

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

DIVISION 9
SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

NOTE: Public Law 26-172 (Dec. 30, 2002) repealed and reenacted Division 9 to adopt the 2001 Revision of Article 9 of the Uniform Commercial Code and did not provide an effective date. Public Law 27-40 (Nov. 18, 2003) amended P.L. 26-172 to extend the effective date to Oct. 1, 2004. Public Law 27-106 (Sept. 30, 2004) extended the effective date until Oct. 1, 2005. Public Law 28-67 (Sept. 20, 2005) further extended the effective date until Oct. 1, 2006. Public Law 28-148:2-5, and 7 (Sept. 30, 2006) repealed P.L.s 26-172, 27-40, 27-106:VI:36 and 28-67, and reenacted Division 9 as it existed immediately prior to P.L. 26-172. Public Law 28-148:6 provided a savings provision for transactions entered between P.L. 26-172 and P.L. 27-40. The Division 9 provided below is as it existed prior to P.L. 26-172 and is the current version of the law.

- Chapter 1. Short Title: Applicability and Definitions.
- Chapter 2. Validity of Security Agreement and Rights of Parties Thereto.
- Chapter 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority.
- Chapter 4. Filing.
- Chapter 5. Default.

CHAPTER 1
SHORT TITLE: APPLICABILITY AND DEFINITIONS

- § 9101. Short Title.
- § 9102. Policy and Scope of Division.
- § 9103. Perfection of Security Interests in Multiple State Transactions.
- § 9104. Transactions Excluded from Division.
- § 9105. Definitions and Index of Definitions.
- § 9106. Definitions: Account; General Intangibles.
- § 9107. Definitions: Purchase Money Security Interest.
- § 9108. When After-Acquired Collateral Not Security for Antecedent Debt.
- § 9109. Classification of Goods; “Consumer Goods”; “Equipment”; “Farm Products”; “Inventory”.
- § 9110. Sufficiency of Description.
- § 9111. Applicability of Bulk Transfer Laws.
- § 9112. Where Collateral Is Not Owned by Debtor.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

§ 9113. Security Interests Arising Under Division on Sales.

§ 9114. Consignment.

§ 9101. Short Title.

This division shall be known and may be cited as *Uniform Commercial Code--Secured Transactions*.

§ 9102. Policy and Scope of Division.

(1) Except as otherwise provided in Section 9104 on excluded transactions, this division applies

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) To any sale of accounts or chattel paper; and also

(c) To any transaction (regardless of its form) which is intended to create a security interest in goods which are or later become "fixtures" under the law of this Territory, but as against third parties having or acquiring an interest in or a lien on the real property, the rights and duties of the parties to the secured transactions are governed by the law of this Territory relating to real property and fixtures.

(2) This division applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, inventory lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This division does not apply to statutory liens except as provided in Section 9310.

(3) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

COMMENT: Subdivision (4) of Section 9102 of the California Commercial Code forbids a non-possessory security interest, other than a purchase money security interest, upon the inventory of certain retail merchants. The provision has been criticized as preserving "nothing but accidental distinctions," see West Ann. Cal. Comm. Code § 9102, California Code Comment (1964), has no counterpart in the Uniform Commercial Code and is not continued here.

§ 9103. Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments and ordinary goods.

(a) This subdivision applies to documents and instruments and to goods other than those covered by a certificate of title described in subdivision (2), mobile goods described in subdivision (3), and minerals described in subdivision (5), except that as to goods which are or later become fixtures under the law of this territory, the application of this subdivision is limited by the provisions of subdivision (1)(c) of Section 9102.

(b) Except as otherwise provided in this subdivision, perfection and the effect of perfection or nonperfection of a security interest in collateral 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.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this territory while subject to a security interest perfected under the law of jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Chapter 3 of this division to perfect the security interest,

(i) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this territory, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(ii) If the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) For the purpose of priority over a buyer of consumer goods (subdivision (2) of Section 9307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subdivision applies to goods covered by a certificate of title issued under a statute of this territory or of another jurisdiction under the law of which indication of a security on the certificate is required as a condition of perfection whether such certificate is designated a "certificate of title," "certificate of ownership," or otherwise.

(b) Except as otherwise provided in this subdivision, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this territory and thereafter covered by a certificate of title issued by this territory is subject to the rules stated in paragraph (d) of subdivision (1).

(d) If goods are brought into this territory while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this territory and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subdivision applies to accounts (other than an account described in subdivision (5) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, roadbuilding and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subdivision (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection, or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper. The rules stated for goods in subdivision (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subdivision (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals. Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

§ 9104. Transactions Excluded from Division.

This division does not apply:

(a) To a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) To a lien given by statute or other rule of law for services or materials except as provided in Section 9310 on priority of such liens; or

(c) To a transfer of a claim for wages, salary or other compensation of an employee; or

(d) To a transfer, including creation of a security interest, by a government or governmental subdivision or agency; or

(e) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(f) To any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of such policy or contract; or

(g) To a right represented by a judgment (other than a judgment taken in a right to payment which was collateral); or

(h) To any right of setoff; or

(i) To the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder and to any interest of a lessor and lessee in any such lease or rents; or

(j) To a transfer in whole or in part of any claim arising out of tort.

§ 9105. Definitions and Index of Definitions.

(1) In this division unless the context otherwise requires:

(a) *Account debtor* means the person who is obligated on an account, chattel paper or general intangible;

(b) *Chattel paper* means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) *Collateral* means the property subject to a security interest, and includes accounts, and chattel paper which have been sold;

(d) *Debtor* means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the division dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) *Deposit account* means a demand, time, savings, passbook or like account maintained with a bank, savings and loan

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit;

(f) *Document* means document of title as defined in the general definitions of Division 1 (Section 1201), and a receipt of the kind described in subdivision (2) of Section 7201;

(g) *Encumbrance* includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) *Goods* includes all things which are movable at the time the security interest attaches or which are fixtures (other than goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metalwork and the like unless the structure remains personal property under applicable law), but does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. Goods also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) *Instrument* means a negotiable instrument (defined in Section 3104), or a security (defined in Section 8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) *Mortgage* means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) 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;

(l) *Security agreement* means an agreement which creates or provides for a security interest;

(m) *Secured party* means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

agreement or the like are represented by a trustee or other person, the representative is the secured party.

(n) *Transmitting utility* means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(o) *New value* includes new advances or loans made, or new obligations incurred, or the release of a valid and existing security interest, or the release of a claim to proceeds; but new value shall not be construed to include extension or renewals of existing obligations of the debtor, nor obligations substituted for such existing obligations.

(2) Other definitions applying to this division and the sections in which they appear are:

Account. Section 9106.

Attach. Section 9203.

Consumer goods. Section 9109(1).

Construction mortgage. Section 9313(1).

Equipment. Section 9109(2).

Farm products. Section 9109(3).

General intangibles. Section 9106.

Inventory. Section 9109(4).

Lien creditor. Section 9301(3).

Proceeds. Section 9306(1).

Purchase money security interest. Section 9107.

United States. Section 9103.

(3) The following definitions in other divisions apply to this division:

Check. Section 3104.

Contract for sale. Section 2106.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

Holder in due course. Section 3302.

Note. Section 3104.

Sale. Section 2106.

(4) In addition Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

§ 9106. Definitions: Account; General Intangibles.

Account means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. General intangibles means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

§ 9107. Definitions: Purchase Money Security Interest.

A security interest is a purchase money security interest to the extent that it is

(a) Taken or retained by the seller of the collateral to secure all or part of its price; or

(b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

§ 9108. When After-Acquired Collateral Not Security for Antecedent Debt.

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by afteracquired property his security interest in the afteracquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

§ 9109. Classification of Goods; Consumer Goods; Equipment; Farm Products; Inventory.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

Goods are:

(1) Consumer goods if they are used or bought for use primarily for personal, family or household purposes;

(2) Equipment if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(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;

(4) Inventory if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has leased or so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

§ 9110. Sufficiency of Description.

For the purposes of this division any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

COMMENT: Section 9110 is identical to Section 9-110 of the 1972 Official Text of the Uniform Commercial Code. For purpose and effect, see Official Comment. The additional sentence in the California version can only be characterized as redundant and unnecessary.

§ 9111. Applicability of Bulk Transfer Laws.

The creation of a security interest under this division may be a bulk transfer under Division 6, except as specified in subdivision (1) of Section 6103.

§ 9112. Where Collateral Is Not Owned by Debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

9502(2) or under Section 9504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor.

(a) To receive statements under Section 9208;

(b) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9505;

(c) To redeem the collateral under Section 9506;

(d) To obtain injunctive or other relief under Section 9507(1); and

(e) To recover losses caused to him under Section 9208(2).

§ 9113. Security Interests Arising Under Division on Sales.

A security interest arising solely under the division on sales (Division 2) is subject to the provisions of this division except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security interest; and

(c) The rights of the secured party on default by the debtor are governed by the division on sales (Division 2).

§ 9114. Consignment.

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this division by paragraph (3)(c) of Section 2326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also his priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(a) The consignor complies with the filing provision of the division on sales with respect to consignments (paragraph (3)(c) of Section 2326) before the consignee receives possession of the goods; and

(b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

covering the same types of goods before the date of the filing made by the consignor; and

(c) The holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) The notification states that the consignor expects to deliver goods on consignment to the consignee describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subdivision have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

CHAPTER 2
VALIDITY OF SECURITY AGREEMENT
AND RIGHTS OF PARTIES THERETO

- § 9201. General Validity of Security Agreement.
- § 9202. Title to Collateral Immaterial.
- § 9203. Enforceability of Security Interests; Proceeds, Formal Requisites.
- § 9204. After-Acquired Property; Future Advances.
- § 9205. Use or Disposition of Collateral Without Accounting Permissible.
- § 9206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.
- § 9207. Rights and Duties When Collateral Is in Secured Party's Possession.
- § 9208. Request for Statement of Account or List of Collateral.
- § 9201. General Validity of Security Agreement.**

Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this division validates any

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

§ 9202. Title to Collateral Immaterial.

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

§ 9203. Enforceability of Security Interest; Proceeds, Formal Requisites.

(1) Subject to the provisions of Section 4208 on the security interest of a collecting bank and Section 9113 on a security interest arising under the division on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) Value has been given; and

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subdivision (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by Section 9306.

(4) A transaction, although subject to this division, is also subject to the Uniform Consumer Credit Code (commencing with Section 1801.101 of the Civil Code) and in the case of conflict between the provisions of this division and that statute, the provisions of that statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

§ 9204. After-Acquired Property; Future Advances.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(1) Except as provided in subdivision (2) a security agreement may provide that any or all obligations covered by the security agreement are to be secured by afteracquired collateral.

(2) No security interest attaches under an afteracquired property clause to consumer goods other than accessions (Section 9314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subdivision (1) of Section 9105).

§ 9205. Use or Disposition of Collateral Without Accounting Permissible.

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

§ 9206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the division on commercial paper (Division 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

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

§ 9207. Rights and Duties When Collateral Is in Secured Party's Possession.

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

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

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

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

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

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

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

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

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

§ 9208. Request for Statement of Account or List of Collateral.

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

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

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

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

(4) If the secured party is an organization maintaining branches or branch offices the request herein provided for shall be sent to the branch or branch office at which the security transaction was entered into or at which the debtor is to make payment of his obligation, and the secured party's statement, unless otherwise specified, shall be deemed to apply only to indebtedness entered into at or payable to such branch or branch office and to any collateral taken by such branch or branch office.

CHAPTER 3
RIGHTS OF THIRD PARTIES: PERFECTED AND
UNPERFECTED SECURITY INTERESTS: RULES OF PRIORITY

§ 9301. Persons Who Take Priority over Unperfected Security Interests; "Lien Creditor".

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

- § 9302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Division Do Not Apply.
- § 9303. When Security Interest Is Perfected; Continuity of Perfection.
- § 9304. Perfection of Security Interest in Instruments, Documents, and Goods Covered By Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.
- § 9305. When Possession by Secured Party Perfects Security Interest Without Filing.
- § 9306. *Proceeds*; Secured Party's Rights on Disposition of Collateral.
- § 9307. Protection of Buyers of Goods.
- § 9308. Purchase of Chattel Paper and Instruments; Priorities.
- § 9309. Protection of Purchasers of Instruments and Documents.
- § 9310. Priority of Certain Liens Arising by Operation of Law.
- § 9311. Alienability of Debtor's Right's: Judicial Process.
- § 9312. Priorities Among Conflicting Securities Interests in the Same Collateral.
- § 9313. Not Adopted in California or Guam.
- § 9314. Accessions.
- § 9315. Priority When Goods Are Commingled or Processed.
- § 9316. Priority Subject to Subordination.
- § 9317. Secured Party Not Obligated on Contract of Debtor.
- § 9318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

§ 9301. Persons Who Take Priority over Unperfected Security Interests: Lien Creditor.

(1) Except as otherwise provided in subdivision (2), an unperfected security interest is subordinate to the rights of

(a) Persons entitled to priority under Section 9312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) 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 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.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

§ 9302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Division Do Not Apply.

(1) A financing statement must be filed to perfect all security interests except the following;

(a) A security interest in collateral in possession of the secured party under Section 9305;

(b) A security interest temporarily perfected in instruments or documents without delivery under Section 9304 or in proceeds for a 10-day period under Section 9306;

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle or boat required to be registered;

(e) A security interest of a collecting bank (Section 4208) or arising under the division on sales (see Section 9113) or covered in subdivision (3) of this section;

(f) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(g) A security interest in a deposit account. Such a security interest is perfected:

(1) As to a deposit account maintained with the secured party when the security agreement is executed;

(2) As to a deposit account not described in subparagraph (1) when notice thereof is given in writing to the organization with whom the deposit account is maintained.

(h) A security interest in or claim in or under any policy of insurance including unearned premiums. Such interest shall be perfected when notice thereof is given in writing to the insurer.

(2) If a secured party assigns a perfected security interest, no filing under this division is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this division for filing of the security interest; or

(b) The provisions of the Government Code which require registration of a vehicle or boat; but during any period in which collateral is inventory, held for sale by a person who is in the business of selling goods of that kind the filing provisions of this division (Chapter 4) apply to a security interest in that collateral created by him as debtor; or

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subdivision (2) of Section 9103).

(4) Compliance with a statute or treaty described in subdivision (3) is equivalent to the filing of a financing statement under this division and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this division.

§ 9303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9302, 9304, 9305, and 9306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this division and is subsequently perfected in some other way under this division, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this division.

§ 9304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subdivision (4) and (5) of this section and subdivisions (2) and (3) of Section 9306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor.

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subdivision (3) of Section 9312; or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subdivision (4) and (5) perfection depends upon compliance with applicable provisions of this division.

§ 9305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in letters of credit and advices of credit (paragraph (2) (a) of Section 5116) goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this division. The security interest may be otherwise perfected as provided in this division before or after the period of possession by the secured party.

§ 9306. Proceeds; Secured Party's Rights on Disposition of Collateral.

(1) Proceeds includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are cash proceeds. All other proceeds are noncash proceeds.

(2) Except where this division otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) 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 and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this division for original collateral of the same type.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds

(a) In identifiable noncash proceeds and in a separate deposit account containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) Subject to any right of setoff; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subdivision (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

§ 9307. Protection of Buyers of Goods.

(1) A buyer in ordinary course of business (subdivision (9) of Section 1201) takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) A buyer other than a buyer in ordinary course of business (subdivision (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, unless made pursuant to a commitment entered into without knowledge of the purchase.

§ 9308. Purchase of Chattel Paper and Instruments; Priorities.

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(a) Which is perfected under Section 9304 (permissive filing and temporary perfection) or under Section 9306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) Which is claimed merely as proceeds of inventory subject to a security interest (Section 9306) even though he knows that the specific paper or instrument is subject to the security interest.

§ 9309. Protection of Purchasers of Instruments and Documents.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

Nothing in this division limits the rights of a holder in due course of a negotiable instrument (Section 3302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7501) or a bona fide purchaser of a security (Section 8301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this division does not constitute notice of the security interest to such holders or purchasers.

§ 9310. Priority of Certain Liens Arising by Operation of Law.

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

§ 9311. Alienability of Debtor's Rights: Judicial Process.

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer but a provision in the security agreement making the transfer constitute a default is valid.

§ 9312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this chapter and in the following sections shall govern where applicable: Section 4208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; Section 9103 on security interests related to other jurisdictions; Section 9114 on consignments.

(2) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subdivision (5) of Section 9304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subdivision (3) and (4)), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subdivision (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subdivision (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

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

thereto. In other cases a perfected security interest has priority from the date the advance is made.

§ 9313. [Not Adopted in California or Guam.]

§ 9314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section *accessions*) over the claims of all persons to the whole except as stated in subdivision (3) and subject to Section 9315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subdivision (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subdivision (1) and (2) do not take priority over

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subdivision (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Chapter 5 remove his collateral from the whole but he must reimburse any encumbrance or owner of the whole who is not the debtor

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

§ 9315. Priority When Goods are Commingled or Processed.

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9314.

(2) When under subdivision (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

§ 9316. Priority Subject to Subordination.

Nothing in this division prevents subordination by agreement by any person entitled to priority.

§ 9317. Secured Party not Obligated on Contract of Debtor.

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

§ 9318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

CHAPTER 4
FILING

§ 9401. Place of Filing.

§ 9402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

- § 9403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.
- § 9404. Termination of Statement.
- § 9405. Release of Security Interest; Duties of Filing Officer; Fees.
- § 9406. Assignment or Transfer of Security Interest; Duties of Filing Officer; Fees; Statement of Assignment.
- § 9407. Information from Filing Officer.
- § 9407.1. Recording on Microfilm.
- § 9407.2. File Numbers.
- § 9407.3. Originals Returned.
- § 9408. Financing Statement by Consignor--Terms.

§ 9401. Place of Filing.

(1) The proper place to file in order to perfect a security interest is with the Department of Revenue and Taxation.

(2) The rules stated in Section 9103 determine whether filing is necessary in this territory.

§ 9401.5. [Amended and renumbered § 10105.]

§ 9402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement:

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement should include the debtor's trade name or style, if any, if known to the secured party, but a failure to include such trade name or style shall not under any circumstances affect the validity of the financing statement. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, the statement must also comply with subdivision (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A certified copy of a financing statement or security

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

agreement is sufficient as a financing statement if the original thereof was filed in this territory.

(2) A financing statement which otherwise complies with subdivision (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this territory or when the debtor's location is changed to this territory. Such a financing statement must state that the collateral was brought into this territory or that the debtor's location was changed to this territory under such circumstances; or

(b) Proceeds under Section 9306, if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral and give the date of filing and the file number of the prior financing statement; or

(c) Collateral as to which the filing has lapsed. Such a financing statement must include a statement to the effect that the prior financing statement has lapsed and give the date of filing and the file number of the prior financing statement; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subdivision 6). Such a financing statement must include a statement that the name, identity or corporate structure of the debtor has been changed and give the date of filing and the file number of the prior financing statement and the name of the debtor as shown in the prior financing statement.

(3) A form substantially as follows is sufficient to comply with subdivision (1);

Name of debtor (or assignor) -----

Address -----

Name of secured party (or assignee) -----

Address -----

Debtor's trade name or style, if any -----

1. This financing statement covers the following types (or items) of property: (DESCRIBE) -----

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

2. (If collateral is crops) The above-described crops are growing or are to be grown on: (DESCRIBE REAL ESTATE) -----

3. (If products of collateral are claimed) products of the collateral are also covered.

(Use whichever is applicable)

Signature of debtor (or assignor)

Signature of secured party (or assignee)

*Where appropriate substitute either "The above timber is standing on . . ." or "The above mineral or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on . . ."

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, or by the secured party alone in the case of an amendment pursuant to subdivision (6). An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this division, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, must show that it covers this type of collateral, must recite that it is to be recorded in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of the territory. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an appropriate amendment to the filed financing statement is filed before the acquisition of the collateral by the debtor. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(7) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

§ 9403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer.

(1) Presentation for filing of a financing statement, tender of the filing fee and acceptance of the statement by the filing officer constitutes filing under this division.

(2) Except as provided in subdivision (6), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later. Upon such lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party of record within six months prior to the expiration of the five-year period specified in subdivision (2). Any such continuation statement must be signed by the secured party of record, identify the original statement by giving the date and the names of the parties thereto and the file number thereof and state that the original statement is continued. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

subdivision (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer may remove a lapsed financing statement and related filings from the files and destroy them immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subdivision (6) shall be retained. The filing officer shall not destroy a financing statement and related filings as to which he has received written notice that there is an action pending relative thereto or that insolvency proceedings have been commenced by or against the debtor.

(4) Except as provided in subdivision (7) a filing officer shall mark each financing statement with a consecutive file number and with the date and time of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statement according to the name of the debtor and shall note in the index the file number and the address of the debtor given in this statement. The filing officer shall mark each continuation statement with the date and time of filing and shall index the same under the file number of the original financing statement.

(5) The uniform fee for filing, indexing and furnishing filing data (subdivision 1 of § 9407) for an original financing statement, an amendment or a continuation statement *shall* be Ten Dollars (\$10.00).

(6) If the debtor is a transmitting utility (subdivision (5) of Section 9401) and a filed financing statement so states, it is effective until a termination statement is filed.

(7) A financing or continuation statement covering collateral described in paragraph (b) of subdivision (1) of Section 9401 shall be recorded and indexed by the filing officer in the real property index of grantors under the name of the debtor. A financing or continuation statement so recorded and indexed and containing a description of real property affected thereby shall constitute constructive notice from the time of its acceptance for recording to any purchaser or encumbrancer of the real property of the security interest in such collateral.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

SOURCE: Subsection (5) amended by P.L. 29-002:V:I:7 (May 18, 2007).

§ 9404. Termination Statement.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party of record must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by date, names of parties thereto and file number. If the affected secured party of record fails to send such a termination statement within 10 days after proper demand therefor he shall be liable to the debtor for all actual damages suffered by the debtor by reason of such failure, and if the failure is in bad faith for a penalty of one hundred dollars (\$100).

(2) The filing officer shall mark each such termination statement with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement. If the filing officer has a microfilm or other photographic record of the financing statement and related filings, he may remove the originals from the files at any time after receipt of the termination statement and destroy them, or if he has no such record, he may remove them from his files at any time after one year after receipt of the termination statement and destroy them.

(3) The uniform fee for filing, indexing and furnishing filing data (subdivision 1 of §9407) for a termination statement, *shall* be Ten Dollars (\$10.00).

SOURCE: Subsection (3) repealed and reenacted by P.L. 29-002:V:I:8 (May 18, 2007).

§ 9405. Release of Security Interest; Duties of Filing Officer; Fees.

(1) A secured party of record may by a writing release his security interest in all or a part of the collateral covered by a filed financing statement. A statement of release is sufficient if it is signed by the secured party of record, contains a statement describing the collateral being released, the name and address of the debtor, and the file number of the original financing statement.

(2) The filing officer shall mark each such statement with the date and time of filing and index the same under the name of the debtor and under the file number of the original financing statement.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(3) The uniform fee for filing, indexing and furnishing filing data (subdivision 1 of §9407) for a statement of release *shall* be Ten Dollars (\$10.00).

SOURCE: Subsection (3) amended by P.L. 29-002:V:1:9 (May 18, 2007).

§ 9406. Assignment or Transfer of Security Interest; Duties of Filing Officer; Fees; Statement of Assignment.

(1) If a secured party assigns or transfers his security interest in any collateral as to which a financing statement has been filed, a statement of such assignment may be filed. Such statement shall be signed by the secured party, describe the collateral as to which the security interest has been assigned, give the name and mailing address of the assignee or transferee, the name and address of the debtor and the file number of the original financing statement.

(2) The filing officer shall mark each such statement of assignment or transfer with the date and time of filing and shall index the same under the name of the debtor and under the file number of the original financing statement.

(3) A statement of assignment may be filed at the time of the filing of the financing statement, in which event the filing officer shall first file the financing statement and index the assignment under the name of the debtor and under the file number given the financing statement. An assignment endorsed on the financing statement before it is filed with the filing officer need not be indexed by him.

(4) The uniform fee for filing, indexing and furnishing filing data (subdivision 1 of §9407) for a separate statement of assignment *shall* be Ten Dollars (\$10.00).

(5) Whenever a continuation statement, an amendment to a financing statement, a termination statement, a statement of release or a statement of assignment signed by one other than the secured party of record is presented for filing it must be accompanied by a statement of assignment signed by the secured party of record covering the collateral to which such continuation statement, amendment, termination statement, release, or assignment applies.

(6) Wherever in this code reference is made to the secured party of record it means the secured party named in the original financing statement or, if a statement of assignment has been filed, or an assignee

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

has been named in the financing statement before it is filed, the assignee or transferee of the security interest in the collateral affected. Any continuation statement amendment to a financing statement, termination statement, statement of release or statement of assignment signed by one other than the secured party of record as to the collateral affected thereby shall be ineffective for any purpose except as between the parties thereto.

SOURCE: Subsection (4) amended by P.L. 29-002:V:I:10 (May 18, 2007).

§ 9407. Information from Filing Officer.

(1) If the person filing any financing statement, amendment, termination statement, statement of assignment, continuation statement, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy of a financing statement the file number and upon the copy of any of such statements the date and time of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer *shall* issue his certificate showing whether there is on file on the date and time stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and *if* there is, giving the date and time of filing of each such statement and the names and addresses of each secured party therein. The certificate *shall* not include any statement as to the possibility of insolvency proceedings which might have the effect of preventing the lapse of effectiveness of a filed financing statement pursuant to Section 9403 whether actual insolvency proceedings are known or unknown to the filing officer. The uniform fee for such a certificate shall be Ten Dollars (\$10.00). Upon request the filing officer *shall* furnish a copy of any filed financing statement or related filings for a uniform fee of One Dollar (\$1.00) for the first page and Fifty Cents (\$0.50) for each page thereafter.

(3) Fees to be charged by the Director of Revenue and Taxation for daily or less frequent summaries or compilations of filings, which he may furnish, shall be sufficient to pay at least the actual cost of such service. Fees shall be determined by the Director of Revenue and Taxation. Such summaries or compilations may be in the form of microfilm copies or such other form as may be provided for the required information.

SOURCE: Subsection (2) amended by P.L. 29-002:V:I:11 (May 18, 2007).

§ 9407.1. Recording on Microfilm.

In lieu of filing all financing statements, termination statements, partial releases, assignments, or other related papers falling under this code, the filing officer may record such papers. He may employ a system of microphotography. All film used in the microphotography process shall comply with minimum standards of quality approved by the United States Bureau of Standards and the American National Standards Institute. A true copy of the microfilm shall be kept in a safe and separate place for security purposes.

§ 9407.2. Consecutive File Numbers.

Should the filing officer choose to record rather than file all financing statements and related papers, he shall mark each financing statement with a consecutive file number. All other related papers affecting such financing statement shall thereafter bear the same file number. He shall index the same under the name of the debtor (or assignor or seller) in a separate index or in his general index, and under the file number of the original statement.

§ 9407.3. Originals Returned.

Upon recording the financing statement or other related papers, the originals or copy of the same shall be returned to the parties entitled thereto.

§ 9408. Financing Statement by Consignor--Terms.

A consignor or lessor of goods may file a financing statement using the terms "consignor," consignee," lessor," "lessee" or the like instead of the terms specified in Section 9402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

**CHAPTER 5
DEFAULT**

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

- § 9501. Default; Procedure When Security Agreement Covers both Real and Personal Property.
- § 9502. Collection Rights of Secured Party.
- § 9503. Secured Party's Right to Take Possession After Default.
- § 9504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.
- § 9505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.
- § 9506. Debtor's Right to Redeem Collateral.
- § 9507. Secured Party's Liability for Failure to Comply with This Chapter.
- § 9508. Remuneration by Debtor--Basis of Validity.

§ 9501. Default; Procedure When Security Agreement Covers both Real and Personal Property.

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this chapter and except as limited by subdivision (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9207. The rights and remedies referred to in this subdivision are cumulative.

(2) After default, the debtor has the rights and remedies provided in this chapter, those provided in the security agreement and those provided in Section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subdivisions referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subdivision (3) of Section 9504 and Section 9505) and with respect to redemption of collateral (Section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

- (a) Subdivision (2) of Section 9502 and subdivision (2) of Section 9504 insofar as they require accounting for surplus proceeds of collateral;

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

(b) Subdivision (3) of Section 9504 and subdivision (1) of Section 9505 which deal with disposition of collateral;

(c) Subdivision (2) of Section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 9506 which deals with redemption of collateral; and

(e) Subdivision (1) of Section 9507 which deals with the secured party's liability for failure to comply with this chapter.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this chapter do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

§ 9502. Collection Rights of Secured Party.

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

COURT DECISIONS: Section 9504 does not apply to deficiency judgments; rather Guam Rules of Civil Procedure 70(a) sets the applicable standard and to use the standard of "commercially reasonable" is to commit reversible error. Town House Dept. Stoe, Inc. v. Ahn, 2000 Guam 29 (Guam Supreme Court, 1/06/2000).

§ 9503. Secured Party's Right to Take Possession After Default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9504.

§ 9504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the division on sales (Division 2). The proceeds of disposition shall be applied in the order following to

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed,

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchase acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a trans-

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

fer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

COMMENT: Section 9504 conforms substantively to Section 9-504 of the 1972 Official Text of the Uniform Commercial Code. For purpose and effect, see Official Comment. The California version is the same except that subdivision (3) provides certain rules relating to notice of sale. The California variations were rejected by the Permanent Editorial Board on the grounds that they destroy the desirable flexibility provided in the Official Text. For further discussion, see Report of the Permanent Editorial Board for the Uniform Commercial Code quoted in West Ann. Cal. Comm. Code § 9504, California Code Comment (Supp. 1975).

COURT DECISIONS: SUPERIOR COURT 1980. Subsection (3) of this § 9504 contains notice requirements which differ for public and private sale. Sale in this case was private, and notice under private sale requires only "reasonable notification of the time after which a sale or other disposition would be made" and such notification was made. Further, assignee is not required to provide notice because assignee of a secured party "acquires the rights and duties of the secured party". *Jones & Guerrero Co., Inc., d/b/a/ Datsun Motors Sale v. Fausto, et al*, Civil Case No. 185-80.

§ 9505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.

(1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights, under this chapter a secured party who has taken possession of collateral must dispose of it under Section 9504 and if he fails to do so within 90 days after he takes possession or within a reasonable time after such 90-day period, the debtor at his option may recover in conversion or under Section 9507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subdivision. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a

person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under Section 9504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

§ 9506. Debtor's Right to Redeem Collateral.

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9504 or before the obligation has been discharged under Section 9505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

§ 9507. Secured Party's Liability for Failure to Comply with This Chapter.

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this chapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences

13 GCA UNIFORM COMMERCIAL CODE
DIV. 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

COMMENT: Section 9507 conforms substantively to Section 9-507 of the 1972 Official Text of the Uniform Commercial Code. For purpose and effect, see Official Comment. The California version differs only insofar as it omits the last sentence of subdivision (1). This omission is based only on the fact that comparable provisions are contained in statutes dealing with consumer sales preserved by Section 9203(4) of the California Commercial Code.

§ 9508. Renunciation by Debtor--Basis of Validity.

No renunciation or modification by the debtor of any of his rights under this chapter as to consumer goods shall be valid or enforceable unless the renunciation or modification is in consideration of a waiver by the secured party of any right to a deficiency on the debt.
