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In 1983 Wyoming adopted the 1972 amendments to Article 9 of the Uniform Commercial Code. In this article, the author examines many of the important provisions of the amendments. Interesting and difficult amendments are explored, and the impact of the amendments on Wyoming law is discussed.

WYOMING ADOPTS THE "1972 AMENDMENTS" TO UNIFORM COMMERCIAL CODE ARTICLE 9— THE REVISIONS AND SOME CONTINUING PROBLEMS*

*Jack Van Baalen***

Wyoming adopted the Uniform Commercial Code (the "Code") in 1961. Promulgated jointly by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, the Code purports to deal with all aspects of a commercial transaction.¹ Article 9 of the Code, which addresses secured transactions in personal property, was an innovative integration of the badly fragmented field of chattel security. Although this integration was highly successful, shortcomings did emerge which required some revisions.² Proposed amendments to Article 9 were therefore promulgated in 1972. At the time of preparation of this article,

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1. UNIFORM COMMERCIAL CODE, GENERAL COMMENT OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND THE AMERICAN LAW INSTITUTE 2 (1962).
2. See PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, REVIEW COMMITTEE FOR ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, FINAL REPORT 195 (1971).

thirty-nine jurisdictions had adopted the 1972 amendments. Wyoming adopted them in 1983, effective July 1, 1983.³

Perusal of the amendments, as well as the Review Committee's comments on its work,⁴ suggests that the revisions are extensive. While many revisions were made, most were intended to clarify the meaning of Code provisions, not to change their substance.⁵ Recognizing that adoption of the Official amendments by all jurisdictions would be a lengthy process, the Committee sought to minimize changes in an effort to preserve uniformity during the interim.⁶ It "eschewed amendment merely for the sake of theoretical improvement," and instead recommended revision only when nonuniform amendments had been made by adopting jurisdictions or when it had received substantial demands for change.⁷

The principal purpose of this article is to review those amendments which I consider significant or otherwise interesting. Readers may disagree. While the review is fairly comprehensive, no attempt is made to refer to every revision. Stylistic and conforming revisions, as well as some substantive ones, are not mentioned. Furthermore, statutory provisions are often paraphrased or extracted for convenience of discussion. I therefore urge reference to the complete and original statutory language.

In the belief that priorities between conflicting claims to collateral and perfection of security interests are of prime importance, discussion of amendments affecting these predominate. Separate sections of the article devoted to multi-state problems, proceeds, fixtures and the peculiar Wyoming treatment of motor vehicles deal largely with considerations of priority

3. The version of the Official Code adopted by the Wyoming legislature in 1961 was the 1958 Official Text. PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, REPORT NO. 1 at 2 (1962), *republished in* R. BRAUCHER & J. SUTHERLAND, COMMERCIAL TRANSACTIONS, SELECTED STATUTES xx (1968). References in this article are to the 1962 Official Text, the version revised by the 1972 amendments. See PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, FINAL REPORT 196 (1971). The 1958 Official Text adopted by Wyoming is virtually the same as the 1962 official text.

In this article the term "Code" designates both the 1962 Official Uniform Commercial Code and the Wyoming Uniform Commercial Code as adopted in 1961 and amended prior to 1983. Wyoming adopted the 1958 Official Code with few changes. The term "amendments" designates both the Official amendments proposed in 1972 and the Wyoming amendments adopted in 1983. Again, Wyoming adopted the 1972 Official amendments with few changes. When only the "Official Code" or "Official amendments" are discussed, they are called by those names and when only the "Wyoming Code" or "Wyoming amendments" are discussed, they are called by those names. The Official Code is cited to U.C.C. §§ 1-101 to 10-104 (1962); the Official amendments to U.C.C. §§ 9-101 to 11-108 (1972); the Wyoming Code to WYO. STAT. §§ 34-21-101 to 34-21-1002 (1977); and the Wyoming amendments to WYO. STAT. §§ 34-21-901 to 34-21-966 (Supp. 1983).

4. The task of preparing the Official amendments was delegated to the Uniform Commercial Code Review Committee (Review Committee). In addition to the amendments, it prepared two Preliminary Reports and a Final Report, as well as section by section reasons for the changes. The reports are entitled Permanent Editorial Board for the Uniform Commercial Code, Review Committee for Article 9 of the Uniform Commercial Code, Preliminary Draft No. 1 (1968) (Draft No. 1), Preliminary Draft No. 2 (1970) (Draft No. 2) and Final Report (1971) (Final Report). The reasons for the changes appear following each section in the Official amendments (Reasons for 1972 Change). They should not be confused with the Official Comments pertaining to the Official Code as amended by the Official amendments. These follow each section of the Official Code as amended.

5. See U.C.C. § 11-108 (1972).

6. See Final Report, *supra* note 4, at 195-96.

7. *Id.*

and perfection as they apply to these specific areas. I must here confess that the section of the article discussing Wyoming motor vehicle security interests may be parading under false colors. In large part it explores questions raised by provisions injected into the Wyoming Code twenty years before the adoption of the Wyoming amendments.⁸ Nonetheless some airing of these questions seems desirable.

PRIORITY CONFLICTS

One of the principal purposes for which a secured party obtains a security interest is to assure priority of payment of his claim from the proceeds of sale of the collateral. Borrower grants Lender a security interest in all of Borrower's equipment to secure repayment of a loan. By granting the security interest Borrower agrees with Lender that, if Borrower fails to repay the loan, Lender may sell the equipment and apply the proceeds to repayment of the loan. Equally important, Lender must be certain that no one else has or can acquire a claim to the equipment which will be superior to Lender's rights. Claims to the equipment which conflict with Lender's rights might arise in many ways. These include levy of execution by a lien creditor,⁹ purchase of equipment from Borrower, Borrower's grant of other security interests in the equipment and others.¹⁰ If Lender is relying on the equipment as a source of repayment, he must determine whether his rights will have priority over these possible conflicting claimants. In most cases priority of the security interest dates from Lender's filing of a financing statement or taking possession of the collateral. Usually filing or possession will effect "perfection" of the interest. Part 3 of Article 9 contains the rules governing priority conflicts.¹¹ The amendments affect some provisions relating to conflicts between a secured party and these other claimants.

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8. The peculiar motor vehicle provisions of the Wyoming Code were first adopted in 1963. See 1963 WYO. SESS. LAWS Ch. 185, § 2. The definition of "vehicle or motor vehicle required to be licensed," "vehicle" and "motor vehicle" was added in 1969. See 1969 WYO. SESS. LAWS Ch. 63, § 1. For the discussion of Wyoming motor vehicle security interests, see *infra* text accompanying notes 147-92.
 9. "A 'lien creditor' means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for the benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment." WYO. STAT. § 34-21-930(c) (1977 & Supp. 1983) (U.C.C. § 9-301(3) (1962 & 1972)).
 10. Conflicts may also arise between a security interest and other lien claims, such as governmental tax liens and possessory liens. The priority of Federal tax liens is dealt with inferentially by WYO. STAT. § 34-21-930(d) (Supp. 1983) (U.C.C. § 9-301(4) (1972)). See *infra* text accompanying notes 34-37. Most possessory liens are accorded priority by WYO. STAT. § 34-21-939 (1977) (U.C.C. § 9-310 (1962 & 1972)). Sections of the Wyoming Statutes Annotated which were not revised by the amendments were not reprinted in the 1983 supplement. For this reason no citation to the supplement appears for unrevised sections.
 11. Part 2 of Article 9 contains the basic priority rule: Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. WYO. STAT. § 34-21-920 (1977) (U.C.C. § 9-201 (1962 & 1972)). Part 3 must be consulted to determine when the Act does otherwise provide.

Security Interest v. Lien Creditor and Some Transferees or Buyers

As a general rule a perfected security interest takes priority over the rights of a lien creditor who obtains his lien after perfection and an unperfected security interest is subordinate to the rights of a lien creditor. Under the Code, however, the rights of a lien creditor were also subordinate to an *unperfected* security interest unless the creditor had no knowledge of the security interest when he obtained the lien.¹² A representative lien creditor (assignee for benefit of creditors, trustee in bankruptcy, or receiver in equity), however, was deemed to be without knowledge so long as any creditor represented was innocent of the existing security interest. The condition that a lien creditor (or his representative) seeking priority over a security interest be innocent of its existence was inconsistent with the Code's treatment of priority conflicts between two secured parties. In the latter case priority was governed solely by the time of filing or perfection by other means. One secured party's knowledge of another's unfiled or unperfected security interest was irrelevant.¹³ The amendments reconcile the treatment of lien creditors with that of secured parties by deleting the knowledge limitation upon lien creditors. Although the change may be of some practical significance with respect to an individual lien creditor, its practical application in most cases is of doubtful importance. It is likely that the provision's principle utility lies in avoidance of unperfected security interests by a trustee in bankruptcy.¹⁴ It would be a rare case indeed in which the secured party could establish that all creditors knew of his unperfected security interest at the time when a bankruptcy petition was filed.¹⁵

Two other provisions of the Code subordinated the unperfected security interest to the rights of certain classes of transferees or buyers.¹⁶ Like the provision respecting lien creditors, these provisions also required that the protected transferees or buyers take the collateral without knowledge of the security interest. Apparently because no dissatisfaction with these provisions had been expressed to the Review Committee, they were not

12. WYO. STAT. § 34-21-930(a) (ii) (1977) (U.C.C. § 9-301(1) (b) (1962)).

13. See WYO. STAT. § 34-21-941(e) (1977) (U.C.C. § 9-312(5) (1962)).

14. The trustee, relying on his position as a hypothetical lien creditor, may utilize U.C.C. § 9-301(1) (b) to avoid an unperfected security interest. See 11 U.C.C. § 544(a) (1) (1982).

15. For a case in which the secured party attempted to establish that all creditors had knowledge of the security interest, see *In re Komfo Products Corp.*, 247 F. Supp. 229 (E.D. Pa. 1965).

16. The first of these provisions subordinated the unperfected security interest to a transferee in bulk or a buyer not in ordinary course of business of goods, instruments, documents and chattel paper to the extent that he gave value and received delivery of the collateral without knowledge of the security interest and before it was perfected. WYO. STAT. § 34-21-930(a) (iii) (1977) (U.C.C. § 9-301(1) (c) (1962)). The amendments add to this group buyers of farm products in the ordinary course of business. WYO. STAT. § 34-21-930 (a) (iii) (Supp. 1983) (U.C.C. § 9-301(1) (c) (1972)). These buyers are expressly excluded from the benefits of section 9-307(1) which protects other buyers in the ordinary course. Presumably failure of the Code to grant these farm products buyers express protection against unperfected security interests was an oversight. See J. WHITE AND R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE 1033 (2d ed. 1980) [hereinafter referred to as J. WHITE AND R. SUMMERS].

The second provision subordinates the unperfected security interest to a transferee of accounts, contract rights and general intangibles to the extent that he gives value without knowledge of the security interest and before it is perfected. WYO. STAT. § 34-21-930(a) (iv) (1977) (U.C.C. § 9-301(1) (d) (1962)).

revised in 1972 to delete the requirement that the transferee or buyer take the collateral without knowledge.¹⁷ There appears to be little, if any, basis for distinguishing between lien creditors and these other types of transferees or buyers with respect to the requirement that they acquire their interest without knowledge of the unperfected security interest. One might question on moral grounds the behavior of any person who acquires an interest in property knowing that this action might interfere with the interest of another. Presumably, the Code drafters opted for a pure race to the record, making knowledge irrelevant, to avoid litigation of possibly difficult disputes over whether a party had knowledge of an unperfected security interest. This rationale applies with equal force to creditors and these other types of transferees and buyers.

The only apparent distinction between a lien creditor and these transferees or buyers arises from the likelihood that the creditor will have advanced credit sometime prior to obtaining his lien in the collateral while transferees or buyers ordinarily give value contemporaneously with, or after, transfer of the collateral to them. In the event that, in the course of attempting to recover payment, a creditor learned of the unperfected security interest, his subsequently acquired judgment lien would be subordinated if knowledge of that interest precluded him from obtaining priority.¹⁸ This possibility would support a limited distinction between lien creditors and these transferees or buyers. Knowledge of a member of the latter group would be determined as of or prior to the time he gave value. Comparable treatment of the lien creditor's lien would require that his lien be subordinated only if he knew of an unperfected security interest when he advanced credit; knowledge of that interest when the lien was later obtained should be irrelevant.¹⁹ As indicated, however, the amendments go beyond this limited distinction, making the lien creditor's knowledge irrelevant even at the time credit is advanced. This seems justified only by the desirability of avoiding litigation of disputes over possible knowledge. If this is the rationale, consistency and logic require deletion of the knowledge limitation in the cases of these transferees or buyers. The drafters' desire to minimize change does not seem an adequate justification for the differing treatment.

One revision of the provision which protects transferees and buyers against unperfected security interests may be of significance to Wyoming practitioners. This revision expressly subordinates an *unperfected* security interest to the rights of a buyer of farm products²⁰ in the ordinary course of business. Buyers in the ordinary course of business of all products, except farm products, take free from even a perfected security interest.²¹ Having

17. Draft No. 2, *supra* note 4, at 35.

18. See U.C.C. § 9-301, Reasons for 1972 Change.

19. At a preliminary stage of the redrafting process, this treatment of lien creditor knowledge was recommended by the Review Committee. Draft No. 2, *supra* note 4, at 34.

20. "Goods are . . . (3) 'farm products' if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory." WYO. STAT. § 34-21-909(a) (iii) (1977) (U.C.C. § 9-109(3) (1962)).

21. WYO. STAT. § 34-21-936(a) (1977) (U.C.C. § 9-307(1) (1962)).

excluded the ordinary course farm products buyer from protection against perfected security interests, the Code did not expressly protect him against an unperfected security interest. Those buyers might, therefore, have been subordinated to the unperfected as well as the perfected security interest. This result could not have been intended because buyers of farm products not in ordinary course were protected against an unperfected interest. There could be no reason for according the ordinary course buyer less favorable treatment than the non-ordinary course buyer. The amendments rectify what was undoubtedly a drafters' oversight, clearly granting the protection intended.²²

Security Interest v. Intervening Buyer or Lien Creditor (Internal Revenue Service)

A security agreement may provide that the secured party will make more than one loan or advance of credit to the debtor.²³ The Code designates additional loans and advances made after the first one as future advances.²⁴ The making of a future advance may either be voluntary or pursuant to a contractual commitment.²⁵ In either case, when a secured party make future advances, priority disputes may arise between the secured party and a person buying or obtaining a lien upon the collateral in the interim between the original advance and the future advances. The Code contained no express provisions governing priorities in these cases. Absent such provisions the secured party might be accorded priority by the general rule that security agreements are effective against purchasers of collateral and creditors.²⁶ The secured party could then make future advances secured by collateral even though he knew that it had been sold or that a creditor had acquired a lien against it.²⁷ In this event the buyer or lien creditor would be denied the benefit of any equity in the collateral which

22. The freedom from prior security interests accorded ordinary course buyers was withheld from ordinary course buyers of farm products because of a contest between highly organized economic interests—farm lenders against processors of farm products. The permanent Editorial Board for the Official Code chose not to assist the processors against the lenders. No reason was perceived, however, to continue the possible subordination of ordinary course farm buyers to unperfected security interests. PROCEEDINGS OF THE 48TH ANNUAL MEETING OF THE AMERICAN LAW INSTITUTE 328 (1971).

23. Security agreement provision for future advances is expressly authorized. WYO. STAT. § 34-21-923(e) (1977) and (c) (Supp. 1983) (U.C.C. § 9-204(5) (1962) and (3) (1972)).

24. The Code does not define the term "future advances," but it appears to contemplate those made some time after the first advance under the security agreement. See WYO. STAT. § 34-21-941(g) (Supp. 1983) (U.C.C. § 9-312(7) (1972)).

25. See WYO. STAT. § 34-21-905 (a) (xi) (Supp. 1983) (U.C.C. § 9-105(1) (k) (1972)). Definition and use of the term "pursuant to commitment" were added to the Code by the amendments.

26. WYO. STAT. § 34-21-920 (1977) (U.C.C. § 9-201 (1962)).

27. It has been argued that a security interest securing a future advance should never take priority over an intervening lien because a security interest is not perfected until value is given. Value has not been given until the future advance is made, after the lien arises. See WYO. STAT. §§ 34-21-932(a) and 923(a) (1977) (U.C.C. §§ 9-303(1), 9-204(1) (1962)). If future advances are limited to those following an earlier advance under the same security agreement, however, it can be said that value is given, and the security interest perfected, at the time of the earlier advance. It would, therefore, take priority over the intervening lien. 2 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 35.6 (1965). The same analysis could be applied to priority of future advances over a buyer of collateral.

had existed at the time of purchase or acquisition of a lien.²⁸ The Review Committee considered unfair the possibility that, by arranging for an additional advance, a debtor and secured party might knowingly "squeeze out" the interest of a buyer or lien creditor.²⁹

Under the amendments all buyers of collateral take free from a security interest securing any future advance made after they buy the collateral unless that advance is made or pursuant to a commitment made (1) while the secured party has no knowledge of the purchase *and* (2) before forty-five days after the purchase.³⁰ The buyer is not protected against the unpleasant consequences of purchasing collateral which is subject to a security interest securing preexisting advances.³¹ He is, however, protected against post-purchase increases in the amount of the security interest to which the collateral is subject, except those advances to the limited extent provided. The amendments do accord priority to a future advance made after a secured party learns of buyer's purchase of the collateral if that advance is pursuant to a prior commitment³² given before expiration of the forty-five-day period and without knowledge of the purchase. Nonetheless, it seems unlikely that a security agreement would require such advances or that the secured party would voluntarily make them.³³

As one might expect the future advance provisions governing priority conflicts between a secured party and a lien creditor are similar to those just discussed relating to protection of buyers. The lien creditor's rights in collateral are subject to a security interest securing advances made before he acquires his lien and to those made within forty-five days thereafter, or made without knowledge of the lien, or made pursuant to a commitment

28. Professor Grant Gilmore suggested that a lien creditor is not injured by the future advance since the reduction in the equity in the collateral is offset by the amount of the advance to the debtor. 2 G. GILMORE, *supra* note 27, § 35.6 (1965). This analysis would not apply to a buyer of collateral who wishes to retain the specific property and has no satisfactory recourse to the debtor's other assets. Furthermore, while theoretically correct, the Gilmore analysis may not always be practically sufficient. By definition, the lien creditor holds a lien on the property subject to the security interest. He may not hold a lien on the property (often cash) transferred to the debtor in exchange for the security interest.

29. U.C.C. § 9-312, Reasons for 1972 Change, para. 5.

30. WYO. STAT. § 34-21-936(c) (Supp. 1983) (U.C.C. § 9-307(3) (1972)).

31. The unpleasant consequences are not as pervasive as they might initially appear. Buyers in the ordinary course of business (WYO. STAT. § 34-21-120(a) (ix) (1977) (U.C.C. § 1-201(9) (1962)) take free of any security interests created by their sellers. WYO. STAT. § 34-21-936(a) (1977) (U.C.C. § 9-307(1) (1962)). Consumer buyers of consumer goods take free of any security interest if (1) they have no knowledge of the interest and (2) it is not perfected by filing. WYO. STAT. § 34-21-936(b) (1977) (U.C.C. § 9-307(2) (1962)). Most security interests in consumer goods are probably not perfected by filing. *See* WYO. STAT. § 34-21-931(a) (iv) (Supp. 1983) (U.C.C. § 9-302(1) (d) (1972)).

32. WYO. STAT. § 34-21-936(c) (Supp. 1983) (U.C.C. § 307(3) (1972)). An advance is made pursuant to commitment "if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation."

33. The assumed sale would necessarily constitute a violation of the security agreement since, if it is authorized, the security interest in the sold collateral expires upon sale. WYO. STAT. § 34-21-935(b) (Supp. 1983) (U.C.C. § 9-306(2) (1972)). *But see* *Matto's Inc. v. Olde Colony Place*, 30 U.C.C. Rep. Serv. 1750 (Bankr. ED Mich. 1981) holding that a security interest continued after an authorized sale.

given without knowledge of the lien.³⁴ Two crucial differences exist between the provision protecting lien creditors and the one just discussed which protects buyers. First, advances by the secured party during the forty-five-day period take priority over the lien regardless of the secured party's knowledge. Second, advances made after the forty-five-day period also take priority so long as they are made without knowledge of the lien.

The absolute priority for forty-five days regardless of knowledge was thought necessary to preserve the priority of future advances over intervening federal tax liens on the collateral.³⁵ The Federal Tax Lien Act of 1966 grants security interests priority over federal tax liens in certain kinds of property. This priority is limited to the extent that the security interest "is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation."³⁶ Before adoption of the Code most states granted priority to optional advances by secured parties only if they were made without knowledge of the intervening lien. The Tax Lien Act, however, is unclear respecting whether the secured party contemplated by its reference to local law is charged with knowledge of the lien or not.³⁷ To assure future advances limited priority over intervening federal tax liens, therefore, the amendments make clear that the advance made within forty-five days after the lien arises has priority over an intervening lien creditor regardless of the secured party's knowledge of the lien.

The second difference between the lien creditor and the buyer future advance provisions pertains to the priority of a future advance made without knowledge after the forty-five-day period. A future advance made without knowledge at any time after an intervening lien arises takes priority over the lien creditor. By contrast, only a future advance made *both* without knowledge and during the forty-five-day period takes priority over an intervening buyer. The Review Committee did not comment publicly on the reasons for this difference. Ordinarily, however, the lien creditor does not specifically rely on the collateral at the time of making his advance while the buyer clearly does. This difference between lien creditors and buyers might motivate more solicitous treatment for buyers. Another explanation of the differing treatment may be that the future advance does not injure the lien creditor as much as it injures the buyer.³⁸

One might wonder why the drafters apply a knowledge standard to conflicts between security interests and buyers or lien creditors when the current trend seems to reject knowledge in favor of a pure race standard elsewhere. Note, however, that the pure race standard governs when both parties are secured creditors who are directly part of the system governed by the UCC or when knowledge of the lien creditor, who is not part of the system, would otherwise deny him priority over an unperfected security

34. WYO. STAT. § 34-21-930(d) (Supp. 1983) (U.C.C. § 9-301(4) (1972)).

35. U.C.C. § 9-301, Reasons for 1972 Change. "Lien creditor" includes the Internal Revenue Service asserting a tax lien. See U.C.C. § 9-301(3) (1972) (WYO. STAT. § 34-21-430(c) (Supp. 1983)).

36. FEDERAL TAX LIEN ACT OF 1966, § 6323(c) and (d).

37. Coogan, *The Effect of the Federal Tax Lien Act of 1966 Upon Security Interests Created Under the Uniform Commercial Code*, 81 HARV. L. REV. 1369, 1401 (1968).

38. See *supra* note 28.

interest. In these latter instances, the undesirability of litigating disputes over possible knowledge of the intervening secured party or lien creditor supports use of the pure race standard. In the future advance conflict the relevant knowledge is the knowledge of a secured party respecting purchase or lien by other parties who are not a direct part of the Code system. Fairness to these other parties outweighs the undesirability of permitting inquiry into the secured party's knowledge. The only exception accords the secured party with knowledge of a lien a short period (forty-five days) after that lien arises within which to make additional advances, or commitments for advances, secured by the collateral. This exception assures priority to future advances made within forty-five days after a federal tax lien arises.

Secured Party v. Secured Party (General Conflicts)

Perhaps the principal priority conflicts governed by the Code are those arising between two security interests in the same collateral. The general approach to these priority conflicts appears in section 9-312(5).³⁹ The essence of this provision is that the first secured party to file a financing statement, or otherwise perfect his security interest, takes priority over any conflicting security interest in the same collateral. Before considering revisions in the general priority provision, however, it will be useful to focus briefly on a major exception.

In the case of purchase money security interests⁴⁰ which comply with section 9-312(3) or (4) the general priority rule is reversed; the second to file a financing statement, or otherwise perfect, takes priority.⁴¹ The Code treats separately purchase money security interests in inventory (governed by 9-312(3)) and those in collateral other than inventory (governed by 9-312(4)). The two subsections differ markedly in the requirements specified for obtaining priority over a conflicting security interest. Subsection (4) simply requires that the purchase money security interest be perfected within twenty days after the debtor receives possession of the collateral.⁴² By contrast, subsection (3) requires both perfection at the time that the debtor receives the inventory and also notification to other parties holding a security interest in the same types of inventory. The need for notice with respect to inventory collateral is that, unlike financing arrangements based on other collateral, inventory financing arrangements typically require the secured party to make advances against incoming inventory or release of old inventory as new inventory is received. Notice

39. WYO. STAT. § 34-21-941(e) (1977) (U.C.C. § 9-312(5) (1962)).

40. A purchase money security interest is one retained by a seller to secure payment of the purchase price or one granted to a lender to secure repayment of a loan made to acquire rights in the collateral. WYO. STAT. § 34-21-907 (1977) (U.C.C. § 9-107 (1972)).

41. WYO. STAT. § 34-21-941(c) and (d) (1977) (U.C.C. § 9-312(3) and (4) (1962)). Some additional exceptions to the general priority rule also exist. Most purchase money security interests in consumer goods (U.C.C. § 9-109(1)) may be perfected without filing a financing statement or taking possession of the collateral. U.C.C. § 9-302(1) (d). Moreover, under some circumstances, temporary perfection (for 21 days) of a security interest in instruments or negotiable documents is authorized without filing or possession.

42. The Official Code and amendments require perfection within 10 days after debtor's receipt of the collateral. Wyoming increased the perfection period to 20 days in 1981. 1981 WYO. SESS. LAWS ch. 103, § 1. Furthermore, section 9-301(2) grants purchase money security interests priority over intervening lien creditors if a financing statement is filed within 10 days of debtor's receipt of the collateral. Wyoming has also increased this period to 20 days. *Id.* Therefore this article will refer to the 20-day period.

enables the earlier secured party to withhold advances against inventory subject to a subsequent purchase money security interest which has priority.⁴³

Questions which arose respecting the subsection (3) notice requirements have been resolved by the amendments. The Code apparently permitted oral notification. The amendments require "notification in writing." The Code was silent respecting the required frequency of notification if more than one purchase money advance was contemplated. The amendments require notice only once during a five-year period.⁴⁴ The Code required notification of secured parties known to the purchase money secured party whether or not that secured party had filed a financing statement. The amendments require notice only to those secured parties who have filed. The change is consistent with the race to the record philosophy of avoiding disputes respecting whether, at the time of filing, a secured party had knowledge of another, unfiled security interest.⁴⁵

Additional revisions which affect both subsections (3) and (4) concern the purchase money secured party's interest in proceeds of the collateral. The Code omitted any reference to proceeds interests in either subsection, with the result that a secured party could obtain a security interest in proceeds.⁴⁶ The amendments expressly confirm this result with respect to subsection (4) security interests in collateral other than inventory; in these cases the secured party does not normally anticipate debtor's sale of the collateral.⁴⁷ Conversely, with respect to subsection (3) security interests in inventory, the purchase money secured party retains a security interest only in identifiable cash proceeds received by the debtor on or before delivery of goods to the buyer. Here it is expected that the inventory will be sold, ordinarily producing accounts or similar proceeds which may themselves constitute the basis for financing.⁴⁸

And now, back to the general first to file or perfect rule. Under the Code problems arose respecting the precise nature and extent of the priority that resulted from this general rule. Assume that First secured party files a financing statement sometime before making any advance to the debtor. Under the first to file rule, First should be secure in the knowledge that an advance made at any time after filing would take priority over an advance that might be made by Second secured party between the time of First's filing and First's advance. Unfortunately, the Code's rule operated only when both First's and Second's security interests were perfected by the filing.⁴⁹ If, when he made his intervening advance, Second perfected his security interest by taking possession of the collateral,⁵⁰ instead of filing, priority followed first perfection rather than first filing. First's security

43. U.C.C. § 9-312, Official Comment, para. 3 (1972).

44. The 5-year period was chosen by analogy to the duration for which a financing statement is effective. U.C.C. § 9-312, Reasons for 1972 Change, para. 2(a).

45. See *supra* text following note 17.

46. See WYO. STAT. §§ 34-21-922(a) (ii) and 34-21-935(b) (1977) (U.C.C. §§ 9-203(1) (b) and 9-306(2) (1962)).

47. See U.C.C. § 9-312, Comment 3 (1972).

48. *Id.*

49. WYO. STAT. § 34-21-941(e) (i) (1977) (U.C.C. § 9-312(5) (a) (1962)).

50. Security interests in collateral other than accounts and general intangibles may be perfected by possession. WYO. STAT. § 34-21-934 (1977) (U.C.C. § 9-305 (1962)).

interest could not be perfected until he gave value, at the time his loan was made.⁵¹ Second, having given value before First gave value, had the first perfected security interest and, therefore, priority.

This result seemed to be clearly dictated by the Code⁵² and one might ask what difference it makes who takes priority as long as the parties' relative priorities are clearly specified. First can protect himself by verifying that the debtor has possession of the collateral when First's advance is made.⁵³ The difficulty is that the Code is intended to adopt a notice filing system. Once First has verified the debtor's possession of the collateral, checked the financing statement file for prior filings and filed with respect to collateral, he should thereafter be secure in his first priority position.⁵⁴ By adopting a bifurcated rule, one for cases in which both interests are perfected by filing and another for all other cases, the Code breached the fortress of his security. The amendments reverse the priority in the above example of a security interest perfected by possession intervening between filing and the perfection of another security interest.⁵⁵ The amended 9-312(5) replaces the Code's bifurcated rule with a unified priority rule, granting priority to the first to file a financing statement or perfect. It places the burden on Second to check the financing statement file before lending, as a prudent lender should, and frees First from the duplicative burden of verifying debtor's possession of the collateral both when First files and when it later lends.

Perhaps the most vexing problem to besmirch the Code's first to file scheme pertained to the priority of future advances by a secured party whose security agreement omitted a clause providing for possible future advances. Here the problem arose when Second's security interest intervened between First's initial advance and a subsequent advance made by him. First obtained a security interest, filed a financing statement and loaned to debtor on March 1. First's security agreement omitted any mention of possible future advances, perhaps none were anticipated. Second obtained a non-purchase money security interest in the same collateral and loaned to debtor on April 1 (April fool). First made an additional loan to debtor on May 1. First's March 1 loan took priority over Second's April 1 loan because both perfected by filing and First filed first. But did First's May 1 loan take priority over Second's April 1 loan? The much discussed case of *Coin-O-Matic Service Co. v. Rhode Island Hospital Trust Co.*⁵⁶ held that, absent a future advance clause in the first security agreement, the second loan made by the first lender did not take priority over an intervening loan made by a second lender.⁵⁷ The decision was motivated by the court's

51. It is a prerequisite of perfection that the security interest has attached. WYO. STAT. § 34-21-932(a) (1977) (U.C.C. § 9-303(1) (1962)). The security interest cannot attach until value is given. WYO. STAT. § 34-21-923(a) (1977) (U.C.C. § 9-204(1) (1962)).

52. The Review Committee believed the result to be debatable. See U.C.C. § 9-312, Reasons for 1972 Change, para. 5.

53. The rules governing secured transactions are made for professional financiers who are assumed to be knowledgeable.

54. See U.C.C. § 9-312, Comment 5 (1972).

55. WYO. STAT. § 34-21-941(c) (Supp. 1983) (U.C.C. § 9-312(5) (1972)).

56. 3 UCC Rep. Serv. 1112 (R.I. Super. 1966).

57. In *Coin-O-Matic* the first financing statement was terminated and a new one filed when the second loan was made. The court did not base its holding on this ground, nor should this fact be crucial. Notice of the first lender's security interest in the collateral was available to the intervening lender when his loan was made. There was no indication that the second lender communicated with the first to determine if future advances might be made.

concern that a first financier could tie up assets of the debtor, thereby precluding him from obtaining future financing from anyone else.⁵⁸ The holding is curious in view of the fact that a lender who filed but made no loan until after the intervening loan was made would clearly prevail. Nothing in the Code's first to file rule seemed to require a different result simply because an earlier loan was made. Moreover, the provision approving authorization of future advances in a security agreement⁵⁹ was clearly permissive; it did not condition the lender's rights on the existence of a future advance clause in the agreement. Other courts have accorded priority to the future advance on facts similar to those in *Coin-O-Matic*.⁶⁰

The amendments add a new subsection (7) to section 9-312 to clarify the priority of future advances.⁶¹ Under this provision the priority of a future advance made while a security interest is perfected is the same as the priority of the first advance. One might assert that the *Coin-O-Matic* result could still be reached under this provision because, by using the term "future advances," subsection (7) refers to advances provided for in the original security agreement, as authorized by the statute.⁶² That this was not the drafters' intent is established by the Official Comments.⁶³

In drafting subsection (7) to clarify the intended priority of future advances, the drafters may have inadvertently created a new problem. The subsection limits its protection to future advances made while a security interest is perfected by filing or possession. Under the amendments, as under the Code, one prerequisite to perfection is that "value has been given" by the secured party.⁶⁴ The provision causes no difficulty as applied to the above example of the First and Second secured parties because, by making the first loan, First has given value. If, however, the hypothetical facts are varied to assume that First's first loan, made on March 1, is repaid in full before his May 1 loan is made, an interpretive question arises. Is First's second loan (the future advance) made "while [its] security interest is perfected?" First's security interest was perfected when it made the first loan. Did it cease to be perfected when that loan was repaid? If so, was the second loan (the future advance), advanced while there was no value given by First which remained in the debtor's hands, made while the security interest was not perfected?

58. This rationale has been branded fallacious for at least two reasons. First, the alleged protection afforded a debtor by *Coin-O-Matic* can be circumvented simply by including a future advance clause in the security agreement. Second, the court seemed to misunderstand commercial practice. Lenders rarely knowingly make loans which will be in a second secured position. J. WHITE & R. SUMMERS, *supra* note 16, at 1038-40.

59. WYO. STAT. § 34-21-923(e) (1977) (U.C.C. § 9-204(5) (1962)).

60. See cases cited in J. WHITE & R. SUMMERS, *supra* note 16, at 1039 n.4.

61. Subsection (7) provides: If future advances are made while a security interest is perfected by filing, the taking of possession, or under Section 8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

62. See WYO. STAT. § 34-21-923(c) (Supp. 1983) (U.C.C. § 9-204(3) (1972)).

63. See U.C.C. § 9-312, Comment 7 (1972).

64. WYO. STAT. §§ 34-21-922(a) (ii) and 34-21-932(a) (Supp. 1983) (U.C.C. §§ 9-203(1) (b) and 9-303(1) (1972)); WYO. STAT. §§ 34-21-923(c) and 34-21-932(a) (1977) (U.C.C. §§ 9-204(1) and 9-303(1) (1962)).

Clearly the phrase "while a security interest is perfected" in the new subsection refers to a perfected security interest which predates the future advance, not one that is perfected by the making of that advance. Otherwise the independent requirement for a perfected security interest seems superfluous. If a continuing effective financing statement or continued possession of the collateral were the only condition of priority for the future advance, the provision could have said so. The phrase apparently contemplates an unpaid balance of a prior loan still outstanding when the future advance is made. Yet no sound reason appears to support a distinction between future advances made before and those made after repayment of the first advance. Future advances made when a prior advance had been reduced to \$1.00, or presumably even to \$.01, would enjoy priority retroactive to the original filing or possession date, but those made after a prior advance had been repaid in full would not. Furthermore, so long as an effective financing statement survives or possession continues, Second (the intervening lender) may learn of First's security interest and may inquire about possible future advances. If First assures Second that none will be made, Second should be safe in making his advance; otherwise, Second's advance is made at his peril.⁶⁵

In view of the apparent desirability of granting the same priority to future advances irrespective of whether or not a prior advance remains outstanding, perhaps the prerequisite to perfection that "value has been given" should be accorded its literal interpretation. Value has been given when First's first loan was made; it is irrelevant that the value given is no longer outstanding.⁶⁶ Although they did not tell us so, the drafters may have intended this reading of the amendments. The Code's value requirement specified that "a security interest cannot attach until . . . value is given."⁶⁷ If carried forward into the amendments, this formulation may have been even more susceptible than its replacement ("value has been given") to the interpretation that the value given must be outstanding at the time of a future advance. An implication may be derived from this change that the drafters intended to protect the future advance made after a prior advance has been repaid. Furthermore, the Review Committee's discussion of prior case law seems to disapprove the opposite result.⁶⁸

65. Whether Second would in fact be protected against First's priority for a future advance made in violation of an assurance is not entirely clear. Section 9-208 directs that a secured party must provide certain information to his debtor and is liable for loss from his failure to comply. That section does not include information respecting future advances, which may imply that no liability would exist. If the secured party did provide a requested assurance, however, he may be estopped from asserting a future advance priority over an intervening advance made in reliance on that assurance. Perhaps speculation on the effect of an assurance is itself fruitless. Lenders rarely knowingly make secured loans subject to a prior security interest. See *supra* note 58 and accompanying text. The conflict will probably arise only when Second secured party is ignorant of First's security interest.

66. This interpretation would not obviate the necessity for an effective financing statement or the secured party's possession of the collateral since they are independent prerequisites of perfection. See WYO. STAT. §§ 34-21-931(a), 34-21-932(a) and 34-21-941 (e) (i) (Supp. 1983) (U.C.C. §§ 9-302(1), 9-303(1) and 9-312(5) (a) (1972)).

67. WYO. STAT. § 34-21-923(a) (1977) (U.C.C. § 9-204(1) (1962)).

68. Discussing Coin-O-Matic Service Co. v. Rhode Island Hospital Trust Co., which it disapproved, the Review Committee suggested that the result was in part predicated on the repayment of the first loan. See Draft No. 2, *supra* note 4, at 32.

A section 9-312(5) problem involving priority of security interests in proceeds, which has been dubbed "largely academic but truly intriguing,"⁶⁹ was also identified under the Code.⁷⁰ Assume that First secured party obtained a security interest in debtor's accounts, with financing statement filed. After First's filing, Second secured party obtained a security interest, with appropriate filing, in debtor's inventory and its proceeds—the proceeds being the *accounts* that were subject to First's security interest. Which one had priority? Section 9-312(5) (a), protecting the first to file, supported First's priority because First filed first. Section 9-306(3), however, provided that a proceeds interest "is a continuously perfected security interest if the interest in the original collateral was continuously perfected . . ." Since Second's original collateral was inventory, not accounts, he might contend that his "continuously perfected security interest" in the inventory and proceeds took priority over the accounts interest of First. First probably should prevail because 9-306 did not set priorities but merely prescribed that Second's security interest continued perfected in the proceeds.⁷¹ Priorities should, therefore, be determined by the priority provisions of 9-312(5).⁷² Further, if Second properly polices its inventory financing arrangement, Second should require debtor to pay it from the proceeds of debtor's assignment of the accounts to First, the accounts financier.⁷³

The amendments appear more clearly to resolve the conflict in favor of First. Section 9-312(3), governing the priority of a purchase money security interest in inventory, accords that interest priority only "in identifiable cash proceeds received on or before the delivery of the inventory to a buyer . . ."⁷⁴ This clearly excludes accounts which are not cash proceeds.⁷⁵ Although this provision is designed to govern conflicts between two security interests which originated in inventory and not between one originating in inventory and the other originating in accounts, it suggests by analogy that the accounts interest should prevail. This result is confirmed by the Reasons for 1972 Change.⁷⁶ Moreover, section 9-312(6) fixes the filing or perfection date respecting proceeds as the filing or perfection date respecting original collateral. Under the 9-312(5) first to file or perfect rule, therefore, an earlier filed accounts interest would enjoy priority. Conversely, if filing of the inventory security interest were first in time, the proceeds interest in the resulting accounts would take priority over the accounts

69. J. WHITE & R. SUMMERS, *supra* note 16, at 1040.

70. See Henson, "Proceeds" Under the Uniform Commercial Code, 65 COLUM. L. REV. 232, 239 (1965).

71. See WYO. STAT. § 34-21-935(b) (1977) (U.C.C. § 9-306(2) (1962)).

72. This conclusion is not expressed by but could be inferred from J. WHITE & R. SUMMERS, *supra* note 16, at 1040. *Contra* Henson, "Proceeds" Under the Uniform Commercial Code, 65 COLUM. L. REV. 232, 240 (1965).

73. *Cf.*, Associates Discount Corp. v. Old Freeport Bank, 421 Pa. 609, 220 A.2d 621 (1966) (where chattel paper arising from sale of inventory was sold by debtor, held in view of 9-308 that inventory financier relegated to security interest in proceeds received for chattel paper).

74. WYO. STAT. § 34-21-941(c) (Supp. 1983) (U.C.C. § 9-312(3) (1972)).

75. See WYO. STAT. § 34-21-935(a) (Supp. 1983) (U.C.C. § 9-306(1) (1972)).

76. The Review Committee asserts that, since accounts financing is more important to the economy than inventory financing, the law should make accounts financing certain as to its position. Once filing of an accounts interest occurs, therefore, it should take a priority over a later filed inventory and proceeds interest. U.C.C. § 9-312, Reasons for 1972 Change, para. (4).

security interest. A search of filed financing statements will alert each type of financier to possible prior interests in accounts.

Secured Party v. Secured Party (Inventory Financier v. Chattel Paper and Instrument Financier)

In a vein somewhat similar to the conflict between the inventory and the accounts security interests, conflicts may also arise between the inventory financier and the financier of chattel paper⁷⁷ or instruments.⁷⁸ Chattel paper or instruments are often received by sellers in payment for relatively expensive goods, such as automobiles, boats, airplanes and others, for which the buyer wishes to pay over time. Some sellers finance their inventory with one financier and the chattel paper or instruments received upon the inventory's sale with another. Recognizing the importance of financing arrangements secured by chattel paper produced upon the sale of inventory, the drafters sought to facilitate financing of this sort.⁷⁹ To accomplish this facilitation the Code accorded priority over some preexisting security interests to two classes of purchasers⁸⁰ who took possession of collateral of this type. Purchasers without knowledge of a security interest in a specific chattel paper or non-negotiable instrument gained priority over a security interest perfected by permissive filing or temporarily perfected without filing. Purchasers of chattel paper were also blessed with priority in spite of their knowledge of a security interest in specific chattel paper when the security interest was claimed merely as proceeds of inventory.⁸¹ While retaining the Code's basic treatment, the amendments expand the protection accorded both classes of purchasers to cover all instruments, whether negotiable or non-negotiable, in addition to chattel paper.⁸²

Some confusion is created by the amendments' provision which predicates protection of purchasers on whether the inventory financier claims the collateral "merely as proceeds." The drafters evidently intended that all security interests are "claimed merely as proceeds," unless the inventory financier "by some new transaction with the debtor acquired a specific interest in the chattel paper" and that the lender must have "given value against the paper."⁸³ The term "merely as proceeds," however, does not appear to be so limited. A specific reference to chattel paper and instruments in a security agreement and financing statement might imply the lender's reliance on this collateral independently and not "merely as proceeds."⁸⁴ One recommended interpretation of this phrase would permit

77. "Chattel paper" includes the evidence of debt and the security interest. *See* WYO. STAT. § 34-21-905(a) (i) (Supp. 1983) (U.C.C. § 9-105(1) (b) (1972)).

78. "Instrument" includes a negotiable instrument and certain evidences of the right to payment. *See* WYO. STAT. § 34-21-905(a) (ix) (Supp. 1983) (U.C.C. § 9-105(1) (i) (1972)).

79. *See* U.C.C. § 9-308, Comment 1 (1972).

80. "Purchaser" includes a secured party. WYO. STAT. § 34-21-120(a) (xxxii) and (xxxiii) (1977) (U.C.C. § 1-201(32) and (33) (1962)).

81. *See* WYO. STAT. § 34-21-937 (1977) (U.C.C. § 9-308 (1962)). As used in this section, "permissive filing" refers to perfection of a security interest in chattel paper by filing.

82. WYO. STAT. § 34-21-937 (Supp. 1983) (U.C.C. § 9-308 (1972)). In some circumstances the section protects purchasers with knowledge of a prior security interest. These purchasers could not be holders in due course of an instrument. U.C.C. § 9-308, Reasons for 1972 Change.

83. U.C.C. § 9-308, Comments 2 and 3 (1972).

84. (Emphasis added). *See* International Harvester Credit Corp. v. Associates Financial Services Co., Inc., 133 Ga. App. 488, 211 S.E.2d 430 (1974) (inclusion of "proceeds" in financing statement held not to prevent claim from being "merely proceeds" claim).

the lender to testify that he in fact relied upon these proceeds to establish that he did not claim them "merely as proceeds."⁸⁵ The provision fails to achieve its goal of promoting this financing activity, however, if the prospective purchaser must determine the inventory financier's intent in order to apply the "merely as proceeds" test. The amendments provision also sets a trap for unwary inventory financiers who believe that a specific claim to this type collateral will protect them against subsequent financiers.

If the drafters intended that a subsequent financier have priority over any inventory financier who does not, by a new transaction, make an advance against the chattel paper or instrument, the statutory provision could have said so. Beyond this concern, however, neither the justification nor the necessity is apparent for extraordinary protection of purchasers when an inventory financier claims chattel paper or instruments merely as proceeds. What if a first financier makes loans in amounts exceeding those which would have been made in reliance on inventory alone? Its willingness to make these loans might be predicated on the expectation that repayment will be secured also by chattel paper and instruments received upon the sale of the debtor's inventory. Notwithstanding this expectation, is its security interest in these proceeds "merely" a proceeds claim? The Comments suggest that it is, but this interpretation may unjustifiably subordinate the first financier's security interest to one obtained by a subsequent chattel paper or instruments financier. Perhaps the drafters concluded that loans of this type simply are not made to borrowers likely to utilize chattel paper or instruments as collateral for additional financing from a second financier. If so, the Comments are silent respecting this conclusion.

Even if industry practice precludes the likelihood that a first financier may initially lend more in expectation of chattel paper or instruments to be received upon sale of inventory, the practical necessity of the merely as proceeds provision seems questionable. Presumably the drafters intended to enable debtors who finance their inventory to utilize chattel paper and instruments as collateral for additional financing from a second financier. But the merely as proceeds provision is necessary to accomplish this purpose only when a purchaser knows that the specific paper or instrument is subject to a security interest.⁸⁶ The Comments admonish financiers to

85. (Emphasis added). See J. WHITE & R. SUMMERS, *supra* note 16, at 1080. One court has held that lender's failure to enter into a new transaction with the debtor or to place substantial reliance on the chattel paper results in a claim merely as proceeds. The opinion implies that the inventory financier would not hold a mere proceeds claim if the debtor were required to turn over chattel paper to it, even if no new value were advanced against the old paper. *Rex Financial Corp. v. Great Western Bank & Trust*, 23 Ariz. App. 286, 532 P.2d 558 (1975) (decided under 1962 U.C.C.).

86. Lacking that knowledge, a purchaser is protected even if he knows of a security interest in chattel paper or instruments generally. See WYO. STAT. § 34-21-937(a) (i) (Supp. 1983) (U.C.C. § 9-308(a) (1972)). If it is established that the inventory financier claims the chattel paper and instruments merely as proceeds, however, the mere proceeds provision does obviate the need to determine whether the chattel paper or instruments financier had knowledge of the inventory financier's security interest. Avoidance of knowledge disputes is consistent with other provisions in which the drafters have sought to avoid litigation of disputes over knowledge of a security interest. Compare WYO. STAT. §§ 34-21-930(a) (ii) and 34-21-941(e) (Supp. 1983) (U.C.C. §§ 9-301(1) (b) and 9-312(5) (1972)). Knowledge disputes under this section could be minimized by limiting the inventory financier's protection to cases in which it either takes possession of or stamps notice of the security interest on the paper.

stamp or note their interest on chattel paper left in a debtor's possession, thereby notifying a potential second financier of that interest.⁸⁷ It seems unlikely that a prospective financier would invite a lawsuit by purchasing or lending on the security of collateral which he knew was claimed by another. If this assumption is accurate, the merely as proceeds provision will not often enable debtors to obtain additional financing from a second financier who knows of the first financier's claim. In view of the provision's potential to create confusion, perhaps the amendments would be improved by its deletion.

PERFECTION OF SECURITY INTERESTS

As has been evident throughout the discussion of priorities, perfection of security interests is a central concept in the law of secured transactions. A security interest which has attached but is not perfected will entitle the secured party, as against a debtor in default, to repossess and sell collateral to recover payment of the secured debt. Unless the security interest is perfected, however, the secured party's rights in collateral will be subordinate to the rights of lien creditors (including, most importantly, a trustee in bankruptcy and the tax collector), buyers and other secured parties.⁸⁸ Both the Code and amendments envision that security interests will be perfected by filing a financing statement,⁸⁹ but also permit the secured party to perfect by taking possession of the collateral in most cases,⁹⁰ with a few exceptions, they both require that possession be taken to perfect a security interest in money or instruments, other than instruments which constitute part of chattel paper.⁹¹ Filing or possession by the secured party enables anyone making appropriate inquiry to determine that a security interest exists. In a few cases the Code and amendments dispense with the requirements because the cost outweighs the likely benefit. Probably the most important of the exceptions is for purchase money security interests in consumer goods other than motor vehicles and fixtures.⁹² Alternative perfection provisions are also provided to recognize federal laws requiring recording of security interests and the possibility that states may enact

87. See U.C.C. § 9-308, Comment 3 (1972). Except for the 10-day perfection in proceeds under section 9-306(3), security interests in instruments not a part of chattel paper must be perfected by possession. WYO. STAT. § 34-21-933(a) (Supp. 1983) (U.C.C. § 9-304(1) (1972)).

88. Although, when a financing statement is filed, priority over other security interests dates from filing, that priority is meaningless until a security agreement is signed, value given and the debtor has rights in collateral. Upon the occurrence of the last of these three events, the security interest becomes perfected if a financing statement is filed. See WYO. STAT. §§ 34-21-922(a) and 34-21-932(a) (Supp. 1983) (U.C.C. §§ 9-203(1) and 9-303 (1) (1972)).

89. WYO. STAT. § 34-21-931(a) (1977 & Supp. 1983) (U.C.C. § 9-302(1) (1962 & 1972)).

90. WYO. STAT. § 34-21-934 (1977 & Supp. 1983) (U.C.C. § 9-305 (1962 & 1972)). A security interest in accounts and general intangibles may be perfected only by filing. See WYO. STAT. § 34-21-931(a) (1977 & Supp. 1983) (U.C.C. § 9-302(1) (1962 & 1972)).

91. (WYO. STAT. § 34-21-933(a) (1977 & Supp. 1983) U.C.C. § 9-304(1) (1962 & 1972)). The reference to "money" was added in 1972. Temporary perfection without possession is possible for 21 days under section 9-304(4) and (5) (1962 and 1972) (WYO. STAT. § 34-21-933(d) and (e) (1977 & Supp. 1983)) and for 10 days as to proceeds under section 9-306(2) and (3) (1962 & 1972) (WYO. STAT. § 34-21-935(b) and (c) (1977 & Supp. 1983)).

92. See WYO. STAT. § 34-21-931(a) (iv) (1977 & Supp. 1983) (U.C.C. § 9-302(1) (d) (1962 & 1972)). Other exceptions to the filing requirement are also listed. See WYO. STAT. § 34-21-931(a) (Supp. 1983) (U.C.C. § 9-302(1) (1972)).

alternative perfection requirements with respect to property governed by a certificate of title.⁹³

The amendments make some changes in the Code's exceptions to the filing requirements and in the federal perfection reference. They delete an exception from the filing requirement for perfection of a purchase money security interest in farm equipment having a purchase price not over \$2,500.⁹⁴ Although the exception was intended to facilitate farmers' use of this equipment as collateral, it has been found to produce the opposite result⁹⁵ since lenders could not determine from the record whether prior security interests existed in this equipment. The amendments insert an exception which exempts from the filing requirement security interests created by assignment of a beneficial interest in a trust or decedent's estate.⁹⁶ Assignees of these interests do not ordinarily think of these assignments as subject to Article 9. Failure to comply with a filing requirement might, therefore, render many of these assignments unperfected against third party claimants.⁹⁷

Both the code and amendments except from the filing requirement purchase money security interests in consumer goods⁹⁸ and except from the exception (require filing to perfect) security interests in motor vehicles and in fixtures. The Code referred to motor vehicles required to be licensed; the amendments changed "licensed" to "registered." Presumably, in some states, some types of motor vehicles must be registered but not licensed. Further, the amendments revise the treatment of fixtures to require fixture filing only where necessary to priority over conflicting real estate interests.⁹⁹ Priority over conflicting interests in fixtures other than conflicting real estate interests may be obtained by an ordinary filing. The Official amendments add a new provision to except from filing assignments for benefit of creditors and subsequent transfers by the assignee.¹⁰⁰ Wyoming omitted this new provision.

The Code exempted from its financing statement filing requirements security interests as to which registration or filing was governed by a United States statute.¹⁰¹ The amendments expand this provision to exempt from the filing requirements security interests as to which registration, filing or certificate notation, or filing in a place different from that specified by the amendments, is required by United States statute or treaty.¹⁰² The amendments also revise Code provisions requiring notation of security

93. See WYO. STAT. § 34-21-931(c) and (d) (1977 & Supp. 1983) (U.C.C. § 9-302(3) and (4) (1962 & 1972)).

94. The deleted provision was WYO. STAT. § 34-21-931(a) (iii) (1977) (U.C.C. § 9-302(1) (c) (1962)).

95. U.C.C. § 9-302, Reasons for 1972 Change.

96. See WYO. STAT. § 34-21-931(a) (iii) (Supp. 1983) (U.C.C. § 9-302(1) (c) (1972)).

97. U.C.C. § 9-302, Reasons for 1972 Change.

98. WYO. STAT. § 34-21-931(a) (iv) (1977 & Supp. 1983) (U.C.C. § 9-302(1) (d) (1962 & 1972)).

99. A fixture filing is required to obtain priority over real estate interests when goods, because of their relation to real estate, become subject to claims of holders of those interests. See *infra* text accompanying notes 281-84 for a discussion of fixture filings.

100. U.C.C. § 9-302(1) (g) (1972).

101. WYO. STAT. § 34-21-931(c) (1977) (U.C.C. § 9-302(3) (a) (1962)).

102. WYO. STAT. § 34-21-931(c) (i) and (d) (Supp. 1983) (U.C.C. § 9-302(3) (a) and (4) (1972)).

interests on certificates of title. These provisions are discussed below in connection with motor vehicle security interests.¹⁰³

Some additional changes in the provisions governing the filing, content and duration of effectiveness of financing statements merit brief description. The Wyoming Code contains its own unique provisions respecting the place of filing. Financing statements with respect to most collateral must be filed in the county clerk's office in the county in which the debtor's principal place of business or residence is located. If the debtor resides out-of-state, filing must be in the Wyoming Secretary of State's office. With respect to fixtures, filing must be in the office where a mortgage on the real estate concerned would be filed or recorded. Filing regarding accounts must be made in both the county clerk's office where the debtor's principal place of business is located and in the Office of the Secretary of State.¹⁰⁴ These basic requirements have not been significantly affected by the amendments.¹⁰⁵ Presumably the emphasis on county filing reflects the perceived inconvenience to people in many parts of the state if financing statement files are maintained only in the Secretary of State's office.

The Official Code offered two alternatives respecting the effect on perfection of a change in the county of debtor's residence or place of business or of the collateral's location, whichever controlled the original filing.¹⁰⁶ Wyoming chose the second alternative under which the filing remained effective for four months after that change and also continued in effect thereafter if a financing statement was filed in the new county within four months. Filing after the four-month period was effective only prospectively from the filing date.¹⁰⁷ The provision excepts motor vehicles from its refiling requirement.¹⁰⁸ The Wyoming amendments effect a change in philosophy respecting this refiling requirement by adopting the first alternative Official Code provision. It requires no refiling upon either change of location within a state or change of use.¹⁰⁹ This revision shifts the burden of protecting against loss from the secured party to persons dealing with the debtor and collateral at their new location. These persons must determine

103. See *infra* text accompanying notes 147-52.

104. WYO. STAT. § 34-21-950(a) (1977). The required place of filing when a debtor maintains his principal place of business in the state but resides elsewhere was unclear. This may be an infrequent occurrence.

105. A new subsection provides that an organization's residence is its place of business, or, if it has more than one, its chief executive office. WYO. STAT. § 34-21-950(f) (Supp. 1983) (U.C.C. § 9-401(6) (1972)). The subsection was added to deal primarily with filing against farmers under the second and third alternative filing provisions which have not been adopted in Wyoming. See U.C.C. § 9-401, Reasons for 1972 Change.

106. U.C.C. § 9-401(3) (1962).

107. WYO. STAT. § 34-21-950(c) (1977) (U.C.C. § 9-401(3) (2d alternative) (1962)). The four-month refiling requirement upon movement among counties within the same state is patterned on a similar requirement for refiling upon movement of the collateral from one state to another. See U.C.C. § 9-401, Comment 6 (1972).

108. WYO. STAT. § 34-21-950(c) (1977). Unlike the Official Code, the Wyoming Code requires filing, as well as title certificate notation, to perfect security interests in motor vehicles. For a discussion of Wyoming motor vehicle security interests, see *infra* text accompanying notes 147-92. No exception for motor vehicles appears in the official version. If the drafters of the Wyoming version considered refiling unnecessary in view of the requirement for notation of the security interest on the certificate, this seems inconsistent with application of a filing requirement to motor vehicles.

109. WYO. STAT. § 34-21-950(c) (Supp. 1983) (U.C.C. § 9-401(3) (1st alternative) (1972)). The Official amendments made no change in the two alternatives as they appeared in the Official Code.

that the change of location has occurred and then search the financing statement file in both the new and the original county.¹¹⁰

The Wyoming amendments adopt the special transmitting utility provision which first appeared in the Official amendments. The provision requires filing only in the office of the Secretary of State regardless of the type of collateral subject to the security interest.¹¹¹ Since transmitting utilities may own fixtures in many different counties, this provision avoids the necessity for multiple filings.¹¹² The impact of this amendment in Wyoming will not be great even though it effects significant amendments in the Wyoming Code. Prior to 1983, Wyoming had adopted a Transmitting Utility Act which provided for perfection of security interests in collateral of a transmitting utility by a single filing under the Wyoming Code in the Secretary of State's office.¹¹³ The Wyoming amendments do not repeal the Act, nor is it clear that the Act is implicitly repealed. The amendments and the Act are sufficiently similar, however, that no substantive conflict is likely.¹¹⁴

Several changes have been made in the requisites for the content and filing of the financing statement. The amendments delete a Code requirement for signature of financing statements by the secured party.¹¹⁵ Only the debtor must now sign. Signature problems may remain, however, when it becomes necessary to file a financing statement after the original transaction occurred. By then the debtor may be either unavailable or unwilling to sign a new financing statement. The Code provides for some circumstances in which a financing statement signed by the secured party only may be filed.¹¹⁶ Other circumstances are added by the amendments.¹¹⁷ The solution provided with respect to one of these circumstances seems

110. The practical effect of the change may not be as great as it seems. Since the security interest remained perfected for four months without refiling under the Wyoming Code, it also required that, during the four-month period, persons dealing with the debtor and collateral in the new location search in both the new and the original county.

111. WYO. STAT. § 34-21-950(e) (Supp. 1983) (U.C.C. § 9-401(5) (1972)).

112. In the absence of a provision of this sort, a filing with respect to fixtures might be required in many counties. Fixture filings must be made in the mortgage records in the county where the real estate in which the goods are or are to become fixtures is located. WYO. STAT. § 34-21-950(a) (ii) (1977) (U.C.C. § 9-401(1) (b) (1962)). A fixture filing must be made to assure priority over real estate interests whenever goods are or are to become so related to real estate that an interest in them arises under real estate law. WYO. STAT. § 34-21-942 (Supp. 1983) (U.C.C. § 9-313 (1972)).

A transmitting utility includes persons primarily engaged in railroad, electric or electronic communications transmission, transmission or production and transmission of electricity, sewer service and other similar businesses. WYO. STAT. § 34-21-905(a) (xiv) (Supp. 1983) (U.C.C. § 9-105(1) (n) (1972)).

113. WYO. STAT. §§ 37-4-101 to -104 (1977).

114. Although the definition of "transmitting utility" is somewhat broader in the amendments (WYO. STAT. § 34-21-905(a) (xiv) (Supp. 1983) (U.C.C. § 9-105(1) (n) (1972)) than in the Transmitting Utility Act, (WYO. STAT. § 37-4-101(a) (ii) (1977)), the definitions do not seem to conflict. The Act provides that, unless displaced by its specific provisions, the Wyoming code supplements those provisions.

115. See U.C.C. § 9-402, Reasons for 1972 Change.

116. These circumstances include change of location of collateral to a new state and perfection as to proceeds of collateral. See WYO. STAT. § 34-21-951(b) (1977) (U.C.C. § 9-402(2) (1962)).

117. These include change of debtor's location to a new state, and change of name, identity or corporate structure of the debtor. WYO. STAT. § 34-21-951(b) (i) and (iv) (Supp. 1983) (U.C.C. § 9-402(2) (a) and (d) (1972)).

unfortunate. This addition permits filing of a financing statement signed only by the secured party to perfect a security interest as to which the filing has lapsed.¹¹⁸ The requirement that the secured party wait until lapse before filing will adversely affect the priority of his security interest. The new financing statement will be effective only from the date of filing, forfeiting the secured party's priority against intervening lien creditors and purchasers.¹¹⁹ The secured party should have been authorized to file a continuation statement before the financing statement lapsed and thereby preserve his priority.

Under the Code disputes arose respecting the effectiveness of financing statements filed to perfect security interests in collateral of debtors using trade names.¹²⁰ Was it necessary or permissible to identify the debtor by his trade name? Was it required that the debtor's real name be included? Some courts held that inclusion of the trade name alone did not comply with the statutory requirement that the financing statement name the debtor.¹²¹ The amendments specify that the financing statement sufficiently shows a debtor's name if it gives the individual, partnership or corporate name. A trade name or names of partners may be added but are not required.¹²² Use of a trade name alone, while not contemplated by the drafters,¹²³ might be effective if that name sufficiently identifies the debtor so that one searching the financing statement index should recognize the trade name as the debtor.¹²⁴

Additional questions arose under the Code respecting the necessity for refileing when a debtor changed its name, identity or corporate structure. The amendments require refileing in these circumstances if the change renders the original financing statement seriously misleading. Refiling, when necessary, is required only to perfect the security interest in collateral acquired more than four months after the change; the original filing remains effective as to collateral acquired before the change or within the four-month period. By contrast, transfer of collateral by the debtor does not require a new filing even though the secured party knows of, or consents to, the transfer.¹²⁵ The burden is on persons dealing with a transferee to determine the identity of his transferor and check the financing statement file for security interests in the collateral.¹²⁶

118. WYO. STAT. § 34-21-951(b) (iii) (Supp. 1983) (U.C.C. § 9-402(2) (c) (1972)). The effectiveness of a financing statement lapses five years after filing unless a continuation statement is filed. WYO. STAT. § 34-21-952(b) (Supp. 1983) (U.C.C. § 9-403(2) (1972)).

119. See WYO. STAT. § 34-21-952(b) (Supp. 1983) (U.C.C. § 9-403(2) (1972)). The priority between secured parties in this situation is not entirely clear. The governing provision specifies that a lapsed financing statement renders the security interest unperfected as against any person who became a purchaser or lien creditor before lapse. The provision does not similarly address effectiveness as against secured parties. The term "purchaser," however, includes holders of security interests. WYO. STAT. § 34-21-120(a) (xxxii) and (xxxiii) (1977) (U.C.C. § 1-201(1) (32) and (33) (1962)).

120. *E.g.*, *In re Leichter*, 471 F.2d 785 (2d Cir. 1972); *In re Hill*, 363 F. Supp. 1205 (N.D. Miss. 1973).

121. *Id.*

122. WYO. STAT. § 34-21-951(g) (Supp. 1983) (U.C.C. § 9-402(7) (1972)).

123. See U.C.C. § 9-403(5) (1972) (not adopted in Wyoming); U.C.C. § 9-402, Comment 7 (1972).

124. A substantially complying financing statement is effective even though it contains minor errors not seriously misleading. WYO. STAT. § 34-21-951(h) (Supp. 1983) (U.C.C. § 9-402(8) (1972)).

125. WYO. STAT. § 34-21-951(g) (Supp. 1983) (U.C.C. § 9-402(7) (1972)).

126. U.C.C. § 9-402, Comment 8 (1972).

The provision just mentioned, relieving the secured part of any obligation to refile upon transfer of the collateral, has provoked dispute over continued perfection in some circumstances. Upon request by Debtor, Secured consents to the sale of collateral to Buyer, who is not a buyer in the ordinary course of business.¹²⁷ No one mentions continuation of the security interest. Does that interest continue after the sale? The amendments provision, which obviates refileing even if a secured party consents to transfer of the collateral, may imply that the security interest continues.¹²⁸ In another provision, however, the amendments specify that "a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless *the disposition was authorized* . . . in the security agreement or otherwise, . . ."¹²⁹ This latter provision omits any independent requirement for specific release of the security interest. It directly provides that a security interest survives only if no authorization of transfer is given while the refileing provision simply supports an inference that the security interest survives in spite of consent to transfer. The apparent inconsistency between the two provisions could be reconciled by reading the refileing provision's consent reference to apply to cases in which a consenting secured party expressly provides for continuation of the security interest. Conversely, it could be reconciled by reading into the continuation provision a requirement for specific release of the security interest.¹³⁰ The latter approach recognizes that often consent to transfer is needed solely to avoid default which could accelerate the due date of a debt. This argues that consent should not impliedly release the collateral from a security interest. The former approach assumes that, while directing his attention to the consent to transfer, the secured party can specifically provide for continuation of his interest if desired. In many cases the secured party will be more knowledgeable about secured transactions law than a buyer. It seems preferable therefore to require that the secured party expressly protect his rights, thereby avoiding surprise of one who may mistakenly believe that a consent releases the security interest.

The amendments effect several changes in the duration of filing and the effect of lapsed filing. They delete a provision limiting the period of effectiveness for a financing statement to sixty days after the maturity date of an obligation when the financing statement specifies that date.¹³¹ Except for a financing statement respecting collateral of a transmitting utility and a real estate mortgage effective as a fixture filing,¹³² the amendments make all financing statements effective for five years unless a termination statement is filed. The drafters believe that this will facilitate renewals and

127. Most buyers of goods in the ordinary course of business take them free of a security interest created by the seller. WYO. STAT. § 34-21-935(b) (Supp. 1983) (U.C.C. § 9-307(1) (1972)).

128. See *Matto's Inc. v. Olde Colony Place*, 30 U.C.C. Rep. Serv. 1750 (Bankr. ED Mich. 1981).

129. U.C.C. § 9-306(2) (1972) (WYO. STAT. § 34-21-935(b) (Supp. 1983)). (Emphasis supplied).

130. The *Matto's* court chose this reconciliation. See *supra* note 129.

131. See WYO. STAT. § 34-21-952(b) (1977) (U.C.C. § 9-403(2) (1962)). Unless the security agreement itself is filed, the financing statement would rarely specify the maturity date of an obligation.

132. A financing statement respecting collateral of a transmitting utility may be made effective until a termination statement is filed. A mortgage effective as a fixture filing remains an effective fixture filing until released or satisfied of record or otherwise terminated as to the real estate. WYO. STAT. § 34-21-952(f) (Supp. 1983) (U.C.C. § 9-403(6) (1972)).

extensions without concern for premature expiration of a financing statement.¹³³ Another change tolls the expiration of the five-year period during insolvency proceedings. A financing statement that would have expired during the proceeding remains effective until sixty days thereafter.¹³⁴

Commentators had disagreed respecting whether a lapse of a financing statement terminated an existing priority over an intervening purchaser, lien creditor or secured party.¹³⁵ Since the intervening party had originally acquired his interest subject to the security interest, some argued that the lapse should not affect the priority, but should simply render the security interest prospectively unperfected. The amendments opt for the opposite result, specifying that the lapse renders the security interest "unperfected as against a person who became a purchaser or lien creditor" before lapse.¹³⁶ The term "purchaser" also includes secured parties.¹³⁷

The Code required a secured party to provide the debtor with a termination statement upon debtor's written request whenever no outstanding secured obligation or commitment to make advances existed.¹³⁸ The amendments add that the secured party must supply a termination statement for each filing officer with whom a financing statement was filed.¹³⁹ Perhaps more significantly, the amendments add a new provision requiring that, when collateral is consumer goods, the secured party shall file a termination statement either within one month, or ten days following written demand, after there is no outstanding secured obligation or commitment to make advances.¹⁴⁰ The automatic one-month filing requirement, which mandates filing even in the absence of demand by the debtor, recognizes that many consumers will not understand the importance of clearing the files.¹⁴¹ Failure to comply with these requirements for providing or filing termination statements subjects the third party to liability for \$100 plus the amount of any loss incurred by debtor as a result of the failure.¹⁴²

The Code and amendments both provide that Article 9 applies "to any transaction (regardless of form) which is intended to create a security interest in personal property . . ." ¹⁴³ Disputes often arise respecting

133. U.C.C. § 9-403, Reasons for 1972 Change.

134. WYO. STAT. § 34-21-952(b) (Supp. 1983) (U.C.C. § 9-403(2) (1972)). The drafters suggest that a secured party who expects the debtor to continue in existence (operation?) after the proceeding should file a continuation statement "on the normal schedule" to preserve the filing. U.C.C. § 9-403, Reasons for 1972 Change. Filing during a bankruptcy proceeding might be barred by the automatic stay (11 U.S.C. § 362(a) (4) (1982)) if it is considered an act to perfect the security interest.

135. See U.C.C. § 9-403 Reasons for 1972 Change.

136. WYO. STAT. § 34-21-952(b) (Supp. 1983) (U.C.C. § 9-403(2) (1972)).

137. See WYO. STAT. § 34-21-120(a) (xxxii) and (xxxiii) (1977) (U.C.C. § 1-201(32) and (33) (1962)); R. HENSON, HANDBOOK ON SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE 81 (2d ed. 1979).

138. WYO. STAT. § 34-21-953(a) (1977) (U.C.C. § 9-404(1) (1962)).

139. WYO. STAT. § 34-21-953(a) (Supp. 1983) (U.C.C. § 9-404(1) (1972)). In Wyoming, when the collateral is accounts, one financing statement must be filed in the office of the Secretary of State and another in the office of the county clerk where the assignor's (debtor's) principal place of business is located. WYO. STAT. § 34-21-950(a) (1977).

140. *Id.*

141. See U.C.C. § 9-404, Reasons for 1972 Change. The burden is not as great as it may appear because no financing statement is filed to perfect most consumer goods security interests. *Id.*

142. WYO. STAT. § 34-21-953(a) (Supp. 1983) (U.C.C. § 9-404(1) (1972)).

143. WYO. STAT. § 34-21-902(a) (i) (1977 & Supp. 1983) (U.C.C. § 9-102(1) (a) (1962 & 1972)).

whether a transaction denominated as a consignment or lease is intended to create a security interest.¹⁴⁴ If an alleged consignment or lease is held to be a security interest, that interest will ordinarily be unperfected because a financing statement will not have been filed. To prevent this the consignor or lessor may wish to file a financing statement even though he does not intend to create a security interest. The Code, however, contained no provision specifically prescribing the nature of the financing statement to be filed in these circumstances. This omission is rectified by the amendments which authorize consignors or lessors to file financing statements using the terms "consignor," "consignee," "lessor" and "lessee" instead of "secured party" and "debtor." Filing by either consignor or lessor is not to be considered in determining whether or not the consignment or lease is intended as security, but, if it is determined that they are so intended, this filing perfects the security interest.¹⁴⁵

Among the most significant changes which affect the content and filing of a financing statement are those respecting perfection of a security interest in goods which are or are to become fixtures. The significance of these changes may be better appreciated, however, if their consideration is deferred until other changes in the Code's fixture provisions are reviewed.¹⁴⁶

WYOMING MOTOR VEHICLE SECURITY INTERESTS

Security interests in motor vehicles have long presented peculiarly difficult problems. Perfection by the filing of a financing statement is inadequate because, after filing, the owner could sell the vehicle to a nonprofessional buyer who would not know of the need to check financing statement filings. Only after the purchase would the luckless buyer learn of the security interest. Moreover, in view of the ease with which most types of motor vehicles move from one place to another, the owner might sell or encumber his vehicle far away from the place where notice of a security interest was filed. In this case, a buyer or second secured party might not be appropriately apprised of the place where a financing statement search should be made. To alleviate these problems and others,¹⁴⁷ many states have long required issuance of a certificate of title evidencing ownership of a motor vehicle and notation on the certificate of security interests in the

144. See, e.g., *Mann v. Clark Oil & Refining Corporation*, 302 F. Supp. 1376 (E.D. Mo. 1969), *aff'd*, 425 F.2d 736 (8th Cir. 1970) ("consignment" held security interest); *Peco, Inc. v. Hartbauer Tool & Die Co.*, 262 Ore. 573, 500 P.2d 308 (1972) ("lease" held security interest).

145. WYO. STAT. § 34-21-957 (Supp. 1983) (U.C.C. § 9-408 (1972)). Filing of a financing statement is not required with respect to true leases, which are not intended to create a security interest. While theoretically unassailable, this rule is practically questionable. In the absence of filing, it may be difficult or impossible for third parties to determine that the goods are not owned by the lessee. If they mistakenly lend on the security of leased goods or purchase those goods, believing them to be owned, they are injured as much or more than if the goods were subject to a security interest. Further, the lessee may choose to lease rather than buy simply as a method of financing his use of the goods. Cf. WYO. STAT. § 34-21-902(a) (ii) (Supp. 1983) (U.C.C. § 9-102(1) (b) and Comment 2 (1972)) applying Article 9 to sales of accounts and chattel paper. It does not appear that a filing requirement respecting true leases of goods would unduly burden lessors or the Code filing system.

146. See *infra* text accompanying notes 281-84.

147. Perhaps the most serious problem addressed by the certificate of title laws was the absence of a reliable means to establish ownership.

In connection with preparation of the motor vehicle section of the article, some random inquiries were made respecting practice of Wyoming county clerks and lenders. While the inquiries were not methodical, they indicated that practices vary rather widely. Footnotes and text refer to the results of these inquiries where appropriate.

have long required issuance of a certificate of title evidencing ownership of a motor vehicle and notation on the certificate of security interests in the vehicle. In a state which requires notation on motor vehicle title certificates, reference to the certificate will reveal to a potential buyer, a potential secured lender and other interested persons the existence of any security interests.

In view of the prevalence of state motor vehicle certificate of title statutes requiring security interest notation, both the Official Code and the Official amendments contain alternative perfection provisions which require compliance with those statutes to perfect security interests in collateral subject to them.¹⁴⁸ When Wyoming originally adopted the Code, the Legislature did not adopt the Official Code version of the state alternative perfection provisions. Instead it inserted specific requirements governing perfection and termination of security interests in motor vehicles.¹⁴⁹ The principal perfection requirement dictates both filing *and* notation of the security interest on the vehicle's title certificate.¹⁵⁰

Curiously, having omitted the Official Code provisions for state alternative perfection in favor of its own motor vehicle provisions, Wyoming then adopted the Official amendments to the omitted Code provisions. As adopted by Wyoming, the provisions refer to the certificate of title law which requires only notation of liens or encumbrances existing when the certificate is issued, not filing of a financing statement.¹⁵¹ Having made this reference, it might have been desirable, after some tinkering with the certificate of title law, to delete from the Wyoming amendments the special provisions governing perfection of security interests in motor vehicles.¹⁵² Instead of collecting in one place all of the law governing perfection of these security interests, however, the procedure chosen retains part of that law in the Wyoming amendments and relegates the other part to the certificate of title statute. The result creates some potential problems.

The Wyoming amendments direct that: "(c) [t]he filing of a financing statement otherwise required by this article is not necessary or effective to

148. See U.C.C. § 9-302(3) (b) and (4) (1962 & 1972). The provisions are not limited to motor vehicles, but pertain to any property subject to certificate of title laws.

149. WYO. STAT. § 34-21-931(d)-(g) (1977).

150. See WYO. STAT. § 34-21-931(d) (1977). Wyoming evidently abandoned the Official Code model of perfection by a single notation on the title certificate at the behest of an automobile dealers' association whose members had become accustomed to pre-Code law requiring recording of a chattel mortgage and also title certificate notation.

151. WYO. STAT. §§ 31-4-301 to -320 (1977 & Supp. 1983). The certificate of title statute, which was originally adopted before adoption of the Wyoming Code, has retained the term "liens or encumbrances" rather than "security interests."

152. The tinkering would have been required because the certificate of title law covers only notation of security interests existing when the county clerk issues a certificate (WYO. STAT. § 31-4-308 (Supp. 1983)), not those created while the certificate is outstanding. Provision for perfecting security interests created when a certificate is already outstanding must appear somewhere. It may have been considered simpler to leave it in the Wyoming amendments rather than to amend another statute. It is not clear, however, that this consideration motivated the unusual result of dividing these perfection provisions between two statutes. The Wyoming Legislative Service Office reports that a Wyoming amendments bill was initially presented to it without the motor vehicle perfection provisions, which were contained in the Wyoming Code. On the ground that it is not authorized to make substantive changes in existing statutes, that office inserted provisions virtually identical to those contained in the Wyoming Code.

perfect a security interest in property subject to . . . (ii) The following statutes of this state, W.S. 31-4-301 through 31-4-320 [the certificate of title statute], . . .” And further: “(d) [c]ompliance with a statute or treaty described in subsection (c) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected *only* by compliance therewith”¹⁵³ Together the provisions leave no doubt—filing is neither necessary nor effective to perfect; perfection is accomplished *only* by compliance with the certificate of title statute. Pristine clarity (a lawyer’s joy)—but . . . immediately after the pristine clarity follow four subsections wholly devoted to prescribing the process for perfecting and terminating a security interest in motor vehicles.¹⁵⁴ As already indicated,¹⁵⁵ the first of these subsections, in unmistakable terms, mandates the filing of a financing statement.¹⁵⁶ What are we to conclude from this head-on collision?

One possible conclusion is that the collision results from an unfortunate legislative oversight.¹⁵⁷ New provisions were inserted, old provisions were neither deleted nor appropriately modified. But the provisions are there now and must be applied. Reading them literally we might conclude that the certificate of title provisions govern only perfection of security interests created in a motor vehicle when the certificate is issued—new motor vehicles.¹⁵⁸ The Wyoming amendments provisions would then govern only perfection of security interests created in vehicles for which a certificate of title was already outstanding—used vehicles. The Wyoming amendments provisions inferentially support this division by requiring that owners of vehicles concerning which a “certificate has been issued” deliver the certificate to the secured party for notation of the security interest.¹⁵⁹ The buyer of a new vehicle who finances the purchase does not receive the certificate until after the security interest has been noted on it. A requirement that he deliver the certificate, with the security interest already noted, for notation of the security interest, would be meaningless.

Although inferential support exists for limiting the Wyoming amendments to perfection of used vehicle security interests, the basic provision, requiring both filing and notation, is not so limited.¹⁶⁰ Moreover, the interpretation that the Wyoming amendments govern perfection respecting used vehicles only is inconsistent with another amendments provision that the certificate of title statute governs duration and renewal of a security interest perfected by compliance with that statute.¹⁶¹ The certificate of title statute contains no provisions governing these matters, suggesting that

153. WYO. STAT. § 34-21-931(c) (ii) and (d) (Supp. 1983). (Emphasis supplied). Except for the reference to the Wyoming certificate of title statute, the quoted language is taken verbatim from U.C.C. § 9-302(3) (b) and (4) (1972).

154. WYO. STAT. § 34-21-931(e)-(h) (Supp. 1983).

155. See *supra* note 150 and accompanying text.

156. WYO. STAT. § 34-21-931(e) (Supp. 1983).

157. *But see supra* note 152.

158. Certificates are not issued with respect to vehicles while they are owned by dealers. See WYO. STAT. § 31-4-305 (Supp. 1983). *Cf.* WYO. STAT. § 34-21-931(c) (ii) (Supp. 1983) (U.C.C. § 9-302(3) (b) (1972)) (security interests in collateral held as inventory are perfected by filing).

159. WYO. STAT. § 34-21-931(f) (Supp. 1983).

160. See WYO. STAT. § 34-21-931(e) (Supp. 1983).

161. WYO. STAT. § 34-21-931(d) (Supp. 1983) (U.C.C. § 9-302(4) (1972)).

duration and renewal of security interests in all motor vehicles, new or used, must be governed by the Wyoming amendments. Most significant, the literal reading of the provisions would result in perfection of security interests in new vehicles by certificate notation without filing and of those in used vehicles by both notation and filing.¹⁶² There appears no rational basis for this distinction. The need of lenders, creditors and buyers to know of existing security interests is the same regardless of when the interest is created. The immediate solution seems to be to adopt an admittedly strained reading of the Wyoming amendments which simply ignores its provisions for perfection under the certificate of title statute. The amendments provisions for dual perfection may then be applied to all motor vehicles.

The long term solution to the problem requires legislative revision of the offending provisions. Revision must begin with a reappraisal of the dual perfection scheme. Wyoming is one of the few Code jurisdictions which still cling to the requirement for both title certificate notation and financing statement filing to perfect motor vehicle security interests.¹⁶³ This suggests that most other state legislatures consider dual perfection unnecessary. In most cases parties dealing with a motor vehicle owner can protect themselves by inspecting the certificate of title which will disclose any security interest in the vehicle. The filing requirement is therefore largely duplicative unless it will protect persons dealing with the debtor against fraud perpetrated by obtaining a duplicate certificate which does not reveal the security interest. It should not be possible for a debtor to obtain such a duplicate certificate. The Wyoming certificate of title statute directs that, upon issuance, the county clerk prominently mark a duplicate certificate with a warning that it might be subject to rights of persons under the original.¹⁶⁴ Unfortunately, although a duplicate certificate will probably reveal that it is a duplicate, it appears that not all county clerks scrupulously observe the directive for addition of this warning. Even if the warning is omitted, however, a copy of the original certificate bearing the security interest notation may be inspected in the issuing county clerk's office.¹⁶⁵ Consequently, a knowledgeable lender or buyer can protect itself against fraud by requiring production of the original certificate or an acceptable explanation of its unavailability, or by checking the file copy of the original certificate.¹⁶⁶

162. This procedure is not now ordinarily followed as to new vehicles. As under the Wyoming Code, both a financing statement is filed and the security interest is noted on the certificate.

163. At the time when the U.C.C. was originally introduced in the Wyoming legislature, one noted commentator understandably anticipated that its adoption would eliminate dual filing in the state. See RUDOLPH in WYO. LEGISLATIVE RESEARCH COMMITTEE, THE UNIFORM COMMERCIAL CODE 63-64 (1960). Legislative changes from the Official Code thwarted this expectation. See *supra* notes 148-50 and accompanying text. Later, in 1981, a subcommittee of the Bar Legislative and Reform Committee urged adoption of the amendments. The proposed amendments were modified to contain provision for motor vehicle perfection by title certificate notation only. The amendments failed of adoption in that legislative session.

164. Wyo. STAT. § 31-4-312 (Supp. 1983). At least one county clerk notifies the secured party before issuing a duplicate.

165. See WYO. STAT. § 34-21-931(f) (Supp. 1983).

166. The original certificate in a debtor's possession will not bear a notation, however, if a debtor defers creation of the security interest until after the duplicate issues and the notation is made on the duplicate, leaving the debtor in possession of a clean original. This would not happen with respect to new car financing at the time of purchase because security interest notation occurs before certificate issuance.

In view of the ability of the professional to protect against most fraudulently obtained clean certificates without resort to the financing statement file, the danger from these practices primarily threatens the nonprofessional purchaser of a used vehicle.¹⁶⁷ In most cases, however, the nonprofessional, not being conversant with secured transactions law, will not know of the existence or significance of the financing statement files. That purchaser will rely on the title certificate offered by his seller. A fraudulently obtained certificate, bearing no entry in the space provided for listing of security interests, will reassure him, if indeed he has identified the problem of clear title.¹⁶⁸ Nor will a financing statement on file help the unschooled nonprofessional who is unaware of its existence. The duplicate perfection requirement must therefore be justified by its benefit to professional lenders and buyers who may succeed in protecting against some fraud only by a financing statement search.¹⁶⁹ This benefit must be weighed against the cost of procuring, filing and maintaining these financing statements and related records. Since losses from intentional misrepresentation may be relatively small, the possibility of their occurrence and of their prevention through financing statement searches may not justify the duplicate perfection requirement. To the extent that these losses are suffered by professionals, perhaps they should properly be considered a cost of doing business. To the extent that they are suffered by nonprofessionals, the filing requirement is unlikely to prevent them.

Any revision of the Wyoming motor vehicle perfection provisions might also address other questions.¹⁷⁰ Whether or not the duplicative filing provision is deleted, clarity would be served by transferring all motor vehicle perfection provisions to the certificate of title statute. This would leave in the Wyoming amendments only the reference to that statute, as recommended by the Official amendments. If the unique perfection provisions are to be retained, several additional questions require attention. These begin with the dual filing requirement itself. It requires filing of "a financing statement or security agreement"¹⁷¹ and, therefore, authorizes filing of a security agreement instead of a financing statement. Although the general filing provisions do countenance utilization of a security agreement as a financing statement, they specify that the agreement filed must contain all information required in a financing statement.¹⁷² The separate reference in the Wyoming provisions to filing the security agreement might authorize perfection by filing an agreement which did not contain all

167. In addressing multi-state transactions, the Review Committee recognized the relative inability of nonprofessionals to protect against title certificate fraud. See U.C.C. § 9-103(2) (d) and Comment 4(e) (1972). For discussion of the amendments to section 9-103, see *infra* text accompanying notes 219-53.

168. It is not clear that all nonprofessionals will be alerted to the problem even by the warning required on duplicate certificates.

169. Even a search of the financing statement index in the county where a debtor resides may reveal nothing since the Wyoming statute requires filing where the vehicle is located. WYO. STAT. § 34-21-931(e) (1) (Supp. 1983). Presumably "located" means the vehicle's location when the security interest is created which may differ from the debtor's residence when he grants a security interest or sells the vehicle.

170. These questions also inhere in the prior Wyoming motor vehicle perfection provisions, which are substantially identical to those contained in the amended statute. They are not, therefore, introduced by changes made by the Wyoming amendments.

171. WYO. STAT. § 34-21-931(e) (i) (Supp. 1983).

172. WYO. STAT. § 34-21-951(a) (Supp. 1983) (U.C.C. § 9-402(1) (1972)).

requisite information.¹⁷³ Reference to filing the security agreement is unnecessary here and should be deleted.

The Wyoming notation procedure requires that the vehicle owner deliver the title certificate to the secured party "who, within five (5) days thereafter, shall deliver the certificate to the clerk of the county in which the vehicle is located, . . ." The provision fails to specify the effect of a delivery to the clerk more than five days after the secured party receives a certificate. The mere existence of the five-day requirement might imply that later delivery defeats perfection, inviting speculation respecting whether late delivery can ever be rectified. If it can, will delay subordinate the security interest to the rights of intervening unsecured creditors? Subordination did follow delay under some pre-Code chattel mortgage statutes. The Code does not contemplate such subordination of security interests in other collateral to intervening unsecured creditors.¹⁷⁴ It seems unlikely that the Wyoming Legislature intended to single out motor vehicle security interests for this treatment.

If the Legislature did not intend to subordinate security interests perfected after the five-day period, perhaps it intended a grace period for filing. This would accord security interests perfected within the prescribed period retroactive priority as of the date on which the secured party received the certificate. Some inferential support for this view might be drawn from another sentence appearing in the same paragraph that contains the five-day requirement. It provides that a financing statement or security agreement "shall take effect and be in force from and after the time of filing and not before, . . ." ¹⁷⁵ Since the sentence specifies only that a financing statement or agreement cannot take effect before filing but omits mention of certificate notation, it might be inferred that certificate notation could take effect as of a time before it is made. This inference could support an argument for priority based on retroactive effectiveness of the certificate notation.

Assuming the above-quoted language prescribes priority at all, however, it seems to fix that priority by time of filing, not of certificate notation. If retroactive priority is intended here, the provision does not make that intention clear. Other provisions of the amendments do clearly mandate retroactivity,¹⁷⁶ but that exalted status is reserved for purchase money security interests filed within twenty days after the debtor receives possession of the collateral. The five-day provision governs perfection of all

173. The information which is most likely to be omitted from a security agreement is the addresses of debtor and secured party.

174. See WYO. STAT. § 34-21-930(a) (ii) (Supp. 1983) (U.C.C. § 9-301(1) (b) (1972)). The express subordination to persons who become lien creditors before perfection implies that subordination to persons advancing unsecured credit between attachment and perfection of a security interest is not intended.

175. WYO. STAT. § 34-21-931(f) (Supp. 1983). It is anticipated that filing and notation will be concurrent. WYO. STAT. § 34-21-931(e) (ii) (Supp. 1983).

176. Compare WYO. STAT. §§ 34-21-930(b) and 34-21-941(d) (Supp. 1983) (U.C.C. §§ 9-301(2) and 9-312(4) (1972)) according purchase money security interests retroactive priority over lien creditors and conflicting security interests. Moreover, several state statutes do not accord retroactive perfection to motor vehicle security interests. See, e.g., N.Y. VEHICLE & TRAFFIC LAW §§ 2101-2135 (McKinney 1970); MASS. GEN. LAWS ANN., ch. 90D, §§ 1-38 (West 1975).

security interests in motor vehicles. If retroactivity were the intended effect of the five-day provision, presumably its drafters would have utilized language similar to that used by the Official amendments in the provisions governing purchase money security interests. It seems probable that the five-day provision was intended neither to preclude perfection of a security interest after expiration of the five-day period nor to provide retroactivity. To the extent that a specific intention existed, it was probably merely to encourage prompt notation of the security interest on the certificate. It should be so interpreted.

We have already seen that, upon notation of a security interest on a certificate, the issuing county clerk must also endorse that notation on the file copy retained in his office.¹⁷⁷ This precaution should avoid later issuance of a duplicate certificate omitting the appropriate notation¹⁷⁸ and also alert interested persons who may choose to inspect the file copy. The clerk is further instructed that, if the original certificate was issued in another state, he shall transmit the relevant data to the state officer who issued the certificate. That officer is, in turn, instructed to endorse the data on his file copy. Assume that Debtor purchased and obtained a title certificate for his motor vehicle in Utah. He subsequently grants a security interest in the vehicle to a lender in Rock Springs, Wyoming. Are we to infer that perfection of that security interest requires filing in and certificate notation by the office of the county clerk in Rock Springs? Is that county clerk then to notify the issuing Utah officer who shall promptly endorse the appropriate notation on the file copy in his office? The prescribed Wyoming procedure cannot be legally binding upon an officer of another state nor does Utah authorize certificate notation upon the advice received from an out-of-state functionary. Moreover, this procedure conflicts directly with other Wyoming amendments provisions and seems unlikely to effect a valid perfection of the security interest.¹⁷⁹

Further questions are posed by the provision which fixes the effective date of financing statement or security agreement at filing. They shall take effect and be in force, the provision specifies, "from and after the time of filing and not before, . . ." ¹⁸⁰ With respect to conflicts between two

177. WYO. STAT. § 34-21-931(f) (Supp. 1983).

178. The certificate of title statute does not specifically provide for notation of the security interest on a duplicate certificate. Instead it requires a warning that the certificate "may be subject to the rights of a person or persons under the original certificate." WYO. STAT. § 31-4-312 (Supp. 1983). One clerk reports that actual notation of the security interest is made.

179. Generally perfection of a security interest in goods covered by a certificate of title issued by another jurisdiction requiring a notation on the certificate is governed by the laws of the issuing jurisdiction until the title certificate surrendered. See WYO. STAT. § 34-21-903(b) (ii) (Supp. 1983) (U.C.C. § 9-103(2) (b) (1972)). For discussion of the section see *infra* text accompanying notes 243-46. Filing is not necessary or effective to perfect a security interest in property subject to a certificate of title statute of another jurisdiction which requires perfection by certificate notation. U.C.C. § 9-302(3) (c) (1972) (WYO. STAT. § 34-21-931(c) (iii) (Supp. 1983)).

One clerk reports that she would not note a security interest on an out-of-state title certificate.

The Colorado certificate of title statute contains an interesting provision which makes effective in Colorado certificate notation effected there or elsewhere. See COLO. REV. STAT. § 42-6-131 (1973).

180. WYO. STAT. § 34-21-931(f) (Supp. 1983).

secured parties, a curious result may flow from this clause. Assume that debtor grants First secured party a security interest in a motor vehicle. First lends and files a financing statement but the security interest is not yet noted on the certificate of title.¹⁸¹ Second secured party obtains a security interest in the same vehicle, lends, files and has its security interest noted on the certificate which it returns to Debtor.¹⁸² First then has its security interest noted on the certificate. Which security interest has priority in the vehicle?

The amendments' general first to file priority provision would accord First priority because First filed before Second either filed or perfected.¹⁸³ The amendments' requirement for compliance with the certificate of title statute in lieu of filing would accord Second priority because it requires certificate notation and renders filing ineffective and unnecessary.¹⁸⁴ Under Wyoming's special motor vehicle perfection provisions, a financing statement or filed security agreement takes effect from and after the time of filing as to other holders of a security interest. No reference to notation appears in this sentence, permitting the inference that priority in this instance, as under the general first to file rule, is governed only by filing.¹⁸⁵ This result could be supported by the view that a financing statement search would have apprised Second of First's security interest and the first party to file will not thereafter be affected by the knowledge of conflicting security interests. Yet, in practice, Second probably relies and should be permitted to rely on the absence of notation on the certificate.

In addition to providing that the financing statement or security agreement takes effect upon filing, the Wyoming motor vehicle perfection provision specifies the persons against whom they take effect: "all creditors, subsequent purchasers and holders of a security interest in good faith, for valuable consideration and without notice." It could be mistakenly inferred from this specification that the filing is not effective against persons who do not acquire their interest in good faith, for valuable consideration and without notice. Obviously the interests of these persons cannot be protected when those of persons in a more meritorious position are not. No one would be likely to dispute this conclusion. The necessity of this quoted clause is not apparent, however, since other amendments provisions adequately address the effect of filing or perfection upon conflicting claimants.¹⁸⁶ Yet, because of its potential for mischief, we cannot simply dismiss it as harmless surplusage.

181. Some county clerks will not accept a financing statement covering a motor vehicle unless accompanied by the title certificate. Others will. In any event, it is doubtful that a filing by an insistent secured party can be rejected since presentation of a financing statement and payment of the filing fee constitutes filing. See WYO. STAT. § 34-21-952(a) (Supp. 1983) (U.C.C. § 9-403(1) (1972)).

182. Nothing requires that the secured party retain possession of a certificate, although conservative practice indicates that it should do so.

183. WYO. STAT. § 34-21-941(e) (i) (Supp. 1983) (U.C.C. § 9-312(5) (a) (1972)).

184. WYO. STAT. § 34-21-931(c) (ii) and (d) (Supp. 1983) (U.C.C. § 9-302(3) (b) and (4) (1972)).

185. In the usual case arising under the first to file rule, however, filing fulfills the only applicable notice requirement. In the case here considered, an additional notice requirement—certificate notation—remains unfulfilled by First when Second perfects its security interest. The difference might suggest that, under this provision, both filing and notation are prerequisites to establish priority.

186. See WYO. STAT. §§ 34-21-930, 34-21-936, 34-21-937, 34-21-941 (Supp. 1983) (U.C.C. §§ 9-301, 9-307, 9-308, 9-312 (1972)).

If, upon filing, the financing statement becomes effective as to creditors, purchasers and secured parties in good faith, for valuable consideration and without knowledge, it can probably be inferred that the unfiled financing statement is ineffective as to the described persons. From this posture one might then be tempted to draw the further inference that the unfiled financing statement would be ineffective only as to persons who meet the good faith, valuable consideration and lack of knowledge criteria. This conclusion certainly is not required, nor does it appear to be desirable. With respect to collateral other than motor vehicles, with one exception, the interests of creditors, purchasers and secured parties are not subordinated to unfiled or unperfected security interests by lack of good faith or valuable consideration, or by knowledge of the security interest.¹⁸⁷ Only buyers or transferees not in the ordinary course of business are subordinated by knowledge of an unperfected security interest.¹⁸⁸ In every other respect good faith,¹⁸⁹ valuable consideration and knowledge are irrelevant to the subordination of an unfiled or unperfected security interest. On the other hand, the provision's reference to creditors is surprising since all creditors, other than lien creditors (a term defined in the amendments¹⁹⁰), are subordinate even to unperfected security interests irrespective of good faith, consideration or lack of knowledge.¹⁹¹ Moreover, the term "valuable consideration" appears nowhere else in the Code or amendments. Presumably it is something more than either value or consideration alone, although something less than fair consideration or fair equivalent.

The possible predication of the effect of an unfiled or unperfected security interest on other parties' good faith, consideration or knowledge could produce results with respect to motor vehicles which would differ from those for all other collateral. Although motor vehicles do differ from other collateral in some respects, none of the differences warrant these distinctions in treatment.¹⁹² The statutory provision that filing is effective against persons acquiring their interests in good faith, for valuable consideration and without knowledge does not logically compel the inference that interests of those lacking these attributes are subordinate to unfiled or unperfected security interests. The inference should be rejected.

PROCEEDS

In many secured transactions the parties anticipate that the debtor will sell or otherwise dispose of the collateral before paying the secured debt. The most common of these occurs when inventory collateral will be sold or

187. *Id.*

188. WYO. STAT. § 34-21-930(a) (iii) and (iv) (Supp. 1983) (U.C.C. § 9-301(1) (c) and (d) (1972)).

189. WYO. STAT. § 34-21-122 (1977) (U.C.C. § 1-203 (1962)) does impose an obligation of good faith in the performance or enforcement of contracts or duties within the U.C.C. "Good faith" is defined as "honesty in fact in the conduct or transaction concerned." WYO. STAT. § 34-21-120(xix) (1977) (U.C.C. § 1-201(19) (1962)). It seems doubtful that the obligation could be breached by buying, or obtaining a lien or security interest with knowledge of an unperfected security interest.

190. WYO. STAT. § 34-21-930(c) (Supp. 1983) (U.C.C. § 9-301(3) (1972)).

191. WYO. STAT. § 34-21-920 (1977) (U.C.C. § 9-201 (1962)). Ordinarily a creditor must obtain a lien to be entitled to seize the debtor's property. If the security agreement were not effective against a creditor, however, the debtor could transfer collateral in payment of a debt free from the security interest.

used in the ordinary course of the debtor's business. In other types of secured transactions it is not expected that the collateral will be sold or disposed of, although the debtor could do so in spite of that expectation. Equipment collateral used to produce goods is a common example of this type transaction. With respect to each type of transaction, the Code addressed two questions. First, does the security interest continue in whatever may be received by the debtor in exchange for the original collateral? Second, does the security interest continue in the collateral after sale or disposition, so that the secured party may repossess and sell it upon debtor's default in payment? In general the Code answered the first of these questions affirmatively with respect to both types of transactions—the security interest continues in identifiable “proceeds” including collections which the debtor receives.¹⁹³ “Proceeds” includes whatever is received upon any disposition of collateral, or upon disposition of proceeds.¹⁹⁴ As one might expect, however, the answer to the second question differs depending on the type of transaction. If the parties anticipate disposition of the collateral (e.g. inventory), or if the secured party authorizes disposition, the security interest in the collateral disposed of terminates.¹⁹⁵ Otherwise the security interest continues in the collateral (e.g. equipment) despite disposition.

The amendments effect changes in the Code provisions relating to the creation of a security interest in proceeds, the perfection of that interest and the extent of a proceeds security interest upon institution of an insolvency proceeding by or against a debtor. The Code was ambiguous respecting the necessity for an express claim to proceeds by the secured party. One provision appeared to require that an express claim be included in the security agreement¹⁹⁶ and the official form of financing statement required indication that proceeds were claimed.¹⁹⁷ Another seemed to provide automatic continuation of the security interest in proceeds without any necessity for an express claim.¹⁹⁸ The amendments expressly provide that, unless specified in the security agreement, no claim to proceeds is required.¹⁹⁹ It is assumed that proceeds are claimed in the normal course,²⁰⁰ placing the burden on the parties to incorporate an exclusion into the security agreement if desired.

When a security interest did include proceeds, the Code automatically continued perfection of the proceeds interest if the financing statement covering the original collateral also covered proceeds.²⁰¹ In some cases, the Code's place of filing provisions might have resulted in inadequate notice of

192. Among other distinctive features, motor vehicles can be moved easily and quickly and have substantial value. They are convenient collateral and are often sold to buyers unversed in secured transactions laws. These are the basic reasons for requiring title certificates and notation of security interests on those certificates.

193. WYO. STAT. § 34-21-935(b) (1977) (U.C.C. § 9-306(2) (1962)).

194. WYO. STAT. § 34-21-935(a) (1977) (U.C.C. § 9-306(1) (1962)).

195. See WYO. STAT. §§ 34-21-936(a) and 34-21-935(b) (1977) (U.C.C. §§ 9-307(1) and 9-306(2) (1962)).

196. WYO. STAT. § 34-21-922(a) (ii) (1977) (U.C.C. § 9-203(1) (b) (1962)).

197. WYO. STAT. § 34-21-451(c) (1977) (U.C.C. § 9-402(3) (1962)).

198. WYO. STAT. § 34-21-935(b) (1977) (U.C.C. § 9-306(2) (1962)).

199. WYO. STAT. § 34-21-922(c) (Supp. 1983) (U.C.C. § 9-203(3) (1972)).

200. See U.C.C. § 9-203, Reasons for 1972 Change.

201. WYO. STAT. § 34-21-935(c) (i) (1977) (U.C.C. § 9-306(3) (a) (1962)).

the proceeds interest to third parties. The problem existed under the Wyoming Code in relation to inventory financing. Frequently a lender who makes loans to finance a debtor's purchase of inventory obtains a security interest in both the inventory and the accounts arising upon its sale. To perfect a security interest in inventory and its proceeds the Wyoming Code required filing in the office of the county clerk of the county in which the debtor maintained his principal place of business, if any; otherwise filing was required in the county in which the debtor resided.²⁰² Security interests in accounts, however, were perfected by filing in the office of the Secretary of State and in the office of the county clerk for the county in which the "assignor"²⁰³ maintained his principal place of business.²⁰⁴ As a result a search for accounts security interests in the Secretary of State's office would not reveal a security interest in the proceeds of a debtor's inventory. To assure protection required a search in the appropriate county clerk's office, making the provision for filing with the Secretary of State superfluous.

The amendments seek to provide the notice lacking under the Code. They limit perfection of a security interest in proceeds, other than identifiable cash proceeds, to a ten-day period unless "[a] filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed . . ." ²⁰⁵ In Wyoming a security interest in the proceeds of inventory—accounts—cannot be perfected by filing only in the county clerk's office; filing with the Secretary of State is also required.²⁰⁶ Consequently, the proceeds are not "collateral in which a security interest may be perfected by filing in the [county clerk's office]." To obtain a perfected security interest in the accounts for more than the ten-day automatic perfection period, therefore, the inventory financier must file an additional financing statement in the Secretary of State's office. This additional filing may be made either when the original financing statement covering inventory is filed with the county clerk or within ten days after each sale of inventory by the debtor.²⁰⁷

A requirement for double filing also exists if a non-resident debtor owns collateral as to which filing is required in Wyoming. Again, assume that the debtor owns inventory in Wyoming. If debtor's chief executive office is elsewhere, a security interest in the inventory located in Wyoming is

202. WYO. STAT. § 34-21-950(a) (iii) (1977). The provision further requires filing in the Wyoming Secretary of State's office if debtor is not a resident of Wyoming. It is unclear respecting the place of filing if the debtor's principal place of business is in Wyoming but he resides elsewhere. The provision has no counterpart in the Official Code.

203. The "assignor" of accounts would be a debtor. See WYO. STAT. § 34-21-905(a) (iv) (1977) (U.C.C. § 9-105(1) (d) (1962)).

204. WYO. STAT. § 34-21-950(a) (i) (1977). If the debtor had no place of business in the state, filing was probably required in the jurisdiction where its principal place of business was located. See WYO. STAT. § 34-21-903(a) (1977) (U.C.C. § 9-103(1) (1962)).

205. WYO. STAT. § 34-21-935(c) (i) (Supp. 1983) (U.C.C. § 9-306(3) (a) (1972)).

206. See *supra* note 204 and accompanying text. The Wyoming amendments do not change the place to file requirements.

207. See WYO. STAT. § 34-21-935(c) (iii) (Supp. 1983) (U.C.C. § 9-306(3) (c) (1972)). This method will virtually always be impractical.

accounts interest, however, is governed by the law of the state where the debtor maintains its chief executive office.²⁰⁹ That law will require filing in that state.²¹⁰ Filing as to inventory in Wyoming will not, therefore, perfect a security interest in accounts proceeds of that inventory beyond the ten-day automatic perfection period. Extension of the perfection for more than ten days requires a filing under the law of the state where the chief executive office is located.²¹¹

The amendments also specify that, to perfect a security interest in proceeds acquired with cash proceeds, a financing statement must describe the types of property constituting the proceeds.²¹² Thus if cash proceeds of the sale of inventory were to be used to purchase more inventory, the description "inventory" in a financing statement would be sufficient. If cash proceeds of inventory were used to purchase equipment, the description "inventory" would not be sufficient. Relying on this provision one court concluded that a financing statement listing by item furniture inventory on hand was insufficient to perfect a security interest in furniture inventory acquired with cash proceeds received upon sale of the listed items.²¹³ This result seems questionable in view of the notice function of the financing statement. The description should have been sufficient at least to signal the possibility that cash proceeds might be utilized to purchase more furniture inventory.²¹⁴

A final proceeds problem under the Code involved the secured party's right to proceeds of collateral upon the debtor's insolvency. The drafters attempted to provide a method of determining the secured party's rights which would avoid the horrors of tracing. The formula subjected commingled funds to the security interest to the extent of cash proceeds received and commingled with other funds within ten days before institution of the

208. WYO. STAT. § 34-21-903(a) (ii) (Supp. 1983) (U.C.C. § 9-103(1) (b) (1972)). Some confusion respecting the place to file results from the use of the term "principal place of business," a home grown Wyoming term not used in the Official Code. If, as applied to a debtor having its executive office outside Wyoming, "principal place of business" means the principal place in Wyoming, then the financing statement is filed in the county where that place is located. If, however, it means the chief executive office, then the financing statement is filed in the Secretary of State's office. WYO. STAT. § 34-21-950(a) (iii) (1977). The debtor would not have its principal place of business or its residence in Wyoming since it would reside at its chief executive office. See WYO. STAT. § 34-21-950(f) (Supp. 1983) (U.C.C. § 9-401(6) (1972)). The latter reading seems preferable even though it fails to accord different meanings to different terms.

209. WYO. STAT. § 34-21-903(c) (ii) and (iv) (Supp. 1983) (U.C.C. § 9-103(3) (b) and (d) (1972)).
210. See U.C.C. § 9-401 (1972).

211. Another situation in which a proper filing respecting the original collateral will not extend perfection in the proceeds arises when the proceeds are in the form of instruments. A security interest in instruments can only be perfected by possession, not by filing. WYO. STAT. § 34-21-933(a) (Supp. 1983) (U.C.C. § 9-304(1) (1972)).

212. WYO. STAT. § 34-21-935(c) (i) (Supp. 1983) (U.C.C. § 9-306(3) (a) (1972)). "Cash proceeds" are money, checks, deposit accounts and the like. WYO. STAT. § 34-21-935(a) (Supp. 1983) (U.C.C. § 9-306(1) (1972)).

213. *Goodman v. Schenck*, 31 U.C.C. Rep. Serv. 713 (Bankr. N.D. Ga. 1981).

214. It seems likely that a description of the collateral simply as "inventory" would have avoided the problem. Cases are legion which illustrate the perils of describing collateral in too much detail. In one, a security agreement described the collateral as "assignment of accounts receivable—\$18,000 as of July 1, 1977—Inventory Supplies and Business equipment now and hereafter acquired and proceeds thereof." The court held that this description created a security interest only in the accounts existing as of July 1, 1977. *Boulder Bank and Trust Co. v. U.S.*, 26 U.C.C. Rep. Serv. 774 (N.D. Okla. 1979).

insolvency proceeding less cash proceeds turned over to the secured party within that ten-day period.²¹⁵ Some argued from this provision that the secured party's interest in the commingled funds must be reduced by the amount of all cash proceeds received in the ten-day period, including those not commingled but turned over to the secured party in kind.²¹⁶ Thus, where a debtor received and commingled \$31,535 of proceeds with other funds in a general bank account, and also received \$31,701 in checks which were turned over in kind to the secured party, the secured party should have no security interest in the bank account. The court held that, although the statute said that, it did not mean that.²¹⁷ Instead it required deduction only of those amounts paid to the secured party from commingled funds. While employing a somewhat different formula, the amendments mandate this latter result.²¹⁸

GOVERNING LAW AND SOME MULTI-STATE TRANSACTIONS

The amendments substantially revise Code provisions respecting the law which governs transactions affecting more than one jurisdiction. Transactions of this nature occur when collateral is purchased in one jurisdiction and then moved to another or when a debtor moves from one jurisdiction to another. Provisions of the Code which governed choice of law respecting the validity of a security agreement²¹⁹ and those purporting to state general choice of law rules²²⁰ have been deleted. The governing provisions now contain only rules pertaining to perfection of security interests and the effect of perfection or non-perfection.²²¹ These provisions have been restructured according to types of collateral to clarify the statement of applicable rules and their interrelationship.²²² In general the amendments provide that "perfection and the effect of perfection or non-perfection . . . are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected."²²³ Some vital exceptions are made: (1) if goods are subject to a purchase money security interest and the parties

215. WYO. STAT. § 34-21-935(d) (iv) (B) (1977) (U.C.C. § 9-306(4) (d) (ii) (1962)).

216. *See* *In re Security Aluminum Co.*, 9 U.C.C. Rep. Serv. 47 (E.D. Mich. 1971).

217. *Id.*

218. *See* WYO. STAT. § 34-21-935(d) (iv) (B) (Supp. 1983) (U.C.C. § 9-306(4) (d) (ii) (1972)). To determine the amount of the security interest in commingled funds the new formula reduces all cash proceeds received during the 10-day period by amounts paid over to the secured party and any other amounts to which the secured party may be entitled under other parts of the insolvency provisions.

Some questions have arisen respecting the effect of the Federal Bankruptcy Code on the Code's insolvency provision. It has been contended that the commingling provision effects a preference to the secured party. The preference results from the transfer within 90 days before the bankruptcy petition is filed of debtor's property in which the secured party might not otherwise have a security interest. This might occur if, within the 10-day period, debtor deposited proceeds of collateral, then withdrew them, and then deposited nonproceeds. The provision may accord the secured party a security interest in the nonproceeds, thus creating a preference. It has also been contended that the security interest, which first becomes effective upon insolvency, constitutes a voidable statutory lien. The contentions and cases are discussed in WHITE & SUMMERS, *supra* note 16, at 1014-17.

219. *See* WYO. STAT. § 34-21-903 (1977) (U.C.C. § 9-103 (1962)).

220. *See* WYO. STAT. § 34-21-902(a) (1977) (U.C.C. § 9-102(1) (1962)).

221. *See* WYO. STAT. § 34-21-903 (Supp. 1983) (U.C.C. § 9-103 (1972)).

222. U.C.C. § 9-103, Reasons for 1972 Change, para. 2.

223. WYO. STAT. § 34-21-903(a) (ii) (Supp. 1983) (U.C.C. § 9-103(1) (b) (1972)).

intend that they will be kept in another jurisdiction, the law of the other jurisdiction usually governs perfection or non-perfection;²²⁴ (2) if goods are covered by a certificate of title on which the law of the issuing jurisdiction requires indication of the security interest for perfection, the law of that jurisdiction governs perfection or nonperfection;²²⁵ and (3) if the collateral is accounts, general intangibles or mobile goods,²²⁶ the law of the jurisdiction where the debtor is located governs perfection or non-perfection.²²⁷ If, after the initial perfection, the collateral is moved or the debtor moves to a new jurisdiction, depending on whether the location of the collateral or the debtor originally governed perfection, the period for which perfection continues is limited.

The Code specified that a purchase money security interest in collateral to be kept in this state although acquired elsewhere was governed by this state's law if the collateral reached this state within thirty days after the security interest attached.²²⁸ Since the security interest could attach before the debtor took possession of the collateral, any delay in debtor's receipt of delivery would shorten the thirty-day period for completion of the move to this state.²²⁹ Moreover, if delivery to the debtor was delayed for thirty days, the statutory requirement could not be fulfilled and others could obtain interests in the collateral in the other state which could gain priority over those of the secured party. The amendments avoid these problems by beginning the thirty-day period when the debtor receives possession of the collateral.²³⁰

The amendments' thirty-day provision is not entirely clear respecting the effect of possible involuntary delay after the debtor receives possession. What if the debtor takes delivery of the collateral in another jurisdiction, but a levy on behalf of a lien creditor prevents him from moving it to this state within thirty days? Does the security interest prevail over the levying lien creditor? It would seem that the priorities should be fixed at the time of levy,²³¹ thereby preserving the security interest. The governing provision, however, can be read to render perfection retroactively ineffective if the collateral fails to reach this state within thirty days, thereby according priority to the lien creditor. In appraising this possible reading of the provision, it is significant that the statutory protection of the security interest is not predicated on notice to third parties in the other jurisdiction.

224. See WYO. STAT. § 34-21-903(a) (iii) (Supp. 1983) (U.C.C. § 9-103(1) (c) (1972)). The goods must arrive in the jurisdiction where they are to be kept within 30 days after the debtor receives possession.

225. See WYO. STAT. § 34-21-903(b) (ii) (Supp. 1983) (U.C.C. § 9-103(2) (b) (1972)).

226. "Mobile goods" are those which are mobile and ordinarily used in more than one jurisdiction and not governed by the certificate of title rule referred to in text accompanying note 225. WYO. STAT. § 34-21-903(c) (i) (Supp. 1983) (U.C.C. § 9-103(3) (a) (1972)).

227. See WYO. STAT. § 34-21-903(c) (ii) (Supp. 1983) (U.C.C. § 9-103(3) (b) (1972)). Non-possessory security interests in chattel paper are also governed by this rule. Possessory security interests in chattel paper are governed by the general rule referring to the law of the jurisdiction in which the collateral is located. See WYO. STAT. § 34-21-903(d) (Supp. 1983) (U.C.C. § 9-103(4) (1972)).

228. WYO. STAT. § 34-21-903(c) (1977) (U.C.C. § 9-103(3) (1962)).

229. If, as some contend, a debtor cannot have rights in collateral until he receives possession, the security interest would not attach until then. See, Anzivino, *When Does a Debtor Have Rights in the Collateral Under Article 9 of the Uniform Commercial Code?*, 61 MARQ. L. REV. 23 (1977). This would have obviated the problem of delayed delivery.

230. WYO. STAT. § 34-21-903(a) (iii) (Supp. 1983) (U.C.C. § 9-103(1) (c) (1972)).

231. See WYO. STAT. § 34-21-930(a) (ii) (Supp. 1983) (U.C.C. § 9-301(1) (b) (1972)).

Furthermore, the secured party advances credit in reliance specifically on this collateral while the lien creditor did not. For these reasons, priority of the security interest should be preserved.²³² If the levy prevents transportation of the collateral to this state beyond the thirty-day period, however, preservation of priority over the levying lien creditor would not insulate the security interest against subordination to others.²³³

Under the Code, movement of collateral from a jurisdiction in which the security interest was perfected to another in which it was not usually required reperfecture in the new jurisdiction within four months of the move.²³⁴ Disagreements arose respecting whether a secured party who never reperfected retained priority over interests in the collateral acquired during the four-month period. Some asserted that the security interest enjoyed absolute priority for four months regardless of failure to reperfect. Others countered that failure to reperfect within four months rendered the security interest retroactively unperfected from the time when the collateral entered the new jurisdiction.²³⁵ The amendments resolve this dispute partly in the affirmative and partly in the negative, subordinating the unperfected security interest to purchasers during the four-month period, but not subordinating it to liens obtained during that period.²³⁶ The amendments also add a similar four-month reperfecture requirement with respect to accounts, general intangibles and mobile goods when the debtor moves to a new jurisdiction,²³⁷ a requirement which had been omitted from the Code.

Confusion existed under the Code respecting the effect on perfection of security interests when collateral governed by a certificate of title moved between jurisdictions. The question arose most frequently with respect to motor vehicles. The problem may have been complicated by an additional provision specifying that, when perfection was effected by certificate notation, the law of the jurisdiction issuing the certificate governed

232. Cf. WYO. STAT. § 34-21-903(a) (iv) and (c) (v) (Supp. 1983) (U.C.C. § 9-103(1) (d) and (3) (e) (1972)). Dealing with other situations, the drafters clearly prescribed retroactive ineffectiveness for failure to file in another jurisdiction when the collateral or debtor moves. The inference is that, having made this sort of provision there and not here, it is not intended here.

233. Recognizing that delay in reaching the destination jurisdiction may disappoint expectations that its law will govern perfection continuously, the drafters recommend the precaution of filing in both jurisdictions. U.C.C. § 9-103, Comment 3 (1972).

234. WYO. STAT. § 34-21-903(c) (1977) (U.C.C. § 9-103(3) (1962)). The provision strikes a compromise between the original secured party and persons acquiring interests in the collateral in the new jurisdiction. Admittedly the compromise may produce somewhat arbitrary results. The original secured party must discover the move and reperfect within four months or lose priority over intervening purchasers. After four months persons in the new jurisdiction are protected against security interests from the original jurisdiction which the secured party has not reperfected. Interests in the collateral acquired in the new jurisdiction within the four-month period, however, are subordinate to an original security interest subsequently reperfected within that period.

235. See, e.g., *Arrow Ford, Inc. v. Western Landscape Construction Co.*, 23 Ariz. App. 281, 532 P.2d 553 (1975) (unperfected security interest retroactively ineffective); *First National Bank of Bay Shore v. Stamper*, 93 N.J. Super. 150, 225 A.2d 162 (1966) (security interest has priority over buyer within four months although never reperfected). See also Draft No. 2, *supra* note 4, at 41.

236. See WYO. STAT. § 34-21-903(a) (iv) (Supp. 1983) (U.C.C. § 9-103(1) (d) (1972)). "Purchaser" includes both buyers and secured parties. WYO. STAT. § 34-21-120(xxxii) and (xxxiii) (1977) (U.C.C. § 1-201(32) and (33) (1962)).

237. See WYO. STAT. § 34-21-903(c) (v) (Supp. 1983) (U.C.C. § 9-103(3) (e) (1972)).

perfection.²³⁸ Relying upon this provision, some courts held that perfection continued without limitation in the new jurisdiction.²³⁹ Others ignored the provision altogether in favor of the four-month reperfecting requirement.²⁴⁰ Still others held that the four-month priority rule governed even if the new jurisdiction issued a certificate without security interest notation within the four-month period.²⁴¹ The problems were further complicated by movement between certificate and noncertificate jurisdictions.²⁴²

The amendments treat separately security interests perfected by notation on a certificate of title.²⁴³ When the collateral moves to a new jurisdiction, the security interest perfected by certificate notation in the original jurisdiction remains perfected for four months. If the collateral has not been reregistered in the new jurisdiction within the four-month period, the perfection continues until it is reregistered. In no event, however, does perfection continue beyond surrender of the original title certificate.²⁴⁴ If a dishonest debtor obtains a duplicate certificate without notation of the security interest, he could surrender that certificate in the new jurisdiction. Since surrender of a duplicate certificate on which the security interest is not noted does not constitute surrender of the certificate,²⁴⁵ however, the secured party who retains the original certificate is accorded a minimum of four months to reperfect.²⁴⁶

A second amendments provision governing certificate of title collateral creates an exception from the continued perfection provisions just discussed.²⁴⁷ It is designed to protect nonprofessional buyers who rely upon a certificate issued by the new jurisdiction which does not reveal the security interest. Unless the new certificate shows that the goods might be subject to an undisclosed security interest, "the security interest is subordinate to the rights of [a nonprofessional buyer] to the extent that he gives value and receives delivery of the goods after issuance of a certificate and without

238. See WYO. STAT. § 34-21-903(d) (1977) (U.C.C. § 9-103(4) (1962)).

239. See, e.g., *In re White*, 266 F. Supp. 863 (N.D.N.Y. 1967).

240. See, e.g., *Arrow Ford v. Western Landscape Construction Co.*, 23 Ariz. App. 281, 532 P.2d 553 (1975).

241. See, e.g., *First National Bank of Bay Shore v. Stamper*, 93 N.J. Super. 150, 225 A.2d 162 (1966).

242. J. WHITE & R. SUMMERS, *HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE* (1972), discusses the problems at section 23-21.

243. WYO. STAT. § 34-21-903(b) (Supp. 1983) (U.C.C. § 9-103(2) (1972)).

244. WYO. STAT. § 34-21-903(b) (ii) (Supp. 1983) (U.C.C. § 9-103(2) (b) (1972)).

245. See U.C.C. § 9-103, Comment 4(c) (1972). Conservative practice dictates that the secured party retain the original certificate of title to preclude its surrender in another jurisdiction. If the original certificate is surrendered in exchange for a Wyoming certificate, the county clerk must note on the Wyoming certificate any security interest shown on the surrendered one. WYO. STAT. §§ 31-4-304(b) and 31-4-308(b) (iii) (Supp. 1983).

246. The secured party could file a financing statement if he knew the county in which to file (WYO. STAT. § 34-21-951(b) (i) (Supp. 1983) (U.C.C. § 9-402(2) (a) (1972)), but no provision permits him to require notation of his security interest on a certificate issued by the Wyoming county clerk. If a debtor manages to obtain a clean certificate in another jurisdiction, he can have a clean Wyoming certificate issued also. Most security agreements provide that removing this sort of collateral from the jurisdiction constitutes a default. This enables the secured party to repossess the collateral if he can find it, thereby reperfecting by possession. See U.C.C. § 9-103, Comment 4(e) (1972).

247. WYO. STAT. § 34-21-903(b) (iv) (Supp. 1983) (U.C.C. § 9-103(2) (d) (1972)).

knowledge of the security interest."²⁴⁸ The choice of the words "the security interest is subordinate" and "to the extent that he gives value" seems unfortunate. A simple promise to pay, without any out-of-pocket payment, would constitute "value."²⁴⁹ Surely the putative buyer who has given nothing more than a promise when the secured party appears upon the scene should not prevail over the latter's right to repossess and sell the collateral. Perhaps the problem is unlikely to arise because the provision also requires that the buyer must have received delivery. Instances in which the buyer will receive delivery before payment, or at least part payment, of the agreed price will be rare.

Despite the Code's general definition of "value," the phrase "to the extent that [the buyer] gives value" suggests that "value" here means payment, not merely a promise to pay.²⁵⁰ Although this seems consistent with a legitimate effort to protect innocent buyers who have paid their money in reliance on their own state's certificate of title, it presents some troublesome questions. What if the buyer has not yet paid the whole purchase price when the secured party surfaces? Or, alternatively, what if, because of the dishonest debtor's eagerness to sell, the buyer has made a very good deal? In either of these circumstances, if the law permits, the secured party may elect to repossess and sell the collateral, reimburse the buyer's out-of-pocket payments from the proceeds and hope to recover a portion of his unpaid loan. Does the provision authorize this result? That it speaks in terms of the security interest being "subordinate . . . to the extent that [the buyer] gives value," rather than in terms of the buyer taking free from the security interest, implies that it does.²⁵¹ A subordinate security interest is entitled to proceeds of collateral remaining after the prior interest is paid.²⁵² The provision further implies that the security interest takes priority over buyer's ownership interest to the extent that he has not given value.

If the amendments protects the nonprofessional buyer's out-of-pocket expenses only, the buyer has not given value to the extent that promised payments are yet to be made. A secured party might also assert, although perhaps less convincingly, that the buyer has not given value to the extent that the agreed purchase price falls short of a reasonable market value of the vehicle. Having aired the arguments, however, it is hard to suppress a suspicion that this is not really what the drafters intended, in spite of their ill-chosen words. The provision seems motivated by a desire to protect the innocent, nonprofessional buyer against repossessing secured parties. To effectuate this purpose, perhaps the words "to the extent that he gives

248. *Id.* Some certificate of title laws require that certificates bear a warning regarding undisclosed security interests in vehicles originally titled out-of-state. After four months this warning may be removed. This procedure obviates the problems addressed by the quoted provision. U.C.C. § 9-103, Comment 4(e) (1972).

249. WYO. STAT. § 34-21-120(xliv) (D) (1977) (U.C.C. § 1-201(44) (d) (1962)).

250. Emphasis supplied. All of the general definitions are subject to modification if "the context otherwise requires, . . ." U.C.C. § 1-201 (1962) (WYO. STAT. § 34-21-120(a) (1977)).

251. *Cf.* WYO. STAT. § 34-21-936(a) (Supp. 1983) (U.C.C. § 9-307(1) (1972)). (Buyer in ordinary course of business "takes free" of a security interest created by his seller. *But cf.* U.C.C. § 9-301(1) (c) and (d) (1972) (WYO. STAT. § 34-21-930 (a) (iii) and (iv) (Supp. 1983)) (unperfected security interest "subordinate to" transferees and buyers not in the ordinary course of business).

252. *Cf.* WYO. STAT. § 34-21-963(a) (1977) (U.C.C. § 9-504(1) (1972)) (secured party must pay excess proceeds of disposition of collateral to subordinate secured party).

value" should be read as "if he gives value." Any value given preceding knowledge of a security interest should then suffice to prevent repossession; bargain buyers would also be protected because this reading would make the relationship between the agreed price and market value irrelevant.²⁵³

FIXTURES

The Code and amendments govern security interests in personal property only and, in general, are not intended to affect interests in real estate. The one exception to this general approach arose under the Code when collateral subject to a security interest became fixtures.²⁵⁴ For example, the furnace installed in a building to furnish heat may be a fixture. If it is, conflicting claims to the furnace might be made by a secured party and a person holding an interest in the real estate. Ordinarily the real estate claimants would be a mortgagee, a buyer, a judgment creditor holding a real estate lien or an owner whose tenant may subject to a security interest property located or to be located in the premises.

Two disputes may arise between the secured party and a person predicating his claim to the furnace upon a real estate interest. First, is the furnace a fixture or isn't it? If it is not a fixture, then no conflict exists because no claim to it arises by virtue of holding a real estate interest. If the furnace is a fixture, the second issue must be faced—does the security interest or the real estate interest have priority? The Code left resolution of the first issue to local, non-Code law.²⁵⁵ If, under that law, the furnace constituted a fixture, however, the Code governed priority conflicts between security interest and real estate interest.²⁵⁶ Generally, if a security interest attached before the furnace became a fixture, it took priority over all real estate interests except a few which were acquired between creation and perfection of the security interest. If the security interest attached after the furnace became a fixture, it also took priority over all subsequently acquired real estate interests except a few acquired between its creation and perfection. It was subordinate, however, to all real estate interests existing when the security interest was created, unless they consented or disclaimed an interest in the furnace. In response to substantial criticism, the amendments completely revise the Code's fixture provisions.

The fixture provisions recognize three categories of property—pure personalty, which is not part of real estate; pure real estate, which has no personalty characteristics for finance purposes, and fixtures, which occupy a legal status somewhere between the other two categories.²⁵⁷ While the statute deferred to local real estate law to determine what constituted a

253. In a case in which less than the entire purchase price has been paid by the innocent buyer, he might be required to pay the balance to the secured party. If the solution recommended for bargain purchases is unpalatable, possibly a court should determine a "fair" price, giving buyer the option to pay the secured party any excess over the bargain price or permit repossession upon return of amounts already paid.

254. See WYO. STAT. § 34-21-942 (1977) (U.C.C. § 9-313 (1962)).

255. WYO. STAT. § 34-21-942(a) (1977) (U.C.C. § 9-313(1) (1962)).

256. WYO. STAT. § 34-21-942(b) and (d) (1977) (U.C.C. § 9-313(2)-(4) (1962)).

257. See U.C.C. § 9-313, Comment 3 (1972).

fixture, some states did not recognize fixtures as occupying an independent, intermediate position between personally and realty.²⁵⁸ The amendments obviate the necessity for local law categorization of some goods as "fixtures" by defining this term to include all goods "when they become so related to particular real estate that an interest in them arises under real estate law."²⁵⁹

Perhaps the most serious substantive flaw in the Code's fixture provisions surfaced in respect to their allocation of priority between security interests and construction mortgages. The fixture provisions accorded priority over all real estate interests (including construction mortgages) to any security interest which attached before the goods became fixtures, except certain interests subsequently acquired without knowledge and before perfection of the security interest.²⁶⁰ An owner or contractor who ran short of construction funds might finance the acquisition of fixtures by granting a purchase money security interest to the financier. When perfected that interest took priority over the construction mortgage.²⁶¹ This result was criticized on the ground that it frustrated the mortgagee's reasonable expectation of a first mortgage on a complete and functioning building.²⁶² The amendments expressly reverse this result, according priority over security interests to the construction mortgage and any mortgage given to refinance it.²⁶³

The Code provision granting priority to security interests attaching before goods became fixtures also enabled a secured party to obtain priority over both owners and mortgagees even though his debtor had no interest in the real estate. If a contractor granted a security interest to finance the purchase of a fixture, the Code accorded that security interest priority over real estate interests in the building in which the fixture was installed. This result flowed from the grant of priority to any security interest attaching to goods before they became fixtures, without specification of who could create the interest.²⁶⁴ Again the amendments came to the rescue, limiting priority to security interests created by a debtor who either has an interest of record in or is in possession of the real estate.²⁶⁵

Two interpretive questions also marred the Code's fixture provisions. First, the provisions denied security interests priority over certain real

258. Schroeder, *Revision of the U.C.C. in Arizona—Security Interests in Fixtures*, 1975 ARIZ. ST. L.J. 289, 323.

259. WYO. STAT. § 34-21-942(a) (i) (Supp. 1983) (U.C.C. § 9-313(1) (a) (1972)).

260. WYO. STAT. § 34-21-942(b) (1977) (U.C.C. § 9-313(2) (1962)). The excepted interests were those of a subsequent purchaser for value of any interest in the real estate, a creditor holding a lien on the real estate subsequently obtained by judicial proceedings and a creditor holding a prior encumbrance of record on the real estate to the extent that he made future advances. These persons obtained priority, however, only if they acted without knowledge of the security interest and before it was perfected. WYO. STAT. § 34-21-942(d) (1977) (U.C.C. § 9-313(4) (1962)).

261. Even the unperfected security interest enjoyed priority over prior advances on the rationale that the holder of a prior interest could not have relied on the fixture when that interest was acquired.

262. See, e.g., Coogan, *The New Article 9*, 86 HARV. L. REV. 477, 498-99 (1973).

263. See WYO. STAT. § 34-21-942(f) (Supp. 1983) (U.C.C. § 9-313(6) (1972)).

264. See WYO. STAT. § 34-21-942(b) (1977) (U.C.C. § 9-313(2) (1962)). The owner would take free from the security interest created by the contractor, however, if the latter were considered to be in the business of selling goods of that kind. See WYO. STAT. § 34-21-936(a) (1977) (U.C.C. § 9-307(1) (1962)).

265. See WYO. STAT. § 34-21-942(d) (i) (Supp. 1983) (U.C.C. § 9-313(4) (a) (1972)).

estate interests created subsequently to the security interest but before its perfection.²⁶⁶ It was silent, however, on whether the subsequently created interests protected were those created subsequently to attachment of the security interest or subsequently to installation of the goods in the real estate. Attachment would ordinarily occur when the goods were purchased or delivered, installation could be substantially later. The latter interpretation of "subsequently" seemed preferable since the holder of the real estate interest would be unlikely to rely on the goods before they were installed as fixtures.²⁶⁷ The amendments solve the problem by abandoning this distinction. They accord priority in all cases to the purchase money security interest perfected by fixture filing either before the goods became fixtures or within ten days thereafter.²⁶⁸ It is immaterial whether the real estate interest is created prior to or subsequently to installation of the fixtures.

The second interpretive question lurking in the Code's fixture provisions pertained to a conflict between the unperfected fixture security interest created by a tenant and the interest of the real estate owner or his mortgagee. If the tenant had no right as against the owner to remove the fixture at the end of the lease, the rights of a secured party, whether perfected or unperfected, were subordinate to those of the owner or mortgagee.²⁶⁹ Furthermore, one might have inferred from the Code fixture provisions that, even if the tenant could remove fixtures, the removal rights of an unperfected security interest were subordinate to the rights of the owner or mortgagee. While these provisions did not expressly address the issue, the preferable result would permit removal by the holder of the unperfected security interest.²⁷⁰ The amendments specify this result.²⁷¹

The amendments also add some provisions not contained in the Code. While continuing the priority of a security interest perfected before a real estate interest is recorded, the amendments add that the security interest must also have priority over any predecessor in title of the real estate interest in question.²⁷² This negates the possibility that a security interest subordinate to an owner or mortgagee could become superior to a purchaser from that owner or to an assignee of that mortgagee.

Another added provision accords priority over all real estate interests to security interests in fixtures which are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods.²⁷³ These security interests must be perfected

266. See *supra* note 260.

267. G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY, § 30.6 (1965).

268. See WYO. STAT. § 34-21-942(d) (i) (Supp. 1983) (U.C.C. § 9-313(4)(a) (1972)). The adoption of a 10-day grace period for perfection makes this provision logically consistent with the amendments' other purchase money security provisions. Compare WYO. STAT. §§ 34-21-930(b) and 34-21-941(d) (Supp. 1983) (U.C.C. §§ 9-301(2) and 9-312(4) (1972)). Wyoming did not increase this 10-day period to 20 days when it increased the period governing the other purchase money security interest filing requirements.

269. See Kripke, *Fixtures Under the Uniform Commercial Code*, 64 COLUM. L. REV. 44, 66-67 (1964). This seems to make superfluous any fixture filing requirement for security interests in a tenant's fixtures.

270. *Id.*

271. WYO. STAT. § 34-21-942(e) (ii) (Supp. 1983) (U.C.C. § 9-313(5) (b) (1972)).

272. WYO. STAT. § 34-21-942(d) (ii) (Supp. 1983) (U.C.C. § 9-313(4) (b) (1972)).

273. WYO. STAT. § 34-21-942(d) (iii) (Supp. 1983) (U.C.C. § 9-313(4) (c) (1972)). Although the provision is of academic interest, it seems unlikely that goods of this type would constitute fixtures in Wyoming.

before the goods become fixtures,²⁷⁴ but a fixture filing is not required; any method of perfection will suffice. In most jurisdictions goods of this sort would probably not be sufficiently related to real estate to be classified as fixtures and, therefore, not subject to real estate interests in any event. If they are, however, the secured party is relieved from compliance with the more burdensome requirements applicable to fixture financing statements and their filing.²⁷⁵ The burden is placed in the mortgagee to determine the existence of security interests from the ordinary financing statement file and, if he claims an interest in this type of goods, to perfect by filing an ordinary financing statement. Note also that the priority of security interests in appliances is limited to replacements of domestic appliances which are consumer goods. This rather narrow classification excludes original appliances in new buildings (such as apartment buildings) which might be included in construction financing.²⁷⁶

A third addition to the fixture provisions made by the amendments accords priority to any security interest against "a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by [Article 9]."²⁷⁷ The addition clarifies that fixture filing is not required for priority in fixtures over lien creditors. These creditors are not likely to search the real estate recordings or to rely upon specific property.²⁷⁸ This provision raises some question respecting the vulnerability in bankruptcy of a fixture security interest perfected by a method other than fixture filing. For some purposes the Bankruptcy Code grants a bankruptcy trustee the rights that a bona fide purchaser of real property from the debtor could assert over holders of conflicting interests.²⁷⁹ The fixture security interest perfected by ordinary filing rather than by fixture filing would take priority over a lien creditor but would not take priority over a purchaser. It has been suggested that this Bankruptcy Code provision is aimed at a different problem and should not apply to fixture priorities.²⁸⁰

The content and filing of a financing statement to perfect security interests in a fixture have also been a source of some problems. These have arisen primarily from lack of adequate requirements for filing in relevant real estate records, for identification of the related real estate in the financ-

274. For this reason, they are likely to be purchase money security interests which could be perfected and gain priority under section 9-313(4)(a). Section 9-313(4)(c) accords priority over construction mortgages, however, while section 9-313(4)(a) does not. WYO. STAT. § 34-21-942(f) (Supp. 1983) (U.C.C. § 9-313(6) (1972)). The drafters conclude that factory and office machines "are not always financed as part a construction mortgage." U.C.C. § 9-313, Comment 4(d) (1972).

275. These require a description of the real estate, the name of the record owner and must be filed and indexed in the real estate records. WYO. STAT. §§ 34-21-950(a) (ii) (1977) and 34-21-951(e) (Supp. 1983) (U.C.C. §§ 9-401(1) (a) and 9-402 (5) (1972)).

276. See U.C.C. § 9-313, Comment 4(d) (1972).

277. WYO. STAT. § 34-21-942(d) (iv) (Supp. 1983) (U.C.C. § 9-313(4) (d) (1972)).

278. See U.C.C. § 9-313, Comment 4(c) (1972).

279. See 11 U.S.C. § 544(a) (3) (1982).

280. J. WHITE & R. SUMMERS, *supra* note 16, at 1062. The problem at which section 544(a)(3) is aimed concerns real estate recording statutes, like Wyoming's, which render unrecorded conveyances ineffective against subsequent purchasers in good faith, but not against lien creditors. Compare WYO. STAT. § 34-1-120 (1977). In states having these statutes an unrecorded mortgage would be invulnerable to the attack of a trustee asserting only his lien creditor rights. See 11 U.S.C. § 544(a) (1) (1982).

ing statement, and for indexing of the financing statement.²⁸¹ Filing in the real estate records is necessary to provide notice of the security interest to persons who have or may acquire some interest in the real estate. An adequate description of the real estate enables those persons to identify the real estate where the fixture is located. Further, if the debtor has no interest in the real estate, persons searching the record are unlikely to find the filing unless it is indexed under the owner's name.²⁸² The amendments require that a fixture filing must recite that it is to be filed in the real estate records. It must also contain a description of the real estate sufficient to constitute a constructive notice under the state's mortgage law and, if the debtor has no interest in the real estate, must contain the name of the record owner.²⁸³ Fixture filings must also be indexed under the names of the debtor and any owner of record shown in the financing statement in the same way as if both debtor and owner were mortgagors, and under the name of the secured party as if he were a mortgagee.²⁸⁴

SOME OTHER CHANGES

Some other, miscellaneous changes effected by the amendments deserve note. The provisions of the Code excluding from the application of Article 9 certain types of transactions are revised in several respects; the revisions seem self explanatory. They include the following revisions and a few others: An exclusion of equipment trusts covering railway rolling stock is deleted since these are essentially similar to other commercial secured transactions.²⁸⁵ They should, therefore, be governed by the amendments. An express exclusion of transfers by a government or governmental unit is inserted for clarity.²⁸⁶ Transactions involving the transfer of a single account in whole or partial satisfaction of a preexisting indebtedness are excluded from the Article's application.²⁸⁷ Although transfers of insurance policies or claims thereunder are excluded from the Article's application, claims to policies as proceeds of collateral as well as the priorities of conflicting claims to those proceeds are expressly excepted from the exclusion.²⁸⁸ Although rights represented by judgments are excluded, a judgment on a right to payment which was collateral (such as an account) is expressly excepted from the exclusion.²⁸⁹ Transfers of any interest in a deposit account are expressly excluded, but deposit accounts representing proceeds of collateral and priority conflicts in those proceeds are expressly excepted from the exclusion.²⁹⁰

281. See U.C.C. § 9-402, Reasons for 1972 Change.

282. *Id.*

283. WYO. STAT. § 34-21-951(e) (Supp. 1983) (U.C.C. § 9-402(5) (1972)). The requirements of this subsection also apply when the collateral is timber to be cut, minerals or the like, or accounts resulting from sale of minerals or the like at wellhead or minehead.

284. WYO. STAT. § 34-21-952(g) (Supp. 1983) (U.C.C. § 9-403(7) (1972)). The requirements of this subsection also apply when the collateral is timber to be cut, minerals or the like, or accounts resulting from sale of minerals or the like at wellhead or minehead.

285. See U.C.C. § 9-104, Reasons for 1972 Change.

286. WYO. STAT. § 34-21-904(a) (v) (Supp. 1983) (U.C.C. § 9-104(e) (1972) and Reasons for 1972 Change).

287. WYO. STAT. § 34-21-904(a) (vi) (Supp. 1983) (U.C.C. § 9-104(f) (1972)).

288. WYO. STAT. § 34-21-904(a) (vii) (Supp. 1983) (U.C.C. § 9-104(g) (1972)).

289. WYO. STAT. § 34-21-904(a) (viii) (Supp. 1983) (U.C.C. § 9-104(h) (1972)).

290. WYO. STAT. § 34-21-904(a) (xii) (Supp. 1983) (U.C.C. § 9-104(i) (1972)).

Several revisions appear in the definitions of terms used in the Article. These include the following revisions and some others. The definition of "document" is expanded to include receipts issued by certain persons even though they are not warehousemen.²⁹¹ This addition clarifies that these receipts are governed by the optional perfection provisions, permitting perfection of security interests either by filing or by possession.²⁹² The primary purpose of this addition is to include as "documents" receipts issued by grain dealers who are not warehousemen.²⁹³ The definition of goods is amended to add thereto "standing timber which is to be cut and removed under a conveyance or contract for sale" and to exclude therefrom "minerals or the like (including oil and gas) before extraction."²⁹⁴ The following definition of the new term "pursuant to commitment" is added: "An advance is made 'pursuant to commitment' if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation."²⁹⁵ In view of this definition it is possible that an advance may be made "pursuant to commitment" and, therefore, entitled to priority even if intervening events have discharged the secured party's contractual obligation to make it. The new term "transmitting utility" is also defined.²⁹⁶

The Code distinguished between "accounts" and "contract rights," the latter term designating the incipient account before obligee had performed.²⁹⁷ Since the term caused several difficulties and the distinction between the two terms was not necessary,²⁹⁸ it has been deleted and "accounts" redefined to include obligations not yet earned by the obligee's performance. Corresponding deletions have been made in numerous sections throughout the Article. A new provision has been added which requires some consignors to notify secured parties that they are delivering goods to the consignee on consignment.²⁹⁹ The provision applies to any consignor who is required to file a financing statement to insulate his goods against claims by the consignee's creditors.³⁰⁰ He must file and give written notice

291. WYO. STAT. § 34-21-905(a) (vi) (Supp. 1983) (U.C.C. § 9-105(1) (f) (1972) and Reasons for 1972 Change). The subsection became somewhat garbled in the process of being transplanted from the Official Code to the Wyoming Code.

292. See WYO. STAT. §§ 34-21-933 and 34-21-934 (1977 & Supp. 1983) (U.C.C. §§ 9-304 and 9-305 (1972)).

293. Draft No. 2, *supra* note 4, at 47.

294. WYO. STAT. § 34-21-905(a) (viii) (Supp. 1983) (U.C.C. § 9-105(1) (h) (1972)).

295. WYO. STAT. § 34-21-905(a) (xi) (Supp. 1983) (U.C.C. § 9-105(1) (k) (1972)). The new term is used in determining the priority of future advances over intervening lien creditors (WYO. STAT. § 34-21-930(d) (Supp. 1983) (U.C.C. § 9-301(4) (1972)), buyers (WYO. STAT. § 34-21-936(c) (Supp. 1983) (U.C.C. § 9-307(3) (1972)) and security interests (WYO. STAT. § 34-21-941(g) (Supp. 1983) (U.C.C. § 9-312(7) (1972)).

296. See WYO. STAT. § 34-21-905(a) (xiv) (Supp. 1983) (U.C.C. § 9-105(1) (n) (1972)). Security interests in collateral owned by a transmitting utility are discussed *supra* in the text accompanying notes 111-14.

297. WYO. STAT. § 34-21-906 (1977) (U.C.C. § 9-106 (1962)).

298. See U.C.C. § 9-106, Reasons for 1972 Change.

299. WYO. STAT. § 34-21-914 (Supp. 1983) (U.C.C. § 9-114 (1972)).

300. A consignor's goods delivered on sale or return are subject to claims of the consignee's creditors unless the consignor complies with an applicable sign law, establishes that the consignee is generally known by his creditors to be substantially engaged in selling the goods of others, or files a financing statement. WYO. STAT. § 34-21-243(c) (1977) (U.C.C. § 2-326(3) (1962)).

of intended consignment deliveries to persons who, prior to his filing, have filed a financing statement covering the same types of goods.³⁰¹

The Code provisions governing attachment and enforceability of security interests have been rewritten.³⁰² These provisions are combined to avoid the former anomaly that a security interest could be attached but not enforceable.³⁰³ A Code provision specifying when a debtor acquired rights in crops, young of livestock, fish, mineral, timber, contract rights and accounts has been deleted as unnecessary and confusing.³⁰⁴ Another, limiting to one year acquisition of a security interest in crops under an after-acquired property clause, has also been deleted as ineffective and productive of unnecessary paperwork.³⁰⁵

Code provisions governing notice by the secured party of proposed sale of collateral or proposed retention of the collateral in full satisfaction of the debt, and also provisions governing rights to object to a proposed retention of the collateral, have been revised.³⁰⁶ The secured party need no longer notify a debtor of a proposed sale or of intent to retain the collateral when, after default, the debtor signs a statement renouncing or modifying his right to notice.³⁰⁷ Under the Code the foreclosing secured party was required to give notice of the proposed sale or retention of the collateral to the debtor and all other secured parties holding a security interest in the same collateral who had filed a financing statement indexed in the debtor's name or who the foreclosing secured party knew to have a security interest in the collateral.³⁰⁸ To reduce this unwarranted burden on the foreclosing secured party and to avoid disputes over his possible knowledge of unfiled security interests,³⁰⁹ the amendments reduce his responsibility to notifying the debtor and other secured parties who have notified the secured party of their interest in the collateral.³¹⁰

The Official amendments contain a new Article 11 consisting of eight sections which govern questions of transition from the Official Code to the Official amendments.³¹¹ The sections address primarily questions concerning which law governs transactions initiated prior to the effective date of the Official amendments and continuing thereafter. Among others, they resolve questions concerning how changes in the place to file affect con-

301. The provision is substantially the same as the one requiring that purchase money inventory financiers notify other inventory secured parties. See WYO. STAT. § 34-21-941(c) (Supp. 1983) (U.C.C. § 9-312(3) (1972)).

302. See WYO. STAT. §§ 34-21-922 and 34-21-923 (1977) (U.C.C. §§ 9-203 and 9-204 (1962)).

303. See WYO. STAT. § 34-21-922(a) and (b) (Supp. 1983) (U.C.C. § 9-203(1) and (2) (1972) and Reasons for 1972 Change).

304. WYO. STAT. § 34-21-923(b) (1977) (U.C.C. § 9-204(2) (1962) and Reasons for 1972 Change).

305. WYO. STAT. § 34-21-923(d) (i) (1977) (U.C.C. § 9-204(4) (a) (1962) and Reasons for 1972 Change).

306. See WYO. STAT. §§ 34-21-963(c) and 34-21-964(b) (1977) (U.C.C. §§ 9-504(3) and 9-505(2) (1962)).

307. See WYO. STAT. §§ 34-21-963(c) and 34-21-964(b) (Cum. Supp. 1983) (U.C.C. §§ 9-504(3) and 9-505(2) (1972)).

308. See *supra* note 306.

309. See U.C.C. §§ 9-504 and 9-505, Reasons for 1972 Change.

310. See *supra* note 307. Although the change will require every other secured party wishing to receive notice to notify the forecloser, few will actually do so. The interest of most will be junior to the forecloser and valueless. See U.C.C. § 9-504, Reasons for 1972 Change.

311. See U.C.C. §§ 11-101 to 11-108 (1972).

tinued perfection.³¹² A general provision also instructs that amendments are declaratory of the meaning of the Code unless a change has clearly been made.³¹³ The Wyoming Legislature did not adopt any of the transition provisions. It remains to be seen how our courts will resolve transition problems and to what extent, if any, they will be influenced by the Official amendments' transition provisions.

CONCLUSION

The amendments effect rather substantial changes in the text of Article 9 of the Code. Most of these changes respond to interpretive questions revealed by decided cases or by commentaries discussing the Official Code's provisions. Some provisions, however, were found to mandate undesirable results. These have been rectified by changes in the substantive effect of the offending provisions.

In regard to motor vehicle security interests, confusion is engendered by the Wyoming amendments. First they adopt the Official amendments' recommendation, referring to the Wyoming certificate of title statute as the exclusive law governing the method of perfecting these security interests. This reference would probably have been sufficient if the certificate of title statute had also been amended to provide for security interest notation on outstanding title certificates. Instead the Wyoming amendments carry forward independent Wyoming Code provisions purporting to govern perfection of motor vehicle security interests. These require both title certificate notation and financing statement filing. Moreover, the unique Wyoming amendments provisions themselves raise several interpretive questions.³¹⁴ Statutory revision to cure the uncertainties created by Wyoming's treatment of this subject would be desirable.

With the exception of the motor vehicle situation just mentioned, the Legislature's adoption of the Wyoming amendments is gratifying. Although some questions still remain and continued application of the statute will undoubtedly disclose additional ones, the amendments have both clarified and improved Wyoming's law of personal property secured transactions.

312. The Wyoming amendments do not change the basic place to file requirements. In some circumstances, however, they will require an additional filing to perfect as to proceeds. See *supra* text accompanying notes 201-07.

313. U.C.C. § 11-108 (1972).

314. See *supra* text accompanying notes 170-92.