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An Introduction to Revised Article 9 of the Uniform Commercial Code

Elaine A. Welle

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AN INTRODUCTION TO REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

*Elaine A. Welle**

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I. INTRODUCTION

During the 2001 general legislative session, Wyoming lawmakers adopted a revised version of Article 9 of the Uniform Commercial Code (UCC).¹ Article 9 is a comprehensive statutory scheme that governs secured transactions, meaning transactions that involve the granting of credit secured by personal property. This new legislation becomes effective in Wyoming² and more than thirty other jurisdictions³ on July 1, 2001. Efforts are underway to introduce legislation in all states, so that the revised law will become effective throughout the United States on the same date.⁴ While Revised Article 9 does not radically alter secured transactions law, it introduces a number of important changes that will profoundly impact an attorney's practice and a party's rights.

1. H.R. Enrolled Act No. 85, 56th Leg., Gen. Sess. (Wyo. 2001). To distinguish between former Article 9 and the revised version of Article 9, hereafter the prior law is referred to as "Former Article 9" and the new legislation is referred to as "Revised Article 9." All citations to Revised Article 9 of the Uniform Commercial Code are to the 2000 Revision that incorporates errata and amendments dating from May 20, 1999, to July 26, 2000 [hereinafter Rev. U.C.C.]. All citations to Revised Article 9, as adopted in Wyoming, are to the statutory citations in H.R. Enrolled Act No. 85, 56th Leg., Gen. Sess. (Wyo. 2001), as enacted, *available at* WL 2001 WY H.B. 111 (SN) and *at* <http://legisweb.state.wy.us/2001/enroll/hb0111.htm> (last visited Apr. 9, 2001) [hereinafter REV. WYO. STAT.].

2. REV. WYO. STAT. § 34.1-9-701.

3. The uniform effective date for Revised Article 9 is July 1, 2001. Rev. U.C.C. § 9-701. As of April 25, 2001, thirty-five states and the District of Columbia have adopted Revised Article 9. These states include Alaska, Arizona, Arkansas, California, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. Legislation to adopt Revised Article 9 has been introduced in sixteen other jurisdictions, including Alabama, Colorado, Connecticut, Florida, Louisiana, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, U.S. Virgin Islands, and Wisconsin. The status of state adoptions is available on the National Conference of Commissioners on Uniform State Laws (NCCUSL) web site *at* http://www.nccusl.org/uniformact_factsheets/uniformacts-fs-ucca9.htm (last visited Apr. 25, 2001).

4. *See supra* note 3.

Revised Article 9 is the product of years of study and drafting by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL).⁵ In an effort to accommodate new business practices, to adapt to technological advances, and to simplify and clarify the law, the drafters extensively overhauled Article 9.⁶ They added a number of new sections,⁷ amended prior provisions, and reorganized, renumbered, and rewrote Article 9.⁸ The resulting revision includes significant changes to the scope, substantive rules, and procedures of Article 9.

Specifically, the new legislation expands the scope of Article 9, alters certain definitions, creates new definitions, changes the filing system, provides additional methods of perfection, adds priority rules, and revises the rules governing default and enforcement.⁹ As a result, Revised Article 9 will have a material effect on loan documentation, the filing process, and enforcement proceedings. In addition, certain currently perfected security interests will lose perfected status against competing claimants if not reperfected under the new rules.¹⁰ Given the July 1, 2001, effective date, attorneys practicing in Wyoming must take immediate action to insure that all transactions comply with Revised Article 9.

This Article presents a brief overview of the revised statute and outlines some of the practical implications.¹¹ No effort has been made to catalogue all changes. Many of the fine points, details, and exceptions to

5. Rev. U.C.C. § 9-101 cmt. 2.

6. See Steven O. Weise, *An Overview to Revised UCC Article 9*, in *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 1* (Corinne Cooper ed., 2d ed. 2000), an updated version of the article also is available at <http://www.hewm.com/news/articles/ucc.pdf>.

7. Beth A. Diebold, *The Expanding Concept of Security Interests: An Introduction to Revised UCC Article 9*, 12 *LOY. CONSUMER L. REV.* 151, 153 (2000) (stating thirty-six new sections have been added to Revised Article 9 that have no counterpart in Former Article 9); G. Ray Warner, *Preparing for the New Article 9*, 19 *AM. BANKR. INST. J.* 6, 6 (Feb. 2000) (noting Former Article 9 contains only fifty-five substantive sections compared with Revised Article 9 that contains 126 substantive sections, not including conforming amendments and transition rules).

8. See Rev. U.C.C. § 9-109 cmts. 3, 4h.

9. See Rev. U.C.C. § 9-101 cmts.; Edwin E. Smith, *Overview of Revised Article 9*, 73 *AM. BANKR. L.J.* 1, 2 (1999).

10. See *infra* Part X.

11. Commentaries that address the practical implications of Revised Article 9 include Joel F. Brown & David M. Mason, *Revised Article 9: Changes for the Commercial Lender*, in *DOING DEALS 2000* (PLI Corp. L. & Prac. Course Handbook Series, Mar. 2000), WL 1167 PLI/Corp 795; Alvin C. Harrell, *Drafting Contracts Under Revised Article 9*, 53 *CONSUMER L.Q. REP.* 138 (1999). Many of the suggestions and practice pointers discussed in this Article also are suggested in these materials.

general rules are necessarily omitted. Consequently, practitioners are strongly urged to consult the statutory text, the official comments, and secondary authority to become familiar with the new law.¹²

II. SCOPE

The drafters expanded the scope of Revised Article 9 to cover new kinds of property and some additional transactions.

New Types of Collateral. Revised Article 9 adds several new types of collateral.¹³ Lenders now may obtain a perfected security interest in certain health-care-insurance receivables, deposit accounts,¹⁴ commercial tort claims, letter-of-credit rights,¹⁵ and electronic chattel paper.¹⁶ Borrowers with such assets will find themselves with greater borrowing power. But to obtain

12. The official comment to revised section 9-101 provides an excellent overview of the new law by highlighting major changes. See Rev. U.C.C. § 9-101 cmt. Other excellent and more detailed introductions to Revised Article 9 include WILLIAM H. LAWRENCE, WILLIAM H. HENNING & R. WILSON FREYERMUTH, *UNDERSTANDING SECURED TRANSACTIONS* (2d ed. 1999); Smith, *supra* note 9; Weise, *supra* note 6; see also Robert M. Lloyd, *The New Article 9: Its Impact on Tennessee Law* (pts.1 & 2), 67 TENN. L. REV. 125 (1999), 67 TENN. L. REV. 329 (2000) (providing detailed discussion of the history, reasons for, and impact of the various revisions). A chart that compares Revised Article 9 to Former Article 9 is set forth in Steven O. Weise, *A Comparison of Current and Revised Article 9*, in *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 107* (Corinne Cooper ed., 2d ed. 2000), an updated version of the chart is also available at <http://www.hewm.com/news/articles/ucc.pdf> (last visited Apr. 9, 2001).

13. See REV. WYO. STAT. §§ 34.1-9-102(a)(xiii) (commercial tort claim), 34.1-9-102(a)(xxix) (deposit account), 34.1-9-102(a)(xxxi) (electronic chattel paper), 34.1-9-102(a)(xlvi) (health-care-insurance receivable), 34.1-9-102(a)(li) (letter-of-credit right).

14. For an in-depth discussion of the rules relating to deposit accounts as collateral under Revised Article 9, see Bruce A. Markell, *From Property to Contract and Back: An Examination of Deposit Accounts and Revised Article 9*, 74 CHI.-KENT L. REV. 963 (1999); see also Reade H. Ryan, *Revised UCC Article 9 - Letters of Credit and Deposit Accounts*, in CONFERENCE ON REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (ALI-ABA Course of Study, Sept. 7, 2000), WL SF01 ALI-ABA 103; G. Ray Warner, *Deposit Accounts as Collateral Under Revised Article 9*, 19 AM. BANKR. INST. J. 18 (Jul.-Aug. 2000), WL 19 AMBKRIJ 18.

15. For a more detailed discussion of letters-of-credit and letter-of-credit rights as collateral, see John P. Dolan, *Security Interests in Letter-of-Credit Rights*, 74 CHI.-KENT L. REV. 1035 (1999); Edwin E. Smith, *Revised Article 9's Treatment of Security Interests in Letters of Credit*, in *WHAT LAWYERS NEED TO KNOW ABOUT THE NEW UCC ARTICLE 9 - SECURED TRANSACTIONS* (PLI Com. L. & Prac. Course Handbook Series Order No. A0-0051, Jan. 2000), WL 800 PLI/Comm 741; see also Ryan, *supra* note 14.

16. For a more detailed discussion of electronic chattel paper under Revised Article 9, see Jane Kaufman Winn, *Electronic Chattel Paper Under Revised Article 9: Updating the Concept of Embodied Rights for Electronic Commerce*, 74 CHI.-KENT L. REV. 1055 (1999).

a security interest in some of these new kinds of collateral requires specific reference in the security agreement.¹⁷ As a result, creditors who intend to take blanket liens on all of a debtor's assets must amend their loan documents to include these assets.¹⁸

Modified Definitions of Account, General Intangible, and Proceeds.

Revised Article 9 also modifies the definitions of various collateral categories, including "account" and "general intangible." For example, the definition of "account" is no longer limited to rights to payment that are related to goods or services.¹⁹ As a result, the definition of "account" is broadened and now includes certain property that formerly would have been considered a general intangible.²⁰ Since general intangible is a residual category that includes personal property other than accounts, the definition of "general intangible" is necessarily narrowed.²¹ Lenders must review the collateral descriptions in their security agreements in light of these revisions and modify such descriptions to reflect these and other definitional changes.²² In addition, Revised Article 9 broadens the definition of "proceeds" to include whatever is acquired "upon the sale, lease, license, exchange or other disposition of collateral."²³ Given the changes in the definitions of "account"

17. For example, Revised Article 9 expressly provides that the description of collateral in a security agreement must refer to specific commercial tort claims and cannot describe the claim simply by type, such as a reference to "all commercial tort claims." REV. WYO. STAT. § 34.1-9-108(e)(i). In addition, a reference to "general intangibles" will not include deposit accounts or letter-of-credit rights, so such collateral must be separately listed in the security agreement's collateral description. See REV. WYO. STAT. § 34.1-9-102(a)(xliv).

18. See Steven O. Weise, *A Comparison of a Security Agreement Under the Former Article 9 and the New Article 9*, in Gary A. Goodman, *Revised UCC Article 9*, in COMMERCIAL REAL ESTATE FINANCING: WHAT BORROWERS AND LENDERS NEED TO KNOW NOW (PLI Real Est. L. & Prac. Course Handbook Series, Annex B, May 2000), WL 456 PLI/Real 445, *477, *481-86, an updated version of the article also is available at <http://www.hewm.com/news/articles/ucc.pdf>. (last visited Apr. 9, 2001) (illustrating changes to a security agreement necessitated by Revised Article 9).

19. Rev. U.C.C. § 9-102 cmt. 5a.

20. *Id.* For instance, "account" now includes "a right to payment, whether or not earned by performance, for real property sold, intellectual property licensed, the incurrence of a suretyship obligation, a policy of insurance, use of a credit card, and government sponsored or licensed lottery winnings." Smith, *supra* note 9, at 10.

21. See REV. WYO. STAT. § 34.1-9-102(a)(xliv).

22. See Weise, *supra* note 18, at *481-86 (noting changes required to the collateral description of a security agreement to conform with Revised Article 9). In many cases, the revisions may simply require deleting specific references to property that is now expressly included within the revised collateral categories. See *id.*

23. REV. WYO. STAT. § 34.1-9-102(a)(lxiv)(A).

and “proceeds,” a borrower with intellectual property rights, including rights as a licensor or licensee, is likely to find more financing.²⁴

Sales of Promissory Notes and Payment Intangibles. Certain transactions that were not governed by Former Article 9 are now within the scope of Revised Article 9. For instance, Former Article 9 applied to the sale of accounts and chattel paper.²⁵ Revised Article 9 has been expanded to apply to the sale of payment intangibles and promissory notes as well.²⁶ The change is designed to accommodate new forms of financing arrangements, such as securitization transactions.²⁷ Sellers and buyers of promissory notes, payment intangibles, license fees, and health-care-insurance receivables need to consider the impact of Revised Article 9 now that these transactions are within its ambit.²⁸

Nonassignable Property Interests. Revised Article 9 expressly permits a secured party to take a security interest in rights that are nonassignable. Security interests in promissory notes, health-care-insurance receivables, letter-of-credit rights, and general intangibles, including contracts, permits, licenses and franchises, are permitted under Revised Article 9 despite contractual or statutory prohibitions against assignment.²⁹ By making these anti-assignment clauses ineffective, borrowers may offer additional property as collateral, and thereby increase their potential borrowing power.

Agricultural Liens. The new legislation will have an impact in agricultural states, such as Wyoming.³⁰ The scope of Revised Article 9 has

24. David A. Lander, *Understanding the Expanded Scope of Revised Article 9 of the UCC*, 9 Norton Bankr. L. Adviser (CBC) at 1 (Sept. 2000), WL 2000 No. 9 NRTN-BLA 1.

25. WYO. STAT. ANN. § 34.1-9-102(a)(ii) (LEXIS 1999).

26. REV. WYO. STAT. § 34.1-9-109(a)(iii); see also Rev. U.C.C. § 9-109 cmt. 4.

27. Lander, *supra* note 24. For a detailed analysis of how Revised Article 9 will affect securitization transactions, see H. Bruce Bernstein & Kevin J. Hochberg, *Revisions of UCC Article 9 May Affect Future Securitization*, 55 No. 2 THE SECURED LENDER at 52 (1999); see also Julian B. McDonnell & John F. Hitchcock, *The Sale of Promissory Notes Under Revised Article 9: Cooking Securitization Stew*, 117 BANKING L.J. 99 (Mar./Apr. 2000); Steven L. Schwarcz, *The Impact on Securitization of Revised UCC Article 9*, 74 CHI.-KENT L. REV. 947 (1999).

28. A right to payment under a property license and health-care-insurance receivables now are treated as “accounts” under Revised Article 9. REV. WYO. STAT. § 34.1-9-102(a)(ii).

29. REV. WYO. STAT. §§ 34.1-9-408, -409; see also Rev. U.C.C. §§ 9-101 cmt. 4a, 9-408 cmt. 2, 9-409 cmt. 2.

30. For an excellent analysis of the impact of Revised Article 9 on agricultural financing, see Linda J. Rusch, *Farm Financing Under Revised Article 9*, 73 AM. BANKR. L.J. 211 (1999); see also Donald W. Baker, *Some Thoughts on Agricultural Liens Under the New U.C.C. Article*

been expanded to cover agricultural liens.³¹ “Agricultural liens” are defined as nonpossessory liens created by statute in favor of persons providing land, goods, or services in connection with a debtor’s farming operations.³² While the creation and general enforceability of such liens remain governed by state law, Revised Article 9 now governs the determination of perfection and priority.³³ To obtain priority over certain claimants, the agricultural lienholder must comply with Revised Article 9, which requires the filing of a financing statement for the perfection.³⁴

Consignments. The revision also brings certain consignment transactions within the scope of Revised Article 9.³⁵ The term “consignment” is defined as “a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale.”³⁶ If a consignment is determined to be governed by Revised Article 9, the consignor must perfect a security interest in the consigned goods by filing a financing statement or risk losing the goods to a competing claimant. The revision, however, excludes transactions with consumers, with certain types of merchants, and where the aggregate value of the goods is less than \$1000.³⁷

III. ATTACHMENT

The rules for creation and attachment of a security interest remain substantially the same, with only a few variations.³⁸

Security Agreement. Former Article 9 required the debtor to sign a security agreement.³⁹ To facilitate emerging forms of electronic commerce, the new legislation adopts a medium-neutral approach.⁴⁰ Under Revised

9, 51 ALA. L. REV. 1417 (2000); Drew L. Kershen & Alvin C. Harrell, *Agricultural Finance: Comparing the Current and Revised Article 9*, 33 UCC L.J. 169 (2000).

31. REV. WYO. STAT. § 34.1-9-109(a)(ii); *see also* Rev. U.C.C. § 9-109 cmt. 3.

32. REV. WYO. STAT. § 34.1-9-102(a)(v). *See, e.g.*, WYO. STAT. ANN. §§ 29-5-101 to -106 (LEXIS 1999) (harvesting machine owners and operators).

33. REV. WYO. STAT. §§ 34.1-9-308(b) (perfection), 34.1-9-310(a) (perfection), 34.1-9-317 (priority), 34.1-9-509(a)(ii) (permitting filing of financing statement).

34. *See supra* note 33.

35. REV. WYO. STAT. § 34.1-9-109(a)(iv); *see also* Rev. U.C.C. §§ 9-101 cmt. 4a, 9-109 cmt. 6.

36. REV. WYO. STAT. § 34.1-9-102(a)(xx).

37. *See id.*

38. *Compare* WYO. STAT. ANN. § 34.1-9-203(a) (LEXIS 1999) *with* REV. WYO. STAT. § 34.1-9-203(b).

39. WYO. STAT. ANN. § 34.1-9-203(1)(i) (LEXIS 1999).

40. Rev. U.C.C. § 9-102 cmt. 9; *see also* Lloyd, *supra* note 12, at 129-31.

Article 9, records may be maintained in either written or electronic form.⁴¹ The signature requirement has been replaced with an authentication requirement.⁴² The term “authenticate” means to sign, or to “execute or otherwise adopt a symbol, or encrypt or similarly process a record” with the intent to accept or adopt the record.⁴³ As a result, Revised Article 9 now can accommodate paperless transactions, various storage mediums, electronic signatures, and other forms of electronic communication.

Description of Collateral. A security agreement must “reasonably identify” the collateral.⁴⁴ Revised Article 9 elaborates on this requirement by listing various methods that a drafter may employ to describe collateral.⁴⁵ The provision, in effect, creates a safe-harbor for collateral descriptions by Article 9 category or type.⁴⁶ The only exception is for commercial tort claims and certain collateral in consumer transactions that must be described with greater specificity than type.⁴⁷ Revised Article 9 also states that supergeneric descriptions in a security agreement, such as “all the debtor’s assets,” are not sufficient.⁴⁸

After-Acquired Property. Revised Article 9 makes clear that a security agreement may create or provide for a security interest in after-acquired property.⁴⁹ Nevertheless, the revision explicitly states that after-acquired property clauses are ineffective with respect to commercial tort claims and certain consumer goods.⁵⁰

41. REV. WYO. STAT. § 34.1-9-102(a)(lxxii); *see also* Rev. U.C.C. § 9-102 cmt. 9a.

42. *See, e.g.*, REV. WYO. STAT. § 34.1-9-203(b)(iii)(A).

43. REV. WYO. STAT. § 34.1-9-102(a)(vii); *see also* Rev. U.C.C. § 9-102 cmt. 9b.

44. REV. WYO. STAT. § 34.1-9-108(a).

45. REV. WYO. STAT. § 34.1-9-108(b); *see also* Rev. U.C.C. § 9-108 cmt. 2.

46. Revised Article 9 indicates that collateral descriptions by Article 9 category, such as “goods,” or by Article 9 type, such as “equipment,” are sufficient. *See* REV. WYO. STAT. § 34.1-9-108(b)(ii) & (b)(iii).

47. REV. WYO. STAT. § 34.1-9-108(e); *see also* Rev. U.C.C. 9-108 cmt. 5. Under Revised Article 9, a collateral description of “all commercial tort claims” is not sufficient. REV. WYO. STAT. § 34.1-9-108(e)(i). More specificity is required. The comments indicate that a description such as “all tort claims arising out of the explosion of debtor’s factory” is the level of specificity required. Rev. U.C.C. § 9-108 cmt. 5. To prevent consumer debtors from inadvertently encumbering certain assets, Revised Article 9 also requires greater specificity than by type if a creditor in a consumer transaction intends to take a security interest in consumer goods or a consumer’s security account, commodity account, or security entitlement. REV. WYO. STAT. § 34.1-9-108(e)(ii); Rev. U.C.C. § 9-108 cmt. 5.

48. REV. WYO. STAT. § 34.1-9-108(c).

49. REV. WYO. STAT. § 34.1-9-204(a).

50. REV. WYO. STAT. § 34.1-9-204(b). A security interest in a commercial tort claim attaches only to tort claims existing at the time the security agreement is signed or authenticated. Rev. U.C.C. § 9-204 cmt. 4.

Supporting Obligations. The revised legislation expressly provides that attachment and perfection in certain original collateral automatically extends to any supporting obligations. "Supporting obligations" are letter-of-credit rights or secondary obligations, such as guarantees, that support payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.⁵¹ When a security interest in the original collateral is perfected, the revision provides for automatic attachment and perfection in the supporting obligation as well.⁵² For example, perfection of a security interest in an account also serves to perfect a security interest in any personal guaranty related to that account.⁵³

IV. PERFECTION BY METHODS OTHER THAN FILING

The principal methods of perfection consist of filing financing statements, possession of collateral, and control. For certain types of collateral, perfection is automatic upon attachment. Revised Article 9 changes the rules relating to perfection by possession through a third-party bailee. The new legislation also expands the types of collateral that may be perfected by control and increases the list of security interests that are automatically perfected. In addition, the legislation modifies the automatic perfection periods.

Possession. A secured party may continue to satisfy the possession requirement by using a third-party bailee. Former Article 9 permitted perfection of a security interest by simply notifying the bailee in possession of the collateral of the secured party's interest.⁵⁴ Revised Article 9 modifies that rule. The revised legislation provides that a security interest in collateral in possession of a third party is perfected only when the third party acknowledges in an authenticated record that it holds the collateral for the secured party's benefit.⁵⁵ To perfect, the secured party must obtain an acknowledgement from the bailee. The secured party's interest is not perfected until such acknowledgement is obtained. The bad news for creditors is that third parties are not required to agree to act on behalf of a secured party or even acknowledge a secured party's notice.⁵⁶ Given the possibility that a third party may refuse to authenticate an acknowledgement,⁵⁷ creditors may be forced to perfect in the collateral by other means, such as filing.

51. REV. WYO. STAT. § 34.1-9-102(a)(lxxx).

52. REV. WYO. STAT. §§ 34.1-9-203(f), 34.1-9-308(d).

53. See Rev. U.C.C. § 9-308 cmt. 5.

54. WYO. STAT. ANN. § 34.1-9-305, cmt. 2 (LEXIS 1999).

55. REV. WYO. STAT. § 34.1-9-313(c); see also Rev. U.C.C. § 9-313 cmt. 4.

56. REV. WYO. STAT. § 34.1-9-313(f); see also Rev. U.C.C. § 9-313 cmt. 8.

57. Revised Article 9 states that an acknowledgement does not create any duties or

Control. Former Article 9 permitted creditors to perfect in investment property by control.⁵⁸ Revised Article 9 adds deposit accounts, electronic chattel paper, and letter-of-credit rights to the types of collateral a secured party now may perfect by control.⁵⁹ A security interest in deposit accounts and letter-of-credit rights can be perfected only by control.⁶⁰ Electronic chattel paper and investment property may be perfected by either filing or control.⁶¹ Special rules delineate what constitutes “control” for each type of property.⁶²

Under Revised Article 9, deposit accounts may be taken as original collateral in non-consumer transactions.⁶³ To perfect in a deposit account as original collateral, the secured party must obtain “control.”⁶⁴ A secured party has “control” if the deposit account is in the secured party’s name, or if the debtor, secured party, and the bank agree that the bank will follow the secured party’s instructions without further consent from the debtor.⁶⁵ If the secured party is the depository bank, it has control over a deposit account it maintains and its security interest is automatically perfected.⁶⁶ A secured party has control over a deposit account even if the debtor retains the right to access the account or direct disposition of the funds.⁶⁷

Electronic chattel paper is chattel paper stored in an electronic medium.⁶⁸ A secured party may perfect in electronic chattel paper by either

responsibilities under Article 9. REV. WYO. STAT. § 34.1-9-313(g)(ii). Nevertheless, the official comments indicate that other applicable law may impose duties and responsibilities on the acknowledging party. Rev. U.C.C. § 3-313 cmt. 8. For an extended discussion of issues relating to perfection through possession by third parties, exceptions, possible common-law liability, and potential problems, see LAWRENCE, *supra* note 12, at 194-96; *see also* Barkley Clark, *Revised Article 9 of the UCC: Scope, Perfection, Priorities, and Default*, 4 N.C. BANKING INST. 129, 144-46 (Apr. 2000), WL 4 N.C. Banking Inst. 129, *144-46.

58. WYO. STAT. ANN. § 34.1-9-115(a)(v), (d) (LEXIS 1999).

59. REV. WYO. STAT. § 34.1-9-314(a).

60. REV. WYO. STAT. § 34.1-9-312(b)(i), (ii).

61. REV. WYO. STAT. §§ 34.1-9-312(a) (perfection by filing), 34.1-9-314(a) (perfection by control).

62. REV. WYO. STAT. §§ 34.1-9-104 (deposit accounts), 34.1-9-105 (electronic chattel paper), 34.1-9-106 (investment property), 34.1-9-107 (letter-of-credit rights).

63. *See* REV. WYO. STAT. § 34.1-9-109(d)(xiii); *see also* Rev. U.C.C. § 9-109 cmt. 16.

64. REV. WYO. STAT. § 34.1-9-312(b)(i); *see also* Rev. U.C.C. § 9-312 cmt. 5.

65. REV. WYO. STAT. § 34.1-9-104(a)(ii), (iii); *see also* Rev. U.C.C. § 9-104 cmt. 3. A sample deposit account control agreement is appended to an article on deposit accounts authored by Professor Bruce Markell. Markell, *supra* note 14, at 1029-33.

66. *See* REV. WYO. STAT. § 34.1-9-104(a)(i); *see also* Rev. U.C.C. § 9-104 cmt 3.

67. REV. WYO. STAT. § 34.1-9-104(b).

68. REV. WYO. STAT. § 34.1-9-102(a)(xxxi).

filing or control.⁶⁹ “Control” in this context is the functional equivalent of possession.⁷⁰ “Control” requires the electronic record to be stored in such a way that there is only one authoritative copy that identifies the secured party and the copy cannot be changed without the secured party’s participation.⁷¹ The secured party or its custodian must maintain the authoritative copy and all other copies must be readily identifiable as nonauthoritative copies.⁷² Additionally, there must be adequate controls in place to identify any revision of the authoritative copy as authorized or unauthorized.⁷³ The legislation “leaves to the marketplace” development of technologies and business practices for effecting control.⁷⁴

Letter-of-credit rights are rights to performance or payment under a letter-of-credit.⁷⁵ The only way to perfect a security interest in letter-of-credit rights as original collateral⁷⁶ is by control.⁷⁷ “Control” requires the secured party to obtain consent to assignment of the proceeds from the person who is making the payment under the letter-of-credit, either the issuer or nominated person.⁷⁸ Consent may be obtained pursuant to Article 5 or any other applicable law or practice.⁷⁹

Automatic. The new rules expand the list of security interests automatically perfected upon attachment to include: (i) the sale of payment intangibles;⁸⁰ (ii) the sale of promissory notes;⁸¹ (iii) the assignment of health-care-insurance receivables to health-care providers;⁸² and (iv) supporting obligations⁸³ and other supporting lien rights.⁸⁴

69. REV. WYO. STAT. §§ 34.1-9-312(a) (filing), 34.1-9-314(a) (control). For a more in-depth discussion of the control requirement, see Winn, *supra* note 16, at 1060-66.

70. REV. U.C.C. § 9-105 cmt. 2.

71. REV. WYO. STAT. § 34.1-9-105(a)(i), (ii), (iv).

72. REV. WYO. STAT. § 34.1-9-105(a)(iii), (v).

73. REV. WYO. STAT. § 34.1-9-105(vi).

74. REV. U.C.C. § 9-105 cmt. 4.

75. REV. WYO. STAT. § 34.1-9-102(a)(li).

76. In most cases, letter-of-credit rights will be supporting obligations. As discussed above, letter-of-credit rights as supporting obligations are automatically perfected when the security interest in the original collateral is perfected. See *supra* notes 51-52 and accompanying text.

77. REV. WYO. STAT. § 34.1-9-312(b)(ii).

78. REV. WYO. STAT. § 34.1-9-107.

79. *Id.*

80. REV. WYO. STAT. § 34.1-9-309(a)(iii); see also REV. U.C.C. § 9-309 cmt. 4.

81. REV. WYO. STAT. § 34.1-9-309(a)(iv).

82. REV. WYO. STAT. § 34.1-9-309(a)(v); see also REV. U.C.C. § 9-309 cmt. 5.

83. REV. WYO. STAT. § 34.1-9-308(d); see also REV. U.C.C. § 9-308 cmt. 5.

84. REV. WYO. STAT. § 34.1-9-308(e); see also REV. U.C.C. § 9-308 cmt. 6.

In addition, the legislation modifies the automatic perfection periods. Revised Article 9 extends the period for temporary perfection of a security interest in proceeds from ten days to twenty days.⁸⁵ This change allows creditors additional time to reperfect by other means. The revision, however, reduces the temporary automatic perfection periods for instruments, certificated securities, and negotiable documents from twenty-one days to twenty days.⁸⁶ This modification reflects an attempt by the drafters to standardize time periods throughout the Article.⁸⁷

V. PERFECTION BY FILING

Filing continues to be one of the most important methods of perfection. The new legislation makes extensive changes to the rules governing the filing of financing statements.⁸⁸ The changes are intended to modernize the filing system, simplify procedures, and reduce costs.

Collateral Perfected by Filing. Revised Article 9 expands of the list of collateral that may be perfected by filing. Under Former Article 9, possession was the exclusive method to perfect a security interest in an instrument.⁸⁹ Revised Article 9 permits a secured party to perfect in an instrument by either filing or possession.⁹⁰ The new legislation also adds investment property to the classes of collateral that may be perfected by filing.⁹¹ In addition, filing is required to perfect in new types of collateral, such as commercial tort claims and agricultural liens.⁹²

85. Compare WYO. STAT. ANN. § 34.1-9-306(c) (LEXIS 1999) (ten days) with REV. WYO. STAT. § 34.1-9-315(d) (unperfected the twenty-first day).

86. Compare WYO. STAT. ANN. § 34.1-9-304(d) (LEXIS 1999) (twenty-one days) with REV. WYO. STAT. § 34.1-9-312(e) (twenty days).

87. See Rev. U.C.C. § 9-312 cmt. 8.

88. For a more detailed discussion of the new filing rules, see Harry C. Sigman, *Twenty Questions About Filing Under Revised Article 9: The Rules of the Game Under New Part 5*, 74 CHI.-KENT L. REV. 861 (1999); see also Harry C. Sigman, *The Filing System Under Revised Article 9*, 73 AM. BANKR. L.J. 61 (1999).

89. WYO. STAT. ANN. § 34.1-9-304(a) (LEXIS 1999).

90. REV. WYO. STAT. § 34.1-9-312(a); see also Rev. U.C.C. § 9-312 cmt. 2. The lender that perfects by filing, however, may be defeated in a priority battle by a creditor that perfects by possession. REV. WYO. STAT. §§ 34.1-9-330(d) (purchasers for value who take possession), 34.1-9-331(a) (protecting holders in due course of negotiable instruments). See *infra* Part VII (possession versus filing).

91. REV. WYO. STAT. § 34.1-9-312(a). A security interest perfected by control, however, will prevail over an interest in the same property perfected by filing. REV. WYO. STAT. § 34.1-9-328(a)(i), (v); see also Rev. U.C.C. § 9-312 cmt. 4.

92. REV. WYO. STAT. § 34.1-9-308(a).

Central Filing. Under Former Article 9, a few states like Wyoming required both central and local filing for certain collateral.⁹³ Dual filing proved burdensome and costly. Revised Article 9 dictates central filing in most situations.⁹⁴ The Secretary of State's Office has been designated as the central filing location in Wyoming.⁹⁵ By establishing central filing offices in each jurisdiction, Revised Article 9 reduces the burden on secured parties. Local filings are required only for motor vehicles⁹⁶ and real estate related collateral, such as fixtures, timber to be cut, and as-extracted collateral including oil, gas, or mineral rights.⁹⁷

Standardized Forms. The text of Revised Article 9 contains model forms, including a financing statement form, an addendum form, and an amendment form.⁹⁸ Revised Article 9 states that every filing office that accepts paper filings must accept these standard forms.⁹⁹ In essence, the new act provides a safe harbor for attorneys and creditors who use such written forms. These standardized forms are included in the act to reduce errors, lessen the risk of rejection on the basis of format, encourage uniformity, and promote efficiency.

Paper Filings Only in Wyoming Until July 1, 2002. While the revised legislation is designed to facilitate electronic filing, Revised Article 9 does not mandate electronic filing nor require states to simultaneously implement an electronic filing system. Wyoming will continue to use a paper filing system, at least initially. During the 2001 legislative session, Wyoming lawmakers appropriated funds to the Wyoming Secretary of State's Office to purchase and implement an electronic filing system.¹⁰⁰ The Wyoming Secretary of State's Office plans to institute the new system on or before July 1, 2002.¹⁰¹ Until then the office will only accept paper filings.

93. See, e.g., WYO. STAT. ANN. § 34.1-9-401(a)(i) (LEXIS 1999) (when collateral was accounts or farm products, the statute required filing in the office of the secretary of state and in the office of the county clerk where the debtor had its principal place of business).

94. Rev. U.C.C. § 9-501 cmt. 2.

95. REV. WYO. STAT. § 34.1-9-501(a)(ii).

96. REV. WYO. STAT. § 34.1-9-501(a)(iii) (county clerk's office).

97. REV. WYO. STAT. § 34.1-9-501(a)(i) (real estate records); see also REV. WYO. STAT. § 34.1-9-102(a)(vi) (definition of "as-extracted collateral").

98. Rev. U.C.C. § 9-521. Wyoming's version of Revised Article 9 also includes these standard forms. REV. WYO. STAT. § 34.1-9-521.

99. Rev. U.C.C. § 9-521(a), cmt. 2.

100. REV. WYO. STAT. § 37-4-103(7).

101. REV. WYO. STAT. § 37-4-103(8).

No Signature Requirement. To facilitate electronic filing, Revised Article 9 eliminates the signature requirement.¹⁰² A financing statement no longer must be signed by the debtor.¹⁰³ The debtor, however, must authorize the filing.¹⁰⁴ Under the new act, the debtor's authentication¹⁰⁵ of a security agreement automatically authorizes the secured party to file a financing statement covering the collateral described in the security agreement and its proceeds.¹⁰⁶ As a practical matter, most secured parties will seek the debtor's express authorization for filing by adding a provision to the security agreement. Nevertheless, a secured party must obtain express authorization to pre-file a financing statement, if the debtor has not yet authenticated a security agreement.¹⁰⁷ A creditor may obtain pre-filing authorization by including authorization language in proposal letters or commitment letters signed by the debtor.¹⁰⁸

While generally the debtor's authorization is required to file a financing statement, it is not required to file a financing statement to perfect an agricultural lien. The holder of an agricultural lien may file a financing statement covering the collateral subject to the lien without obtaining the debtor's consent.¹⁰⁹ Since such liens arise by operation of law, the debtor's consent is not required.¹¹⁰

Revised Article 9 prohibits the filing of unauthorized financing statements. Any person who violates this prohibition is liable for actual damages caused and a statutory penalty.¹¹¹ In response to the problem of fraudulent filings against public officials, Revised Article 9 also permits the debtor to file a corrective statement if the debtor believes a financing statement is inaccurate or wrongfully filed.¹¹² In addition, a debtor may file a

102. Rev. U.C.C. § 9-502 cmt. 3.

103. See REV. WYO. STAT. § 34.1-9-502(a); see also Rev. U.C.C. § 9-502 cmt. 3.

104. REV. WYO. STAT. § 34.1-9-509(a)(i).

105. "Authenticate" is a term of art in the revised act designed to facilitate electronic transactions. "Authenticate" means to sign, execute, or otherwise adopt or accept. REV. WYO. STAT. § 34.1-9-102(a)(vii).

106. REV. WYO. STAT. § 34.1-9-509(b); see also Rev. U.C.C. § 9-509 cmt. 4. The description of collateral in the financing statement must be consistent with the security interest granted by the debtor in the security agreement. The collateral description in the financing statement can be no broader than the collateral described in the security agreement. See REV. WYO. STAT. § 34.1-9-509(b); see also Rev. U.C.C. § 9-509 cmt. 4.

107. See REV. WYO. STAT. § 34.1-9-509(a)(i).

108. Brown & Mason, *supra* note 11, at *800.

109. REV. WYO. STAT. § 34.1-9-509(a)(ii); see also Rev. U.C.C. § 9-509 cmt. 5.

110. Rev. U.C.C. § 9-509 cmt. 5.

111. REV. WYO. STAT. § 34.1-9-625(b), (e)(iii).

112. REV. WYO. STAT. § 34.1-9-518(a); see also Rev. U.C.C. § 9-518 cmt. 2.

termination statement if the secured party has a duty to file and has failed to do so.¹¹³

Debtor's Name. Under Revised Article 9, a financing statement must set forth the exact name of the debtor. For a registered organization, such as a corporation, the financing statement must mirror the name stated in the public records of the debtor's state of organization.¹¹⁴ An incorrect name is deemed seriously misleading if a standard search under the correct name would not locate the filing.¹¹⁵ The new rules reduce the courts discretion in this area. "Close enough" will no longer prove sufficient. A debtor's trade name also is insufficient.¹¹⁶ Consequently, the debtor's exact legal name must be verified before filing. Creditors should consider adding representations and warranties to their loan documents to verify the debtor's legal name and state of formation. Moreover, prudence would dictate verifying the debtor's name and state of formation by checking state databases or requesting certified copies of the entity's formation or registration documents.

Collateral Description. Revised Article 9 expressly permits the use of supergeneric collateral descriptions, such as "all assets" or "all personal property," in financing statements.¹¹⁷ This change eliminates the need for lengthy collateral descriptions and multi-page financing statements when a lender takes a blanket lien on all of the debtor's assets. Specific collateral descriptions, however, are still required in security agreements.¹¹⁸ A supergeneric collateral description is not adequate in a security agreement.

VI. CHOICE OF LAW AND WHERE TO FILE

Both Former Article 9 and Revised Article 9 contain choice-of-law rules to determine which state's law governs perfection, the effect of perfection, and the priority of security interests.¹¹⁹ Revised Article 9 radically changes the choice-of-law rules. The most significant change is to where financing statements are filed.

113. REV. WYO. STAT. § 34.1-9-509(d)(ii).

114. REV. WYO. STAT. § 34.1-9-503(a)(i); *see also* Rev. U.C.C. § 9-503 cmt. 2.

115. *See* REV. WYO. STAT. § 34.1-9-506(c); *see also* Rev. U.C.C. § 9-506 cmt. 2.

116. REV. WYO. STAT. § 34.1-9-503(c).

117. REV. WYO. STAT. § 34.1-9-504(a)(ii). Regardless, a financing statement has no effect with respect to property listed if a security interest has not attached through a grant in the security agreement. Rev. U.C.C. § 9-504 cmt. 2.

118. *See* REV. WYO. STAT. §§ 34.1-9-108(c) (supergeneric collateral description not sufficient), 34.1-9-203(b)(iii)(A) (security agreement must provide description of collateral); *see also* Rev. U.C.C. § 9-108 cmt. 2.

119. Rev. U.C.C. § 9-301 cmt. 2; *see also* WYO. STAT. ANN. § 34.1-9-103, cmts. 1-9 (LEXIS 1999); REV. WYO. STAT. §§ 34.1-9-301 to -307.

General Rule Governing Perfection. Former Article 9 generally required the secured party to file a financing statement in the jurisdiction where the goods were located.¹²⁰ If the collateral was intangible property, such as accounts, a financing statement usually was filed in the state of the debtor's chief executive office.¹²¹ As a result, if the debtor's personal property was located in multiple jurisdictions, the secured party was required to make multiple filings. In contrast, Revised Article 9 provides that for most collateral the law of the jurisdiction where the debtor is located governs perfection.¹²² This change should significantly reduce the need to file in multiple jurisdictions. The revision then sets forth special rules to determine the location of the debtor.

Registered Organizations. If the debtor is a registered organization,¹²³ such as a corporation, limited liability company, limited partnership, or limited liability partnership, the debtor is deemed to be located in the state under whose laws it is organized.¹²⁴ For example, if the debtor is a Delaware corporation, the proper place to file a financing statement is with the Delaware Secretary of State, even if the debtor's chief executive office is in Wyoming, all the debtor's operations are in Wyoming, and all the debtor's collateral is in Wyoming. Consequently, a filing in one state will be sufficient to perfect in most tangible and intangible property of a debtor, even if the debtor has property in fifty states. In addition to reducing multiple filings, the new legislation should decrease the number of refilings because a debtor is less likely to change its state of organization than to move its property. Revised Article 9 also should reduce the number of erroneous filings since it is easier to verify a debtor's state of organization than to verify the location of collateral.

Non-Registered Organizations. If the debtor is not a registered organization,¹²⁵ such as a general partnership,¹²⁶ the entity is deemed to be

120. See, e.g., WYO. STAT. ANN. §§ 34.1-9-103(a)(ii), cmt. 1, 34.1-9-401(a)(iii) (LEXIS 1999).

121. See, e.g., WYO. STAT. ANN. §§ 34.1-9-103(c)(ii), (iv), cmt. 5(a), 34.1-9-401(a)(i) (LEXIS 1999).

122. REV. WYO. STAT. § 34.1-9-301(a)(i); see also Rev. U.C.C. §§ 9-101 cmt. 4c, 9-301 cmt. 4.

123. "Registered organization" means an entity organized under state law where the state maintains a public record showing organization. REV. WYO. STAT. § 34.1-9-102(a)(lxxiii). Thus, the debtor is a registered organization if the entity is created by state registration.

124. REV. WYO. STAT. § 34.1-9-307(e); see also Rev. U.C.C. §§ 9-102 cmt. 11, 9-307 cmt. 4.

125. An entity is not a registered organization if it is not required to record a public notice of its existence. Whether an entity is a registered organization turns on whether the state is required to maintain a public record of the entity's existence. Rev. U.C.C. § 9-102 cmt. 11.

located where the debtor has its place of business.¹²⁷ If it has more than one place of business, it is located at its chief executive office.¹²⁸

Individuals. If the debtor is an individual, he or she is located at his or her principal residence.¹²⁹ As a result, a lender would file a financing statement in Wyoming to perfect a security interest in the personal property of a Wyoming resident, regardless of where the collateral is located. The term "principal residence" is not defined.¹³⁰ The official comments indicate that if there is a doubt, prudence may require the secured party to perfect in each jurisdiction that may be deemed the debtor's principal residence.¹³¹

Foreign Debtors. Generally, if a debtor is located in a foreign jurisdiction, foreign law governs.¹³² Nevertheless, if a debtor is located in a jurisdiction outside the United States where foreign law does not provide for a public filing system that enables the secured party to prevail over a subsequent lien creditor, then the debtor is deemed to be located in the District of Columbia.¹³³

The revised rules regarding location of filing do not bind states that have not adopted Revised Article 9. Efforts have been made to introduce the revised legislation in all states.¹³⁴ Nevertheless, if all jurisdictions do not adopt Revised Article 9 prior to July 1, 2001, "horrendous complications may arise," which will create uncertainty and increase costs.¹³⁵ In such an event, lenders must examine transactions on a deal-by-deal basis to determine which set of rules (Former Article 9, Revised Article 9, or some combination) govern.¹³⁶ It is anticipated that if there is not unanimous adoption, the drafters, the American Law Institute, or the National Conference of Commissioners on Uniform State Laws will provide guidance on how attorneys should handle such situations.

126. *Id.*

127. REV. WYO. STAT. § 34.1-9-307(b)(ii); *see also* Rev. U.C.C. § 9-307 cmt. 2 (defining place of business).

128. REV. WYO. STAT. § 34.1-9-307(b)(iii); *see also* Rev. U.C.C. § 9-307 cmt. 2 (defining chief executive office).

129. REV. WYO. STAT. § 34.1-9-307(b)(i).

130. Rev. U.C.C. § 9-307 cmt. 2.

131. *Id.*

132. Rev. U.C.C. § 9-307 cmt. 3.

133. REV. WYO. STAT. § 34.1-9-307(c); *see also* Rev. U.C.C. § 9-307 cmt. 3.

134. *See supra* note 3.

135. Rev. U.C.C. § 9-701 cmt.

136. Brown & Mason, *supra* note 11, at *800.

Exceptions to the General Rule. The general rule governing perfection is subject to a number of exceptions for specific classes of collateral. The general rule does not apply to possessory security interests, inherently local collateral, goods covered by a certificate of title, agricultural liens, deposit accounts, investment property, and letter-of-credit rights.

Possessory Security Interests. If a security interest is perfected by possession, the law of the jurisdiction where the collateral is located governs perfection and priority.¹³⁷ The new act continues to allow a secured party to perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by possession.¹³⁸

Inherently Local Collateral. Under Revised Article 9, local filings are required only for fixtures, timber to be cut, and “as-extracted collateral,”¹³⁹ such as oil, gas, or other minerals.¹⁴⁰ Local filings are made in the applicable real estate recording offices in the jurisdiction where the collateral is located.¹⁴¹ For example, to perfect a security interest in a fixture, the lender must file a fixture filing in the county office where the mortgage on the related real property is filed.

Goods Covered by Certificate of Title. Perfection of a security interest in titled goods, such as motor vehicles, is governed by the law of the jurisdiction that issued the certificate of title.¹⁴² As under former law, in Wyoming a security interest in a motor vehicle is perfected by filing in the county where the motor vehicle is located.¹⁴³ Procedures for perfecting a security interest in a motor vehicle and other titled goods remain unchanged in Wyoming.¹⁴⁴

137. REV. WYO. STAT. § 34.1-9-301(a)(ii); *see also* Rev. U.C.C. § 9-301 cmt. 5a.

138. REV. WYO. STAT. § 34.1-9-313(a).

139. REV. WYO. STAT. § 34.1-9-102(a)(vi) (defines “as-extracted collateral”).

140. *See* REV. WYO. STAT. §§ 34.1-9-301(a)(iii), (iv), 34.1-9-501(a)(i); *see also* Rev. U.C.C. §§ 9-301 cmt. 5, 9-501 cmts. 3, 4.

141. *See supra* note 140.

142. REV. WYO. STAT. § 34.1-9-303(c); *see also* Rev. U.C.C. § 9-303 cmt. 3.

143. *Compare* WYO. STAT. ANN. § 34.1-9-302(e) (LEXIS 1999) *with* REV. WYO. STAT. § 31-2-701(a); *see also* REV. WYO. STAT. § 34.1-9-501(a)(iii).

144. *See supra* note 143. Section 31-2-701(a) of the revised Wyoming statutes sets forth the requirements for perfection of a security interest in a motor vehicle:
Two (2) steps are required for perfection of a security interest in a vehicle or motor vehicle required to be licensed as hereinafter defined:

- (i) A financing statement or security agreement must be filed in the office of the county clerk of the county in which the vehicle is located; and
- (ii) A notation of the security interest must be endorsed on the certificate of title to the vehicle or motor vehicle, the endorsement to be made concurrently with the

Agricultural Liens. Under Revised Article 9, generally a creditor is required to file a financing statement to perfect an agricultural lien.¹⁴⁵ The perfection of an agricultural lien is governed by the law of the jurisdiction where the farm products subject to the lien are located.¹⁴⁶

Other Collateral. The new law provides special choice-of-law rules for deposit accounts, letter-of-credit rights, and investment property. Perfection of a security interest in a deposit account is governed by the law of the depository bank's jurisdiction.¹⁴⁷ Revised Article 9 sets forth rules for determining a depository bank's jurisdiction.¹⁴⁸ The law of the jurisdiction of the issuer or nominated person usually determines perfection of a security interest in letter-of-credit rights.¹⁴⁹ If perfection in investment property is claimed by control, perfection and priority are governed by the law of the jurisdiction where the securities intermediary or commodity intermediary is located.¹⁵⁰

VII. PRIORITY

Revised Article 9 continues to employ the same general priority scheme found in Former Article 9. Nevertheless, there are several changes to the prior rules, as well as the addition of rules to accommodate the new types of collateral now within the ambit of Article 9. The revised act also offers more ways to perfect security interests in traditional forms of collateral. Priority generally turns on specific facts and a detailed discussion of the host of priority battles that may arise is beyond the scope of this Article.¹⁵¹ Instead, the following section simply highlights some of the new rules and underlying principles.

The revised act retains the general "first to file or perfect" rule to determine priority.¹⁵² This general rule, however, is subject to a number of complicated qualifications, variations, and exceptions. As the discussion that follows illustrates, priority may depend on the method of perfection selected.

filing of the financing statement or security agreement.

REV. WYO. STAT. § 31-2-701(a).

145. REV. WYO. STAT. §§ 34.1-9-308(b), 34.1-9-310(a).

146. REV. WYO. STAT. § 34.1-9-302; *see also* Rev. U.C.C. § 9-302 cmt. 2.

147. REV. WYO. STAT. § 34.1-9-304(a); *see also* Rev. U.C.C. § 9-304 cmt. 2.

148. REV. WYO. STAT. § 34.1-9-304(b).

149. REV. WYO. STAT. § 34.1-9-306(a), (b).

150. REV. WYO. STAT. § 34.1-9-305(a)(iii), (iv); *see also* Rev. U.C.C. § 9-305 cmt. 2.

151. The priority rules are set forth in REV. WYO. STAT. §§ 34.1-9-317 to -339. An excellent discussion of the priority provisions (organized by type of collateral) appears in an article on Revised Article 9 by Professor Robert Lloyd, *supra* note 12, at 330-43.

152. REV. WYO. STAT. § 34.1-9-322(a)(i).

Consequently, under Revised Article 9, secured creditors must use care when selecting methods of perfection.

Control Versus Other Methods of Perfection. A fundamental principle under Revised Article 9 is that a security interest perfected by control has priority over a security interest perfected by other means.¹⁵³ Generally, control will trump other forms of perfection. As previously discussed, secured parties may perfect security interests in investment property, letter-of-credit rights, and deposit accounts by control.¹⁵⁴

Revised Article 9 provides that a secured party that perfects in investment property¹⁵⁵ by control will prevail over a secured party that perfects only by filing, even if control occurred after the filing.¹⁵⁶ Thus, a secured creditor that fears double financing should not rely on filing alone to perfect its security interest. Nevertheless, a secured creditor that files will prevail over a lien creditor, including a bankruptcy trustee or debtor in possession.¹⁵⁷

Similarly, a security interest in letter-of-credit rights perfected by control has priority over a security interest perfected by any other means.¹⁵⁸ Consequently, a secured creditor that takes control by obtaining consent to the assignment of proceeds from the issuer or nominated person will prevail over a secured creditor that perfected automatically in letter-of-credit rights as a supporting obligation.¹⁵⁹ As a result, a secured creditor that perfects in letter-of-credit rights by relying on automatic perfection is vulnerable if a subsequent creditor perfects by control.

If a secured party has control of a deposit account, its security interest is senior to a security interest perfected in another manner.¹⁶⁰ Thus, a security interest in a deposit account as proceeds of other collateral that was perfected by filing is subordinate to a security interest in a deposit account perfected by

153. See, e.g., Rev. U.C.C. § 9-328 cmts. 2, 3 (investment property).

154. See *supra* Part IV (control).

155. "Investment property" includes securities, security entitlements, securities accounts, commodity accounts, and commodity contracts. REV. WYO. STAT. § 34.1-9-102(a)(xlix).

156. See REV. WYO. STAT. § 34.1-9-328(a)(i).

157. See Lloyd, *supra* note 12, at 339 & n.478. A perfected secured party will prevail over a lien creditor, provided the secured party perfected before the lien became effective. See REV. WYO. STAT. § 34.1-9-317(a)(ii). The definition of "lien creditor" includes a bankruptcy trustee. REV. WYO. STAT. § 34.1-9-102(a)(lii).

158. REV. WYO. STAT. § 34.1-9-329(a)(i). See *supra* Part III for a discussion of automatic perfection in supporting obligations.

159. Rev. U.C.C. § 9-329 cmt. 2.

160. REV. WYO. STAT. § 34.1-9-327(a)(i).

control.¹⁶¹ The result is that secured creditors with security interests in inventory or accounts perfected only by filing will find their security interests in proceeds placed in deposit accounts subordinate to any security interest perfected by control. To improve their position, such secured creditors should consider perfecting in the deposit account by control.¹⁶²

Possession Versus Filing. Even though Revised Article 9 allows parties to perfect in chattel paper and instruments by filing, a secured lender that relies solely on filing risks losing a priority contest to certain purchasers who take possession.

Revised Article 9 permits a secured creditor to perfect in electronic chattel paper by either filing or control.¹⁶³ A secured creditor that perfects its security interest in chattel paper only by filing may be defeated in a priority battle by a purchaser who takes possession.¹⁶⁴ Under the new act, a purchaser of chattel paper has priority if the purchaser gave new value and took possession or obtained control of the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violated the rights of the competing secured party.¹⁶⁵ The safest approach, then, is for the secured party to perfect by taking possession of tangible chattel paper or obtaining control of electronic chattel paper.¹⁶⁶ The new legislation, however, provides that if the chattel paper has a legend to indicate that it has been assigned to an identified secured party, the purchaser is deemed to have knowledge that the purchase violates the rights of the secured party.¹⁶⁷ The purchaser, therefore, would not qualify for priority. Secured parties that file to perfect may protect themselves by legending the chattel paper. In addition, secured parties that take security interests in chattel paper by filing should add language to their financing statements stating that any purchase of chattel paper from the debtor would violate the named secured party's rights.¹⁶⁸

161. Rev. U.C.C. § 9-327 cmt. 3.

162. See *supra* Part IV (control).

163. See REV. WYO. STAT. §§ 34.1-9-312(a) (filing), 34.1-9-314(a) (control). Electronic chattel paper is a form of chattel paper that is stored in an electronic format. REV. WYO. STAT. § 34.1-9-102(a)(xxxii).

164. See REV. WYO. STAT. § 34.1-9-330(b).

165. *Id.*

166. If the secured party has possession, then the purchaser would be unable to meet the priority requirements because possession by the purchaser is an essential element for priority. See *id.*

167. REV. WYO. STAT. § 34.1-9-330(f); see also Rev. U.C.C. § 9-330 cmt. 6.

168. Rev. U.C.C. § 9-330 cmt. 6.

The new law also permits secured parties to perfect security interests in instruments by filing.¹⁶⁹ A lender that perfects its security interest in an instrument by filing, however, may be defeated in a priority contest by a purchaser who takes possession.¹⁷⁰ For example, a secured party that perfects its interest in an instrument by filing generally is subordinate to a purchaser that takes possession of the instrument for value, in good faith, and without knowledge that the purchase violates the rights of a competing secured party.¹⁷¹ A secured lender that fears double financing, therefore, should not rely on filing alone. To be assured priority, the secured lender must take possession of the instrument. Secured parties that file to perfect also may protect themselves by legending the instrument and providing notice of their rights in the filed financing statement.¹⁷²

Possession Versus Automatic Perfection. Security interests created by the sale of promissory notes are automatically perfected.¹⁷³ Automatic perfection, however, does not insure priority. A purchaser of a promissory note has priority over a security interest perfected automatically, if the purchaser gave value and took possession of the promissory note in good faith, and without knowledge that the purchaser violated the rights of the secured party.¹⁷⁴ A secured party purchasing promissory notes, therefore, risks losing priority if the notes are left with the seller for servicing. A secured party may protect its interest by taking possession of the notes¹⁷⁵ or by legending the notes and providing notice of its interest in its filed financing statements.¹⁷⁶

Control Versus Control. Competing security interests in the same collateral each perfected by control generally rank temporally, according to

169. See *supra* Part V.

170. REV. WYO. STAT. §§ 34.1-9-330(d) (purchasers for value who take possession), 34.1-9-331(a) (protecting holders in due course of negotiable instruments).

171. REV. WYO. STAT. § 34.1-9-330(d).

172. REV. WYO. STAT. § 34.1-9-330(f); see also Rev. U.C.C. § 9-330 cmt. 7. The requirements for legending and notice are described in the preceding paragraph in connection with the discussion of chattel paper.

173. See REV. WYO. STAT. § 34.1-9-309(a)(iv); see also Rev. U.C.C. § 9-309 cmts. 2, 4.

174. A promissory note is an instrument. REV. WYO. STAT. § 34.1-9-102(a)(lxviii). See REV. WYO. STAT. § 34.1-9-330(d); see also Rev. U.C.C. § 9-330 cmt. 7.

175. If the secured party obtains possession, then the purchaser would be unable to meet the priority requirements because possession of the note by the purchaser is an essential element for priority. REV. WYO. STAT. § 34.1-9-330(d).

176. REV. WYO. STAT. § 34.1-9-330(f); see also Rev. U.C.C. § 9-330 cmt. 7. The legending and notice requirements are described above in the discussion of possession versus filing with respect to chattel paper.

the time of control.¹⁷⁷ This represents a change from Former Article 9, which provided that security interests perfected by control ranked equally, regardless of the time of control.¹⁷⁸ Consequently, where two secured parties have control of the same investment property, letter-of-credit rights, or deposit accounts, the first to obtain control usually prevails.¹⁷⁹

Of course, this general rule is not without exceptions. Revised Article 9 also establishes a hierarchy of priority rules with respect to investment property and deposit accounts. For instance, in certain situations the debtor's securities intermediary or commodities intermediary may prevail over other secured parties perfected by control.¹⁸⁰ As an example, a security intermediary with control of a securities account and with whom the account is maintained, has priority over earlier perfected security interests, even those with control.¹⁸¹

As previously discussed, a secured party may obtain control of a deposit account through a variety of methods.¹⁸² Revised Article 9 sets forth rules to determine which method of control has priority.¹⁸³ If the secured party perfects by becoming the bank's customer on the account, the secured party obtains priority over all other security interests in the account.¹⁸⁴ Thus, a creditor that perfects its security interest in a deposit account by becoming the bank's customer will have the highest priority and will prevail over all other creditors with a security interest in the account. The next highest priority is the security interest held by the bank in which the account is maintained.¹⁸⁵ Revised Article 9 also affords depositary banks priority set-off and recoupment rights over competing lenders.¹⁸⁶ As a result, if the secured party is someone other than the bank where the deposit account is maintained,

177. See, e.g., REV. WYO. STAT. §§ 34.1-9-327(a)(ii) (deposit accounts), 34.1-9-328(a)(ii) (investment property), 34.1-9-329(a)(ii) (letter-of-credit rights).

178. WYO. STAT. ANN. § 34.1-9-115(e)(ii) (LEXIS 1999).

179. REV. WYO. STAT. §§ 34.1-9-327(a)(ii) (deposit accounts), 34.1-9-328(a)(ii) (investment property), 34.1-9-329(a)(ii) (letter-of-credit rights).

180. REV. WYO. STAT. § 34.1-9-328(a)(iii), (iv).

181. REV. WYO. STAT. § 34.1-9-328(a)(iii). Subsections (a)(iii) and (a)(iv) of section 34.1-9-328 set forth analogous rules relating to securities entitlements, commodities contracts, and commodities accounts. REV. WYO. STAT. § 34.1-9-328(a)(iii), (iv).

182. REV. WYO. STAT. § 34.1-9-104. See *supra* Part IV (control).

183. For an in-depth discussion of the priority rules as they relate to deposit accounts, see Professor Bruce Markell's article on deposit accounts. Markell, *supra* note 14, at 988-91.

184. REV. WYO. STAT. § 34.1-9-327(a)(iv); see also Rev. U.C.C. §§ 9-101 cmt. 4e, 9-327 cmt. 4.

185. REV. WYO. STAT. § 34.1-9-327(a)(iii); see also Rev. U.C.C. §§ 9-101 cmt. 4e, 9-327 cmt. 4.

186. REV. WYO. STAT. § 34.1-9-340; see also Rev. U.C.C. §§ 9-101 cmt. 4e, 9-340 cmt. 2.

to protect its interest, the secured party must either become the bank' customer with respect to the account or obtain a subordination agreement from the depository bank.¹⁸⁷ Under Revised Article 9, secured lenders that wish to protect their interests in deposit accounts should obtain subordination agreements from depository banks.

Purchase-Money Security Interests. The basic rules governing purchase-money security interests (PMSIs) remain the same. Secured parties with PMSI status continue to enjoy superpriority.¹⁸⁸ The new act, however, expands the scope of PMSIs beyond goods. In addition to the special rule for purchase-money priority in inventory,¹⁸⁹ Revised Article 9 adds special rules for purchase-money priority in livestock,¹⁹⁰ software,¹⁹¹ and situations where two lenders hold PMSIs in the same collateral.¹⁹²

The legislation also enhances the position of PMSI lenders. Revised Article 9 rejects the transformation rule adopted by some courts under which any cross-collateralization, refinancing or similar activity destroyed PMSI status.¹⁹³ Under the new act, a PMSI does not lose its preferred status in a commercial transaction¹⁹⁴ simply because the purchase-money collateral secures nonpurchase-money obligations, a purchase-money obligation is secured by nonpurchase-money collateral, or the purchase-money obligation is refinanced, renewed, restructured, or consolidated.¹⁹⁵ Additionally, Revised Article 9 expressly permits cross-collateralization of PMSIs in

187. Rev. U.C.C. § 9-327 cmt. 4.

188. Holders of perfected PMSIs generally rank ahead of security interests in the same collateral. REV. WYO. STAT. § 34.1-9-324(a); *see also* Rev. U.C.C. § 9-324 cmts. 2, 3.

189. REV. WYO. STAT. § 34.1-9-324(b).

190. REV. WYO. STAT. § 34.1-9-324(d), (e). The PMSI priority rules for livestock are similar to the PMSI rules for inventory, but with some variations. *Compare* REV. WYO. STAT. §§ 34.1-9-324(b) *with* 34.1-9-324(d). For a perfected PMSI in livestock to enjoy priority, among other things, the secured creditor must perfect before the debtor receives possession of the livestock and must notify other secured parties with conflicting security interests. REV. WYO. STAT. § 34.1-9-324(d); *see also* Rev. U.C.C. § 9-324 cmt. 10.

191. REV. WYO. STAT. § 34.1-9-324(f). A PMSI in goods also includes embedded software. REV. WYO. STAT. § 34.1-9-103(b)(iii), (c); *see also* Rev. U.C.C. §§ 9-101 cmt. 4e, 9-103 cmt. 5.

192. REV. WYO. STAT. § 34.1-9-324(g). Preference is given to the seller of the collateral over a lender. REV. WYO. STAT. § 34.1-9-324(g)(i); *see also* Rev. U.C.C. § 9-324 cmt. 13.

193. Rev. U.C.C. § 9-103 cmt. 7a.

194. Section 34.1-9-103(f) regarding PMSI status in cross-collateralization transactions, refinancings, restructurings, and the like, does not apply to consumer-goods transactions. REV. WYO. STAT. § 34.1-9-103(f). Revised Article 9 leaves such matters in consumer-goods transactions to the courts. Rev. U.C.C. § 9-103 cmt. 8.

195. REV. WYO. STAT. § 34.1-9-103(f).

inventory.¹⁹⁶ As a result, all purchase-money inventory advances from a seller or lender may be secured by successive shipments of purchase-money inventory from the same seller or lender.¹⁹⁷

Production-Money Security Interests. Revised Article 9 contains optional provisions that allow for the creation of a new type of security interest, a production-money security interest.¹⁹⁸ The production-money security interest (PrMSI) provisions are analogous to the PMSI provisions relating to inventory.¹⁹⁹ The PrMSI provisions confer superpriority status to lenders that extend credit to enable debtors to produce crops, provided that the value given is in fact used for crop production.²⁰⁰

Wyoming incorporated the PrMSI provisions into its version of Revised Article 9.²⁰¹ To obtain priority over a conflicting security interest in crops that is not a PrMSI, the holder of the PrMSI must meet certain perfection and notification requirements set forth in the priority rules.²⁰² These requirements are similar to the perfection and notification criteria required to obtain a PMSI in inventory.²⁰³ The holder of a PrMSI in crops that meets the requirements for priority will prevail over an earlier-filed secured party that claims a non-PrMSI in the same crops.²⁰⁴ If the secured party holds both a PrMSI and an agricultural lien on the crops, the priority rules applicable to the agricultural lien govern.²⁰⁵ If the PrMSI priority is more advantageous, the secured party may waive its agricultural lien.²⁰⁶

Agricultural Liens. The general rules that determine priority between conflicting security interests now apply as well to priority contests involving

196. See Rev. U.C.C. § 9-103 cmt. 4.

197. See REV. WYO. STAT. § 34.1-9-103(b)(ii); see also Rev. U.C.C. § 9-103 cmt. 4; Smith, *supra* note 9, at 24-25.

198. See Rev. U.C.C. § 9-101 cmt. 4e; see also Rusch, *supra* note 30, at 240-45; Jason Finch, Comment, *The Making of Article 9 Section 9-312(2) Into Model Provision Section 9-324A: The Production Money Security Interest: Finally a Sensible "Superpriority" for Crop Finance*, 5 DRAKE J. AGRIC. L. 381 (2000), WL 5 DRAKEJAL 381.

199. Rev. U.C.C., app. II, § 9-103A cmt. 2.

200. See REV. WYO. STAT. §§ 34.1-9-102(a)(lxv)-(lxvii), -103A(a), -324A(a); see also Rev. U.C.C., app. II, § 9-103A cmt. 2.

201. REV. WYO. STAT. §§ 34.1-9-102(a)(lxv)-(lxvii) (definitions), 34.1-9-103A (creation), 34.1-9-324A (priority).

202. REV. WYO. STAT. § 34.1-9-324A(b); see also Rev. U.C.C., app. II, § 9-324A cmt. 2.

203. Compare REV. WYO. STAT. §§ 34.1-9-324(b) with 34.1-9-324A(b).

204. REV. WYO. STAT. § 34.1-9-324A(a).

205. REV. WYO. STAT. § 34.1-9-324A(e).

206. Rev. U.C.C., app. II, § 9-324A cmt. 4.

agricultural liens.²⁰⁷ Under Revised Article 9, the basic “first to file or perfect” rule governs not only priority contests between two security interests, but also priority contests between two agricultural liens and priority contests between an agricultural lien and a security interest.²⁰⁸ If the statute creating the agricultural lien provides that the agricultural lien has priority over conflicting security interests or conflicting agricultural liens in the same collateral, the statute governs if the agricultural lien was perfected.²⁰⁹

VIII. ENFORCEMENT

The new legislation extensively revises the default and enforcement provisions²¹⁰ in an attempt to resolve many of the disputes that have arisen in litigation over the years.²¹¹ The revised rules establish new standards, clarify prior rules, and provide some safe harbors. The number of statutory provisions dealing with default and enforcement has increased four-fold.²¹² The more noteworthy provisions are outlined below.²¹³

Notice Before Disposition. The revised act sets forth new notification requirements. Revised Article 9 imposes a duty on the secured party to send notice of an intended disposition to the debtor and any secondary obligor, such as a guarantor.²¹⁴ Neither the debtor nor the secondary obligor may waive its right to notice, unless waiver is given after the default.²¹⁵ In non-consumer cases, the secured party also must provide notice to any person who has notified the secured party of an interest in the collateral.²¹⁶ In addition, the foreclosing party must notify any party who has properly perfected its

207. REV. WYO. STAT. § 34.1-9-322(a)(i).

208. *Id.*; see also Rusch, *supra* note 30, at 238-40.

209. REV. WYO. STAT. § 34.1-9-322(g); see also Rev. U.C.C. § 9-322 cmt. 12.

210. Rev. U.C.C. § 9-101 cmt. 4i.

211. The enforcement provisions of Former Article 9 have been some of the most litigated provisions of the UCC. See Donald J. Rapson, *Default and Enforcement of Security Interests Under Revised Article 9*, 74 CHI.-KENT L. REV. 893, 893-95 (1999).

212. Former Article 9 contained seven statutory provisions in its default section. See WYO. STAT. ANN. §§ 34.1-9-501 to -507 (LEXIS 1999). Revised Article 9 contains twenty-eight statutory provisions in its default section. See REV. WYO. STAT. §§ 34.1-9-601 to -628.

213. For detailed analyses of the new default rules, see the articles by Donald Rapson, *supra* note 211, and Timothy R. Zinnecker, *The Default Provisions of Revised Article 9 of the Uniform Commercial Code* (pts. 1 & 2), 54 BUS. LAW. 1113, 1737 (1999).

214. REV. WYO. STAT. § 34-9-611(c)(i), (ii). The definition of “obligor” includes any person accountable for payment or performance of the obligation. REV. WYO. STAT. § 34.1-9-102(a)(lix). A “secondary obligor” includes obligors with secondary obligations or a right of recourse. REV. WYO. STAT. § 34.1-9-102(lxxiv).

215. REV. WYO. STAT. §§ 34.1-9-602(a)(vii) (prohibiting waiver of notice), 34.1-9-624(a) (permitting post-default waiver of notice).

216. REV. WYO. STAT. § 34.1-9-611(c)(iii)(A).

interest in the collateral by filing a financing statement.²¹⁷ As a result, the party foreclosing on the collateral must conduct a UCC search to identify parties that must be notified.²¹⁸

Revised Article 9 attempts to reduce the burden associated with these notice provisions by establishing safe harbors and promulgating standard notification forms. For instance, the foreclosing party is only required to search under the debtor's name in the office where one would file on a specified date determined by reference to the notification date.²¹⁹ Moreover, the statute provides a ten-day, safe-harbor period for giving notice in commercial transactions.²²⁰ The notification is deemed as sent within a reasonable time if it is sent ten days or more before the earliest disposition date stated in the notice.²²¹ The statute also grants safe-harbor protection to a creditor that requests and relies on a search report.²²² To guarantee receipt of pre-sale notifications, all lenders as a matter of practice should notify competing secured parties of their interest. Although Revised Article 9 requires more information in pre-sale notices than Former Article 9,²²³ the risk of error is reduced because the new legislation includes standard notification forms²²⁴ and provides defenses for certain minor and non-misleading errors.²²⁵

Low Sales Price. A fundamental principal of Article 9 is that every aspect of a foreclosure sale must be commercially reasonable.²²⁶ Revised Article 9 indicates that a low sales price alone is not sufficient to establish a violation.²²⁷ A low price, however, suggests that the court should scrutinize the disposition to insure it was conducted in a commercially reasonable manner.²²⁸ There is one exception. Revised Article 9 provides that if a secured party, an affiliate of the secured party, or a secondary obligor

217. REV. WYO. STAT. § 34.1-9-611(c)(iii)(B).

218. Rev. U.C.C. § 9-611 cmt. 4.

219. REV. WYO. STAT. § 34.1-9-611(c)(iii)(B); *see also* Rev. U.C.C. § 9-611 cmt. 4.

220. REV. WYO. STAT. § 34.1-9-612(b); *see also* Rev. U.C.C. § 9-612 cmt. 3.

221. REV. WYO. STAT. § 34.1-9-612(b).

222. REV. WYO. STAT. § 34.1-9-611(e); *see also* Rev. U.C.C. § 9-611 cmt. 4.

223. *Compare* WYO. STAT. ANN. §§ 34.1-9-504(c) (LEXIS 1999) ("reasonable notification of time and place" of any sale) *with* REV. WYO. STAT. § 34.1-9-613 to -614 (required contents expressly listed).

224. REV. WYO. STAT. §§ 34.1-9-613 (commercial transaction notification), 34.1-9-614 (consumer-goods transaction notification).

225. REV. WYO. STAT. §§ 34-9-613(a)(iii) (commercial transactions), 34.1-9-614(a)(v) (consumer-goods transactions).

226. REV. WYO. STAT. § 34.1-9-610(b); *see also* Rev. U.C.C. § 9-610 cmt. 2.

227. REV. WYO. STAT. § 34.1-9-627(a); *see also* Rev. U.C.C. § 9-627 cmt. 2.

228. Rev. U.C.C. §§ 9-610 cmt. 10, 9-627 cmt. 2.

acquires collateral at a foreclosure sale at a price significantly below the price that a sale to an unrelated party would have brought, the surplus or deficiency will be adjusted.²²⁹ The surplus or deficiency will be recalculated to reflect the amount of proceeds that would have been received in an arms-length transaction.²³⁰ Consequently, third-party appraisals will become increasingly important.

Application of Noncash Proceeds. The duties of a secured party who received noncash proceeds from a foreclosure sale were unclear under Former Article 9. The revised act attempts to clarify the law in this area. Revised Article 9 provides that a secured party who receives noncash proceeds, such as a note or a trade-in, when disposing of collateral may value the proceeds in a commercially reasonable manner and apply the value to the debt.²³¹ Alternatively, unless it is commercially unreasonable, the secured party may hold the noncash proceeds and apply the proceeds to the obligation when liquidated.²³²

Warranties. A secured creditor may sell, license,²³³ lease, or otherwise dispose of collateral after default.²³⁴ If a secured creditor disposes of collateral under the act, Revised Article 9 provides that the contract for disposition includes all warranties that would accompany a voluntary disposition, such as the right to possession, title, and quiet enjoyment.²³⁵ Revised Article 9, however, allows the secured creditor to disclaim or modify such warranties.²³⁶ The statute even sets forth sample disclaimer language.²³⁷ Thus, a secured creditor disposing of collateral should consider affirmatively disclaiming all warranties to avoid potential liability. In addition, lenders should consider adding language to their loan documents to notify debtors that upon default they may sell collateral without warranties.

229. REV. WYO. STAT. § 34.1-9-615(f); *see also* Rev. U.C.C. § 9-615 cmt. 6.

230. *See supra* note 229.

231. *See* REV. WYO. STAT. § 34.1-9-615(c); *see also* Rev. U.C.C. § 9-615 cmt. 3.

232. *See* REV. WYO. STAT. § 34.1-9-608(a)(iii); *see also* Rev. U.C.C. § 9-608 cmt. 4.

233. Revised Article 9 expressly permits licensing as a means of disposition, thereby acknowledging the increasing importance of intellectual property rights as collateral. REV. WYO. STAT. § 34.1-9-610(a).

234. *Id.*

235. REV. WYO. STAT. § 34.1-9-610(d); *see also* Rev. U.C.C. § 9-610 cmt. 11. Such warranties would include those that arise under other laws, such as under Article 2 of the UCC, pursuant to other statutes, and under common law. Rev. U.C.C. § 9-610 cmt. 11.

236. REV. WYO. STAT. § 34.1-9-610(e).

237. The statute expressly states that the following language is sufficient to disclaim warranties: "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition." REV. WYO. STAT. § 34.1-9-610(f).

Acceptance of Collateral in Satisfaction of a Debt. Revised Article 9 significantly modifies the rules relating to strict foreclosure.²³⁸ The revised act expressly permits secured parties to retain collateral in a commercial transaction in full or partial satisfaction of a debt, if the debtor consents and the other secured parties do not object.²³⁹ In a commercial transaction, the secured party also may retain the collateral in satisfaction of a debt even if the secured party is not in possession of the collateral.²⁴⁰ This new provision allows secured parties to strictly foreclose on intangible collateral as well.

Under Former Article 9, some courts held that a secured creditor's extended possession of collateral without disposing of it implied acceptance of the collateral in full satisfaction of the debt.²⁴¹ Revised Article 9 rejects this approach by providing that the secured lender must consent to acceptance of the collateral in an authenticated record or send the debtor a proposal.²⁴² Any delay will go to the issue of commercial reasonableness.²⁴³ Furthermore, the new act clarifies that a creditor who strictly forecloses obtains the collateral free of junior interests.²⁴⁴

Deposit Accounts. Revised Article 9 sets forth the enforcement rights of a secured party who has perfected an interest in a deposit account by control. The revised act permits certain secured creditors whose interests are perfected by control, such as the depository bank where the account is maintained, to apply the balance of the account to the secured obligation.²⁴⁵

238. The term "strict foreclosure" refers to the acceptance of collateral in satisfaction of a debt. See Rev. U.C.C. § 9-620 cmt. 2. The statutory provisions in Revised Article 9 are both longer and more complicated than the provisions in Former Article 9. Compare WYO. STAT. ANN. § 34.1-9-505 (LEXIS 1999) with REV. WYO. STAT. §§ 34.1-9-620 to -622. The revised act sets forth specific procedures on how a creditor may propose a strict foreclosure, the contents of notifications, who must be notified, and how parties may object. REV. WYO. STAT. §§ 34.1-9-620 to -621. Additionally, some former rules have been modified. For instance, notices must be authenticated, rather than written. REV. WYO. STAT. §§ 34.1-9-620(a)(ii), -621(a)(i). Also, the period for objection is extended from twenty days to twenty-one days. Compare WYO. STAT. ANN. § 34.1-9-505(b) (LEXIS 1999) with REV. WYO. STAT. § 34.1-9-620(d).

239. REV. WYO. STAT. § 34.1-9-620(a). The remedy of retention in partial satisfaction of a debt is not available to the secured creditor in a consumer transaction. REV. WYO. STAT. § 34.1-9-620(g); see also Rev. U.C.C. § 9-620 cmt. 12.

240. Rev. U.C.C. § 9-620 cmt. 7.

241. Rev. U.C.C. § 9-101 cmt. 4i.

242. REV. WYO. STAT. § 34.1-9-620(b); see also Rev. U.C.C. § 9-620 cmt. 5.

243. Rev. U.C.C. § 9-620 cmt. 5.

244. REV. WYO. STAT. § 34.1-9-622(a)(iii); see also Rev. U.C.C. § 9-622 cmt. 2.

245. REV. WYO. STAT. § 34.1-9-607(a)(iv),(v); see also Rev. U.C.C. § 9-607 cmt. 7.

Effect of Noncompliance. Under Former Article 9, courts were divided on how to handle a secured party's noncompliance with default and enforcement provisions when the amount of a deficiency was at issue.²⁴⁶ Revised Article 9 resolves the dispute by expressly adopting the rebuttable presumption rule for commercial transactions. If the secured creditor fails to comply with the act, the value of the collateral is presumed to equal the amount of the secured debt, thus eliminating any deficiency claim.²⁴⁷ The secured creditor may recover a deficiency judgment only if it can prove that a sale in compliance with the relevant provisions would have produced a sales price less than the secured debt.²⁴⁸ The revised act, however, does not address which rule should apply in consumer transactions, thereby leaving it for the courts to decide.²⁴⁹

IX. CONSUMER TRANSACTIONS

Revised Article 9 contains a number of provisions that apply only to transactions with consumers.²⁵⁰ The drafters unfortunately were unable to reach a consensus about many contentious consumer-related issues.²⁵¹ A compromise was reached to leave such issues to the courts.²⁵² As a result, Revised Article 9 makes only limited changes to the law governing consumer transactions. Much of the case law relating to consumer transactions will remain the same.²⁵³ Nevertheless, the drafters made some noteworthy changes.²⁵⁴

Definitions. Several consumer-related definitions trigger a variety of rules. Revised Article 9 draws a distinction between a "consumer transaction" and a "consumer-goods transaction." A "consumer transaction" is one in which the credit secured is for personal, family, or household

246. Courts generally adopted one of three approaches: (i) the absolute bar rule (barring the secured party from recovering any deficiency); (ii) the rebuttable presumption rule; or (iii) some form of setoff, offset, or netting out theory based on the actual damages suffered by the debtor. See Lloyd, *supra* note 12, at 367.

247. REV. WYO. STAT. § 34.1-9-626(a)(iii); see also Rev. U.C.C. § 9-626 cmt. 3.

248. See *supra* note 247.

249. REV. WYO. STAT. § 34.1-9-626(b); see also Rev. U.C.C. § 9-626 cmt. 4.

250. See Rev. U.C.C. § 9-101 cmt. 4j.

251. For a description of the process used to consider consumer issues, see Marion W. Benfield, Jr., *Consumer Provisions in Revised Article 9*, 74 CHI.-KENT L. REV. 1255, 1255-59 (1999).

252. Jean Braucher, *Deadlock: Consumer Transactions Under Revised Article 9*, 73 AM. BANKR. L.J. 83, 83 (1999).

253. *Id.* at 83-84.

254. For a detailed discussion of the consumer-related provisions in Revised Article 9, see Benfield, *supra* note 251.

purposes, and the collateral is personal, family, or household collateral.²⁵⁵ A “consumer-goods transaction” is a subset of consumer transactions where the collateral is consumer goods.²⁵⁶ “Consumer goods” are goods “used or bought for use primarily for personal, family or household purposes.”²⁵⁷ Additionally, some provisions of Revised Article 9 apply to transactions secured by consumer goods even if the credit was obtained for commercial purposes.²⁵⁸ The availability of certain protections provided by the act turn on these definitions.

Scope. Revised 9 permits lenders in commercial transactions to take security interests in deposit accounts as original collateral.²⁵⁹ Revised Article 9, however, expressly excludes from its scope deposit accounts taken as original collateral in consumer transactions.²⁶⁰ The revised act leaves such transactions to other laws, not Revised Article 9.²⁶¹

Attachment. The new act generally permits secured parties to describe collateral by type.²⁶² But to prevent consumer debtors from inadvertently encumbering specific assets, Revised Article 9 requires greater specificity with respect to some collateral descriptions.²⁶³ In a consumer transaction, a description by type is not sufficient if the collateral is consumer goods or a security account, commodity account, or security entitlement.²⁶⁴ For instance, if a lender in a consumer transaction desires to take a security interest in a consumer’s security account, the lender should identify the specific account by account number in the security agreement. New accounts would not be covered, unless the parties later amended the security agreement

255. A “consumer transaction” is defined as “a transaction in which (1) an individual incurs an obligation primarily for personal, family or household purposes, (2) a security interest secures the obligation, and (3) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.” REV. WYO. STAT. § 34.1-9-102(a)(xxvi).

256. A “consumer-goods transaction” is defined as “a consumer transaction in which: (A) An individual incurs an obligation primarily for personal, family or household purposes; and (B) A security interest in consumer goods secures the obligation.” REV. WYO. STAT. § 34.1-9-102(a)(xxiv).

257. REV. WYO. STAT. § 34.1-9-102(a)(xxiii).

258. See, e.g., REV. WYO. STAT. § 34.1-9-625(c)(ii) (statutory damages for failure to comply with foreclosure requirements apply to transactions where the collateral is consumer goods).

259. REV. U.C.C. § 9-109 cmt. 16.

260. REV. WYO. STAT. § 34.1-9-109(d)(xiii); see also REV. U.C.C. § 9-109 cmt. 16.

261. REV. U.C.C. § 9-109 cmt. 16. Revised Article 9 does not prohibit secured parties from taking interests in consumer deposit accounts under common law or other statutes. The revised act simply excludes such transactions from the scope of Revised Article 9. *Id.*

262. See *supra* Part III (description of collateral).

263. REV. U.C.C. § 9-108 cmt. 5.

264. REV. WYO. STAT. § 34.1-9-108(e)(ii); REV. U.C.C. § 9-108 cmt. 5.

to add the new accounts and described them with the requisite specificity. Similarly, in a consumer transaction, a description of collateral as “consumer goods” is not effective.

Priority. With respect to commercial transactions, the revised act rejects the transformation rule adopted by some courts.²⁶⁵ Revised Article 9 provides that, in commercial transactions, cross-collateralization, refinancing, or other similar activities do not destroy purchase-money security interest status. The new rule, however, does not apply to consumer-goods transactions.²⁶⁶ Thus, Revised Article 9 leaves it to the courts to fashion an appropriate rule for consumer-goods transactions and instructs courts to draw no inference from the rule selected for commercial transactions.²⁶⁷

Enforcement. Most of the special consumer-transaction rules pertain to enforcement after default.

Notice Before Disposition. The revised legislation establishes special content requirements for pre-sale notification in consumer-goods transactions.²⁶⁸ The statute sets forth a list of items the notice must contain, such as a description of the collateral, the intended method of disposition, a statement of the debtor’s right to an accounting, the time and place of disposition, a description of liability for deficiencies, and contact telephone numbers and addresses.²⁶⁹ Additionally, the drafters promulgated a notification form to be used specifically for consumer-goods transactions.²⁷⁰ When properly completed, the form satisfies the statutory notification requirements, thereby providing lenders with a safe harbor from potential liability.²⁷¹ However, the ten-day advance notice safe-harbor provision for commercial transactions²⁷² does not apply to consumer transactions.²⁷³ Accordingly, whether a notice is sent within a reasonable time is a question of fact in consumer transactions.²⁷⁴ No safe harbor is provided in the statute. As a result, it may be risky for a creditor to contract for or provide only ten-days notice in consumer transactions.

265. See *supra* Part VII (purchase-money security interests).

266. See REV. WYO. STAT. § 34.1-9-103(f); see also Rev. U.C.C. § 9-103 cmt. 7a.

267. REV. WYO. STAT. § 34.1-9-103(h); see also Rev. U.C.C. § 9-103 cmt. 8.

268. REV. WYO. STAT. § 34.1-9-614; see also Rev. U.C.C. § 9-614 cmt. 2.

269. REV. WYO. STAT. § 34.1-9-614(a)(i).

270. REV. WYO. STAT. § 34.1-9-614.

271. Rev. U.C.C. § 9-614 cmt. 3.

272. See *supra* Part VIII (notice before disposition).

273. See REV. WYO. STAT. § 34.1-9-612(b).

274. REV. WYO. STAT. § 34.1-9-612(a).

Calculation of Surplus or Deficiency. Revised Article 9 requires a secured party in a consumer-goods transaction to explain to the debtor how it calculated a surplus or deficiency.²⁷⁵ The new rules set forth the notification requirements and specify the information that must be communicated.²⁷⁶ The explanation must be sent before the secured party pays a surplus or attempts to collect a deficiency.²⁷⁷

Right to Redeem Collateral. A debtor in a consumer-goods transaction may not waive redemption rights, even after default.²⁷⁸

Acceptance of Collateral in Satisfaction of a Debt. Under certain circumstances, Revised Article 9 imposes an obligation on a secured party to dispose of repossessed consumer goods, thereby prohibiting retention of the collateral in lieu of the debt.²⁷⁹ To protect consumers, Revised Article 9 prohibits a secured party in a consumer transaction from accepting collateral in partial satisfaction of a debt.²⁸⁰ The drafters were concerned that consumers may not know the value of their collateral and feared that unscrupulous creditors would take advantage of consumers without such safeguards.²⁸¹

Effect of Noncompliance. For commercial transactions, Revised Article 9 adopts the rebuttable presumption rule to determine how to handle a secured party's noncompliance with default and enforcement provisions when the amount of a deficiency is at issue.²⁸² The new rule does not address the effect of noncompliance in consumer transactions.²⁸³ The drafters allow the courts to decide the proper rule in consumer transactions.²⁸⁴ In addition, the drafters instruct the court to draw no inference from the rule adopted in the commercial transactions context.²⁸⁵

275. REV. WYO. STAT. § 34.1-9-616; *see also* Rev. U.C.C. § 9-616 cmts. 2, 3.

276. REV. WYO. STAT. § 34.1-9-616(b),(c).

277. REV. WYO. STAT. § 34.1-9-616(b)(i)(A).

278. *See* REV. WYO. STAT. § 34.1-9-624(c).

279. REV. WYO. STAT. § 34.1-9-620(e),(f); *see also* Rev. U.C.C. § 9-620 cmt. 12.

280. REV. WYO. STAT. § 34.1-9-620(g); *see also* Rev. U.C.C. § 9-620 cmt. 12.

281. *See* Benfield, *supra* note 251, at 1286.

282. *See supra* Part VIII (effect of noncompliance).

283. Rev. U.C.C. § 9-626 cmt. 4.

284. REV. WYO. STAT. § 34.1-9-626(b); *see also* Rev. U.C.C. § 9-626 cmt. 4.

285. REV. WYO. STAT. § 34.1-9-626(b).

X. TRANSITION

Revised Article 9 becomes effective in Wyoming and most jurisdictions on July 1, 2001.²⁸⁶ The revised act contains provisions to assist with the transition from Former Article 9 to Revised Article 9.²⁸⁷ The intricacies of these provisions have been the subject of lengthy law review articles that discuss in extensive (and often excruciating) detail the myriad of situations that may arise.²⁸⁸ The section that follows briefly summarizes the basic transition provisions and provides a general guide, as always subject to exceptions and sometimes variations.

Loan Documentation Under Revised Article 9. The effects of Revised Article 9 tend to be primarily prospective. Loan documents executed under Former Article 9 generally will continue to be effective under Revised Article 9.²⁸⁹ Nevertheless, as previously noted, attorneys and lenders may need to revise their standard loan documents for loans made after July 1, 2001. Some fine-tuning of loan documents may be worthwhile, while other changes may be required.

For example, Revised Article 9 permits lenders to take security interests in new types of collateral, such as deposit accounts, commercial tort claims, health-care-insurance receivables, letter-of-credit rights, and electronic chattel paper.²⁹⁰ These new types of collateral may be added to the description of collateral in a security agreement. The revised act also

286. See *supra* note 3. The uniform effective date recommended by the drafters is July 1, 2001. Rev. U.C.C. § 9-701.

287. REV. WYO. STAT. §§ 34.1-9-701 to -709.

288. One of the most helpful resources is an article authored by Steven O. Weise that contains diagrams illustrating how the transitional rules work. See Steven O. Weise, *Transitioning to Revised Article 9*, in THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 59 (Corinne Cooper ed., 2d ed. 2000), an updated version of the article titled *Preparing for the Revised UCC Article 9: The Transition Rules* is also available at <http://www.hewm.com/news/articles/ucc.pdf> (last visited Apr. 9, 2001). For detailed descriptions of the transitional rules, see Harry C. Sigman & Edwin E. Smith, *Revised U.C.C. Article 9's Transition Rules: Insuring a Soft Landing* (pts. 1 & 2), 55 BUS. LAW. 1065, 1763 (2000); Bradley Y. Smith, *New Article 9 Transition Rules*, 74 CHI.-KENT L. REV. 1339 (1999).

289. See REV. WYO. STAT. §§ 34.1-9-703, -704; see also Rev. U.C.C. §§ 9-703 cmts. 1, 2, 9-704 cmt. In addition, the official comments to Revised Article 9 state:

If parties to a pre-effective-date security agreement describe the collateral by using a term defined in former Article 9 in one way and defined in this Article in another way, in most cases it should be presumed that the bargain of the parties contemplated the meaning of the term under former Article 9.

Rev. U.C.C. § 9-703 cmt. 3.

290. See *supra* Part II (new types of collateral).

modifies the definitions of various collateral categories.²⁹¹ Attorneys therefore must review the collateral descriptions in their form security agreements in light of these revisions and modify such descriptions to reflect these definitional changes. Since Revised Article 9 permits description of certain collateral by type,²⁹² attorneys may wish to revise the collateral descriptions in their form security agreements to reflect this change. Revised Article 9, however, states that commercial tort claims and certain collateral in consumer transactions must be described with greater specificity than by type.²⁹³ Accordingly, attorneys drafting security agreements must take care to specifically describe such collateral.

Additionally, secured parties may wish to add a provision to their loan documents to obtain the debtor's express authorization to file financing statements.²⁹⁴ Given that the proper jurisdiction for filing now depends on the state where the debtor is organized,²⁹⁵ secured parties may wish to add a representation and warranty to their loan documents concerning the debtor's state of formation. And if the collateral for a loan is chattel paper, the security agreement should provide that the debtor will not create chattel paper without legending it to indicate the secured party's interest.²⁹⁶ Under Revised Article 9, cross-collateralization does not destroy purchase-money security interest status in commercial transactions.²⁹⁷ Consequently, creditors making commercial loans may wish to add a cross-collateralization clause to certain loan agreements.

Clearly no attempt has been made to catalogue all of the changes that might be required with the adoption of Revised Article 9.²⁹⁸ As you review your loan documents, this Article, the revised code, and other commentary, you will identify other actions that you may wish to take.

Transactions Entered Into Under Former Article 9. Generally, transactions entered into under Former Article 9 will be governed by Revised

291. See *supra* Part II (modified definitions of account, general intangible, and proceeds).

292. See *supra* Part III (description of collateral).

293. See *supra* Part III (description of collateral) and Part IX (attachment).

294. See *supra* Part V (no signature requirement).

295. See *supra* Part VI (general rule governing perfection).

296. See *supra* Part VII (possession versus filing).

297. See *supra* Part VII (purchase-money security interests).

298. Steven Weise provides a useful checklist of items to consider in connection with the transition. See Steven O. Weise, *Checklist for Revised UCC Article 9*, in *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 14* (Corinne Cooper ed., 2d ed. 2000), an updated version of the checklist is appended to his article titled *Preparing for the Revised UCC Article 9: The Transition Rules* which is also available at <http://www.hewm.com/news/articles/ucc.pdf> (last visited Apr. 9, 2001).

Article 9 after the new act's effective date.²⁹⁹ For example, a secured creditor who repossesses collateral after the effective date of Revised Article 9 is required to comply with the new act's default and enforcement provisions, even if the loan agreement was entered into under Former Article 9 and before the new act's effective date.³⁰⁰ Still, Revised Article 9 does not affect litigation commenced before the new act takes effect.³⁰¹

When Actions Taken Under Former Article 9 Are Sufficient to Perfect Under Revised Article 9. If an action taken under Former Article 9 to perfect a security interest also is sufficient to perfect the security interest under Revised Article 9, the creditor need not take any additional action until the routine lapse of perfected status.³⁰² To illustrate, if a creditor properly perfected in a Wyoming corporation's accounts under Former Article 9³⁰³ by filing a financing statement with the Wyoming Secretary of State,³⁰⁴ the creditor need not take any additional action since the filing of a financing statement with the Wyoming Secretary of State is sufficient to perfect under Revised Article 9.³⁰⁵ A secured party may continue the financing statement by filing a continuation statement in the same office in the same jurisdiction, if the original filing was made in the proper office and proper jurisdiction for Revised Article 9.³⁰⁶

When Actions Taken Under Former Article 9 Are Not Sufficient to Perfect Under Revised Article 9—General Rule. Security interests perfected under Former Article 9 prior to the new act's effective date remain perfected for one year after the effective date, even if different or additional steps are required to perfect under Revised Article 9.³⁰⁷ The creditor must take such additional action within one year of the effective date of Revised Article 9. If the creditor takes such action within one year, the security interest is deemed to have been continuously perfected and perfection relates back to the initial perfection date.³⁰⁸

299. REV. WYO. STAT. § 34.1-9-702(a); *see also* Rev. U.C.C. § 9-702 cmt. 1.

300. As the comments to Revised Article 9 state, "secured transactions entered into under former Article 9 must be terminated, completed, consummated, and enforced under this Article." Rev. U.C.C. § 9-702 cmt. 1.

301. REV. WYO. STAT. § 34.1-9-702(c); *see also* Rev. U.C.C. § 9-702 cmt. 2.

302. REV. WYO. STAT. § 34.1-9-703(a); *see also* Rev. U.C.C. § 9-703 cmt. 1.

303. WYO. STAT. ANN. § 34.1-9-103(c)(ii) (law of the jurisdiction where the debtor is located) (LEXIS 1999).

304. WYO. STAT. ANN. § 34.1-9-401(a)(i) (office of the secretary of state) (LEXIS 1999).

305. *See supra* Part V (central filing) and Part VI (general rule governing perfection).

306. REV. WYO. STAT. § 34.1-9-705(d); *see also* Rev. U.C.C. § 9-705 cmt. 5.

307. REV. WYO. STAT. § 34.1-9-703(b)(i); *see also* Rev. U.C.C. § 9-703 cmt. 2.

308. *See* REV. WYO. STAT. § 34.1-9-703(b); *see also* Rev. U.C.C. § 9-703 cmt. 2.

In a number of situations, the method used to perfect a security interest under Former Article 9 will not perfect the security interest under Revised Article 9. As an example, under prior law a secured party could perfect in collateral by simply notifying the bailee.³⁰⁹ To remain continuously perfected, the secured party must reperfect in accordance with Revised Article 9 by obtaining the bailee's acknowledgement within one year of Revised Article 9's effective date. Similarly, if a security agreement describes the collateral in a consumer transaction as "all of the customer's security accounts," to remain continuously perfected the secured party must reperfect in accordance with Revised Article 9 by amending the security agreement within one year of the new act's effective date to specifically describe the security account.³¹⁰

Nonetheless, this one-year grace period does not apply to filings. Special rules govern security interests perfected by filing under Former Article 9.

When Actions Taken Under Former Article 9 Are Not Sufficient to Perfect Under Revised Article 9—Special Rules Where Perfection Under Former Article 9 Was by Filing. Financing statements properly filed under Former Article 9 before the new act's effective date remain effective, even if Revised Article 9 would require filing in a different office or a different jurisdiction.³¹¹ A proper filing under Former Article 9 remains effective until the earlier of the time it would have lapsed under the law of the jurisdiction in which it was filed³¹² or June 30, 2006.³¹³ Secured parties, however, must file in the jurisdiction dictated by Revised Article 9 as filings made under Former Article 9 lapse. The secured party may continue such financing statements by filing a new initial financing statement in lieu of a continuation statement in the office and jurisdiction dictated by Revised Article 9.³¹⁴

Continuation of Perfected Status. If a financing statement is filed prior to the new act's effective date in an office that would not be a proper office under Revised Article 9, effectiveness cannot be extended by a continuation statement filed in the original office.³¹⁵ Instead, the secured party must file an initial financing statement in lieu of a continuation statement in the office in which the financing statements must be filed under

309. See *supra* Part IV (possession).

310. See *supra* Part IX (attachment).

311. REV. WYO. STAT. § 34.1-9-705(c); see also Rev. U.C.C. § 9-705 cmt. 4.

312. This date is determined without giving effect to continuation statements filed after the effective date of Revised Article 9.

313. REV. WYO. STAT. § 34.1-9-705(c); see also Rev. U.C.C. § 9-705 cmt. 4.

314. REV. WYO. STAT. § 34.1-9-706(a); see also Rev. U.C.C. § 9-706 cmt. 1.

315. REV. WYO. STAT. § 34.1-9-705(d); see also Rev. U.C.C. § 9-705 cmt. 5.

Revised Article 9.³¹⁶ Where the secured party filed its financing statement under Former Article 9 in the same office in which the financing statement would be filed under Revised Article 9, its effectiveness can be extended by a continuation statement filed under Revised Article 9.³¹⁷

Searching. Financing statements properly filed under Former Article 9 remain effective even if they are filed in an office other than the one dictated by Revised Article 9. As a result, often creditors will need to search in more than one office.³¹⁸ For instance, a lender contemplating a loan to a Wyoming debtor to be secured by equipment located in Wyoming will need to search in at least two locations. First, the lender should search in the county where the equipment is located, since a financing statement may have been filed there under Former Article 9.³¹⁹ Additionally, the lender should search in the Wyoming Secretary of State's Office, since a financing statement may have been filed against the property under Revised Article 9.³²⁰ Similarly, if the debtor is a Delaware corporation and the collateral is equipment located in Wyoming, the lender should search in both Wyoming, the proper state for filing under Former Article 9,³²¹ and Delaware, the proper state for filing under Revised Article 9.³²²

XI. CONCLUSION

Revised Article 9 retains the basic concepts of Former Article 9, but it expands the scope, alters definitions, creates new definitions, changes the filing system, provides additional methods of perfection, adds priority rules, and clarifies default and enforcement procedures. The revision is the culmination of years of work and the efforts of many. The drafters rewrote, reorganized, and renumbered the code. Their goals were laudable and their undertaking extensive in scope. As a result, Revised Article 9 should improve and simplify many aspects of secured lending, primarily due to changes in the filing rules that will increase efficiency, promote uniformity, and streamline filing. Ultimately, the revisions should lower costs and increase the availability of secured credit.

316. REV. WYO. STAT. § 34.1-9-706(a); *see also* Rev. U.C.C. § 9-706 cmt. 1.

317. REV. WYO. STAT. § 34.1-9-705(d); *see also* Rev. U.C.C. § 9-705 cmt. 5.

318. Rev. U.C.C. § 9-705 cmt. 4.

319. WYO. STAT. ANN. § 34.1-9-401(a)(iii) (LEXIS 1999) (office of the county clerk where the debtor has its principal place of business).

320. *See supra* Part V (central filing) and Part VI (general rule governing perfection).

321. WYO. STAT. ANN. § 34.1-9-103(a)(ii) (LEXIS 1999) (perfection governed by the law of the jurisdiction where the collateral is located).

322. *See supra* Part VI (general rule governing perfection).

Unfortunately, the devil is in the details. The legal community, the financial community, and other interested parties will be required to expend a substantial amount of time and effort to master this new code. Until then, danger lurks for those unfamiliar with its complex and intricate provisions. Many practitioners are likely to be caught off guard. While those who specialize in commercial financings will easily see the benefits of the new legislation, others are more likely to be frustrated by the puzzling web of new rules. Over time, hopefully, the investment will prove worthwhile, with the benefits of Revised Article 9 far outweighing the costs.