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Annual Survey of Virginia Law: Revised Article 9: A Primer for the General Practitioner

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REVISED ARTICLE 9: A PRIMER FOR THE GENERAL PRACTITIONER

*David Frisch**

I. INTRODUCTION

These are exciting times for commercial lawyers. Over the past fifteen years, the sponsoring organizations of the Uniform Commercial Code (UCC or the Code), the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL), have been hard at work to keep the UCC responsive to contemporary needs. Aside from periodic adjustments to existing UCC articles that reflect societal changes,¹ two new articles have been added to cover commercial activity previously governed by the common law of contract.² In 1998, the ALI and NCCUSL gave their approval to the final text of the newest version of Article 9 (Revised Article 9) after eight years of study, drafting, and the inevitable wrangling between consumer and creditor representatives.³ Aside from a few conforming amend-

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1. Within the past twelve years, the ALI and NCCUSL have revised Articles 3 (Negotiable Instruments) (1990), 4 (Bank Deposits and Collections) (1990), 5 (Letters of Credit) (1995), 6 (Bulk Sales) (1989), 8 (Investment Securities) (1994), and 9 (Secured Transactions) (1998). The ALI considered and approved the final draft of a revised Article 1 (General Provisions) at its May 2001 meeting, *The American Law Institute, Actions Taken on 2001 Annual Meeting Drafts*, at <http://www.ali.org> (last visited Oct. 18, 2001), and NCCUSL did the same at its August meeting, *Uniform Law Commissioners: The National Conference of Commissioners on Uniform State Laws, Revision of Uniform Commercial Code, Article 1—General Provisions*, at <http://www.nccusl.org/nccusl> (last visited Oct. 6, 2001). Drafting committees are currently revising Article 2 (Sales), 2A (Leases), 3, 4, 4A (Funds Transfers), and 7 (Documents of Title).

2. See U.C.C. art. 2A (Leases) (1998); U.C.C. art. 4A (Funds Transfers) (1998).

3. The project began in 1990 when the ALI and NCCUSL appointed a committee to study Article 9 and recommend needed changes. The committee issued its final report in 1992. See REP. OF THE ART. 9 STUDY COMM. OF THE PERM. ED. BD. FOR THE U.C.C. (Dec. 1, 1992) [hereinafter ARTICLE 9 REPORT]. From the inception of the drafting process in 1993,

ments occasioned by changes in other articles, this is the first time that Article 9 had been revised since 1972.⁴

Much to its credit, the Virginia General Assembly took a giant step in the direction of sensible law reform when it enacted the new (and improved) Article 9 during its 2000 legislative session.⁵ The statute took effect in Virginia on July 1, 2001.⁶

Why the need for Revised Article 9? In 1992, the following answer was given by the Article 9 study committee:

During the two decades since [Article 9 was last revised], the secured credit markets have seen continued growth and unprecedented innovation. In addition, many hundreds of judicial decisions applying Article 9 have been reported and a large volume of commentary on Article 9, both scholarly and practice-oriented, has emerged. Moreover, the enactment by Congress of the Bankruptcy Reform Act of 1978 . . . has had a profound effect on secured transactions. These developments have led to a strong consensus . . . that although Article 9 is fundamentally sound, serious consideration should be given to the revision of some of the Article's provisions.⁷

When the study committee prepared its report nearly a decade ago, it was impossible to foresee the extent to which the existing law would be rewritten.⁸ As it turned out, the drafting committee

consumer advocates and consumer credit representatives were at loggerheads. The compromise reached was that Revised Article 9 would leave untouched the old law for consumer transactions, except for some very minor changes. Thus, both sides grudgingly agreed not to oppose the statute in the state legislatures.

4. This article cites to sections in "former" Article 9 as VA. CODE ANN. § 8.9-xxx (Repl. Vol. 1991) or VA. CODE ANN. § 8.9-xxx (Cum. Supp. 2000), and to provisions in "new" or "revised" Article 9 as VA. CODE ANN. § 8.9A-xxx (Repl. Vol. 2001).

5. Act of Apr. 9, 2000, ch. 1007, 2000 Va. Acts 1204 (codified as amended at VA. CODE ANN. §§ 8.9A-101 to -709 (Repl. Vol. 2001)).

6. VA. CODE ANN. § 8.9A-701 (Repl. Vol. 2001). U.C.C. § 9-701 (1999) provides for an initial effective date of July 1, 2001. It was the drafters' hope that on this date Revised Article 9 would become effective nationwide, thereby eliminating many of the problems that would otherwise arise during the transition period. See VA. CODE ANN. § 8.9A-701 cmt. (Repl. Vol. 2001) ("If former Article 9 is in effect in some jurisdictions, and this article is in effect in others, horrendous complications may arise."). That hope was realized. As of July 1, 2001, Revised Article 9 went into effect in all fifty states and the District of Columbia except for Connecticut, where it will go into effect October 1, 2001, and Alabama, Florida, and Mississippi, where it will go into effect January 1, 2002. See Uniform Law Commissioners: The National Conference of Commissioners on Uniform State Laws, *Legislative Status and Information on Uniform Acts*, at <http://www.nccusl.org/nccusl> (last visited Oct. 18, 2001).

7. ARTICLE 9 REPORT, *supra* note 3, at 2.

8. Ironically, even the study committee saw no need for a substantial overhaul of Article 9. See *id.* ("[T]here seems to be little support or need for fundamental changes to the

was not content merely cleaning up the relatively few problematic sections of the previous version of Article 9 (Old Article 9) and giving statutory recognition to technological developments. Instead, it succeeded in producing a statute that dwarfs its former self in both complexity and difficulty. Although Revised Article 9 covers much of the same territory as Old Article 9 and does not abandon the existing legal framework, the changes it has brought are far-reaching. Old Article 9 has been reorganized, new sections have been added, related sections in other parts of the Code have been rewritten, and numerous substantive changes have been made. Those acquainted with Old Article 9 will, in many instances, find themselves in an unfamiliar environment.

The primary purpose of this article is to assist the general practitioner in adjusting to the new world of secured transactions by summarizing many of the key differences between Old Article 9 and Revised Article 9 as contained in the Virginia Code. In this vein, no attempt will be made to discuss the many nuances of the statute or how it will impact highly specialized practice areas, such as agricultural finance, oil, gas and mineral financing, security interests in letters of credit, and the arcane world of securitization. This article assumes, however, that the reader has some familiarity with the basic structure, concepts, and terminology of Old Article 9. The uninitiated will have to look elsewhere for the statutory basics.

Part I discusses the expanded scope of Revised Article 9 and its effect on revised Virginia Code section 8.9A. Parts II and III detail the important changes concerning attachment and perfection of security interests. Part IV analyzes the effect of the revisions upon common priority disputes. Part V provides an overview of the new provisions that govern default and enforcement of security interests. Finally, Part VI explains the basic transition rules that will guide the changeover from prior law to the new statute.

II. THE EXPANDED SCOPE OF ARTICLE 9

Revised Article 9 will apply to many transactions that were formerly outside the scope of the old statute.⁹ The expanded cov-

scope and structure of Article 9.”).

9. Conceptually, the basic scope of Old Article 9 remains unchanged. It will continue

erage has been achieved by a combination of drafting strategies. One strategy was to narrow considerably the long list of excluded transactions contained in Old Article 9, codified at Virginia Code section 8.9-104.¹⁰ Another strategy was to expressly add transactions that were previously governed by other statutory provisions.¹¹ A third strategy was a bit more subtle; the drafting committee was able to extend the tentacles of Article 9 by tinkering with some of its defined terms.¹² The following is an overview of the major areas affected by the revision.

A. *Deposit Accounts*

Old Article 9 excluded security interests in various forms of deposit accounts, except insofar as they constituted proceeds of other collateral.¹³ This meant that the scope, attachment, perfection, priority, and enforcement of consensual liens on this ubiquitous form of property were left to the vagaries of the common law. Official Comment 7 in the old Virginia Code section 8.9-104 explained the exclusion by stating: "Such transactions are often quite special, do not fit easily under a general commercial statute and are adequately covered by existing law."¹⁴ But commentators have always believed otherwise, and for years they have argued that deposit accounts—as original collateral—should be within the ambit of Article 9.¹⁵

to apply to those consensual interests in personal property and fixtures that are created for the purpose of securing payment or performance of an obligation. *Compare* VA. CODE ANN. § 8.9A-109(a)(1) (Repl. Vol. 2001), *with id.* § 8.9-102(1)(a) (Repl. Vol. 1991).

10. *Id.* § 8.9-104 (Cum. Supp. 2000). Old Article 9, as codified in Virginia, excluded twelve transactions from the coverage of Article 9. *Id.* Many of these exclusions were justified on the ground that the transactions described were outside the mainstream of commercial lending. *See id.* cmts. 3, 6, 8 (Repl. Vol. 1991). The new list of exclusions in revised Virginia Code section 8.9A-109 reflects how much the lending business has changed since the Code was first drafted. *See id.* § 8.9A-109 (Repl. Vol. 2001); *see also infra* notes 13–19 and accompanying text.

11. *See infra* notes 28–33, 40–45, and accompanying text.

12. *See infra* notes 43–45 and accompanying text.

13. *See* VA. CODE ANN. § 8.9-104(l) (Cum. Supp. 2000) (excluding a non-proceeds interest in a "deposit account"); *id.* § 8.9-105(e) (Cum. Supp. 2000) (defining "deposit account"); *id.* § 8.9-306(1) (Cum. Supp. 2000) (including deposit accounts within the definition of "cash proceeds"). California, Hawaii, and Louisiana enacted non-uniform amendments to Article 9 to permit security interests in deposit accounts. *See Hawkland U.C.C. Series Local Code Variations*, Art. 9—Part 1, at 11–17 (2001).

14. *See* VA. CODE ANN. § 8.9-104 cmt. 7 (Repl. Vol. 1991).

15. *See, e.g.,* Luize E. Zubrow, *Integration of Deposit Account Financing into Article 9*

Notwithstanding the support of academics and the eventual recommendation of the Article 9 study committee to include deposit accounts in any revision of the statute,¹⁶ not everyone on the drafting committee was initially persuaded that the long-time rule of exclusion should be changed.¹⁷ Eventually, however, the supporters of the inclusion of deposit accounts within the scope of Article 9 won out, and the new form of collateral makes its debut under Revised Article 9 with one exception:¹⁸ the drafting committee accepted the arguments of consumer advocates and excluded security interests in deposit accounts as part of consumer transactions.¹⁹

B. *Commercial Tort Claims*

No longer are all tort claims excluded from the scope of Article 9.²⁰ In fact, the 2000 statutory revision applies to one particular brand of tort claim—the “commercial tort.”²¹ To qualify as a “commercial tort claim,”²² the claimant must be an organization or, if an individual, the claim must be business-related and not involve personal injury.²³ However, this new form of collateral is subject to several special rules designed to make sure that the debtor does not inadvertently encumber a claim. First, a security interest will only arise if the particular claim is specifically described in the security agreement.²⁴ Thus, a generic description

of the Uniform Commercial Code: A Proposal for Legislative Reform, 68 MINN. L. REV. 899 (1984).

16. See ARTICLE 9 REPORT, *supra* note 3, at 68–71.

17. *Id.*

18. See VA. CODE ANN. § 8.9A-109(a), (d)(13) (Repl. Vol. 2001).

19. See *id.* § 8.9A-109(d)(13) (Repl. Vol. 2001). “Consumer transaction,” in turn, is defined as “a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes.” *Id.* § 8.9A-102(a)(26) (Repl. Vol. 2001). Presumably a lender may still acquire a lien on the deposit account under non-Code law. See *id.* § 8.9A-102 cmt. 16 (Repl. Vol. 2001).

20. Compare *id.* § 8.9-104(k) (Cum. Supp. 2000), with *id.* § 8.9A-109(d)(12) (Repl. Vol. 2001).

21. See *id.* § 8.9A-109(d)(12) (Repl. Vol. 2001).

22. See *id.* § 8.9A-102(a)(13) (Repl. Vol. 2001).

23. *Id.*

24. See *id.* § 8.9A-108(e) (Repl. Vol. 2001). This does not mean that the description must indicate the amount of the claim, its underlying theory, or the identity of the tortfeasor(s). A sufficient description, for example, would be “all tort claims arising out of the explosion of debtor’s factory.” *Id.* § 8.9A-108 cmt. 5 (Repl. Vol. 2001).

by type alone (for example, "tort claims") will not be sufficient.²⁵ Second, the lender can only take an effective interest in existing tort claims, rather than those that are after-acquired.²⁶ If the debtor acquires a tort claim after executing the security agreement, no security interest will arise in the absence of a new agreement.²⁷

C. *Agricultural Liens*

An "agricultural lien" is a nonpossessory statutory lien that may arise in favor of those persons providing goods, services, or land to farmers.²⁸ These liens typically occupy a rather obscure niche in the remedial structure of each state, with little uniformity among states on such basic matters as perfection, priority, and enforcement. Revised Article 9 seeks to add clarity to this muddled picture by partially incorporating those statutory liens on farm products that fall within the new definition of "agricultural lien."²⁹ Because the lien retains its character as a statutory lien, a security agreement is unnecessary.³⁰ The lienor, however, is required to perfect its interest by filing a financing statement in the Article 9 filing office,³¹ and must look to the provisions of Revised Article 9 to determine the priority of the lien vis-à-vis various competing third-party claimants.³² Similarly, the enforcement provisions of Part 6 of Revised Article 9 are generally applicable to agricultural liens.³³

D. *Health-Care-Insurance Receivables*

The provisions of Revised Article 9 dealing with security interests in rights under life insurance and other policies continue the

25. *Id.* § 8.9A-108(e) (Repl. Vol. 2001).

26. *See id.* § 8.9A-204(b)(2) (Repl. Vol. 2001).

27. *See id.* § 8.9A-204 cmt. 4 (Repl. Vol. 2001).

28. *See id.* § 8.9A-102(a)(5) (Repl. Vol. 2001).

29. *See id.* § 8.9A-109(a)(2) (Repl. Vol. 2001).

30. Although agricultural liens are not captured by the definition of "security interest," *see id.* § 8.1-201(37) (Repl. Vol. 2001), the lienor is a "secured party." *See id.* § 8.9A-102(a)(72) (Repl. Vol. 2001).

31. *See id.* §§ 8.9A-308(b), -310(a), -501(a) (Repl. Vol. 2001).

32. *See id.* § 8.9A-317 & cmt. 7 (Repl. Vol. 2001).

33. *See id.* § 8.9A-601(a) (Repl. Vol. 2001).

rules of the former statute with one significant difference.³⁴ By including health-care-insurance receivables fully within its scope, the revision confronts the challenge of bringing some uniformity and consistency to the financing of the health-care industry.³⁵ A “health-care-insurance receivable” is defined as “an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.”³⁶ It should also be noted that the expanded definition of “account” in Virginia Code section 8.9A-102(a)(2) includes health-care-insurance receivables.³⁷ What difference does it make that a health-care-insurance receivable is an account? Article 9 has always applied to both security interests in and sales of accounts.³⁸ Thus, the provisions on priority and perfection are applicable to the outright sale of health-care insurance receivables. However, if the receivable is transferred to the doctor, hospital, or other health-care provider, it is automatically perfected upon attachment.³⁹

E. *Consignments*

In modern distribution systems, an owner will sometimes deliver goods to a consignee for the purpose of selling those goods to third parties. Under Old Article 9, the rights of a true consignor did not qualify as a security interest.⁴⁰ Notwithstanding the fact that the consignor was the actual “owner” of the goods while they remained in possession of the consignee, the consignor was often well-advised to behave as if his interest was no more than a security interest. The statutory impetus for this seemingly inconsistent behavior was old Virginia Code section 8.2-326, which subordinated the consignor’s interest to the claims of the consignee’s creditors unless (1) the consignor could prove that the consignee

34. *See id.* § 8.9-104(g) (Cum. Supp. 2000).

35. *See id.* § 8.9A-109(d)(8) (Repl. Vol. 2001).

36. *Id.* § 8.9A-102(a)(46) (Repl. Vol. 2001).

37. *Id.* § 8.9A-102(a)(2)(viii) (Repl. Vol. 2001).

38. *See id.* § 8.9A-109(a)(3) (Repl. Vol. 2001); *id.* § 8.9-102(1)(b) (Repl. Vol. 1991).

39. *See id.* § 8.9A-309(5) (Repl. Vol. 2001).

40. *See id.* § 8.1-201(37) (Repl. Vol. 1991 & Cum. Supp. 2000). This discussion of consignments assumes that the transaction is not in substance a traditional secured transaction. A so-called “false consignment” that secures an obligation has been and will be treated, for all purposes, as an ordinary secured transaction. *See id.*; *id.* § 8.9A-102(a)(2) (Repl. Vol. 2001).

was “generally known by his creditors to be substantially engaged in selling the goods of others;” (2) the consignor complied with a relevant sign law showing its interest; or (3) the consignor filed a financing statement under Article 9.⁴¹ Because only a handful of states had sign laws, and since no consignor would eagerly relish the prospect of litigating what others knew or did not know about the consignee’s business, the only safe course for the consignor was to act as if he were a secured party and file under Article 9.⁴²

In response to the inadequacies of old Virginia Code section 8.2-326, the drafters decided to give most true consignments their rightful place directly within the scope of Article 9.⁴³ As a result, under revised section 8.9A-317, all consignors who are not explicitly excluded by the definition in revised Virginia Code section 8.9A-102(a)(20) hold security interests that, if left unperfected, will be subordinate to lien creditors and others.⁴⁴ Although treated as a secured party for purposes of perfection and priority,

41. *See id.* § 8.2-326(3) (Cum. Supp. 2000). Subordination would only occur in those cases where the consignee did business under a different name than the consignor. *See id.*

42. Moreover, old Virginia Code section 8.9-114 subordinated the consignor’s interest to the interest of a secured party with a prior security interest in the consignee’s inventory unless the consignor jumped through the hoops of old Virginia section 8.9-312(3). *See id.* § 8.9-312(3) (Cum. Supp. 2000); *id.* § 8.9-114 (Repl. Vol. 1991).

43. *See id.* § 8.1-201(37) (Repl. Vol. 2001). The term “consignment” is defined as follows:

“[C]onsignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

- (i) deals in goods of that kind under a name other than the name of the person making delivery;
- (ii) is not an auctioneer; and
- (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

Id. § 8.9A-102(a)(20) (Repl. Vol. 2001).

44. *See id.* § 8.9A-317 (Repl. Vol. 2001). Because subsection (3) has been dropped from section 2-326, the respective interests of the consignor and the consignees’ creditors in consigned goods that fall through the cracks of revised Virginia Code section 8.9A-102(a)(20) will be governed by the common law of the particular states. *Compare id.* § 8.2-326 (Repl. Vol. 2001), *with id.* § 8.2-326 (Cum. Supp. 2000).

the true consignor, however, is not subject to Part 6 of Revised Article 9 on foreclosure.⁴⁵

F. *Sales of Rights to Payment*

Although Old Article 9 applied to the sale of rights to payment arising from goods or services transactions (accounts), it left the sale of rights to payment arising from other transactions (general intangibles) to non-Code law.⁴⁶ In order to accommodate the growing number and the economic importance of securitization transactions, the reach of Revised Article 9 has been expanded considerably to pull in a much broader spectrum of sales of receivables.⁴⁷

The drafting committee accomplished this result by making essentially three changes to the statute. First, the definition of “account” was rewritten to include payment obligations arising out of the sale, lease, or license of all kinds of tangible and intangible property, including credit card receivables and lottery winnings.⁴⁸ Thus, for example, the sale of rights to payment arising from the disposition of intellectual property is now covered by Revised Article 9.⁴⁹

The second change wrought by the drafters of Revised Article 9 was the creation of a new subset of general intangibles called “payment intangibles,” whose sale was then brought within the scope of the statute.⁵⁰ A payment intangible is defined as “a general intangible under which the account debtor’s principal obligation is a monetary obligation.”⁵¹ Accordingly, the sale of loans is now clearly within the statute, but it may be less obvious which other transactions are covered. The resulting challenge for practi-

45. *See id.* § 8.9A-109 cmt. 6 (Repl. Vol. 2001).

46. *Compare id.* § 8.9-102(1)(b) (Repl. Vol. 1991), *with id.* § 8.9-104 (Cum. Supp. 2000). Old Article 9 also applied to the sale of chattel paper. *See id.* § 8.9-102(1)(b) (Repl. Vol. 1991). Revised Article 9 continues this rule. *See id.* § 8.9A-109(a)(3) (Repl. Vol. 2001).

47. *Id.* § 8.9A-109(a) (Repl. Vol. 2001). Revised Article 9 specifically excludes from its scope the sale of payment obligations that are clearly outside the mainstream of commercial financing transactions. *See id.* § 8.9A-109(d)(4)–(7) (Repl. Vol. 2001).

48. *See id.* § 8.9A-102(a)(2) (Repl. Vol. 2001).

49. *See id.* § 8.9A-102 cmt. 5a (Repl. Vol. 2001).

50. *See id.* § 8.9A-109(a)(3) (Repl. Vol. 2001).

51. *See id.* § 8.9A-102(a)(61) (Repl. Vol. 2001).

tioners will be to determine whether a monetary obligation is “principal” or ancillary.

Finally, the drafters extended the scope of Revised Article 9 to include the sale of promissory notes.⁵² Because the new definition of “promissory note” expressly excludes an “order to pay,”⁵³ Revised Article 9 still does not address the sale of checks and other drafts.

III. ATTACHMENT OF THE SECURITY INTEREST

Revised Virginia Code section 8.9A-203 is modeled on and largely continues the substance of old Virginia Code section 8.9-203, which governs the attachment of the security interest.⁵⁴ However, the revised version of this provision is updated to account for electronic commerce.⁵⁵ Instead of signing the security agreement, it must now be authenticated by the debtor.⁵⁶ Thus, digital signatures and electronic security agreements are now sufficient.⁵⁷

Revised Article 9 section 8.9A-108(b) provides guidance as to when a description of collateral in the security agreement satisfies the general rule that it must “reasonably identify] what is described.”⁵⁸ Subsection (b)(3) expressly validates generic descriptions by category⁵⁹ and by the type of collateral defined in the Code.⁶⁰ Presumably, this means that descriptions such as “inven-

52. See *id.* § 8.9A-109(a)(3) (Repl. Vol. 2001).

53. See *id.* § 8.9A-102(a)(65) (Repl. Vol. 2001).

54. Compare *id.* § 8.9A-203 (Repl. Vol. 2001), with *id.* § 8.9-203 (Cum. Supp. 2000).

55. See *id.* § 8.9A-203(b)(3)(D) (Repl. Vol. 2001).

56. See *id.* § 8.9A-203(b)(3)(A) (Repl. Vol. 2001). In addition to a traditional signature, authenticate means “to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.” *Id.* § 8.9A-102(a)(7)(B) (Repl. Vol. 2001). “Record,” in turn, means “information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.” *Id.* § 8.9A-102(a)(69) (Repl. Vol. 2001).

57. See VA. CODE ANN. § 8.9A-203 (Repl. Vol. 2001).

58. See *id.* § 8.9A-108(b) (Repl. Vol. 2001).

59. *Id.* § 8.9A-108(b)(2) (Repl. Vol. 2001).

60. *Id.* § 8.9A-108(b)(3) (Repl. Vol. 2001). Under revised Virginia Code section 8.9A-108(e), description by type is an insufficient description of commercial tort claims and, in consumer transactions, consumer goods, security entitlements, securities accounts, or commodity accounts. *Id.* § 8.9A-108(e) (Repl. Vol. 2001).

tory” or “equipment” are now clearly sufficient. Although generic descriptions were approved by the drafting committee, the use of “supergeneric” descriptions in the security agreement was not.⁶¹ Revised Virginia Code section 8.9A-108(c) provides that a description of the collateral as “all the debtor’s assets” or “all the debtor’s personal property” does not reasonably identify the collateral.⁶²

The provisions of Revised Article 9 governing security interests in proceeds of collateral generally track their analogues in Old Article 9,⁶³ although there is a new expanded definition of “proceeds” worth noting. Revised Virginia Code section 8.9A-102(a)(64) now defines “proceeds” to include distributions on account of collateral.⁶⁴ Also, whatever is acquired upon the lease or license of collateral is proceeds.⁶⁵

Another matter that is clarified under Revised Article 9 is that a security interest in a “[s]upporting obligation,”⁶⁶ such as a letter-of-credit right or a guaranty, automatically follows from a security interest in the underlying supported collateral.⁶⁷

IV. PERFECTION OF THE SECURITY INTEREST

Among the most important changes in the Article 9 revision are those that pertain to the perfection of security interests. A security interest is usually perfected when it has attached and all the applicable requirements for perfection have been satisfied.⁶⁸ In a few circumstances, however, the security interest is automatically perfected the moment it attaches.⁶⁹ The availability of

61. *See id.* § 8.9A-108 cmt. 2 (Repl. Vol. 2001). On the other hand, revised Virginia Code section 8.9A-504(2) approves a description in the financing statement if it “covers all assets or all personal property.” *Id.* § 8.9A-504(2) (Repl. Vol. 2001).

62. *Id.* § 8.9A-108(c) (Repl. Vol. 2001).

63. *Compare id.* § 8.9A-203(f) (Repl. Vol. 2001), *and id.* § 8.9A-315(a)(2) (Repl. Vol. 2001), *with id.* § 8.9-203(3) (Cum. Supp. 2000), *and id.* § 8.9-306(2) (Cum. Supp. 2000).

64. *See id.* § 8.9A-102(a)(64)(B) (Repl. Vol. 2001).

65. *See id.* § 8.9A-102(a)(64)(A) (Repl. Vol. 2001). Arguably, these proceeds were also proceeds under Old Article 9, but now the matter is settled. *See id.* § 8.9A-102 cmt. 13 (Repl. Vol. 2001).

66. *See id.* § 8.9A-102(a)(77) (Repl. Vol. 2001).

67. *See id.* § 8.9A-203(f) (Repl. Vol. 2001).

68. *See id.* § 8.9A-308(a) (Repl. Vol. 2001). In Virginia, the requirements for perfection are located in revised Virginia Code sections 8.9A-310 through 8.9A-316. *See id.*; *id.* §§ 8.9A-310 to -317 (Repl. Vol. 2001).

69. *See id.* §§ 8.9A-308(d), -309 (Repl. Vol. 2001).

any given method of perfection depends upon the particular type of collateral and, sometimes, upon the nature of the transaction.⁷⁰

A. *Automatic Perfection*

Revised Article 9 adds three significant new kinds of security interests to the list of those that are perfected when they attach—payment intangibles, promissory notes, and supporting obligations—all of which were the result of statutory changes made elsewhere.⁷¹ As you may recall, Revised Article 9 applies to certain transactions in rights to payment that do not secure payment or performance of an obligation.⁷² The drafters feared, however, that applying the perfection provisions of Revised Article 9 to the sale of general intangibles and promissory notes would unduly interfere with the well-functioning loan participation market that has, until now, prospered without the requirement of public notice.⁷³ Yet, at the same time, no one doubted that buyers of these forms of receivables would benefit greatly from the application of Article 9's priority rules, especially in the seller's bankruptcy proceeding.⁷⁴

The drafting committee solved this dilemma of exclusion or inclusion by providing that sales of payment intangibles and promissory notes are perfected automatically upon attachment.⁷⁵ However, at least one problem remains. Because the automatic perfection rule is limited to true sales, an additional step must still be taken to perfect an interest in a payment intangible or promissory note that secures an obligation.⁷⁶ In borderline cases, the secured party/buyer would be wise to take that step.

The third new automatic perfection rule is located in revised Virginia Code section 8.9A-308(d).⁷⁷ If the security interest in col-

70. *See id.* § 8.9A-308 (Repl. Vol. 2001).

71. *Compare id.* § 8.9A-309(Repl. Vol. 2001), *with id.* § 8.9-302 (Cum. Supp. 2000).

72. *See supra* notes 46–53 and accompanying text.

73. *See* Steven L. Schwartz, *The Impact on Securitization of Revised UCC Article 9*, 74 CHI.-KENT L. REV. 947, 955 (1999).

74. *Id.* at 956.

75. *See* VA. CODE ANN. § 8.9A-309(3), -309(4) (Repl. Vol. 2001).

76. *See id.*; *id.* § 8.9A-310(a), (b) (Repl. Vol. 2001).

77. *See id.* § 8.9A-308(d) (Repl. Vol. 2001).

lateral is perfected, the security interest in the supporting obligation is also perfected.⁷⁸

B. *Perfection by Possession*

Revised Article 9 deals with a method of perfection that generated much controversy under the former version of the statute—perfection by possession—where the collateral is held by a third party who has not issued a negotiable document of title covering the goods.⁷⁹ Under old Virginia Code section 8.9-305, the security interest became perfected the moment the third party received notice of the interest, regardless of whether he acknowledged the notice or agreed to act as the secured party's bailee.⁸⁰ Old Article 9 never clarified what the involuntary bailee's responsibilities were in this situation.

Revised Virginia Code section 8.9A-308 does much to clean up this area. Now, perfection requires that the bailee acknowledge in an authenticated record that it is holding the collateral for the secured party's benefit.⁸¹ However, the bailee cannot be made to do so; the text explicitly rejects the notion that bailee status can be involuntary.⁸² Moreover, even if the bailee does acknowledge that it holds for the secured party, its responsibilities as bailee will depend on the agreement between the parties.⁸³ Thus, no aspect of the relationship between the secured party and the bailee can be involuntary.

Beyond this, the statute was revised to reject the holding in *Atlantic Computer*⁸⁴ that acknowledgment by a lessee who leases collateral from the debtor in the ordinary course of the debtor's business is sufficient to perfect the security interest.⁸⁵ Such a per-

78. See *id.*; see also § 8.9A-308(e) (Repl. Vol. 2001) ("Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.").

79. See *id.* § 8.9A-312(f) & cmt. 9 (Repl. Vol. 2001).

80. See, e.g., *In re Atlantic Computer Sys., Inc.*, 135 B.R. 463, 470 (Bankr. S.D.N.Y. 1992).

81. See VA. CODE ANN. § 8.9A-313(c) (Repl. Vol. 2001).

82. See *id.* § 8.9A-313(f) (Repl. Vol. 2001).

83. See *id.* § 8.9A-313(g)(2) (Repl. Vol. 2001).

84. *Atlantic Computer*, 135 B.R. at 470.

85. See VA. CODE ANN. § 8.9A-313(c) (Repl. Vol. 2001).

son is believed to be too closely connected to the debtor to provide adequate public notice of the security interest.⁸⁶

C. *Perfection by Control*

When Article 8 was revised in 1994, several amendments were made to Article 9. Those amendments resulted in the addition of Virginia Code section 8.9-115.⁸⁷ The upshot of these amendments was that "control" became the preferred method of perfecting a security interest in investment property (stocks, bonds, mutual fund, and the like).⁸⁸ Control in this context meant putting oneself in the position to have the securities sold without further action by the debtor.⁸⁹ This is essentially the approach taken by Revised Article 9.⁹⁰

Control is now the exclusive method for perfecting a security interest in a deposit account.⁹¹ There are three ways to achieve control over a deposit account, depending upon the relationship between the bank and the secured party. Initially, if the secured party happens to be the bank with which the account is maintained, then the security agreement alone is sufficient to give the bank control.⁹² Hence, a word of warning: "[A]ll actual and potential creditors of the debtor are always on notice that the bank with which the debtor's account is maintained may assert a claim against the deposit account."⁹³

Less significant are the control provisions for non-bank secured parties.⁹⁴ Here a non-bank secured party gains control if it be-

86. *See id.* § 8.9A-313 cmt. 4 (Repl. Vol. 2001).

87. *Id.* § 8.9-115 (Cum. Supp. 2000).

88. With the introduction of control as a method of perfection came the basic priority rule that a secured party who obtains control has priority over other claimants who do not obtain control. *See* VA. CODE ANN. § 8.9-115 (Cum. Supp. 2000). So even though a security interest in investment property could be perfected by filing, *see id.* § 8.9A-115(e) (Repl. Vol. 2001), it would be best to take control. Moreover, with control, one need not have a written security agreement. *See id.* § 8.9-203(1)(a) (Cum. Supp. 2000).

89. *See id.* § 8.8A-106 cmt. 1 (Cum. Supp. 2000).

90. *See id.* §§ 8.9A-106, -314 (Repl. Vol. 2001).

91. *See id.* §§ 8.9A-312(b)(1), -314(a) (Repl. Vol. 2001). Revised Article 9 also provides for perfection by control if the collateral is letter-of-credit rights, *see id.* § 8.9A-314(a) (Repl. Vol. 2001), or electronic chattel paper. *See id.*

92. *See id.* § 8.9A-104(a)(1) (Repl. Vol. 2001).

93. *Id.* § 8.9A-104 cmt. 3 (Repl. Vol. 2001).

94. *See id.* §§ 8.9A-105 to -107 (Repl. Vol. 2001). Control by non-bank secured parties

comes the depository bank's customer with respect to the deposit,⁹⁵ or if the depository bank agrees that it will obey disposition orders from the secured party without first obtaining the assent of the debtor.⁹⁶ The first method is straightforward; if the account is transferred to the name of the secured party, then it will have control.⁹⁷ The second method envisions an authenticated agreement among the debtor, the depository bank, and the secured party.⁹⁸ The debtor need not give up his right to direct disposition of the funds in the account; as long as the secured party is able to do so, the secured party will have control.⁹⁹

D. *Perfection by Filing*

The provisions of Revised Article 9 that govern the filing of financing statements present a host of substantive changes that deserve mention. In addition to expanding the categories of collateral that can be perfected by filing to include instruments and investment property,¹⁰⁰ Part 5 of Revised Article 9 goes a long way toward making the filing system more reliable and efficient. The major changes are discussed below.

1. Filing Location

There are some kinds of collateral (e.g., ordinary goods) that have a relatively fixed identifiable physical presence, and there are some kinds of collateral (e.g., accounts) that do not. This simple observation seems to have influenced the drafters of Old Article 9 in their selection of choice-of-law rules. For ordinary goods,

will be less significant than control by the depository bank for two reasons. First, the security interest will have less value to non-bank secured parties because the depository bank's security interest—if it exists—will always have priority. *See infra* notes 142–46 and accompanying text. Second, control by the non-bank secured party may not be possible or practical.

95. *See* VA. CODE ANN. § 8.9A-104(a)(3) (Repl. Vol. 2001).

96. *See id.* § 8.9A-104(a)(2) (Repl. Vol. 2001).

97. *See id.* § 8.9A-104(a)(3) (Repl. Vol. 2001); *id.* § 8.4-104(5) (Repl. Vol. 2001) (defining "customer"). It is unclear whether the debtor can continue to have the right to draw on the account as joint owner. Revised Virginia Code section 8.9A-104(b) suggests that she can. *See id.* § 8.9A-104(b) (Repl. Vol. 2001).

98. *See id.* § 8.9A-104(a)(2) (Repl. Vol. 2001).

99. *See id.*

100. *See id.* § 8.9A-310(a) (Repl. Vol. 2001).

the drafters required that the secured party perfect its interest by filing the financing statement under the laws of the jurisdiction of the collateral's location.¹⁰¹ However, if the collateral was of the latter kind, the filing was governed by the laws of the jurisdiction where the debtor was located.¹⁰²

Revised Article 9 recognizes that a bifurcated filing system can be unnecessarily messy and complex. Under the new rules, all financing statements are filed in the jurisdiction of the debtor's location.¹⁰³ But in order to determine where the debtor is located, one must consider revised Virginia Code section 8.9A-307. If the debtor is incorporated or otherwise organized as a registered organization, its location is the state in which it is registered.¹⁰⁴ If the debtor is an unregistered entity, it is located in the state in which it maintains its chief executive office.¹⁰⁵ The location of an individual is his or her principal residence.¹⁰⁶

Once the secured party determines the proper state in which to file, there is still the question of where in the state to file. Old Article 9 provided states with three alternative provisions from which to choose.¹⁰⁷ Each provision combined both central and local filing requirements, and one alternative required a dual filing in some cases.¹⁰⁸ Revised Article 9 generally requires a single central filing.¹⁰⁹ Local filings in the real estate office are required only for as-extracted collateral, timber to be cut, or fixture filings.¹¹⁰

2. Contents of the Financing Statement

Revised Article 9, like Old Article 9, provides that the financing statement must give the name of the debtor.¹¹¹ Because financing

101. *See id.* § 8.9-103(1)(a)-(b) (Cum. Supp. 2000).

102. *See id.* § 8.9-103(3)(a)-(b) (Cum. Supp. 2000).

103. *See id.* § 8.9A-301 (Repl. Vol. 2001).

104. *See id.* § 8.9A-307(e) (Repl. Vol. 2001).

105. *See id.* § 8.9A-307(b)(3) (Repl. Vol. 2001).

106. *See id.* § 8.9A-307(b)(1) (Repl. Vol. 2001).

107. *See id.* § 8.9A-501 cmt. 2 (Repl. Vol. 2001).

108. *See id.* Prior to the most recent revisions, Virginia had adopted the dual filing alternative. *See id.* § 8.9-401(1) (Repl. Vol. 1991 & Cum. Supp. 2000).

109. *See id.* § 8.9A-501 (Repl. Vol. 2001).

110. *See id.*

111. *Compare id.* § 8.9A-502(a)(1) (Repl. Vol. 2001), *with id.* § 8.9-402(1) (Cum. Supp.

statements are indexed under the debtor's name, using the correct name is the key to the filing system.¹¹² It should therefore come as no surprise that there is an extensive number of reported cases involving this simple sounding requirement under Old Article 9.¹¹³ This litigation typically involved the improper use of the debtor's trade name or the incorrect reproduction of the debtor's legal name.¹¹⁴ The secured party would argue that although a mistake had been made, it fell within the "minor error" exception found in old Virginia Code section 8.9-402(8).¹¹⁵

Revised Article 9 introduces a statutory test that is designed to indicate whether the secured party's mistake is, indeed, minor.¹¹⁶ If the filing office's standard search logic is able to find the statement when a search is made using the debtor's correct name, then the debtor's name requirement is satisfied.¹¹⁷

Electronic commerce is taken into account in a range of Revised Article 9 sections.¹¹⁸ One change of obvious importance is that the debtor is no longer required to sign the financing statement.¹¹⁹ This modification was based on the theory that deletion of the signature requirement will accommodate electronic filings and searches.¹²⁰ However, the financing statement is effective to perfect the security interest only if the filing was authorized by the debtor in an authenticated record.¹²¹ Revised Virginia Code sec-

2000).

112. *See id.* § 8.9A-519(c)(1), (f)(1) (Repl. Vol. 2001); *id.* § 8.9-403(4) (Cum. Supp. 2000).

113. *See, e.g.,* Unsecured Creditors Comm. v. Marepcon Fin. Corp., 907 F.2d 1430 (4th Cir. 1990).

114. *See id.* at 1435. Revised Virginia Code section 8.9A-503(c) states in unambiguous terms that a financing statement is insufficient if the only name it gives is the debtor's trade name. VA. CODE ANN. § 8.9A-503(c) (Repl. Vol. 2001). Official comment 2 to this section explains that this "reflects the view prevailing under former Article 9 that the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient. . . ." *Id.* § 8.9A-503 cmt. 2. (Repl. Vol. 2001).

115. *See Unsecured Creditors Comm.*, 907 F.2d at 1435.

116. *See* VA. CODE ANN. § 8.9A-506(c) (Repl. Vol. 2001).

117. *Id.*

118. *See, e.g., id.* § 8.9A-502(a) (Repl. Vol. 2001); *id.* § 8.9A-516(a) (Repl. Vol. 2001).

119. *See id.* § 8.9A-502(a) & cmt. 3 (Repl. Vol. 2001). Another change to account for electronic commerce is the substitution of the word "communication" for the word "presentation" in the section that establishes the rule for what constitutes filing. *Compare id.* § 8.9A-516(a) (Repl. Vol. 2001), *with id.* § 8.9-403(1) (Cum. Supp. 2000).

120. *Id.* § 8.9A-502(a) (Repl. Vol. 2001).

121. *See id.* §§ 8.9A-509(a), -510(a) (Repl. Vol. 2001). Authorization is unnecessary if the filing is intended to cover an agricultural lien that is in effect at the time of the filing. *See id.* § 8.9A-509(a) (Repl. Vol. 2001).

tion 8.9A-509(b) simplifies matters for the secured party by providing that the debtor's authentication of the security agreement automatically authorizes the secured party to proceed with filing.¹²² Typically, problems will only arise when the secured party files in advance of the security agreement.¹²³ In such cases, the debtor must either expressly authorize the filing or ratify it subsequently.¹²⁴

In addition to stating the debtor's correct name, Revised Article 9, like its predecessor, requires that the financing statement also provide certain basic information about the underlying collateral.¹²⁵ Under Old Article 9, this requirement meant that the financing statement had to contain "a statement indicating the types, or describing the items, of collateral."¹²⁶ In the opinion of most courts, this left out the possibility of a supergeneric description of collateral, such as "all assets."¹²⁷ Revised Article 9 rejects these decisions.¹²⁸

Revised Virginia Code section 8.9A-502(a)(3) provides that a financing statement is sufficient if, among other things, it "indicates the collateral covered by the financing statement."¹²⁹ Without the need to refer to the collateral by item or type, supergeneric descriptions are no longer precluded.¹³⁰ To eliminate any lingering or contrived uncertainty on this point, the drafters created a new safe harbor, which states that a financing statement sufficiently indicates the collateral if it provides "an indication

122. *See id.* § 8.9A-509(b) (Repl. Vol. 2001). Authentication of the security agreement is also authorization to file at a later time to cover proceeds, even if the security agreement says nothing about proceeds. *See id.* § 8.9A-509(b)(2) (Repl. Vol. 2001).

123. *See id.* § 8.9A-509 & cmts. 2-3 (Repl. Vol. 2001).

124. *See id.* § 8.9A-502(d) & cmts. 2-3 (Repl. Vol. 2001). If the filing is later ratified by the debtor, is the effective date of the financing statement the date it was filed or the date of ratification? On this issue, Revised Article 9 is silent. In the event that the secured party files without the requisite authorization, the debtor is permitted to recover actual and statutory damages. *See id.* § 8.9A-625(b), (e) (Repl. Vol. 2001).

125. *See id.* § 8.9A-502(a)(3) (Repl. Vol. 2001); *id.* § 8.9-402(1) (Cum. Supp. 2000).

126. *Id.* § 8.9-402(1) (Cum. Supp. 2000).

127. *See, e.g., In re H.L. Bennett Co.*, 588 F.2d 389, 391-92 (3d Cir. 1978).

128. *See* VA. CODE ANN. § 8.9A-504(2) (Repl. Vol. 2001).

129. *Id.* § 8.9A-502(a)(3) (Repl. Vol. 2001).

130. *Compare id.* § 8.9A-502(a)(3) (Repl. Vol. 2001), *with id.* § 8.9-402(1) (Cum. Supp. 2000).

that the financing statement covers all assets or all personal property.”¹³¹

The third requirement for a sufficient financing statement is that it must name the secured party or its representative.¹³² This change is a bit obscure, but helpful. In situations where several secured parties participate in a single loan and security interest, the parties now have the option, if they wish, to provide the name of a single representative, whether or not that representative is actually one of the secured party lenders.¹³³ Thus, the person named will be the “secured party of record”¹³⁴ and will have the attendant statutory power to amend or terminate the financing statement.¹³⁵

V. PRIORITY CONFLICTS

The provisions of Revised Article 9 governing priorities generally track their analogues in Old Article 9, although there are several changes worth noting. The following is an overview of those changes.

A. *Secured Party v. Secured Party*

The basic priority rule of Revised Article 9 is substantively unchanged from the old law, although a few alterations were made necessary by the addition of new forms of collateral and methods of perfection. Thus, under revised Virginia Code section 8.9A-322(a), as under old Virginia Code section 8.9-312(5), priority is awarded to the secured party who is first to either file a financing statement or to otherwise perfect its security interest.¹³⁶ The revised provision does, however, make explicit what was implicit in

131. *Id.* § 8.9A-504(2) (Repl. Vol. 2001).

132. *Id.* § 8.9A-502(a)(2) (Repl. Vol. 2001). Old Article 9 was silent on whether a financing statement may provide the name of a “representative” of the secured party. *See id.* § 8.9-402(1) (Cum. Supp. 2000).

133. *See id.* § 8.9A-502(a)(2) (Repl. Vol. 2001).

134. *Id.* § 8.9A-511(a) (Repl. Vol. 2001).

135. *See id.* § 8.9A-509(d)(1) (Repl. Vol. 2001).

136. *Compare id.* § 8.9A-322(a) (Repl. Vol. 2001), *with id.* § 8.9-312(5) (Cum. Supp. 2000).

its predecessor: that a perfected security interest has priority over a competing unperfected security interest.¹³⁷

The major changes in the revision's priority rules involve what is described in the Official Comments as non-filing collateral.¹³⁸ This is collateral that the secured party will typically perfect by either possession or control.¹³⁹ With respect to this type of collateral, the drafters evidently believed that there were priority conflicts where exceptions to the general first-to-file-or-perfect rule were warranted.¹⁴⁰ More fundamentally, Revised Article 9 recognizes a hierarchy of perfection methods in which some methods are superior to others, resulting in situations where, because of one party's status, the traditional temporal priority rule of first-in-time is reversed, even though both secured parties perfected by the same method.¹⁴¹ Thus, before we can know which secured creditor has priority, we must first know the status of each and how each has perfected its interest. Several examples follow.

1. Deposit Accounts

As discussed above, control is the only method to perfect a security interest in a commercial deposit account when that account is the secured party's original collateral.¹⁴² The general priority rule is that the first secured party to obtain control has priority.¹⁴³ However, this is not the case if one of the secured parties is the bank with which the account is maintained.¹⁴⁴ In that case, the bank (even if second-in-time) has priority unless the competing secured party perfected by becoming the depository bank's customer with respect to the account.¹⁴⁵ Finally, if a secured party has an automatically perfected interest in the account as proceeds

137. *See id.* § 8.9A-322(a)(2) (Repl. Vol. 2001).

138. *See id.* § 8.9A-322 cmt. 7 (Repl. Vol. 2001).

139. *See id.* ("More specifically, non-filing collateral is chattel paper, deposit accounts, negotiable documents, instruments, investment property, and letter-of-credit rights.")

140. *See id.* §§ 8.9A-327 to -330 (Repl. Vol. 2001).

141. A hierarchy of perfection methods is not altogether new. Recall that under Old Article 9 a later-in-time secured party who took possession of the collateral was sometimes awarded priority over an earlier-in-time secured party who had not. *See, e.g., id.* §§ 8.9-115(5), -309 (Cum. Supp. 2000); *id.* § 8.9-308 (Repl. Vol. 1991).

142. *See supra* notes 91-93 and accompanying text.

143. *See* VA. CODE ANN. § 8.9A-327(2) (Repl. Vol. 2001).

144. *See id.* § 8.9A-327(3)-(4) (Repl. Vol. 2001).

145. *Id.*

of some other form of collateral, that interest will be subordinate to an interest perfected by control regardless of the order in which the interests were perfected.¹⁴⁶

2. Investment Property

One priority rule for the perfection of a security interest in investment property is temporal. If both secured parties have perfected by control, then they rank according to the time of obtaining control.¹⁴⁷ However, there are two important non-temporal priority rules. First, if the competing interest is in a security entitlement or a securities account that is maintained by a securities intermediary who is also a secured party, the intermediary will have priority.¹⁴⁸ Second, a secured party who perfects by control will have priority over a secured party who perfects by filing.¹⁴⁹

3. Instruments

Now, for the first time, a secured party is permitted by Revised Article 9 to perfect a security interest in an instrument by filing.¹⁵⁰ If one secured party perfects by filing and a second secured party takes possession, the secured party with possession will have priority if he takes possession in good faith and without knowledge that his transaction with the debtor violates the rights of the secured party who perfected by filing.¹⁵¹ Moreover, Revised Article 9 continues to provide that a holder in due course of a negotiable instrument has priority over an earlier secured party to the extent set forth in Article 3.¹⁵²

146. *See id.* § 8.9A-327(1) (Repl. Vol. 2001).

147. *See id.* § 8.9A-328(2)(a) (Repl. Vol. 2001). Under old Virginia Code section 8.9-115, the interests would rank equally. *See id.* § 8.9-115(5)(b) (Cum. Supp. 2000). If, under revised Virginia Code section 8.9A-328, both secured parties perfect by filing, perfection will be governed by the general first-to-file-or-perfect rule. *See id.* § 8.9A-328(7) (Repl. Vol. 2001).

148. *See id.* § 8.9A-328(3) (Repl. Vol. 2001).

149. *See id.* § 8.9A-328(1) (Repl. Vol. 2001).

150. *See id.* § 8.9A-312(a) (Repl. Vol. 2001).

151. *See id.* § 8.9A-330(d) (Repl. Vol. 2001). Because this non-temporal rule of priority is couched in terms of "purchasers," it is not limited to secured parties. *See id.* § 8.1-201(33) (Repl. Vol. 2001) (defining "purchaser"). Thus, any consensual transferee who has also given value for the instrument will be similarly protected. *See id.*

152. *See id.* § 8.9A-331(a) (Repl. Vol. 2001); *id.* § 8.3A-309 (Repl. Vol. 2001).

4. Chattel Paper

The priority provisions of Revised Article 9 keep the same structure and, for the most part, the same substance as the former statutory provisions concerning competing interests in chattel paper. Under Old Article 9, a special non-temporal priority rule operated in favor of secured parties and other purchasers who, without knowledge of the prior security interest, gave new value and took possession of the chattel paper in the ordinary course of their business.¹⁵³

Among the several changes worth noting in new Article 9 is a rule that makes the non-temporal rule of priority equally applicable to a later purchaser who takes control of electronic chattel paper.¹⁵⁴ Another noteworthy change is the implementation of a requirement that the purchaser not know that the purchase violates the secured party's rights, replacing the former requirement that the purchaser not know that the chattel paper is subject to the secured party's security interest.¹⁵⁵ If the chattel paper bears a legend indicating that it has been assigned to an identified secured party, the purchaser is deemed to have knowledge that the purchase violates the rights of the secured party.¹⁵⁶

Revised Article 9 continues to contain a slightly different priority rule if the earlier secured party claims the chattel paper "merely as proceeds."¹⁵⁷ Revised Article 9 awards priority to the ordinary course new value purchaser unless the chattel paper indicates "that it has been assigned to an identified assignee."¹⁵⁸

153. *See id.* § 8.9-308 (Repl. Vol. 1991).

154. *See id.* § 8.9A-330(b) (Repl. Vol. 2001). Other changes include an explicit requirement that the purchaser act in good faith. *See id.* § 8.9A-330(b) (Repl. Vol. 2001). Another change includes a statutory definition of "new value." *See id.* §§ 8.9A-102(a)(57), -330(e) (Repl. Vol. 2001).

155. *See id.* § 8.9A-330(b) (Repl. Vol. 2001).

156. *See id.* § 8.9A-330(f) (Repl. Vol. 2001).

157. *See id.* § 8.9A-330(a) (Repl. Vol. 2001); *id.* § 8.9-308(b) (Repl. Vol. 1991). The meaning of the term "merely proceeds" is explained by the Permanent Editorial Board for the Uniform Commercial Code in *PEB Commentary No. 8: Section 9-308*. *See id.* § 8.9A-330 cmt. 3 (Repl. Vol. 2001).

158. *Id.* § 8.9A-330(a)(2) (Repl. Vol. 2001).

B. Secured Party v. Buyer

Revised Virginia Code section 8.9A-320(a), like its counterpart in old Virginia Code section 8.9-307(1), provides that a buyer in the ordinary course of business (other than one who buys farm products from a farmer) takes title free of any security interest created by the seller even if the buyer knows of the security interest.¹⁵⁹ Revised Virginia Code section 8.1-201(9) deals with a related question that generated much controversy and litigation under Old Article 9: When during the life of a sales transaction will a purchaser qualify as a protected buyer? Possible alternatives include: (1) the date of contract formation; (2) the date the goods are identified to the contract; (3) the date title to the goods passes to the buyer; or (4) the date the buyer obtains possession of the goods. The revised definition of "buyer in ordinary course" now makes clear that buyer status is achieved the moment the purchaser obtains possession or the remedial right to obtain possession of the goods vis-a-vis the seller.¹⁶⁰

A related, but conceptually distinct, question is whether Article 9 should protect a buyer when the seller's secured party retains possession. The seminal case, *Tanbro Fabrics Corp. v. Deering Milliken, Inc.*,¹⁶¹ held that it did.¹⁶² Revised Virginia Code section 8.9A-320(e) reverses the rule of *Tanbro*, stating that the special buyer in ordinary course priority does "not affect a security interest in goods in the possession of the secured party."¹⁶³

While on the subject of buyers, a related revision to Article 2 should be noted. Under the old statute, where the buyer had prepaid in whole or in part for the goods and all that remained was the seller's performance, it was unlikely that the buyer would be able to recover the goods from the seller or from the seller's trustee in bankruptcy.¹⁶⁴ However, now that revised Virginia Code

159. *Id.* § 8.9A-320(a) (Repl. Vol. 2001); *id.* § 8.9-307(1) (Repl. Vol. 1991). Unlike Old Article 9, however, revised Virginia Code section 8.9A-321 explicitly gives priority to a "lessee in ordinary course of business." *Id.* § 8.9A-321(c) (Repl. Vol. 2001). The same protection is also afforded to a nonexclusive licensee of a general intangible in ordinary course. *Id.* § 8.9A-321(b) (Repl. Vol. 2001).

160. *See id.* § 8.1-201(9) & cmt. 9 (Repl. Vol. 2001).

161. 350 N.E.2d 590 (N.Y. 1976).

162. *Id.* at 592.

163. VA. CODE ANN. § 8.9A-320(e) & cmt. 8 (Repl. Vol. 2001); *see also id.* § 8.9A-313(a) (Repl. Vol. 2001).

164. *See id.* § 8.2-502 (Repl. Vol. 1991).

section 8.2-502 has taken effect, a pre-paying buyer of consumer goods need only show that he has a "special property" in the goods.¹⁶⁵ This means that in order to recover those goods from the seller, the goods must be identified to the contract.

C. Purchase-Money Security Interests

Like its predecessor, revised Virginia Code section 8.9A-103 continues to recognize the super-priority status of purchase-money security interests.¹⁶⁶ Unlike its predecessor, however, the revised statutory provision makes it clear that not every type of collateral can be "purchase-money collateral."¹⁶⁷ Rather, this characterization is reserved only for goods and software sold or licensed with goods, and only if the interest in the goods is purchase-money and the software is acquired to be used with the goods.¹⁶⁸

The drafters of the revised statute had to confront the challenge of determining what happens to a purchase-money security interest when the original loan has been refinanced. The related problem of whether purchase-money status is possible when the security interest in the goods secures more than their purchase price also needed to be resolved. There was considerable controversy over these issues under Old Article 9, and as a result, many courts denied purchase-money status in both situations by declaring that the purchase-money character of the security interest had been transformed into non-purchase money.¹⁶⁹

165. See *id.* § 8.2-502(1), (2) (Repl. Vol. 2001); see also *id.* § 8.2-501(1) (defining "identification"). The conclusion that the seller's trustee will be under an obligation to deliver the goods embodies two assumptions: first, if the contract is "rejected" by the trustee, it will have no effect on the buyer's proprietary power over the goods. See 11 U.S.C. § 365(a) (1994). Second, the trustee is not able, by virtue of enjoying the powers of a lien creditor, to avoid the buyer's property interest. See *id.* § 544(a)(1).

166. See VA. CODE ANN. § 8.9A-324(a) (Repl. Vol. 2001); *id.* § 8.9-107 (Repl. Vol. 1991 & Cum. Supp. 2000); see also *id.* § 8.9A-103(b) (Repl. Vol. 2001) (defining "purchase-money security interest"). Revised Article 9 section 9-103 introduces, for the first time, the terms "purchase money collateral" and "purchase-money obligation." See *id.* § 8.9A-103(a) (Repl. Vol. 2001). These twin terms are then used in the remainder of the section to explain the concept of a purchase-money security interest.

167. See *id.* § 8.9A-103(a)-(b) (Repl. Vol. 2001).

168. See *id.* § 8.9A-103(b)-(c) (Repl. Vol. 2001).

169. See generally Mary Aronov, *The Transformation Rule Applied to Purchase Money Security Interests in Commercial Lending Transactions*, 16 MEM. ST. U. L. REV. 15, 23-39 (1985).

Revised Article 9 eschews the “transformation” rule in favor of a “dual status” rule for non-consumer transactions.¹⁷⁰ The dual-status rule preserves purchase-money status to the extent that the amount of the purchase-money obligation can be determined.¹⁷¹ When the extent of the obligation depends on the application of the debtor’s payments to a particular obligation, the secured party would be wise to provide for an appropriate method of allocation in the security agreement.¹⁷² In the absence of an agreement by the parties, the debtor may decide how the payments should be allocated.¹⁷³

VI. DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS

The drafters of Revised Article 9 removed many of the uncertainties that plagued the enforcement of security interests under the old statute. Unfortunately, the drafters accomplished this worthy goal by adding twenty-one sections to the “default” portion of Article 9.¹⁷⁴ To fully discuss each of the twenty-one sections would require an article devoted entirely to “default;” instead, this article will introduce only the changes that are most crucial to the general practitioner.

As under Old Article 9,¹⁷⁵ a secured party that exercises its collection and enforcement rights is required to do so in a commercially reasonable manner.¹⁷⁶ Historically, this requirement posed problems when the collateral was sold for a price that the debtor claimed was less than its fair value.¹⁷⁷ In particular, considerable

170. See VA. CODE ANN. § 8.9A-103(f) (Repl. Vol. 2001); see also *id.* § 8.9A-103 cmt. 7a (Repl. Vol. 2001). The drafters took no position on how these issues should be resolved in consumer transactions. However, Revised Article 9 the new section 9-103 states that courts should not infer from the drafters’ silence a preference for the adoption of the transformation rule in consumer transactions. *Id.* § 8.9A-103(h), cmt. 8 (Repl. Vol. 2001).

171. See *id.* § 8.9A-103(e) (Repl. Vol. 2001).

172. See *id.* § 8.9A-103(e) & cmt. 7b (Repl. Vol. 2001).

173. See *id.* § 8.9A-103(e)(2) (Repl. Vol. 2001). If there is no agreement by the parties, and the debtor has not manifested his intention, payments will be allocated to unsecured obligations first and then to secured obligations in the order in which they were incurred. See *id.* § 8.9A-103(e)(3) (Repl. Vol. 2001).

174. In Old Article 9, seven default provisions formed Part 5. *Id.* §§ 8.9-501 to -507 (Repl. Vol. 1991 & Cum. Supp. 2000). The revised default provisions now form Part 6, comprised of twenty-eight sections. *Id.* §§ 8.9A-601 to -628 (Repl. Vol. 2001).

175. See *id.* §§ 8.9-502(2), -504(3) (Repl. Vol. 1991 & Cum. Supp. 2000).

176. See *id.* §§ 8.9A-607(c), -610(b) (Repl. Vol. 2001).

177. See *id.* § 8.9-502 cmts. 1-2 (Repl. Vol. 1991).

uncertainty surrounded the issue of whether the price of the collateral was one of the terms of the disposition that needed to be commercially reasonable.¹⁷⁸ To answer this question directly, the drafters put the following statement in two Official Comments: “While not itself sufficient to establish a violation of this Part, a low price suggests that a court should scrutinize carefully all aspects of a disposition to ensure that each aspect was commercially reasonable.”¹⁷⁹ But the drafters did not stop there. Because certain buyers at a foreclosure sale may lack the economic incentive to pay a fair price, the drafters crafted a special rule for dispositions to an “insider”: if a secured party, a person related to a secured party,¹⁸⁰ or a secondary obligor¹⁸¹ buys the collateral at a foreclosure sale for a price that is significantly below what an independent third party would have paid at a commercially reasonable sale, the secured party’s deficiency claim is calculated based on what that unrelated third party would have paid.¹⁸²

The Revised Article 9 clarifies and alters a number of aspects concerning the secured party’s obligation to give notice prior to disposing of the collateral.¹⁸³ One important split resolved by the revision deals with guarantors. Old Article 9 was vague on whether a guarantor was a “debtor”¹⁸⁴ for purposes of the right to receive pre-disposition notice and the protection of the non-waivable rules of old Virginia Code section 8.9-501(3)(b). Revised Article 9 settles the matter by requiring that notification of disposition be sent to all guarantors and other secondary obligors; it further provides that the right to receive such notification may not be waived prior to default.¹⁸⁵

If the collateral is not consumer goods, then, in addition to sending notice to the debtor and any secondary obligor, disposi-

178. *See id.*

179. *Id.* §§ 8.9A-610 cmt. 10, 8.9A-627 cmt. 2 (Repl. Vol. 2001); *see also* § 8.9A-627(a) (Repl. Vol. 2001).

180. *Id.* § 8.9A-102(a)(62)–(63) (Repl. Vol. 2001) (defining “person related to”).

181. *Id.* § 8.9A-102(a)(71) (Repl. Vol. 2001) (defining “secondary obligor”).

182. *See id.* § 8.9A-615(f)(2) (Repl. Vol. 2001); *see also id.* § 8.9A-615 cmt. 6 (Repl. Vol. 2001).

183. *See id.* § 8.9-504(1), (3) (Repl. Vol. 1991 & Cum. Supp. 2000).

184. *See id.* § 8.9-105(1)(d) (Cum. Supp. 2000) (defining “debtor”); *see also id.* § 8.9-105 cmt. 2 (Repl. Vol. 1991).

185. *See id.* §§ 8.9A-611(c), -624(a) (Repl. Vol. 2001). The notice requirement assumes, of course, that the secured party knows the identity of the guarantor or other secondary obligor. *See id.* § 8.9A-628(a)–(b) (Repl. Vol. 2001).

tion notifications must also be sent to “any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.”¹⁸⁶ This is not new.¹⁸⁷ However, the return to the pre-1972 rule that notice also must be given to any secured party who, ten days before the notification date, has filed a financing statement or otherwise perfected its interest in the collateral under a federal statute or regulation, or under a state certificate of title statute, is new.¹⁸⁸

As to the timing and the contents of the notice, Revised Article 9 contains three safe-harbor provisions that secured parties will undoubtedly find quite helpful. One safe-harbor provision is for non-consumer transactions only. It provides that the statute’s “reasonable time” requirement is satisfied if the notification is sent at least “ten days or more before the earliest time of disposition” stated in the notice.¹⁸⁹ However, when it comes to the contents of the notice, secured parties will benefit from provisions providing both a safe-harbor form for commercial transactions¹⁹⁰ and a more detailed form for consumer goods transactions.¹⁹¹

The revised and the former versions of Article 9 both state that, after default, a secured party may “propose to retain the collateral in satisfaction of the obligation.”¹⁹² Under the language of the old statute, however, several questions arose. First, does the option of “strict foreclosure” depend upon the secured party having possession of the collateral?¹⁹³ Second, if the secured party fails to dispose of the collateral within a reasonable period of time, is he deemed to have accepted the collateral in full satisfac-

186. *Id.* § 8.9A-611(c)(3)(a) (Repl. Vol. 2001).

187. *See id.* § 8.9-504(3) (Repl. Vol. 1991 & Cum. Supp. 2000).

188. *See id.* § 8.9A-611(c)(3)(B)-(C) (Repl. Vol. 2001); *see also id.* § 8.9A-611 cmt. 4 (Repl. Vol. 2001).

189. *See id.* § 8.9A-612 (Repl. Vol. 2001). With respect to consumer transactions, the courts will have to decide for themselves how much time must elapse between the sending of the notice and the disposition of the collateral. *See id.*

190. *See id.* § 8.9A-613(5) (Repl. Vol. 2001).

191. *See id.* § 8.9A-614(3) (Repl. Vol. 2001). Notice that “consumer-goods transaction” is a new term, meaning a transaction in which consumer goods are used to secure an obligation incurred for “personal, family, or household purposes.” *Id.* § 8.9A-102(a)(24) (Repl. Vol. 2001).

192. *Id.* § 8.9A-620(a) (Repl. Vol. 2001); *id.* § 8.9-505(2) (Repl. Vol. 1991).

193. *See id.* § 8.9A-620 cmts. 5-7 (Repl. Vol. 2001).

tion of the debt?¹⁹⁴ Third, may the secured party accept the collateral in *partial* satisfaction of the debt?¹⁹⁵ Fortunately, Revised Article 9 provides answers to these questions.

Revised Virginia Code section 8.9A-620(a) makes clear that the secured party's possession of the collateral is not a prerequisite to strict foreclosure in commercial and consumer transactions.¹⁹⁶ Thus, no distinction is drawn between tangible and intangible collateral. Also, revised Virginia Code section 8.9A-620(b) eliminates the possibility that the secured party's delay in disposing of the collateral could result in an implied or constructive strict foreclosure.¹⁹⁷ Finally, if the transaction is not a consumer transaction, Revised Article 9 provides that there can be a retention in partial satisfaction of the debt if both the debtor and the secured party agree in an authenticated record.¹⁹⁸

Revised Virginia Code section 8.9A-625(b) replicates the substance of old Virginia Code section 8.9-507 by permitting the debtor to recover for any loss caused by the secured party's failure to give notice of the intended sale or other disposition of the collateral or to proceed in a commercially reasonable manner.¹⁹⁹ Under the former statute, that was not necessarily the only remedial consequence of the secured party's non-compliance with the provisions of Article 9.²⁰⁰ Courts were split three ways as to the effect a creditor's non-compliance had on its right to recover a deficiency judgment: either (1) the creditor was permitted to recover the deficiency, but the recovery was subject to a reduction for any damages provable by the debtor under old Virginia Code section 8.9-507;²⁰¹ (2) the creditor was absolutely barred from any recovery;²⁰²

194. *See id.* § 8.9A-620 cmt. 6 (Repl. Vol. 2001).

195. *See id.* § 8.9A-620(a), (g), cmt. 12 (Repl. Vol. 2001).

196. *Id.* § 8.9A-620(a) (Repl. Vol. 2001). Under the version of revised Article 9 promulgated by NCCUSL and the ALI, if the collateral is consumer goods, strict foreclosure does depend upon the secured party having possession. *See* U.C.C. § 9-620(a)(3) (1999).

197. VA. CODE ANN. § 8.9A-620(b) (Repl. Vol. 2001). Because the secured party must consent to the acceptance in an authenticated record or send a proposal to the debtor, the debtor would be precluded from proving an oral agreement that the collateral would be accepted in full satisfaction of the debt. *See id.* § 8.9A-620(b)(1) (Repl. Vol. 2001).

198. *See id.* § 8.9A-620(a), (c) (Repl. Vol. 2001).

199. *Id.* § 8.9A-625(b) (Repl. Vol. 2001).

200. *See id.* § 8.9-507 (Repl. Vol. 1991 & Cum. Supp. 2000).

201. *See id.* § 8.9-507(1) (Repl. Vol. 1991 & Cum. Supp. 2000).

202. *See, e.g.,* First Va. Bank Mountain Empire v. Ruff, 27 Va. Cir. 286 (Cir. Ct. 1992) (Wise County).

or (3) recovery was permitted to the extent that the creditor was able to overcome a rebuttable presumption that the collateral's value equaled the amount of the debt.²⁰³ Revised Virginia Code section 8.9A-626(a) resolves the controversy by adopting the rebuttable presumption rule for all transactions, including consumer transactions.²⁰⁴ However, the version of Revised Article 9 that was submitted to the states by NCCUSL and the ALI is silent on the appropriate rule for consumer transactions, deferring instead to the court's discretion.²⁰⁵

VII. TRANSITION

Part 7 of Revised Article 9 governs the transition from the old article to the new article. If we assume that the security interest was perfected under the Old Article 9 (or otherwise) at the time the revision took effect, the critical question is whether the secured party must take further action after the effective date for the security interest to maintain its enforceable, perfected status.²⁰⁶ The answer is maybe, but not immediately. Consider the following hypothetical situations:

1. Assume that the debtor is a Virginia corporation that does business only in Virginia. On April 5, 2000, the secured party perfected a security interest in the debtor's inventory by filing a proper financing statement in Virginia.²⁰⁷ Reperfection is not required because the steps taken by the secured party under Old Article 9 would be sufficient to perfect the security interest under the revision.²⁰⁸ Also, if the secured party wished to extend the effectiveness of the financing statement beyond five years, it would do so by filing a continuation statement in Virginia.²⁰⁹

2. The facts are the same as in the preceding hypothetical except that the debtor is a Delaware corporation whose inventory is

203. *See, e.g.,* Smith v. Paige, 19 Va. Cir. 359 (Cir. Ct. 1990) (Richmond City).

204. VA. CODE ANN. § 8.9A-626(a) (Repl. Vol. 2001).

205. *See* U.C.C. § 9-626(a)-(b) (1999).

206. *See* VA. CODE ANN. §§ 8.9A-703(a), -705 (Repl. Vol. 2001).

207. *See id.* §§ 8.9A-310(a), -501(a) (Repl. Vol. 2001). The proper place to file under Old Article 9 was where the collateral was located (i.e., Virginia), and the proper place to file under Revised Article 9 is where the debtor is incorporated (i.e., Virginia). *See supra* notes 100-10 and accompanying text.

208. *See* VA. CODE ANN. § 8.9A-703(a) (Repl. Vol. 2001).

209. *See id.* § 8.9A-705(d) (Repl. Vol. 2001).

located in Virginia. The difference between this situation and the prior is that the pre-transition filing would not be proper as an initial filing post-transition.²¹⁰ Revised Virginia Code section 8.9A-705(c) provides that the financing statement remains effective until the earlier of its normal lapse date or June 30, 2006.²¹¹ However, if the secured party wishes to extend the effectiveness of the filing beyond the initial five year period, it cannot do so by filing a continuation statement in Virginia.²¹² Instead, it must file a financing statement in the jurisdiction in which an original filing would be proper under Revised Article 9 (i.e., Delaware).²¹³

3. Assume that on April 5, 2000, the secured party perfected a security interest in instruments by notification to a bailee under the old Virginia Code section 8.9-305.²¹⁴ In one respect, this hypothetical is similar to the preceding one: in both, the perfection step taken before the revision's effective date would not satisfy the requirements for perfection under Revised Article 9.²¹⁵ Yet, there is an important difference. Situations where the post-revision change has nothing to do with the filing of a financing statement in a new required location are governed by revised Virginia Code section 8.9A-703(b), which provides that the security interest is perfected for one year following Revised Article 9's effective date.²¹⁶ If the secured party takes the necessary steps to satisfy the requirements for perfection within that period, the security interest remains perfected thereafter.²¹⁷

210. *See id.* §§ 8.9A-307(e), 8.9A-703(a) (Repl. Vol. 2001).

211. *Id.* § 8.9A-705(c) (Repl. Vol. 2001). One consequence of this rule is that, until June 30, 2006, third parties must search for financing statements both where a filing would have been proper under Old Article 9 and where a filing is proper under Revised Article 9.

212. *See id.* § 8.9A-705(d) (Repl. Vol. 2001).

213. *See id.* § 8.9A-706(a) (Repl. Vol. 2001).

214. *Id.* § 8.9-305 (Cum. Supp. 2000); *see also id.* § 8.9A-313(a) (Repl. Vol. 2001).

215. *See id.* § 8.9A-313(a), (c) (Repl. Vol. 2001).

216. *Id.* § 8.9A-703(b) (Repl. Vol. 2001). The situations governed by revised Virginia Code section 8.9A-703(b) are not limited to those where there is a post-revision change in the method of perfecting the security interest. Also covered are situations where the security interest would not have attached if the pre-revision attachment steps were taken post-revision (e.g., the pre-revision security agreement in a consumer transaction describes the collateral as "all securities accounts") and where the transaction formerly was not governed by Old Article 9 but now is within the scope of Revised Article 9 (e.g., secured party had an enforceable pre-revision lien on a deposit account under non-Code law). In all of these cases, if the creditor does not comply with Revised Article 9 within one year of its effective date, its interest will become unperfected or, worse, unenforceable. *See id.* § 8.9A-703(b) & cmt. 2 (Repl. Vol. 2001).

217. *See id.* § 8.9A-703(b)(3) (Repl. Vol. 2001).

Finally, a potential pitfall for the secured party lurks in revised Virginia Code section 8.9A-702. By providing that Revised Article 9 applies to pre-revision transactions, this section subjects the enforcement actions of the secured party to scrutiny under the new rules.²¹⁸ Thus, to the extent that the revision imposes additional enforcement burdens upon the secured party,²¹⁹ those new requirements must be met.²²⁰

VIII. CONCLUSION

There is good news and bad news about Revised Article 9. The good news is that by clearing up conflicting interpretations, curing judicial misconstructions, and incorporating desirable improvements that take into account technological developments and changes in business practices, the drafters of the new statute have done their best to provide us with a viable product for the new millennium. The bad news is that Revised Article 9 is far more complex than the old statute and, consequently, the non-expert lawyer or judge may find it to be less accessible. Only time and experience will reveal whether the revision will be as satisfactory as its promise.

218. *See id.* § 8.9A-702(a) (Repl. Vol. 2001).

219. *See, e.g., id.* § 8.9A-614 (Repl. Vol. 2001).

220. *See id.* § 8.9A-702(a) & cmt. 1 (Repl. Vol. 2001).
