



# REVISIONS TO ARTICLE 9: What you Need to Know

June 19, 2001

---

**Presented by:**

Robert H. Hume, Jr.

Spencer C. Sneed

Sharon Young

Frederick J. Odsen

Krista S. Stearns, Moderator



# REVISED ARTICLE 9: SCOPE & ATTACHMENT

---

Robert H. Hume, Jr.  
Landye Bennett Blumstein LLP

© 2001 Robert H. Hume, Jr.

# Notes on slide conventions

---

- Italicized words are defined terms (though may not be defined in presentation)
- Section references are to revised Article 9 using standard UCC style (*e.g.* 9-102 refers to AS 45.29.102)
- “Old” Article 9 refers to AS 45.09
- “New” Article 9 or “Article 9” refers to AS 45.29

# REASONS FOR REVISED ARTICLE 9

- UCC last revised in 1972 – many changes in commercial transactions since then
- Securitization, nationalization, specificity, clarity
- UCC provides certainty re rights and procedures, but many types of property not covered
- Desire to bring within UCC all property that support loans and other commercial transactions
- Make transactions more efficient, less expensive, easier, quicker
- Accommodate electronic transactions

# SCOPE - OLD ARTICLE 9

---

- Any transaction intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper or accounts
- Sale of accounts or chattel paper
- Special sections for consignments

# SCOPE - NEW 9-109

- Broadened scope, with new definitions
- Any transaction that creates *security interest* in personal property or *fixtures* by contract
  - Doesn't include real property, except to the extent are fixtures
  - Doesn't include liens or other nonconsensual encumbrances
- *Agricultural lien*
- Sale of *accounts, chattel paper, payment intangibles or promissory notes* (ACPPIN)
- *Consignment*
- Article 2, 2A, 4 and 5 security interests
- Right of buyer to goods upon identification (2-401, 2-502) and right of seller/lessor to retain or recover goods (2-702, 2-705) are not a *security interest* 1-201(38)

# A FEW NEW TERMS ...

## *Debtor vs. Obligor* (vs. Debtor)

### DEBTOR

- Person having an interest (other than *security interest* or *lien*) in the collateral, whether or not the debtor is an *obligor*
- Seller of accounts, chattel paper, payment intangibles or promissory notes (ACPPIN)
- Consignee (9-102(34))

### OBLIGOR

- Person who owes payment or other performance on the obligation secured by the *security interest* or *agricultural lien*
- Person who has provided property other than the *collateral* to secure payment or performance of the obligation (9-102(75))

# NEW TERMS

(continued)

- *Account debtor* – The person obligated on an *account, chattel paper or general intangible* (9-102(3))
- *Secondary obligor* – *Obligor* whose obligation is secondary or having a right of recourse against the *debtor*, another *obligor* or property of either (9-102(88))
- *Secured party*
  - The person to whom a *security interest* is granted (whether or not has beneficial interest in the obligation secured by the security interest)
  - Holder of an *agricultural lien*
  - Consignor
  - Person to whom *accounts, chattel paper, payment intangibles or promissory notes* (ACPPIN) have been sold (9-102(89))



# NEW TERMS

(continued)

- *Collateral* – the property subject to the *security interest* or *agricultural lien*, including
  - *Proceeds*
  - *ACCPIN* that have been sold
  - *Goods* subject to *consignment* (9-102(17))
- *Authenticate* (vs. *sign*)
  - *Sign*
  - Execute or otherwise adopt a symbol or encrypt or similarly process a *record* with the present intent to identify the person and adopt or accept the *record* (9-102(8))

# NEW TERMS

(continued)

- *Record* (vs. writing) – information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form (9-102(85))

# OTHER SPECIAL TERMS

- *Control*
  - Different definitions for *deposit account*, *electronic chattel*, *investment property*, *letter of credit right* (9-104, 9-105, 9-106, 8-106, 9-107)
- *Consumer transaction*
  - A transaction involving *consumer goods* (9-102(30))

# OTHER SPECIAL TERMS

(continued)

## ■ *Proceeds*

- Whatever is acquired upon sale, lease, license, exchange or other disposition of collateral
- Whatever is collected on or distributed on account of collateral
- Rights arising out of the collateral
- Claims arising out of loss of or damage to the collateral (up to value of collateral)
- Insurance payable due to loss or damage to collateral (up to value of collateral) (9-102(79))
- *Cash proceeds vs. noncash proceeds* (9-102(12), 9-102(73))
- Tracing *proceeds* using lowest intermediate balance method (9-315)

# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of *accounts, chattel paper, payment intangibles* or *promissory notes* (ACPPIPN)
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interests

# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of *accounts, chattel paper, payment intangibles or promissory notes (ACPPIPN)*
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interests

# PROPERTY COVERED BY ARTICLE 9

- Tangible personal property
  - Goods
- Intangible property rights
  - Payment rights
  - Other rights

# GOODS, IN GENERAL

---

- Old Article 9
  - Things movable at the time the security interest attaches or are fixtures, unborn animals, or standing timber to be cut



# GOODS, IN GENERAL

(continued)

## ■ New Article 9 – 9-102(52)

- Things that are movable at the time the *security interest* attaches, including
  - Standing timber to be cut
  - Unborn young of animals
  - Crops grown, growing or to be grown
  - *Manufactured homes*
  - Oil, gas and minerals after extraction
  - Software embedded in goods
  - *Inventory*
  - *Consumer goods*
  - *Farm products*
  - *Equipment*
  - *Fixtures*

# INVENTORY – GOODS

## ■ Old Article 9

- Goods held for sale or lease or to be furnished under contracts of service, or raw materials, work in process or material used or consumed in business

## ■ New 9-102(57)

- *Goods (other than farm products)*
  - *Leased by lessor (incorporates Article 2A)*
  - Held by person for sale or lease to or to be furnished under contract of service
  - Furnished under a contract of service
  - Raw materials, work in process, or materials used or consumed in business

# CONSUMER GOODS – GOODS

- Old Article 9
  - Goods used or bought for use primarily for personal, family or household purposes
- New 9-102(27)
  - Same

# FARM PRODUCTS – GOODS

## ■ Old Article 9

- Crops, livestock or supplies used or produced in farming operations, or unmanufactured products

## ■ New 9-102(41)

- *Goods* (other than standing timber) when *debtor* is engaged in *farming operations* that are:
  - Crops grown, growing or to be grown
  - Aquacultural products
  - Livestock born and unborn
  - Supplies used in *farming operations*
  - Unmanufactured products

# FARMING OPERATIONS

---

- Raising, cultivating, propagating, fattening, grazing, or other farming, livestock or aquacultural operations (9-102(42))

# EQUIPMENT – GOODS

- Old Article 9
  - Goods used or bought for use primarily in business or by a nonprofit or governmental organization, or not inventory, farm products or consumer goods (residual goods classification)
- New 9-102(40)
  - *Goods other than inventory, farm products and consumer goods (residual goods classification)*

# FIXTURES – GOODS

- Old Article 9
  - Goods that become so related to particular real property that an interest arises under real property law
- New 9-102(48)
  - Same

# PROPERTY COVERED BY ARTICLE 9

---

- Tangible personal property
  - Goods
- Intangible property rights
  - Payment rights
  - Other rights



# PROPERTY COVERED BY ARTICLE 9

*(continued)*

- Tangible personal property
  - Goods
    - Inventory
    - Consumer goods
    - Farm products
    - Equipment
    - Fixtures
- Intangible property rights
  - Payment rights
  - Other rights
  - Money

# PROPERTY COVERED BY ARTICLE 9

- Tangible personal property
  - Goods
- Intangible property rights
  - Payment rights
  - Other rights
  - Money

# ACCOUNTS

---

- Old Article 9

- Right to payment for goods sold or leased or services rendered not evidenced by an instrument or chattel paper, whether or not earned by performance, including right to payment for charter for use of vessel

# ACCOUNTS

(continued)

- Broadened to include many payment rights formerly classified as *general intangibles*
- Right to payment of a monetary obligation, whether or not earned by performance, not evidenced by instrument or chattel paper, for:
  - Property sold, leased, licensed, assigned or disposed of
  - Services rendered or to be rendered
  - Policy of insurance issued or to be issued
  - *Secondary obligation* incurred or to be incurred
  - Energy provided or to be provided
  - Charter for use of a vessel
- Right to payment arising out of use of credit or charge card
  - (Otherwise excludes right to payment for money advanced, loans)
- Winnings of government sponsored or licensed lottery or other game of chance
- *Health care insurance receivables* (9-102(2))

# HEALTH CARE INSURANCE RECEIVABLE - ACCOUNT

- Old Article 9
  - Excluded

- New 9-102(54)
  - Claim under a policy of insurance that is a right to payment of a monetary obligation for health-care goods or services provided

# CHATTEL PAPER

## ■ Old Article 9

- Writing evidencing both monetary obligation and security interest or lease in specific goods

## ■ New 9-102(15)

- *Record* evidencing both monetary obligation and security interest or lease in specific *goods*
  - Includes associated *software* or software license
  - Is *chattel paper* even if an *instrument* is involved
  - Does not include charter for use of a vessel
  - Does not include right to payment arising out of use of credit or charge card
- Tangible chattel paper vs. electronic chattel paper

# INSTRUMENT

- Old Article 9
  - Negotiable instrument or other writing evidencing right to payment and not itself a security agreement or lease and is type of document transferred in ordinary course of business by delivery with any necessary indorsement
- New 9-102(56)
  - Same
    - Does not include right to payment arising out of use of credit or charge card

# PROMISSORY NOTE – INSTRUMENT

- Old Article 9
  - Not defined
- New 9-102(81)
  - *Instrument* evidencing a promise to pay, not an order to pay



# COMMERCIAL TORT CLAIM

- Old Article 9
  - Excluded from scope so not defined
- New 9-102(18)
  - Tort claim and claimant is
    - An organization
    - An individual and claim arose out of claimant's business and doesn't involve personal injury

# DEPOSIT ACCOUNT

---

- Old Article 9

- Excluded from scope so not defined

- New 9-102(35)

- Demand, time, savings, passbook or similar account maintained with a bank

# LETTER OF CREDIT RIGHT

## ■ Old Article 9

- Excluded from scope so not defined

## ■ New 9-102(63)

- Right to payment or performance under letter of credit, whether or not beneficiary has demanded or then entitled to demand payment or performance
  - Excludes right to demand payment or performance

# INVESTMENT PROPERTY

- Old Article 9
  - Added to UCC in 1996
- New 9-102(58)
  - Same; *certificated and uncertificated security, security entitlement, securities accounts, commodity contract or commodity account*

# DOCUMENTS

- Old Article 9
  - Documents of title and warehouse receipts
- New 9-102(36), 1-201(16), 7-201
  - Same; document of title (*e.g.*, bill of lading, warehouse receipt or other document evidencing that person in possession is entitled to receive, hold and dispose of the document and the goods covered by it that are in possession of a bailee)

# GENERAL INTANGIBLES

## ■ Old Article 9

- Personal property other than goods, accounts, and other intangible classifications, rights to proceeds of letter of credit, and money

## ■ New 9-102(50)

- Personal property including *payment intangibles, software* and things in action, excluding
  - *Goods*
  - *Accounts* and other intangible property classes
  - Money
  - Oil, gas and minerals before extraction

# PAYMENT INTANGIBLES – GENERAL INTANGIBLES

- A *general intangible* under which the *account debtor's* (i.e., *obligor*) principal obligation is a monetary obligation (9-102(77))

# SOFTWARE – GENERAL INTANGIBLES

---

- Computer program and supporting information, if not *goods* (9-102(97))



# THINGS IN ACTION – GENERAL INTANGIBLES

- Not defined in either old or new Article 9
- “The right to recover money or other personal property by judicial action” - *Black's Law Dictionary*
  - Rights that arise under license of intellectual property
  - Rights under franchise agreement

# MONEY

- Not within any property category
  - Specifically excluded from *goods* and *general intangibles*, but . . .
- Security interest in money is perfected by possession (9-312, 9-313)
- Money may be cash proceeds (9-102(12))
- Money received can be subject to security interest if recipient acts in collusion with *debtor* in violating rights of *secured party* (9-332)

# AGRICULTURAL LIEN

## ■ Old Article 9

- Excluded from scope so not defined

## ■ New 9-102(5)

- Nonpossessory statutory lien in *farm products* to secure payment for
  - *Goods* or services provided in ordinary course of business in connection with *debtor's farming operations*
  - Rent for farm land

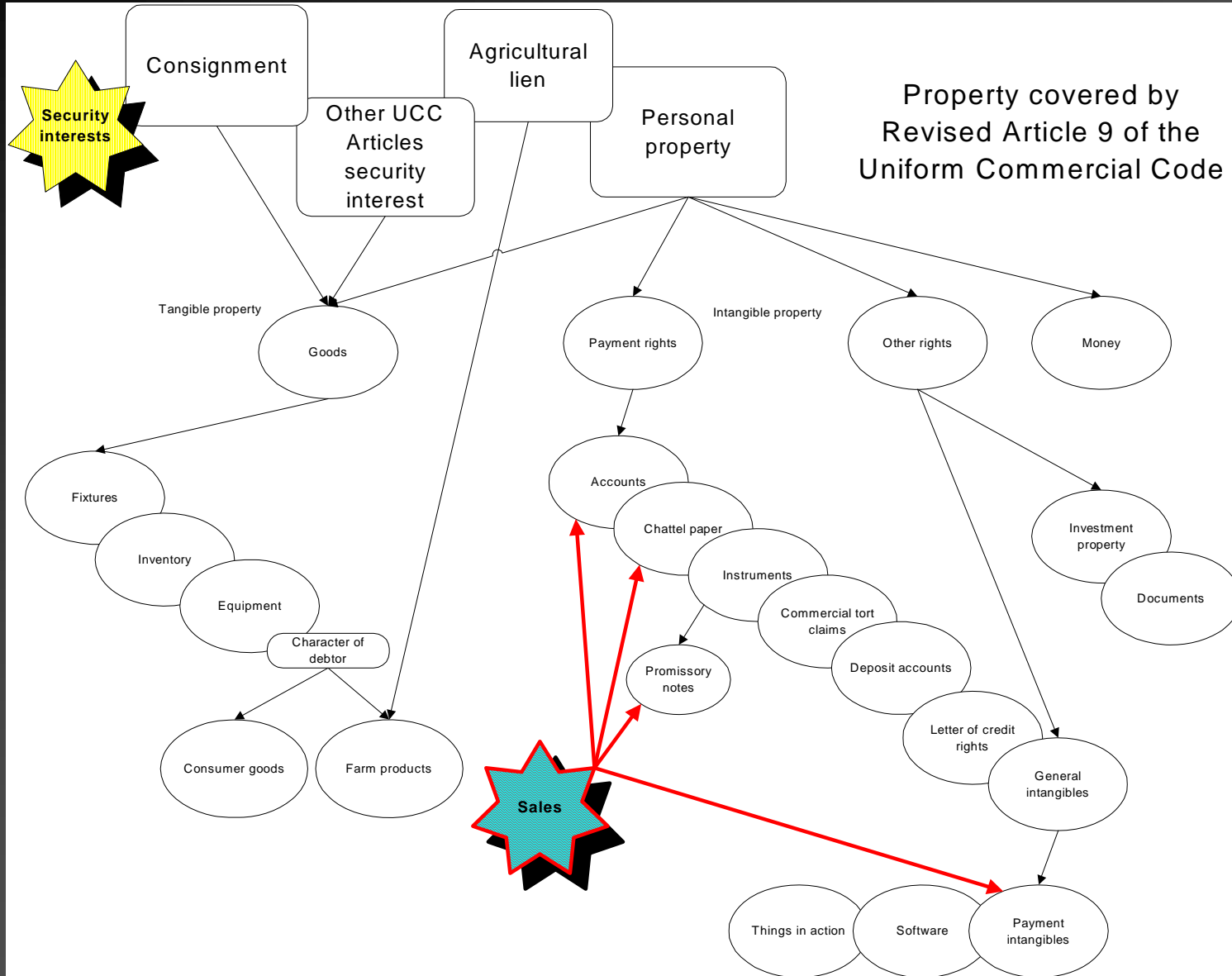
# PROPERTY COVERED BY ARTICLE 9

- Tangible personal property
  - Goods
- Intangible property rights
  - Payment rights
    - Accounts
      - Health insurance receivables
    - Chattel paper
    - Instruments
      - Promissory notes
    - Commercial tort claims
    - Deposit accounts
    - Letter of credit rights
  - General intangibles
    - Payment intangibles
    - Software
    - Things in action
  - Agricultural liens
- Other rights
  - Investment property
  - Documents
- Money

# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of ACPPIP
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interest

# Property covered by Revised Article 9 of the Uniform Commercial Code



# EXCLUSIONS FROM ARTICLE 9

9-109

- Similar to old Article 9, but narrowed somewhat
- Federal statute or treaty preemption, rather than absolute exclusion
- Governmental liens and transfers
- Landlord's lien (other than agricultural lien)
- Statutory liens (other than agricultural lien) for services or materials
- Assignment of wage claims

# EXCLUSIONS FROM ARTICLE 9

(continued)

- Sale of ACPPIPNs as part of sale of business out of which they arose or assignment for the purpose of collection only
- Assignment of a single *account, payment intangible or promissory note* (ACPPIPN without *chattel paper*) to an assignee in full or partial satisfaction of a preexisting debt
- Transfer of an interest in a claim under a policy of insurance, other than an assignment by or to a health care provider of a *health care insurance receivable* and subsequent assignments



# EXCLUSIONS FROM ARTICLE 9

(continued)

- Assignment of a judgment, other than a judgment taken on a right to payment that was collateral
- Creation or transfer of an interest in real property, including a lease and rents, except regarding *fixtures*
- Assignment of tort claims, other than *commercial tort claims*
- Assignment of consumer *deposit accounts*
- Common law bailments
- True leases of personal property (Article 2A, AS 45.12)

# ATTACHMENT OF A SECURITY INTEREST

- Similar to old Article 9
- "Attachment" is when the *security interest* becomes enforceable against the *debtor* regarding the *collateral* (9-203)
- Will also be enforceable against third parties
- Title to collateral generally immaterial (9-202)

# ATTACHMENT

(continued)

- *Security interest* attaches to collateral when
  - *Value* is given 1-201(45)
  - *Debtor* has rights in the *collateral* or the power to transfer rights in the collateral to the *secured party*
  - *Either*
    - Any collateral – *authenticated security agreement* describing the collateral (including land if is timber to be cut)
    - Collateral other than a *certificated security* -- secured party has possession of collateral under a *security agreement*
    - *Certificated security* -- certificate has been delivered to secured party under a *security agreement*
    - *Deposit account, electronic chattel paper, investment property or letter of credit right* – secured party has *control* under a *security agreement*

# ATTACHMENT

(continued)

- *Security agreement* may describe collateral by general classifications, but not by "all assets"
  - *Investment property, commercial tort claims and consumer transaction* need greater specificity 9-108
- May include after-acquired collateral, except
  - *Consumer goods* (other than *accessions*) acquired more than 10 days after secured party gives value
  - *Commercial tort claims* (9-204)
- May include future advances

# ATTACHMENT

(continued)

- Attachment automatically includes
  - *Proceeds*
  - *Supporting obligations*
  - If collateral is a right to payment or performance secured by a security interest or other lien on personal or real property, also includes attachment of a security interest in the security interest, mortgage or lien
  - If collateral is *securities or commodities account*, also attaches to securities or commodities in account

# ATTACHMENT

(continued)

- Security interest attaching to *accessions* to collateral, and security interest in collateral that becomes an accession, clarified (9-335)
- Security interest in goods that are commingled clarified (9-336)

# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of ACPPIP
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interests

# AGRICULTURAL LIEN

- Created under separate statute (e.g. AS 34.45.220) (9-102(5))
- Statutes provide analog to attachment of security interest
- Agricultural lien is within scope of Article 9 and holder of agricultural lien is a “secured party,” even though lien is not a “security interest” (9-103, 9-102(89), 1-201(38))
- Unless separate statutes specifically override, perfection and priority covered by Article 9



# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of ACPPIP
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interests

# CONSIGNMENT

- Article 9 *consignment* (9-102(25))
  - Vendor delivers *goods* to *merchant* for purpose of sale (*i.e.* nonconsumer transaction)
  - Merchant
    - Deals in goods of the kind other than under vendor's name
    - Is not an auctioneer
    - Is not generally known by its creditors to be substantially engaged in selling consigned goods
  - Value of goods delivered is \$1,000 or more
  - Goods are not *consumer goods* before delivery
  - Transaction does not create a security interest that secures an obligation

# CONSIGNMENT

(continued)

- Interest of consigning vendor is a *security interest* (1-201(38))
- Treated as purchase money security interest (PMSI) in inventory 9-103
  - Perfected PMSI has priority if perfected before delivery and notified other filed *secured parties* before delivery 9-324
- Non-Article 9 determines rights of merchant's creditors if under Article 9 perfected security interest by vendor would have priority 9-319
- Special protection for artists against claims by art dealer's creditors 2-326, AS 45.65.200

# CONSIGNMENT

(continued)

- If true consignment but not Article 9 *consignment*
  - No *attachment* of merchant's secured obligations
  - Goods subject to claims of merchant's creditors while goods are in merchant's possession (2-326)

# CHOICE OF LAW

## ■ Old Article 9

- Generally look to law of state where goods were located when the last event occurred that made the security interest perfected or unperfected
- Special rules for goods covered by certificate of title, accounts, mobile goods, investment property
- When collateral brought into state subject to perfected security interest, 4 months to refile to perfect security interest or else lapses to unperfected status

# CHOICE OF LAW

*(continued)*

- New Article 9 – nationalization unless strong local connection
- Security agreement can select governing law if transaction has a reasonable relationship to the state selected, but UCC choice of law is mandatory re effect of perfection or nonperfection and priority (1-105)
- General rule – law governing perfection, effect of perfection and nonperfection, and priority of a security interest in collateral governed by location of debtor (9-301)

# CHOICE OF LAW - LOCATION OF DEBTOR

- *Registered organization* – organization organized solely under the laws of a single state or the United States that maintains a public record showing the organization to have been organized (9-102(86))
- *Registered organization* organized under state law – state of organization
- *Registered organization* organized under federal law – as specified by federal law or designated by organization
- Branch of a bank not organized under federal or state law – as specified by federal law or designated by organization

# LOCATION OF DEBTOR

(continued)

- Individual – principal residence (if state has public filing system for nonpossessory security interests to obtain priority over *lien creditor*)
- Nonregistered organization having only one place of business – its place of business (if public filing system)
- Nonregistered organization having more than one place of business – its chief executive office (if public filing system)



# CHANGE OF DEBTOR'S LOCATION

- If *debtor* changes location or transfers collateral to an successor debtor, governing law changes to new location but perfected status ...
  - If debtor changes location, have 4 months to file in debtor's new location (9-316)
  - If debtor transfers collateral to an successor debtor in another state, have 1 year to file in successor debtor's location (9-316)

# CHOICE OF LAW - LOCATION OF COLLATERAL

- If security interest is a possessory security interest
- Security interest in *as-extracted collateral* when wellhead or minehead is in state
  - Security interest in oil, gas or minerals created before extraction and attaching as extracted
  - *Accounts* arising from sale at wellhead or minehead of oil, gas or minerals (9-102(7))

# CHOICE OF LAW - LOCATION OF COLLATERAL

(continued)

- While negotiable *documents, goods, instruments, money or tangible chattel paper* are located in state
  - Perfection in goods by fixture filing
  - Perfection in timber to be cut
  - Effect of perfection or nonperfection and priority of nonpossessory security interest (9-301)
- *Farm products* subject to *agricultural lien* (9-302)

# CHOICE OF LAW – SPECIAL RULES

- Goods covered by certificate of title
- Deposit accounts
- Letter of credit rights
- Investment property

# CHOICE OF LAW - GOODS COVERED BY CERTIFICATE OF TITLE

- Law of state issuing certificate of title governs so long as certificate of title remains in force (9-303)

# CHOICE OF LAW - DEPOSIT ACCOUNTS

- Law of bank's jurisdiction governs perfection, effect of perfection and nonperfection, and priority in deposit accounts with the bank
- Special rules to determine bank's jurisdiction (9-304)

# CHOICE OF LAW - LETTER OF CREDIT RIGHTS

- Law of issuer's or nominated person's state governs perfection, effect of perfection and nonperfection, and priority (9-306)

# CHOICE OF LAW - INVESTMENT PROPERTY

- Law of state where security certificate is located governs
- Law of issuer's state governs for noncertificated security
- Other rules for securities and commodities intermediaries and interests (9-305)



# SCOPE OF ARTICLE 9

- Any transaction that creates *security interest* in personal property or fixtures by contract
- Sale of ACPPIP
- *Agricultural lien*
- *Consignment*
- Article 2, 2A, 4 and 5 security interests



# REVISIONS TO ARTICLE 9: What you Need to Know

June 19, 2001

---

**Presented by:**

Robert H. Hume, Jr.

Spencer C. Sneed

Sharon Young

Frederick J. Odsen

Krista S. Stearns, Moderator