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 an attached security interest in any type of Article 9 collateral by filing, or having its agent file, a financing statement satisfying § 9-502’s requirements. § 9-310(a).

♦ A secured creditor must file to perfect an attached security interest in an account, commercial tort claim, or general intangible. § 9-310(a)-(b).

B. Possession

1. A secured creditor must perfect an attached security interest in money by possessing, or having its agent possess, the collateral. §§ 9-312(b)(3) & 9-313(c).

2. A secured creditor may perfect an attached security interest in a consumer good, equipment, a farm product, an instrument, inventory, tangible chattel paper, or a tangible document by possessing, or having its agent or a bailee possess, the collateral. § 9-313(a) & (c).

C. Delivery: A secured creditor may perfect an attached security interest in a certificated security by taking, or having its agent take, delivery of the collateral. §§ 8-301(a)(2) & 9-313(a).

D. Control

1. A secured creditor must perfect an attached security interest in a deposit account or letter-of-credit right by control. § 9-312(b)(1)-(2).

2. A secured creditor may perfect an attached security interest in investment property, electronic chattel paper, or an electronic document by control. § 9-314(a).
3. **Deposit Accounts:** A secured creditor can control a deposit account by
   a. being the bank that maintains the account, § 9-104(a)(1);
   b. agreeing, in an authenticated record, with the debtor and the bank that maintains the debtor’s account that the bank will comply with the secured creditor’s instructions regarding the account without the debtor’s further consent, § 9-104(a)(2); or
   c. becoming the bank’s customer on the deposit account, § 9-104(a)(3), by either
      i. becoming a joint accountholder with the debtor (giving the secured creditor and the debtor the right to direct the bank regarding the account) or
      ii. opening a “lockbox” account, over which the secured creditor would have the sole authority to direct the bank, into which the debtor’s funds would be deposited according to the terms of its agreement with the secured creditor.

4. **Letter-of-Credit Rights:** A secured creditor can control a letter-of-credit right by obtaining the issuer’s (see § 5-102(a)(9)) or the nominated person’s (see § 5-102(a)(11)) consent to assign the letter of credit’s proceeds to the secured creditor. § 9-107.

5. **Investment Property:** § 9-106 empowers a secured creditor to control
   a. a certificated security by taking delivery of the certificate
      i. in bearer form, § 8-106(a) or
      ii. in registered form, provided that the registered certificate is
         a). indorsed to the secured creditor or in blank, § 8-106(b)(1), or
         b). registered in the secured creditor’s name, § 8-106(b)(2);
   b. an uncertificated security by
      i. becoming its registered owner, §§ 8-106(c)(1) & 8-301(b); or
ii. obtaining the issuer’s and registered owner’s agreement that the issuer will comply with the secured creditor’s instructions regarding the security without the debtor’s further consent, § 8-106(c)(2) & (g);

c. a securities entitlement by

i. becoming the entitlement holder, § 8-106(d)(1);

ii. obtaining the securities intermediary’s and entitlement holder’s agreement that the intermediary will comply with the secured creditor’s instructions regarding the entitlement without the entitlement holder’s further consent, § 8-106(d)(2) & (g);

iii. having a third party control, or acknowledge that it controls, the entitlement on the secured creditor’s behalf, § 8-106(d)(3); or

iv. being the securities intermediary with respect to the entitlement at issue, § 8-106(e);

d. a commodity contract by

i. being the commodity intermediary with respect to the contract at issue, § 9-106(b)(1); or

ii. obtaining the commodity intermediary’s and commodity customer’s agreement that the commodity intermediary will comply with the secured creditor’s instructions regarding the contract without the commodity customer’s further consent, § 9-106(b)(2);

e. a securities account or commodity account by controlling all of the securities entitlements or commodity contracts in the account, § 9-106(c).

6. Sections 9-105 & 7-106, respectively, detail the requirements a secured creditor must satisfy to control electronic chattel paper and electronic documents of title.
E. **Automatic Perfection**

1. **Purchase-Money Security Interest:** A security interest in favor of a seller or lender who financed the debtor’s purchase of the good or software that serves as collateral. *See § 9-103(a)-(c).*
   
a. **Consumer Goods:** A PMSI in a consumer good not subject to a certificate-of-title statute perfects when it attaches. *§ 9-309(1).*
   
b. **Non-Consumer Goods:** A secured creditor perfects a PMSI in a non-consumer good by the same method(s) as any other security interest in that type of collateral.

2. **Proceeds:** A perfected security interest automatically perfects all identifiable proceeds arising from the collateral. *§ 9-315(c).*
   
a. A secured creditor with a perfected security interest in underlying collateral for which Article 9 permits perfection by a means other than control will have an automatically perfected security interest in a deposit account or letter-of-credit right that is proceeds of that collateral despite not having control of the deposit account, *see §§ 9-312(b)(1) & 9-315(c), or the letter-of-credit right, see §§ 9-312(b)(2) & 9-315(c).*

b. A secured creditor with a perfected security interest in underlying collateral for which Article 9 permits perfection by a means other than possession will have an automatically perfected security interest in money that is proceeds of that collateral despite not possessing the money. *See §§ 9-312(b)(3) & 9-315(c).*

   c. The automatic perfection *§ 9-315(c) affords is temporary.* In many cases, the secured creditor will have to take some action within 20 days to stay perfected in the proceeds. *See § 9-315(d).*

F. **Certificate-of-Title Notation or Filing:** To perfect a security interest in goods 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, whichever the relevant certificate-of-title statute requires. *See § 9-311(a)(2) & cmt. 3.*

   ♦ Certificate-of-title goods held as inventory for resale or lease by someone in the business of selling them are generally exempt from the otherwise applicable certificate-of-title statute, *§ 9-311(d), and are perfected by filing where the debtor is located, § 9-301(1), or by possession where the inventory is located, § 9-301(2).*
III. Proper Jurisdiction for Initial Perfection

A. Perfecting by Filing: As a general rule, a secured creditor must perfect by filing according to the law of the state where the debtor is located. § 9-301(1).

1. An individual debtor is located at her principal residence. § 9-307(b)(1).

2. A registered organization (e.g., a corporation, limited partnership, limited liability company, statutory trust) is located in the state in which it was organized. § 9-307(e).

3. A non-registered organization (e.g., a general partnership) is located
   a. at its sole place of business, § 9-307(b)(2); or,
   b. if it has more than one place of business, at its chief executive office, § 9-307(b)(3).

   ♦ For purposes of § 9-307(b), a debtor has more than one place of business only if it has a place of business in more than one state.

4. Special Cases
   a. Fixtures: A secured creditor may perfect a security interest in goods that are or will become so attached to realty that an interest in them arises under real property law, § 9-102(a)(41), by filing
      i. a realty mortgage or a fixture filing in the office that maintains real property records for the county where the realty is located, see §§ 9-301(3)(A) & 9-501(a)(1)(B) or
         ♦ A realty mortgage may perfect an attached security interest in fixtures despite not satisfying the requirements of §§ 9-502, -503, -504 & -516 (discussed below).
      ii. a non-fixture filing (i.e., a financing statement) in the office that maintains personal property records for the state where the debtor is located, §§ 9-301(1) & 9-501(a)(2).

   b. Timber to be Cut and Minerals to be Extracted: A secured creditor perfects a security interest in timber to be cut or as-extracted minerals to be extracted by filing in the office that maintains real property records for the state where the realty is located. §§ 9-301(3)(B) & (4) & 9-501(a)(1)(A).
c. **Realty-Related Security Interest:** A secured creditor perfects in personal property that evidences ownership of or a lien on realty or fixtures (e.g., chattel paper secured by realty) according to the Article 9 rules applicable to the personalty, not the rules applicable to the underlying realty or fixtures.

d. **Transmitting Utility:** A secured creditor perfects in personal property and fixtures owned by a “transmitting utility,” see § 9-102(a)(80), by filing in the personal property records of each state where collateral is located. § 9-501(b).

e. **Federal Preemption:** A secured creditor perfects a security interest in collateral for which federal law prescribes the exclusive location for perfection by filing where federal law requires.

B. **Perfecting by Possession:** A secured creditor perfects an attached security interest by possession under the law of the state where the collateral is located. § 9-301(2).

C. **Perfecting by Control**

1. **Deposit Account:** A secured creditor perfects an attached security interest in a deposit account according to the law of the state where the bank is located. § 9-304.

2. **Investment Property:** A secured creditor perfects an attached security interest in investment property according to the law of the state § 9-305(a) prescribes.

   ♦ If a secured creditor elects to perfect against investment property by filing, it must do so where the debtor is located. § 9-305(c)(1).

3. **Letter-of-Credit Rights:** Except where letter-of-credit rights are only a supporting obligation, see §§ 9-308(d), a secured creditor perfects an attached security interest in letter-of-credit rights according to the law of the jurisdiction § 5-116 prescribes. § 9-306.

D. **Perfecting Against Certificate-of-Title Goods:** As a general rule, the law of the state whose certificate of title covers a good governs perfection. § 9-303(c).

   ♦ A certificate of title covers a good as soon as a valid certificate of title application and applicable fee are delivered to the authority identified in the certificate of title statute and continues to cover the good until the certificate expires of the good is retitled in another jurisdiction. § 9-303(b).
IV. Financing Statements

A. Required Elements: A financing statement must contain

1. the debtor’s name, § 9-502(a)(1);

2. the secured creditor’s (or its representative’s) name, § 9-502(a)(2);

3. a statement indicating the collateral, § 9-502(a)(3); and,

4. only if the collateral is minerals to be extracted or timber to be cut, or if the financing statement is a fixture filing,
   a. a description of the real property to which the collateral is related § 9-502(b)(3), and
   b. if the debtor does not have a record interest in the realty, the record owner’s name, § 9-502(b)(4).

B. Debtor’s Name

1. Basic Concepts
   a. Uniqueness: At any time, each debtor has only one correct name (although a debtor’s correct name may change over time).
   b. Substantial Compliance: A financing statement is effective “even though it contains minor errors that are not seriously misleading.” § 9-506(a).
   c. Safe Harbor: A financing statement is not seriously misleading if a search of the records using the filing office’s standard search logic would discover it. § 9-506(c).
   d. The key is to provide anyone searching the personal property records constructive notice that the secured creditor claims an interest in some or all of the debtor’s assets.

2. Individual: The financing statement must provide the debtor’s individual name (which might or might not be the debtor’s “legal name”), § 9-503(a)(4)(A), and should also include any common name(s) or nicknames by which the debtor is or might be known.

   Amendment Alert: The 2010 Amendments invite states to require (“only if”) or allow (“safe harbor”) a financing statement to use an individual debtor’s name as reflected on his or her unexpired driver’s license or other identification card issued most recently by
the state whose law governs perfecting against the debtor’s collateral by filing. §§ 9-503(a)(4) [Alt. A] (“only if”) & 9-503(a)(4)(C) [Alt. B] (“safe harbor”) (2010). A financing statement must name a debtor to whom the state has not issued an unexpired driver’s license or identification card by the debtor’s individual name or by his or her surname and first personal name. §§ 9-503(a)(5) [Alt. A] & 9-503(a)(4)(A)-(B) [Alt. B] (2010).

3. **Corporation, Limited Partnership, or Other Registered Organization:**

   The financing statement must include the registered organization’s name “indicated on the public record of the debtor’s jurisdiction of organization which shows the debtor to have been organized.” § 9-503(a)(1).

   a. A financing statement may also include the debtor’s trade name(s), but will fail to satisfy § 9-502(a)(1) if it contains only the debtor’s trade name(s). § 9-503(c).

   b. It should not matter whether “Inc.” or “Co.” is spelled out as “Incorporated” or “Company” or even omitted because Article 9 considers them to be “noise” words. By contrast, omitting or abbreviating other words may make a financing statement seriously misleading.

   **Amendment Alert:** The 2010 Amendments modify the language of § 9-503(a)(1) to require “the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization’s jurisdiction of organization.” § 9-503(a)(1) (2010). In the event there is more than one such record, the amendments clarify that the financing statement must use “the name that is stated to be the debtor’s name on the most recently filed or issued organic public record that purports to state, amend, or restate the debtor’s name.” § 9-503(f) (2010). A “public organic record,” in turn, means “a record or records consisting of the record initially filed with or issued by a State ... to form or organize an organization and any record filed with or issued by the State ... which effects an amendment or restatement of the initial record, if the record or records are available to the public for inspection.” § 9-102(a)(67A)(A) (2010).
4. **General Partnership or Other Non-Registered Organization:** The financing statement must include the debtor’s organizational name, if it has one, § 9-503(a)(4)(A), or its constituents’ names, if the debtor does not have an organizational name, § 9-503(a)(4)(B).

a. If the financing statement names a non-registered organization by its correct organizational name, omitting its constituents’ names does not make the financing statement ineffective. § 9-503(b)(2).

b. However, because there may be no public record of a non-registered organization’s name, a filer should consider naming the individuals and entities that constitute the non-registered organization even if the non-registered organization has a name.

c. The financing statement should also include the name by which the debtor is commonly known in the community in which it does business – although that name alone may be legally insufficient under § 9-503(c).

♦ **Amendment Alert:** The 2010 Amendments do not appear to change the legal requirements for naming a non-registered organization debtor, other than to relocate them to §§ 9-503(a)(6) [Alt. A] & 9-503(a)(5) [Alt. B] (2010). That does not mean that a creditor need not reevaluate its current practices, however, because the sufficiency of naming a non-registered organization debtor that lacks an organizational name will be tested according to the new standard for the sufficiency of naming its constituents.

C. **Secured Party’s Name:** Although § 9-502(a)(2) appears to attach comparable significance to the secured creditor’s name and the debtor’s name, § 9-503, which details how to name a debtor, provides no details about naming a secured creditor.

♦ The practical explanation is that UCC filings are indexed and searched by the debtor’s name; the secured creditor’s name only provides a searcher with a source to turn to for additional information or to corroborate information the debtor provides. See § 9-503 cmt. 2.

D. **Collateral:** A financing statement indicates collateral by satisfying § 9-108 or stating the collateral is “all assets” or “all personal property.” § 9-504.

♦ A security agreement must describe the collateral, §§ 9-203(b)(3)(A) & 9-108; whereas a financing statement need only indicate it, §§ 9-502(a)(3) & 9-504.

E. **Related Real Property:** The financing statement must reasonably identify the realty; it need not provide a metes-and-bounds description. See § 9-502 cmt. 5.
F. **Time to File**

1. **Pre-attachment Filing:** A prospective secured creditor may file an authorized financing statement before the security interest it purports to perfect has attached. § 9-502(d).

2. **Concurrent or Post-attachment Filing:** A secured creditor may file an authorized financing statement when the security interest it purports to perfect attaches or at any time thereafter, as long as the security interest remains attached and the debtor remains bound.

3. **Perfection Date:** An authorized financing statement will perfect a security interest when the security interest attaches or the financing statement becomes effective, whichever occurs last. § 9-308(a).

G. **Authority to File:** A secured creditor may file a financing statement only if

1. the debtor authorizes the filing
   a. in an authenticated record, § 9-509(a)(1);
   b. by authenticating or otherwise becoming bound by a security agreement, § 9-509(b)(1), or
   c. by acquiring collateral in which a security interest continues after the debtor disposes of it, §§ 9-315(a)(1) & 9-509(c); or

2. the subject collateral is proceeds of collateral in which the secured party held a perfected security interest, §§ 9-315(a)(2) & 9-509(b)(2) & (c).

3. An unauthorized filing cannot perfect a security interest. § 9-510(a).

H. **Media Neutrality:** Article 9 refers to “records,” rather than writings, to accommodate electronic filing.

I. **Filing Office Rules**

1. **Grounds for Rejection:** A filing office must reject (see § 9-520(a)) a financing statement that does not contain the following information in addition to that which § 9-502 requires for perfection:
   a. the secured party’s mailing address, § 9-516(b)(4);
   b. the debtor’s mailing address, § 9-516(b)(5)(A);
   c. whether the debtor is an individual or organization, § 9-516(b)(5)(B); and,
d. if the debtor is an organization,
   i. the debtor’s **organizational type**, § 9-516(b)(5)(C)(i);  
   ii. the debtor’s **jurisdiction of organization**, § 9-516(b)(5)(C)(ii); and  
   iii. the debtor’s organizational **identification number**, if any, § 9-516(b)(5)(C)(iii).

**Amendment Alert:** The 2010 Amendments dispense with § 9-516(b)(5)(C) in its entirety.

2. **Consequences**

a. **Incorrect Information:** The filing office may not inquire about or consider the **accuracy** of the financing statement. However, if a filed financing statement provides incorrect information that § 9-516(b)(5) requires, the secured creditor whose financing statement contains the incorrect information
   i. will lose priority to a subsequent secured creditor who gave value reasonably relying on the incorrect information, § 9-338(1); and  
   ii. will lose its security interest to the extent that a subsequent buyer of the collateral gave value in reasonable reliance on the incorrect information, § 9-338(2).

b. **Rightful Rejection:** A secured creditor whose financing statement the filing office rightfully rejects will know of its rejection promptly and may promptly remedy whatever error or omission triggered the rejection. See § 9-520(b).

c. **Wrongful Rejection:** A financing statement the filing office rejects for a reason other than one § 9-516(b) provides is effective against lien creditors, but not against subsequent buyers or secured creditors who give value in reasonable reliance on not finding the financing statement in the filing office’s records. § 9-516(d).

d. **Wrongful Acceptance:** A financing statement the filing office accepted but should have rejected for failing to satisfy § 9-516(b) is effective as of the filing date, see § 9-520(c) & cmt. 3, but is subject to § 9-338 if any of the information § 9-516(b) requires was incorrect when filed.
V. Maintaining Perfection

A. Lapse: A security interest perfected by filing a financing statement remains perfected for **five years** from the filing date. § 9-515(a).

1. One year after a financing statement lapses, the filing office may remove it from the filing system and destroy it. § 9-522(a).

2. **Special Case: Realty Fixture Filing:** If a creditor files a record of a realty mortgage as a fixture filing, see § 9-502(c), the filing will not lapse until the mortgage is released or satisfied or otherwise terminates under real property law. § 9-515(g).

B. Continuation: A secured creditor may extend a financing statement’s effectiveness by filing a continuation statement (see § 9-102(a)(27)) during the **last six months** before the filing lapses. § 9-515(d).

1. Filing more than 6 months before lapse, or at any time after lapse, is ineffective to continue a filed financing statement, § 9-510(c); but, if the filing satisfies § 9-502, it will establish a new perfection date in the event the original filing lapses.

2. A timely-filed continuation statement extends a financing statement’s effectiveness for another five years **from the original lapse date.** § 9-515(e).

3. Article 9 imposes no limit on the number of times a secured creditor may continue a previously-filed financing statement.

4. **Authority:** The authority to file a continuation statement and other types of amendments is found in § 9-509(d).

C. Termination: Once the debt, if any, to which a filed financing statement relates is fully satisfied, § 9-513(a)(1) & (c)(1), or if the debtor did not authorize filing the financing statement, § 9-513(a)(2) & (c)(4),

1. the secured creditor must file a termination statement within

   a. one month, if the collateral is consumer goods, or

   b. 20 days after receiving an authenticated demand from the debtor, whichever period is shorter. § 9-513(b) & (c).
2. The termination statement must
   a. identify by filing number the financing statement it terminates, §§ 9-102(a)(79)(A) & 9-512(a)(1), and
   b. indicate the financing statement is no longer effective, § 9-102(a)(79)(B).

3. The financing statement is extinguished as soon as the termination statement is filed. § 9-513(d).

4. If the secured creditor fails to timely terminate, § 9-509(d)(2) empowers the debtor to file its own termination statement.

D. **Release:** A secured creditor may relinquish collateral in which it is perfected by amending an existing financing statement. § 9-512(a).

   ♦ The release must identify by filing number the financing statement it amends. § 9-512(a)(1).

E. **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 acquired by the debtor prior to or at the time of the name change. § 9-507(c)(1).

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 an attached security interest in collateral the debtor acquired more than four (4) months after the change. The secured creditor must file a new financing statement prior to the 4 month deadline in order to perfect in collateral acquired more than 4 months after the change. § 9-507(c)(2).

3. A searcher should always consider the possibility that the debtor’s name changed before the debtor approached the searcher for a loan.

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.
F. Debeat’s Interstate Relocation

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), or until perfection would have lapsed in State A, § 9-316(a)(1), if the latter would occur less than four months after the debtor relocated to State B.

2. 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), or until perfection would have lapsed in State A, § 9-316(a)(1), if the latter would occur less than four months after the debtor relocated to State B.

3. 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), or until perfection would have lapsed in State A, § 9-316(a)(1), if the latter would occur less than one year after the debtor reorganized in State B.

Amendment Alert: The 2010 Amendments to UCC Article 9 allow a secured party to perfect, by filing a financing statement in State A before the debtor relocates to or reorganizes in State B, a security interest in collateral the debtor acquires within four months after the debtor relocates to or reorganizes in State B, provided that the filed financing statement would have been sufficient to perfect the security interest had the debtor not relocated/reorganized. §§ 9-316(h) & (i) (2010). Note that the 2010 Amendments do not afford a more generous “safe harbor” for secured parties whose debtors have reorganized in another state: whether an individual debtor relocates to another state or an organizational debtor reorganizes in another state, the safe harbor period is four months.

4. Effect of Timely Reperfect in the New Jurisdiction: A timely filed financing statement or other action necessary to perfect in State B will keep the security interest continuously perfected dating back to the original perfection date in State A. § 9-316(b) & cmt. 2 (Ex. 3).

5. Failure to Timely Reperfect: Before the relevant grace period expires, the secured party must file or otherwise perfect in State B or its security interest will become unperfected as a matter of law against anyone whose claim arises after the grace period expires and against any purchaser or secured creditor who gave value after the debtor relocated to/reorganized in State B. § 9-316(b).
G. Change in the Collateral’s Appearance, Use, or Location

1. **General Rule:** A change in circumstances other than the debtor’s name or the debtor’s location will not alter the effectiveness of a creditor’s pre-change perfection, even if the change makes the pre-change financing statement seriously misleading. § 9-507(b).

2. **Collateral Perfected by Possession:** A security interest in non-certificate-of-title goods perfected by possession in State A remains perfected after the collateral moves to State B if it was perfected in State B upon its relocation. § 9-316(c).

3. **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,

      i. will continue to be perfected and retain their priority against lien creditors (and bankruptcy trustees), § 9-316(d);

      ii. but 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).