

SECURED TRANSACTIONS – CREATION, PERFECTION AND PRIORITY UNDER UCC ARTICLE 9

Note: Portions of the outline that are particularly relevant to security interests in non-intermediated securities (*i.e.*, “certificated securities”) appear in bold type.

1) SCOPE OF UCC ARTICLE 9

a) Article 9 Transactions UCC 9-109

i) *Security Interest*

- (1) **Transaction, regardless of form, that creates a security interest in personal property or fixtures by contract**
- (2) **Security interest is an interest in personal property or fixtures to secure payment or to secure performance of an obligation UCC 9-102(37)**
 - (a) **Secured Party—person in whose favor a security interests is created UCC 9-102(72)**
 - (b) **Debtor—person with the interest in the collateral UCC 9-102(28)**
 - (c) **Obligor—person who owes payment or performance, usually the debtor UCC 9-102(59)**

ii) *Agricultural Liens* (ALWAYS STATUTORY)

- (1) Interest in farm products (not a security interest)
- (2) Secures payment for goods, services, or real estate lease in connection with debtor’s farming operation
- (3) Created by statute
- (4) Creditor furnished goods/services or leased real property in the ordinary course of debtor’s business AND
- (5) Statute does not require possession to effectuate the lien

iii) *Sale of Intangibles* (Debtor sells his rights to payment)

- (1) Accounts
- (2) Chattel paper
- (3) Payment intangibles
- (4) Promissory notes

iv) *Consignments*

- (1) A consignment is a bailment for the purpose of sale. Article 9 applies if
 - (a) Merchant receiving goods
 - (i) Is not an auctioneer
 - (ii) Does not do business under name of the consignor
 - (iii) Is not generally know by creditors to be a consignee
 - (b) Each delivery is \$1000 or more at the time of delivery
 - (c) Goods are not consumer goods *immediately before* delivery AND
 - (d) The transaction is not a security interest

v) *Conditional Sales* UCC 9-109(a)(5); 2-401

- (1) Any attempt by a seller to retain title in goods shipped or delivered is limited to a security interest

vi) *Leases Intended as Security* UCC 1-201(37): Article 9 applies if:

- (1) Lease is not subject to termination by the lessee AND one of the following:
 - (a) Term of the lease and economic life are equal
 - (b) Lessee is bound to buy
 - (c) Renewal or buyout at end of term for nominal consideration
 - (i) Nominal consideration is determined by comparing the buyout/renewal price to the "reasonably predictable fair market value"
 - (ii) Reasonably predictable fair market value is what the parties expected the goods would be worth at the time the parties entered into the lease agreement
 - (iii) If the only reasonable thing to do is pay the buyout price, the price is nominal
- (2) Security interests are not created in the following situations UCC 1-201(37)
 - (a) Clause requiring the lessee to pay insurance, taxes, etc.
 - (b) Lessor files a financing statement
 - (c) Present value of the property is substantially greater than or equal to the fair market value at the time the lease was entered into
 - (d) Full payout leases where lessee pays the full price at the end of the term

- (e) Renewals for consideration (not nominal)
- b) *Collateral*: Determined by the debtor's use of the property
 - i) Classification UCC 9-102
 - (1) Tangibles: *Goods* (movables at the time the interest attaches) including *Fixtures* UCC 9-102(a)(44).
 - (a) *Goods Generally*
 - (i) Classification of goods is mutually exclusive: goods must be one of the four classifications
 - (ii) The classification of goods is determined by their *principal use*
 - (iii) If you can't determine the principal use, the good is *equipment*
 - (b) *Consumer goods* UCC 9-102(a)(23)
 - (i) *Primarily* for personal, family, or household use
 - (ii) Businesses cannot have consumer goods, only individuals
 - (c) *Equipment* UCC 9-102(a)(33)
 - (i) Goods other than inventory, consumer goods, or farm products
 - (ii) Rule out all other goods before picking equipment
 - (iii) Animals can be equipment (if not on the farm as farm product)
 - (iv) *Principal Use Doctrine*: = equipment
 - (d) *Inventory* UCC 9-102(a)(58)
 - (i) Goods other than farm products where debtor
 - 1. holds the goods for sale or lease OR
 - 2. uses up or consumes the goods in business
 - (e) *Farm Products* UCC 9-102(a)(34)
 - (i) Goods held by debtor (farmer) engaged in farming operation
 - 1. Farming operation is raising, cultivating, fattening, etc. on the farm AND
 - (ii) Goods are either
 - 1. crops
 - 2. livestock—animals raised on the farm
 - 3. supplies—seed, fertilizer, feed, NOT fixed assets
 - 4. products of crops or livestock in unmanufactured state
 - (f) *Fixtures*: UCC 9-102(a)(41)
 - (i) Personal property that is so related to real property that an interest arises under real property law
 - (ii) Fixtures will either be
 - 1. Equipment, if the debtor is a business OR
 - 2. Consumer goods, if the debtor is an individual
 - (2) Intangibles
 - (a) *Money*: medium of exchange adopted by a government (1-201(24))
 - (b) ***Investment Property***
 - (i) Security (**directly** or indirectly **held, certificated security** or uncertificated security), commodity contract, or commodity account (9-102(a)(13))
 - (c) *Commercial Tort Claim*
 - (i) Individual's tort claim arising out of business and not involving personal injury, or
 - (ii) An organization's tort claim (9-102(a)(13))
 - (d) *Chattel Paper*
 - (i) The records constituting a secured transaction in, or a lease of, specific goods, but not the charter of a vessel (9-102(a)(11))
 - (ii) Record that evidences both a debt and a security interest in specific goods
 - (e) *Instrument*
 - (i) Right to payment of a monetary obligation represented by a negotiable instrument or by a writing commonly transferred by delivery and any necessary endorsement or assignment, unless it is a lease or security agreement, investment property, letter of credit, or writings evidencing a credit card receivable (9-102(a)(47))
 - (ii) Types
 - 1. promissory notes
 - 2. checks
 - 3. negotiable certificates of deposit; drafts
 - (f) *Deposit Account*
 - (i) demand, time, savings, or passbook account maintained with a bank, but not investment property or an instrument (9-102(a)(29))
 - (g) *Account*

- (i) right to payment of a monetary obligation that arises from (1) the disposition of property by sale, lease, license, or otherwise (2) the rendering of services, (3) the issuing of insurance, (4) the incurring of a secondary obligation, (5) the providing of energy, (6) the chartering of a vessel, (7) the use of a credit card, or (8) legal lottery winnings; unless the right to payment results from money advanced or comes within one of the other categories of intangible property
- (h) *Document*
 - (i) warehouse receipts, bills of lading, and similar documents embodying rights to goods possessed by a bailee (9-102(a)(30))
 - (ii) documents means documents of title
- (i) *General Intangibles*
 - (i) any personal property not fitting into one of the other categories
 - (ii) (i.e. software, copyrights, patents, payment intangibles)
- c) *Exclusions*—UCC 9-109(d) excludes the following from Article 9:
 - i) *Transactions Excluded*
 - (1) Statutory liens other than agricultural liens
 - (2) Assignments of deposit accounts (bank accounts) in consumer transactions
 - (3) Insurance policies EXCEPT Health Care Insurance Receivables
 - (4) Transfer of accounts, chattel paper, payment intangibles, or promissory notes where
 - (a) Sale is part of a going out of business sale
 - (b) Assignment is for collection purposes only
 - (5) Assignment of a single account, payment intangible, or promissory note (NOT CHATTEL PAPER) to satisfy a preexisting debt
 - (6) Assignment of a right to payment under contract to assignee who is also obligated to perform under the contract
 - ii) *Collateral Excluded*
 - (1) Non-commercial tort claims
 - (2) Real estate other than fixtures

2) CREATION OF SECURITY INTERESTS: ATTACHMENT UCC 9-203

- a) ***General Rule: A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral***
 - i) ***Attachment is all that is necessary when the dispute is between the creditor and the debtor ONLY***
 - ii) ***Where there is a dispute involving a third party, the security interest is enforceable against third parties BUT perfection will be necessary to determine priority***
- b) ***Requirements: (1) Agreement; (2) Debtor has Rights in the Collateral; (3) Creditor gives Value (Statute of Frauds)***
 - i) ***Agreement and Authenticated Record: Debtor authenticates a security agreement that describes the collateral***
 - (1) ***UCC 9-102: Security agreement is an agreement that creates or provides for a security interest***
 - (a) ***This is the intent requirement***
 - (b) ***The parties, particularly the debtor, must have intended to create a security interest and intent to do so must be evidenced in some kind of record***
 - (c) ***No magic words are required in the agreement***
 - (2) ***UCC 9-102: Authenticated Record***
 - (a) ***The debtor signed the agreement or***
 - (b) ***The debtor executed or adopted a symbol with the present intent to adopt or accept a record***
 - (c) ***Record is information inscribed on a tangible medium or stored in electronic medium and is retrievable in perceivable form***
 - (d) ***Emails can be records***
 - (e) ***Bundle of Documents Theory: ALL the correspondences by the parties can be used to meet the authenticated record requirement***
 - (3) ***UCC 9-108: Description of the Collateral***
 - (a) ***General rule***
 - (i) ***Reasonably identifies what is described.***
 1. ***Exact description of the collateral***
 2. ***Category of collateral***
 3. ***An Article 9 description (e.g., accounts, chattel paper, inventory, etc.)***
 4. ***Quantity***
 5. ***Computational or allocational formula or procedure OR***

6. Any other method, if the identity of the collateral is *objectively determinable*
- (b) Exceptions
- (i) Supergeneric descriptions such as "all debtor's assets" or "all debtor's property" are not sufficient for the security agreement
 - (ii) An Article 9 description is insufficient if the collateral is
 1. A commercial tort claim (must have the docket number) OR
 2. Consumer goods in a consumer transaction
- (4) *After-Acquired Collateral* UCC 9-204
- (a) Security agreement may create or provide for a security interest in after-acquired collateral (collateral acquired after initial security interest is created)
 - (b) After-acquired collateral *must* be provided for in the security agreement
 - (c) Security agreement must contain sufficient description of the after-acquired collateral under UCC 9-108
 - (i) Description of after-acquired collateral is a question of contract interpretation.
 - (ii) The standard is whether the agreement contains *future* language (e.g., "after acquired" or "owns or acquires in the future")
 - (iii) *Inventory* and *accounts* are inherently future
 - (d) Security interest does not attach in the after-acquired property until the debtor obtains *rights in the after-acquired property*
 - (e) *Exception*: A security interest does *not* attach to after-acquired property if the property is
 - (i) Consumer goods UNLESS debtor acquires rights within 10 days after the creditor gives value *or*
 - (ii) Commercial tort claims
- (5) *Future Advances* UCC 9-204
- (a) A security agreement may provide for future advances (more money from creditor secured by initial security agreement)
 - (b) The security agreement *must* provide for future advances
 - (c) Whether agreement provides for future advances is a question of contract interpretation
 - (d) Agreement must provide some future language
- (6) *Agreement and Possession*: UCC 9-203 and UCC 9-313 possession
- (a) Collateral must be subject to possession. Collateral that is subject to possession include:
 - (i) Negotiable documents
 - (ii) Goods
 - (iii) Instruments
 - (iv) Money *or*
 - (v) Tangible Chattel Paper
 - (b) Creditor must have possession under UCC 9-313
 - (i) Creditor has actual possession *or*
 - (ii) Creditor's agent takes possession AND
 1. possession followed by acknowledgement in authenticated record *or*
 2. Acknowledgement in authenticated record followed by possession
 - (iii) Creditor's agent cannot be the debtor
 - (c) Perfection begins at the time of possession and continues until no longer in possession
- (7) *Agreement and Control*:
- (a) Collateral must be subject to control. Collateral that is subject to control include:
 - (i) Deposit accounts
 - (ii) Electronic chattel paper
 - (iii) Investment property
 - (iv) Letter of credit rights
 - (b) UCC 9-104: *Control of Deposit Accounts*—a secured party has control over deposit accounts if:
 - (i) Secured party is the bank
 - (ii) The debtor, secured party, and the bank all agree in an *authenticated record* that bank will comply with secured party *or*
 - (iii) Secured party becomes a customer of the bank (e.g., secured party is named on the debtor's account)
 - (iv) NOTE: Secured party still has control regardless if the debtor can freely access its bank account
 - (c) UCC 9-105: *Control of Electronic Chattel Paper*—a secured party has control over electronic chattel paper if:
 - (i) Single authoritative copy
 1. Unique
 2. Identifiable

- 3. Generally unalterable
 - (ii) Single authoritative copy identifies the secured party as the assignee
 - (iii) Single authoritative copy is sent to and maintained by the secured party
 - (iv) Changes to the single authoritative copy can only be made with participation of the secured party
 - (v) Copies of the single authoritative copy must be *readily identifiable as a copy*
 - (vi) Revisions of the single authoritative copy must be *readily identifiable as authorized or unauthorized*
- (d) **UCC 8-106 and 9-106: Control of Investment Property—secured party has control of investment property if:**
 - (i) **Certificated security is delivered to the secured party AND**
 - 1. **Certificate is indorsed to the secured party *or***
 - 2. **registered in secured party's name**
 - (ii) Uncertificated security
 - 1. Is delivered to the secured party *or*
 - 2. Issuer of the security has agreed to comply with secured party's instructions without the consent of the debtor
 - (iii) Security entitlement
 - 1. Secured party becomes the holder of the entitlement
 - 2. Intermediary has agreed to comply with the secured party's instructions without the consent of the debtor *or*
 - 3. Third party controls of the entitlement on behalf of the secured party or acknowledges that he is controlling on behalf of the secured party
 - (iv) No authenticated record is required
 - (v) Agreement can be oral
- ii) **Debtor has Rights in the Collateral: UCC 9-203 requirement but determined by other law**
 - (1) **Debtor must have rights or the power to transfer rights in the collateral**
 - (2) **If debtor is the owner of the collateral, debtor has rights unquestionably**
 - (3) Gifts: Debtor has rights in a gift if
 - (a) Donor *intends* to give debtor a gift
 - (b) Debtor *accepts* the gift AND
 - (c) Gift is *delivered* to the debtor
 - (4) Leases: (Art. 2A)
 - (a) Debtor has a leasehold interest
 - (b) Debtor has rights to possession and use of the leasehold property
 - (5) Sale of Goods: Article 2: UCC 2-403, 2-501
 - (a) General Rule: transferee gets all that the transferor had to transfer
 - (b) Good Title = rights in the collateral
 - (c) Void Title = no rights in the collateral
 - (d) Voidable Title = rights in the collateral if
 - (i) Transferor voluntarily departs with goods subject to express/implied condition.
 - (ii) Transferee is a *good faith purchaser for value* UCC 1-201
 - 1. Good Faith under Article 2 for merchants and non-merchants
 - 2. Purchasers take an interest in property voluntarily (broad)
 - a. Includes lien creditors
 - 3. Secured creditors are always purchasers for value
 - (e) UCC 2-501 states that a buyer obtains a special property interest in *goods identified to the contract*
 - (6) If the debtor only has a limited interest in the collateral, the debtor has rights in the collateral and can transfer but can transfer *only* that limited interest. THEREFORE, secured party will attach to the limited interest
 - (7) Rights in *After-Acquired Collateral* UCC 9-204
 - (a) Generally, secured party cannot attach to after-acquired collateral until the debtor obtains rights
 - (b) For *after-acquired consumer goods*, debtor must acquire rights within ten days after the creditor gives value or the after-acquired clause fails
- iii) **Creditor Gives Value: UCC 1-201(44)**
 - (1) **Any consideration sufficient to support a simple contract**
 - (a) **Binding commitment to lend money without further conditions**
 - (b) *E.g., "The money is yours"*
 - (2) **Pre-existing indebtedness to secure a loan (Creditor gets s security interest from debtor because debtor owed creditor money; the pre-existing debt is the value given by the creditor)**
 - (3) **Does not require that money is actually lent**
- iv) *Attachment to Proceeds* UCC 9-315

- (1) A security interest continues in collateral notwithstanding transfer unless the secured party authorizes the disposition *free of the security interest*
 - (2) A security interest attaches to all *identifiable proceeds* of the original collateral ANALYSIS: (1) Define the proceed; (2) Determine Cash or Non-cash; (3) Determine Identifiability of Proceed
 - (3) Proceeds Defined: UCC 9-102
 - (a) Anything acquired upon disposition of collateral by any method (sale/lease, license, trade/exchange)
 - (b) Collections and dividends from the collateral
 - (c) Rights arising out of the collateral
 - (d) Rights to payment from tort claims with respect to the collateral
 - (e) Insurance payables with respect to the collateral
 - (f) A proceed of a proceed is a proceed
 - (4) Types of Proceeds UCC 9-315 Comment 13
 - (a) Cash Proceeds are money equivalents or the like
 - (i) Money
 - (ii) Checks
 - (iii) Deposit accounts
 - (b) Non-cash proceeds are everything other than cash proceeds (usually goods)
 - (5) Identifiability of Commingled Proceeds
 - (a) If the proceeds are goods, then the proceeds are identifiable to the extent provided for in UCC 9-336
 - (b) If the proceeds are *not* goods (cash proceeds), the following rules apply:
 - (i) *Lowest intermediate balance rule* follows the money into deposit account and the security interest will attach to the deposit account
 - (ii) The presumption is that the debtor spends non-proceeds before spending proceeds
 - (iii) The value of the security interest in the proceed is the *lesser* value between the proceeds deposited or the lowest balance of the account
 - (c) As a general rule, if cash proceeds are deposited into an account with non-proceeds, the creditor probably cannot trace the money.
- v) *Other General Rules*
- (1) Attachment occurs on the day where agreement, rights, and value exist (no particular order) UCC 9-203
 - (2) When security interests are transferred perfection and priority pass along with it. UCC 9-310
 - (3) A security interest cannot exceed the value of the debt (can never exceed value of collateral). The security interest is *the lesser amount of the debt or the collateral*.

3) PERFECTION

- a) *Analysis*
 - i) **Classify the Collateral**
 - ii) **What are the permissible methods of perfection for this type of collateral**
 - iii) **Did the creditor attempt to use a permissible method**
 - iv) **Was the attempted method done sufficiently**
- b) **Ways to Perfect: Permissible Methods**

TYPE OF COLLATERAL	FILING	POSSESSION	CONTROL	AUTOMATIC
<i>Farm Products</i>	YES § 9-310	YES § 9-313(a)	NO	NO
<i>Consumer Goods</i>	YES	YES	NO	YES: PMSI § 9-309
<i>Equipment</i>	YES	YES	NO	NO
<i>Inventory</i>	YES	YES	NO	NO
<i>Fixtures (Equipment)</i>	YES	Legally, YES Practically, NO	NO	NO unless PMSI Fixture is a Consumer Good § 9-309
<i>Document</i>	YES	YES	NO	Temporary Perfection for 20 Days § 9-312(e) or (f)
<i>Certified Security</i>	YES	YES § 9-313(a) if possession by delivery under § 8-301	YES § 9-314(a) if control by delivery and indorsement under § 8-106	Temporary Perfection for 20 Days § 9-312(e) or (g)
<i>Investment Property</i>	YES	NO unless Certified Security	YES	YES § 9-309(10)
<i>Deposit Account</i>	NO	NO § 9-312(b)(1)	YES § 9-314	NO
<i>Commercial Tort Claim</i>	YES § 9-310(a)	NO	NO	NO
<i>Instrument</i>	YES § 9-312(a)	YES § 9-313(a)	NO	NO unless sold under § 9-309(4)
<i>Chattel Paper</i>	YES § 9-312(a)	YES § 9-313(a) only Tangible Chattel Paper	YES § 9-314(a) only Electronic Chat. Pap.	NO
<i>Accounts</i>	YES	NO	NO	NO unless assignment of small portion (§ 9-309) or sale of lottery winnings (§ 9-309(14))
<i>Agricultural Lien</i>	YES (ONLY § 9-310 Filing)	NO	NO	NO
<i>General Intangibles</i>	YES	NO	NO	NO
<i>Payment Intangibles</i>	YES	NO	NO	YES if its a true sale

c) **Perfection by Filing: Purpose**—UCC basic notice system; give notice to other creditors

i) **General Analysis**

- (1) Is filing permissible for perfection
- (2) Did the creditor choose the correct state
- (3) Did the creditor choose the correct office
- (4) Did the financing statement meet the requirements of the Code

ii) **Filing is appropriate for all collateral except deposit accounts and money**

iii) **Where to File (which State)**

(1) **UCC 9-301 General Rule: Place for filing is the debtor's location**

(a) **Debtor's location UCC 9-307**

- (i) **Corporation: state of incorporation**
- (ii) **Individual: state of debtor's residence**
- (iii) **Unincorporated Business: state of debtor's principal place of business or chief executive office**

(b) **Place of collateral if**

- (i) **Possessory security interest**
- (ii) **Fixtures**
- (iii) **Timber to be cut**
- (iv) **Wellhead or minehead for as extracted collateral**

(2) **UCC 9-501: Choosing the Office (within a State)**

(a) **Generally, secretary of state's office**

- (b) For real estate and fixtures, the recorder of deeds of the state where the real estate is located
- (c) For fixtures that are also *equipment*, creditor has the choice of either secretary of state's office or recorder of deeds where the real property that contains the fixture is located

iv) **What to File**

(1) **UCC 9-502: Financing Statements MUST have**

(a) **Debtor's Name**

(b) **Secured Party's Name**

(c) **Indication of the Collateral**

- (i) UCC 9-504 provides that the indication of collateral is sufficient if
 1. complies with 9-108 descriptions or
 2. indicates that financing statement covers "all assets or all personal property" of the debtor
- (ii) Differs from the security agreement because
 1. financing statement need not indicate after acquired property
 2. financing statement can state "all assets of debtor" and still be valid

- (2) UCC 9-516: Financing Statements SHOULD have
 - (a) Debtor's address
 - (b) Whether the debtor is an individual or organization
 - (c) Registration Numbers
 - (d) Secured Party's address
 - (e) Last name of debtor if debtor is an individual
- (3) *Errors or Omissions* UCC 9-506
 - (a) *General Rule*: Minor errors not *seriously misleading* do not invalidate the financing statement
 - (i) An error is *seriously misleading* if
 - 1. Financing statement fails to sufficiently provide the name of the debtor in 9-503
 - 2. Errors in the name are thus presumed to be *seriously misleading*
 - (b) *Exception*: If a standard search using the debtor's correct name would reveal the filing, it saves the financing statement
 - (i) Must know the standard search logic of each office
 - (ii) Distinguish between corporations and individuals, as they are separate entities
 - (c) UCC 9-503: *Trade names* are not sufficient as debtor's name unless revealed by the standard search logic
 - (d) Individual debtor's: creditor must have the actual name of the debtor
 - (i) Use driver's license
 - (ii) Social security card
 - (iii) Passport etc.
 - (e) Intent of UCC 9-506: Validate a financing statement that is close but has minor errors—general purpose of the UCC is to make business easy and less cumbersome
- (4) Changes
 - (a) Changes in the *Name of the Debtor* UCC 9-507
 - (i) UCC 9-506: New name after the initial filing is *seriously misleading*
 - (ii) If the financing statement is *seriously misleading*, apply UCC 9-507(c)
 - 1. collateral acquired before the name change is still perfected
 - 2. collateral acquired up to four months *after* the name change is still perfected
 - 3. collateral acquired *after* the four-month period is *not* perfected *unless*
 - a. amendment filed
 - b. within four months of the name change
 - (iii) Policy: four months is reasonable time for creditor to find out
 - (iv) Practice Point: creditors should always ask for all the debtor's prior names because other creditors are still perfected in collateral before the name change
 - (b) Changes in the *Debtor's State of Incorporation* UCC 9-316
 - (i) Determine the original jurisdiction that governed the filing (UCC 9-301 & UCC 9-307)
 - (ii) When the debtor relocates to a new jurisdiction, the *new* jurisdiction governs the filing
 - (iii) If the security interest is perfected in another jurisdiction (old JD), the security interest remains perfected in the new location for *four months*
 - (iv) Secured party *must* file in the new jurisdiction within four months after the relocation to remain perfected
 - (v) After *four months*, the creditor is *unperfected* AND
 - 1. Will lose to a *purchaser for value* no matter when the purchaser acquired the interest (before the four months, during the four months, after the four months)
 - 2. Will defeat non-purchasers for value in interests that arose before the relocation and during the four months after the relocation *but not* interest that arose after the four month period expired
 - (vi) Short-Hand Rule: if a debtor relocates:
 - 1. a secured creditor is absolutely perfected within four months after the relocation against non-purchasers
 - 2. a secured creditor is conditionally perfected within four months after the relocation against purchasers *if* the secured creditor files in the new location within the four month period
- v) **Who & How**
 - (1) **UCC 9-509: A person can file a financing statement if**
 - (a) **Debtor authorizes the filing in an *authenticated record***
 - (b) **The debtor authorizes the filing if debtor executes an initial security agreement with the creditor**
 - (2) **If the financing statement covers more than that authorized by the security agreement**
 - (a) **The debtor only authorizes the collateral in the security agreement**
 - (b) **Thus, financing statement is not authorized and the debtor may be entitled to damages, if any**

- (c) Practice Point: as creditor, have the debtor authorize a financing statement that covers more than the security agreement
- vi) **Duration, Continuation, & Termination UCC 9-513 & UCC 9-515**
 - (1) **Duration**
 - (a) **A financing statement is effective for 5 years. UCC 9-515(a)**
 - (2) **Continuation**
 - (a) **A continuation statement must be filed during the six month period before the five years expires to continue the effectiveness of the financing statement**
 - (b) **If not, UCC 9-510 provides that the financing statement is ineffective (as if it were never filed)**
 - (3) **Termination**
 - (a) **UCC 9-515: if the five year period ends**
 - (i) **The financing statement lapses**
 - (ii) **Financing statement is deemed never perfected against a purchaser for value**
 - (4) Two-fold purpose: (1) The six-month rule prevents continuous filing of continuation statements; (2) punishment for not following article 9 encourages compliance with article 9
- vii) **Amendments UCC 9-512**
 - (1) Alternative [A] or [B] (chosen by the states)
 - (2) Amendment must identify file number of the initial financing statement
 - (3) If real estate filing
 - (a) Indicate that the amendment covers this collateral
 - (b) Will be filed in real estate records
 - (c) Description of real estate
 - (d) Record owner of real estate
 - (4) UCC 9-509: The initial authorization by debtor covers initial filing *and* all amendments
 - (5) UCC 9-512(b): Filing an amendment does not extend the period of effectiveness of the initial financing statement
 - (6) UCC 9-512(c): Amendment date is effective as to the *new collateral* added by the amendment
- viii) **Fixture Filings UCC 9-502(b)**
 - (1) UCC 9-102 defines a fixture filing as a financing statement covering goods that are or are to become fixtures
 - (2) Must have all requirements of UCC 9-502(a)
 - (a) Debtor's Name
 - (b) Secured Party's Name
 - (c) Indication of the Collateral
 - (3) Type of collateral (fixture)
 - (4) Statement that the FS will be filed in the real estate records
 - (5) Description of the real property where the fixture is located (sufficient to give notice)
 - (6) Name of record owner of real estate
- d) **Perfection by Possession or Delivery UCC 9-313**
 - i) **Generally: Perfection by possession: goods, negotiable documents, instruments, money, or tangible chattel paper is sufficient; by delivery: certificated securities**
 - (1) **Does not require intent to possess**
 - (2) **Repossession of 9-313 collateral is sufficient to perfect**
 - ii) **Agricultural Liens**
 - (1) **Filing is only method of perfection for agricultural liens unless authorized by the agricultural lien statute**
 - (2) **UCC 9-310(b) excludes agricultural liens from non-filing methods of perfection**
 - iii) **Possession of Instruments and Chattel Paper**
 - (1) **Possession is the preferred method for instruments and chattel paper**
 - iv) **Possession in 3rd party other than Debtor UCC 9-313(c)**
 - (1) **Creditor must have possession or 3rd party agent of creditor has possession**
 - (a) **If a 3rd party is the creditor's agent, agency law applies.**
 - (b) **Comments to UCC 9-313.**
 - (2) **Agent cannot be the debtor or controlled by the creditor (Independent 3rd Party)**
 - (a) **If the 3rd party is independent of the creditor:**
 - (b) **UCC §§ 9-312 & 9-313 apply (see next section)**
 - v) **Possession of 3rd Party Bailees with Negotiable, Non-negotiable, or No Documents**
 - (1) **Negotiable Documents UCC 9-312(c): Perfection if secured party**
 - (a) **Possesses the document (best)**
 - (b) **Files financing statement against the document (second best) or**

- (c) Files financing statement against the goods (third best)
- (2) Non-negotiable Documents UCC 9-312(d): Perfection if secured party
 - (a) Has document issued in secured creditor's name
 - (b) Gives *notice* to bailee *or*
 - (c) Files as to the goods
- (3) No Documents UCC 9-313(c)
 - (a) Only sufficient if *acknowledgement* by the bailee *and*
 - (b) In an *authenticated record*
- vi) Duration of Perfection by Possession UCC 9-313(d)
 - (1) Perfection last only during the time of possession
 - (2) If there is an intervening period without perfection and the secured party retakes possession, perfection is on the later date UCC 9-322
 - (3) Secured party can use several modes of perfection so long as there is no intermediate period where there is not perfection
 - (4) UCC 9-313(h): Secured party can give up possession and retain perfection *if*
 - (a) Secured party does not give possession to the debtor
 - (b) Gives up possession for a limited time to a 3rd party for a specific purpose
- vii) Duration of Perfection by Delivery UCC 9-313(e): From time of delivery of certificated securities under UCC 8-301 until debtor obtains possession of security certificate.
- viii) Creditor's Rights & Responsibilities while in Possession of Collateral
 - (1) UCC 9-207(a): secured party must use reasonable care in custody and preservation of collateral
 - (2) UCC 9-207(b): Risk of loss is on debtor so long as the secured party used *reasonable care*
 - (3) UCC 1-102: Parties *cannot* contract around the duty to exercise reasonable care
 - (4) UCC 9-602: Debtor *cannot* waive provisions of use in UCC 9-207
 - (5) Reasonable expenses of care can be added to the debt
 - (6) Secured party must keep collateral identifiable unless the collateral is fungible
- e) Perfection by Control UCC 9-314
 - i) **Generally: security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper** can be perfected by control under 9-104 through 106
 - (1) Perfection occurs when the secured party obtains control
 - (2) Perfection lasts only while the secured party retains control
 - ii) Control of Electronic Chattel paper: UCC 9-105
 - (1) Single authoritative copy that is *unique, identifiable, generally unalterable and*
 - (2) Identifies the secured party as the assignee
 - (3) Sent to and maintained by the secured party
 - (4) Changes only make with participation of the secured party
 - (5) Copies are "readily identifiable" as copies *and*
 - (6) Revisions are "readily identifiable" as authorized or unauthorized
 - (7) Purpose: allow objective parties to know exactly what the record is
 - iii) Control of Deposit Accounts UCC 9-104
 - (1) Deposit accounts can *only* be perfected by control
 - (a) Secured party is the bank
 - (b) Debtor, secured party, and bank *all* agree in an *authenticated record* that bank will comply with the secured party *or*
 - (c) Secured party becomes the bank's customer on the debtor's account
- f) Automatic Perfection
 - i) Generally UCC 9-309
 - (1) A *purchase money security interest* in *consumer goods* is automatically perfected
 - (a) Consumer Goods
 - (i) Personal
 - (ii) Family
 - (iii) Household use
 - (b) Purchase Money Security Interest: UCC 9-103 types of PMSI:
 - (i) The Seller finances the purchase *or*
 - (ii) The creditor gives *value* so that the debtor can *obtain* the goods *and* the value is actually used to obtain the goods
 - (iii) Secured party has the burden to prove the PMSI. Ways to ensure PMSI:
 - 1. Have the creditor pay seller directly *or*
 - 2. Make check payable to seller & debtor

- (2) A *sale* of a *promissory note* is automatically perfected when the creditor *attaches*
 - (a) Agreement "+" (authenticated record, control, possession, delivery)
 - (b) Rights
 - (c) Value
- (3) A *security interest* in a *promissory note* is *not* automatically perfected
- (4) An assignment of an *insignificant account* relative to the debtor's outstanding accounts is automatically perfected (VERY LIMITED)
- ii) **Temporary Perfection UCC 9-312**
 - (1) **Security interest in *certificated securities, negotiable documents, or instruments* automatically becomes perfected for 20 days from the time of attachment if**
 - (a) **Interest arises from *new value* (in other words, creditor gives debtor something *now* in exchange for the security agreement)**
 - (b) **Under an *authenticated* security agreement**
 - (2) **Creditor can give debtor possession of certificated security or instrument for sale or presentation and still remain perfected for twenty days**
 - (3) **Once the 20 days expires, the secured party must perfect by other methods in article 9**
- g) Perfection in Proceeds UCC 9-315
 - i) Proceeds are perfected for 20 days *if* original collateral was perfected
 - ii) A perfected security interest in proceeds becomes *unperfected* on the 21st day after the interest attaches to the proceed *unless*
 - (1) The proceeds are *identifiable cash* proceeds;
 - (2) The proceeds are *non-cash* proceeds *and*
 - (a) A filed financing statement covers the original collateral
 - (b) Proceeds can be perfected by filing in the same office as original collateral *and*
 - (c) There are no *intervening cash* proceeds
 - iii) Almost all *non-real estate* proceeds will continue to be perfected
 - iv) It does not matter that the security agreement or financing statement does not describe the proceeds UCC 9-315
 - v) If there is *intervening cash* in a non-cash proceed, the creditor must
 - (1) File a financing statement covering the proceed *or*
 - (2) The security agreement must cover the proceed
 - vi) Article 9 does not give proceed interest in agricultural liens *unless* the lien statute creates the interest in proceeds
- h) Perfection of Chattel Paper
 - i) Perfection in the chattel paper perfects
 - (1) Payment *and*
 - (2) Ownership interest in goods
 - ii) If the chattel paper is a lease, perfection in chattel paper by possession or filing
 - (1) Perfects payment *only* but *not*
 - (2) Lessor's ownership interest
 - (3) Lessor must file against the good

4) PRIORITIES

- a) **Default Priority Rules UCC 9-322**
 - i) **Between secured creditors, the first to *file* or *perfect* has priority**
 - ii) **Perfected security interests beat unperfected security interests**
 - iii) **Between unsecured creditors, the first to *attach* has priority**
 - iv) Priority in Proceeds UCC 9-322
 - (1) Creditor must be continuously perfected in the proceed
 - (2) Date for priority is related back to the date of filing/perfection of original collateral
 - (3) Thus, between secured creditors in proceeds, the first to file or perfect wins
 - v) **Future Advances (§ 9-323)**
 - (1) **When security agreement covers future advance, advance dates back to original loan unless the advance is made during automatic or temporary perfection.**
 - (2) **If it does, then lender must have perfected by filing, possession, or control in addition.**
- b) **Exceptions to the Default Priority Rules**
 - i) Purchase Money Security Interests UCC 9-324
 - (1) PMSI in Equipment UCC 9-324(a), (g)
 - (a) Between PMSI and non-PMSI, PMSI wins *if*
 - (i) PMSI perfects within 20 days of the debtor's possession

- (b) Between conflicting PMSI in Equipment
 - (i) PMSI must perfect within 20 days of the debtor's possession
 - (ii) Seller beats non-seller
 - (iii) If neither party is a seller, first PMSI to perfect or file wins
- (c) MUST know the date of the debtor's possession
- (2) PMSI in Inventory UCC 9-324(b)
 - (a) Between conflicting PMSI in inventory
 - (i) PMSI must be perfected at or before the debtor takes possession *and*
 - (ii) PMSI must give *notice* to other creditors
 - (iii) Notice must be received five years before the debtor takes possession
 - (b) Purpose of PMSI in inventory: PMSI relies heavily on after acquired collateral and thus protects the earlier lender
- (3) PMSI in Livestock UCC 9-324(d)
 - (a) Between conflicting PMSI in livestock
 - (i) PMSI must be perfected at or before debtor takes possession *and*
 - (ii) PMSI must give *notice* to creditors
 - (iii) Notice must be received 6 months before the debtor takes possession
- (4) IF PMSI rules do not qualify, the default rules apply
- ii) **Priority in Investment Property UCC 9-328**
 - (1) **Security interest perfected by control has priority over security interest otherwise perfected**
 - (2) **Conflicting security interests in a security perfected by control rank according to priority in time of obtaining control**
 - (3) Special rules for conflicting security interests in security entitlements perfected by control
 - (4) Security interests in security entitlements in favor of debtor's securities intermediary have priority over other conflicting security interests
 - (5) **Security interest perfected by delivery (UCC 9-313) but not control has priority over conflicting security interests not perfected by control**
- iii) Priority in Deposit Accounts UCC 9-327 (same rules for letter-of-credit rights and investment accounts)
 - (1) Between conflicting security interest in the same deposit account, control defeats non-control
 - (2) Between secured party and secured party bank, the bank defeats other interests perfected by control
 - (3) If the secured party is a *customer* of the bank, secured party customer beats all other control
- iv) Fixtures UCC 9-334
 - (1) General Rule: Mortgage beats a security interest in fixtures
 - (2) Exceptions
 - (a) UCC 9-334(d): PMSI beats mortgage if
 - (i) Debtor has an interest of record or possession (always met)
 - (ii) Security interest qualifies as a PMSI
 - 1. seller financing *or*
 - 2. value given to obtain the collateral and collateral is in fact obtained
 - (iii) The mortgage occurred before the goods became fixtures *and*
 - (iv) Fixtures were perfected by a *fixture filing* within 20 days from the time the good became a fixture
 - (b) UCC 9-334(e)(1): Non-PMSI beats mortgage if
 - (i) Debtor has an interest of record or possession (always met)
 - (ii) Fixture filing occurred before there real estate interest was recorded
 - (iii) "First to file in real estate records rule"
 - (iv) If not, mortgage beats security interest in fixtures
 - (c) UCC 9-334(e)(2): Readily removable fixtures perfected by any method beat mortgages *if*
 - (i) Readily removable before the goods become fixtures (*e.g.*, bolted to ground)
 - 1. factory or office machines
 - 2. equipment that is not primarily used or lease for use in the operation of the real property *or*
 - 3. replacement of domestic appliances that are consumer goods
 - (ii) Purpose: Protects the secured party who mistakenly believes the goods won't become fixtures
 - (d) UCC 9-334(e)(3): *Fixture Lender* beats the *trustee* in bankruptcy *if*
 - (i) Secured party perfects by any method
 - 1. before the date of bankruptcy *or*
 - 2. before lien creditor attaches
- v) Accessions UCC 9-335
 - (1) Defined under 9-102 as a good attached to another good where original identity is not lost
 - (2) Security interest continues in accession and continues even when the goods become accessions

- (3) Perfection continues
- (4) General priority rules apply (under UCC 9-322)
- (5) NOTE: Just ignore the fact that the accession is there and apply the general rules
- vi) Commingled Goods (§ 9-336)
 - (1) Goods that loses its identity.
 - (2) SP loses security interest in a commingled goods, but gains a SI in the whole.
 - (3) If more than one secured interest was perfected before the goods became commingled, then the creditors rank according to the proportion of value of the collateral at the time they became commingled.
- c) Lien Creditors
 - i) Generally
 - (1) UCC 9-102 defines lien creditor as
 - (a) One who obtains a judgment against debtor and debtor's property is attached to satisfy debt
 - (b) One who acquires a lien by attachment, levy, or the like
 - (c) An assignee for the benefit of creditors
 - (d) The trustee on the date of bankruptcy
 - (e) A receiver in equity on the day of appointment
 - (2) Priority of Lien Creditor UCC 9-317
 - (a) General rule: lien creditors beat unsecured creditors
 - (b) Exceptions: Security interest beats lien creditor *if*
 - (i) Secured party is perfected before the lien attaches *or*
 - (ii) Secured party files first *and* meets one of the 9-203(b)(3) requirements
 - 1. value given
 - 2. agreement *or*
 - 3. debtor has rights
 - (3) Security Interest in Future Advances v. Lien Creditors UCC 9-317; UCC 9-323
 - (a) If secured party beats the lien creditor under UCC 9-317, then apply 9-323(b)
 - (b) Lien creditor beats security interest in an advancement unless
 - (i) Advancement was made within 45 days from the date the lien creditor attaches
 - (ii) Any advancement made after the 45 without any knowledge of the lien, the secured party wins
 - (iii) Any advancement made after the 45 days *with* knowledge of the lien, the lien creditor wins
 - (c) Knowledge means *actual* knowledge UCC 1-201
 - ii) **Trustee in Bankruptcy**
 - (1) **Unperfected Security Interests UCC 9-317; 11 U.S.C. § 544**
 - (a) **An unperfected secured creditor loses to the trustee in bankruptcy**
 - (b) **Trustee becomes a lien creditor on the date of bankruptcy**
 - (c) **Trustee acquires rights in order to maximize debtor's assets**
 - (2) Preferences: 11 U.S.C. § 547 (Bankruptcy Code)
 - (a) Trustee can avoid (set aside) preferred transfers made by the debtor if the following are met:
 - (i) Transfer of an *interest* in debtor's property
 - 1. 11 U.S.C. § 547(e): Date of Transfer of Security Interest Occurs:
 - a. On the date of *attachment* if *perfected* within 10 days after attachment
 - b. On the date of *perfection* if the transfer occurs over 10 days after attachment
 - (ii) Made for the *benefit of a creditor*
 - (iii) On account of an *antecedent debt*
 - 1. Not *new* debt
 - 2. Debt owed *before* the transfer is made
 - (iv) While debtor was *insolvent*
 - 1. Section 547(f) presumes that the debtor is insolvent *ninety (90) days* before the date of bankruptcy
 - (v) Made within 90 days before the date of bankruptcy *and*
 - (vi) Creditor gets more through the transfer than it would have through bankruptcy
 - iii) Buyers of Goods UCC 9-315; 9-320
 - (1) General Rule: UCC 9-315—Security interest continues in collateral no regardless of disposition to third party
 - (2) Exceptions: Classify the Collateral in the *Sellers* Hands
 - (a) Inventory UCC 9-320(a)
 - (i) A buyer in the ordinary course of business takes free of a security interest even if the security interest is perfected and buyer has knowledge of the security interests
 - (ii) Requirements
 - 1. Buyer (exchange title for a price)

2. Good Faith
 3. Without knowledge of a violation of a security interest
 - a. Cannot know that there is a violation of a security interest
 - b. You may know that the SI exists
 - c. If you know that taking will violate the SI, you cannot take free
 4. Bought in the ordinary course of seller's business
 - a. NO BULK SALES (general rule: greater than 50% of the inventory = bulk)
 5. Seller is engaged in the business of selling goods of that kind
- (iii) SP loses SI in inventory but gains SI in the *proceeds* of the inventory
- (iv) Purpose: Secured party should expect that debtor-seller will sell its inventory
- (b) Equipment *or* Farm Products
- (i) UCC 9-315 General Rule: Buyers of equipment or farm products must get authorization from the secured party to take free of a security interest
 - (ii) UCC 9-317 Exception: *Unperfected secured creditors* will lose to buyers of equipment and farm products if
 1. Buyer gives value *and*
 2. Receives delivery *before*
 3. Buyer has knowledge of the security interest *and*
 4. *Before* perfection
 - (iii) Purpose: Creditor does not presume that equipment will be sold like inventory will
- (c) Consumer Goods: CASUAL SALES (Consumer to Consumer)
- (i) Buyer of consumer goods takes free of a security interest if
 1. Goods were *consumer goods* in the *buyer's and seller's* hand
 2. Bought without any knowledge of the *security interest*
 3. Buyer gives value *and*
 4. Bought before secured party files a financing statement
 - (ii) Buyer beats PMSI in consumer goods because no filing is required to perfect in PMSI
- (d) Two Creditors with Two Different Debtors in the Same Collateral: UCC 9-325
- (i) If first secured creditor can defeat the buyer, first secured creditor wins
 - (ii) If buyer is a buyer in the ordinary course, buyer wins
- iv) Purchasers of Chattel Paper & Instruments
- (1) Instruments: (Subsequent Taker of Instruments)
 - (a) UCC 9-331: A *holder in due course* of an instrument takes priority over everyone's interests, including security interests
 - (b) UCC 9-330(d): *Purchasers* of instruments have priority if
 - (i) Purchaser
 - (ii) Takes possession
 - (iii) Without knowledge of a violation of security interest *and*
 - (iv) Purchaser gives value
 - (c) Possession in instruments is the key: possession almost always trumps filing against the instrument
 - (2) Chattel Paper UCC 9-330
 - (a) If chattel paper is a *proceed* of *inventory*, purchaser of chattel paper wins
 - (i) Requirements: UCC 9-330(a)
 1. Purchaser (1-201 voluntary transfer including secured creditors and buyers)
 2. Good faith (Art. 9 good faith is Honesty in fact *and* observance standard)
 3. Bought in the ordinary course of business (buyer is a *professional* purchaser of chattel paper)
 4. Gives new value (not based on preexisting debt) *and*
 5. Takes possession of the chattel paper
 - (ii) Exceptions:
 1. If the chattel paper indicates on its face that it has been assigned to someone other than the purchaser, the purchaser does not win
 - (iii) Purpose: Protect professional purchasers of chattel paper and allow debtor to use the money to pay off debt
 - (b) If interest in chattel paper is *anything else*
 - (i) Requirements of 9-330(a) must be met *and*
 - (ii) Purchaser cannot know that the purchase violates a security interest