

**Secured Transactions**  
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**Perfecting the Security Interest**

- I. **The Concept:** Perfection determines the relative rights of the secured creditor and third parties asserting claims against the secured creditor's collateral
- II. **Methods of Perfection**
- A. **Filing:** Subject to certain exceptions, a secured creditor may perfect against any collateral by filing a financing statement satisfying the requirements of § 9-502.
- ◆ Filing is the only permissible method of perfecting an interest in **accounts, commercial tort claims, or general intangibles.**
- B. **Possession**
1. § 9-312(b)(3) *requires* possession to perfect an interest in money.
  2. § 9-313(a) *permits* perfection by possession of, *inter alia*, goods, instruments, negotiable documents (*e.g.*, warehouse receipts, bills of lading), or chattel paper.
    - ◆ **However**, a subsequent chattel paper purchaser/creditor who
      - i. gives **new value**
      - ii. in the **ordinary course** of its business, and
      - iii. acts **without knowledge** of an earlier-filed security interest in the chattel paperhas priority over an earlier-filed security interest. § 9-330(b).
  3. **Constructive Possession:** A secured party can possess collateral through an agent or a bailee. § 9-312(c).
    - ◆ Courts disagree whether the agent/bailee must be under the secured party's exclusive control or merely have notice of the secured party's interest

C. **Control**

1. **§ 9-312(b)(1)-(2)** *requires* control to perfect an interest in deposit accounts or letter-of-credit rights.
2. **§ 9-314(a)** *permits* perfection by control of investment property or electronic chattel paper.

D. **Automatic Perfection:** A purchase-money security interests (PMSI) in consumer goods “automatically” perfects per § 9-309(1).

1. **PMSI:** Secured debt incurred to fund the purchase of collateral. A creditor may lose its purchase-money status if
  - a. the borrower/buyer does not use the exact funds lent to make the purchase, and/or
  - b. the creditor consolidates purchase-money loans with non-purchase money loans.
2. **Non-Consumer Goods:** A PMSI in any non-consumer good must be perfected by the same means appropriate for a similar non-PMSI.

E. **Certificate-of-Title Notation or Filing:** To perfect a security interest in goods that are subject to a certificate of title statute, the secured creditor must note its lien on the certificate of title or file notice of its lien in a special registry.

III. **Proper State for Initial Perfection**

A. **Perfecting by Filing:** The basic Article 9 rule is that a security interest properly perfected by filing should be filed in the state where the debtor is located.

1. An **individual debtor** is located in the state of her “principal residence.” § 9-307(b)(1).
2. A **registered organization** is located in the state in which it was organized. § 9-307(e).
3. A **non-registered organization**
  - a. with only one place of business is located at its place of business, § 9-307(b)(2);
  - b. with more than one place of business is located at the place of its “chief executive office,” § 9-307(b)(3).

4. **Special Cases**

- a. **Fixture Filings** are made in the appropriate records of the county where the real property is located. §§ 9-301(3)(A) & 9-501(a)(1).
  - b. **Filings Against Timber or Minerals** are made in the appropriate records of the state where the real property from which the timber or minerals are to be taken is located. § 9-301(3)(B) & (4).
- B. **Perfecting by Possession:** A security interest properly perfected by possession is perfected under the law of the state where the collateral is located. § 9-301(2).
- C. **Perfecting by Control:** A security interest properly perfected by control is perfected as provided for in §§ 9-304 to 9-306.
- D. **Perfecting Against Certificate-of-Title Goods:** A security interest must be noted on the certificate of title issued (or filed in a special registry maintained) by the state in which the debtor resides or in which the debtor most recently resided, if the debtor has not yet obtained a new certificate of title from her new state of residence.

IV. **Financing Statements**

- A. **Required Elements** – § 9-502(a) requires only that a financing statement contain
- 1. **Debtor's Name**, *see* § 9-503(a);
    - a. **Basic Concepts**
      - i. **Substantial Compliance:** A “substantially complying” filed financing statement is effective “even though it contains minor errors that are *not seriously misleading*.” § 9-506(a).
      - ii. **“Safe Harbor”:** A financing statement is sufficient against a registered entity (corporation, registered LP, LLP, etc.) only if it provides the entity’s registered name. As to individuals and non-registered partnerships, must provide the debtor’s “individual or organizational name.” § 9-503.
      - iii. If there’s some variance between the name that’s filed and the name you searched under (and vice versa), is the error seriously misleading enough to constitute non-compliance?
    - b. **Individual Debtor** – Should include the debtor’s full, legal name, as well as any “common” name(s) by which he or she is known.

- c. **Corporate or Limited Partnership Debtor** – Must include the debtor’s legal name as recorded on its certificate of incorporation, etc. § 9-503(a)(1). May also include trade name(s); but trade name(s) alone will not suffice. § 9-503(c).
  - d. **General Partnership Debtor** – Must include the debtor’s organizational name, if it has one, or the general partners’ names, if the debtor does not have an organizational name. § 9-503(a)(4). In either case, should also include the name by which the debtor is commonly known in the community in which it does business. But, that name alone may be legally insufficient under § 9-503(c).
- 2. **Secured Creditor’s (or authorized representative’s) Name;** and
  - 3. **Statement Indicating the Collateral the Financing Statement Covers:**  
A description of collateral is adequate if it
    - a. satisfies the requirements of § 9-108; or
    - b. indicates that the collateral is “all assets” or “all personal property.” § 9-504.
  - 4. **Description of the Real Property to Which the Collateral is Related**  
only if the collateral is timber, minerals, or fixtures, *see* § 9-502(b).

**B. Filing Office Rules**

- 1. **Grounds for Rejection** – While not required for enforcement, a filing office may reject a financing statement for not containing the following:
  - a. **Debtor’s Mailing Address**, § 9-516(b)(5)(A);
  - b. **Secured Party’s Mailing Address**, § 9-516(b)(4);
  - c. **Debtor’s Individual or Entity Status**, § 9-516(b)(5)(B); and
  - d. If the debtor is an entity, § 9-516(b)(5)(C) requires
    - i. Debtor’s **organizational type** (*e.g.*, corporation, LLC);
    - ii. Debtor’s **jurisdiction of organization**; and
    - iii. Debtor’s organizational **identification number**.
- ◆ Note that the filing office is not permitted to inquire about or consider the **accuracy** of the information.

## 2. Consequences

- a. **Rightful Rejection:** A secured creditor whose financing statement is rightfully rejected will know of its rejection promptly and may remedy whatever error or omission led to the rejection.
- b. **Wrongful Rejection:** A wrongfully rejected financing statement is effective against lien creditors, but not against subsequent buyers or secured creditors. § 9-516.
- c. **Wrongful Acceptance:** A wrongfully accepted financing statement is effective as of the filing date. § 9-520(c) & cmt. 3.

## V. Maintaining Perfection

### A. Lapse, Termination, Release, and Continuation

1. **Lapse:** A security interest perfected by filing remains perfected (and retains its priority over other later-perfected security interests) only for five years from the date of filing, unless it is continued. § 9-515(a).
  - ◆ One year after a financing statement lapses, it may be removed from the filing system and destroyed. § 9-522(a).
2. **Continuation:** A filed security interest may be continued beyond its initial five-year span only if the creditor files a continuation statement, satisfy the requirements of either § 9-102(a)(27) or § 9-512(a), during the last 6 months of the five-year period. § 9-515(c).
  - ◆ A filing before or after the 6-month continuation window is ineffective. § 9-510(c).
3. **Termination:** Once the debt giving rise to the security interest is fully satisfied, the creditor must timely file a termination statement to signify that the collateral is no longer encumbered. § 9-513(c)(1).
  - ◆ The secured creditor must timely notice termination or satisfaction. Failing to do so will subject the secured creditor to legal sanctions.
  - ◆ The termination statement must identify the financing statement by filing number, § 9-512, and must indicate that the financing statement it terminates is no longer effective, § 9-102(a)(79).
  - ◆ Upon filing the termination statement, the financing statement lapses. § 9-513(d).

4. **Release:** Voluntary relinquishment by creditor of some or all of its perfected security interest.
  - ◆ Release obligation arises only by way of contract b/w debtor and creditor – no legal obligation to file release
  - ◆ Release may be accomplished by filing an amendment to the existing financing statement. § 9-512(a).
  - ◆ The release must identify the financing statement by filing number. § 9-512.

#### B. **Debtor's Name Change**

1. **Existing Collateral:** A change in the debtor's name does not affect the perfection of a security interest in collateral possessed by the debtor prior to or at the time of the name change. § 9-507(c).
2. **"After-Acquired" Collateral:** When a change in the debtor's name renders a filed financing statement "seriously misleading," the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change. The secured creditor must file a new financing statement prior to the 4 mo. deadline in order to perfect as to collateral acquired more than 4 mos. after the change. *Id.*
3. A searcher should always consider the possibility that the debtor's name changed before the debtor approached the searcher for a loan. *Id.*
4. Provisions in security agreements requiring debtor to notify the secured creditor of any name change are not much help to the secured creditor and no help at all to searchers. *Id.*

#### C. **Change in Appearance, Use, or Location of Collateral**

1. **General Rule:** A change in circumstances other than the debtor's name will not affect the effectiveness of the initial filing, *even if the changes make the initial filing seriously misleading.* § 9-507(b).
2. **Certificate-of-Title Goods:** If the debtor relocates certificate-of-title goods to another state, the law of the new state may require the debtor to obtain a replacement certificate of title within a certain period of time. In any event, once the debtor obtains a new certificate of title,
  - a. any **liens that attach after the debtor relocates** the collateral must be noted on the replacement certificate, § 9-303(b); and

- b. any liens noted on the replaced certificate, but not the replacement certificate, will continue to be perfected and retain their priority against lien creditors (and bankruptcy trustees (a.k.a. “TiBs”), § 9-316(d); but
- c. any liens noted on the replaced certificate, but not the replacement certificate, will cease to be perfected and lose their priority four months after the replacement certificate issues against purchasers and secured creditors who give value after the replacement certificate issues, § 9-316(e).

#### D. **Interstate Relocation of the Debtor**

1. **Individual Debtor:** When an individual debtor changes her principal residence, a security interest properly perfected in State A will remain perfected for four months following the relocation, § 9-316(a)(2), by the expiration of which the secured creditor must file or otherwise perfect in State B or its security interest will become unperfected both prospectively, as against all new claimants, and retrospectively *as against a purchaser or secured creditor who gave value after the debtor relocated to State B.* § 9-316(b).
2. **Registered Organization:** When a registered organization reorganizes in State B, a security interest properly perfected in State A will remain perfected for one year following the reorganization, § 9-316(a)(3), by the expiration of which the secured creditor must file or otherwise perfect in State B or its security interest will become unperfected both prospectively, as against all new claimants, and retrospectively *as against a purchaser or secured creditor who gave value after the debtor reorganized in State B.* § 9-316(b).
3. **Non-Registered Organization:** When a partnership or other non-registered organization moves its chief executive office from State A to State B, a security interest properly perfected in State A will remain perfected for four months following the relocation, § 9-316(a)(2) & cmt. 2 (Ex. 1), by the expiration of which the secured creditor must file or otherwise perfect in State B or its security interest will become unperfected both prospectively, as against all new claimants, and retrospectively *as against a purchaser or secured creditor who gave value after the debtor relocated to State B.* § 9-316(b).
4. A timely filed financing statement in State B will keep the security interest continuously perfected dating back to the original effective date of the filing in State A. § 9-316(b) & cmt. 2 (Ex. 3).