

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 652

*An Act to amend and reenact §§ 8.1A-201, 8.1A-204, 8.1A-301, 8.1A-306, 8.2-102, 8.2-106, 8.2-201, 8.2-202, 8.2-203, 8.2-205, 8.2-209, 8.2A-102, 8.2A-103, 8.2A-107, 8.2A-201, 8.2A-202, 8.2A-203, 8.2A-205, 8.2A-208, 8.3A-104, 8.3A-105, 8.3A-401, 8.3A-604, 8.4A-103, 8.4A-201, 8.4A-202, 8.4A-203, 8.4A-207, 8.4A-208, 8.4A-210, 8.4A-211, 8.4A-305, 8.5A-104, 8.5A-116, 8.7-102, 8.7-106, 8.8A-102, 8.8A-103, 8.8A-106, 8.8A-110, 8.8A-303, 8.9A-102, 8.9A-104, 8.9A-105, 8.9A-203, 8.9A-204, 8.9A-207 through 8.9A-210, 8.9A-301, 8.9A-304, 8.9A-305, 8.9A-310, 8.9A-312, 8.9A-313, 8.9A-314, 8.9A-316, 8.9A-317, 8.9A-323, 8.9A-324, 8.9A-330, 8.9A-331, 8.9A-332, 8.9A-334, 8.9A-341, 8.9A-404, 8.9A-406, 8.9A-408, 8.9A-509, 8.9A-513, 8.9A-601, 8.9A-605, 8.9A-608, 8.9A-611, 8.9A-613 through 8.9A-616, 8.9A-619, 8.9A-620, 8.9A-621, 8.9A-624, and 8.9A-628 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.9A-105.1, 8.9A-107.1, 8.9A-107.2, 8.9A-306.1, 8.9A-306.2, 8.9A-314.1, and 8.9A-326.1, by adding a title numbered 8.12, consisting of sections numbered 8.12-101 through 8.12-107, and by adding a title numbered 8.13, consisting of sections numbered 8.13-101 through 8.13-401, relating to Uniform Commercial Code; amendments.*

[H 1286]

Approved April 8, 2024

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.1A-201, 8.1A-204, 8.1A-301, 8.1A-306, 8.2-102, 8.2-106, 8.2-201, 8.2-202, 8.2-203, 8.2-205, 8.2-209, 8.2A-102, 8.2A-103, 8.2A-107, 8.2A-201, 8.2A-202, 8.2A-203, 8.2A-205, 8.2A-208, 8.3A-104, 8.3A-105, 8.3A-401, 8.3A-604, 8.4A-103, 8.4A-201, 8.4A-202, 8.4A-203, 8.4A-207, 8.4A-208, 8.4A-210, 8.4A-211, 8.4A-305, 8.5A-104, 8.5A-116, 8.7-102, 8.7-106, 8.8A-102, 8.8A-103, 8.8A-106, 8.8A-110, 8.8A-303, 8.9A-102, 8.9A-104, 8.9A-105, 8.9A-203, 8.9A-204, 8.9A-207 through 8.9A-210, 8.9A-301, 8.9A-304, 8.9A-305, 8.9A-310, 8.9A-312, 8.9A-313, 8.9A-314, 8.9A-316, 8.9A-317, 8.9A-323, 8.9A-324, 8.9A-330, 8.9A-331, 8.9A-332, 8.9A-334, 8.9A-341, 8.9A-404, 8.9A-406, 8.9A-408, 8.9A-509, 8.9A-513, 8.9A-601, 8.9A-605, 8.9A-608, 8.9A-611, 8.9A-613 through 8.9A-616, 8.9A-619, 8.9A-620, 8.9A-621, 8.9A-624, and 8.9A-628 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.9A-105.1, 8.9A-107.1, 8.9A-107.2, 8.9A-306.1, 8.9A-306.2, 8.9A-314.1, and 8.9A-326.1, by adding a title numbered 8.12, consisting of sections numbered 8.12-101 through 8.12-107, and by adding a title numbered 8.13, consisting of sections numbered 8.13-101 through 8.13-401, as follows:**

**§ 8.1A-201. General definitions.**

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other titles of the Uniform Commercial Code that apply to particular titles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other titles of the Uniform Commercial Code that apply to particular titles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 8.1A-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in

the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Title 8.2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that, *based on the totality of the circumstances*, a reasonable person against whom it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. **Conspicuous terms include the following:**

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or *an authoritative tangible copy of a record evidencing* chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods it covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16A) "*Electronic*" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith" means honesty in fact in the conduct or transaction concerned.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, *other than pursuant to § 8.7-106 (g)*, of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange *that is* currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. *The term does not include an electronic*

*record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.*

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, ~~public corporation~~, or any other legal or commercial entity. *The term includes a protected series, however denominated, of an entity if the protected series is established under law other than the Commercial Code, Title 8.1A through Title 8.13, that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.*

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Title 8.9A. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 8.2-401, but a buyer may also acquire a "security interest" by complying with Title 8.9A. Except as otherwise provided in § 8.2-505, the right of a seller or lessor of goods under Title 8.2 or Title 8.2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Title 8.9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 8.2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 8.1A-203.

(36) "Send" in connection with a ~~writing~~, record, or ~~notice~~ notification means:

(A) to deposit in the mail ~~or~~, deliver for transmission, *or transmit* by any other usual means of communication, with postage or cost of transmission provided for ~~and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, addressed to any address reasonable under the circumstances; or~~

(B) ~~in any other way to cause to be received any record or notice within the time it would have arrived if properly sent to cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).~~

(37) "Signed" ~~includes using any symbol executed or adopted with present intention to adopt or accept a writing~~ "Sign" means, *with present intent to authenticate or adopt a record:*

(A) *execute or adopt a tangible symbol; or*

(B) *attach to or logically associate with the record an electronic symbol, sound, or process.*

"Signed," "signing," and "signature" have corresponding meanings.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**§ 8.1A-204. Value.**

Except as otherwise provided in Titles 8.3A, 8.4, ~~and~~ 8.5A, *and 8.12*, a person gives value for rights if the person acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

**§ 8.1A-301. Territorial applicability; parties' power to choose applicable law.**

(a) This section applies to a transaction to the extent that it is governed by another title of the Uniform Commercial Code.

(b) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or such other state or nation shall govern their rights and duties.

(c) In the absence of an agreement effective under subsection (b), the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of laws principles.

(d) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Rights of creditors against sold goods. § 8.2-402;
- (2) Applicability of the title on leases. §§ 8.2A-105 and 8.2A-106;
- (3) Applicability of the title on bank deposits and collections. § 8.4-102;
- (4) Applicability of the title on funds transfers. § 8.4A-507;
- (5) Letters of credit. § 8.5A-116;
- (6) Applicability of the title on investment securities. § 8.8A-110;
- (7) Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. §§ 8.9A-301 through 8.9A-307;

(8) *Controllable Electronic Records*. § 8.12-107.

**§ 8.1A-306. Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~an authenticated~~ *a signed* record.

**§ 8.2-102. Scope; certain security and other transactions excluded from this title.**

~~Unless the context otherwise requires, this title applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this title impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. (1) Unless the context otherwise requires, and except as provided in subsection (3), this title applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).~~

~~(2) In a hybrid transaction:~~

~~(a) If the sale-of-goods aspects do not predominate, only the provisions of this title that relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.~~

~~(b) If the sale-of-goods aspects predominate, this title applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction that do not relate to the sale of goods.~~

~~(3) This title does not:~~

~~(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or~~

~~(b) impair or reveal a statute regulating sales to consumers, farmers, or other specified classes of buyers.~~

**§ 8.2-106. Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation"; "hybrid transaction."**

(1) In this title unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (§ 8.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) *"Hybrid transaction" means a single transaction involving a sale of goods and:*

(a) *the provision of services;*

(b) *a lease of other goods; or*

(c) *a sale, lease, or license of property other than goods.*

**§ 8.2-201. Formal requirements; statute of frauds.**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~some writing~~ *a record* sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~ *the party's* authorized agent or broker. A ~~writing~~ *record* is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~ *subsection* beyond the quantity of goods shown in ~~such writing~~ *the record*.

(2) Between merchants if within a reasonable time a ~~writing~~ *record* in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ *the* party unless ~~written~~ *notice in a record* of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (§ 8.2-606).

**§ 8.2-202. Final expression; parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ *record* intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing or usage of trade (§ 8.1A-303); and

(b) by evidence of consistent additional terms unless the court finds the ~~writing~~ *record* to have been intended also as a complete and exclusive statement of the terms of the agreement.

**§ 8.2-203. Seals inoperative.**

The affixing of a seal to a ~~writing~~ *record* evidencing a contract for sale or an offer to buy or sell goods does not constitute the ~~writing~~ *record* a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**§ 8.2-205. Firm offers.**

An offer by a merchant to buy or sell goods in a signed ~~writing~~ *record* which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**§ 8.2-209. Modification, rescission, and waiver.**

(1) An agreement modifying a contract within this title needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed ~~writing~~ *or other signed record* cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this title (§ 8.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**§ 8.2A-102. Scope.**

(1) This title applies to any transaction, regardless of form, that creates a lease *and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).*

(2) *In a hybrid lease:*

- (a) if the lease-of-goods aspects do not predominate:*
  - (i) only the provisions of this title that relate primarily to the lease-of-goods aspect of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;*
  - (ii) § 8.2A-209 applies if the lease is a financial lease; and*
  - (iii) § 8.2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and*
- (b) if the lease-of-goods aspects predominate, this title applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease that do not relate to the lease of goods.*

**§ 8.2A-103. Definitions and index of definitions.**

- (1) In this title unless the context otherwise requires:
  - (a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
  - (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
  - (c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
  - (d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
  - (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
  - (f) "Fault" means wrongful act, omission, breach, or default.
  - (g) "Finance lease" means a lease with respect to which:
    - (i) The lessor does not select, manufacture, or supply the goods;
    - (ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
    - (iii) One of the following occurs:
      - (A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
      - (B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
      - (C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
      - (D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this title to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
  - (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 8.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
    - (h1) "Hybrid lease" means a single transaction involving a lease of goods and:*
      - (i) the provision of services;*
      - (ii) a sale of other goods; or*
      - (iii) a sale, lease, or license of property other than goods.*
    - (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each

delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this title and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this title and the sections in which they appear are:

"Accessions" § 8.2A-310 (1).

"Construction mortgage" § 8.2A-309 (1) (d).

"Encumbrance" § 8.2A-309 (1) (e).

"Fixture filing" § 8.2A-309 (1) (b).

"Fixtures" § 8.2A-309 (1) (a).

"Purchase money lease" § 8.2A-309 (1) (c).

(3) The following definitions in other titles apply to this title:

"Account" § 8.9A-102 (a) (2).

"Between merchants" § 8.2-104 (3).

"Buyer" § 8.2-103 (1) (a).

"Chattel paper" § 8.9A-102 (a) (11).

"Consumer goods" § 8.9A-102 (a) (23).

"Document" § 8.9A-102 (a) (30).

"Entrusting" § 8.2-403 (3).

"General intangible" § 8.9A-102 (a) (42).

"Good faith" § 8.2-103 (1) (b).

"Instrument" § 8.9A-102 (a) (47).

"Merchant" § 8.2-104 (1).  
 "Mortgage" § 8.9A-102 (a) (55).  
 "Pursuant to commitment" § 8.9A-102 (a)(69).  
 "Receipt" § 8.2-103 (1) (c).  
 "Sale" § 8.2-106 (1).  
 "Sale on approval" § 8.2-326.  
 "Sale or return" § 8.2-326.  
 "Seller" § 8.2-103 (1) (d).

(4) In addition, Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

**§ 8.2A-107. Waiver or renunciation of claim or right after default.**

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation *in a signed and record* delivered by the aggrieved party.

**§ 8.2A-201. Statute of frauds.**

(1) A lease contract is not enforceable by way of action or defense unless:

(a) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) There is a ~~writing~~ *record*, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subdivision (1) (b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A ~~writing~~ *record* is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subdivision (1) (b) of this section beyond the lease term and the quantity of goods shown in the ~~writing~~ *record*.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable if:

(a) The goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) The party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a ~~writing~~ *record* signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.

**§ 8.2A-202. Final expression: parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ *record* intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the court finds the ~~writing~~ *record* to have been intended also as a complete and exclusive statement of the terms of the agreement.

**§ 8.2A-203. Seals inoperative.**

The affixing of a seal to a ~~writing~~ *record* evidencing a lease contract or an offer to enter into a lease contract does not render the ~~writing~~ *record* a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**§ 8.2A-205. Firm offers.**

An offer by a merchant to lease goods to or from another person in a signed ~~writing~~ *record* that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**§ 8.2A-208. Modification, rescission, and waiver.**

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed ~~writing~~



*record* may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

#### **§ 8.3A-104. Negotiable instrument.**

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, *or (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.*

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this title.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

#### **§ 8.3A-105. Issue of instrument.**

(a) "Issue" means

(1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; *or*

(2) *if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.*

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

#### **§ 8.3A-401. Signature necessary for liability on instrument.**

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under § 8.3A-402.

(b) ~~A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

**§ 8.3A-604. Discharge by cancellation or renunciation.**

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~ *record*. *The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.*

(b) Cancellation or striking out of an endorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the endorsement.

**§ 8.4A-103. Definitions: "Payment order"; "Beneficiary"; "Beneficiary's bank"; "Receiving bank"; "Sender."**

(a) In this title:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically~~, or in ~~writing~~ *a record*, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if: (i) the instruction does not state a condition to payment to the beneficiary other than time of payment, (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and (iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subdivision (a) (1) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

**§ 8.4A-201. Security procedure.**

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may *impose an obligation on the receiving bank or the customer and may* require the use of algorithms or other codes, identifying words ~~or~~, numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer *or requiring a payment order to be sent from a known email address, IP address, or telephone number* is not by itself a security procedure.

**§ 8.4A-202. Authorized and verified payment orders.**

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with *the bank's obligations under* the security procedure and any ~~written~~ agreement or instruction of the customer, *evidenced by a record*, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a ~~written~~ *an* agreement with the customer, *evidenced by a record*, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in ~~writing~~ *a record* to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the *bank's obligations under* the security procedure chosen by the customer.

(d) The term "sender" in this title includes the customer in whose name a payment order is issued if

the order is the authorized order of the customer under subsection (a) of this section, or it is effective as the order of the customer under subsection (b) of this section.

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in subdivision (a) (1) of § 8.4A-203, rights and obligations arising under this section or § 8.4A-203 may not be varied by agreement.

**§ 8.4A-203. Unenforceability of certain verified payment orders.**

(a) If an accepted payment order is not, under subsection (a) of § 8.4A-202, an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to subsection (b) of § 8.4A-202, the following rules apply:

(1) By express ~~written~~ agreement *evidenced by a record*, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

**§ 8.4A-207. Misdescription of beneficiary.**

(a) Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) of this section is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subdivision (b) (1) of this section, the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a ~~writing~~ *record* stating the information to which the notice relates.

(d) In a case governed by subdivision (b) (1) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c) of this section, the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

**§ 8.4A-208. Misdescription of intermediary bank or beneficiary's bank.**

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the

receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subdivision (b) (1) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed ~~in writing~~ *a record* stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in subdivision (a) (1) of § 8.4A-302.

#### **§ 8.4A-210. Rejection of payment order.**

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in ~~writing~~ *a record*. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to subsection (d) of § 8.4A-211 or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

#### **§ 8.4A-211. Cancellation and amendment of payment order.**

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, ~~electronically~~, or in ~~writing~~ *a record*. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a) of this section, a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is

not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subdivision (c) (2) of this section.

**§ 8.4A-305. Liability for late or improper execution or failure to execute payment order.**

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of § 8.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of § 8.4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a) of this section, resulting from the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, *evidenced by a record*.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, *evidenced by a record*, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section, and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) of this section, is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement.

**§ 8.5A-104. Formal requirements.**

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a *signed* record and is ~~authenticated~~ (i) ~~by a signature or~~ (ii) ~~in accordance with the agreement of the parties or the standard practice referred to in § 8.5A-108(e).~~

**§ 8.5A-116. Choice of law and forum.**

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in § 8.5A-104~~ or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is

indicated, the person is considered to be located at the address from which the person's undertaking was issued.

(c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection (d).

(d) *A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.*

(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this title would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this title and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 8.5A-103(c).

(f) If there is conflict between this title and Titles 8.3A, 8.4, 8.4A, or 8.9A, this title governs.

(g) The forum for settling disputes arising out of an undertaking within this title may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

### **§ 8.7-102. Definitions and index of definitions.**

(1) In this title, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document acknowledges possession of goods and contracts to deliver them.

(b) "Carrier" means a person that issues a bill of lading.

(c) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(d) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(f) "Document" means document of title as defined in the general definitions in Title 8.1A (§ 8.1A-201).

(g) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(h) "Goods" means all things that are treated as movable for the purposes of a contract of storage or transportation.

(i) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer received no goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(j) ~~"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~ [Reserved.]

(k) "Shipper" means a person that enters into a contract of transportation with a carrier.

(l) ~~"Sign" means, with present intent to authenticate or adopt a record (1) to execute or adopt a tangible symbol or (2) to attach to or logically associate with the record an electronic sound, symbol, or process.~~ [Reserved.]

(m) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this title or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate." § 8.7-501.

"Person entitled under the document." § 8.7-403(4).

(3) Definitions in other titles applying to this title and the sections in which they appear are:

"Contract for sale." § 8.2-106.

"Lessee in ordinary course." § 8.2A-103.

"Overseas." § 8.2-323.

"Receipt" of goods. § 8.2-103.

(4) In addition Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

### **§ 8.7-106. Control of electronic document.**

(1) A person has control of an electronic document if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the

electronic document was issued or transferred.

(2) A system satisfies subsection (1), and a person is ~~deemed to have~~ *has* control of an electronic document, if the document is created, stored, and ~~assigned~~ *transferred* in such a manner that:

(a) a single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in subdivisions (c), (d), and (e), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to whom the document was issued; or

(ii) if the authoritative copy indicates that the document has been transferred, the person to whom the document was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or his designated custodian;

(d) copies or amendments that add or change an identified ~~assignee~~ *transferee* of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(3) *A system satisfies subsection (1), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:*

*(a) enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;*

*(b) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and*

*(c) gives the person exclusive power, subject to subsection (4), to:*

*(i) prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and*

*(ii) transfer control of each authoritative electronic copy.*

*(4) Subject to subsection (5), a power is exclusive under subsection (3)(c)(i) and (ii) even if:*

*(a) the authoritative electronic copy, a record attached to or legally associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or*

*(b) the power is shared with another person.*

*(5) A power of a person is not shared with another person under subsection (4)(b) and the person's power is not exclusive if:*

*(a) the person can exercise the power only if the power is also exercised by the other person; and*

*(b) the other person:*

*(i) can exercise the power without exercise of the power by the person; or*

*(ii) is the transferor to the person of an interest in the document of title.*

*(6) If a person has the powers specified in subsection (3)(c)(i) and (ii), the powers are presumed to be exclusive.*

*(7) A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:*

*(a) has control of the document and acknowledges that it has control on behalf of the person; or*

*(b) obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.*

*(8) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.*

*(9) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this title or Title 8.9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgement to any other person.*

#### **§ 8.8A-102. Definitions.**

(a) In this title:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;  
(ii) a federal reserve bank; or  
(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) send a signed ~~writing~~ *record*; or  
(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 8.8A-501 (b) (2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in § 8.8A-103, means:

(i) a security;  
(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or  
(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this title.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and  
(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) a clearing corporation; or  
(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 8.8A-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or  
(B) is a medium for investment and by its terms expressly provides that it is a security governed by this title.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) ~~Other~~ The following definitions applying to in this title and the sections in which they appear are other Articles apply to this title:

Appropriate person § 8.8A-107

Control § 8.8A-106

Controllable account § 8.9A-102

Controllable electronic record § 8.12-102

Controllable payment intangible § 8.9A-102

Delivery § 8.8A-301



Investment company security § 8.8A-103

Issuer § 8.8A-201

Overissue § 8.8A-210

Protected purchaser § 8.8A-303

Securities account § 8.8A-501

(c) In addition, Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

(d) The characterization of a person, business, or transaction for purposes of this title does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**§ 8.8A-103. Rules for determining whether certain obligations and interests are securities or financial assets.**

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this title, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this title and not by Title 8.3A, even though it also meets the requirements of that title. However, a negotiable instrument governed by Title 8.3A is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in subdivision (a) (15) of § 8.9A-102, is not a security or a financial asset.

(g) A document of title is not a financial asset unless subdivision (a) (9) (iii) of § 8.8A-102 applies.

(h) *A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless subdivision (a)(9)(iii) of § 8.8A-102 applies.*

**§ 8.8A-106. Control.**

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) the certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser, other than the transferor to the purchaser of an interest in the security entitlement:

(A) *has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or*

(B) *obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.*

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c) (2) or (d) (2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

*(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.*

*(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this Article or Article 9 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgement to any other person.*

**§ 8.8A-110. Applicability; choice of law.**

(a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

- (1) the validity of a security;
- (2) the rights and duties of the issuer with respect to registration of transfer;
- (3) the effectiveness of registration of transfer by the issuer;
- (4) whether the issuer owes any duties to an adverse claimant to a security; and
- (5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

- (1) acquisition of a security entitlement from the securities intermediary;
- (2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (a) (2) through (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this title or the Uniform Commercial Code, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

*(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.*

**§ 8.8A-303. Protected purchaser.**

(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (1) gives value;
- (2) does not have notice of any adverse claim to the security; and
- (3) obtains control of the certificated or uncertificated security.

(b) ~~In addition to acquiring the rights of a purchaser,~~ a *A* protected purchaser also acquires its interest in the security free of any adverse claim.

**§ 8.9A-102. Definitions and index of definitions.**

(a) Title 8.9A definitions. In this title:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," *"account statement," "account to," "commodity account" in paragraph (14), "customer's account," "deposit account" in paragraph (29), "on account of," and "statement of account,"* means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) health-care-insurance receivables. *The term includes controllable accounts.* The term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument,~~ (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, *or (vii) rights to payment evidenced by an instrument.*

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the *negotiable instrument constitutes part of evidences* chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) ~~authenticated signed by~~ a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) ~~to sign; or~~

(B) ~~with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process. [Reserved.]~~

(7A) "Assignee," except as used in "assignee for benefit of creditors," means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security

interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.:

(A) a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" 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.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means 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. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(27A) *"Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under § 8.12-105 of the controllable electronic record.*

(27B) *"Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under § 8.12-105 of the controllable electronic record.*

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in subdivision (2) of § 8.7-201.

(31) ~~"Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium. [Reserved.]~~

(31A) *"Electronic money" means money in an electronic form.*

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subsection (a) of § 8.9A-519.

(37) "Filing office" means an office designated in § 8.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to § 8.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of § 8.9A-502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than

accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes *controllable electronic records*, payment intangibles, and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means 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.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, ~~or~~ (iv) *writings that evidence chattel paper*.

(48) "Inventory" means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) an assignee for benefit of creditors from the time of assignment;
- (C) a trustee in bankruptcy from the date of the filing of the petition; or
- (D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

- (A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(54A) "*Money*" has the meaning in § 8.1A-102(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under § 8.9A-105A.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures

payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under subsection (d) of § 8.9A-203 by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in subsection (c) of § 8.9A-310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of § 8.9A-203.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. *The term includes a controllable payment intangible.*

(62) "Person related to," with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in subsection (b) of § 8.9A-609, means the following property:

- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record ~~authenticated~~ *signed* by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 8.9A-620, 8.9A-621, and 8.9A-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

- (A) debt securities are issued;
- (B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
- (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and that is:

- (A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
- (B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
- (C) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the

organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," 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.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under § 8.2-401, 8.2-505, 8.2-711 (3), 8.2A-508 (5), 8.4-210, or 8.5A-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) ~~"Send," in connection with a record or notification, means:~~

~~(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A). [Reserved.]~~

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) ~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium. [Reserved.]~~

~~(79A) "Tangible money" means money in a tangible form.~~

(80) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other titles. The following definitions in other titles apply to this title:

"Applicant" § 8.5A-102.

"Beneficiary" § 8.5A-102.

"Broker" § 8.8A-102.

"Certificated security" § 8.8A-102.

"Check" § 8.3A-104.

"Clearing corporation" § 8.8A-102.

"Contract for sale" § 8.2-106.



"Control" § 8.7-106.  
 "Controllable electronic record" § 8.12-102.  
 "Customer" § 8.4-104.  
 "Entitlement holder" § 8.8A-102.  
 "Financial asset" § 8.8A-102.  
 "Holder in due course" § 8.3A-302.  
 "Issuer" (with respect to a letter of credit or letter-of-credit right) § 8.5A-102.  
 "Issuer" (with respect to a security) § 8.8A-201.  
 "Issuer" (with respect to documents of title) § 8.7-102.  
 "Lease" § 8.2A-103.  
 "Lease agreement" § 8.2A-103.  
 "Lease contract" § 8.2A-103.  
 "Leasehold interest" § 8.2A-103.  
 "Lessee" § 8.2A-103.  
 "Lessee in ordinary course of business" § 8.2A-103.  
 "Lessor" § 8.2A-103.  
 "Lessor's residual interest" § 8.2A-103.  
 "Letter of credit" § 8.5A-102.  
 "Merchant" § 8.2-104.  
 "Negotiable instrument" § 8.3A-104.  
 "Nominated person" § 8.5A-102.  
 "Note" § 8.3A-104.  
 "Proceeds of a letter of credit" § 8.5A-114.  
 "Protected purchaser" § 8.8A-303.  
 "Prove" § 8.3A-103.  
 "Qualifying purchaser" § 8.12-102.  
 "Sale" § 8.2-106.  
 "Securities account" § 8.8A-501.  
 "Securities intermediary" § 8.8A-102.  
 "Security" § 8.8A-102.  
 "Security certificate" § 8.8A-102.  
 "Security entitlement" § 8.8A-102.  
 "Uncertificated security" § 8.8A-102.

(c) Title 8.1A definitions and principles. Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

**§ 8.9A-104. Control of deposit account.**

(a) Requirements for control. A secured party has control of a deposit account if:

- (1) the secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in ~~an authenticated~~ *a signed* record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~
- (3) the secured party becomes the bank's customer with respect to the deposit account; *or*
- (4) *another person, other than the debtor:*
- (A) *has control of the deposit account and acknowledges that it has control on behalf of the secured party; or*
- (B) *obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.*

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

**§ 8.9A-105. Control of electronic copy of record evidencing chattel paper.**

(a) General rule: control of electronic *copy of a record evidencing* chattel paper. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interest in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) ~~Specific facts giving control.~~

A system satisfies subsection (a), and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that

is not the authoritative copy; and

~~(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.~~ an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.

(b) *Single authoritative copy.* A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) *One or more authoritative copies.* A system satisfies subsection (a), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(3) gives the purchaser exclusive power, subject to subsection (d), to:

(A) prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(B) transfer control of the authoritative electronic copy.

(d) *Meaning of exclusive.* Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) *When power not shared with another person.* A power of a purchaser is not shared with another person under subsection (d)(2) and the purchaser's power is not exclusive if:

(1) the purchaser can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) *Presumption of exclusivity of certain powers.* If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) *Obtaining control through another person.* A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

#### **§ 8.9A-105.1. Control of electronic money.**

(a) *General rule: control of electronic money.* A person has control of electronic money if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(A) power to avail itself of substantially all the benefit from the electronic money; and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(2) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any

way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) *Meaning of exclusive.* Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(c) *When power not shared with another person.* A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the electronic money.

(d) *Presumption of exclusivity of certain powers.* If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) *Control through another person.* A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:

(1) has control of the electronic money and acknowledges that it has control on behalf of the person; or

(2) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

**§ 8.9A-107.1. Control of controllable electronic record, controllable account, or controllable payment intangible.**

(a) *Control under § 8.12-105.* A secured party has control of a controllable electronic record as provided in § 8.12-105.

(b) *Control of controllable account and controllable payment intangible.* A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

**§ 8.9A-107.2. No requirement to acknowledge or confirm; no duties.**

(a) *No requirement to acknowledge.* A person that has control under Section 9-104, 9-105, or 9-105A is not required to acknowledge that it has control on behalf of another person.

(b) *No duties or confirmation.* If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**§ 8.9A-203. Attachment and enforceability of security interest; proceeds, supporting obligations; formal requisites.**

(a) *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) *Enforceability.* Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has ~~authenticated~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under § 8.9A-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 8.8A-301 pursuant to the debtor's security agreement; ~~or~~

(D) the collateral is ~~controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic chattel paper, electronic documents, electronic money, investment property, or letter-of-credit rights; or electronic documents,~~ and the secured party has control under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-105A 8.9A-106, ~~or~~ § 8.9A-107, or 8.9A-107A pursuant to the debtor's security agreement; or

(E) the collateral is chattel paper and the secured party has possession and control under § 8.9A-314A pursuant to the debtor's security agreement.

(c) *Other Uniform Commercial Code provisions.* Subsection (b) is subject to § 8.4-210 on the security interest of a collecting bank, § 8.5A-118 on the security interest of a letter-of-credit issuer or nominated person, § 8.9A-110 on a security interest arising under Title 8.2 or Title 8.2A, and § 8.9A-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this title or by contract:

- (1) the security agreement becomes effective to create a security interest in the person's property; or
- (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subdivision (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 8.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

#### **§ 8.9A-204. After-acquired property; future advances.**

(a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. *A Subject to subsection (b.1), a security interest does not attach under a term constituting an after-acquired property clause to:*

- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or
- (2) a commercial tort claim.

*(b.1) Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:*

- (1) to consumer goods as proceeds under Section 9-315(a) or commingled goods under Section 9-336(c);*

*(2) to a commercial tort claim as proceeds under Section 9-315(a); or*

- (3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.*

(c) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

#### **§ 8.9A-207. Rights and duties of secured party having possession or control of collateral.**

(a) Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

- (1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession and control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-105A, 8.9A-106, ~~or~~ § 8.9A-107, or 8.9A-107A:

- (1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

**§ 8.9A-208. Additional duties of secured party having control of collateral.**

(a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated *a signed* demand by the debtor:

(1) a secured party having control of a deposit account under § 8.9A-104 (a) (2) shall send to the bank with which the deposit account is maintained an ~~authenticated statement~~ *a signed record* that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under § 8.9A-104 (a) (3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under ~~§ 8.9A-105~~ shall:

(A) ~~communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) ~~take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party; under § 8.9A-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to a debtor or a person designated by the debtor;~~

(4) a secured party having control of investment property under § 8.8A-106 (d) (2) or § 8.9A-106 (b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an ~~authenticated~~ *a signed* record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under § 8.9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an ~~authenticated~~ *a signed* release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) ~~give control of the electronic document to the debtor or its designated custodian;~~

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) ~~take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party; under § 8.7-106 of an authoritative electronic copy of an electronic document of title shall transfer control of the electronic copy to the debtor or a person designated by the debtor;~~

(7) a secured party having control under Section 9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

**§ 8.9A-209. Duties of secured party if account debtor has been notified of assignment.**

(a) Applicability of section. Except as otherwise provided in subsection (c), this section applies if:

- (1) there is no outstanding secured obligation; and
- (2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten days after receiving ~~an~~ *authenticated a signed* demand by the debtor, a secured party shall send to an account debtor that has received notification *under subsection (a) of § 8.9A-406 or subsection (b) of § 8.12-106* of an assignment to the secured party as assignee ~~under § 8.9A-406 (a) an authenticated a signed~~ record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**§ 8.9A-210. Request for accounting; request regarding list of collateral or statement of account.**

(a) Definitions. In this section:

- (1) "Request" means a record of a type described in paragraph (2), (3), or (4).
- (2) "Request for an accounting" means a record ~~authenticated~~ *signed* by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
- (3) "Request regarding a list of collateral" means a record ~~authenticated~~ *signed* by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.
- (4) "Request regarding a statement of account" means a record ~~authenticated~~ *signed* by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) in the case of a request for an accounting, by ~~authenticating~~ *signing* and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by ~~authenticating~~ *signing* and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor ~~an authenticated a signed~~ record including a statement to that effect within fourteen days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor ~~an authenticated a signed~~ record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor ~~an authenticated a signed~~ record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

**§ 8.9A-301. Law governing perfection and priority of security interests.**

Except as otherwise provided in §§ 8.9A-303 through ~~8.9A-306~~ *8.9A-306B*, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods,

instruments, *or tangible money, or tangible chattel paper* are located in a jurisdiction, the local law of that jurisdiction governs:

- (A) perfection of a security interest in the goods by filing a fixture filing;
- (B) perfection of a security interest in timber to be cut; and
- (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**§ 8.9A-304. Law governing perfection and priority of security interests in deposit accounts.**

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank *even if the transaction does not bear any relation to the bank's jurisdiction*.

(b) Bank's jurisdiction. The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this title, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**§ 8.9A-305. Law governing perfection and priority of security interests in investment property.**

(a) Governing law; general rules. Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in § 8.8A-110 (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in § 8.8A-110 (e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(5) *Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.*

(b) Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this title, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:

- (1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

**§ 8.9A-306.1. Law governing perfection and priority of security interests in chattel paper.**

(a) *Chattel paper evidenced by authoritative electronic copy. Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.*

(b) *Chattel paper's jurisdiction. The following rules determine the chattel paper's jurisdiction under this section:*

(1) *If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.*

(2) *If paragraph (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.*

(3) *If paragraphs (1) and (2) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.*

(4) *If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.*

(5) *If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.*

(c) *Chattel paper evidenced by authoritative tangible copy. If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:*

(1) *perfection of a security interest in the chattel paper by possession under Section 9-314A; and*

(2) *the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.*

(d) *When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.*

**§ 8.9A-306.2. Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.**

(a) *Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in Section 12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.*

(b) *When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:*

(1) *perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and*

(2) *automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.*

**§ 8.9A-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.**

(a) *General rule; perfection by filing. Except as otherwise provided in subsection (b) and § 8.9A-312 (b), a financing statement must be filed to perfect all security interests and agricultural liens.*

(b) *Exceptions; filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:*

(1) *that is perfected under § 8.9A-308 (d), (e), (f), or (g);*

(2) *that is perfected under § 8.9A-309 when it attaches;*

(3) *in property subject to a statute, regulation, or treaty described in § 8.9A-311 (a);*

(4) *in goods in possession of a bailee that is perfected under § 8.9A-312 (d) (1) or (2);*



(5) in certificated securities, documents, goods, or instruments that is perfected without filing, control, or possession under § 8.9A-312 (e), (f), or (g);

(6) in collateral in the secured party's possession under § 8.9A-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under § 8.9A-313;

(8) in *controllable accounts, controllable electronic records, controllable payment intangibles*, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, or letter-of-credit rights which is perfected by control under § 8.9A-314;

(8.1) *in chattel paper which is perfected by possession and control under § 8.9A-314A.*

(9) in proceeds which is perfected under § 8.9A-315; or

(10) that is perfected under § 8.9A-316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this title is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**§ 8.9A-312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing, temporary perfection without filing or transfer of possession.**

(a) Perfection by filing permitted. A security interest in chattel paper, ~~negotiable documents, controllable accounts, controllable electronic records, controllable payment intangibles~~, instruments, ~~or investment property, or negotiable documents~~ may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in § 8.9A-315 (c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under § 8.9A-314;

(2) except as otherwise provided in § 8.9A-308 (d), a security interest in a letter-of-credit right may be perfected only by control under § 8.9A-314; ~~and~~

(3) a security interest in *tangible* money may be perfected only by the secured party's taking possession under § 8.9A-313; ~~and~~

(4) *a security interest in electronic money may be perfected only by control under § 8.9A-314.*

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) Temporary perfection; new value. A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under ~~an authenticated~~ a signed security agreement.

(f) Temporary perfection; goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection; delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this title.

**§ 8.9A-313. When possession by or delivery to secured party perfects security interest without filing.**

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents~~, goods, instruments, *negotiable tangible documents*, or *tangible* money; ~~or tangible chattel paper~~ by taking possession of the collateral.

A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 8.8A-301.

(b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this Commonwealth, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 8.9A-316 (d).

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession ~~authenticates~~ *signs* a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having ~~authenticated~~ *signed* a record acknowledging that it will hold possession of *the* collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs ~~no~~ *not* earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under § 8.8A-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or § 8.8A-301 (a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this title otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this title otherwise provides.

#### **§ 8.9A-314. Perfection by control.**

(a) Perfection by control. A security interest in ~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~ *controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights* may be perfected by control of the collateral under §§ 8.7-106, 8.9A-104, ~~8.9A-105~~ 8.9A-105A, 8.9A-106 ~~or~~ §, 8.9A-107, *or* 8.9A-107A.

(b) Specified collateral; time of perfection by control; continuation of perfection. A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents~~ *controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights* is perfected by control under §§ 8.7-106, 8.9A-104, ~~8.9A-105~~ 8.9A-105A, 8.9A-106 ~~or~~ §, 8.9A-107, *or* 8.9A-107A ~~when not earlier than the time~~ the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property; time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under § 8.9A-106 ~~from~~ *not earlier than* the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

##### **§ 8.9A-314.1. Perfection by possession and control of chattel paper.**

(a) *Perfection by possession and control.* A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(b) *Time of perfection; continuation of perfection.* A security interest is perfected under subsection (a) not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) *Application of § 8.9A-313 to perfection by possession of chattel paper.* § 8.9A-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

**§ 8.9A-316. Effect of change in governing law.**

(a) General rule; effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in § 8.9A-301 (1) or, 8.9A-305 (c), 8.9A-306A (d), 8.9A-306B (b) remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from the Commonwealth. Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Commonwealth remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 8.9A-311(b) or 8.9A-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Commonwealth; or
- (2) the expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of *chattel paper, controllable electronic record*, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in *chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles*, deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the *chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction*, as applicable, remains perfected until the earlier of:

- (1) the time the security interest would have become unperfected under the law of that jurisdiction;
- or
- (2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) Effect on filed financing statement of change in governing law. The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

- (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in

§ 8.9A-301(1) or 8.9A-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 8.9A-301(1) or 8.9A-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) Effect of change in governing law on financing statement filed against original debtor. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in § 8.9A-301(1) or 8.9A-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under § 8.9A-203(d), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

(2) A security interest that is perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 8.9A-301(1) or 8.9A-305(c) remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**§ 8.9A-317. Interests that take priority over or take free of security interest or agricultural lien.**

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under § 8.9A-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in subdivision (b)(3) of § 8.9A-203 is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer, other than a secured party, of ~~tangible chattel paper, tangible documents,~~ of goods, instruments, *tangible documents*, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. ~~A~~ *Subject to subsections (f) through (i),* a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper, tangible documents~~ *electronic money*, goods, instruments, *tangible documents*, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in §§ 8.9A-320 and 8.9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) *Buyers of chattel paper. A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:*

*(1) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and*

*(2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 9-105, obtains control of each authoritative electronic copy.*

(g) *Buyers of electronic documents. A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 7-106, obtains control of each authoritative electronic copy.*

(h) *Buyers of controllable electronic records. A buyer of a controllable electronic record takes free*

*of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.*

*(i) Buyers of controllable accounts and controllable payment intangibles. A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.*

**§ 8.9A-323. Future advances.**

(a) When priority based on time of advance. Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under § 8.9A-322 (a) (1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under § 8.9A-309 when it attaches; or

(B) temporarily under § 8.9A-312 (e), (f), or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under § 8.9A-309 or § 8.9A-312 (e), (f), or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Buyer of goods. Except as otherwise provided in subsection (e), a buyer of goods ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) forty-five days after the purchase.

(e) Advances made pursuant to commitment; priority of buyer of goods. Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five day period.

(f) Lessee of goods. Except as otherwise provided in subsection (g), a lessee of goods; ~~other than a lessee in ordinary course of business~~, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the lease; or

(2) forty-five days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment; priority of lessee of goods. Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period.

**§ 8.9A-324. Priority of purchase-money security interests.**

(a) General rule; purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in § 8.9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in § 8.9A-330, and, except as otherwise provided in § 8.9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. Subsections (b) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the

same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under § 8.9A-312 (f), before the beginning of the twenty-day period thereunder.

(d) Livestock purchase-money priority. Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in § 8.9A-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends ~~an authenticated~~ *a signed* notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. Subsections (d) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under § 8.9A-312 (f), before the beginning of the twenty-day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in § 8.9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, § 8.9A-322 (a) applies to the qualifying security interests.

**§ 8.9A-326.1. Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.**

*A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.*

**§ 8.9A-330. Priority of purchaser of chattel paper or instrument.**

(a) Purchaser's priority; security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value ~~and~~, takes possession of *each authoritative tangible copy of the record evidencing the chattel paper* ~~or~~, and obtains control ~~of under § 8.9A-105 of each authoritative electronic copy of the record evidencing the chattel paper under § 8.9A-105~~; and

(2) the ~~chattel paper~~ *does authoritative copies of the record evidencing the chattel paper* do not indicate that ~~it the chattel paper~~ has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority; other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value ~~and~~, takes possession of *each authoritative tangible copy of the record evidencing the chattel paper* ~~or~~, and obtains control ~~of under § 8.9A-105 of each authoritative electronic copy evidencing the chattel paper under § 8.9A-105~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in § 8.9A-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) § 8.9A-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in § 8.9A-331 (a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if *the authoritative copies of the record evidencing* chattel paper or an instrument ~~indicates~~ *indicate* that ~~it the~~ *the* chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**§ 8.9A-331. Priority of rights of purchasers of controllable accounts, controllable electronic records, controllable payment intangibles, documents, instruments and securities under other titles, priority of interests in financial assets and security entitlements and protection against assertion of claims under Titles 8.8A and 8.12.**

(a) Rights under Titles 8.3A, 8.7, ~~and~~ 8.8A, *and* 8.12 not limited. This title does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or~~ a protected purchaser of a security, *or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible*. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Titles 8.3A, 8.7, ~~and~~ 8.8A *and* 8.12.

(b) Protection under Title 8.8A *and* 8.12. This title does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Title 8.8A *or* 8.12.

(c) Filing not notice. Filing under this title does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

**§ 8.9A-332. Transfer of money, transfer of funds from deposit account.**

(a) Transferee of *tangible* money. A transferee of *tangible* money takes the money free of a security interest ~~unless if~~ the transferee ~~acts~~ *receives possession of the money without acting* in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest ~~unless if~~ the transferee ~~acts~~ *receives the funds without acting* in collusion with the debtor in violating the rights of the secured party.

(c) *Transferee of electronic money. A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.*

**§ 8.9A-334. Priority of security interests in fixtures and crops.**

(a) Security interest in fixtures under this title. A security interest under this title may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this title in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real property law. This title does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule; subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (1) the security interest is a purchase-money security interest;
- (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (3) the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

- (A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
- (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
- (2) before the goods become fixtures, the security interest is perfected by any method permitted by this title and the fixtures are readily removable:

- (A) factory or office machines;
- (B) equipment that is not primarily used or leased for use in the operation of the real property; or
- (C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this title; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in § 8.9A-311 (a) (2).

(f) Priority based on consent, disclaimer, or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in ~~an authenticated~~ *a signed* record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of subdivision (f) (2) priority. The priority of the security interest under subdivision

(f) (2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) prevails over any inconsistent provisions of the following statutes.

**§ 8.9A-341. Bank's rights and duties with respect to deposit account.**

Except as otherwise provided in § 8.9A-340 (c), and unless the bank otherwise agrees in ~~an authenticated~~ *a signed* record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

**§ 8.9A-404. Rights acquired by assignee; claims and defenses against assignee.**

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment ~~authenticated~~ *signed* by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this title requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

**§ 8.9A-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) Discharge of account debtor; effect of notification. Subject to subsections (b) through (i) *and subsection (m)*, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~ *signed* by the assignor or the assignee, that the amount due or to become due has been



assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. Subject to ~~subsection~~ *subsections (h) and (m)*, notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this title; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to ~~subsection~~ *subsections (h) and (m)*, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. *In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper.* Except as otherwise provided in subsection (e) and §§ 8.2A-303 and 8.9A-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under § 8.9A-610 or an acceptance of collateral under § 8.9A-620.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in §§ 8.2A-303 and 8.9A-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b) (3) not waivable. Subject to ~~subsection~~ *subsections (h) and (m)*, an account debtor may not waive or vary its option under subsection (b) (3).

(h) Rule for individual under other law. This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

(j) Inapplicability of subsection (d) to certain transactions. Subsection (d) does not apply to:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104(a) (1), as amended from time to time; or

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p (d) (4), as amended from time to time.

(k) Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.

(l) No inference regarding structured settlements. This section shall not be construed or interpreted to relieve or exempt any person or entity from any duties, obligations or rights imposed or provided by the Structured Settlement Protection Act (§ 59.1-475 et seq.), as amended from time to time.

(m) *Subsections (a), (b), (c), and (g) do not apply to a controllable account or controllable payment intangible.*

**§ 8.9A-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.**

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under § 8.9A-610 or an acceptance of collateral under § 8.9A-620.

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this title but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Inapplicability of subsection (a) to certain payment intangibles. Subsection (a) does not apply to:

(1) the sale of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104 (a) (2), as amended from time to time, provided that no inference shall be drawn regarding the enforceability or nonenforceability under other law or any term in an agreement which prohibits, restricts, or requires consent to the sale of such claim or right described in 26 U.S.C. § 104 (a) (2);

(2) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104

(a) (1), as amended from time to time; or

(3) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p

(d) (4), as amended from time to time.

(f) Inapplicability of subsection (c) to certain payment intangibles. Subsection (c) does not apply to:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. § 104

(a) (1) or (2), as amended from time to time; or

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p

(d) (4), as amended from time to time.

(g) Inapplicability to partnership and limited liability company interests. This section does not apply to an interest in a partnership or limited liability company.

(h) *Promissory note.* In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

**§ 8.9A-509. Persons entitled to file a record.**

(a) Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in ~~an authenticated~~ *a signed* record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By ~~authenticating~~ *signing* or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under § 8.9A-315 (a) (2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under § 8.9A-315 (a) (1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under § 8.9A-315 (a) (2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by § 8.9A-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

#### **§ 8.9A-513. Termination statement.**

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within twenty days after the secured party receives ~~an authenticated~~ *a signed* demand from a debtor.

(c) Other collateral. In cases not governed by subsection (a), within twenty days after a secured party receives ~~an authenticated~~ *a signed* demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in § 8.9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in § 8.9A-510, for purposes of §§ 8.9A-519 (g), 8.9A-522 (a), and 8.9A-523 (c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

#### **§ 8.9A-601. Rights after default; judicial enforcement, consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in § 8.9A-602, those provided by agreement of the parties. A

secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under §§ 8.7-106, 8.9A-104, 8.9A-105, 8.9A-105A, 8.9A-106, ~~or~~ § 8.9A-107, *or* 8.9A-107A has the rights and duties provided in § 8.9A-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) and § 8.9A-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this title.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in § 8.9A-607 (c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

**§ 8.9A-605. Unknown debtor or secondary obligor.**

(a) *In general: no duty owed by secured party.* ~~Except as provided in subsection (b),~~ a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) *Exception: Secured party owes duty to debtor or obligor.* A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or

(C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**§ 8.9A-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.**

(a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 8.9A-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subsection (a) (1) (C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under § 8.9A-607 unless the failure to do so would be commercially unreasonable. A

secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

**§ 8.9A-611. Notification before disposition of collateral.**

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor ~~an authenticated~~ *a signed* notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 8.9A-610 shall send to the persons specified in subsection (c) a reasonable ~~authenticated~~ *signed* notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send ~~an authenticated~~ *a signed* notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, ~~an authenticated~~ *a signed* notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 8.9A-311 (a).

(d) Subsection (b) inapplicable; perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c) (3) (B). A secured party complies with the requirement for notification prescribed by subsection (c) (3) (B) if:

(1) not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c) (3) (B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent ~~an authenticated~~ *a signed* notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**§ 8.9A-613. Contents and form of notification before disposition of collateral; general.**

(a) *Contents and form of notification.* Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in ~~§ 8.9A-614 (3)~~ *§ 8.9A-614(a)(3)*, when completed *in accordance with the instructions in subsection (b) and § 8.9A-614(b)*, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL****To:**

Name of debtor, obligor, or other person to which the notification is sent

**From:**

Name, address, and telephone number of secured party

**Name of****Debtor(s):**

Include only if debtor(s) are not an addressee

**For a public disposition:**

We will sell or lease or license, as applicable, the (describe collateral) to the highest qualified bidder in public as follows:

**Day and Date:****Time:****Place:****For a private disposition:**

We will sell or lease or license, as applicable, the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or lease or license, as applicable, for a charge of \$. You may request an accounting by calling us at (telephone number).

**NOTIFICATION OF DISPOSITION OF COLLATERAL***To: (Name of debtor, obligor, or other person to which the notification is sent)**From: (Name, address, and telephone number of secured party)**{1} Name of any debtor that is not an addressee: (Name of each debtor)**{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:**(Date)**(Time)**(Place)**{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.**{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.**{5} If you request an accounting you must pay a charge of \$ (amount).**{6} You may request an accounting by calling us at (telephone number).**[End of Form]**(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):**(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.**(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.**(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.**(4) Include and complete items {4} and {6}.**(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.***§ 8.9A-614. Contents and form of notification before disposition of collateral; consumer-goods transaction.***(a) Contents and form of notification. In a consumer-goods transaction, the following rules apply:**(1) A notification of disposition must provide the following information:**(A) the information specified in § 8.9A-613 (1) 8.9A-613(a)(1);**(B) a description of any liability for a deficiency of the person to which the notification is sent;**(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under § 8.9A-623 is available; and**(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.**(2) A particular phrasing of the notification is not required.**(3) The following form of notification, when completed in accordance with the instructions in subsection (b), provides sufficient information:***Name and address of secured party****Date**

**NOTICE OF OUR PLAN TO SELL PROPERTY**

Name and address of any obligor who is also a debtor

Subject:

Identification of Transaction

We have your (describe collateral), because you broke promises in our agreement.

For a public disposition:

We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

For a private disposition:

We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (telephone number).

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) or write us at (secured party's address) and request a written explanation. We will charge you \$for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

If you need more information about the sale call us at (telephone number) or write us at (secured party's address).

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(names of all other debtors and obligors, if any)

(Name and address of secured party)

(Date)

**NOTICE OF OUR PLAN TO SELL PROPERTY**

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

You may attend the sale and bring bidders if you want.

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{3} The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

{4} You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

{5} If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) {7} and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

{8} We will charge you \$ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

{10} We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this title.

(6) If a notification under this section is not in the form of paragraph (3), law other than this title determines the effect of including information not required by paragraph (1).

*(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):*

*(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.*

*(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.*

*(3) Include and complete items {3}, {4}, {5}, {6}, and {7}.*

*(4) In item {5}, include and complete any one of the three alternative methods for the explanation—writing, writing or electronic record, or electronic record.*

*(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication—writing or electronic communication—for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.*

*(6) In item {7}, include and complete the method or methods for the explanation—writing, writing or electronic record, or electronic record—included in item {5}.*

*(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.*

*(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication—electronic communication—for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.*

*(9) If item {10} does not apply, insert "None" after "agreement:".*

**§ 8.9A-615. Application of proceeds of disposition; liability for deficiency and right to surplus.**

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under § 8.9A-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an ~~authenticated~~ *a signed* demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an ~~authenticated~~ *a signed* demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a) (3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under § 8.9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a) (4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:



(1) the debtor is not entitled to any surplus; and  
 (2) the obligor is not liable for any deficiency.  
 (f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

**§ 8.9A-616. Explanation of calculation of surplus or deficiency.**

(a) Definitions. In this section:

(1) "Explanation" means a ~~writing~~ *record* that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) ~~authenticated~~ *signed* by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under § 8.9A-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under § 8.9A-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand *in a record* on the consumer obligor after the disposition for payment of the deficiency; and

(B) within fourteen days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. To comply with subsection (a) (1) (B), a ~~writing~~ *an explanation* must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

(d) Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b) (1). The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

**§ 8.9A-619. Transfer of record or legal title.**

(a) "Transfer statement." In this section, "transfer statement" means a record ~~authenticated~~ *signed* by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its postdefault remedies with respect to the collateral;  
 (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral;  
 and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this title and does not of itself relieve the secured party of its duties under this title.

**§ 8.9A-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.**

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) the debtor consents to the acceptance under subsection (c);

(2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal ~~authenticated~~ *signed* by:

(A) a person to which the secured party was required to send a proposal under § 8.9A-621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to § 8.9A-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in ~~an authenticated~~ *a signed* record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ *signed* after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ *signed* after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection ~~authenticated~~ *signed* by the debtor within twenty days after the proposal is sent.

(d) Effectiveness of notification. To be effective under subsection (a) (2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to § 8.9A-621, within twenty days after notification was sent to that person; and

(2) in other cases:

(A) within twenty days after the last notification was sent pursuant to § 8.9A-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) Mandatory disposition of consumer goods.

A secured party that has taken possession of collateral shall dispose of the collateral pursuant to § 8.9A-610 within the time specified in subsection (f) if:

(1) sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. To comply with subsection (e), the secured party shall dispose of the collateral:

(1) within ninety days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and ~~authenticated~~ *signed* after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may

not accept collateral in partial satisfaction of the obligation it secures.

**§ 8.9A-621. Notification of proposal to accept collateral.**

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an ~~authenticated~~ *a signed* notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 8.9A-311 (a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

**§ 8.9A-624. Waiver.**

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 8.9A-611 only by an agreement to that effect entered into and ~~authenticated~~ *signed* after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under § 8.9A-620 (e) only by an agreement to that effect entered into and ~~authenticated~~ *signed* after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 8.9A-623 only by an agreement to that effect entered into and ~~authenticated~~ *signed* after default.

**§ 8.9A-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.**

(a) Limitation of liability of secured party for noncompliance with title. ~~Unless~~ *Subject to subsection (f), unless* a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this title; and

(2) the secured party's failure to comply with this title does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. ~~A~~ *Subject to subsection (f), a* secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under § 8.9A-625 (c) (2) for its failure to comply with § 8.9A-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under § 8.9A-625 (c) (2) more than once with respect to any one secured obligation.

(f) *Limitation of liability under subsections (a) and (b) does not apply. Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:*

- (1) *the person is a debtor or obligor; and*
- (2) *the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.*

#### TITLE 8.12.

#### CONTROLLABLE ELECTRONIC RECORDS.

##### **§ 8.12-101. Title.**

*This title shall be known and may be cited as Uniform Commercial Code—Controllable Electronic Records.*

##### **§ 8.12-102. Definitions.**

(a) *Title 8.12 definitions. In this article:*

(1) *"Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 8.12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.*

(2) *"Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.*

(3) *"Transferable record" has the meaning provided for that term in:*

(A) *Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1), as amended; or*

(B) *Section 59.1-494 of the Uniform Electronic Transactions Act (§§ 59.1-479 et seq.).*

(4) *"Value" has the meaning provided in Section 3-303(a), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.*

(b) *Definitions in Article 9. The definitions in Article 9 of "account debtor," "controllable account," "controllable payment intangible," "chattel paper," "deposit account," "electronic money," and "investment property" apply to this article.*

(c) *Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.*

##### **§ 8.12-103. Relation to Article 9 and consumer laws.**

(a) *Article 9 governs in case of conflict. If there is conflict between this article and Article 9, Article 9 governs.*

(b) *Applicable consumer law and other laws. A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.*

##### **§ 8.12-104. Rights in controllable account, controllable electronic record, and controllable payment intangible.**

(a) *Applicability of section to controllable account and controllable payment intangible. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.*

(b) *Control of controllable account and controllable payment intangible. To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.*

(c) *Applicability of other law to acquisition of rights. Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.*

(d) *Shelter principle and purchase of limited interest. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.*

(e) *Rights of qualifying purchaser. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.*

(f) *Limitation of rights of qualifying purchaser in other property. Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.*

(g) *No-action protection for qualifying purchaser. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in*

*conversion, replevin, constructive trust, equitable lien, or other theory.*

*(h) Filing not notice. Filing of a financing statement under Article 9 is not notice of a claim of a property right in a controllable electronic record.*

**§ 8.12-105. Control of controllable electronic record.**

*(a) General rule: control of controllable electronic record. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:*

*(1) gives the person:*

*(A) power to avail itself of substantially all the benefit from the electronic record; and*

*(B) exclusive power, subject to subsection (b), to:*

*(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and*

*(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and*

*(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).*

*(b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:*

*(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or*

*(2) the power is shared with another person.*

*(c) When power not shared with another person. A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:*

*(1) the person can exercise the power only if the power also is exercised by the other person; and*

*(2) the other person:*

*(A) can exercise the power without exercise of the power by the person; or*

*(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.*

*(d) Presumption of exclusivity of certain powers. If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.*

*(e) Control through another person. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:*

*(1) has control of the electronic record and acknowledges that it has control on behalf of the person; or*

*(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.*

*(f) No requirement to acknowledge. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.*

*(g) No duties or confirmation. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or Article 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.*

**§ 8.12-106. Discharge of account debtor on controllable account or controllable payment intangible.**

*(a) Discharge of account debtor. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:*

*(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or*

*(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.*

*(b) Content and effect of notification. Subject to subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:*

*(1) is signed by a person that formerly had control or the person to which control was transferred;*

*(2) reasonably identifies the controllable account or controllable payment intangible;*

*(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;*

*(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and*

*(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.*

(c) *Discharge following effective notification.* After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) *When notification ineffective.* Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of the account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) *Proof of transfer of control.* Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) *What constitutes reasonable proof.* A person furnishes reasonable proof under subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1), that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers specified in paragraphs (1) and (2) to another person.

(g) *Rights not waivable.* Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

(h) *Rule for individual under other law.* This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

#### **§ 8.12-107. Governing law.**

(a) *Governing law: general rule.* Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this article.

(b) *Governing law: Section 8.12-106.* For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by Section 12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) *Controllable electronic record's jurisdiction.* The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this title or the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) *Applicability of Title 8.12.* If subsection (c)(5) applies and Title 8.12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Title 8.12 were in effect in the District of

Columbia without material modification. In this subsection, "Title 8.12" means Article 12 of Uniform Commercial Code Amendments (2022).

(e) Relation of matter or transaction to controllable electronic record's jurisdiction not necessary. To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) Rights of purchasers determined at time of purchase. The rights acquired under Section 12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

#### **TITLE 8.13.**

#### **2022 AMENDMENTS - EFFECTIVE DATE AND TRANSITION PROVISIONS.**

##### **PART 1.**

##### **§ 8.13-101. Title.**

This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

##### **§ 8.13-102. Definitions.**

(a) Article A Definitions. In this article:

(1) "Act" means the Uniform Commercial Code Amendments (2022).

(2) "Adjustment date" means the date that is one year after the effective date of this act.

(3) "Title 8.12" means Title 8.12 of the Uniform Commercial Code (§§ 8.12-101 et seq.).

(4) "Title 8.12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(5) "Effective date of this act" means July 1, 2025.

(b) Definitions in other articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

"Controllable account". Section 8.9A-102.

"Controllable electronic record". Section 8.12-102.

"Controllable payment intangible". Section 8.9A-102.

"Electronic money". Section 8.9A-102.

"Financing statement". Section 8.9A-102.

(c) Title 8.1A definitions and principles. Title 8.1A contains general definitions and principles of construction and interpretation applicable throughout this article.

##### **PART 2.**

##### **§ 8.13-201. Savings clause.**

Except as provided in Part 3, a transaction validly entered into before the effective date of this act and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this act had not taken effect.

##### **PART 3.**

##### **§ 8.13-301. Savings clause.**

(a) Pre-effective-date transaction, lien, or interest. Except as provided in this part, Title 8.9A as amended by this act and Title 8.12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before the effective date of this act.

(b) Continuing validity. Except as provided in subsection (c) and §§ 8.13-302 through 8.13-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this act and was not governed by the Uniform Commercial Code, but would be subject to Title 8.9A as amended by this act or Title 8.12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective-date proceeding. This act does not affect an action, case, or proceeding commenced before the effective date of this act.

##### **§ 8.13-302. Security interest perfected before effective date.**

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this act is a perfected security interest under this act if, on the effective date of this act, the requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this act, but the requirements for enforceability or perfection under this act are not satisfied on the effective date of this act, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this act or the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under § 8.9A-203, as amended by this act, before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this act are satisfied before the time specified in paragraph (1).

**§ 8.13-303. Security interest unperfected before effective date.**

A security interest that is enforceable immediately before the effective date of this act but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 9-203, as amended by this act, on the effective date of this act or before the adjustment date; and

(3) becomes perfected:

(A) without further action, on the effective date of this act if the requirements for perfection under this act are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

**§ 8.13-304. Effectiveness of actions taken before effective date.**

(a) Pre-effective-date action; attachment and perfection before adjustment date. If action, other than the filing of a financing statement, is taken before the effective date of this act and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this act, the action is effective to perfect a security interest that attaches under this act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this act before the adjustment date.

(b) Pre-effective-date filing. The filing of a financing statement before the effective date of this act is effective to perfect a security interest on the effective date of this act to the extent the filing would satisfy the requirements for perfection under this act.

(c) Pre-effective-date enforceability action. The taking of an action before the effective date of this act is sufficient for the enforceability of a security interest on the effective date of this act if the action would satisfy the requirements for enforceability under this act.

**§ 8.13-305. Priority.**

(a) Determination of priority. Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Established priorities. Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this act, Title 8.9A as in effect before the effective date of this act determines priority.

(c) Determination of certain priorities on adjustment date. On the adjustment date, to the extent the priorities determined by Title 8.9A as amended by this act modify the priorities established before the effective date of this act, the priorities of claims to Title 8.12 property and electronic money established before the effective date of this act cease to apply.

**§ 8.13-306. Priority of claims when priority rules of Title 8.9A do not apply.**

(a) Determination of priority. Subject to subsections (b) and (c), Title 8.12 determines the priority of conflicting claims to Title 8.12 property when the priority rules of Title 8.9A as amended by this act do not apply.

(b) Established priorities. Subject to subsection (c), when the priority rules of Article 9 as amended by this act do not apply and the priorities of claims to Title 8.12 property were established before the effective date of this act, law other than Title 8.12 determines priority.

(c) Determination of certain priorities on adjustment date. When the priority rules of Article 9 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Title 8.12 property established before the effective date of this act cease to apply on the adjustment date.

**PART 4.**

**§ 8.13-401. Effective date.**

This act shall take effect on July 1, 2025.

**2. That this act may be referred to as the Uniform Commercial Code Amendments (2022).**

**3. That the provisions of this act shall become effective on July 1, 2025.**