



**Council of Delegates  
Meeting**

**May 09, 2023  
Ohio Statehouse  
Columbus**

**Council of Delegates Meeting**  
**Tuesday, May 9, 2023**  
**1:00 PM**

*President Dean L. Wilson presiding*

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**COUNCIL OF DELEGATES MEETING AGENDA**  
**Tuesday, May 9, 2023**  
**1:00 p.m.**

*President Dean L. Wilson presiding*

I. Roll Call of the Council, CEO and Corporate Secretary Mary Amos Augsburger

II. Committee and Section Reports

A. Report of the Banking, Commercial and Bankruptcy Law Committee

To adopt the amendments to Articles 2 and 9 of the Uniform Commercial Code (R.C. Chapters 1302 and 1309) and new Article 12 (to create a new R.C. Chapter 1312) as approved by the Uniform Law Commission in July 2022.

B. Report of the Estate Planning, Trust and Probate Law Section

To amend R.C. §5801.07 (B) in order to clarify that an Ohio trustee does not have an affirmative duty to move the situs of a trust's administration to a location outside of Ohio.

C. Report of the Real Property Section

To amend R.C. §§5301.071 and 5301.255 to make it mandatory to record a memorandum of trust or other instrument complying with R.C. §5301.255 when title to real property is held by the trustee of a disclosed trust, and provide a four-year curative period when such instrument has not been recorded.

D. Report of the Real Property Section

To amend R.C. §§4123.76, 4123.78, 4141.23, 5719.04, 5739.13, 5747.13, 5749.07 and 3123.67 to make it mandatory that certain liens filed with county recorders includes the last known address of the lien debtor(s).

III. Adjournment

**Awards will also be presented throughout the day for the Ohio Bar Medal, the Nettie Cronise Lutes Award, the Eugene R. Weir Award, the Lawyer Legislator Distinguished Service Award, the John and Ginny Elam Pro Bono Award, the Ohio Access to Justice Foundation Presidential Award and the Ohio Access to Justice Foundation Voice of Justice Award.**

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**Ohio State Bar Association  
2022-2023 Council of Delegates  
Dean L. Wilson, President**

**District 1**

**Counties:**     Butler, Clermont, Clinton, Hamilton and Warren

**Board of Governors Representative:**

**Term End Date:**

Theresa L. Nelson, 312 Walnut Street, Suite 1800,  
Cincinnati, OH 45202

06/30/23

**Council of Delegates (18):**

**Term End Date:**

Eric K. Combs, 255 E. 5<sup>th</sup> Street, Suite 1900,  
Cincinnati, OH 45202

06/30/24

Sara Cooperrider, 425 Walnut Street, Suite 1800,  
Cincinnati, OH 45202

06/30/24

Gary T. Stedronsky, 1714 W. Galbraith Road  
Cincinnati, OH 45239

06/30/24

John D. Holschuh, Jr., 600 Vine Street, Suite 2700,  
Cincinnati, OH 45202

06/30/24

John D. Holschuh, III, 600 Vine Street, Suite 2700,  
Cincinnati, OH 45202

06/30/24

Doloris F. Learmonth, 3498 Forest Oak Court,  
Cincinnati, OH 45208

06/30/24

Kelly M. Myers, 600 Vine Street, 9<sup>th</sup> Floor,  
Cincinnati, OH 45202

06/30/24

Zachary D. Prendergast, 250 E. 5<sup>th</sup> Street, Suite 310,  
Cincinnati, OH 45202

06/30/24

James C. Shew, 16 N. Main Street,  
Middletown, OH 45042

06/30/24

Terrence M. Donnellon, 9079 Montgomery Road,  
Cincinnati, OH 45242

06/30/23

Richard I. Fleischer, 810 Sycamore Street, 2 <sup>nd</sup> Floor, Cincinnati, OH 45202	06/30/23
Gregory S. French, 1244 Padlock Hills Avenue, Cincinnati, OH 45229	06/30/23
Michael L. Gay, 201 E. Fifth Street, Suite 900, Cincinnati, OH 45202	06/30/23
Barbara J. Howard, 120 E. Fourth Street, Suite 960, Cincinnati, OH 45202	06/30/23
Stephen C. Lane, 7419 Kingsgate Way, Suite A, West Chester, OH 45069	06/30/23
Lauren E. Raizk, 145 N. South Street, Wilmington, OH 45177	06/30/23
Charles E. Strain, 1535 Cohasset Drive, Cincinnati, OH 45255	06/30/23
John J. Williams, 600 Vine Street, Suite 1400, Cincinnati, OH 45202	06/30/23

### **District 2**

**Counties: Darke, Miami, Montgomery, Preble and Shelby**

**Board of Governors Representative:**

**Term End Date:**

Magistrate Kathleen S. Lenski, 380 W. 2 <sup>nd</sup> Street, Dayton, OH 45422-4240	06/30/24
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**Council of Delegates (7):**

**Term End Date:**

Judge Gary J. Carter, 201 W. Poplar St., Sidney, OH 45365	06/30/24
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Jared B. Chamberlain, 215 W. Water Street, Troy, OH 45373	06/30/23
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Elizabeth J. Orlando, 301 W. Third Street, 5 <sup>th</sup> Floor, Dayton, OH 45422	06/30/23
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Judge Jenifer K. Overmyer, 101 E. Main Street, 2 <sup>nd</sup> Floor, Eaton, OH 45320	06/30/23
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Matthew J. Pierron, 507 S. Broadway Street,  
Greenville, OH 45331 06/30/23

Michael W. Sandner, 40 N. Main Street, Suite 2700,  
Dayton, OH 45423 06/30/23

Katrina L. Wahl, 40 N. Main Street, Suite 2700,  
Dayton, OH 45423 06/30/23

### **District 3**

**Counties:** Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert,  
Williams and Wood

**Board of Governors Representative:** **Term End Date:**

Matthew A. Miller, 120 S. Walnut Street  
Paulding, OH 45879 06/30/25

**Council of Delegates (3):** **Term End Date:**

Ryan S. Breininger, 117 W. Maple Street,  
Bryan, OH 43506 06/30/24

Pamela A. Heringhaus, 1 Courthouse Square,  
Bowling Green, OH 43402 06/30/24

Clayton Crates, 901 Ralston Ave.,  
Defiance, OH 43512 06/30/23

### **District 4**

**Counties:** Lucas, Ottawa and Sandusky

**Board of Governors Representative:** **Term End Date:**

Vallie T. Bowman-English, 555 N. Erie Street,  
Toledo, OH 43604 06/30/23

**Council of Delegates (6):** **Term End Date:**

Joseph K. Cole, 300 Madison Avenue, Ste. 1000  
Toledo, OH 43604 06/30/24

Shelly R. Kennedy, 725 W. Broadway Street, Maumee, OH 43537	06/30/24
Linde H. Webb, 2630 Edgehill Road, Ottawa Hills, OH 43615	06/30/24
Adam S. Nightingale, One SeaGate, 24 <sup>th</sup> Floor, P.O. Box 10032, Toledo, OH 43699	06/30/23
Sarah K. Skow, 900 Adams Street, Toledo, OH 43604	06/30/23
Kyle Silvers, 405 Madison Avenue, Suite 1000 Toledo, OH 43604	06/30/23

### **District 5**

**Counties:**     **Crawford, Delaware, Marion, Morrow, Seneca and Wyandot**

<b>Board of Governors Representative:</b>	<b>Term End Date:</b>
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Robert J. Rice, 145 N. Union Street, Delaware, OH 43015	06/30/23
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<b>Council of Delegates (3):</b>	<b>Term End Date:</b>
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Russell J. Long, 111 W. Rensselaar St, Bucyrus, OH 44820	06/30/24
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Hari K. Sathappan, 8251 Liberty Road N., Powell, OH 43065	06/30/24
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Ronald D. Cramer, 116 S. Main Street, Marion, OH 43302	06/30/23
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### **District 6**

**Counties:**     **Champaign, Clark, Fayette, Greene, Logan, Madison and Union**

<b>Board of Governors Representative:</b>	<b>Term End Date:</b>
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Gregory R. Flax, 500 N. Fountain Avenue, Urbana, OH 43078	06/30/25
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**Council of Delegates (3):****Term End Date:**

William C. Hicks, P. O. Box 1687,  
Springfield, OH 45501

06/30/24

Amanda J. Lantz, P.O. Box 1488, 500 N. Fountain Ave,  
Springfield, OH 45501-1488

06/30/23

Douglas M. Smith, 112 N. Main Street,  
Bellefontaine, OH 43311

06/30/23

**District 7**

**Counties:     Franklin**

**Board of Governors Representative:****Term End Date:**

Lisa Pierce Reisz, 52 East Gay Street,  
Columbus, OH 43215

06/30/23

Michael E. Flowers, 41 S. High St., Ste. 2200,  
Columbus, OH 43215

06/30/24

**Council of Delegates (27):****Term End Date:**

Belinda S. Barnes, 471 E. Broad Street, 19th Floor,  
Columbus, OH 43215

06/30/24

Sally W. Bloomfield, 100 S. Third Street,  
Columbus, OH 43215

06/30/24

Leah F. Curtis, 280 N. High Street, 6<sup>th</sup> Floor  
Columbus, OH 43215

06/30/24

Paul Giorgianni, 1538 Arlington Avenue,  
Columbus, OH 43212

06/30/24

Eric W. Johnson, 400 S. Fifth Street, Suite 101,  
Columbus, OH 43215

06/30/24

Helen Mac Murray, 6530 West Campus Oval, Suite 210,  
New Albany, OH 43054

06/30/24

Jane Higgins Marx, 366 E. Broad Street,  
Columbus, OH 43215

06/30/24

Heather G. Sowald, 400 S. Fifth Street, Suite 101, Columbus, OH 43215	06/30/24
Magistrate Elizabeth J. Watters, 345 S. High Street, Room 5807, Columbus, OH 43215	06/30/24
Bradley B. Wrightsel, 3300 Riverside Drive, Suite 100, Columbus, OH 43221	06/30/24
Thomas J. Bonasera, 191 W. Nationwide Boulevard, Ste. 300, Columbus, OH 43215	06/30/23
David A. Bressman, 5186 Paul G. Blazer Parkway, Dublin, OH 43017	06/30/23
Stephen E. Chappelear, 100 E. Broad Street, 21 <sup>st</sup> Floor, Columbus, OH 43215	06/30/23
Christopher T. Curry, 483 Dempsey Road, Westerville, OH 43081	06/30/23
Hilary R. Damaser, 30 E. Broad Street, 26 <sup>th</sup> Floor, Columbus, OH 43215	06/30/23
Polly J. Harris, 41 South High Street, Suite 2900, Columbus, OH 43215	06/30/23
Caitlyn Nestleroth Johnson, 30 E. Broad Street, 17 <sup>th</sup> Floor, Columbus, OH 43215	06/30/23
Judge Stephen L. McIntosh, 345 S. High Street, Ct Rm 4B, Columbus, OH 43215	06/30/23
Elizabeth A. Mote, 1350 W. Fifth Avenue, Suite 330, Columbus, OH 43212	06/30/23
Scott R. Mote, 1650 Lake Shore Drive, Suite 375, Columbus, OH 43204	06/30/23
Andrew W. Owen, 65 East State Street, Suite 1100, Columbus, OH 43215	06/30/23
Jalyn Parks, 1465 E. Broad Street, Suite B, Columbus, OH 43205	06/30/23

Beatrice K. Sowald, 125 Eastmoor Boulevard, Columbus, OH 43209	06/30/23
E. Jane Taylor, 318 E. Beck Street, Columbus, OH 43206	06/30/23
Audrey E. Varwig, 65 E. State Street, Suite 1510, Columbus, OH 43215	06/30/23
Brian Kelso, 843 City Park Avenue., Columbus, OH 43206	06/30/23
Mindy K. Yocum, 7652 Sawmill Road, Suite 263, Dublin, OH 43016	06/30/23

### **District 8**

**Counties:**     **Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton**

<b>Board of Governors Representative:</b>	<b>Term End Date:</b>
Frederick C. Fisher, Jr., 311 Park Avenue, Ironton, OH 45638	06/30/24

<b>Council of Delegates (2):</b>	<b>Term End Date:</b>
Richard W. Clagg, 16 E. Broadway Street, Wellston, OH 45692	06/30/24
Brian M. Cremeans, 311 Park Avenue Ironton, OH 45638	06/30/23

### **District 9**

**Counties:**     **Coshocton, Fairfield, Knox, Licking, Muskingum and Perry**

<b>Board of Governors Representative:</b>	<b>Term End Date:</b>
Wendi Fowler, 1 S. Main St., Mount Vernon, OH 43050	06/30/25
Jan A. Baughman, 111 N. 4 <sup>th</sup> Street, Zanesville, OH 43701	06/30/25

**Council of Delegates (3):****Term End Date:**

Jennifer Sitterley, 166 W. Main Street, Suite 201  
Lancaster, OH 43130

06/30/24

Jason W. Given, 318 Chestnut Street,  
Coshocton, OH 43812

06/30/23

Patrick S. Carpenter, 32 North Park Place, P.O. Box 309,  
Newark, OH 43058

06/30/23

**District 10**

**Counties:** Ashland, Erie, Holmes, Lorain, Medina, Richland, Huron and Wayne

**Board of Governors Representative:****Term End Date:**

Christopher Lake Brown, 30 N. Diamond Street,  
Mansfield, OH 44902

06/30/23

**Council of Delegates (6):****Term End Date:**

Gowri V. Hampole, 124 Middle Avenue, 4<sup>th</sup> Floor,  
Elyria, OH 44035

06/30/24

Robert J. Reynolds, P. O. Box 958,  
Wooster, OH 44691

06/30/24

Patricia A. Walker, 231 S. Broadway St.,  
Medina, OH 44256

06/30/24

Lee E. Belardo, 1001 Jaycox Rd., Suite 1,  
Avon, OH 44011

06/30/23

Kevin W. Donovan, 409 East Ave., Suite A,  
Elyria, OH 44035

06/30/23

Andrew P. Lycans, 225 N. Market St.,  
Wooster, OH 44691

06/30/23

**District 11**

**Counties:** Portage and Summit

**Board of Governors Representative:**

**Term End Date:**

William G. Chris, 50 S. Main St., 10<sup>th</sup> Floor,  
Akron, OH 44308

06/30/24

Montrella S. Jackson, 217 South High Street, Suite 713  
Akron, OH 44308

06/30/23

**Council of Delegates (8):**

**Term End Date:**

Karen D. Adinolfi, 222 S. Main Street, Suite 400,  
Akron, OH 44308

06/30/24

Peter Kratcoski, 11 S. River Street, Suite A  
Kent, OH 44240

06/30/24

Ronald S. Kopp, 222 S. Main Street, Suite 400,  
Akron, OH 44308

06/30/24

Maura E. Scanlon, 4040 Embassy Parkway, Suite 240,  
Akron, OH 44333

06/30/24

Terri E. Brunsdon, 2251 Front Street, Suite 206,  
Cuyahoga Falls, OH 44221

06/30/23

Melissa A. Graham-Hurd, 4030 Massillon Road, Suite B,  
Uniontown, OH 44685

06/30/23

Carmen V. Roberto, 3988 Greenridge Dr.,  
Uniontown, OH 44685

06/30/23

Bruce H. Wilson, 120 E. Mill Street, Suite 416,  
Akron, OH 44308

06/30/23

**District 12**

(1 vacancy for term ending 6/30/24)

**Counties:** Cuyahoga

**Board of Governors Representative:**

**Term End Date:**

Michael J. Frantz, Jr., 200 Public Square, Ste. 3000,  
Cleveland, OH 44114

06/30/25

**Council of Delegates (24):****Term End Date:**

Christa A.G. Heckman, 20788 N. Greystone Drive, Strongsville, OH 44149	06/30/24
Lisa A. Reid, 615 W. Superior Avenue, 11th Floor, Cleveland, OH 44113	06/30/24
Karen E. Rubin, 2904 Washington Blvd. Cleveland Heights, OH 44118	06/30/24
John P. Thomas, 301 Hamilton Drive, Broadview Heights, OH 44147	06/30/24
Klevis Bakiaj, 200 Public Square, Ste. 3000, Cleveland, OH 44114	06/30/24
Erin McDevitt-Frantz, 812 Huron Rd, Suite 650, Cleveland, OH 44115	06/30/24
Chris Hawley, 600 Superior Ave. E., Suite 2100, Cleveland, OH 44114	06/30/24
Ian Friedman, 1360 E. 9 <sup>th</sup> St., Suite 650, Cleveland, OH 44114	06/30/24
Alison Archer, 615 W. Superior Ave., Floor 11, Cleveland, OH 44113	06/30/24
Jonathan Scandling, 200 Public Square, Suite 3000, Cleveland, OH 44114	06/30/24
Keith A. Ashmus, 24380 Lake Road, Bay Village, OH 44140	06/30/23
Awatef Assad, 2079 E. 9 <sup>th</sup> St., Floor 7, Cleveland, OH 44115	06/30/23
Eileen M. Bitterman, 323 W. Lakeside Avenue, Suite 200, Cleveland, OH 44113	06/30/23
Jeffrey A. Brauer, 200 Public Square, Suite 2800, Cleveland, OH 44114	06/30/23

Luke T. Brewer, 623 W. St. Clair Avenue, Cleveland, OH 44113	06/30/23
Michael C. Brink, 6055 Parkland Avenue, Cleveland, OH 44124	06/30/23
Megan E. Goedecker, 812 Huron Road, Suite 650 Cleveland, OH 44115	06/30/23
Alicia N. Graves, 26110 Emery Road, Suite 250, Cleveland, OH 44128	06/30/23
Fredric E. Kramer, 4608 St. Clair Avenue, Cleveland, OH 44103	06/30/23
John P.L. Mills, 1300 Ontario Street, 13 <sup>th</sup> Floor Cleveland, OH 44113	06/30/23
Marlon A. Primes, 801 W. Superior Avenue, Suite 400, Cleveland, OH 44113	06/30/23
Daniel J. Ryan, 55 Public Square, Suite 2100, Cleveland, OH 44113	06/30/23
Nancy C. Schuster, 2913 Clinton Avenue, Cleveland, OH 44113	06/30/23

### **District 13**

**Counties:     Columbiana and Mahoning**

**Board of Governors Representative:**

**Term End Date:**

Ronald E. Slipski, 527 Greenmont Drive, Canfield, OH 44406	06/30/23
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**Council of Delegates (3):**

**Term End Date:**

J. Michael Thompson, 6 Federal Plaza Central, Ste. 1300, Youngstown, OH 44503	06/30/24
David “Chip” C. Comstock, Jr., 3701B Boardman Canfield Rd., Canfield, OH 44406	06/30/24
Mark A. Hutson, 33 Pittsburgh St., Columbiana, OH 44408	06/30/24

### **District 14**

**Counties:** Carroll, Stark and Tuscarawas

**Board of Governors Representative:**

**Term End Date:**

Daniel R. Griffith, 4481 Munson St., NW, Suite 200,  
Canton, OH 44718

06/30/24

**Council of Delegates (4):**

**Term End Date:**

Jennifer L. Thomas, P. O. Box 235,  
Carrollton, OH 44615

06/30/24

Howard L. Wernow, 4940 Munson Street NW,  
Suite 1100, Canton, OH 44718

06/30/24

Stephanie A. Lehota, 4775 Munson St. NW,  
Canton, OH 44735

06/30/23

Thomas P. Moushey, 1844 W. State Street, Suite A,  
Alliance, OH 44601

06/30/23

### **District 15**

**Counties:** Belmont, Guernsey, Harrison, Jefferson and Monroe

**Board of Governors Representative:**

**Term End Date:**

Bryan C. Conaway, 126 N. 9<sup>th</sup> Street,  
Cambridge, OH 43725

06/30/24

**Council of Delegate (2):**

**Term End Date:**

Kyle Bickford, 46457 National Road W.,  
Saint Clairsville, OH 43950

06/30/24

C. Keith Plummer, P. O. Box 640,  
Cambridge, OH 43725

06/30/23



**District 16**

**Counties:** Allen, Auglaize, Hardin and Mercer

**Board of Governors Representative:**

Amy B. Ikerd, 119 N. Walnut Street,  
Celina, OH 45822

**Term End Date:**

06/30/24

**Council of Delegates (2):**

Andrea L. Henning, 102 Devonshire Dr. #C,  
Lima, OH 45804

**Term End Date:**

06/30/24

Zach G. Ferrall, 146 E. Spring St.,  
St. Marys, OH 45885

06/30/24

**District 17**

**Counties:** Athens, Hocking, Meigs, Morgan, Noble and Washington

**Board of Governors Representative:**

Scott M. Robe, 14 W. Washington Street,  
Athens, OH 45701

**Term End Date:**

06/30/25

**Council of Delegates (2):**

Kristopher O. Justice, 424 2<sup>nd</sup> Street,  
Marietta, OH 45750

**Term End Date:**

06/30/24

James K. Stanley, 117 W. 2<sup>nd</sup> Street,  
Pomeroy, OH 45769

06/30/23

**District 18**

**Counties:** Ashtabula, Geauga, Lake and Trumbull

**Board of Governors Representative:**

Matthew G. Vansuch, 6550 Seville Drive, Ste. B,  
Canfield, OH 44406

**Term End Date:**

06/30/25

**Council of Delegates (4):****Term End Date:**

Samuel R. Martillotta, 11715 Riverwood Drive,  
Chardon, OH 44024

06/30/24

Matthew M. Ries, 108 Main Ave. SW, Suite 500  
Warren, OH 44481

06/30/24

Michael E. Hamper, III, 531 East Beech Street,  
Jefferson, OH 44047

06/30/23

Anna M. Parise, 60 S. Park Place,  
Painesville, OH 44077

06/30/23

**AT-LARGE DELEGATES****Term End Date:**

Martin E. Mohler, 405 Madison Avenue, Ste. 1000,  
Toledo, OH 43604

06/30/24

Gina Russo, 375 S. High Street, 6<sup>th</sup> Floor, 12C  
Columbus, OH 43215

06/30/24

John S. Stith, 250 E. 5<sup>th</sup> Street, Ste. 2200,  
Cincinnati, OH 45202

06/30/24

Carol Seubert Marx, 106 Starrit Street, Ste. 210,  
Lancaster, OH 43130

06/30/23

Rachel A. Sabo, 6612 Dalmore Lane,  
Dublin, OH 43016

06/30/23

Lawrence J. Scanlon, 57 S. Broadway St., 3<sup>rd</sup> Floor,  
Akron, OH 44308

06/30/23

**Parliamentarian****Term End Date:**

Robert A. Brundrett, 33 N. High Street, 6th Floor  
Columbus, OH 43215

06/30/23

**At-Large Board of Governors Appointees**

	<b>Term End Date:</b>
Jan A. Baughman, 111 N. 4 <sup>th</sup> Street, Zanesville, OH 43701	06/30/25
Michael E. Flowers, 41 S. High St., Ste. 2200, Columbus, OH 43215	06/30/24
Montrella S. Jackson, 217 S. High Street, Ste. 713, Akron, OH 44308	06/30/23

**Ohio Bar Elected Officers**

	<b>Term End Date:</b>
David H. Lefton, Immediate Past-President, 3074 Madison Road, Cincinnati, OH 45209	06/30/23
Judge Dean Wilson, President, 105 N. Main St., New Lexington, OH 43764	06/30/23
Michelle L. Kranz, President-Elect 6627 W. Central Avenue, Ste. 100, Toledo, OH 43617	06/30/23

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**OHIO STATE BAR ASSOCIATION  
BYLAWS OF THE  
COUNCIL OF DELEGATES**

Section I

In the absence or disability of both the president and president-elect of the Association, the meetings of this Council shall be presided over by a chairperson pro tempore, elected by a majority vote of the Council members present, which chairperson, when elected, shall serve in that capacity only during the sessions of the meeting at which he or she is elected. The secretary shall convene the first session of any meeting from or at which both the president and president-elect are absent or unable to preside, and preside during the election of such chairperson pro tempore.

Section II

No action shall be taken upon reports of committees or sections of the Association unless they are submitted in writing; and no such committee or section report, which has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members, as directed by the Board of Governors, prior to the date of the meeting of the Council, shall be read orally to the meeting unless, by motion adopted by two-thirds vote of the delegates present, such a reading be ordered.

Section III

No person shall, without the consent of two-thirds of the delegates present, be entitled to speak more than once or for more than five minutes on any issue before the Council. Reports presented by committees and sections shall be limited to ten minutes, provided, however, that the ten-minute restriction shall not apply to the discussion of a proposal subsequent to its initial presentation. A member of the council or person presenting a report or resolution shall be entitled to open and close the discussion on the matter under consideration.

Section IV

Voting on all matters shall be by voice vote unless the presiding officer is in doubt concerning the result, or a division of the house is requested by any member, in either of which events a standing vote shall be taken.

Section V

The president of the Association shall, with the advice and consent of the Board of Governors, appoint a parliamentarian to aid and assist him or the chairperson at all meetings of the Council of Delegates. Said parliamentarian, whose term of office shall be concurrent with that of the president, shall not be a member of the current Board of Governors or the Council of Delegates.

Section VI

The order of business of all meetings of the Council of Delegates shall be the following:

1. Roll call.
2. Action of minutes of previous meetings.
3. Unfinished business from preceding day, if any.
4. Special order of business for the day, as previously prepared by the president, president-elect and secretary of the Association.
5. New business.

## Section VII

Roberts' Rules of Order shall govern the Council of Delegates in all its proceedings, except to the extent to which these bylaws are, or the Constitution of the Association is, inconsistent therewith.

## Section VIII

These bylaws may be amended by the majority vote of the delegates present at any meetings, provided the proposed amendment has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members as directed by the Board of Governors at least once, not less than one week prior to the date of the meeting at which action on said amendment is taken.

*As amended by the Council of Delegates November 7, 2003*

Resolution No. 2 (*Policy only – not a part of the actual COD bylaws*)

WHEREAS there may be more proposed bills recommended by the Association committees and sections and approved by the Council of Delegates for introduction in the legislature than can reasonably be handled in the legislature effectively;

THEREFORE, BE IT RESOLVED that the responsibility for the overall legislative planning for the legislative sessions be committed to the Board of Governors with the power to select the legislation which will be introduced if all of the proposed legislation approved by the Council of Delegates cannot, in the judgment of the Board of Governors, feasibly be sponsored by the Association at such legislative session, and that the committees and sections of the Association be advised of this action.

*As amended by the Council of Delegates November 7, 2003.*

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1 **REPORT OF THE BANKING, COMMERCIAL AND BANKRUPTCY LAW**  
2 **COMMITTEE**

3  
4 *To the Council of Delegates*

5  
6 To adopt the amendments to Articles 2 and 9 of the Uniform Commercial Code (R.C. Chapters  
7 1302 and 1309) and new Article 12 (to create a new R.C. Chapter 1312) as approved by the  
8 Uniform Law Commission in July 2022.

9  
10 Respectfully submitted,

11  
12 Daniel M. Anderson, Columbus  
13 Chair, Banking, Commercial and Bankruptcy Law Committee  
14

15  
16 **Summary and Rationale for Proposal**  
17

18 The Uniform Commercial Code (UCC) is a set of rules to govern commercial transactions. For  
19 over sixty years the UCC has worked to facilitate commerce throughout the United States because  
20 it has been adopted in nearly identical form by every U.S. jurisdiction. As a result, it does not  
21 matter if the parties to a transaction are in different states – the law governing the transaction is  
22 substantially the same. The UCC was originally adopted in Ohio in 1962, and has been codified  
23 ever since, with various amendments in Chapters 1301 through 1305 and 1307 through 1311 of  
24 the Ohio Revised Code. (Article 6, formerly codified in Chapter 1306, was repealed, on the ULC’s  
25 recommendation, in 2000. Chapter 1306 now contains other uniform acts (the Uniform Electronic  
26 Transactions Act), and other non-uniform legislation.  
27

28 With one minor exception (Article 2 – “Sales of Goods” in Louisiana) UCC has been adopted in  
29 all 50 states, the District of Columbia, the Republic of Puerto Rico, and the U.S. Virgin Islands. It  
30 has been so widely accepted because its provisions are sensible and consistent with most people’s  
31 expectations. For example, if a merchant agreed to sell the same television to two different buyers,  
32 obviously only one of them could take delivery of the television and use it. Under the UCC, the  
33 merchant would be required to either provide an equally good television to the second buyer or to  
34 refund the purchase price. This is a simple example, but illustrative. The UCC contains many such  
35 rules to provide ready answers when something goes wrong with a transaction.  
36

37 Most UCC rules, when third party rights are not involved, are default rules. The parties to any  
38 particular transaction can agree to different terms in a contract and their agreement will be  
39 enforceable. But if they have not agreed otherwise the UCC default rules will apply. In this way,  
40 the UCC provides legal certainty, which in turn gives many millions of Americans the confidence  
41 to conduct business with strangers. Because this uniform set of rules is in place, strong commercial  
42 markets have developed and thrived.  
43

44 The UCC is updated periodically to keep pace with legal and technological developments. The  
45 2022 amendments will ensure that the UCC continues to facilitate commercial activity well into  
46 the future by implementing the following updates:



- 47 • **Digital Assets.** A new Article 12 provides rules for transactions involving certain new type  
48 of digital assets, including cryptocurrency and non-fungible tokens (NFTs). Under the  
49 UCC, these intangible assets are called “controllable electronic records,” or “CERs.” To  
50 ensure that the UCC remains relevant, CERs are defined to include not only assets created  
51 using today’s distributed ledger or “blockchain” technology, but also any assets that may  
52 function similarly using future technologies.
- 53 ○ **Control of Digital Assets.** Section 12-105 introduces the concept of “control” as it  
54 applies to intangible property such as cryptocurrency. Control of an electronic  
55 record is roughly analogous to possession of a tangible asset – the person with  
56 control has the power to “spend” the intangible asset by transferring it to another  
57 person in exchange for goods or services. The person with control can also prevent  
58 anyone else from using the property. The person with control can be anonymous,  
59 but must be positively identifiable in some manner, such as through the use of a  
60 cryptographic key.
- 61 ○ **Security Interests in Digital Assets.** Amendments to Article 9 will facilitate the  
62 use of digital assets as collateral for loans. Under the prior version of Article 9,  
63 there was no effective way for a lender to perfect a security interest in digital assets  
64 except by filing a financing statement, and no way to ensure priority of the security  
65 interest without obtaining a release or subordination from all other secured parties,  
66 if they are even disclosed. The amended Article 9 will provide that a lender with  
67 control of digital assets has a perfected security interest with priority over the  
68 interests of any other lenders who do not have control.
- 69 ○ **Tethered Assets.** Some digital assets may not have intrinsic value, but rather  
70 represent a right to payment. A simple example would be an electronic promissory  
71 note with terms stating the borrower agrees to pay the lender a fixed monthly  
72 payment for a period of time. When the promissory note was executed on paper,  
73 the paper itself could be sold by the original lender to another party who bought not  
74 just the paper itself, but the right to receive future payments from the borrower. The  
75 right to payment was “tethered” to the paper. The 2022 amendments will provide  
76 similar rules for “controllable accounts” and “controllable payment intangibles,”  
77 which are simply digital versions of a tethered asset, e.g., a promissory note in  
78 electronic form rather than in a writing.
- 79 ○ **Take-Free Rules.** The UCC includes rules to protect innocent parties who receive  
80 digital assets subject to competing property claims. For example, imagine a bank  
81 robber who uses stolen cash to purchase goods at a store. If the store accepted the  
82 cash in exchange for valuable goods without knowing that the cash was stolen, the  
83 store is not liable for the bank’s loss even if the cash received is later traced to the  
84 robbery. The robber remains liable for the amount stolen. Similarly, new UCC

provisions will protect innocent parties who accept in good faith digital assets in exchange for value without knowledge of any other property claim to the assets.

- **Governing Law.** Because digital assets have no physical location, conflict of laws questions may arise. The UCC amendments will allow the parties to a transaction involving digital assets to choose the law that applies to their transaction for commercial law purposes and incorporate the choice into their CER or the system in which the CER is recorded. If the parties do not choose a governing law in the CER or system, the law of the District of Columbia will apply.

- **Tangible and Electronic Money.** “Money” is defined under the UCC as a medium of exchange authorized by a domestic or foreign government and was presumed under many UCC rules to exist only in tangible form. Recently, some countries’ central banks have proposed creating virtual currencies to supplement or replace traditional forms of money, and at least two countries have adopted the virtual currency Bitcoin as an alternate form of legal tender. An amendment to the Article 1 definition of money clarifies that governmentally created forms of money may be tangible or electronic and that pre-existing virtual currencies, like Bitcoin, while they may be CERs, are not “money” for purposes of the UCC. New amendments in Article 9 provide that a security interest in “electronic money,” i.e., virtual currency created by a government’s central bank, like a security interest in a CER can only be perfected through control.
- **Chattel Paper.** “Chattel paper” is defined under the former Article 9 as a record containing both a monetary obligation and a security interest in goods, e.g., the documents governing an automobile loan. The 2022 amendments modify this definition to refer to the right to payment evidenced by the record, rather than to the record itself. This makes the rules for chattel paper more consistent with the new rules for CERs. Similarly, the rule governing control of electronic chattel paper is amended for consistency with the rule governing control of CERs.
- **Hybrid Transactions.** Articles 2 and 2A of the UCC apply to the sale and lease of goods, respectively, and not to contracts for services. The line between these categories has blurred with the emergence of transactions involving both the sale or lease of goods and the provision of other property or services. As a result, a new rule is needed for these hybrid transactions. The UCC amendments provide that, absent the parties’ agreement otherwise, the UCC rules will apply to a hybrid transaction if the sale/lease of goods is the predominant purpose of the transaction. If the sale of services or provision of other property predominates, the UCC rules will apply only to aspects of the transaction that involve the sale or lease of goods. Whether or not the lease of goods aspects of the transaction predominate, the finance lease provisions of Article 2A will apply to those aspects of the transaction.
- **Negotiable Instruments.** Changes to Article 3 clarify that a choice-of-law or choice-of-forum clause included in an instrument does not affect the negotiability of the instrument, and that an image of a negotiable instrument (i.e., photos of the front and back of a check)

may be substituted for the actual instrument in accordance with federal banking regulations.

- **Terminology.** Various UCC provisions are amended to replace obsolete terms that applied only to transactions on paper. For example, the term “sign” is redefined to include electronic signatures, the term “record” is substituted for “writing” to encompass electronic documents, and the term “conspicuous” is redefined to apply more broadly to the terms of both paper and electronic agreements.
- **Transition Rules.** The UCC amendments will be effective on the effective date in the enacting legislation. However, to protect any lenders who hold a security interest in digital assets that were perfected under the prior rules, there will be a transition period during which the lender’s priority established on the effective date will be maintained. This provides a grace period during which the parties to a pre-existing loan agreement can renegotiate terms as necessary and comply with provisions of the new law to ensure that their respective interests remain protected.

### **Rationale**

The Uniform Commercial Code (“UCC”) provides commercial law rules for broad categories of transactions: the sale or lease of goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment property, and secured transactions in personal property. Its adoption in every state allowed the development of strong interstate markets. Today the UCC is the backbone of United States commerce, giving all Americans the legal structure necessary to have confidence when transacting business with strangers.

Developed in the 1940’s and 1950’s in a largely goods-based economy, the UCC has been revised by state legislatures from time to time over the years at the recommendation of the UCC’s sponsoring organizations, the American Law Institute, and the Uniform Law Commission, to reflect the economy’s shift toward services, software, and information-based transactions. The latest updates are the 2022 amendments, which accommodate emerged and emerging technologies such as distributed ledger technology (a type of which is known as “blockchain”), and artificial intelligence. The amendments bring the UCC into the digital age by providing commercial law rules for a new category of transactions: the transfer and leveraging of virtual currencies and certain other digital assets. Ohio should adopt the amendments to facilitate modern commercial transactions involving these technologies and these assets, thus avoiding the obstacles and lack of clarity under the current law that inhibit transactions or increase their costs.

***The amendments promote commercial activity involving new types of property.*** New UCC Article 12 deals with a category of digital assets referred to as “controllable electronic records” (“CERs”). Examples of CERs are virtual currencies, non-fungible tokens, and electronic promises to pay. The amendments provide rules to determine the rights of a person who receives a CER and for the perfection and priority of a security interest in a CER. The updated law will stimulate economic activity by providing legal certainty to these increasingly common transactions.

***The amendments will reduce transaction costs and the cost of credit through uniformity.*** The UCC has been successful because of its adoption by states on a substantially uniform basis, creating greater certainty and thereby reducing the cost of credit as well as transaction costs. The need for uniformity is especially important to minimize forum shopping for disputes concerning digital assets, which by their nature cross state borders.

***The amendments are narrowly focused to avoid stifling innovation.*** The UCC amendments only address the rules that govern consensual transactions. They do not regulate the use of CERs, whether as a security or a commodity, address the taxation of CERs, alter the law governing money transmitters, or revise anti-money laundering rules. These matters are left to law outside of the UCC.

***The amendments preserve uniformity of state commercial law.*** Interstate commercial markets developed in the United States because the UCC provided standard default rules to govern transactions between parties in different jurisdictions. Adopting the latest amendments will preserve the uniformity that benefits businesses and consumers in every state.

***The amendments clarify rules for money in electronic form.*** Some governments and central banks are experimenting with digital currency. The amendments create a new, separate asset category called “electronic money” and contain clearer rules for transactions involving electronic money than exist under current law, which generally contemplates that money exists only in tangible form, such as bills or coins.

***The amendments update UCC terminology for the digital age.*** The language of many current UCC rules assumes parties still use paper documents. The amendments ensure that the law applies equally to electronic transactions.

***The amendments apply to future technologies.*** The new amendments facilitate transactions using distributed ledger technology but are drafted using technologically neutral language, i.e., they are not wedded to any particular technology. Consequently, the updated UCC will accommodate not only technologies known today but also technologies yet to be invented.

***The amendments include a grace period to preserve pre-established priorities.*** The amendments contain transition provisions designed to protect the expectations of parties to pre-effective-date transactions. For example, a secured lender who has a priority security interest in collateral under the prior law will retain its priority through a transition period, giving parties to preexisting transactions plenty of time to revise their agreements to comply with the updated law.

***The amendments are thoroughly vetted.*** The UCC amendments reflect the efforts of the American Law Institute and the Uniform Law Commission in conjunction with approximately 350 knowledgeable advisors and stakeholder observers who met dozens of times over a three-year period to reach consensus on updates to this crucial area of state law. Further, the UCC amendments were reviewed by a four-member subcommittee of the OSBA’s Banking, Commercial and Bankruptcy Law Committee and were unanimously approved by a full vote of that Committee.

**Uniform Commercial Code Amendments (2022)**

Drafted by the

Uniform Law Commission

and the

American Law Institute

*Without Prefatory Note and Comments*



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**Uniform Commercial Code Amendments (2022)**

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310 UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

311 ARTICLE 1

312 GENERAL PROVISIONS

313 Section 1-201. General Definitions.

314 \* \* \*

315 (b) Subject to definitions contained in other articles of [the Uniform Commercial Code]  
316 that apply to particular articles or parts thereof:

317 \* \* \*

318 (10) “Conspicuous”, with reference to a term, means so written, displayed, or  
319 presented that, based on the totality of the circumstances, a reasonable person against which it is  
320 to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the  
321 court. ~~Conspicuous terms include the following:~~

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

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

328 \* \* \*

329 (15) “Delivery”, with respect to an electronic document of title, means voluntary  
330 transfer of control and, with respect to an instrument, a tangible document of title, or an  
331 authoritative tangible copy of a record evidencing chattel paper, means voluntary  
332 transfer of possession.

333 \* \* \*

334 (16A) “Electronic” means relating to technology having electrical, digital,  
335 magnetic, wireless, optical, electromagnetic, or similar capabilities.

336 \* \* \*

337 (21) “Holder” means:

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

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

342 (C) the person in control, other than pursuant to Section 7-106(g), of a  
343 negotiable electronic document of title.

344 \* \* \*

345 (24) “Money” means a medium of exchange that is currently authorized or  
346 adopted by a domestic or foreign government. The term includes a monetary unit of account  
347 established by an intergovernmental organization, or pursuant to an agreement between two or  
348 more countries. The term does not include an electronic record that is a medium of exchange  
349 recorded and transferable in a system that existed and operated for the medium of exchange  
350 before the medium of exchange was authorized or adopted by the government.

351 \* \* \*

352 (27) “Person” means an individual, corporation, business trust, estate, trust,  
353 partnership, limited liability company, association, joint venture, government, governmental  
354 subdivision, agency, or instrumentality, ~~public corporation~~, or any other legal or commercial  
355 entity. The term includes a protected series, however denominated, of an entity if the protected



series is established under law other than [the Uniform Commercial Code] 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.

\* \* \*

(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.

\* \* \*

**Legislative Note:**

*A state should review and amend any statute or regulation that relies on or refers to the definition of “money” in subsection (b)(24) to account for the amendment to that definition.*

*A state should enact the amendment to subsection (b)(27) whether the state has enacted the Uniform Protected Series Act (2017) or otherwise recognizes a protected series under its law. Because the amendment applies only under the enacting state’s Uniform Commercial Code, inclusion of the amendment does not require the enacting state to recognize a limit on liability of a protected series organized under the law of another jurisdiction or a limit on liability of the entity that established the protected series. The amendment clarifies the status of a protected series as a “person” under the choice-of-law and substantive law rules of the enacting state’s Uniform Commercial Code.*

**Section 1-204. Value.**

Except as otherwise provided in Articles 3, 4, ~~[and] 5, [and 6], [6,] and 12,~~ a person gives value for rights if the person acquires them:

\* \* \*

**Section 1-301. Territorial Applicability; Parties’ Power to Choose Applicable Law.**

\* \* \*

(c) 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:

\* \* \*

(8) Sections 9-301 through 9-307;

402                   (9) Section 12-107.

403                   **Section 1-306. Waiver or Renunciation of Claim or Right After Breach.**

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

406                   **ARTICLE 2**

407                   **SALES**

408                   **Section 2-102. Scope; Certain Security and Other Transactions Excluded from**  
409 **this Article.**

410                   ~~Unless the context otherwise requires, this Article applies to transactions in goods; it does~~  
411 ~~not apply to any transaction which although in the form of an unconditional contract to sell or~~  
412 ~~present sale is intended to operate only as a security transaction nor does this Article impair or~~  
413 ~~repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.~~

414                   (1) Unless the context otherwise requires, and except as provided in subsection (3), this  
415 Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the  
416 extent provided in subsection (2).

417                   (2) In a hybrid transaction:

418                   (a) If the sale-of-goods aspects do not predominate, only the provisions of this  
419 Article which relate primarily to the sale-of-goods aspects of the transaction apply, and the  
420 provisions that relate primarily to the transaction as a whole do not apply.

421                   (b) If the sale-of-goods aspects predominate, this Article applies to the transaction  
422 but does not preclude application in appropriate circumstances of other law to aspects of the  
423 transaction which do not relate to the sale of goods.

424                   (3) This Article does not:

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

427                   (b) impair or repeal a statute regulating sales to consumers, farmers, or other  
428 specified classes of buyers.

429                   **Section 2-106. Definitions: “Contract”; “Agreement”; “Contract for Sale”;**  
430 **“Sale”; “Present Sale”; “Conforming” to Contract; “Termination”; “Cancellation”;**  
431 **“Hybrid Transaction”.**

432                   \* \* \*

433                   (5) “Hybrid transaction” means a single transaction involving a sale of goods and:

434                   (a) the provision of services;

435                   (b) a lease of other goods; or

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

437                   **Section 2-201. Formal Requirements; Statute of Frauds.**

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

445                   (2) Between merchants if within a reasonable time a ~~writing~~ record in confirmation of the  
446 contract and sufficient against the sender is received and the party receiving it has reason to  
447 know its contents, it satisfies the requirements of subsection (1) against ~~such~~ the party unless

448 ~~written~~ notice in a record of objection to its contents is given within 10 days after it is received.

449 \* \* \*

450 **Section 2-202. Final ~~Written~~ Expression: Parol or Extrinsic Evidence.**

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

456 \* \* \*

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

459 **Section 2-203. Seals Inoperative.**

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

463 **Section 2-205. Firm Offers.**

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

469 **Section 2-209. Modification, Rescission, and Waiver.**

470 \* \* \*

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

475 \* \* \*

476 **ARTICLE 2A**  
477 **LEASES**

478 **Section 2A-102. Scope.**

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

481 (2) In a hybrid lease:

482 (a) if the lease-of-goods aspects do not predominate:

483 (i) only the provisions of this Article which relate primarily to the lease-  
484 of-goods aspects of the transaction apply, and the provisions that relate primarily to the  
485 transaction as a whole do not apply;

486 (ii) Section 2A-209 applies if the lease is a finance lease; and

487 (iii) Section 2A-407 applies to the promises of the lessee in a finance lease  
488 to the extent the promises are consideration for the right to possession and use of the leased  
489 goods; and

490 (b) if the lease-of-goods aspects predominate, this Article applies to the  
491 transaction, but does not preclude application in appropriate circumstances of other law to  
492 aspects of the lease which do not relate to the lease of goods.

493 **Section 2A-103. Definitions and Index of Definitions.**

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

\* \* \*

(h.1) “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.

\* \* \*

#### **Section 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.

#### **Section 2A-201. Statute of Frauds.**

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

\* \* \*

(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.

\* \* \*

(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 subsection (1)(b) beyond the lease term and the quantity of goods shown in the ~~writing~~ record.

\* \* \*

(5) The lease term under a lease contract referred to in subsection (4) 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;

\* \* \*

#### **Section 2A-202. Final ~~Written~~ 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:

\* \* \*

(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.

#### **Section 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.

#### **Section 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 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

540       **Section 2A-208. Modification, Rescission, and Waiver.**

541       \* \* \*

542       (2) A signed lease agreement that excludes modification or rescission except by a signed  
543 ~~writing record~~ may not be otherwise modified or rescinded, but, except as between merchants,  
544 such a requirement on a form supplied by a merchant must be separately signed by the other  
545 party.

546       \* \* \*

547                               **ARTICLE 3**  
548                               **NEGOTIABLE INSTRUMENTS**

549       **Section 3-104. Negotiable Instrument.**

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

553               \* \* \*

554       (3) does not state any other undertaking or instruction by the person promising or  
555 ordering payment to do any act in addition to the payment of money, but the promise or order  
556 may contain (i) an undertaking or power to give, maintain, or protect collateral to secure  
557 payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose  
558 of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of  
559 an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an  
560 undertaking to resolve in a specified forum a dispute concerning the promise or order.

561       \* \* \*

562       **SECTION 3-105. Issue of Instrument.**

563       (a) “Issue” means:

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

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

569       \* \* \*

570       **Section 3-401. Signature Necessary for Liability on Instrument.**

571       ~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument, or  
572 (ii) the person is represented by an agent or representative who signed the instrument and the  
573 signature is binding on the represented person under Section 3-402.

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

577       **Section 3-604. Discharge by Cancellation or Renunciation.**

578       (a) A person entitled to enforce an instrument, with or without consideration, may  
579 discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such  
580 as surrender of the instrument to the party, destruction, mutilation, or cancellation of the  
581 instrument, cancellation or striking out of the party’s signature, or the addition of words to the  
582 instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights  
583 against the party by a signed record. The obligation of a party to pay a check is not discharged  
584 solely by destruction of the check in connection with a process in which information is extracted  
585 from the check and an image of the check is made and, subsequently, the information and image

are transmitted for payment.

\* \* \*

(c) ~~In this section, “signed,” with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.~~

## ARTICLE 4A

### FUNDS TRANSFERS

#### Section 4A-103. Payment Order – Definitions.

(a) In this Article:

(1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically, or in writing~~ or in 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.

\* \* \*

#### Section 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.

#### Section 4A-202. Authorized and Verified Payment Orders.

\* \* \*

(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.

\* \* \*

#### **Section 4A-203. Unenforceability of Certain Verified Payment Orders.**

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), 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.

\* \* \*

#### **Section 4A-207. Misdescription of Beneficiary.**

\* \* \*

(c) If (i) a payment order described in subsection (b) 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 subsection (b)(1), the following rules apply:

\* \* \*

(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.

\* \* \*

#### **Section 4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank.**

\* \* \*

(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.

\* \* \*

(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 subsection (b)(1), 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 a writing record stating the information to which the notice relates.

\* \* \*

#### SECTION 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.

\* \* \*

#### Section 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.

\* \* \*

#### Section 4A-305. Liability for Late or Improper Execution or Failure to Execute Payment Order.

\* \* \*

(c) In addition to the amounts payable under subsections (a) and (b), 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.

\* \* \*

### ARTICLE 5 LETTERS OF CREDIT

#### Section 5-104. 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 Section 5-108(e).~~

#### Section 5-116. 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 Section 5-104~~ 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)~~ (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 article 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 article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5-103(c).

~~(f)~~ (f) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

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

## ARTICLE 7 DOCUMENTS OF TITLE

### Section 7-102. Definitions and Index of Definitions.

(a) In this article, unless the context otherwise requires:

\* \* \*

~~(10) "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.]~~

~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) to execute or adopt a tangible symbol; or~~

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

\* \* \*

### Section 7-106. Control of Electronic Document of Title.

\* \* \*

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

\* \* \*

(4) 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;

\* \* \*

(c) A system satisfies subsection (a), 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:

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

(2) 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

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

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

(B) transfer control of each authoritative electronic copy.

(d) 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 document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(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 document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) 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:

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

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

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

(i) 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.

## ARTICLE 8

### INVESTMENT SECURITIES

#### Section 8-102. Definitions and Index of Definitions.

(a) In this Article:

816                   \* \* \*

817                   (6) “Communicate” means to:

818                         (i) send a signed ~~writing~~ record; or

819                         (ii) transmit information by any mechanism agreed upon by the persons

820 transmitting and receiving the information.

821                   \* \* \*

822                   ~~(b) Other~~ The following definitions applying to in this Article and the sections in which

823 ~~they appear are~~ other Articles apply to this Article:

824                   \* \* \*

825                   “Controllable account”. Section 9-102.

826                   “Controllable electronic record”. Section 12-102.

827                   “Controllable payment intangible”. Section 9-102.

828                   \* \* \*

829                   **Section 8-103. Rules for Determining Whether Certain Obligations and Interests**

830 **are Securities or Financial Assets.**

831                   \* \* \*

832                   (h) A controllable account, controllable electronic record, or controllable payment

833 intangible is not a financial asset unless Section 8-102(a)(9)(iii) applies.

834                   **Section 8-106. Control**

835                   \* \* \*

836                   (d) A purchaser has “control” of a security entitlement if:

837                         \* \* \*

838                         (3) ~~another person has control of the security entitlement on behalf of the~~

839 ~~purchaser or, having previously acquired control of the security entitlement, acknowledges that it~~

840 ~~has control on behalf of the purchaser. person, other than the transferor to the purchaser of an~~

841 interest in the security entitlement:

842                                 (A) has control of the security entitlement and acknowledges that it has

843 control on behalf of the purchaser; or

844                                 (B) obtains control of the security entitlement after having acknowledged

845 that it will obtain control of the security entitlement on behalf of the purchaser.

846                   \* \* \*

847                   (h) A person that has control under this section is not required to acknowledge that it has

848 control on behalf of a purchaser.

849                   (i) If a person acknowledges that it has or will obtain control on behalf of a purchaser,

850 unless the person otherwise agrees or law other than this Article or Article 9 otherwise provides,

851 the person does not owe any duty to the purchaser and is not required to confirm the

852 acknowledgment to any other person.

853                   **Section 8-110. Applicability; Choice of Law.**

854                   \* \* \*

855                   (g) The local law of the issuer’s jurisdiction or the securities intermediary’s jurisdiction

856 governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction

857 does not bear any relation to the jurisdiction.

858                   **Section 8-303. Protected Purchaser.**

859                   \* \* \*

860                   ~~(b) In addition to acquiring the rights of a purchaser, a~~ A protected purchaser acquires its

861 interest in the security free of any adverse claim.

**ARTICLE 9**  
**SECURED TRANSACTIONS**  
**Section 9-102. Definitions and Index of Definitions.**

(a) [Article 9 definitions.] In this article:

\* \* \*

(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) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument~~ chattel paper, (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~~ 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.

\* \* \*

(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.

\* \* \*

(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.

(11) “Chattel paper” means:

(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.

\* \* \*

(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 Section 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 Section 12-105 of the controllable electronic record.

\* \* \*

(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.

\* \* \*

(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) [Reserved.] [“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.]

\* \* \*

(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 indorsement 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.

\* \* \*

(54A) “Money” has the meaning in Section 1-201(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9-105A.

\* \* \*

(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.

\* \* \*

(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 Sections 9-620, 9-621, and 9-622.

\* \* \*

~~(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.]~~

\* \* \*

~~(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.

\* \* \*

(b) **[Definitions in other articles.]** “Control” as provided in Section 7-106 and the following definitions in other articles apply to this article:

\* \* \*

“Controllable electronic record”. Section 12-102.

\* \* \*

“Protected purchaser”. Section 8-303.

\* \* \*

“Qualifying purchaser”. Section 12-102.

\* \* \*

**Legislative Note:** *Replicate the formatting of the tabulated material in subsection (a)(11) exactly to ensure that the meaning of the material is preserved.*

*The definition of “good faith” in subsection (a)(43) was deleted from subsection (a) pursuant to a conforming amendment accompanying the 2001 amendments of Article 1. However, any jurisdiction that has not adopted the revised definition of “good faith” in Section 1-201(b)(20) should retain the definition of “good faith” in subsection (a)(43).*

#### **Section 9-104. Control of Deposit Account.**

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

\* \* \*

(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.

\* \* \*

**Section 9-105. Control of Electronic Chattel Paper.**

(a) ~~**[General rule: control of electronic chattel paper.]**~~ A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests 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) 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.~~

**Section 9-105. Control of Electronic Copy of Record Evidencing Chattel Paper.**

(a) **[General rule: control of electronic copy of record evidencing chattel paper.]** A purchaser has control of 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.

## **Section 9-105A. 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.

**Section 9-107A. Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.**

(a) **[Control under Section 12-105.]** A secured party has control of a controllable electronic record as provided in Section 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.

**Section 9-107B. 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.

**Section 9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.**

\* \* \*

(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:

\* \* \*

(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;

\* \* \*

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 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 Section 7-106, 9-104, ~~9-105, 9-105A,~~ 9-106, ~~or 9-107, or 9-107A~~ pursuant to the debtor's security agreement; or

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

\* \* \*

**Section 9-204. After-Acquired Property; Future Advances.**

\* \* \*

(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:

\* \* \*

**(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.

\* \* \*

**Section 9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.**

\* \* \*

(c) **[Duties and rights when secured party in possession or control.]** Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-105A, 9-106, ~~or 9-107, or 9-107A:~~

1184 \* \* \*

1185 **Section 9-208. Additional Duties of Secured Party Having Control of Collateral.**

1186 \* \* \*

1187 (b) **[Duties of secured party after receiving demand from debtor.]** Within 10 days  
1188 after receiving ~~an authenticated~~ a signed demand by the debtor:

1189 (1) a secured party having control of a deposit account under Section 9-104(a)(2)  
1190 shall send to the bank with which the deposit account is maintained ~~an authenticated statement~~ a  
1191 signed record that releases the bank from any further obligation to comply with instructions  
1192 originated by the secured party;

1193 \* \* \*

1194 (3) ~~a secured party, other than a buyer, having control of electronic chattel paper~~  
1195 ~~under Section 9-105 shall:~~

1196 (A) ~~communicate the authoritative copy of the electronic chattel paper to~~  
1197 ~~the debtor or its designated custodian;~~

1198 (B) ~~if the debtor designates a custodian that is the designated custodian~~  
1199 ~~with which the authoritative copy of the electronic chattel paper is maintained for the secured~~  
1200 ~~party, communicate to the custodian an authenticated record releasing the designated custodian~~  
1201 ~~from any further obligation to comply with instructions originated by the secured party and~~  
1202 ~~instructing the custodian to comply with instructions originated by the debtor; and~~

1203 (C) ~~take appropriate action to enable the debtor or its designated custodian~~  
1204 ~~to make copies of or revisions to the authoritative copy which add or change an identified~~  
1205 ~~assignee of the authoritative copy without the consent of the secured party; and~~

1206 (3) a secured party, other than a buyer, having control under Section 9-105 of an  
1207 authoritative electronic copy of a record evidencing chattel paper shall transfer control of the  
1208 electronic copy to the debtor or a person designated by the debtor;

1209 (4) a secured party having control of investment property under Section 8-  
1210 106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with  
1211 which the security entitlement or commodity contract is maintained ~~an authenticated~~ a signed  
1212 record that releases the securities intermediary or commodity intermediary from any further  
1213 obligation to comply with entitlement orders or directions originated by the secured party;

1214 (5) a secured party having control of a letter-of-credit right under Section 9-107  
1215 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter  
1216 of credit to the secured party ~~an authenticated~~ a signed release from any further obligation to pay  
1217 or deliver proceeds of the letter of credit to the secured party; ~~and~~

1218 (6) ~~a secured party having control of an electronic document shall:~~

1219 (A) ~~give control of the electronic document to the debtor or its designated~~  
1220 ~~custodian;~~

1221 (B) ~~if the debtor designates a custodian that is the designated custodian~~  
1222 ~~with which the authoritative copy of the electronic document is maintained for the secured party,~~  
1223 ~~communicate to the custodian an authenticated record releasing the designated custodian from~~  
1224 ~~any further obligation to comply with instructions originated by the secured party and instructing~~  
1225 ~~the custodian to comply with instructions originated by the debtor; and~~

1226 (C) ~~take appropriate action to enable the debtor or its designated custodian~~  
1227 ~~to make copies of or revisions to the authoritative copy which add or change an identified~~  
1228 ~~assignee of the authoritative copy without the consent of the secured party.~~

1229 (6) a secured party having control under Section 7-106 of an authoritative

electronic copy of an electronic document 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.

**Section 9-209. Duties of Secured Party if Account Debtor Has Been Notified of Assignment.**

\* \* \*

(b) **[Duties of secured party after receiving demand from debtor.]** Within 10 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 Section 9-406(a) or 12-106(b) of an assignment to the secured party as assignee ~~under Section 9-406(a) an authenticated~~ a signed record that releases the account debtor from any further obligation to the secured party.

\* \* \*

**Section 9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account.**

(a) **[Definitions.]** In this section:

\* \* \*

(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 14 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 14 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 14 days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

\* \* \*

(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 14 days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

\* \* \*

### **Section 9-301. Law Governing Perfection and Priority of Security Interests.**

Except as otherwise provided in Sections 9-303 through ~~9-306~~ 9-306B, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

\* \* \*

(3) Except as otherwise provided in paragraph (4), while negotiable tangible documents, goods, instruments, or tangible money, ~~or tangible chattel paper~~ is 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.

\* \* \*

### **Section 9-304. 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.

\* \* \*

### **Section 9-305. 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:

\* \* \*

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

\* \* \*

### **Section 9-306A. 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.

**Section 9-306B. 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.

**Section 9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.**

\* \* \*

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

\* \* \*

(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 Section 9-314;

(8.1) in chattel paper which is perfected by possession and control under Section 9-314A;

\* \* \*

**Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable 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 Section 9-315(c) and (d) for proceeds:

\* \* \*

(2) except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; ~~and~~

(3) a security interest in tangible money may be perfected only by the secured party's taking possession under Section 9-313; ~~and~~

(4) a security interest in electronic money may be perfected only by control under Section 9-314.

\* \* \*

(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.

\* \* \*

**Section 9-313. 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 Section 8-301.

\* \* \*

(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.

\* \* \*

#### **Section 9-314. 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 Section 7-106, 9-104, ~~9-105, 9-105A, 9-106, or 9-107, or 9-107A.~~

(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, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, ~~9-105, 9-105A, or 9-107, or 9-107A~~ 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 Section 9-106 ~~from~~ not earlier than the time the secured party obtains control and remains perfected by control until:

\* \* \*

#### **Section 9-314A. 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 Section 9-313 to perfection by possession of chattel paper.]** Section 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

#### **Section 9-316. Continued Perfection of Security Interest Following 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 Section 9-301(1), ~~or 9-305(c), 9-306A(d), or 9-306B(b)~~ remains perfected until the earliest of:

\* \* \*

(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:

\* \* \*

### **Section 9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.**

\* \* \*

(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, or~~ goods, instruments, tangible documents, or a security certificate 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.

\* \* \*

(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, electronic money, tangible documents,~~ 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.

\* \* \*

(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

1506 intangible.

1507 **Section 9-323. Future Advances.**

1508 \* \* \*

1509 (d) **[Buyer of goods.]** Except as otherwise provided in subsection (e), a buyer of goods  
1510 ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the extent that  
1511 it secures advances made after the earlier of:

1512 \* \* \*

1513 (f) **[Lessee of goods.]** Except as otherwise provided in subsection (g), a lessee of goods;  
1514 ~~other than a lessee in ordinary course of business~~, takes the leasehold interest free of a security  
1515 interest to the extent that it secures advances made after the earlier of:

1516 \* \* \*

1517 **Section 9-324. Priority of Purchase-Money Security Interests.**

1518 \* \* \*

1519 (b) **[Inventory purchase-money priority.]** Subject to subsection (c) and except as  
1520 otherwise provided in subsection (g), a perfected purchase-money security interest in inventory  
1521 has priority over a conflicting security interest in the same inventory, has priority over a  
1522 conflicting security interest in chattel paper or an instrument constituting proceeds of the  
1523 inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as  
1524 otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the  
1525 inventory to the extent the identifiable cash proceeds are received on or before the delivery of the  
1526 inventory to a buyer, if:

1527 \* \* \*

1528 (2) the purchase-money secured party sends ~~an authenticated~~ a signed notification  
1529 to the holder of the conflicting security interest;

1530 \* \* \*

1531 (d) **[Livestock purchase-money priority.]** Subject to subsection (e) and except as  
1532 otherwise provided in subsection (g), a perfected purchase-money security interest in livestock  
1533 that are farm products has priority over a conflicting security interest in the same livestock, and,  
1534 except as otherwise provided in Section 9-327, a perfected security interest in their identifiable  
1535 proceeds and identifiable products in their unmanufactured states also has priority, if:

1536 \* \* \*

1537 (2) the purchase-money secured party sends ~~an authenticated~~ a signed notification  
1538 to the holder of the conflicting security interest;

1539 \* \* \*

1540 **Section 9-326A. Priority of Security Interest in Controllable Account,**  
1541 **Controllable Electronic Record, and Controllable Payment Intangible.**

1542 A security interest in a controllable account, controllable electronic record, or  
1543 controllable payment intangible held by a secured party having control of the account, electronic  
1544 record, or payment intangible has priority over a conflicting security interest held by a secured  
1545 party that does not have control.

1546 **Section 9-330. Priority of Purchaser of Chattel Paper or Instrument.**

1547 (a) **[Purchaser's priority: security interest claimed merely as proceeds.]** A purchaser  
1548 of chattel paper has priority over a security interest in the chattel paper which is claimed merely  
1549 as proceeds of inventory subject to a security interest if:

1550 (1) in good faith and in the ordinary course of the purchaser's business, the  
1551 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 Section 9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 9-105~~; 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 Section 9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 9-105~~ 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.

\* \* \*

(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 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.

**Section 9-331. Priority of Rights of Purchasers of Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Instruments, Documents, Instruments, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements and Protection Against Assertion of Claim Under Article 8 Articles 8 and 12.**

(a) **[Rights under Articles 3, 7, ~~and~~ 8, and 12 not limited.]** This article 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 Articles 3, 7, ~~and~~ 8, and 12.

(b) **[Protection under ~~Article 8~~ Articles 8 and 12.]** This article 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 Article 8 ~~or~~ 12.

\* \* \*

**Section 9-332. 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 the transferee acts if the transferee 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 in the deposit account ~~unless the transferee acts if the transferee 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.

**Section 9-334. Priority of Security Interests in Fixtures and Crops.**

1598 \* \* \*

1599 (f) **[Priority based on consent, disclaimer, or right to remove.]** A security interest in  
1600 fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or  
1601 owner of the real property if:

1602 (1) the encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented  
1603 to the security interest or disclaimed an interest in the goods as fixtures; or

1604 \* \* \*

1605 **Section 9-341. Bank's Rights and Duties with Respect to Deposit Account.**

1606 Except as otherwise provided in Section 9-340(c), and unless the bank otherwise agrees  
1607 in ~~an authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account  
1608 maintained with the bank are not terminated, suspended, or modified by:

1609 \* \* \*

1610 **Section 9-404. Rights Acquired by Assignee; Claims and Defenses Against**  
1611 **Assignee.**

1612 (a) **[Assignee's rights subject to terms, claims, and defenses; exceptions.]** Unless an  
1613 account debtor has made an enforceable agreement not to assert defenses or claims, and subject  
1614 to subsections (b) through (e), the rights of an assignee are subject to:

1615 \* \* \*

1616 (2) any other defense or claim of the account debtor against the assignor which  
1617 accrues before the account debtor receives a notification of the assignment ~~authenticated~~ signed  
1618 by the assignor or the assignee.

1619 \* \* \*

1620 **Section 9-406. Discharge of Account Debtor; Notification of Assignment;**  
1621 **Identification and Proof of Assignment; Restrictions on Assignment of Accounts,**  
1622 **Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.**

1623 (a) **[Discharge of account debtor; effect of notification.]** Subject to subsections (b)  
1624 through (i) and (l), an account debtor on an account, chattel paper, or a payment intangible may  
1625 discharge its obligation by paying the assignor until, but not after, the account debtor receives a  
1626 notification, ~~authenticated~~ signed by the assignor or the assignee, that the amount due or to  
1627 become due has been assigned and that payment is to be made to the assignee. After receipt of  
1628 the notification, the account debtor may discharge its obligation by paying the assignee and may  
1629 not discharge the obligation by paying the assignor.

1630 (b) **[When notification ineffective.]** Subject to ~~subsection~~ subsections (h) and (l),  
1631 notification is ineffective under subsection (a):

1632 \* \* \*

1633 (c) **[Proof of assignment.]** Subject to ~~subsection~~ subsections (h) and (l), if requested by  
1634 the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment  
1635 has been made. Unless the assignee complies, the account debtor may discharge its obligation  
1636 by paying the assignor, even if the account debtor has received a notification under subsection  
1637 (a).

1638 (d) **[Term restricting assignment generally ineffective.]** In this subsection,  
1639 "promissory note" includes a negotiable instrument that evidences chattel paper. Except as  
1640 otherwise provided in subsections (e) and (k) and Sections 2A-303 and 9-407, and subject to  
1641 subsection (h), a term in an agreement between an account debtor and an assignor or in a  
1642 promissory note is ineffective to the extent that it:

1643 \* \* \*

(g) **[Subsection (b)(3) not waivable.]** Subject to ~~subsection~~ subsections (h) and (l), an account debtor may not waive or vary its option under subsection (b)(3).

\* \* \*

(l) **[Inapplicability of certain subsections.]** Subsections (a), (b), (c), and (g) do not apply to a controllable account or controllable payment intangible.

\* \* \*

**Section 9-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective.**

\* \* \*

(g) **[“Promissory note.”]** In this section, “promissory note” includes a negotiable instrument that evidences chattel paper.

**Section 9-509. 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

\* \* \*

(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:

\* \* \*

**Section 9-513. Termination 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:

\* \* \*

(2) if earlier, within 20 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 20 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:

\* \* \*

**Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.**

\* \* \*

(b) **[Rights and duties of secured party in possession or control.]** A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-105A, 9-106, ~~or 9-107~~, or 9-107A has the rights and duties provided in Section 9-207.

\* \* \*

**Section 9-605. Unknown Debtor or Secondary Obligor.**

A (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:

\* \* \*

(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.

**Section 9-608. 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 Section 9-607 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.

\* \* \*

**Section 9-611. 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

\* \* \*

(b) **[Notification of disposition required.]** Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 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:

\* \* \*

(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, 10 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, 10 days before the notification date, held  
a security interest in the collateral perfected by compliance with a statute, regulation, or treaty  
described in Section 9-311(a).

\* \* \*

(e) **[Compliance with subsection (c)(3)(B).]** A secured party complies with the  
requirement for notification prescribed by subsection (c)(3)(B) if:

\* \* \*

(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.

### **Section 9-613. 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 Section 9-  
614(3) 9-614(a)(3), when completed in accordance with the instructions in subsection (b) and  
Section 9-614(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]~~.  
**[End of Form]**

### **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.

### **Section 9-614. 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 Section 9-613(1) 9-613(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 Section 9-623 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]—

**[End of Form]**

(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)

1874 Subject: (Identify transaction)

1875 We have your (describe collateral), because you broke promises in our agreement.

1876 {1} We will sell (describe collateral) at public sale. A sale could include a lease or  
1877 license. The sale will be held as follows:

1878 (Date)

1879 (Time)

1880 (Place)

1881 You may attend the sale and bring bidders if you want.

1882 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could  
1883 include a lease or license.

1884 {3} The money that we get from the sale, after paying our costs, will reduce the amount  
1885 you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the  
1886 difference. If we get more money than you owe, you will get the extra money, unless we must  
1887 pay it to someone else.

1888 {4} You can get the property back at any time before we sell it by paying us the full  
1889 amount you owe, not just the past due payments, including our expenses. To learn the exact  
1890 amount you must pay, call us at (telephone number).

1891 {5} If you want us to explain to you in (writing) (writing or in (description of electronic  
1892 record)) (description of electronic record) how we have figured the amount that you owe us, {6}  
1893 call us at (telephone number) (or) (write us at (secured party's address)) (or contact us  
1894 by (description of electronic communication method)) {7} and request (a written explanation) (a  
1895 written explanation or an explanation in (description of electronic record)) (an explanation in  
1896 (description of electronic record)).

1897 {8} We will charge you \$ (amount) for the explanation if we sent you another written  
1898 explanation of the amount you owe us within the last six months.

1899 {9} If you need more information about the sale (call us at (telephone number)) (or)  
1900 (write us at (secured party's address)) (or contact us by (description of electronic  
1901 communication method)).

1902 {10} We are sending this notice to the following other people who have an interest in  
1903 (describe collateral) or who owe money under your agreement:  
1904 (Names of all other debtors and obligors, if any)

1905 **[End of Form]**

1906 \* \* \*

1907 **(b) [Instructions for form of notification.]** The following instructions apply to the form  
1908 of notification in subsection (a)(3):

1909 (1) The instructions in this subsection refer to the numbers in braces before items  
1910 in the form of notification in subsection (a)(3). Do not include the numbers or braces in the  
1911 notification. The numbers and braces are used only for the purpose of these instructions.

1912 (2) Include and complete either item {1}, if the notification relates to a public  
1913 disposition of the collateral, or item {2}, if the notification relates to a private disposition of the  
1914 collateral.

1915 (3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

1916 (4) In item {5}, include and complete any one of the three alternative methods for  
1917 the explanation—writing, writing or electronic record, or electronic record.

1918 (5) In item {6}, include the telephone number. In addition, the sender may  
1919 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.”.

### **Section 9-615. 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 Section 9-610 in the following order to:

\* \* \*

(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.

\* \* \*

### **Section 9-616. 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 Section 9-610.

(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 Section 9-615, 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 14 days after receipt of a request; or

\* \* \*

(c) **[Required information.]** To comply with subsection (a)(1)(B), ~~a writing~~ an explanation must provide the following information in the following order:

\* \* \*

#### **Section 9-619. Transfer of Record or Legal Title.**

(a) **[“Transfer statement.”]** In this section, “transfer statement” means a record ~~authenticated~~ signed by a secured party stating:

\* \* \*

#### **Section 9-620. 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:

\* \* \*

(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 Section 9-621; 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;

\* \* \*

(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

\* \* \*

(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 20 days after the proposal is sent.

\* \* \*

(f) [**Compliance with mandatory disposition requirement.**] To comply with subsection (e), the secured party shall dispose of the collateral:

\* \* \*

(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.

\* \* \*

#### **Section 9-621. 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;

\* \* \*

#### **Section 9-624. Waiver.**

(a) [**Waiver of disposition notification.**] A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 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 Section 9-620(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 Section 9-623 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

#### **Section 9-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.**

(a) [**Limitation of liability of secured party for noncompliance with article.**] ~~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:

\* \* \*

(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:

\* \* \*

(f) [**Exception: 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.

### **ARTICLE 12**

### **CONTROLLABLE ELECTRONIC RECORDS**

2058 **Section 12-101. Title.**

2059 This article may be cited as Uniform Commercial Code—Controllable Electronic  
2060 Records.

2061 **Section 12-102. Definitions.**

2062 **(a) [Article 12 definitions.]**

2063 In this article:

2064 (1) “Controllable electronic record” means a record stored in an electronic  
2065 medium that can be subjected to control under Section 12-105. The term does not include a  
2066 controllable account, a controllable payment intangible, a deposit account, an electronic copy of  
2067 a record evidencing chattel paper, an electronic document of title, electronic money, investment  
2068 property, or a transferable record.

2069 (2) “Qualifying purchaser” means a purchaser of a controllable electronic record  
2070 or an interest in a controllable electronic record that obtains control of the controllable electronic  
2071 record for value, in good faith, and without notice of a claim of a property right in the  
2072 controllable electronic record.

2073 (3) “Transferable record” has the meaning provided for that term in:

2074 (A) Section 201(a)(1) of the Electronic Signatures in Global and National  
2075 Commerce Act, 15 U.S.C. Section 7021(a)(1)[, as amended]; or

2076 (B) [cite to Uniform Electronic Transactions Act Section 16(a)].

2077 (4) “Value” has the meaning provided in Section 3-303(a), as if references in that  
2078 subsection to an “instrument” were references to a controllable account, controllable electronic  
2079 record, or controllable payment intangible.

2080 (b) [Definitions in Article 9.] The definitions in Article 9 of “account debtor”,  
2081 “controllable account”, “controllable payment intangible”, “chattel paper”, “deposit account”,  
2082 “electronic money”, and “investment property” apply to this article.

2083 (c) [Article 1 definitions and principles.] Article 1 contains general definitions and  
2084 principles of construction and interpretation applicable throughout this article.

2085 *Legislative Note: It is the intent of this act to incorporate future amendments to the federal law*  
2086 *cited in subsection (a)(3)(A). A state in which the constitution or other law does not permit*  
2087 *incorporation of future amendments when a federal statute is incorporated into state law should*  
2088 *omit the phrase “[as amended]”. A state in which, in the absence of a legislative declaration,*  
2089 *future amendments are incorporated into state law also should omit the phrase.*

2090  
2091 *In subsection (a)(3)(B), the state should cite to the state’s version of the Uniform Electronic*  
2092 *Transactions Act Section 16(a) or comparable state law.*

2093  
2094 **Section 12-103. Relation to Article 9 and Consumer Laws.**

2095 (a) [Article 9 governs in case of conflict.] If there is conflict between this article and  
2096 Article 9, Article 9 governs.

2097 (b) [Applicable consumer law and other laws.] A transaction subject to this article is  
2098 subject to any applicable rule of law that establishes a different rule for consumers and [insert  
2099 reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and  
2100 practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection  
2101 statute or regulation].

2102 **Section 12-104. Rights in Controllable Account, Controllable Electronic Record,**  
2103 **and Controllable Payment Intangible.**

2104 **(a) [Applicability of section to controllable account and controllable payment**  
2105 **intangible.]** This section applies to the acquisition and purchase of rights in a controllable  
2106 account or controllable payment intangible, including the rights and benefits under subsections  
2107 (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section  
2108 applies to a controllable electronic record.

2109 **(b) [Control of controllable account and controllable payment intangible.]** To  
2110 determine whether a purchaser of a controllable account or a controllable payment intangible is a  
2111 qualifying purchaser, the purchaser obtains control of the account or payment intangible if it  
2112 obtains control of the controllable electronic record that evidences the account or payment  
2113 intangible.

2114 **(c) [Applicability of other law to acquisition of rights.]** Except as provided in this  
2115 section, law other than this article determines whether a person acquires a right in a controllable  
2116 electronic record and the right the person acquires.

2117 **(d) [Shelter principle and purchase of limited interest.]** A purchaser of a controllable  
2118 electronic record acquires all rights in the controllable electronic record that the transferor had or  
2119 had power to transfer, except that a purchaser of a limited interest in a controllable electronic  
2120 record acquires rights only to the extent of the interest purchased.

2121 **(e) [Rights of qualifying purchaser.]** A qualifying purchaser acquires its rights in the  
2122 controllable electronic record free of a claim of a property right in the controllable electronic  
2123 record.

2124 **(f) [Limitation of rights of qualifying purchaser in other property.]** Except as  
2125 provided in subsections (a) and (e) for a controllable account and a controllable payment  
2126 intangible or law other than this article, a qualifying purchaser takes a right to payment, right to  
2127 performance, or other interest in property evidenced by the controllable electronic record subject  
2128 to a claim of a property right in the right to payment, right to performance, or other interest in  
2129 property.

2130 **(g) [No-action protection for qualifying purchaser.]** An action may not be asserted  
2131 against a qualifying purchaser based on both a purchase by the qualifying purchaser of a  
2132 controllable electronic record and a claim of a property right in another controllable electronic  
2133 record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or  
2134 other theory.

2135 **(h) [Filing not notice.]** Filing of a financing statement under Article 9 is not notice of a  
2136 claim of a property right in a controllable electronic record.

2137 **Section 12-105. Control of Controllable Electronic Record.**

2138 **(a) [General rule: control of controllable electronic record.]** A person has control of a  
2139 controllable electronic record if the electronic record, a record attached to or logically associated  
2140 with the electronic record, or a system in which the electronic record is recorded:

2141 **(1) gives the person:**

2142 **(A) power to avail itself of substantially all the benefit from the electronic**  
2143 **record; and**

2144 **(B) exclusive power, subject to subsection (b), to:**

2145 **(i) prevent others from availing themselves of substantially all the**  
2146 **benefit from the electronic record; and**

2147 **(ii) transfer control of the electronic record to another person or**  
2148 **cause another person to obtain control of another controllable electronic record as a result of the**  
2149 **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.

## **Section 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.

**Section 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 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 article 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 Article 12.]** If subsection (c)(5) applies and Article 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 Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 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.

ARTICLE A

**TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE  
AMENDMENTS (2022)**

**Legislative Note:** *A state should codify Parts 1, 2 and 3 of this article as a part of the state's [Uniform Commercial Code].*

*In its codification of this article a state should provide a title that is conducive to its usual methods of codification, which is likely to ensure that it is called to the attention of users of the state's [Uniform Commercial Code], and which will avoid misunderstandings as to the relationship of this article to the other provisions of the state's [Uniform Commercial Code]. The designation of "Article" indicates that this article is a part of the state's [Uniform Commercial Code] as are the other articles. A state that uses a designation other than "article" may adopt for this article that other designation (such as "division"). Alternatively, a state may wish to adopt for this article a distinctive designation, such as "annex," which would distinguish its focus on transitional provisions from the content of other articles.*

**PART 1**

**GENERAL PROVISIONS AND DEFINITIONS**

**Section A-101. Title.**

This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

**Section A-102. Definitions.**

**(a) [Article A Definitions.]** In this article:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after [the effective date of this [act]], whichever is later.

(2) "Article 12" means Article 12 of [the Uniform Commercial Code].

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

**(b) [Definitions in other articles.]** The following definitions in other articles of [the Uniform Commercial Code] apply to this article.

"Controllable account". Section 9-102.

"Controllable electronic record". Section 12-102.

"Controllable payment intangible". Section 9-102.

"Electronic money". Section 9-102.

"Financing statement". Section 9-102.

**(c) [Article 1 definitions and principles.]** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**PART 2**

**GENERAL TRANSITIONAL PROVISION**

**Section A-201. Saving 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**

## **TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12**

### **Section A-301. Saving Clause.**

(a) **[Pre-effective-date transaction, lien, or interest.]** Except as provided in this part, Article 9 as amended by this [act] and Article 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 Sections A-302 through A-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 Article 9 as amended by this [act] or Article 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]].

### **Section A-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 Section 9-203, 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).

### **Section A-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.

**Section A-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].

**Section A-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]], Article 9 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 Article 9 as amended by this [act] modify the priorities established before [the effective date of this [act]], the priorities of claims to Article 12 property and electronic money established before [the effective date of this [act]] cease to apply.

**Section A-306. Priority of Claims When Priority Rules of Article 9 Do Not Apply.**

(a) **[Determination of priority.]** Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 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 Article 12 property were established before [the effective date of this [act]], law other than Article 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 Article 12 property established before [the effective date of this [act]] cease to apply on the adjustment date.

**PART 4**  
**EFFECTIVE DATE**

**Section A-401. Effective Date.**

This [act] takes effect on . . . .

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2426 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

2427 *To the Council of Delegates*

2428  
2429 To amend R.C. §5801.07 (B) in order to clarify that an Ohio trustee does not have an affirmative  
2430 duty to move the situs of a trust's administration to a location outside of Ohio.

2431  
2432 Respectfully submitted,

2433  
2434 M. Elizabeth Monihan, *Cleveland*  
2435 Chair, Estate Planning, Trust and Probate Law Section  
2436

2437 **Rationale for the Proposal:**

2438  
2439 A trustee who is responsible for the administration of a trust established under Ohio law has a  
2440 common law duty to administer the trust at a place appropriate to its purposes, its administration  
2441 and the interests of the beneficiaries. This common law duty has been codified in the Ohio Trust  
2442 Code at R.C. §5801.07 (B), which language was adopted without change from §108(b) of the  
2443 Uniform Trust Code promulgated by the Uniform Law Commission.

2444  
2445 This proposal is in response to commentators who suggest that a trustee has an affirmative,  
2446 proactive duty to change the situs of the trust under certain circumstances. Some commentators  
2447 have suggested that the common law duty set forth above might impose an affirmative obligation  
2448 upon the trustee to move the trust administration from Ohio to another state, if applying the law of  
2449 the other state would be more advantageous or enhance the interests of the beneficiaries. Because  
2450 other states have varying trust laws, some jurisdictions might be more favorable for a trust's situs  
2451 than Ohio. For example, another state may not levy income tax on the accumulated income of the  
2452 trust (as Ohio does), or may provide for a greater payout to the current trust beneficiaries under its  
2453 principal and income statute (Ohio's "safe harbor" payout rate is 4%). Additionally, creditor  
2454 protection for beneficiaries might differ from state to state, or investment rules may be different  
2455 elsewhere. In the absence of this proposed statutory amendment, some might suggest that an Ohio  
2456 trustee should be encouraged, or even be required, to move the situs of the trust administration out  
2457 of Ohio, in order to avoid a surcharge action by the trust's beneficiaries.

2458  
2459 Such an affirmative duty, if it existed in Ohio, could subject a trustee to a burdensome, continuing  
2460 duty to keep abreast of changing laws among the 50 states (and possibly also foreign jurisdictions  
2461 as well), in order to be aware of the location which might offer the best current advantage for the  
2462 trust administration. It also is not good public policy to impose a duty on a trustee which requires  
2463 that a trust be moved out of Ohio for such reasons, nor should trustees have a continuing,  
2464 burdensome, duty to monitor the state of the laws elsewhere, nor should trustees who do not make  
2465 such a change in the situs of the trust administration be subject to a surcharge action for not making  
2466 the move.

2467  
2468 The Trust Code Joint Committee of our Section has considered several solutions, including  
2469 providing a priority to staying in Ohio or flatly negating any duty to move out of Ohio, and each  
2470 appears also to have substantial offsetting disadvantages. The recommended statutory change is to  
2471 declare that there may be more than one place that is appropriate for administration of a trust, and

that a for a trust established in Ohio, our state is one of those places which are appropriate. This revision to R.C. §5801.07(B) would give some protection to a trustee who chooses to keep the situs of the trust administration in Ohio.

**Text of Proposal**

Our proposed statutory amendment is to add two additional sentences (as underlined) to R.C. §5801.07(B):

**R.C. §5801.07 Connection with designated jurisdiction - transfer.**

(B) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries. If there is more than one place reasonably appropriate for administration of a trust, the trustee may administer the trust at any of such places. The original place of administration selected by the settlor will continue to be one of the appropriate places of administration.



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2488 **REPORT OF THE REAL PROPERTY LAW SECTION**

2489 *To the Council of Delegates*

2490  
2491 To amend R.C. §§5301.071 and 5301.255 to make it mandatory to record a memorandum of trust  
2492 or other instrument complying with R.C. §5301.255 when title to real property is held by the trustee  
2493 of a disclosed trust, and provide a four-year curative period when such instrument has not been  
2494 recorded.

2495  
2496 Respectfully submitted,

2497  
2498 Michael J. Sikora III, *Columbus*  
2499 *Chair, Real Property Law Section*

2500  
2501 **Summary and Rationale for Proposal**

2502  
2503 All major title insurance underwriters require as a condition for issuing a policy of title insurance  
2504 that a memorandum of trust or other instrument complying with R.C. §5301.255 be place of record  
2505 when real property is conveyed from the trustee of a disclosed trust to a third party. Under current  
2506 Ohio law, the recording of such instrument is discretionary. This presents practical problems for  
2507 real property lawyers when a title search reveals that title was vested in the trustee of a trust in the  
2508 chain of title, and there is no memorandum of trust or other qualifying instrument of record,  
2509 particularly when the conveyance in question is from a distant time period in the chain of title.

2510  
2511 The proposed amendments to R.C. §5301.255 make the recording of a memorandum of trust or  
2512 other qualifying instrument mandatory when title to real property is held by the trustee of a  
2513 disclosed trust.

2514  
2515 Similar problems exist when a title search reveals a conveyance from a trust (i.e., “the John Doe  
2516 Trust”) rather than the trustee of a trust (i.e., “Mary Doe, Trustee of the John Doe Trust”). Curative  
2517 actions may be difficult, as a practical matter, if the instrument in question is from a distant time  
2518 period in the chain of title. The proposed amendments to R.C. §5307.01(E)(1) cure such title  
2519 defects “in furtherance of the manifest intention of the parties.”

2520  
2521 The addition of subsection (F) to R.C. §5301.071 creates a four-year curative period for  
2522 conveyances from a trust or a trustee of a trust when a memorandum of trust or other qualifying  
2523 instrument has not been recorded. The Real Property Section unanimously agreed that the four-  
2524 year period is a sufficient amount of time to deem title cured under those circumstances, absent  
2525 other facts and circumstances.

2526  
2527  
2528 **Text of Proposal**

2529  
2530 **Section 5301.255 | Memorandum of trust recording.**

2531  
2532 (A) A memorandum of trust or other instrument that satisfies both of the following ~~shall~~ **may** be  
2533 presented for recordation when title to real property is held by the trustee of a disclosed trust, and

in circumstances other than the conveyance of real property otherwise may be presented in the office of the county recorder of any county in which real property that is subject to the trust is located:

(1) The instrument ~~memorandum~~ shall be executed by the trustee of the trust and acknowledged by the trustee of the trust in accordance with section 5301.01 of the Revised Code.

(2) The instrument ~~memorandum~~ shall state all of the following:

(a) The name and address of the trustee of the trust;

(b) The date of execution of the trust;

(c) The powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

(B) An instrument ~~memorandum of trust~~ that satisfies divisions (A)(1) and (2) of this section also may set forth the substance or actual text of provisions of the trust that are not described in those divisions.

(C) An instrument ~~memorandum of trust~~ that satisfies divisions (A)(1) and (2) of this section shall constitute notice only of the information contained in it.

(D) Upon the presentation for recordation of an instrument ~~memorandum of trust~~ that satisfies divisions (A)(1) and (2) of this section and the payment of the requisite fee prescribed in section 317.32 of the Revised Code, a county recorder shall record the instrument ~~memorandum of trust~~ in the official records described in division (A)(17) of section 317.08 of the Revised Code, if the instrument ~~memorandum of trust~~ describes specific real property, or in the official records described in division (A)(23) of that section, if the instrument ~~memorandum of trust~~ does not describe specific real property.

#### **Section 5301.071 | Validity of instruments not affected by certain actions or omissions.**

No instrument conveying real property, or any interest in real property, and of record in the office of the county recorder of the county within this state in which that real property is situated shall be considered defective nor shall the validity of that conveyance be affected because of any of the following:

(A) The dower interest of the spouse of any grantor was not specifically released, but that spouse executed the instrument in the manner provided in section 5301.01 of the Revised Code.

(B) The officer taking the acknowledgment of the instrument having an official seal did not affix that seal to the certificate of acknowledgment.

(C) The certificate of acknowledgment is not on the same sheet of paper as the instrument.

(D) The executor, administrator, guardian, assignee, or trustee making the instrument signed or acknowledged the same individually instead of in a representative or official capacity.

(E)(1) The grantor or grantee of the instrument is a trust rather than the trustee or trustees of the trust if the trust named as grantor or grantee has been duly created under the laws of the state of its existence at the time of the conveyance and a memorandum of trust that complies with section 5301.255 of the Revised Code and contains a description of the real property conveyed by that instrument is recorded in the office of the county recorder in which the instrument of conveyance is recorded. Upon compliance with division (E)(1) of this section, a conveyance to or from a trust shall be considered to be a conveyance to or from the trustee or trustees of the trust in furtherance of the manifest intention of the parties.

(2) Except as otherwise provided in division (E)(2) of this section, division (E)(1) of this section shall be given retroactive effect to the fullest extent permitted under section 28 of Article II, Ohio Constitution. Division (E) of this section shall not be given retroactive or curative effect if to do so would invalidate or supersede any instrument that conveys real property, or any interest in the real property, recorded in the office of the county recorder in which that real property is situated prior to the date of recording of a curative memorandum of trust or the effective date of this section, whichever event occurs later.

F) An instrument complying with section 5301.255 of the Revised Code is not recorded, so long as the instrument from a trustee or trust as grantor has been of record for more than 4 years, absent other facts and circumstances.

**[PAGE INTENTIONALLY LEFT BLANK]**

2604 **REPORT OF THE REAL PROPERTY LAW SECTION**

2605 *To the Council of Delegates*

2606  
2607 To amend R.C. §§4123.76, 4123.78, 4141.23, 5719.04, 5739.13, 5747.13, 5749.07 and 3123.67 to  
2608 make it mandatory that certain liens filed with county recorders include the last known address of  
2609 the lien debtor(s).

2610  
2611 Respectfully submitted,

2612  
2613 Michael J. Sikora III, *Columbus*  
2614 *Chair, Real Property Law Section*

2615  
2616 **Summary and Rationale for Proposal**

2617  
2618 This proposal extends the proposed requirement that all judgment liens filed with county recorders  
2619 include the last known address of the judgment debtor to the following non-judicial liens:

- 2620  
2621 ■ County Child Support Enforcement Agencies for failure to timely make child support  
2622 payments (R.C. §3123.67);  
2623 ■ Bureau of Workers' Compensation against employers failing to timely pay premiums  
2624 (§§4123.76 and 4123.78);  
2625 ■ Ohio Department of Job and Family Services against employers failing to timely pay  
2626 premiums for unemployment compensation (§4141.23);  
2627 ■ County Auditors for failure to pay personal property taxes when due (§5719.04);  
2628 ■ State of Ohio, Department of Taxation for failure to collect or timely remit sales taxes  
2629 (§5739.13);  
2630 ■ State of Ohio, Department of Taxation for failure to collect or timely remit withheld income  
2631 taxes (§5747.13); and  
2632 ■ State of Ohio, Department of Taxation for failure to timely file or pay severance taxes  
2633 (§5749.07).

2634  
2635 The above-referenced statutory liens only require the name(s) of the lien debtor(s), the amount of  
2636 the lien and information regarding the authority filing the lien. This has caused what is commonly  
2637 referred to as the "same-name" identification problem in Ohio real estate transactions, in which  
2638 individuals are mistakenly identified as having a lien encumbering their property. That  
2639 misidentification causes the person affected unnecessary stress and economic hardship, through  
2640 no fault of their own.

2641  
2642 To address this issue, the Real Property Section Council has proposed amendments to the above-  
2643 referenced statutes to require additional identifying language as to individuals and businesses. The  
2644 proposed amendments would require a minor additional requirement on the lien creditor when  
2645 identifying a lien debtor. That additional requirement would be for a lien creditor to provide the  
2646 last known address of the lien debtor – without going so far as to require further inquiry or  
2647 investigation. The benefits of this proposed amendment far outweigh the minor burden that it  
2648 would impose. Most importantly, it would help protect innocent consumers and reduce the  
2649 frequency of these problems.

Included below are drafts of the proposed amended statutes submitted with the unanimous approval of the members of the Real Property Section Council. The Real Property Section Council is requesting that the Ohio State Bar Association take steps to amend the statute to include these improvements.

## **Text of Proposal**

### **Child Support Lien**

#### **Section 3123.67 | Arrearage becomes lien against personal and real property.**

The amount of the arrearage due under the support order determined to be in default pursuant to sections 3123.01 to 3123.07 of the Revised Code, and any amounts due for current support that become an arrearage after the date the default determination was made, shall be a lien against all personal property, including after-acquired property, of the obligor that is situated in this state. The lien may be filed with the county recorder in each county of the state in which the personal property is located. The amount of the arrearage due under the support order determined to be in default and any amounts due for current support that become an arrearage after the date the default determination was made, shall be a lien against real property, including after-acquired property, of the obligor after the lien is filed with a county recorder of this state in which the real property is located. A lien may be filed with the county recorder in each county of the state in which real property of the obligor is located. Any lien filed under this section must include the obligor's last known address. In recording the lien, if registered land is involved, the county recorder shall take all necessary action required by Chapter 5309. of the Revised Code. The county recorder may be compensated for liens filed under this section pursuant to the development of unit costs that are reimbursed under the provider contract entered into pursuant to Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended.

### **Ohio Bureau of Workers' Compensation**

#### **Section 4123.76 | Claim against noncomplying employer a lien.**

When an application for compensation or benefits or an application for further compensation or benefits is filed with the industrial commission or the bureau of workers' compensation under section 4123.75 of the Revised Code against an employer who has not complied with section 4123.35 of the Revised Code, the bureau shall make and file for record in the office of the county recorder in the counties where the employer's property is located, an affidavit showing the date on which the application was filed with the commission or the bureau, the name and address of the employer against whom it was filed, and the fact that the employer had not complied with section 4123.35 of the Revised Code. The county recorder shall accept and file the affidavit and record and index the affidavit in the official record. A copy of the application or other bureau record documenting the claim shall be filed with the affidavit. A copy of the affidavit shall be served upon the employer by the bureau. The affidavit constitutes a valid lien from the time of filing, in favor of the bureau, upon the real property and personal property of the employer located within the county. The administrator of workers' compensation shall have the lien canceled of record after

the employer has paid to the claimant or to the bureau the amount of the compensation or benefits which has been ordered paid to the claimant, or when the application has finally been denied after the claimant has exhausted the remedies provided by law in such cases, or when the employer has filed a bond in the amount and with surety as the administrator approves conditioned on the payment of all sums ordered paid to the claimant. The recorder shall make no charge for the services provided by this section to be performed by the recorder.

#### **Section 4123.78 | Recording of Certificate of Noncompliance**

If any employer fails to comply with section 4123.35 of the Revised Code in accordance with the rules of the administrator of workers' compensation, the administrator shall file with the county recorder of any counties in which the employer's property is located, a certificate containing the employer's name, last known address, and the amount of premium due from the employer. The certificate in that amount shall be a lien from the date of filing against the real property and personal property of the employer within the county in which the certificate is filed. The county recorder shall record and index the certificate in the official record. The county recorder shall make no charge for the services provided by this section to be performed by the county recorder.

#### **Ohio Department of Job and Family Services**

#### **Section 4141.23 | Employer contributions - payments in lieu of contributions.**

(A) Contributions shall accrue and become payable by each employer for each calendar year or other period as prescribed by this chapter. Such contributions become due and shall be paid by each employer to the director of job and family services for the unemployment compensation fund in accordance with such regulations as the director prescribes, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employer's employ.

In the payment of any contributions, a fractional part of a dollar may be disregarded unless it amounts to fifty cents or more, in which case it may be increased to the next higher dollar.

(B)(1) Any contribution or payment in lieu of contribution, due from an employer on or before December 31, 1992, shall, if not paid when due, bear interest at the rate of ten per cent per annum. In such computation any fraction of a month shall be considered as a full month.

(2) Any contribution, payment in lieu of contribution, interest, forfeiture, or fine due from an employer on or after January 1, 1993, shall, if not paid when due, bear interest at the annual rate of fourteen per cent compounded monthly on the aggregate receivable balance due. In such computation any fraction of a month shall be considered as a full month.

(C) The director may waive the interest assessed under division (B)(2) of this section if the employer meets all of the following conditions within thirty days after the date the director mails or delivers the notice of assessment of interest:

(1) Provides to the director a written request for a waiver of interest clearly demonstrating that the employer's failure to timely pay contributions, payments in lieu of contributions, interest, forfeiture, and fines was a result of circumstances beyond the control of the employer or the



employer's agent, except that negligence on the part of the employer or the employer's agent shall not be considered beyond the control of the employer or the employer's agent;

(2) Furnishes to the director all quarterly reports required under section 4141.20 of the Revised Code;

(3) Pays in full all contributions, payments in lieu of contributions, interest, forfeiture, and fines for each quarter for which such payments are due.

The director shall deny an employer's request for a waiver of interest after finding that the employer's failure to timely furnish reports or make payments as required under this chapter was due to an attempt to evade payment.

(D) Any contribution, interest, forfeiture, or fine required to be paid under this chapter by any employer shall, if not paid when due, become a lien upon the real and personal property of such employer. Upon failure of such employer to pay the contributions, interest, forfeiture, or fine required to be paid under this chapter, the director shall file notice of such lien, containing the employer's name and last known address, for which there shall be no charge, in the office of the county recorder of the county in which it is ascertained that such employer owns real estate or personal property. The director shall notify the employer by mail of the lien. The absence of proof that the notice was sent does not affect the validity of the lien. Such lien shall not be valid as against the claim of any mortgagee, pledgee, purchaser, judgment creditor, or other lienholder of record at the time such notice is filed.

If the employer acquires real or personal property after notice of lien is filed, such lien shall not be valid as against the claim of any mortgagee, pledgee, subsequent bona fide purchaser for value, judgment creditor, or other lienholder of record to such after-acquired property, unless the notice of lien is refiled after such property was acquired by the employer and before the competing lien attached to such after-acquired property or before the conveyance to such subsequent bona fide purchaser for value.

Such a notice shall be recorded in the county recorder's official records and indexed in the direct and reverse indexes under the name of the employer. When such unpaid contributions, interest, forfeiture, or fines have been paid, the employer may record with the county recorder of the county in which such notice of lien has been filed and recorded, notice of such payment, and the notice of payment shall be recorded in the county recorder's official records and indexed in the direct and reverse indexes. For recording the notice of payment, the county recorder shall charge and receive from the employer a base fee of two dollars for services and a housing trust fund fee of two dollars pursuant to section 317.36 of the Revised Code.

(E) Notwithstanding other provisions in this section, the director may reduce, in whole or in part, the amount of interest, forfeiture, or fines required to be paid under this chapter if the director determines that the reduction is in the best interest of the unemployment compensation fund.

(F) Assessment of contributions shall not be made after four years from the date on which such contributions became payable, and no action in court for the collection of contributions without assessment of such contributions shall be begun after the expiration of five years from the date

such contributions became payable. In case of a false or fraudulent report or of a willful attempt in any manner to evade contributions, such contributions may be assessed or a proceeding in court for the collection of such contributions may be begun without assessment at any time. When the assessment of contributions has been made within such four-year period provided, action in court to collect such contributions may be begun within, but not later than, six years after such assessment.

(G) In the event of a distribution of an employer's assets, pursuant to an order of any court under the law of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, or similar proceedings, contributions, interest, forfeiture, or fine then or thereafter due have the same priority as provided by law for the payment of taxes due the state and shall be paid out of the trust fund in the same manner as provided for other claims for unpaid taxes due the state. (H) If the attorney general finds after investigation that any claim for delinquent contributions, interest, forfeitures, or fines owing to the director is uncollectible, in whole or in part, the attorney general shall recommend to the director the cancellation of such claim or any part thereof. The director may thereupon effect such cancellation.

## **Personal Property Tax**

### **Section 5719.04 | Tax list and duplicate of delinquent personal and classified property taxes - publication - notice of lien - certificate of jeopardy - stay of collection.**

(A) Immediately after each settlement required by division (D) of section 321.24 of the Revised Code, the county auditor shall make a tax list and duplicates thereof of all general personal and classified property taxes remaining unpaid, as shown by the county treasurer's books and the list of taxes returned as delinquent by the treasurer to the auditor at such settlement. The county auditor shall also include in such list all taxes assessed by the tax commissioner pursuant to law which were not charged upon the tax lists and duplicates on which such settlements were made nor previously charged upon a delinquent tax list and duplicates pursuant to this section, but the auditor shall not include taxes specifically excepted from collection pursuant to section 5711.32 of the Revised Code. Such tax list and duplicates shall contain the name of the person charged, the last known address of the person charged, and the amount of such taxes, and the penalty, due and unpaid, and shall set forth separately the amount charged or chargeable on the general and on the classified list and duplicate. The auditor shall deliver one such duplicate to the treasurer on the first day of December, annually. Upon receipt of the duplicate the treasurer may prepare and mail tax bills to all persons charged with such delinquent taxes. Each bill shall include a notice that the interest charge prescribed by section 5719.041 of the Revised Code has begun to accrue.

The auditor shall cause a copy of the delinquent personal and classified property tax list and duplicate provided for in this division to be published twice within sixty days after delivery of such duplicate to the treasurer in a newspaper of general circulation in the county. The newspaper shall meet the requirements of section 7.12 of the Revised Code. The auditor may publish the tax list on a preprinted insert in the newspaper. The cost of the second publication of the list shall not exceed three-fourths of the cost of the first publication of the list.

Before such publication, the auditor shall cause a display notice of the forthcoming publication of such delinquent personal and classified property tax list to be inserted once a week for two consecutive weeks in a newspaper of general circulation in the county. Copy for such display notice shall be furnished by the auditor to the newspaper selected to publish such delinquent tax lists simultaneously with the delivery of the duplicate to the treasurer. Publication of the delinquent lists may be made by a newspaper in installments, provided that complete publication thereof is made twice during said sixty-day period.

The office of the county treasurer shall be kept open to receive the payment of delinquent general and classified property taxes from the day of delivery of the duplicate thereof until the final publication of the delinquent tax list. The name of any taxpayer who, prior to seven days before either the first or second publication of said list, pays such taxes in full or enters into a delinquent tax contract to pay such taxes in installments pursuant to section 5719.05 of the Revised Code shall be stricken from such list, and the taxpayer's name shall not be included in the list for that publication.

The other such duplicate, from which shall first be eliminated the names of persons whose total liability for taxes and penalty is less than one hundred dollars, shall be filed by the auditor on the first day of December, annually, in the office of the county recorder, and the same shall constitute a notice of lien and operate as of the date of delivery as a lien on the lands and tenements, vested legal interests therein, and permanent leasehold estates of each person named therein having such real estate in such county. Such notice of lien and such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor whose rights have attached prior to the date of such delivery. Such duplicate shall be kept by the county recorder in the official records, and indexed under the name of the person charged with such tax. No fee shall be charged by the county recorder for the services required under this section.

The auditor shall add to the tax list made pursuant to this section all such taxes omitted in a previous year when assessed by the auditor or finally assessed by the tax commissioner pursuant to law, and by proper certificates cause the same to be added to the treasurer's delinquent tax duplicate provided for in this section, and, in proper cases, file notice of the lien with the recorder, as provided in this section.

If the authority making any assessment believes that the collection of such taxes will be jeopardized by delay, such assessing authority shall so certify on the assessment certificate thereof, and the auditor shall include a certificate of such jeopardy in the certificate given by the auditor to the treasurer. In such event, the treasurer shall proceed immediately to collect such taxes, and to enforce the collection thereof by any means provided by law, and the treasurer may not accept a tender of any part of such taxes; but the person or the representatives of the person against whom such assessment is made may, in the event of an appeal to the tax commissioner therefrom, obtain a stay of collection of the whole or any part of the amount of such assessment by filing with the treasurer a bond in an amount not exceeding double the amount as to which the stay is desired, with such surety as the treasurer deems necessary, conditioned upon the payment of the amount determined to be due by the decision of the commissioner which has become final, and further conditioned that if an appeal is not filed within the period provided by law, the amount of collection which is stayed by the bond will be paid on notice and demand of the treasurer at any time after

the expiration of such period. The taxpayer may waive such stay as to the whole or any part of the amount covered by the bond, and if as the result of such waiver any part of the amount covered by the bond is paid, then the bond shall be proportionately reduced on the request of the taxpayer.

(B) Immediately after each settlement required by division (D) of section 321.24 of the Revised Code, the auditor shall make a separate list and duplicate, prepared as prescribed in division (A) of this section, of all general personal and classified property taxes that remain unpaid but are excepted from collection pursuant to section 5711.32 of the Revised Code. The duplicate of such list shall be delivered to the treasurer at the time of delivery of the delinquent personal and classified property tax duplicate.

## **Sales Tax Liens**

### **Section 5739.13 | Liability of vendor and consumer - assessment - petition for reassessment - penalties - appeal - judgment - execution.**

(A) If any vendor collects the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code, and fails to remit the tax to the state as prescribed, or on the sale of a motor vehicle, watercraft, or outboard motor required to be titled, fails to remit payment to a clerk of a court of common pleas as provided in section 1548.06 or 4505.06 of the Revised Code, the vendor shall be personally liable for any tax collected and not remitted. The tax commissioner may make an assessment against such vendor based upon any information in the commissioner's possession.

If any vendor fails to collect the tax or any consumer fails to pay the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code, on any transaction subject to the tax, the vendor or consumer shall be personally liable for the amount of the tax applicable to the transaction. The commissioner may make an assessment against either the vendor or consumer, as the facts may require, based upon any information in the commissioner's possession.

An assessment against a vendor when the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code has not been collected or paid, shall not discharge the purchaser's or consumer's liability to reimburse the vendor for the tax applicable to such transaction.

An assessment issued against either, pursuant to this section, shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any person for the tax due on a particular transaction if the tax on that transaction actually has been paid by another.

The commissioner may make an assessment against any vendor who fails to file a return or remit the proper amount of tax required by this chapter, or against any consumer who fails to pay the proper amount of tax required by this chapter. When information in the possession of the commissioner indicates that the amount required to be collected or paid under this chapter is greater than the amount remitted by the vendor or paid by the consumer, the commissioner may

audit a sample of the vendor's sales or the consumer's purchases for a representative period, to ascertain the per cent of exempt or taxable transactions or the effective tax rate and may issue an assessment based on the audit. The commissioner shall make a good faith effort to reach agreement with the vendor or consumer in selecting a representative sample.

The commissioner may make an assessment, based on any information in the commissioner's possession, against any person who fails to file a return or remit the proper amount of tax required by section 5739.102 of the Revised Code.

The commissioner may issue an assessment on any transaction for which any tax imposed under this chapter or Chapter 5741. of the Revised Code was due and unpaid on the date the vendor or consumer was informed by an agent of the tax commissioner of an investigation or audit. If the vendor or consumer remits any payment of the tax for the period covered by the assessment after the vendor or consumer was informed of the investigation or audit, the payment shall be credited against the amount of the assessment.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due from the party assessed and payable to the treasurer of state and remitted to the tax commissioner. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the place of business of the party assessed is located or the county in which the party assessed resides. Such filing shall include the party's name and last known address. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state, county, and transit authority retail sales tax" or, if appropriate, "special judgments for resort area excise tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment except as otherwise provided in this chapter.

If the assessment is not paid in its entirety within sixty days after the date the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the taxes imposed by or pursuant to sections 5739.01 to 5739.31 of the Revised Code.

## **State Income Tax**

### **Section 5747.13 | Liability of employer for failure to file return or collect or remit tax.**

(A) If any employer collects the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code and fails to remit the tax as required by law, or fails to collect the tax, the employer is personally liable for any amount collected that the employer fails to remit, or any amount that the employer fails to collect. If any taxpayer fails to file a return or fails to pay the tax imposed by section 5747.02 or under Chapter 5748. of the Revised Code, the taxpayer is personally liable for the amount of the tax.

If any employer, taxpayer, qualifying entity, or electing pass-through entity required to file a return under this chapter fails to file the return within the time prescribed, files an incorrect return, fails to remit the full amount of the taxes due for the period covered by the return, or fails to remit any additional tax due as a result of a reduction in the amount of the credit allowed under division (B) of section 5747.05 of the Revised Code together with interest on the additional tax within the time prescribed by that division, the tax commissioner may make an assessment against any person liable for any deficiency for the period for which the return is or taxes are due, based upon any information in the commissioner's possession.

An assessment issued against either the employer or the taxpayer pursuant to this section shall not be considered an election of remedies or a bar to an assessment against the other for failure to report or pay the same tax. No assessment shall be issued against any person if the tax actually has been paid by another.

No assessment shall be made or issued against an employer, a taxpayer, a qualifying entity, or an electing pass-through entity more than four years after the final date the return subject to assessment was required to be filed or the date the return was filed, whichever is later. However, the commissioner may assess any balance due as the result of a reduction in the credit allowed under division (B) of section 5747.05 of the Revised Code, including applicable penalty and interest, within four years of the date on which the taxpayer reports a change in either the portion of the taxpayer's adjusted gross income subjected to an income tax or tax measured by income in another state or the District of Columbia, or the amount of liability for an income tax or tax

measured by income to another state or the District of Columbia, as required by division (B)(3) of section 5747.05 of the Revised Code. Such time limits may be extended if both the employer, taxpayer, qualifying entity, or electing pass-through entity and the commissioner consent in writing to the extension or if an agreement waiving or extending the time limits has been entered into pursuant to section 122.171 of the Revised Code. Any such extension shall extend the four-year time limit in division (B) of section 5747.11 of the Revised Code for the same period of time. There shall be no bar or limit to an assessment against an employer for taxes withheld from employees and not remitted to the state, against an employer, a taxpayer, a qualifying entity, or an electing pass-through entity that fails to file a return subject to assessment as required by this chapter, or against an employer, a taxpayer, a qualifying entity, or an electing pass-through entity that files a fraudulent return.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the party assessed to the commissioner with remittance made payable to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the employer's, taxpayer's, qualifying entity's, or electing pass-through entity's place of business is located or the county in which the party assessed resides. Such filing shall include the party's name and last known address. If the party assessed is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county. Immediately upon the filing of the entry, the clerk shall enter a judgment against the party assessed in the amount shown on the entry. The judgment shall be filed by the clerk in one of two loose-leaf books, one entitled "special judgments for state and school district income taxes," and the other entitled "special judgments for qualifying entity and electing pass-through entity taxes." The judgment shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the

attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) All money collected under this section shall be considered as revenue arising from the taxes imposed by this chapter or Chapter 5733. or 5748. of the Revised Code, as appropriate.

(E) If the party assessed files a petition for reassessment under division (B) of this section, the person, on or before the last day the petition may be filed, shall pay the assessed amount, including assessed interest and assessed penalties, if any of the following conditions exists:

(1) The person files a tax return reporting Ohio adjusted gross income, less the exemptions allowed by section 5747.025 of the Revised Code, in an amount less than one cent, and the reported amount is not based on the computations required under division (A) of section 5747.01 or section 5747.025 of the Revised Code.

(2) The person files a tax return that the tax commissioner determines to be incomplete, false, fraudulent, or frivolous.

(3) The person fails to file a tax return, and the basis for this failure is not either of the following:

(a) An assertion that the person has no nexus with this state;

(b) The computations required under division (A) of section 5747.01 of the Revised Code or the application of credits allowed under this chapter has the result that the person's tax liability is less than one dollar and one cent.

(F) Notwithstanding the fact that a petition for reassessment is pending, the petitioner may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the portion paid, there shall be issued to the petitioner or to the petitioner's assigns or legal representative a refund in the amount of the overpayment as provided by section 5747.11 of the Revised Code, with interest on that amount as provided by such section, subject to section 5747.12 of the Revised Code.



**Severance Tax**

**Section 5749.07 | Failure to file or pay tax.**

(A) If any severer required by this chapter to make and file returns and pay the tax levied by section 5749.02 of the Revised Code, or any severer or owner liable for the amounts due under section 1509.50 of the Revised Code, fails to make such return or pay such tax or amounts, the tax commissioner may make an assessment against the severer or owner based upon any information in the commissioner's possession.

No assessment shall be made or issued against any severer for any tax imposed by section 5749.02 of the Revised Code or against any severer or owner for any amount due under section 1509.50 of the Revised Code more than four years after the return was due or was filed, whichever is later. This section does not bar an assessment against a severer or owner who fails to file a return as required by this chapter, or who files a fraudulent return.

The commissioner shall give the party assessed written notice of such assessment in the manner provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the party assessed to the treasurer of state. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the party assessed resides or in which the party's business is conducted. Such filing shall include the debtor's name and last known address. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin County.

Immediately upon the filing of such entry, the clerk shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state severance tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment is issued, the portion of the assessment consisting of tax due or amounts due under section 1509.50 of the Revised Code shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised

3154 Code from the day the commissioner issues the assessment until it is paid or until it is certified to  
3155 the attorney general for collection under section 131.02 of the Revised Code, whichever comes  
3156 first. If the unpaid portion of the assessment is certified to the attorney general for collection, the  
3157 entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by  
3158 section 5703.47 of the Revised Code from the date of certification until the date it is paid in its  
3159 entirety. Interest shall be paid in the same manner as the tax and may be collected by the issuance  
3160 of an assessment under this section.

3161  
3162 (D) All money collected by the commissioner under this section shall be paid to the treasurer of  
3163 state, and when paid shall be considered as revenue arising from the tax imposed by section  
3164 5749.02 of the Revised Code and the amount due under section 1509.50 of the Revised Code, as  
3165 applicable.

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