financing statements as provided in Title 11, section ~~9-401~~ 9-1501, subsection (1)(a), and excepting notices of liens for internal revenue taxes and certificates discharging such liens and excepting notices of liens for taxes assessed pursuant to Title 36, Part 1 and Parts 3 to 8 and Title 26, chapter 13, and releases discharging such liens, must be acknowledged by the grantors, or by the persons executing any such written instruments, or by one of them, or by their attorney executing the same, or by the lessor in a lease or one of the lessors or lessor's attorney executing the same, before a notary public in the State, or before an attorney-at-law duly admitted and eligible to practice in the courts of the State, if within the State; or before any clerk of a court of record having a seal, notary public or commissioner appointed by the Governor of this State for the purpose, or a commissioner authorized in the State where the acknowledgment is taken, within the United States; or before a minister, vice-consul or consul of the United States or notary public in any foreign country.

Any person who is in the Armed Forces of the United States, and who executes a general or special power of attorney, deed, lease, contract or any instrument that is required to be recorded, may acknowledge the same as his true act and deed before any lieutenant or officer of senior grade thereto in the Army, U. S. Marine Corps or Air Force or before any ensign or officer of senior grade thereto in the Navy or Coast Guard and the record of such acknowledgment by said officers shall be received and have the same force and effect as ~~acknowledgements~~ acknowledgments under the other provisions of this section, and all such instruments heretofore executed are hereby validated as to acknowledgment and authenticity. Powers of attorney and other instruments requiring seals executed by such members of the armed forces may be accepted for recordation in registries of deeds and other offices of record in cases where no seal is affixed after the name of the person or persons executing the instrument with like force and effect as though seals were affixed thereto.

Any notary public who is a stockholder, director, officer or employee of a bank or other corporation may take the acknowledgment of any party to any written instrument executed to or by such corporation, provided such notary public is not a party to such instrument either individually or as a representative of such bank or other corporation.

This section shall not be construed as invalidating any instrument duly executed in accordance with the statutes heretofore in effect or made valid by any such statute. All such instruments may be admitted to record which at the time of their execution or subsequent validation could be so recorded.

Notwithstanding any of the requirements in this section, an instrument with an acknowledgment conforming to the requirements of the Uniform Recognition of ~~Acknowlegments~~ Acknowledgments Act, Title 4, section 1011 et seq., shall be accepted for recording purposes.

Sec. 22. 33 MRSA §505, sub-§5, ¶A is amended to read:

A. The mortgagor or a successor in interest may file in the same recording office in which the original mortgage is filed and send to the mortgagee by registered mail, return receipt requested, a written notice limiting the amount of future advances, other than advances made pursuant to a commitment as defined in Title 11, section ~~9-105, subsection 1, paragraph K~~ 9-1102, subsection (71), secured by that mortgage to not less than the amount actually advanced as of the end of the 3rd business day following the delivery of the notice.

Sec. 23. 33 MRSA §551, last ¶, as amended by PL 1999, c. 230, is amended to read:

All discharges of recorded mortgages, attachments or liens of any nature must be recorded by a written instrument, and except for termination statements filed pursuant to Title 11, section ~~9-404~~ 9-1513, acknowledged in same manner as other instruments presented for record and no such discharges may be permitted by entry in the margin of the instrument to be discharged.

Sec. 24. 33 MRSA §1903, sub-§ 3 is amended to read:

3. Personal property liens. Notices of federal liens upon personal property, whether tangible or intangible, except property of a type in which a security interest is perfected under Title 11, section ~~9-401, subsection (1), paragraph (a)~~ 9-1501, subsection (1), paragraph (a), for obligations payable to the United States and certificates and notices affecting the liens, shall be filed with the Secretary of State.

Sec. 25. 33 MRSA §1903, sub-§4 is amended to read:

4. Timber, mineral and other liens. Notices of federal liens upon personal property of a type in which a security interest is perfected under Title 11, section ~~9-401, subsection (1), paragraph (a)~~ 9-1501, subsection (1), paragraph (a), for obligations payable to the United States and certificates and notices affecting the liens, shall be filed in the registry of deeds in the county or counties where a mortgage on the real estate concerned would be filed or recorded.

Sec. 26. 33 MRSA §1905, sub-§1, ¶A is amended to read:

A. The Secretary of State, the filing officer shall cause the notice to be marked, held and indexed in accordance with Title 11, section ~~9-403, subsection (4)~~ 9-1519, as if the notice were a financing statement within the meaning of the Uniform Commercial Code, Title 11, except that if the property is of a type in which a security interest is perfected under Title 5, section 90-A, the Secretary of State shall cause the notice to be marked, held and indexed in accordance with the

procedures established under Title 5, section 90-A, as if the notice were a financing statement within the meaning of that section; or

Sec. 27. 35-A MRSA §4151, sub-§8 is amended to read:

8. Investment securities. All bonds, notes and interest coupons appertaining to them issued by the agency have all the qualities and incidents, including negotiability, unless the agency expressly provides otherwise, of investment securities under the applicable provisions of Title 11, article 8, but no provision of Title 11, ~~article 9~~ Article 9-A, respecting the filing of a financing statement to perfect a security interest shall be applicable to any pledge made or security interest created in connection with the issuance of the bonds, notes or coupons.

Sec. 28. 36 MRSA §175-A, sub-§1 is amended to read:

1. Filing. If any tax imposed by this Title or imposed by any other provision of law and authorized to be collected by the bureau is not paid when due and no further administrative or judicial review of the assessment is available pursuant to law, the assessor may file in the registry of deeds of any county, with respect to real property, or in the office ~~in which a financing statement with respect to tangible personal property is properly filed with~~ of the Secretary of State, with respect to property a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A ~~section 9-401, subsection (1), paragraph (b)~~ , a notice of lien specifying the amount of the tax, interest, penalty and costs due, the name and last known address of the person liable for the amount and, in the case of a tax imposed by this Title, the fact that the assessor has complied with all the provisions of this Title in the assessment of the tax. The lien arises at the time the assessment becomes final and constitutes a lien upon all property, whether real or personal, then owned or thereafter acquired by that person in the period before the expiration of the lien. The lien imposed by this section is not valid against any mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded security interest until notice of the lien has been filed by the assessor, with respect to real property, in the registry of deeds of the county where such property is located and, with respect to personal property, in the office in which a financing statement for such personal property is normally filed. Notwithstanding this subsection, a tax lien upon personal property does not extend to those types of personal property not subject to perfection of a security interest by means of the filing ~~under Title 11, sections 9-104, subsection (7); 9-104, subsection (12); 9-302, subsection (3); and 9-304~~ in the office of the Secretary of State. The lien is prior to any mortgage or security interest recorded, filed or otherwise perfected after the notice, other than a purchase money security interest perfected in accordance with Title 11, Article 9-A ~~section 9-301, subsection (2) and Title 11, section 9-312, subsection (4)~~. In the case of any mortgage or security interest properly recorded or filed prior to the notice of lien that secures future advances by the mortgagee or secured party, the lien is junior to all advances made within 45 days after filing of the notice of lien, or made without knowledge of the lien or pursuant to a

commitment entered into without knowledge of the lien. Subject to the limitations in this section, the lien provided in this section has the same force, effect and priority as a judgment lien and continues for 10 years from the date of recording unless sooner released or otherwise discharged. The lien may, within the 10-year period, or within 10 years from the date of the last extension of the lien in the manner provided in this subsection, be extended by filing for record in the appropriate office a copy of the notice and, from the time of filing, that lien must be extended for 10 years unless sooner released or otherwise discharged.

Sec. 29. 36 MRSA §176-A, sub-§6, ¶¶A and B are amended to read:

A. As soon as practicable after seizure of property, the assessor shall give notice in writing to the owner of the property, or, in the case of personal property, the possessor of the property, or leave notice at the owner's or possessor's usual place of abode or business, if any, within the State. If the owner or possessor cannot be readily located, or has no dwelling or place of business within the State, the notice may be mailed to that person's last known address. In the case of real property, the notice must be filed in the registry of deeds in the county where the property is located. The notice must specify the sum demanded and contain:

(1) In the case of personal property, an account of the property seized; and

(2) In the case of real property, a description with reasonable certainty of the property seized.

In the case of levy on a motor vehicle that is the subject of a Certificate of Title issued by the Secretary of State, a copy of the notice must be filed with the Secretary of State, who shall note the levy in the records of ownership of the motor vehicle in question. In the case of levy on those types of personal property, a security interest in which may be perfected by filing in the office of the Secretary of State ~~pursuant to Title 11, section 9-401~~, a copy of the notice must be filed in the office of the Secretary of State, who shall file the notice of levy as a financing statement.

B. The assessor, as soon as practicable after the seizure of the property, shall give notice to the owner or possessor in the manner prescribed in paragraph A and cause a notification to be published in a newspaper of general circulation within the county where the seizure is made, or, if there is no such newspaper, post the notice at the city or town hall nearest the place where the seizure is made and in not less than 2 other public places. In the case of real property, the notice must be served on all persons holding an interest of record, including, without limitation, recorded leases and security interest of all types, in the property as reflected at the time the notice of levy is recorded by the indices of the registry of deeds in the county where the property is located. In the case of personal property that is a

motor vehicle subject to a Certificate of Title issued by the Secretary of State, notice must be served on all persons holding a security interest of record in the motor vehicle as set forth in the records of the Secretary of State. In the case of those types of personal property that may be the subject of a security interest perfected by filing in the office of the Secretary of State ~~pursuant to Title 11, section 9-401~~, notice must be served upon all secured parties claiming an interest in the property seized as reflected at the time the notice of levy is recorded in the records maintained by the Secretary of State pursuant to Title 11. The notice must specify the property to be sold, subject to the liabilities of prior encumbrances, if any, and the time, place, manner and conditions of the sale. If levy is made without regard to the 10-day period provided in subsection 2, public notice of sale of the property seized may not be made within the 10-day period unless subsection 7 applies. It is a Class E crime to intentionally remove or deface the posted notice of sale prior to the scheduled sale date, unless the property has been redeemed or the sale is for some other reason canceled. The assessor or any law enforcement officer may enter onto the land if necessary to carry out the purposes of this section.

Sec. 30. 36 MRSA §612 is amended to read:

36 § 612. Tax lien on personal property

1. Lien. There shall be a lien to secure the payment of all taxes legally assessed on personal property as defined in section 601, provided in the inventory and valuation upon which the assessment is made there shall be a description of the personal property taxed which meets the requirements of Title 11, section ~~9-402~~ 9-1504. Except as otherwise provided in this section, the lien, when perfected, shall take precedence over all other claims on the personal property and shall continue in force until the taxes are paid or until the lien is otherwise terminated by law.

2. Definitions. As used in this section, unless the context otherwise indicates, the terms used in this section have the same meanings as in Title 11.

3. Filing required to perfect lien. The lien established by subsection 1 shall attach on the date of assessment and shall become perfected at the time when notice of the lien, signed by the tax collector, is filed, pursuant to the filing provisions of Title 11, section ~~9-403~~ 9-1516, except that the signature of the taxpayer against whose property the lien is claimed, shall not be required on the notice of lien. If the lien is not perfected within 2 years from the date of assessment, it shall expire.

4. Notice of lien. Each notice of lien, which may be in the form of a financing statement, shall contain information which will identify:

A. The owner of the property upon which the lien is claimed, if the owner is not the taxpayer;

B. The residence or business address of the owner;

C. The taxpayer and his residence or business address;

D. The property claimed to be subject to the lien;

E. The amount of tax, accrued interest and costs claimed due the municipality by the lien;

F. The tax year or years for which the lien is claimed; and

G. The municipality claiming the lien.

A copy of the notice of lien shall be given by certified mail, return receipt requested, at the last known address, to the taxpayer, to the owner, if the owner is not the taxpayer and to any secured party who has a recorded security interest. Failure to give notice to any secured party who has a perfected security interest shall prevent the lien from taking precedence over that security interest, but shall not otherwise affect the validity of the lien.

5. Effective period of lien; limitation period. The lien shall be effective for a period of 5 years from the date of filing, unless discharged as provided in this section or unless a continuation statement should be filed prior to the lapse. A continuation statement signed by the tax collector may be filed on behalf of the municipality within 6 months prior to the expiration of the 5-year period provided in this section in the same manner and to the same effect as provided in Title 11, section ~~9-403, subsection (3)~~ 9-1515.

6. Rights and remedies of municipality and taxpayer. A municipality which has filed a notice of tax lien and the taxpayer against whom the lien has been filed shall have the rights and remedies of a secured party and debtor, respectively, as provided for in Title 11, ~~sections 9-501 to 9-507~~ Article 9-A, Part 6, except that the municipality shall not have the right to propose to retain any property in satisfaction of the obligation, as provided in Title 11, ~~section 9-505~~ Article 9-A, Part 6.

7. Personal property liens; discharge. If any lien created under this section is discharged, then a certificate of discharge shall promptly be filed by the tax collector of the municipality which originally filed the notice of lien, or by his successor, in the same manner as termination statements are filed under Title 11, section ~~9-404~~ 9-1513. The municipal officer who has filed the notice of lien shall file a notice of discharge of the lien in the manner provided in this section, if:

A. The taxes for which the lien has been filed are fully paid, together with all interest and costs due thereon;

B. A cash bond or surety company bond is furnished to the municipality conditioned upon the payment of the amount liened, together with interest and cost due, within the effective period of the lien as provided in this section; or

C. A final judgment shall be rendered in favor of the taxpayer or others claiming an interest in the liened personal property which determines either that the tax is not owed or that the lien is not valid. If the judgment determines that the tax is partially owed, then the officer who filed the notice of lien or his successor shall, within 10 days of the rendition of the final judgment, file an amended tax lien for the actual amount of tax found to be due, which amended lien shall be effective as to the revised amount of the lien as of the date of the filing of the original notice of tax lien, and the officer, or his successor at the time of the filing of the amended tax lien, shall also file a discharge of the original tax lien.

8. Consumer goods. In the case of consumer goods, a buyer in the ordinary course of business takes free of the lien created by this section, even though the lien is perfected and even though the buyer knows of its existence.

9. Liens subordinate to security interests. The lien authorized by this section shall be subordinated to security interests which were perfected before the effective date of this section.

10. Collection procedure. The collection procedure authorized by this section shall be optional and shall not affect in any way alternate collection procedures authorized by law.

11. Limitation of this section. The lien authorized by this section shall apply to taxes assessed on or after April 1, 1984.

Sec. 31. 38 MRSA §2214, sub-§2 is amended to read:

2. Mortgages. To further secure the payment of the revenue obligation securities, the trust agreement or other document may mortgage or assign the mortgage of the project, or any part of the project, and create a lien on or security interest in any or all of the project. In the event of a default with respect to the revenue obligation securities, the trustee, mortgagee or other person may be authorized by the trust agreement or other document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or from time to time lease the property in accordance with law. Any security interest granted by the authority under this chapter may be created and perfected

in accordance with the Uniform Commercial Code, Title 11, Article ~~9~~ 9-A~~,~~ ~~notwithstanding Title 11, section 9-104, subsection 5~~.

Appendix 5

Summary of Revisions to Article 9

National Conference of Commissioners on Uniform State Laws

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

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

Deposit accounts. Section 9-109 includes within this Article's scope deposit accounts as original collateral, except in consumer transactions. Former Article 9 dealt with deposit accounts only as proceeds of other collateral.

Sales of payment intangibles and promissory notes. Section 9-109 also includes within the scope of this Article most sales of "payment intangibles" (defined in Section 9-102 as general intangibles under which an account debtor's principal obligation is monetary) and "promissory notes" (also defined in Section 9-102). Former Article 9 included sales of accounts and chattel paper, but not sales of payment intangibles or promissory notes. In its inclusion of sales of payment intangibles and promissory notes, this Article continues the drafting convention found in former Article 9; it provides that the sale of accounts, chattel paper, payment intangibles, or promissory notes creates a "security interest." The definition of "account" in Section 9-102 also has been expanded to include various rights to payment that were general intangibles under former Article 9.

Health-care-insurance receivables. Section 9-109 narrows Article 9's exclusion of transfers of interests in insurance policies by carving out of the exclusion "health-care-insurance receivables" (defined in Section 9-102). A health-care-insurance receivable is included within the definition of "account" in Section 9-102.

Nonpossessory statutory agricultural liens. Section 9-109 also brings nonpossessory statutory agricultural liens within the scope of Article 9.

Consignments. Section 9-109 provides that "true" consignments–bailments for the purpose of sale by the bailee–are security interests covered by Article 9, with certain exceptions. See Section 9-102 (defining "consignment"). Currently, many consignments are subject to Article 9's filing requirements by operation of former Section 2-326.

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

Commercial tort claims. Section 9-109 expands the scope of Article 9 to include the assignment of commercial tort claims by narrowing the exclusion of tort claims generally. However, this Article continues to exclude tort claims for bodily injury and other non-business tort claims of a natural person. See Section 9-102 (defining "commercial tort claim").

Transfers by States and governmental units of States. Section 9-109 narrows the exclusion of transfers by States and their governmental units. It excludes only transfers covered by another statute (other than a statute generally applicable to security interests) to the extent the statute governs the creation, perfection, priority, or enforcement of security interests.

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

Subject to Sections 9-408 and 9-409 and two other exceptions (Sections 9-406, concerning accounts, chattel paper, and payment intangibles, and 9-407, concerning interests in leased goods), Section 9-401 establishes a baseline rule that the inclusion of transactions and collateral within the scope of Article 9 has no effect on non-Article 9 law dealing with the alienability or inalienability of property. For example, if a commercial tort claim is nonassignable under other applicable law, the fact that a security interest in the claim is within the scope of Article 9 does not override the other applicable law's effective prohibition of assignment.

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

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

Information. Section 9-210 expands a secured party's duties to provide the debtor with information concerning collateral and the obligations that it secures.

Default and enforcement. Part 6 also includes some additional duties of secured parties in connection with default and enforcement. See, e.g., Section 9-616 (duty to explain calculation of deficiency or surplus in a consumer-goods transaction).

c. **Choice of Law.** The choice-of-law rules for the law governing perfection, the effect of perfection or nonperfection, and priority are found in Part 3, Subpart 1 (Sections 9-301 through 9-307). See also Section 9-316.

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

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

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

Priority. For tangible collateral such as goods and instruments, Section 9-301 provides that the law applicable to priority and the effect of perfection or nonperfection will remain the law of the jurisdiction where the collateral is located, as under former Section 9-103 (but without the confusing "last event" test). For intangible collateral, such as accounts, the applicable law for priority will be that of the jurisdiction in which the debtor is located.

Possessory security interests; agricultural liens. Perfection, the effect of perfection or nonperfection, and priority of a possessory security interest or an agricultural lien are governed by the law of the jurisdiction where the collateral subject to the security interest or lien is located. See Sections 9-301, 9-302.

Goods covered by certificates of title; deposit accounts; letter-of-credit rights; investment property. This Article includes several refinements to the treatment of choice-of-law matters for goods covered by certificates of title. See Section 9-303. It also provides special choice-of-law rules, similar to those for investment property under current Articles 8 and 9, for deposit accounts (Section 9-304), investment property (Section 9-305), and letter-of-credit rights (Section 9-306).

Change in applicable law. Section 9-316 addresses perfection following a change in applicable law.

d. **Perfection.** The rules governing perfection of security interests and agricultural liens are found in Part 3, Subpart 2 (Sections 9-308 through 9-316).

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

Electronic chattel paper. Section 9-102 includes a new defined term: "electronic chattel paper." Electronic chattel paper is a record or records consisting of information stored in an electronic medium (i.e., it is not written). Perfection of a security interest in electronic chattel paper may be by control or filing. See Sections 9-105 (*sui generis* definition of control of electronic chattel paper), 9-312 (perfection by filing), 9-314 (perfection by control).

Investment property. The perfection requirements for "investment property" (defined in Section 9-102), including perfection by control under Section 9-106, remain substantially unchanged. However, a new provision in Section 9-314 is designed to ensure that a secured party retains control in "repledge" transactions that are typical in the securities markets.

Instruments, agricultural liens, and commercial tort claims. This Article expands the types of collateral in which a security interest may be perfected by filing to include instruments. See Section 9-312. Agricultural liens and security interests in commercial tort claims also are perfected by filing, under this Article. See Sections 9-308, 9-310.

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

Possessory security interests. Several provisions of this Article address aspects of security interests involving a secured party or a third party who is in possession of the collateral. In particular, Section 9-313 resolves a number of uncertainties under former Section 9-305. It provides that a security interest in collateral in the possession of a third party is perfected when the third party acknowledges in an authenticated record that it holds for the secured party's benefit. Section 9-313 also provides that a third party need not so acknowledge and that its acknowledgment does not impose any duties on it, unless it otherwise agrees. A special rule in Section 9-313 provides that if a secured party already is in possession of collateral, its security interest remains perfected by possession if it delivers the collateral to a third party and the collateral is accompanied by instructions to hold it for the secured party or to redeliver it to the secured party. Section 9-313 also clarifies the limited circumstances under which a security interest in goods covered by a certificate of title may be perfected by the secured party's taking possession.

Automatic perfection. Section 9-309 lists various types of security interests as to which no public-notice step is required for perfection (e.g., purchase-money

security interests in consumer goods other than automobiles). This automatic perfection also extends to a transfer of a health-care-insurance receivable *to* a health-care provider. Those transfers normally will be made by natural persons who receive health-care services; there is little value in requiring filing for perfection in that context. Automatic perfection also applies to security interests created by sales of payment intangibles and promissory notes. Section 9-308 provides that a perfected security interest in collateral supported by a "supporting obligation" (such as an account supported by a guaranty) also is a perfected security interest in the supporting obligation, and that a perfected security interest in an obligation secured by a security interest or lien on property (e.g., a real-property mortgage) also is a perfected security interest in the security interest or lien.

e. **Priority; Special Rules for Banks and Deposit Accounts.** The rules governing priority of security interests and agricultural liens are found in Part 3, Subpart 3 (Sections 9-317 through 9-342). This Article includes several new priority rules and some special rules relating to banks and deposit accounts (Sections 9-340 through 9-342).

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

Purchase-money security interests in livestock; agricultural liens. Section 9-324 provides a special PMSI priority, similar to the inventory PMSI priority rule, for livestock. Section 9-322 (which contains the baseline first-to-file-or-perfect priority rule) also recognizes special non-Article 9 priority rules for agricultural liens, which can override the baseline first-in-time rule.

Purchase-money security interests in software. Section 9-324 contains a new priority rule for a software purchase-money security interest. (Section 9-102 includes a definition of "software.") Under Section 9-103, a software PMSI includes a PMSI in software that is used in goods that are also subject to a PMSI. (Note also that the definition of "chattel paper" has been expanded to include

records that evidence a monetary obligation and a security interest in specific goods and software used in the goods.)

Investment property. The priority rules for investment property are substantially similar to the priority rules found in former Section 9-115, which was added in conjunction with the 1994 revisions to UCC Article 8. Under Section 9-328, if a secured party has control of investment property (Sections 8-106, 9-106), its security interest is senior to a security interest perfected in another manner (e.g., by filing). Also under Section 9-328, security interests perfected by control generally rank according to the time that control is obtained or, in the case of a security entitlement or a commodity contract carried in a commodity account, the time when the control arrangement is entered into. This is a change from former Section 9-115, under which the security interests ranked equally. However, as between a securities intermediary's security interest in a security entitlement that it maintains for the debtor and a security interest held by another secured party, the securities intermediary's security interest is senior.

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

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

Chattel paper and instruments. Section 9-330 is the successor to former Section 9-308. As under former Section 9-308, differing priority rules apply to purchasers of chattel paper who give new value and take possession (or, in the case of electronic chattel paper, obtain control) of the collateral depending on whether a

conflicting security interest in the collateral is claimed merely as proceeds. The principal change relates to the role of knowledge and the effect of an indication of a previous assignment of the collateral. Section 9-330 also affords priority to purchasers of instruments who take possession in good faith and without knowledge that the purchase violates 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.

Proceeds. Section 9-322 contains new priority rules that clarify when a special priority 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 Sections 9-324 (purchase-money security interest priority) and 9-330 (priority of certain purchasers of chattel paper and instruments).

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

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

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

g. **Part 4: Additional Provisions Relating to Third-Party Rights.** New Part 4 contains several provisions relating to the relationships between certain third parties and the parties to secured transactions. It contains new Sections 9-401 (replacing former Section 9-311) (alienability of debtor's rights), 9-402 (replacing former Section 9-317) (secured party not obligated on debtor's contracts), 9-403 (replacing former Section 9-206) (agreement not to assert defenses against assignee), 9-404, 9-405, and 9-406 (replacing former Section 9-318) (rights acquired by assignee, modification of assigned contract, discharge of account debtor, restrictions on assignment of account, chattel paper, promissory note, or payment intangible ineffective), 9-407 (replacing some provisions of former Section 2A-303) (restrictions on creation or enforcement of security interest in leasehold interest or lessor's residual interest ineffective). It also contains new Sections 9-408 (restrictions on assignment of promissory notes, health-care-insurance receivables ineffective, and certain general intangibles ineffective) and 9-409 (restrictions on assignment of letter-of-credit rights ineffective), which are discussed above.

h. **Filing.** Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years.

Medium-neutrality. This Article is "medium-neutral"; that is, it makes clear that parties may file and otherwise communicate with a filing office by means of records communicated and stored in media other than on paper.

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

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

Financing statement formal requisites. The formal requisites for a financing statement are set out in Section 9-502. A financing statement must provide the name of the debtor and the secured party and an indication of the collateral that it covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a financing statement and clarify when a debtor's name is correct and when an incorrect name is insufficient. Section 9-504 addresses the indication of collateral covered. Under Section 9-504, a super-generic description (e.g.,"all assets" or "all personal property") in a financing statement is a sufficient indication of the collateral. (Note, however, that a super-generic description is inadequate for purposes of a security agreement. See Sections 9-108, 9-203.) To facilitate electronic filing, this Article does not require that the debtor's signature or other authorization appear on a financing statement. Instead, it prohibits the filing of unauthorized financing statements and imposes liability upon those who violate the prohibition. See Sections 9-509, 9-626.

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

Correction of records: Defaulting or missing secured parties and fraudulent filings. In some areas of the country, serious problems have arisen from fraudulent financing statements that are filed against public officials and other persons. This Article addresses the fraud problem by providing the opportunity for a debtor to file a termination statement when a secured party wrongfully refuses or fails to provide a termination statement. See Section 9-509. This opportunity also addresses the problem of secured parties that simply disappear through mergers or liquidations. In addition, Section 9-518 affords a statutory method by which a debtor who believes that a filed record is inaccurate or was wrongfully filed may indicate that fact in the files by filing a correction statement, albeit without affecting the efficacy, if any, of the challenged record.

Extended period of effectiveness for certain financing statements. Section 9-515 contains an exception to the usual rule that financing statements are effective for five years unless a continuation statement is filed to continue the effectiveness for another five years. Under that section, an initial financing statement filed in connection with a "public-finance transaction" or a "manufactured-home transaction" (terms defined in Section 9-102) is effective for 30 years.

National form of financing statement and related forms. Section 9-521 provides for uniform, national written forms of financing statements and related written records that must be accepted by a filing office that accepts written records.

i. **Default and Enforcement.** Part 6 of Article 9 extensively revises former Part 5. Provisions relating to enforcement of consumer-goods transactions and consumer transactions are discussed in Comment 4.j.

Debtor, secondary obligor; waiver. Section 9-602 clarifies the identity of persons who have rights and persons to whom a secured party owes specified duties under Part 6. Under that section, the rights and duties are enjoyed by and run to the "debtor," defined in Section 9-102 to mean any person with a non-lien property interest in collateral, and to any "obligor." However, with one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties concerned affect non-debtor obligors only if they are "secondary obligors." "Secondary obligor" is defined in Section 9-102 to include one who is secondarily obligated on the secured obligation, e.g., a guarantor, or one who has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. However, under Section 9-628, the secured party is relieved from any duty or liability to any person unless the secured party knows that the person is a debtor or obligor. Resolving an issue on which courts disagreed under former Article 9, this Article generally prohibits waiver by a secondary obligor of its rights and a secured party's duties under Part 6. See Section 9-602. However, Section 9-624 permits a secondary obligor or debtor to waive the right to notification of disposition of collateral and, in a non-consumer transaction, the right to redeem collateral, if the secondary obligor or debtor agrees to do so after default.

Rights of collection and enforcement of collateral. Section 9-607 explains in greater detail than former 9-502 the rights of a secured party who seeks to collect or enforce collateral, including accounts, chattel paper, and payment intangibles. It also sets forth the enforcement rights of a depositary bank holding a security interest in a deposit account maintained with the depositary bank. Section 9-607 relates solely to the rights of a secured party vis-a-vis a debtor with respect to collections and enforcement. It does not affect the rights or duties of third parties, such as account debtors on collateral, which are addressed elsewhere (e.g., Section 9-406). Section 9-608 clarifies the manner in which proceeds of collection or enforcement are to be applied.

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

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

Rights and duties of secondary obligor. Section 9-618 provides that a secondary obligor obtains the rights and assumes the duties of a secured party if the secondary obligor receives an assignment of a secured obligation, agrees to assume the secured party's rights and duties upon a transfer to it of collateral, or becomes subrogated to the rights of the secured party with respect to the collateral. The assumption, transfer, or subrogation is not a disposition of collateral under Section 9-610, but it does relieves the former secured party of further duties. Former Section 9-504(5) did not address whether a secured party was relieved of its duties in this situation.

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

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

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

"Low-price" dispositions: Calculation of deficiency and surplus. Section 9-615(f) addresses the problem of procedurally regular dispositions that fetch a low price. Subsection (f) provides a special method for calculating a deficiency if the proceeds of a disposition of collateral to a secured party, a person related to the secured party, or a secondary obligor are "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." ("Person related to" is defined in Section 9-102.) In these situations there is reason to suspect that there may be inadequate incentives to obtain a better price. Consequently, instead of calculating a deficiency (or surplus) based on the actual net proceeds, the deficiency (or surplus) would be calculated based on the proceeds that would have been received in a disposition to person other than the secured party, a person related to the secured party, or a secondary obligor.

j. **Consumer Goods, Consumer-Goods Transactions, and Consumer Transactions.** This Article (including the accompanying conforming revisions (see Appendix I)) includes several special rules for "consumer goods," "consumer transactions," and "consumer-goods transactions." Each term is defined in Section 9-102.

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

(ii) Section 9-103(e) (allocation of payments for determining extent of purchase-money status), (f) (purchase-money status not affected by cross-collateralization, refinancing, restructuring, or the like), and (g) (secured party has burden of establishing extent of purchase-money status) do not apply to consumer-goods transactions. Sections 9-103 also provides that the limitation of those provisions to transactions other than consumer-goods transactions leaves to the

courts the proper rules for consumer-goods transactions and prohibits the courts from drawing inferences from that limitation.

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

(iv) Sections 9-403 and 9-404 make effective the Federal Trade Commission's anti-holder-in-due-course rule (when applicable), 16 C.F.R. Part 433, even in the absence of the required legend.

(v) The 10-day safe-harbor for notification of a disposition provided by Section 9-612 does not apply in a consumer transaction.

(vi) Section 9-613 (contents and form of notice of disposition) does not apply to a consumer-goods transaction.

(vii) Section 9-614 contains special requirements for the contents of a notification of disposition and a safe-harbor, "plain English" form of notification, for consumer-goods transactions.

(viii) Section 9-616 requires a secured party in a consumer-goods transaction to provide a debtor with a notification of how it calculated a deficiency at the time it first undertakes to collect a deficiency.

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

(x) Section 9-626 ("rebuttable presumption" rule) does not apply to a consumer transaction. Section 9-626 also provides that its limitation to transactions other than consumer transactions leaves to the courts the proper rules for consumer transactions and prohibits the courts from drawing inferences from that limitation.

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