

THE REVISION OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

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In February 1967 the Article 9 Review Committee began a study of Article 9 of the Uniform Commercial Code. In February 1971 the Proposed Final Report of the Review Committee was approved with amendments by the Permanent Editorial Board for the Uniform Commercial Code. The Final Report was submitted for approval to the American Law Institute and the National Conferences of Commissioners on Uniform State Laws and, with some changes and amendments, will be presented to the various state legislatures for adoption.

It is the purpose of this article to review some¹ of the more important proposed changes in Article 9 set out in the Report and to compare it with the current Nebraska version of the Uniform Commercial Code.² In this discussion the current law will be referred to as the "Code", while a reference to "Revision" will refer to the proposed changes.

Since the function of a system of secured transactions is to afford the secured party certain priorities with respect to other secured parties, buyers and creditors, it is not surprising that most of the proposed changes deal with questions of priority. In some cases the revisions are intended to merely clarify existing Code rules, in others to settle disputes which have arisen under the Code or to substantially change existing rules.

One area of major change is the effect of knowledge of an unperfected security interest. Under the Code, an unperfected security interest is subordinate to the right of a lien creditor only if the lien creditor is without knowledge of the security interest.³ The Revision of section 9-301(1)(b) will give the lien creditor priority over an unperfected security interest even though the creditor has knowledge.

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1. The Revision contained a reworking of the fixture provisions currently found in Uniform Commercial Code § 9-313 (hereinafter cited as UCC). This article will not deal with this area, as another article exploring the current law and the effect of the proposed changes and their impact on Nebraska real estate is planned. The Revision also substantially reworks UCC § 9-103 dealing with the problems of multiple state transactions. This area will be discussed only where otherwise relevant to the textual discussion.

2. The 1958 Official Text, with some variations, was adopted in Nebraska in 1963, effective September 1, 1965. Laws of Nebraska ch. 544, p. 1693 (1963). The 1962 and 1966 amendments accepted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws have not been adopted in Nebraska.

3. UCC § 9-301(1)(b).

I. PURCHASE MONEY SECURITY INTERESTS

The purchase money security interest enjoys special priority under the Code. Although this policy will generally continue under the Revision, some changes both in the priority and in the steps necessary to acquire the priority will be made.

While a purchase money security interest in consumer goods will continue to be perfected without filing under Revision section 9-302(1)(d), the parallel provision in Code section 9-302(1)(c) relating to farm equipment having a purchase price not in excess of \$2500 is deleted by the Revision. Two new exemptions from filing will be added: (1) "a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate,"⁴ and (2) "an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder."⁵

Under both the Code and the Revision a purchase money security interest will have priority over an intervening transferee in bulk or lien creditor if the secured party files within ten days after the debtor receives possession of the collateral.⁶ No changes are made in the priority of a purchase money security interest in collateral other than inventory vis-a-vis a conflicting security interest in the collateral. In each case the requirement for priority is that the purchase money security interest be "perfected at the time the debtor receives possession of the collateral or within ten days thereafter."⁷

In the case of a purchase money security interest in inventory, the Revision makes some changes and clarifies several areas of dispute under the Code with respect to priority over conflicting security interests. Under the Code, the inventory secured parties who were to receive notification of the intended purchase money security interest included any secured party who had previously filed and any secured party whose interest was known to the prospective purchase money financier.⁸

The Revision requires notification only to a secured party who has filed before the purchase money party files and eliminates the requirement of notification of a secured party whose interest is known but unfiled.⁹

4. REVIEW COMMITTEE FOR ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, FINAL REPORT ON PROPOSALS FOR CHANGES § 9-302(1)(c) (1971) (hereinafter cited as Revision).

5. Revision § 9-302(1)(g).

6. UCC § 9-301(2); Revision § 9-301(2).

7. UCC § 9-312(4); Revision § 9-312(4).

8. UCC § 9-312(3)(b).

9. Revision § 9-312(3)(b).

The Revision expressly requires *written* notification and also settles the question of whether the notice is to be given each time the purchase money party finances the acquisition of new goods or whether a single notification will cover a series of transactions — a proper notification within five years prior to the time the debtor receives possession of the inventory will be sufficient.¹⁰

The Revision faces two other priority problems commonly involving purchase money security interests in inventory. The Code is less than clear as to the relative priority of a financier of inventory whose security interest arose through a perfected security interest in a negotiable document such as a bill of lading, and a prior secured party with a perfected security interest covering after acquired inventory. While it seems clear that the perfected security interest in the document and thus in the goods has priority over any conflicting security interest in the goods otherwise perfected during the time the goods remain in possession of the issuer of the document,¹¹ the continuation of that priority both during and after the 21-day period of temporary perfection, when the document and accordingly the goods were made available to the debtor pursuant to Code section 9-304(5), was unclear. The Revision solves the problem by making section 9-312(3) controlling on the question of priority in the goods and requiring that the purchase money secured party give notification to the holder of the conflicting security interest before the beginning of the 21-day period of temporary perfection in order to maintain his priority in the goods.¹²

A consignment transaction under the Code creates a security interest if intended as security¹³ and accordingly is subject to all the provisions of Article 9. A "true" consignment — one not intended as security — is not a security interest. Although the only practical method of protecting the consignor's interest against creditors of the consignee in an inventory transaction when the consignee operated under a name other than the name of the consignor (even in a true consignment transaction) in Nebraska (and most jurisdictions) is to file a financing statement pursuant to Code section 2-326,¹⁴ the

10. Revision § 9-312(3) (c).

11. UCC § 9-304(2).

12. Revision §§ 9-304(5) (a), 9-312(3) (b).

13. UCC § 1-201(37).

14. UCC § 2-326(3) protects the consignor's interest if he either:
(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or
(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or
(c) complies with filing provisions of the Article on Secured Transactions (Article 9).

Nebraska has no law which would satisfy (a) and no attorney should relish the prospect of a trial to establish (b), which leaves, of course, (c).

question of whether the consignor had to give notice to a prior inventory secured party under Code section 9-312(3) in order to obtain priority depended upon whether the consignment in fact created a security interest. This is an unsatisfactory situation in that neither party can be sure of his position with respect to the goods until financial difficulties have forced a judicial determination of the proper characterization of the transaction. Furthermore, the policy of allowing an inventory financier to make advances or maintain his loan on the basis of the debtor's inventory unless he knows of possible purchase money priorities is compromised by the elimination of goods held by the debtor under a true consignment. The Revision would add a new section to Article 9 which would partially cover this question by providing that the consignor in a consignment transaction which is not a secured transaction, and who is required to file under Code section 2-326(3)(c), must in order to have priority give prior written notice of the consignment transactions to an inventory secured party who has filed. The consignor's interest is expressly subordinated to that of the inventory secured party if the required notice is not given.¹⁵

II. FUTURE ADVANCES — PRIORITY

The Code's general validation of a future advance provision in security agreements has created much debate on questions of priority to be afforded the future advance against intervening lien creditors, buyers and secured parties. The Revision will clarify some present Code provisions and also present some new rules in this area.

Revision section 9-301(4) will deal with the conflict between a secured party having a perfected security interest and a subsequent lien creditor by providing in effect that the lien creditor will take subject to the security interest to the extent that the security interest (1) secures advances prior to the time the person becomes a lien creditor; (2) secures advances made within 45 days after the person becomes a lien creditor;¹⁶ (3) secures advances made without

15. Revision § 9-114(2). One of the changes made in the text of the Revision as found in the Final Report is the addition of a new section 9-408 to the Revision. This section would permit a consignor or lessor (since a lease may also be a security interest under UCC § 1-201(37)) to file a financing statement using the terms "consignor", "consignee", "lessor", and "lessee" instead of the normal "secured party" and "debtor". The section also provides that the fact of filing will not be a factor in determining whether or not the consignment or lease was intended as security, but the fact of filing will serve to perfect the transaction if it is determined to be a secured transaction.

16. Official Comment 7 to Revision § 9-301 states in part:

In this section, because of the impact of the rule chosen on the question whether the security interest for future advances in (sic) "protected" under Sections 6323(c)(2) and (d) of the Internal Revenue

knowledge of the lien; or (4) secures advances made pursuant to a commitment entered into without knowledge of the lien.¹⁷

If a buyer other than a buyer in ordinary course of business¹⁸ buys goods subject to a security interest and an advance is then made, Revision section 9-307(3) will determine the questions of priority. If the advance concerned is made "pursuant to a commitment,"¹⁹ the buyer will be subject to the advance only if the commitment was made within 45 days after the purchase and without knowledge of the purchase. If the advance is not pursuant to a commitment the buyer will take subject if the advance is made without knowledge of the purchase and made before the expiration of 45 days after the purchase.

The relative priority of future advances in the case of conflicting security interests is covered by the addition of a new subsection to Code section 9-312.²⁰

As the proposed solution to these priority problems depends largely upon other priority rules of the Code, we must first explore those rules. Code section 9-312(5) was intended to cover questions of priority between conflicting security interests which were not entitled to a purchase-money priority or treated specifically elsewhere. These rules have been restated, and in some cases altered by Revision section 9-312(5).²¹

Code as amended by the Federal Tax Lien Act of 1966, the priority of the security interest for future advances over a judgment lien is made absolute for 45 days regardless of knowledge of the secured party concerning the judgment lien.

While the Revision will give the advances priority over an intervening lien creditor the same priority will not result in all cases against the federal tax lien. For discussion of the federal tax lien see Plumb, *The New Federal Tax Lien*, 22 BUS. LAW. 271 (1967), and Coogan, *The Effect of the Federal Tax Lien Act of 1966 upon Security Interests Created under the Uniform Commercial Code*, 81 HARV. L. REV. 1369 (1968), reprinted in 1 P. COOGAN, W. HOGAN, AND D. VACTS, SECURED TRANSACTIONS UNDER THE U.C.C. §§ 12.07 through .13 (1972).

17. Revision § 9-105(1)(k), which has no parallel in the Code, provides that an advance is made "pursuant to commitment" if the secured party bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

18. The buyer in ordinary course is already protected from any security interest created by his seller under UCC § 9-307(1).

19. See note 17 *supra*.

20. Revision § 9-312(7).

21. UCC § 9-312(5) provides:

In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under Section 9-204(1)

Although the statutory language will be changed, the first to file rule is retained in the case of conflicting security interests which were both originally perfected by filing. Let us assume the following sequence of events: (1) A files with respect to certain collateral owned by the debtor; (2) B acquires a perfected security interest in the same collateral by filing, having a security agreement executed and giving value; and (3) A acquires a perfected security interest by having a security agreement executed and giving value. Under this set of facts, A would have priority under both the present Code section 9-312(5)(a) and Revision section 9-312(5)(a). The Revision also retains the present rule that the first to perfect has priority in the case of two conflicting security interests, neither of which were originally perfected by filing.

The Revision, however, will change the rule of priority of conflicting security interests when one security interest is originally perfected by filing and the other is perfected by another method. Under Code section 9-312(5)(b)²² the security interest which was first perfected has priority, while Revision section 9-312(5)(a)²³ determines priority by the order of filing or perfection. Accordingly, assume the following sequence of events: (1) A files with respect to collateral owned by the debtor; (2) B acquires a perfected security interest by taking possession of the collateral, having a security agreement executed and giving value; and (3) A then acquires a perfected security interest by having a security agreement executed and giving value. In this set of facts, B would prevail under Code section 9-312(5)(b) because he is the first to perfect. However,

and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under Section 9-204(1) so long as neither is perfected.

UCC § 9-312(6) rounds out the system by providing:

For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

Revision § 9-312(5) combines these two Code sections and provides:

In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

22. See note 21 *supra*.

23. See note 21 *supra*.

A will prevail under Revision section 9-312(5)(a) because A's filing occurred before B's perfection.

The determination of the priority of security interests under Revision section 9-312(5) will largely determine the question of priority with respect to a future advance situation. If a future advance is made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority with respect to that advance as it does with respect to the first advance.²⁴ Several examples will serve to illustrate the effects of this rule: If A has filed and perfected a security interest and B then perfects a security interest by filing or taking of possession, any advances by A will be afforded priority over B's security interest. The same result will be reached if A had first perfected by taking possession. Advances made pursuant to a commitment before or after the security interest is perfected by filing or the taking of possession have the same priority.

In cases where an advance not pursuant to a commitment is made while a security interest is perfected without filing or the taking of possession, the subsequent advance will have priority from the date of the advance only.

III. PROCEEDS

The treatment of proceeds and a secured party's interest in them, as found in the Code, has been the subject of considerable discussion among Code writers. A secured party has, by virtue of Code section 9-306(2), a security interest in the proceeds of the collateral subject to his security interest. The Revision will continue this basic rule,²⁵ and will resolve some of the problems that have arisen under the Code. The Revision will make it clear that the secured party's interest in proceeds arises through the security interest in the collateral and that the security agreement does not have to claim proceeds in order for the security interest in proceeds to exist.²⁶ The Revision also does away with the necessity of checking a proceeds box or otherwise claiming "proceeds" in the financing statement in order to continue the perfected security interest in proceeds. As the following discussion will show, whether or not the security interest in proceeds continues beyond the ten-day period of automatic perfection without independent perfection is not determined by such action.

24. Revision § 9-312(7).

25. Revision § 9-306(2).

26. Revision § 9-203(3) provides: "Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by Section 9-306."

The Revision expressly recognizes insurance payable by reason of loss or damage to the collateral to be proceeds,²⁷ except to the extent payable to someone not a party to the security agreement. As noted by the Review Committee, this treatment of the insurance proceeds in the Revision will overrule the results of cases reaching a different result under the Code.²⁸

The Revision also eliminates any possible problem as to whether "deposit accounts"²⁹ which are proceeds are covered by Article 9 by expressly providing that they are.³⁰

The Revision continues the Code policy of treating the security interest in proceeds of a perfected security interest in collateral as a continuously perfected security interest.³¹ However, some changes and clarifications are made. Under the Code, the security interest in proceeds become unperfected ten days after receipt of the proceeds unless the filed financing statement which covered the collateral also covered proceeds, or the secured party perfected a security interest in the proceeds within the ten days.³²

Under the Revision the secured party may, of course, continue the perfected status of a security interest in proceeds by independently perfecting with respect to the proceeds within the ten days of automatic perfection. However, the efficacy of the filing as to the original collateral will be changed.

In somewhat involved language³³ the Revision, after eliminating the necessity of claiming "proceeds" in the financing statement, covers the troublesome question of what to do in those situations

27. Revision § 9-306(1). UCC § 9-104(g) will also be amended to recognize Article 9 coverage of insurance payments as collateral under Revision §§ 9-306 and 9-312.

28. See, e.g., *Universal C.I.T. Credit Corp. v. Prudential Investment Corp.*, 101 R.I. 287, 222 A.2d 571 (1966); *Quigley v. Caron*, 247 A.2d 94 (Me. 1968).

29. "Deposit account" is defined by Revision § 9-105(1)(e) to mean "a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit."

The Revision will amend UCC § 9-104(k) by deleting all references to anything except any claim arising out of tort and adds Revision § 9-104(1) restricting the application of Article 9 to deposit accounts to proceeds situations under §§ 9-306 and 9-312.

30. Revision § 9-306(1).

31. UCC § 9-306(3); Revision § 9-306(3).

32. UCC § 9-306(3).

33. Revision § 9-306(3) provides:

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the type of proper-

(1) in which the place of filing appropriate for the collateral is not the place appropriate for a filing as to the particular proceeds; (2) in which cash proceeds are used to acquire collateral of a type not described in the financing statement; and (3) in which the proceeds are not of a nature that a filing with respect to the proceeds as original collateral would be effective. In situation (1), the original filing will not operate to continue the perfected security interest in proceeds beyond the period of automatic perfection and the secured party will have to perfect independently with respect to the collateral in order to continue his perfected status.³⁴

The same rule also governs situation (2). Unless the original financing statement indicates the type of property which the proceeds involved constitute, the secured party must perfect with respect to the proceeds or the security interest will become unperfected ten days after the receipt of the proceeds.³⁵

If the proceeds are of a nature (such as instruments) that filing would not be an allowable method of perfection if the proceeds were original collateral, situation (3), the Revision makes it clear that the original filing will not serve to continue perfection as to these proceeds beyond the automatic period unless the proceeds are identifiable cash proceeds.³⁶

Under the Code, numerous questions involving the relative priorities to be afforded secured parties claiming interests in proceeds have arisen for which no clear answer is provided. Questions such as whether a secured party with a purchase money security interest which is entitled to priority by virtue of Code sections 9-312(3) (for collateral which is inventory) or 9-312(4) (for collateral other than inventory) has priority over the proceeds claim of another secured party; whether conflicting security interests in accounts between an inventory secured party claiming the proceeds and a secured party claiming the accounts as original collateral are to be determined by Code section 9-312(5) and, if so, whether a security interest in proceeds of collateral which is the subject of a filing is

ty constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

34. Revision §§ 9-306(3) (a), 9-306(3) (c). UCC § 9-402(2) (b) permits the filing of a financing statement without the debtor's signature in order to perfect a security interest in proceeds under § 9-306. This rule is continued in the Revision.

35. Revision § 9-306(3) (a).

36. Revision § 9-306(3) (b). Revision § 9-306(1) provides in part: "Money, checks, deposit accounts, and the like are 'cash proceeds'."

perfected by that filing or perfected by a method other than filing by virtue of the automatic perfection provisions of Code section 9-306; or whether Code sections 9-312(3) and 9-306 provide a special rule of priority, have been the subject of numerous articles pointing out (and sometimes attempting to solve) the various proceeds priority situations not clearly resolved by the Code.³⁷

The Revision will do much to resolve the questions in this area.³⁸

A purchase money security interest in collateral other than inventory, which is afforded priority over a conflicting security interest by virtue of complying with Revision section 9-312(4), will have priority in the proceeds of the collateral.³⁹

Revision section 9-312(3) dealing with purchase money security interests in inventory afforded priority by meeting the perfection and notice requirements also gives such a purchase money security interest "priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer"

37. For discussions of these and related priority problems, see 2 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 29.4 (1965); P. COOGAN, W. HOGAN AND D. VACTS, *SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* §§ 24.05, 24.06, 24.07, 24.09 through .15 (1972).

After analyzing the situation and possible solutions, Professor Gilmore concludes:

It would be folly to predict what any court would do with the situation we have been analyzing in the preceding pages There simply is no "fair reading" of the relevant statutory provisions. It is clear enough that no lender who is financing on the security of accounts can ever be absolutely sure that his interest will not be subordinated to that of an inventory financier, even to that of an inventory financier who came into the picture subsequently to the inception of the accounts receivable arrangement. On the other hand, neither can the inventory man be absolutely sure of his priority in the proceeds. There are enough ambiguities in the statute so that decision of the case in litigation could be arrived at only by rolling the judicial dice. The only safe advice which a lawyer can give his client—no matter which type of financing the client is engaged in—is that he runs the risk of subordination unless the issue can be resolved by a contractual agreement between the competing parties (assuming that they know of each other's existence).

2 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 29.4 at 796 (1965). Unfortunately this conclusion appears justified.

38. It should be remembered that the Code contains particular rules dealing with proceeds in the form of chattel paper and non-negotiable instruments (UCC § 9-308), instruments and documents (UCC § 9-309). The Revision will make only one change of substance in these sections. As the Review Committee noted, a purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business would take priority over a secured party who claims the chattel paper merely as proceeds of inventory, even though the purchaser was aware of the inventory secured party's claim to the chattel paper. No similar protection was given to the purchaser of a negotiable instrument since UCC § 9-309 protected only holders in due course—a status which a purchaser with knowledge could not reach. Recognizing the anomaly of protecting a purchaser of chattel paper in a case where a purchaser of a negotiable instrument would not be protected, Revision § 9-308 will give priority to the purchaser of an instrument in the same situations that a purchaser of chattel paper was afforded priority.

39. Revision § 9-312(4).

Proceeds situations not involving proceeds of purchase money security interests covered by Revision sections 9-312(3) and 9-312(4) (or by other sections of Article 9)⁴⁰ will be handled by the priority rules of Revision section 9-312(5) providing for priority in the order of the time of filing or perfection. The addition of Revision section 9-312(6) stating that a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds for the purpose of applying the rules of Revision section 9-312(5) completes the statutory scheme. Several examples, some of which are illustrated by the official comments to the Revision, will illustrate the operation of the Revision in this area.

A has filed and has a perfected security interest covering the debtor's presently held and after acquired inventory. B then finances a new inventory acquisition by the debtor, taking a purchase money security interest which has priority over A's security interest in the new inventory by virtue of compliance with Revision section 9-312(3). When this new inventory is sold, the priorities in the proceeds will depend upon the type of proceeds produced. Revision section 9-312(3) will give B priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer. If the proceeds are accounts and we assume that the office in which the inventory filings were made was the proper place of filing to perfect a security interest in the debtor's accounts, A will have priority. This result is reached because Revision section 9-312(6) makes A's date of filing with respect to inventory also a date of filing as to proceeds, and Revision section 9-312(5)(a) would rank the security interests according to the dates of filing. Since A's filing occurred before B's filing, A has priority.

If we change the example so that A has filed and perfected a security interest in the debtor's accounts and B subsequently files and perfects a security interest in the debtor's inventory, A would again have priority because his filing preceded that of B.

If the collateral is equipment rather than inventory, different considerations are present which may be illustrated as follows: A files and has a perfected security interest in the debtor's presently held and after acquired equipment. B subsequently files and perfects a purchase money security interest in a new item of equipment within 10 days of the time the debtor receives possession of the collateral. If the equipment is sold B will have priority in the proceeds over any position A can take as a secured party claiming proceeds under his security agreement covering equipment. If we again change the situation so that A's filing with respect to

40. See note 38 *supra*.

equipment was also a proper place of filing with respect to accounts, B would again have priority over A with respect to an account which arose as proceeds of the sale of the equipment by virtue of Revision section 9-312(4).

If in the prior examples neither A nor B had a purchase money security interest in the equipment entitled to priority under Revision section 9-312(4), then A as the first to file would have priority.

IV. MISCELLANEOUS

Seeing no particular need to have the secured party sign the financing statement, the Review Committee has eliminated this requirement and only the signature of the debtor is required.⁴¹

The Revision also covers the problem of the effect of a lapsed filing. The problem may be illustrated in the following situation: A has filed and perfected a security interest. B then acquires an interest, as a purchaser⁴² or lien creditor, in the same collateral which was subject to A's security interest. A's filing then lapsed under the provisions of Code section 9-403(2). Although Comment 3 to Code section 9-403 indicated that if B were a secured party he would prevail, the Code itself was silent. Professor Gilmore felt that A should continue to have priority and disclaimed any knowledge as to the source of Comment 3.⁴³ The Revision will give B, the subsequent purchaser or lien creditor, priority over A's security interest by providing that A's interest shall be deemed to have been unperfected as against B.⁴⁴

No change has been made in Code section 9-307(1) which leaves the buyer in ordinary course of farm products from a person engaged in farming operations subject to a perfected security interest in the farm products.⁴⁵ Accordingly, the Nebraska cases which have dealt with this problem will still represent the law under the Revision.⁴⁶

41. Revision § 9-402(1).

42. This would, of course, include a secured party under the broad definition of "Purchase" and "Purchaser" found in UCC §§ 1-201(32) and (33).

43. See 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 21.6 (1965), in particular the discussion at page 589 and footnote 4.

44. Revision § 9-403(2). A similar result is provided for in the case of goods (not subject to a certificate of title act or mobile goods as therein defined) subject to a perfected security interest in State A having been removed to State B. If not perfected in State B within the time allowed the security interest will be "deemed to have been unperfected as against a person who became a purchaser after removal." Revision § 9-103(1)(d)(i). Although the Permanent Editorial Board added the protection for lien creditors under Revision § 9-403(2), no corresponding protection for lien creditors is provided under Revision § 9-103(1)(d)(i).

45. The Review Committee would have proposed an optional deletion of the exception for farm products from § 9-307(1) but this was overruled by the Permanent Editorial Board. See Revision, Appendix, at note 5.

46. Garden City Prod. Credit Ass'n. v. Lannon, 186 Neb. 668, 186 N.W.2d 99

Several other changes should be noted. Revision section 9-402(7) covers the troublesome problems of the effect of a name change by a debtor or transfer of the collateral to another person. If the name change by a debtor is such that the filed financing statement becomes seriously misleading, a new financing statement must be filed within four months of the change in order to perfect a security interest in collateral acquired more than four months after the change. If the debtor transfers the collateral subject to a perfected, filed security interest, the original filing will continue the perfected status of the security agreement with respect to the collateral transferred even though the secured party knows of or consents to the transfer.⁴⁷

Nebraska, by virtue of Code section 9-302, makes filing ineffective as a means of perfecting a security interest in motor vehicles subject to the Certificate of Title Act,⁴⁸ even when held as inventory. The Revision, in the interests of uniformity, would specifically make the filing provisions applicable to the inventory situation and the Revisors specifically recommend that the Certificate of Title Act be amended to exclude the inventory situation.⁴⁹

Part 5 of Article 9 of the Code dealing with remedies is generally unchanged by the Revision. The Revision does eliminate the requirement that the secured party seeking to dispose of the collateral after default send notification of sale to other secured parties who have filed financing statements in the state or whose security interest is known. Under the Revision, the secured party need send notification only to those secured parties from whom the secured party has received written notice of a claim to an interest in the collateral.⁵⁰ Code section 9-505(2), which provided that the secured party could retain the collateral in satisfaction of the obligation in the absence of written objection from the parties concerned within thirty days after their receipt of notification of the proposal, will be amended. The Revision will reduce the time from thirty days to twenty-one days from the time *when the notice was sent*, eliminating the problem existing under present law of determining when the notification was received.⁵¹

(1971) (the court was divided on the question of whether the secured party had waived his security interest); *Overland Nat'l Bank v. Aurora Cooperative Elevator Co.*, 184 Neb. 843, 172 N.W.2d 786 (1969).

47. As Official Comment 8 of § 9-402(7) to the Revision points out, this means that a potential purchaser must make inquiry as to the debtor's source of title. It would appear to this writer to have been better to require a secured party who had knowledge of or consented to such a transfer to file a new financing statement within four months in order to continue his perfected status.

48. NEB. REV. STAT. §§ 60-101 to 60-117 (Reissue 1968), *as amended*, §§ 60-105, 106, 109, 114 (Cum. Supp. 1969), §§ 60-107, 110 (Supp. 1971).

49. Revision § 9-302(3)(b).

50. Revision § 9-504(3).

51. Revision § 9-505(2).

V. CONCLUSION

In preparing the Revision the purpose of the Committee was not to amend Article 9 into a theoretically perfect treatment of secured transactions. Rather the Committee attempted to solve problems which have arisen with Article 9 within its existing framework, to make clear what experience had shown to be unclear and to cover situations on which Article 9 was silent. The Revision will to a large measure accomplish this result.