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# A SYNOPSIS OF THE MAJOR REVISIONS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE ADOPTED BY VIRGINIA†

*John W. Edmonds, III\**

When the Uniform Commercial Code became effective in Mississippi and South Carolina on January 1, 1968, it reached its goal of near uniform enactment.<sup>1</sup> Maintaining this achievement of uniform adoption, however, has proven to be most difficult with regard to the Code's treatment of "secured transactions" in Article 9. In 1966, the Permanent Editorial Board<sup>2</sup> noted that there had been 337 non-uniform, non-official amendments to Article 9 of the Code. Accordingly, the Board established a Review Committee to restudy Article 9 in depth and report its findings. The study culminated in the Final Report of the Permanent Editorial Board of April 25, 1971.<sup>3</sup>

In 1972 the General Assembly of Virginia directed<sup>4</sup> the Virginia Code Commission to undertake a study of the Board's Report and its proposed revision of Article 9 and to propose appropriate amendments throughout Title 8.9 of the Code of Virginia.<sup>5</sup> While there are

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† The revisions adopted by the General Assembly will become effective on July 1, 1974. VA. CODE ANN. § 8.11-101 (Cum. Supp. 1973).

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1. It is now in effect in all fifty states except Louisiana, as well as having been enacted in the District of Columbia and the Virgin Islands.

2. The Permanent Editorial Board was established by agreement of the American Law Institute and the National Conference of Commissioners on Uniform State Laws in 1961.

3. For in depth discussions on reasons for the proposed amendments see Coogan, *The New U.C.C. Article 9*, 86 HARV. L. REV. 477 (1973); Levenburg, *Comments on Certain Proposed Amendments to Article 9 of the Uniform Commercial Code*, 56 MINN. L. REV. 117 (1971); Funk, *Preliminary Report No. 2 of the Review Committee on Article 9 of the Uniform Commercial Code*, 25 BUS. LAW. 1069 (1970).

4. Virginia Acts of Assembly, 1972, H.J.R. 31, p. 1631.

5. The Code Commission appointed a committee of attorneys to study these proposed revisions to enable the Code Commission to make recommendations to the Legislature. This committee consisted of Richard H. Catlett, Jr., selected from the Business Law Section of the Virginia State Bar, Howard W. Dobbins, selected from the Committee on Banking and Commercial Law of the Virginia State Bar Association, Garland M. Harwood, Jr., counsel to the Virginia Savings and Loan League, Jay J. Levit, Harry L. Snead, Jr., Professor of Law at the University of Richmond Law School and author of that portion of *An Introduction to the Uniform Commercial Code* relating to Article 9, and John W. Edmonds, III, counsel to the Virginia Bankers Association. The latter served as Chairman of the Committee.

some thirty-four sections affected or amended by the revisions, many of these changes are merely conforming, as in the case of elimination of the phrase "contract rights"<sup>6</sup> from other sections containing an internal reference thereto. The major changes in Article 9, however, attempt to either eliminate or define lines of demarcation between categories or types of collateral.

References in the text to § 9- are to the proposed uniform revisions; references to § 8.9- are to the Virginia statute in effect until June 30, 1974.<sup>7</sup>

### FIXTURES

In the redrafted sections, 9-313, 9-401 and 9-402 the revisors of Article 9 undertook to define with more precision what is or what is not a fixture, finally reaching in essence the same solution as did the Virginia Supreme Court in *Danville Holding Corp. v. Clement*.<sup>8</sup> The court said:

It is difficult, if not impossible, to frame any precise rule to determine whether an article used in connection with realty is to be considered a fixture or not a fixture. Each case must be decided according to its particular facts and circumstances.<sup>9</sup>

The proposed Uniform draft requires that the financing statement covering a fixture recite that it is to be filed in the real estate records (§9-402), and that it be indexed in the real estate records §9-403(7). The Committee consulted the Virginia Court Clerks' Association which indicated its opposition to the filing of fixture financing statements in the real estate records or the indexing of such filings in the grantors' index. In addition, the Committee, the Code Commission

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6. VA. CODE ANN. § 8.9-106 (Cum. Supp. 1973). Formerly "contract right" was defined as ". . . any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper." The distinction between "contract rights" and "accounts" has been eliminated as basically non-functional in the case of financing of such receivable transactions.

7. The Committee made a report in depth to the Code Commission, who in turn recommended adoption by the Virginia Legislature of most of these revisions. The legislature adopted these with an effective date of July 1, 1974. The latter date was selected for the purpose of permitting the Bar and the business community to become familiar with the modifications. The changes were not such as to indicate any need for immediate effect.

8. 178 Va. 223, 16 S.E.2d 345 (1941).

9. *Id.* at 231, 16 S.E.2d at 349.

and the General Assembly took the position that the recording of fixture filings in the real estate records or the indexing of such filings in the grantors' or the grantees' index was not the best solution.

Presently, the title abstractor is required to look in both the grantors' index and in the index to financing statements to locate matters of record affecting fixtures. Because of the impreciseness with which fixtures are defined, it is generally preferable to treat any substantial items of personal property as fixtures and file accordingly against such property both as (1) fixtures and (2) equipment or consumer goods. Under Section 9-403,<sup>10</sup> filings under the Uniform Commercial Code lapse after five years unless continued as provided therein. This automatic lapsing is based upon the premise that chattel financing generally does not have a life in excess of five years; this premise would also apply to many financings which would cover fixtures. This purging of the records after five years has the beneficial effect of removing terminated or completed financings from the records and leaving the title abstractor checking only five year records, and those financings which have been continued. If fixture filings were to be indexed in the grantors' index, this purging effect of Section 9-403 would be lost, and the permanent records relating to real estate would be cluttered with the indexing of these fixture filings in perpetuity.

The General Assembly enacted the proposed amendments to Section 9-313. It seems clear that under the Code there were only two categories of property, real property and personal property (or "goods"<sup>11</sup> to use the Code term), and not a third category known as "fixtures". A new subsection (3) to Section 9-313<sup>12</sup> would make this abundantly clear and provide that Article 9 does not prevent creation of an encumbrance upon fixtures pursuant to real estate law. A new subsection (6) to Section 9-402<sup>13</sup> seems to apply the same

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10. UNIFORM COMMERCIAL CODE § 9-403(2) states: "The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse."

11. VA. CODE ANN. § 8.9-105(h) (Cum. Supp. 1973).

12. "This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law." UNIFORM COMMERCIAL CODE § 9-313(3).

13. UNIFORM COMMERCIAL CODE § 9-402(6):

A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if

(a) the goods are described in the mortgage by item or type; and

principle by stating that a mortgage will be effective as a financing statement if the goods are described, the goods are or are to become fixtures, the mortgage complies with the requirements of Article 9, and is otherwise duly recorded. The Committee and the Code Commission thought it unnecessary to impose, even by inference, any further requirements upon the Virginia deed of trust, and this subsection,<sup>14</sup> as amended, states that a mortgage<sup>15</sup> need to comply only with the law relating to mortgages to be effective as a financing statement under § 9-402. Thus, the Virginia version of Section 9-402 (6) differs slightly from the uniform revision.

Recorded construction mortgages are given priority over subsequent fixture filings if the goods become fixtures before the completion of construction. A mortgage given to refinance a construction mortgage has the same priority as the construction mortgage. This is the preferable approach. The Uniform Commercial Code was never intended as a substitute for mechanic's lien law.<sup>16</sup> The construction mortgage, as recorded, must indicate that it secures an obligation incurred for the construction of improvements on the land and may include the acquisition cost of the land.

A purchase money security interest perfected by a fixture filing before the goods become fixtures, or within ten days thereafter, has priority over conflicting real estate interests if the debtor has an

(b) the goods are or are to become fixtures related to the real estate described in the mortgage; and

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded.

14. VA. CODE ANN. § 8.9-402(6) (Cum. Supp. 1973) (effective July 1, 1974) reads as follows: A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the secured party is identified in the mortgage, (d) the mortgage meets the requirements of the laws of this State for such instruments, and (e) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

15. Under the new Virginia revisions to Article 9, it is abundantly clear that the word "mortgage" includes the Virginia deed of trust. See VA. CODE ANN. § 8.9-105(j) (Cum. Supp. 1973) (effective July 1, 1974).

16. While there are no instances which have come to my attention in Virginia of a creditor trying to utilize the filing provisions of the Uniform Commercial Code as opposed to mechanic's lien law, it is desirable that this be made abundantly clear.

interest of record in the real estate or is in possession of the real estate. It further would have priority if the fixture filing was perfected prior to the interest of the real estate encumbrancer or owner becoming of record. It would also have priority if the fixtures were readily removable factory or office machines or removable replacements of domestic appliances, and the security interest is perfected as otherwise permitted by Article 9. The section<sup>17</sup> as amended would also recognize that the lienor or owner could consent in writing to the security interest or disclaim an interest in the goods as fixtures. Furthermore, even though the filing party mistakenly treats fixtures only as chattels and files accordingly, a sufficient filing for chattel purposes would be a sufficient filing to perfect a security interest in fixtures as against lien creditors, trustees in bankruptcy, and all others except competing interests in the real estate.<sup>18</sup>

### *ELIMINATION OF CONTRACT RIGHTS*

One of the more important amendments is in § 9-106 and elsewhere, eliminating the technical term "contract right." Under the Code, prior to revision, the term "account"<sup>19</sup> means any right to payment of goods sold or leased or services rendered, not evidenced by an instrument of chattel paper. "Contract right"<sup>20</sup> means a right to payment under a contract not yet earned by performance. In the revised Code, both categories would be reclassified under the term "account" under the theory that it makes little functional difference whether you are pledging or otherwise transferring a right to payment presently earned.

### *SELLERS OF EXTRACTED MINERALS AND THE SALE OF TIMBER*

Section 1-201<sup>21</sup> is amended to provide that persons selling minerals, or the like (including oil and gas), at the wellhead or mine head are deemed to be persons in the business of selling goods of that kind. In effect, this means that persons purchasing such minerals

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17. VA. CODE ANN. § 8.9-313 (Cum. Supp. 1973).

18. See 1972 U.C.C. Official Comment 4(c) to § 9-313. Cf. § 9-302(1)(d) as to fixture filings for consumer goods for priority over conflicting real estate interests.

19. VA. CODE ANN. § 8.9-106 (Cum. Supp. 1973).

20. See Note 6 *supra*.

21. VA. CODE ANN. § 8.1-201(a) (Cum. Supp. 1973) (effective July 1, 1974).

would get a clear title, free of any security interest therein of a lender financing the production of such minerals, much as in the case of a purchaser of cars from a car dealer, even though the cars are subject to floor plan security interests.<sup>22</sup>

An amendment to Section 2-107<sup>23</sup> provides that a contract for the sale of timber to be cut is a contract for the sale of personal property rather than real property, regardless of who is to cut the timber. Previously, there was a contract for the sale of goods (or personal property) if the trees were to be severed by the seller; otherwise, there was a contract for real estate. The contract and provisions of Section 2-107 are still subject to any third party rights provided by the law relating to records of real estate, and the contract may still be recorded as an interest in land to protect the buyer. This amendment is supposed to facilitate financing of severance by the buyer by the allegedly simpler methods under Article 9 and the less expensive filing fees thereunder. The lender might still feel it prudent to require the buyer to record his contract as a real estate instrument for more perfect protection.

### *MULTI-STATE TRANSACTIONS*

There has been a rewrite of Section 9-103<sup>24</sup> dealing with the perfection of security interests in multi-state transactions. If the parties to a transaction creating a purchase money security interest understand at the time the security interest attaches that the goods will be kept in another jurisdiction, then the law of that other jurisdiction governs the perfection of the security interest for thirty days from the time the debtor takes possession, and thereafter, if these goods are taken to the other jurisdiction before the end of the thirty-day period. Otherwise, if collateral subject to a security interest is moved across the state line, the lender has four months to file under the law of the new state for the purpose of perfecting continuously his interest.

Subsection (2) which deals with certificates of title provides basically that perfection and its effect are governed by the law of the jurisdiction issuing the certificate of title for up to four months after

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22. VA. CODE ANN. § 8.9-307(1) (Cum. Supp. 1973).

23. VA. CODE ANN. § 8.2-107 (Cum. Supp. 1973) (effective July 1, 1974).

24. VA. CODE ANN. § 8.9-103 (Cum. Supp. 1973) (effective July 1, 1974).

the goods are moved from the original jurisdiction, and thereafter until the goods are registered or re-certificated in another jurisdiction, but in no event beyond the surrender of the original certificate of title. If a car is brought into Virginia while a security interest thereon is perfected under the law of another state, by notation on the certificate of title or filing in a non-certificate state, and a certificate of title is issued by Virginia which does not show the security interest, then the person who buys the car (other than a car dealer) has priority over that security interest unless he has knowledge thereof. In the case of mobile goods of the type normally used in more than one jurisdiction, such as road building construction machinery (and not covered by a certificate of title), perfection is governed by (1) the location of the place of business of the borrower, if he has one place of business, (2) at his chief executive office, if he has more than one place of business, and (3) otherwise at his residence.

Accounts and general intangibles are controlled by the law of (1) the place of business of the debtor, if he has only one, (2) his chief executive office, if he has more than one place of business, and (3) his residence, if he has neither of the foregoing. The present statute provides that accounts are controlled by the law of the state where the books in question are kept. The principal reason for the change was that the chief executive office of a multi-state operator is normally easier to locate than the office where he keeps his records regarding certain accounts.

### *MUNICIPAL FINANCING*

Section 9-104<sup>25</sup> is amended by the proposed uniform draft revisions to provide that Article 9 does not apply to the transfer by a government or governmental subdivision or agency. Virginia has amended § 8.9-302 to provide that filing is not required in the case of a security interest granted by a political subdivision, however, chattel financings by political subdivisions are subject to the rules of Article 9. Article 9 gives some desired certainty to chattel financing by political subdivisions, while at the same time eliminating the necessity of filing a financing statement as the method of perfection.

Section 8.9-104(g) contains some non-uniform Virginia language:

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25. VA. CODE ANN. § 8.9-104 (Cum. Supp. 1973) (effective July 1, 1974).

“or contract for annuity, including a variable annuity.” On page 508 of House Document No. 5, presented to the 1964 legislature, there is a Council Comment recommending this language as preventing an unfortunate or an improvident person from losing or dissipating rights in an annuity contract which he may have spent years to accumulate against the needs of his old age. The Committee Report pointed out that it was not in agreement with the 1964 Council Comment. If an exemption was intended, additional language would seem to be necessary. Insurance contracts and annuities were and are still transferable either outright or by way of security under non-Code rules. A new subsection (1) to Section 9-104 makes the Code inapplicable to transfers of interest in deposit accounts, except to the extent it constitutes proceeds.

### *“DEPOSIT ACCOUNTS” AND OTHER DEFINITIONS*

In Section 9-105, there is a new definition in subsection (e) for “deposit accounts” which include an account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.<sup>26</sup> For purposes of granting or not granting a security interest therein, or dealing with “proceeds,” bank accounts, savings and loan accounts, and credit union accounts should be treated similarly.

Virginia has retained its peculiar definition of “secured party” as being either “the lender, seller or other person in whose favor there is a security interest” or the trustee or other representative, along with the additional sentence that “the person shown on a filed financing statement as the secured party shall be treated as the secured party of record.”<sup>27</sup>

### *CONSIGNMENTS*

There is a new section, 9-114, which makes it clear that the filing provisions of Article 9 apply to so-called true consignments of inventory as well as to security interests in inventory. In short, in order to protect his interest in goods, the consignor of the inventory must do the same as a lender whose lien is secured by inventory. He must

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26. This definition is primarily for the purpose of dealing with the exception in § 9-104 discussed previously.

27. VA. CODE ANN. § 8.9-105(m) (Cum. Supp. 1973) (effective July 1, 1974).

file under Article 9, and his consignment is subject to the rules relating to inventory, although technically the inventory may be the consignor's rather than that of the dealer who has possession thereof. If there are existing financing statements of record, the consignor must give the same notice that a secured party seeking a purchase money priority in inventory would give. The requirement of public filing is a better solution than the public sign approach of the Virginia Traders Act.<sup>28</sup>

### *RIGHTS IN UNPLANTED CROPS*

Section 9-204<sup>29</sup> was amended to eliminate confusing and unnecessary provisions. The amendment eliminated language providing that the debtor has no rights in crops until they are planted, or otherwise become growing crops, in the young of livestock until they are conceived, in fish until caught, in timber until cut, or minerals until extracted, or in a contract right until the contract has been made.

### *PRIORITIES OF JUDGMENT LIEN CREDITORS AND PRIORITIES FOR FUTURE ADVANCES*

There is an amendment in Section 9-301 relating to the rights of secured parties and judgment lien creditors. Previously, to have priority, the judgment lien creditor must have become such without the knowledge of the security interest and before it was perfected. The amendment provides that a lien creditor (by virtue of a judgment) need become one only prior to perfection. His knowledge is basically immaterial.<sup>30</sup> A new subsection (4)<sup>31</sup> follows the scheme of the Federal Tax Lien Act of 1966 by providing that future advances

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28. VA. CODE ANN. § 55-152. This section of the Code has been repealed. The public notice contemplated by § 55-152 is now satisfied by the filing required under § 9-114 of the Uniform Commercial Code.

29. VA. CODE ANN. § 8.9-204 (Cum. Supp. 1973) (effective July 1, 1974).

30. The new amendment is much the same as the rule is with regard to real estate and as the rule was with regard to chattel financing in Virginia prior to the Uniform Commercial Code.

31. VA. CODE ANN. § 8.9-301(4) (Cum. Supp. 1973) (effective July 1, 1974) reads as follows: A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

have priority over a judgment creditor for forty-five days under a prior filing, regardless of the knowledge of the secured party concerning the judgment lien. If this advance is made after forty-five days, it has a priority only if made or committed without knowledge of the judgment lien.

### *FILING MODIFICATIONS*

A new subsection (1)(c) in Section 9-302 makes it clear that filing is not necessary to perfect a security interest created by the assignment of a beneficial interest in a trust or a decedent's estate. This proceeds basically upon a *de minimis* theory, as it applies to the importance of filing.

The present subsection (1)(c) in Section 9-302 is omitted in the revised Code. It provided that filing was not necessary to perfect a security interest in farm equipment having a purchase price of \$2,500.00 or less (\$500.00 or less in Virginia). The change proceeds upon the theory that farmers are businessmen, not consumers. This allows such equipment to be available for collateral purposes by permitting a verification of a prior outstanding security interest. A new subsection (1)(g) eliminates the necessity of filing in the event of an assignment for the benefit of all the creditors of the transferor. Subsections (3) and (4) provide exemptions from filing if the property is otherwise subject to a statute or treaty of the United States (new), or a certificate of title, as in the case of an aircraft and copyrights.

Revised Section 9-302(3)(b) retains the substance of the provisions therein as amended in Virginia in 1966, which permits the filing of financing statements against an inventory of used cars, notwithstanding the existence of certificates of title covering such cars.

Section 8.9-302(5)(b) as amended by Virginia in 1966 provides that the filing provisions of Article 9 do not apply to a security interest created by a deed of trust or mortgage made by a public service corporation as defined in the Code.<sup>32</sup> The Uniform revision attempts to solve the same problem in Section 9-403(6), which states that if the debtor is a transmitting utility and a filed financing statement so states, it is effective until the filing of a termination statement. Section 9-403(6) further states that a real estate

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32. VA. CODE ANN. § 56-1 (Cum. Supp. 1973).

mortgage which is effective as a fixture filing under subsection (6) of Section 9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or otherwise terminated. The Uniform solution also provides for central filing only in the case of a transmitting utility.

### *SECURITY INTEREST IN MONEY*

Section 9-304 has been amended to conform with a court opinion holding that a security interest in money can be perfected by possession, not by filing.<sup>33</sup> A similar amendment is found in Section 9-305.

### *PROCEEDS*

There is an amendment to Section 9-306 which provides that proceeds now include insurance payable by reason of loss or damage to the collateral, except to the extent that the insurance is payable to a person other than a party to the security agreement. In brief, if you have a security interest in a car and it is destroyed, you have a security interest in the insurance proceeds without a formal assignment thereof.

Other statutory language in the revised Code deals with "proceeds" and particularly those that have found their way into a deposit account. Under this section proceeds are automatically included in both the security agreement and the financing statement unless expressly negated. If the proceeds are a type of collateral in which a security interest may be perfected by filing in the same office or offices as the original collateral, no new filing is necessary. Otherwise the security interest in proceeds may be perfected only by the methods permitted for original collateral of the same type. In brief, if you cover inventory and proceeds make certain that the places for filing are the same for inventory and accounts.

### *FUTURE ADVANCES; 45-DAY RULE*

Section 9-307 contains an amendment conforming to the 45-day rule discussed previously.<sup>35</sup> Even though a lender has filed against collateral, if the loan is made more than forty-five days after it has

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33. *Zuke v. St. Johns Community Bank*, 387 F.2d 118 (8th Cir. 1968).

34. VA. CODE ANN. § 8.9-306 (Cum. Supp. 1973) (effective July 1, 1974).

35. See the previous textual discussion of Priorities for Future Advances.

been sold to someone else, or is made with knowledge of this, whichever occurs sooner, the purchaser, even though not a buyer in the ordinary course of business, prevails over the perfected security interest. If a lender has a binding commitment to lend, he is protected if his loan is made more than forty-five days after the sale but without knowledge thereof. In brief, if a lender makes future advances against existing collateral, he must periodically verify his collateral or run the chance of losing it.

### *PURCHASE MONEY PRIORITY IN INVENTORY*

Section 9-312(3) has changed the inventory purchase money security interest rule to provide that the purchase money secured party has priority if his security interest, in inventory, is perfected at the time the debtor receives possession of the inventory, and the secured party has given notification in writing to the holder of any conflicting security interest who had filed a financing statement covering the same type of inventory. This notice must be received by the holder of the conflicting security interest within five years previous to the time the debtor receives possession of the inventory.

### *RESIDENCE OF AN ORGANIZATION*

Revised Section 9-401 relating to filing provides that the residence of an organization (corporation or partnership) is its place of business, if it has only one place of business, or its chief executive office if it has more than one place of business. A 1966 non-uniform amendment to the Virginia Code defines the corporate residence as the registered office.<sup>36</sup> The Committee, Commission, and Legislature retained the registered office approach as applicable to farmers because, as to farmers, such an approach can be easily confirmed by a check with the State Corporation Commission.

### *FILING PROVISIONS*

Previously, I have commented upon the requirements of Section 9-402 relating to financing statements and fixture filings being filed in real estate records. The section as revised incorporates the requirements of Virginia law, that is, that the name of the record owner of the real estate must be stated therein, and the filing in-

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36. VA. CODE ANN. § 8.9-401 (Cum. Supp. 1973).

dexed in his name. This Virginia requirement as to the record owner was retained. The uniform revision requires that the name of the record owner be shown if he is not the debtor. The Virginia section requires the record owner's name in every case of filing against fixtures, crops, timber, minerals and accounts resulting from minerals. However, there was a deletion of the general requirement of the signing of a financing statement by the secured party or lender. Only the signature of the debtor is required. There are still some cases when the secured party may sign a financing statement in lieu of the debtor, such as in the case where the collateral has been moved across the state line or where there has been a change in the debtor's name.

A new subsection (7)<sup>37</sup> provides that if the debtor changes his or its name so that a filing of the financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change unless a new appropriate financing statement is filed before the expiration of that time. This is so regardless of the knowledge of the secured party. Such a financing statement may be signed by the secured party only. A further amendment makes it clear that a filing in the name of the partnership is sufficient without filing against each individual partner; this is particularly helpful in this day of multi-partner partnerships.

A one-sentence amendment to Section 9-402(1) provides that a reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state. This amendment negates a decision of a lower court in another state invalidating the filing of a xerox copy of a financing statement, including the signature, where the manually signed copy had been filed elsewhere in that state.

There are changes in Section 9-403 relating to the use of microfilm and other photographic records by a clerk. A new subsection (7) in Section 9-403 requires indexing of fixture filings or filings covering timber or minerals under the name of the debtor in the same fashion as if he were a grantor of a mortgage of real estate; the secured party is treated in such case as the grantee. This revision was rejected by Virginia.

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37. VA. CODE ANN. § 8.9-402(7) (Cum. Supp. 1973) (effective July 1, 1974).

### *TERMINATION STATEMENTS*

An amendment to Section 9-404 would require the filing of termination statements for consumer goods within thirty days after termination of an outstanding security obligation or commitment or ten days after demand. This would apply only to financing statements filed after the effective date of the statute, July 1, 1974. If the termination statement is tendered in duplicate, the clerk is now directed by statute to return one copy to the secured party and to show the time of receipt of such termination statement.<sup>38</sup>

### *FILING FEES*

New proposed subsections, 9-403(5) and 9-404(2), provide for a permissible variance in filing fees if the statement is in a standard form prescribed by the filing officer such as the Clerk of the State Corporation Commission. An additional filing fee is required if the secured party wishes the financing statements indexed in a trade name as well as the name of the debtor. Proposed sections 9-405 and 9-406 also contain variances in fees relating to prescribed forms and non-prescribed forms.<sup>39</sup>

### *FILING ON LEASES AND CONSIGNMENTS*

A new section, 9-408, provides that if a consignor or lessor files a statement describing himself as "consignor or lessor or the like," the filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security. If it is determined that it was intended for security, the filing would be sufficient perfection.

### *RIGHT TO WAIVER OF NOTICE AFTER DEFAULT*

An amendment to subsection (3) of Section 9-504 provides that the debtor may, after default, sign a statement renouncing or modifying his right to notification of sale. There is also conforming language in subsection (1) (a) adding the words "lease" and "leasing" as a premissable method of realizing on collateral.

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38. VA. CODE ANN. § 8.9-404(2) (Cum. Supp. 1973) (effective July 1, 1974).

39. The filing fee of \$1.00 is one of the lowest in the United States. The Committee and the Code Commission saw no need for the differential in fees under Virginia practice.

*DUTY OF SUBORDINATE SECURED PARTY*

An amendment to Section 9-505 requires a subordinate secured party to notify a prior secured party if he wishes to receive notice of any proposed retention of the goods with the consent of the debtor after default.

*TRANSITIONAL PROVISIONS*

A new Article 11 provides the effective date of July 1, 1974, and contains other helpful provisions relating to the transition from existing Article 9 to Revised Article 9 of the Uniform Commercial Code.<sup>40</sup>

*CONCLUSION*

Article 9 of the Uniform Commercial Code has undergone more reading in detail than the provisions of any other Uniform Act. Most uniform acts have existed for longer periods of time without significant revision, but the revisions to Article 9 do not reflect an insufficient initial effort nor unhappiness on the part of the drafters, the Bar, or the business community with Article 9. The thrust of Article 9 is such that it regularly affects more business transactions than any other Uniform Act. Review of the revisions and the criticisms which generated them is, in itself, the best evidence of the general overall satisfaction with Article 9. For the most part, the amendments should provide easier traveling with Article 9 for the less initiated of the general business community.

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40. VA. CODE ANN. §§ 8.11-101 to -108 (Cum. Supp. 1973).

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