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Perfecting Article 9 Security Interests Under Illinois Law

JASON M. TORF
Schiff Hardin LLP
Chicago

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I. [2.1] INTRODUCTION

This chapter is based on revised Article 9 of the Uniform Commercial Code (UCC), as drafted by the National Conference of Commissioners on Uniform State Laws and as adopted by the legislature of the State of Illinois at 810 ILCS 5/9-101, *et seq.* Revised Article 9, which replaces and supersedes the former version, took effect in Illinois on July 1, 2001. This chapter discusses the perfection of Article 9 security interests only under revised Article 9 and does not contain any substantive discussion of the law under the former Article 9. Because revised Article 9 applies to all transactions or liens within its scope, even those entered into or created prior to July 1, 2001 (UCC §9-702(a)), reference to the transition rules contained at Part 7 of revised Article 9, 810 ILCS 5/9-701, *et seq.*, is essential.

II. DETERMINING THE MANNER OF PERFECTION

A. [2.2] General Rules of Perfection

A security interest becomes perfected when it has attached and all applicable steps for perfection for the particular collateral in question have been taken. 810 ILCS 5/9-203, 5/9-308(a). The following procedures are four basic methods of perfecting a security interest under Article 9:

1. by taking possession of the collateral (810 ILCS 5/9-313(a));
2. by filing a financing statement in a public office (810 ILCS 5/9-310(a));
3. by obtaining control of the collateral (810 ILCS 5/9-314(a)); and
4. by accomplishing attachment alone (810 ILCS 5/9-309).

An agricultural lien (which is defined at 810 ILCS 5/9-102(a)(5) as being certain interests in farm products) becomes perfected when it becomes effective and all applicable steps for perfection have been taken. 810 ILCS 5/9-308(b).

A chart summarizing the methods of perfection for the principal collateral types under revised Article 9 (as well as the proceeds thereof) is included in §2.66 below.

B. Perfection by Possession

1. [2.3] What Constitutes Possession?

Revised Article 9 does not define “possession.” To determine whether the secured party has possession, the rules of agency apply. Official Comment 3, 810 ILCS 5/9-313. If the collateral is in the possession of someone who is clearly the secured party’s agent, then it is deemed to be in the possession of the secured party. For others who are not clearly the secured party’s agent, revised Article 9 presents two rules:

Goods in the possession of a bailee that has issued a negotiable or nonnegotiable document covering the goods. If the document is negotiable, a security interest in the goods is perfected by perfecting a security interest in the document. This security interest has priority over any security interest that becomes perfected in the goods by another method during that time. 810 ILCS 5/9-312(c). If the document is nonnegotiable, a security interest in the goods may be perfected by issuance of a document in the name of the secured party, by the bailee's receipt of notification of the secured party's interest, or by filing a financing statement against the goods. 810 ILCS 5/9-312(d). The bailee is not required to acknowledge that it is holding on behalf of the secured party.

Other collateral (except certificated securities). For other types of collateral, the secured party takes possession when the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit or a bailee takes possession of the collateral after having authenticated such a record. 810 ILCS 5/9-313(c). *See, e.g., Maloney v. Stewart Title & Trust of Tucson (In re Nichols)*, 88 B.R. 871 (Bankr. C.D.Ill. 1988); *First National Bank of Vandalia v. Trail Ridge Farm, Inc.*, 143 Ill.App.3d 244, 492 N.E.2d 1030, 97 Ill.Dec. 371 (5th Dist. 1986). Neither the debtor nor a lessee of the collateral from the debtor in the ordinary course of the debtor's business qualifies as a bailee for purposes of perfection by possession. 810 ILCS 5/9-313(c).

Perfection is concurrent with possession and continues only while possession continues. 810 ILCS 5/9-313(d). Perfection of a security interest in a certificated security in registered form perfected by delivery occurs upon delivery under UCC §8-301 and continues until the debtor obtains possession of the security certificate. 810 ILCS 5/9-313(e).

A person in possession of collateral is not required to acknowledge that it holds on behalf of the secured party and by acknowledging does not assume any obligations to the secured party or any other person. 810 ILCS 5/9-313(f), 5/9-313(g). The acknowledgment is effective even if it violates the rights of the debtor. 810 ILCS 5/9-313(g)(1).

2. [2.4] When Is Possession Mandatory?

Under UCC §9-312(b)(3), a security interest in money can be perfected only by possession. 810 ILCS 5/9-312(b)(3).

3. [2.5] When Is Possession Permissive?

Under UCC §9-313(a), a security interest in goods, instruments (other than certificated securities and other goods covered by a certificate of title), negotiable documents, or tangible chattel paper may be permanently perfected by possession. 810 ILCS 5/8-313(a).

C. Perfection by Filing

1. Where Must the Filing Be Made?

a. [2.6] Location of the Debtor

The location of the filing is determined generally by the debtor's "location," regardless of the type of collateral. 810 ILCS 5/9-301(1).

(1) [2.7] Registered organizations

The location of an entity created by a filing with a state (*e.g.*, corporations, limited liability companies, and limited partnerships) is the state where the filing is made. 810 ILCS 5/9-307(e).

(2) [2.8] Other debtors

The location of an entity other than a registered organization (*e.g.*, a general partnership) is the location of its place of business, or if it has multiple places of business, then the location is its chief executive office. If the debtor is an individual, its location is the individual's principal residence. 810 ILCS 5/9-307(b).

The rules regarding the debtor's location are subject to a number of qualifications. One such qualification states that the location rules apply only for debtors whose "residence, place of business, or chief executive office . . . is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor." 810 ILCS 5/9-307(c). In other words, the rules in UCC §9-307(b) for determining a debtor's location do not apply when the debtor's residence, place of business, or chief executive office is located in a jurisdiction that has not adopted Article 9 or some similar statute. This section, which is intended generally for non-U.S. debtors, provides for the District of Columbia to be the *de facto* location for debtors to which this section applies. The United States is also deemed to be located in the District of Columbia. 810 ILCS 5/9-307(h).

In addition, UCC §9-307(f) specifies the location of a registered organization that is organized under the law of the United States. Deference is given to federal law to the extent that it determines, or allows the debtor to determine, the debtor's location. Otherwise, the debtor's location is deemed to be the District of Columbia. This section also determines the location of branches and agencies of banks that are not organized under the law of the United States or any individual state. 810 ILCS 5/9-307(f). However, under UCC §9-307(i), if all of the branches and agencies of the bank are licensed in only one state, then the debtor's location is that state. 810 ILCS 5/9-307(i). A special rule also applies to foreign air carriers, as set forth at UCC §9-307(j). 810 ILCS 5/9-307(j).

After the occurrence of certain events, the rules for determining a debtor's location remain applicable. Under UCC §9-307(d), a person who ceases to exist, have a residence, or have a place

of business continues to be located in the jurisdiction specified by the general rules of UCC §9-307(b) (or, if that section does not apply, the District of Columbia, as provided by UCC §9-307(c)). 810 ILCS 5/9-307(d). Under UCC §9-307(g), even the suspension, revocation, forfeiture, or lapse of a registered organization's status or the dissolution, winding up, or cancellation of its existence does not alter its location, which continues to be dictated by UCC §9-307(e) or §9-307(f). 810 ILCS 5/9-307(g).

b. [2.9] Filing Office

In Illinois, the Office of the Secretary of State is the proper filing office. 810 ILCS 5/9-501(a)(2). This also applies when the debtor is a transmitting utility. 810 ILCS 5/9-501(b).

Certain types of collateral require a local filing in the office where a mortgage on real estate would be filed or recorded, including

1. as-extracted collateral (defined at 810 ILCS 5/9-102(a)(6));
2. timber to be cut (810 ILCS 5/9-501(a)(1)(A)); or
3. a financing statement filed as a fixture filing and concerning goods that are or are about to become fixtures (810 ILCS 5/9-501(a)(1)(B)).

A mortgage on real estate is ordinarily filed with the recorder's office in the county in which the real estate is located. 765 ILCS 5/28.

2. [2.10] When Is Filing Mandatory?

Under UCC §9-310(a), filing is the only manner of perfection for each of the following types of collateral:

- a. accounts;
- b. general intangibles;
- c. fixtures; and
- d. an assignment of a beneficial interest in a trust. 810 ILCS 5/9-310(a).

Filing is also the only manner of perfection for agricultural liens. *Id.*

3. [2.11] When Is Filing Permissive?

Article 9 of the Uniform Commercial Code permits the filing of a financing statement to perfect a security interest in various types of collateral. A security interest in the following types of collateral may be perfected by filing:

- a. chattel paper (tangible or electronic);
- b. negotiable documents;
- c. instruments;
- d. investment property;
- e. goods; and
- f. in a nonstandard Illinois amendment that became effective January 1, 2002, collateral assignments of beneficial interests in Illinois land trusts. 810 ILCS 5/9-312(a).

Note that certain specific rules apply to a financing statement for goods in the possession of a bailee. A financing statement for goods covered by a negotiable document must describe the negotiable document, while a financing statement for goods in the possession of a bailee that are covered by a nonnegotiable document must describe the goods. 810 ILCS 5/9-312(c), 5/9-312(d)(3). Security interests in these types of collateral also may be perfected by control or possession. See §§2.5, 2.19, 2.20 of this chapter. A security interest in these types of collateral perfected by filing is subordinate to security interests perfected by control or possession. Alternative methods of perfection achieve higher priority.

4. [2.12] When Is Filing Inadequate?

Filing is not even an optional method of perfection for

- a. deposit accounts (except as proceeds), which may be perfected only by control;
- b. letter-of-credit rights (except as proceeds or supporting obligations), which may be perfected only by control; and
- c. money (except as proceeds), which may be perfected only by possession. 810 ILCS 5/9-312(b).

5. [2.13] When Is Filing Requirement Superseded by Other Statutes?

Transactions for which a system of filing has been established under federal law are exempted from the filing provisions. 810 ILCS 5/9-311(a)(1). In addition, transactions that are covered by state certificate-of-title statutes providing that a security interest must be indicated on the certificate as a condition or result of perfection (*e.g.*, the Illinois Vehicle Code and the Boat Registration and Safety Act) are exempted from the filing provisions. 810 ILCS 5/9-311(a)(2), 5/9-311(a)(3). Compliance with the perfection requirements of such other statute, regulation, or treaty is sufficient to perfect a security interest under Article 9 and will have the same effect as a security interest that is perfected under Article 9. 810 ILCS 5/9-311(b). The time of perfection is governed by the statute, regulation, or treaty. 810 ILCS 5/9-311(c). While any such collateral is held as inventory for sale or lease and the holder is in the business of selling or leasing such

goods, the certificate-of-title statute does not apply to a security interest created by the holder as debtor and perfection is achieved by filing. 810 ILCS 5/9-311(d).

D. [2.14] Perfection by Control

Under UCC §9-314(a), a security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral. 810 ILCS 5/9-314(a). “Control” is defined separately for each of these types of collateral.

1. [2.15] When Is Control Mandatory?

Control is the only method of perfection of a security interest in deposit accounts or letter-of-credit rights. 810 ILCS 5/9-312(b)(1), 5/9-312(b)(2).

a. [2.16] Control of Deposit Account

Under UCC §9-104(a), a secured party controls a deposit account in any of three ways:

1. if the secured party is the bank that maintains the deposit account;
2. if the secured party obtains the bank’s authenticated (see 810 ILCS 5/9-102(a)(7)) agreement that it will comply with the secured party’s instructions directing disposition of the funds in the deposit account without further consent by the debtor; or
3. if the secured party becomes the bank’s customer with respect to the deposit account. 810 ILCS 5/9-104(a).

The debtor’s continued right to access the deposit account is not inconsistent with the secured party’s control. 810 ILCS 5/9-104(b). Both the secured party and the debtor may have access to the account. The security interest is perfected when the secured party obtains control. 810 ILCS 5/9-314(b). The security interest remains perfected only while the secured party retains control. *Id.*

Banks are not required by law to enter into control agreements even if the customer so requests or directs. If a bank has entered into a control agreement, it is not obligated to confirm the existence of the agreement to another person unless requested to do so by its customer. 810 ILCS 5/9-342.

b. [2.17] Control of Letter-of-Credit Rights

Under UCC §9-107, a secured party obtains control of a letter-of-credit right if the issuer or nominated person (*e.g.*, a confirmer or negotiating bank) consents to an assignment of the proceeds of the letter of credit. 810 ILCS 5/9-107. See also 810 ILCS 5/5-114(c). Perfection of a security interest in the original collateral also perfects a security interest in a letter-of-credit right as a supporting obligation. 810 ILCS 5/9-308(d). The secured party remains perfected only while the secured party retains control. 810 ILCS 5/9-314(b).

2. [2.18] When Is Control Permissive?

Control is available as a method to perfect a security interest in electronic chattel paper, investment property, or, in a nonstandard Illinois amendment that became effective January 1, 2002, collateral assignments of beneficial interests in Illinois land trusts.

a. [2.19] Control of Electronic Chattel Paper

Under UCC §9-105, a secured party has control of electronic chattel paper if the record or records comprising the chattel paper are uniquely marked. 810 ILCS 5/9-105.

b. [2.20] Control of Investment Property

Under UCC §9-106(a), a secured party has control of a certificated security, uncertificated security, or security entitlement as provided in UCC §8-106. 810 ILCS 5/9-106(a). Essentially, obtaining control of these types of investment property means that the purchaser has taken the necessary steps, considering the manner in which the securities are held, to place itself in a position to have the securities sold without further action by the owner. Control of a commodity contract is obtained in a similar manner, as directed by UCC §9-106(b). Control over the account achieves control over the security entitlements or the commodity contracts held in the account. Official Comment 4, 810 ILCS 5/9-106.

The Article 8 rules on control of securities and security entitlements are as follows:

1. The secured party has control of a certificated security in bearer form if the security is delivered to the secured party. 810 ILCS 5/8-106(a). Delivery means the possession of the certificate by the secured party, another person on behalf of the secured party, or a securities intermediary acting on behalf of the secured party (but only if the certificate is in registered form and has been specially indorsed to the secured party by an effective indorsement). 810 ILCS 5/8-301(a).

2. The secured party has control of a certificated security in registered form if the security is delivered to the secured party and is indorsed to the secured party or in blank by an effective indorsement or is registered in the name of the secured party. 810 ILCS 5/8-106(b).

3. The secured party has control of an uncertificated security if it is delivered to the secured party or if the issuer has agreed that it will comply with instructions originated by the secured party without further consent by the registered owner. 810 ILCS 5/8-106(c). Delivery occurs when the issuer registers the secured party or a person acting on behalf of the secured party as the registered owner. 810 ILCS 5/8-301(b)(1). Delivery also occurs if the registered owner acknowledges that it holds the security for the secured party. 810 ILCS 5/8-301(b)(2).

4. The secured party has control of a security entitlement if the secured party becomes the entitlement holder (*i.e.*, becomes the broker's customer) or the securities intermediary agrees that it will comply with entitlement orders originated by the secured party without further consent by the entitlement holder. 810 ILCS 5/8-106(d). A secured party has control if another person has

control of the security entitlement on behalf of the secured party or, if the other person already had control of the security entitlement, the other person acknowledges that it has control on behalf of the secured party. 810 ILCS 5/8-106(c)(3). If the entitlement holder grants an interest in a security entitlement to its own securities intermediary, the securities intermediary automatically has control. 810 ILCS 5/8-106(e).

A secured party may have control even though the original entitlement holder remains authorized to direct the securities intermediary to make trades and even to withdraw assets. Official Comment 4, 810 ILCS 5/8-106. The secured party, however, must have the power to direct the securities intermediary to comply with the secured party's entitlement orders with no further consent of the debtor. The secured party's power to direct the securities intermediary may be conditional; *e.g.*, it may arise only upon the debtor's default. Official Comment 7, 810 ILCS 5/8-106.

A security interest perfected by control is perfected when the secured party obtains control and remains perfected until the secured party no longer has control and the debtor acquires the security certificate, becomes the registered owner of the uncertificated security, or becomes the entitlement holder. 810 ILCS 5/9-314(c).

c. [2.21] Control of Collateral Assignments of Beneficial Interests in Illinois Land Trusts

Illinois has enacted nonstandard provisions that took effect January 1, 2002, to preserve the former non-filing method of perfecting collateral assignments of beneficial interests (ABIs) in Illinois land trusts. Illinois land trusts are created for the principal purpose of holding title to Illinois land and give to the beneficiary a personal property interest called a "power of direction" or "beneficial interest." The amendments recognize the potential, created by the inclusion of beneficial interests in revised Article 9 collateral that can be perfected by filing, of more perfected security interests in this type of personal property. Such security interests can arise under the uniform version of revised Article 9 merely by taking a security interest in all of the debtor's general intangibles and filing a financing statement against "all assets" of the debtor in the location of the debtor. 810 ILCS 5/9-102(a)(42), 5/9-108, 5/9-504(2). Prior to the enactment of revised Article 9, conflicting caselaw in Illinois either required lodging an assignment of the beneficial interest with the land trustee or held that such interests were automatically perfected upon attachment. *Compare St. Charles Savings & Loan Association v. Estate of Sundberg*, 150 Ill.App.3d 100, 501 N.E.2d 322, 103 Ill.Dec. 301 (2d Dist. 1986) (lodging and acceptance required), *with In re Foos*, No. 96 C 3982, 1996 U.S. Dist. LEXIS 14507 (N.D.Ill. Sept. 19, 1996) (stating that weight of authority is that collateral ABI is perfected upon attachment).

Rather than nullifying filing as a method of perfection (and thus creating a trap for the unwary secured party who relies on the uniform law's specification of filing), the amendments adopt the "control" method of perfection as an additional, permissive method of perfection in the beneficial interest. 810 ILCS 5/9-107.1(a), 5/9-310(b)(8), 5/9-314(a). This approach also avoids the creation of a "secret lien" that is automatically perfected upon attachment of the ABI. Control is effected by lodging the collateral assignment with the land trustee and obtaining its acceptance by the trustee in an authenticated record. *Id.* The secured party is in control even if the beneficiary retains the power of direction and the right to receive the rent income and profits thereof. 810 ILCS 5/9-107.1(b).

Perfection by control gives the secured party a superpriority over other secured parties who perfected their ABIs by filing. This superpriority extends to beneficial interests and proceeds of beneficial interests consisting of cash proceeds or other beneficial interests in Illinois land trusts. If multiple parties perfect by control, the first to so perfect has priority. 810 ILCS 5/9-329.1. However, this is unlikely to become an issue since most assignments bar the trustee from accepting subsequent assignments without the consent of the secured party.

The land trust amendments do not completely eliminate the need to identify the location of the beneficiary of a land trust and to file a financing statement there. First, a filing will ensure that the secured party receives notice of other secured parties' foreclosures and hence provide an opportunity to intervene and assert the superpriority of perfection by control. Second, a precautionary filing avoids the prospect of litigation over choice of law if a beneficiary in a new deal is located outside Illinois. It will be less expensive to make a precautionary filing against a beneficiary than to litigate the issue. Bear in mind that the secured party who perfects by filing must be vigilant for location changes (particularly a change in the principal residence of an individual).

Enforcement of a beneficial interest in an Illinois land trust may not be under Part 6 of revised Article 9, 810 ILCS 5/9-601, *et seq.* The Illinois Mortgage Foreclosure Law requires judicial foreclosure for ABIs in land trusts that were created at or in close proximity to the creation of the land trust pursuant to a requirement in the loan documents that the beneficial owner provide such security. 735 ILCS 5/15-1106(a)(3). Otherwise, a UCC foreclosure is an optional remedy for other ABIs. 735 ILCS 5/15-1106(b). The Illinois Mortgage Foreclosure Law applies to all ABIs in land trusts created after its 1986 effective date. 735 ILCS 5/15-1106(a)(3).

The amendments take special steps to ensure that local Illinois law will govern the perfection, the effect of perfection or non-perfection, and the priority of a collateral assignment of, or other security interest in, a beneficial interest in an Illinois land trust. 810 ILCS 5/9-306.1. An entire secured transaction involving a security interest in a beneficial interest in an Illinois land trust can be closed — and foreclosed — by a debtor and secured party located outside Illinois in a non-Illinois court. The special choice of law rule states that it

implements the important interest of this State in matters associated with the administration of Illinois land trusts created for the principal purpose of owning an interest in Illinois land and the regulation of restrictions on the transfer of beneficial interests in, and of the power of appointments under, such trusts. *Id.*

This language invokes the sections of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS that require disputes involving land to be governed by the local law of the situs of the land. This language also makes it unlikely that an Illinois court will enforce a foreign judgment that is based on non-Illinois law in conflict with this choice of law provision.

E. Automatic Perfection (By Attachment Alone)

1. [2.22] Under What Circumstances Is Perfection by Attachment Permanent?

Under UCC §9-309, in each of the following circumstances, the security interest is perfected upon attachment without requiring the secured party to take possession of the collateral, obtain control of the collateral, or file a financing statement:

a. Purchase-money security interests in consumer goods. However, if the consumer goods are fixtures, filing may be required under UCC §§9-310(a) and 9-502(b) (*see Harney v. Spellman*, 113 Ill.App.2d 463, 251 N.E.2d 265 (4th Dist. 1969)), or if subject to a statute or treaty described in UCC §9-311(a) (see §2.13 above), then such statute or treaty governs perfection (UCC §9-311(b)). If there is no filing, transfers of the collateral to certain bona fide transferees will be free of the security interest. 810 ILCS 5/9-320(b).

b. Assignment of “insignificant” accounts, provided that the assignment “does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor’s outstanding accounts or payment intangibles.” 810 ILCS 5/9-309(2). For insight into what might constitute a “significant part,” *see City of Vermillion, South Dakota v. Stan Houston Equipment Co.*, 341 F.Supp. 707, 712 (D.S.D. 1972) (assignment was “significant” when it included entire proceeds of contractor’s sole construction contract), and *E. Turgeon Construction Co. v. Elhatton Plumbing & Heating Co.*, 110 R.I. 303, 292 A.2d 230 (1972) (assignment of \$10,000 retainage by plumbing subcontractor to equipment supplier was isolated event and did not constitute assignment of “significant part” of accounts receivable).

c. Certain other security interests

1. arising from a sale of a payment intangible or promissory note (a sale of a participation interest in a promissory note is perfected automatically);
2. created by the assignment of a “health-care-insurance receivable” (defined at UCC §9-102(a)(46)) to the provider of the healthcare goods or services (a subsequent assignment from the healthcare provider to another is not automatically perfected);
3. arising under UCC §2-401, §2-505, §2-711(3), or §2A-508(5), until the debtor obtains possession of the collateral;
4. of a collecting bank in items, accompanying documents, and proceeds arising under UCC §4-210;
5. of an issuer or nominated person arising under UCC §5-118;
6. arising in the delivery of a financial asset under UCC §9-206(c) (*i.e.*, when a broker credits a financial asset to the buyer’s account before payment);

7. in investment property created by a broker or securities intermediary or in a commodity contract or a commodity account created by a commodity intermediary;
8. arising from an assignment for the benefit of creditors of the transferor and subsequent transfers by the assignee; and
9. created by an assignment of a beneficial interest in a decedent's estate. 810 ILCS 5/9-309.

In addition, a security interest in a “supporting obligation” (defined at UCC §9-102(a)(77) as being a letter-of-credit right or secondary obligation that supports the payment or performance of certain types of collateral) is automatically perfected if a security interest in the collateral related to the supporting obligation is perfected. 810 ILCS 5/9-308(d).

2. [2.23] Under What Circumstances Is Temporary Perfection by Attachment Achieved?

A security interest in certificated securities, negotiable documents, or instruments is temporarily perfected under UCC §9-312(e) for a period of 20 days from the time of attachment, even if there has been no filing and the collateral remains in the possession of the debtor, so long as the secured party provided “new value” to the debtor. 810 ILCS 5/9-312(e). In addition, under UCC §9-312(f), a security interest that is already perfected with respect to a negotiable document or goods in the possession of a bailee (but not goods covered by a negotiable document) will remain temporarily perfected for 20 days without filing if the secured party makes the collateral available to the debtor for the purpose of ultimate sale or exchange or dealing with such collateral prior to sale or exchange in a manner consistent with such purpose. 810 ILCS 5/9-312(f). A perfected security interest in a certificated security or instrument also remains temporarily perfected, under UCC §9-312(g), for 20 days without filing if the secured party delivers such collateral to the debtor for the purpose of ultimate sale or exchange or presentation, collection, enforcement, renewal, or registration of transfer. 810 ILCS 5/9-312(g). After any 20-day period of temporary perfection expires, perfection will lapse unless such security interest is perfected in another manner directed by Article 9. 810 ILCS 5/9-312(h). *See Expeditors International of Washington, Inc. v. Liquidating Trust (In re Schwinn Cycling & Fitness, Inc.)*, 51 U.C.C.Rep.Serv.2d (CBC) 1224 (Bankr. D.Colo. 2003) (although Expeditors was temporarily perfected at petition date, Expeditors lost that status by failing to file financing statement within 20 days of parting with its collateral). If the collateral is sold, the interest in proceeds remains perfected only to the extent permitted under 810 ILCS 5/9-315(d).

F. Special Types of Collateral

1. [2.24] Stock Option Contracts and Stock Warrants

There is some uncertainty as to whether stock option contracts and stock warrants are securities, and thus investment property, under the UCC because of a split of authority as to whether stock options or warrants are included in the definition of “investment security.” *See E.F. Hutton & Co. v. Manufacturers National Bank of Detroit*, 259 F.Supp. 513, 517 (E.D.Mich.

1966) (stock warrants fall within definition of “investment security” under former version of Article 8); *Art-Camera-Pix, Inc. v. Cinecom Corp.*, 315 N.Y.S.2d 991, 994 (1970) (transferable warrants evidencing rights to subscribe for shares in corporation will normally be “securities”); *Cohn, Ivers & Co. v. Gross*, 56 Misc.2d 491, 289 N.Y.S.2d 301, 305 (1968) (call option is not security, but rather “chose in action” concerning security). However, although cases discussing Article 8 may be instructive, these cases do not involve the treatment of securities under Article 9.

More recent caselaw suggests that stock options and warrants are likely general intangibles, which are perfected by filing, and not investment securities, which may be perfected by possession or filing. *Larson v. ORIX Credit Alliance, Inc. (In re Larson)*, No. 90-05863, 1993 Bankr. LEXIS 1518, *8 (Bankr. D.N.D. July 1, 1993) (creditor perfected its security interest in debtor’s general intangibles which included stock options); *Cardillo v. Tech Prototype, Inc.*, Civil No. 92-235-SD, 1994 U.S. Dist. LEXIS 21262, *7 (D.N.H. Mar. 17, 1994) (for purposes of summary judgment, stock options fail to meet Article 8 definition of “security”); *United States v. Oncology Associates, P.C.*, 269 B.R. 139, 157 (D.Md. 2001), *aff’d*, 61 Fed.Appx. 860 (4th Cir. 2003) (stock option agreement falls within general intangibles under UCC). Moreover, at least two authors maintain that OTC derivatives would be deemed “general intangibles” and specifically “payment intangibles” under Article 9. The authors reached this conclusion based on authorities’ finding that certain option rights constituted “general intangibles.” Mark A. Guinn and William L. Harvey, *Taking OTC Derivative Contracts as Collateral*, 57 Bus.Law. 1127 (May 2002). These authors concluded that OTC options would not fall within the definition of “security” or “financial asset” under UCC §8-102, even though they are considered securities under federal statutes. While there is no clear answer to the question presented by stock options and warrants, it is important to consider this issue when security consists of stock options and/or warrants and prudence may dictate perfection by *both* filing *and* possession.

2. [2.25] Partnership and LLC Interests

Article 8 of the UCC, 810 ILCS 5/8-101, *et seq.*, contains special rules regarding partnership and LLC interests. The most critical is UCC §8-103(c), which states that an interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by Article 8, or it is an investment company security. 810 ILCS 5/8-103(c). However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

This definition controls over the more general definition of “security” in UCC §8-102 (which would, if applicable, likely lead to the conclusion that most partnership and LLC interests are securities). 810 ILCS 5/8-102(a)(15). Lenders involved in financing transactions involving security interests in partnership and LLC ownership interests must consider each portion of this definition:

- a. See if the ownership interests are publicly traded in the market. If they are, they are securities. If not, go to the next step.
- b. See if the partnership or LLC itself is a registered investment company. If it is, the interests are securities. If not, go to the next step.

c. Look carefully at the partnership and LLC charter documents to see whether those documents “expressly provide” that the interests are securities. If not, and you passed the first two tests, then the interests are not securities.

A partnership or LLC interest that is not a security will therefore be a “general intangible.” Security interests in such partnership or LLC interests may be perfected by filing a financing statement in the appropriate filing office or by other means. The last sentence of UCC §8-103(c) makes it clear that whatever the status of the interest as a security or non-security, if held in a securities account, it is a financial asset and thus subject to perfection through control over the account itself. The secured party would be wise, however, to make sure that it has control, not just perfection through filing, if possible.

In addition, the partnership and LLC interests may be certificated or uncertificated. If certificated, the prudent lender will require physical possession and control in that fashion as well as perfection through other means, whether or not the interests are securities.

3. [2.26] Vehicles

Security interests in vehicles are subject to several unique rules. A “vehicle” is defined under the Illinois Vehicle Code as

Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway or requiring a certificate of title under Section 3-101(d) of this Code [625 ILCS 5/3-101(d)], except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles as defined in the Snowmobile Registration and Safety Act [625 ILCS 40/1-1, *et seq.*]. 625 ILCS 5/1-217.

A financing statement is not required to be filed to perfect a security interest in a vehicle and, if filed, is not effective. 810 ILCS 5/9-310(b)(3), 5/9-311(a)(2). Compliance with the motor vehicle lien statute is equivalent to filing a financing statement under Article 9, except that the time of perfection is determined by the Illinois Vehicle Code. 810 ILCS 5/9-311(b). A security interest in a vehicle is not valid against any creditor of the owner or any subsequent transferee of the owner or other secured party unless the security interest is perfected under the Illinois Vehicle Code. 625 ILCS 5/3-202.

With one exception, a security interest in a vehicle may be perfected only by compliance with the Illinois Vehicle Code, and a security interest so perfected remains perfected even though use or possession of the vehicle is transferred. 810 ILCS 5/9-311(b); 625 ILCS 5/3-207. Perfection occurs by delivery to the Illinois Secretary of State of the existing certificate of title, if any, and an application for a new certificate of title containing the name and address of the secured party and the appropriate filing fee. 625 ILCS 5/3-202(b).

In connection with the enactment of revised Article 9, the Illinois Vehicle Code was amended to deal with delays in the process of recovery of the certificate of title from the prior lienholder or the dealer. Under the amendment, the perfection date relates back to the time of the security

interest's creation if the delivery to the Secretary of State is completed within 21 days after the creation of the security interest or the new lienholder receives the certificate of title for the prior lienholder or dealer; otherwise, it is perfected as of the delivery date. *Id.* This should avoid bankruptcy attack in the event of an intervening bankruptcy of the owner.

The local law of the jurisdiction that issues the certificate of title governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in vehicles from the time the vehicle becomes covered by the certificate of title until it ceases to be covered. 810 ILCS 5/9-303(c). This law governs, even if there is no other relationship between the jurisdiction and the vehicle or the debtor. 810 ILCS 5/9-303(a). See *In re Paige*, 679 F.2d 601 (6th Cir. 1982); *Durette v. Associates Commercial Corp. (In re Durette)*, 228 B.R. 70 (Bankr. D.Conn. 1998); *Meeks v. Mercedes Benz Credit Corp.*, 257 F.3d 843 (8th Cir. 2001).

Goods become covered by a certificate of title when an application for a certificate of title and the appropriate fee are delivered to the appropriate authority. Goods cease to be covered at the earlier of the time the certificate of title becomes ineffective or the time the vehicle becomes covered by a certificate of title issued by another jurisdiction. 810 ILCS 5/9-303(b). Even though another state law governs perfection, the security interest remains perfected until it otherwise would have lapsed, subject to loss of perfection to purchasers of the vehicle for value described below. 810 ILCS 5/9-316(d).

A security interest in vehicle inventory held for sale or lease by a person in the business of selling or leasing goods of that kind is not perfected by notation on a certificate of title and must be perfected by filing a financing statement. 810 ILCS 5/9-311(d). Article 9 also requires perfection by filing against inventory in the case of title vehicles on lease (as opposed to merely held for lease). *Id.* Perfection of a security interest in inventory of a dealer is governed by the general perfection rules even though the vehicles will be covered by a certificate of title in the hands of a buyer. Under the former UCC §9-302(3)(b), a secured party who financed a dealer would have filed a financing statement on the goods held for sale and would have complied with the certificate-of-title statute for goods held for lease. Official Comment 4, 810 ILCS 5/9-311. Under Revised Article 9, financiers simply must file against the goods as inventory, whether the goods are held for sale or lease.

If the debtor moves the vehicle to another jurisdiction and a new certificate of title is issued that does not show the security interest that was shown on the prior certificate, perfection continues until the security interest would have lapsed. 810 ILCS 5/9-316(d). However, perfection lapses as against a purchaser of the goods for value (including a secured party), and the security interest is deemed never to have been perfected against such purchaser if the lien is not noted on the new certificate of title within four months. 810 ILCS 5/9-316(e).

A creditor who becomes aware that the vehicle has moved to another jurisdiction has four months to have its lien noted on the new state's certificate of title or risk subordination to another secured party or buyer. Alternatively, the secured party may continue perfection by taking possession, or repossession, of the vehicle. 810 ILCS 5/9-313(b). Only in this circumstance does possession of the vehicle perfect. *Id.*

4. [2.27] Boats and Vessels

Procedures governing perfection of security interests in boats depend on the size of the boat and the jurisdiction. If a boat weighs more than five tons and meets certain other requirements set forth in Chapter 121 of Title 46 of the U.S. Code, the boat may be federally “documented.” 46 U.S.C. §12102; 46 C.F.R. §67.5. A federal filing with the National Vessel Documentation Center (www.uscg.mil/hq/g-m/vdoc/nvdc.htm) is required in order to perfect an interest in a documented boat. 46 U.S.C. §31321. Generally, this federal filing takes the form of a “preferred mortgage,” which is given status and priority as a maritime lien. *Id.*

For boats not covered under the federal documentation system that meet the definition of “motorboat” under 625 ILCS 45/1-2, “[a] security interest is perfected by the delivery to the Department of Natural Resources of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the date of his security agreement and the required fee. It is perfected as of the time of its creation if the delivery is completed within 21 days thereafter, otherwise as of the time of the delivery.” 625 ILCS 45/3B-2(b). For all other “vessels” not included in the Illinois statutory definition of “motorboat,” perfection is governed by the same rules applicable to other goods, equipment, and/or inventory under Article 9. See 625 ILCS 45/1-2 (broadly defining “vessel” as “every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water, innertube, air mattress or similar device, and boats used for concession rides in artificial bodies of water designed and used exclusively for such concessions”).

5. [2.28] Aircraft

If a federal statute, regulation, or treaty preempts Article 9’s rules with respect to when a secured party’s interest in collateral has priority over lien creditors, then the filing of a financing statement is neither necessary nor effective to perfect a security interest in that collateral. 810 ILCS 5/9-311(a)(1). Security interests in civil aircraft and their parts are subject to such federal statutes. Official Comment 2, 810 ILCS 5/9-311; 49 U.S.C. §§44107 – 44111. *See also In re AvCentral, Inc.*, 289 B.R. 170 (Bankr. D.Kan. 2003) (FAA controls perfection of security interest in aircraft); *Aircraft Trading & Services, Inc. v Braniff, Inc.*, 819 F.2d 1227 (2d Cir.), *cert. denied*, 108 S.Ct. 163 (1987). The distinct types of collateral that must be perfected under the Federal Aviation Act include (a) civil aircraft; (b) aircraft engines of 750 or more rated takeoff horsepower; (c) aircraft propellers capable of absorbing 750 or more rated takeoff shaft power; and (d) aircraft engines, propellers, appliances, and spare parts maintained by an air carrier certified under 49 U.S.C. §44705. 49 U.S.C. §44107(a).

To perfect a security interest in aircraft, the instrument granting the security interest must be recorded with the Federal Aviation Administration Aircraft Registry. AC Form 8050-93, Recording of Aircraft Ownership and Security Documents ¶2 (available at www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry). The instrument must be signed by the debtor, who must be the registered owner, and must be notarized. 49 U.S.C. §44107. Additional requirements for properly recording security interests in civil aircraft and aircraft parts may be found in the Federal Aviation Regulations, 14 C.F.R. pt. 49, Recording of Aircraft Titles and Security Documents.

A security interest that has been recorded with the FAA is perfected from the date of filing. 49 U.S.C. §44108. A security interest that has not been recorded with the FAA is enforceable only against the debtor, its heirs and devisees, and those who have actual notice of the interest. *Id.* Although federal law governs perfection of security interests in aircraft and major aircraft parts, priority of interests between interest holders in such collateral is still a matter governed by state law. *See Braniff, supra*, 819 F.2d at 1232; *Northern Illinois Corp. v Bishop Distributing Co.*, 284 F.Supp. 121 (W.D.Mich. 1968) (applying rule that buyer in ordinary course from dealer takes free of security interest created by seller even where secured party filed under federal system). Note, however, that if there is any doubt as to whether perfection is governed by the federal scheme, it is advisable to file a financing statement. *See In re Craig*, 57 B.R. 63 (Bankr. D.S.C. 1985).

G. Choice of Law Rules

1. [2.29] General Rule

The law of the debtor's location generally governs the perfection, the effect of perfection or non-perfection, and the priority of a security interest that is perfected by filing. 810 ILCS 5/9-301(1). However, if perfection is by possession, then the law of the state where the collateral is located governs perfection, the effect of perfection or non-perfection, and the priority of such security interest. 810 ILCS 5/9-301(2). In addition, with respect to tangible collateral (*e.g.*, negotiable documents, goods, instruments, money, or tangible chattel paper) perfected by filing, the law of the jurisdiction where the collateral is located governs the effect of perfection. 810 ILCS 5/9-301(3)(C).

2. [2.30] Agricultural Liens

The law of the jurisdiction where the farm products are located governs perfection, the effect of perfection or non-perfection, and the priority of an agricultural lien on farm products. 810 ILCS 5/9-302.

3. [2.31] Goods Covered by a Certificate of Title

The law of the jurisdiction under whose certificate of title the goods are covered governs perfection and priority of a security interest in goods covered by a certificate of title. This rule applies only during the time the goods are actually covered by the certificate of title. 810 ILCS 5/9-303(c).

4. [2.32] Deposit Accounts

The law of the bank's jurisdiction with which the deposit account is maintained governs perfection and priority of a security interest in a deposit account. 810 ILCS 5/9-304(a). A bank's jurisdiction is determined in accordance with the rules of 810 ILCS 5/9-304(b).

5. [2.33] Investment Property

The law governing perfection and priority of a security interest in certificated securities is that of the jurisdiction where the security certificate is located. 810 ILCS 5/9-305(a)(1). With

respect to uncertificated securities, the law of the jurisdiction where the issuer is located governs perfection and priority. 810 ILCS 5/9-305(a)(2). The law of the jurisdiction where the securities or commodity intermediary is located governs the effect of perfection of a security interest in security entitlements, commodity contracts, securities accounts, and commodity accounts. 810 ILCS 5/9-305(a)(3), 5/9-305(a)(4). A commodity intermediary's jurisdiction is determined in accordance with the rules of UCC §9-305(b), 810 ILCS 5/9-305(b).

6. [2.34] Letter-of-Credit Rights

The law of the issuer's or nominated person's jurisdiction governs perfection and priority of a security interest in a letter-of-credit right. 810 ILCS 5/9-306(a). An issuer's or nominated person's jurisdiction is determined in accordance with the rules of 810 ILCS 5/9-306(b).

III. ELEMENTS OF A FINANCING STATEMENT

A. [2.35] Contents

UCC §9-506(a) provides that a "financing statement substantially satisfying the requirements of this Part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." 810 ILCS 5/9-506(a). Nevertheless, to be effective, the financing statement must contain certain information. Subject to certain exceptions, a financing statement must state (1) the name of the debtor, (2) the name of the secured party or a representative of the secured party, and (3) the collateral covered by the financing statement. 810 ILCS 5/9-502(a). This information is discussed in §§2.36 – 2.49 below. The official forms (see §2.53 below) ask for certain additional information. Note also the requirements of the Secretary of State (see §2.64 below).

1. [2.36] Identification of Debtor and Secured Party

Under former Article 9, courts were generally somewhat lenient about errors in the name of the secured creditor. For instance, courts rejected arguments that financing statements were defective when the creditor was identified by one of its divisional trade names (*Clarke Floor Machine Division of Studebaker Corp. v. Gordon*, 7 U.C.C.Rep.Serv. (CBC) 363 (Md. 1970)), by a shortened version of its real name (*Industrial National Bank of Rhode Island v. Quinn (In re Dwares)*, 6 B.R. 335 (Bankr. D.R.I. 1980)), when the secured creditor later changed its name or address (*Steego Auto Parts Corp. v. Markey*, 2 Ohio App.3d 200, 441 N.E.2d 279 (6th Dist. 1981)), or when the name of the parent company of the secured party was used (*In re Colorado Mercantile Co.*, 299 F.Supp. 55 (D.Colo. 1969)). Decisions under revised Article 9 should take a similar view. Further, a financing statement does not need to indicate the representative capacity of a secured party or the representative of a secured party to be sufficient. 810 ILCS 5/9-503(d).

However, stricter rules regarding the debtor's name have been promulgated because the filing officer uses the debtor's name to index the security interest.

a. [2.37] *Identifying Correct Debtor*

Section 9-503(a) of the Uniform Commercial Code provides the requirements for naming the debtor on a financing statement:

1. For a registered organization, the financing statement must provide the name of the debtor indicated on the public record of the debtor's jurisdiction of organization that shows the debtor to have been organized.

2. For a decedent's estate, the financing statement must provide the name of the decedent and indicate that the debtor is an estate.

3. For a trust or a trustee acting with respect to property held in trust, the financing statement must

- a. provide the name specified for the trust in its organic documents or, if no name is specified, provide the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
- b. indicate that the debtor is a trust or is a trustee acting with respect to property held in trust.

4. In all other cases,

- a. if the debtor has a name, the financing statement must provide the individual or organizational name of the debtor; and
- b. if the debtor does not have a name, the financing statement must provide the names of the partners, members, associates, or other persons comprising the debtor. 810 ILCS 5/9-503(a).

b. [2.38] *Effect of Errors or Omissions*

Under the general rule stated in UCC §9-506(b), a financing statement that fails to sufficiently identify the debtor under UCC §9-503(a) is seriously misleading. 810 ILCS 5/9-506(b). However, if the financing statement would still be found using standard search methods (as described in UCC §9-506(c)), then the financing statement will not be considered seriously misleading. 810 ILCS 5/9-506(c).

c. [2.39] *New Debtor Becoming Bound by Security Agreement*

In certain circumstances, such as when a change in business structure occurs, a new debtor may become bound by an existing security agreement. For example, if the original debtor to a security agreement is a sole proprietorship that becomes incorporated, a new debtor is bound. Also, the original debtor may be a corporation that merges into another corporation. Official Comment 2, 810 ILCS 5/9-508.

If a new debtor has or acquires rights in collateral for which a financing statement has already been filed, a security interest in that collateral remains perfected to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral. 810 ILCS 5/9-508(a). However, if the filing against the original debtor is seriously misleading (see §2.38 above) as to the new debtor, the filing is effective only as to collateral acquired by the new debtor before and within four months after becoming bound (see 810 ILCS 5/9-203(d) for the rule regarding how a new debtor becomes bound). 810 ILCS 5/9-508(b)(1). A financing statement that provides the name of the new debtor must be filed within four months of the new debtor's becoming bound by the security agreement to perfect a security interest in collateral acquired by the new debtor more than four months after becoming bound. 810 ILCS 5/9-508(b)(2). See also §2.44 below.

d. [2.40] Multiple Debtors and Secured Parties

More than one debtor and secured party may be indicated on a financing statement. 810 ILCS 5/9-503(e).

e. [2.41] Correctly Recording Debtor's Name

For an individual debtor, the financing statement must identify the debtor's last name. 810 ILCS 5/9-516(b)(3)(C).

Under the former Article 9, many cases found that a misspelling of an individual debtor's last name is defective. *Bank of North America v. Bank of Nutley*, 94 N.J.Super. 220, 227 A.2d 535 (1967) ("Kapas" instead of "Kaplan"); *National Cash Register Co. v. Valley National Bank of Long Island*, 5 U.C.C.Rep.Serv. (CBC) 396 (N.Y. 1968) ("Boywald" instead of "Borgwald"); *In re Brawn*, 6 U.C.C.Rep.Serv. (CBC) 1031 (Bankr. D.Me. 1969) ("Brawn" instead of "Brown" and reversal of first and last names). Similarly, one court has held that using the name "McGovern Auto Specialty, Inc." was not effective against "McGovern Auto Truck Parts, Inc." *Kay Automotive Warehouse, Inc. v. McGovern Auto Specialty, Inc. (In re McGovern Auto Specialty, Inc.)*, 51 B.R. 511 (Bankr. E.D.Pa. 1985).

It is important to make sure that the financing statement actually refers to the correct debtor. See, e.g., *River Valley Bank of Russellville, Arkansas v. Ace Sports Management, LLC (In re Ace Sports Management, LLC)*, 271 B.R. 134 (Bankr. E.D.Ark. 2001) (secured party incorrectly listed individual debtor's corporation as debtor in financing statement instead of individual debtor).

Article 9 does not provide any specific criteria in regard to the sufficiency of an individual's name. What constitutes an individual debtor's name should be determined by a review of the debtor's driver's license, social security card, birth certificate, or other official documents. Some doubt exists as to whether the use of an individual debtor's nickname is sufficient. In *Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71 (B.A.P. 10th Cir. 2004), the Tenth Circuit Bankruptcy Appellate Panel held that the use of a debtor's nickname (Terry) in a creditor's financing statements rather than his legal name (Terrance) rendered the financing statement insufficient. This holding reversed the lower court and disavowed the result in *Nazar v. Bucklin National Bank (In re Erwin)*, 50 U.C.C.Rep.Serv.2d (CBC) 933 (Bankr. D.Kan. 2003), in which

the use of “Mike Erwin” as opposed to “Michael A. Erwin” did not render the financing statement seriously misleading because a reasonably diligent searcher not only would have run searches for “Michael A. Erwin,” but also for “Erwin” or “Erwin, M.” and would have found the financing statements. As *Kinderknecht* emphasizes, a secured party should make every effort to ensure the full legal name of an individual appears on a financing statement. There have been much discussion and controversy surrounding *Kinderknecht* and other questions left to be determined, such as the use of foreign names or how to resolve conflicts in the event that the debtor’s legal name shows up differently on the birth certificate, driver’s license, passport, etc.

In *Pankratz Implement Co. v. Citizens National Bank*, 33 Kan.App.2d 279, 102 P.3d 1165 (2004), the court concluded that a financing statement filed against “Roger House” instead of the debtor’s legal name, “Rodger House,” was seriously misleading because the financing statement would not be disclosed using the state’s standard search logic.

A financing statement may provide the names of multiple debtors and multiple secured parties. 810 ILCS 5/9-503(e).

f. [2.42] Using Trade Names

A financing statement sufficiently shows the name of the debtor if it complies with the requirements of UCC §9-503(a), whether or not it adds other trade names or names of partners. 810 ILCS 5/9-503(b). However, a financing statement that provides only the debtor’s trade name is ineffective. 810 ILCS 5/9-503(c).

g. [2.43] Using Partnership Names

UCC §1-201(28) defines the term “organization” very broadly to include partnerships of all kinds. 810 ILCS 5/1-201(28). Therefore, the rules of UCC §9-503(a)(4), as described in §2.37 above, apply to partnerships. 810 ILCS 5/9-503(a)(4). If a partnership has a name, that name should be provided on the financing statement. Otherwise, the names of the individual partners should be provided.

h. [2.44] Change in Debtor’s Name

In the event the debtor changes its name such that a filed financing statement becomes seriously misleading (see §2.38 above), that financing statement is effective to perfect a security interest in collateral acquired only before, or within four months after, the change. 810 ILCS 5/9-507(c)(1). In order to perfect a security interest in collateral acquired more than four months after the change, however, an amendment to the financing statement that renders it not seriously misleading must be filed within four months after the change. 810 ILCS 5/9-507(c)(2).

i. [2.45] Change in Debtor’s Location

If the debtor’s location changes, a financing statement must be filed in the jurisdiction of the debtor’s new location within four months of the change in order to maintain the continued perfection of a security interest in collateral that must be perfected by filing where the debtor is located. 810 ILCS 5/9-316(c)(2).

2. [2.46] Debtor's Signature

Unlike under the former Article 9, a financing statement does not need to be signed by the debtor. See 810 ILCS 5/9-502(a). This requirement was eliminated to facilitate electronic filings. Although the debtor's signature is not required, the debtor must generally authorize the filing of the financing statement. 810 ILCS 5/9-509(a)(1). The fact that a debtor authenticates or becomes bound by a security agreement constitutes authorization to file a financing statement. 810 ILCS 5/9-509(b). In addition, by acquiring collateral in which a security interest or agricultural lien continues after disposition of the collateral (see 810 ILCS 5/9-315(a)), a debtor authorizes the filing of a financing statement covering the collateral. 810 ILCS 5/9-509(c). The concept of authorization is not addressed by Article 9 but rather is left to judicial interpretation. See Official Comment 2, 810 ILCS 5/9-509.

A secured party is entitled to file a financing statement covering only collateral in which it holds an agricultural lien even without authorization by the debtor. 810 ILCS 5/9-509(a)(2).

3. [2.47] Addresses

A filing office is required to reject a financing statement that fails to provide a mailing address for both the debtor and the secured party. 810 ILCS 5/9-516(b)(4), 5/9-516(b)(5), 5/9-520(a). Nevertheless, a filed financing statement that satisfies the requirements of UCC §9-502(a) (which does not require that the address of either the secured party or the debtor appear on the financing statement) is effective, even if the filing office was required to refuse to accept it. 810 ILCS 5/9-520(c). In other words, if the filing office mistakenly accepts a financing statement for filing that it should refuse under UCC §9-502(a), as long as the financing statement provides all of the information required under UCC §9-502(a), it will be effective.

4. [2.48] Description of Collateral

A financing statement must "indicate" the collateral that is covered. 810 ILCS 5/9-502(a)(3). The indication is sufficient if the description reasonably identifies what is described. 810 ILCS 5/9-504(1), 5/9-108(a). Collateral is reasonably identified by specific listing, category, type (as provided in UCC §9-102), quantity, computational or allocational formula or procedure, or any other method, as long as the identity of the collateral is objectively determinable. 810 ILCS 5/9-108(b). Certain types of collateral (such as investment property, commercial tort claims, and, in consumer transactions, consumer goods, security entitlements, securities accounts, and commodities accounts) must be described according to more specific rules, however. See 810 ILCS 5/9-108(d), 5/9-108(e). In addition, an indication that the financing statement covers "all assets" or "all personal property" is sufficient. 810 ILCS 5/9-504(2). *See also Grabowski v. Deere & Co. (In re Grabowski)*, 277 B.R. 388 (Bankr. S.D.Ill. 2002). Note, however, that such a description is not sufficient for a security agreement. 810 ILCS 5/9-108(c).

The secured party has to be careful that the collateral description in the financing statement is at least as broad as that in the security agreement. Otherwise, the secured party will have a perfected security interest only in the narrower class of collateral. *In re Keneco Financial Group, Inc.*, 131 B.R. 90, 93 (Bankr. N.D.Ill. 1991), *citing Sweney v. Cardinal Doors, Inc. (In re Door*

Supply Center, Inc., 3 B.R. 103 (Bankr. D. Idaho 1980). For instance, “tools” have been found to exclude equipment and machinery. *Sweney, supra*, 3 B.R. at 105 – 106. Financing statements for purchase-money security interests do not require any special language. *De Kalb Bank v. Klotz*, 151 Ill.App.3d 638, 502 N.E.2d 1256, 104 Ill.Dec. 596 (2d Dist. 1986).

An issue that is not addressed by Article 9 is whether a description in a security agreement includes after-acquired collateral if the agreement does not explicitly so provide. Official Comment 3, 810 ILCS 5/9-108, states that no reference to descriptions of after-acquired collateral is included because this issue is a question of contract interpretation and is not subject to a statutory rule. With respect to a financing statement, however, because Article 9 now permits a description of “all assets” or “all personal property,” it would seem that after-acquired collateral would be included in such a broad description. Official Comment 2, 810 ILCS 5/9-108. To ensure perfection, however, the prudent secured party should include reference to after-acquired property in the financing statement. See *In re Middle Atlantic Stud Welding Co.*, 503 F.2d 1133 (3d Cir. 1974) (no security interest in after-acquired accounts receivable because security agreement and financing statement did not so provide); *Schechter v. Nelson (In re Nightway Transportation Co.)*, 96 B.R. 854 (Bankr. N.D.Ill. 1989) (intent of parties, as manifested by security agreement, determines whether security interest includes after-acquired accounts). But see *First Bank v. Eastern Livestock Co.*, 837 F.Supp. 792 (S.D.Miss. 1993) (issue is whether financing statement is adequate to warn prospective purchasers of preexisting security interest such that further inquiry would be prudent).

5. [2.49] Filing as to As-Extracted Collateral, Timber To Be Cut, or Fixtures

In addition to satisfying the requirements of UCC §9-502(a), a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must also

- a. indicate that it covers this type of collateral;
- b. indicate that it is to be filed in the real property records;
- c. provide a description of the real property to which the collateral is related that would be adequate in a record of a mortgage of the real property in Illinois; and
- d. if the debtor does not have an interest of record in the real property, provide the name of a record owner. 810 ILCS 5/9-502(b).

The description of the related real property must be sufficient to reasonably identify it. 810 ILCS 5/9-108(a). As stated in Official Comment 5, 810 ILCS 5/9-502, the test for the adequacy of the description is whether the financing statement will fit into the real property search system and be found through a standard search.

A recorded mortgage may also suffice as a financing statement with respect to as-extracted collateral, timber to be cut, or fixtures. In order to be effective as such,

- a. the mortgage must indicate the goods or accounts that it covers;
- b. the security interest must be in goods that are or are to become fixtures, as-extracted collateral, or timber to be cut that is related to the real property;
- c. the mortgage must satisfy the requirements of UCC §§9-502(a) and 9-502(b) other than an indication that it is to be filed in the real property records; and
- d. the mortgage must be recorded. 810 ILCS 5/9-502(c).

B. [2.50] When To File

“A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.” 810 ILCS 5/9-502(d).

Except for certain limited exceptions relating to a transmitting utility or a real estate mortgage used as a fixture filing (UCC §§9-515(f), 9-515(g)), a financing statement is effective for a period of five years from the date of filing (UCC §9-515(a)) unless a continuation statement is filed within six months before the financing statement lapses (UCC §§9-515(c), 9-515(d)). 810 ILCS 5/9-515.

If the debtor files a bankruptcy, the lapse of the financing statement is not tolled (unlike under the former Article 9), and the secured creditor must file a continuation statement, as provided above, in order to maintain continuous perfection of its security interest. See Official Comment 4, 810 ILCS 5/9-515. This apparently can be done even without first obtaining relief from the automatic stay. 11 U.S.C. §362(b)(3). However, to the extent that the bankruptcy laws determine the rights of creditors only as of the date of the filing of the bankruptcy petition (11 U.S.C. §544(a)), there may be no practical effect if perfection lapses after the bankruptcy petition is filed (unless, for instance, the asset that is the collateral is abandoned from the bankruptcy estate and, thus, not administered therein or the asset is first acquired after the lapse).

C. [2.51] Special Bankruptcy Rule

Under certain circumstances, a security interest that is perfected on or before 30 days after the debtor receives possession of the collateral is not avoidable as a preference. 11 U.S.C. §547(c)(3)(B). *See also Fidelity Financial Services, Inc. v. Fink*, 522 U.S. 211, 139 L.Ed.2d 571, 118 S.Ct. 651 (1998). Consequently, for preference purposes, the secured creditor is given a 30-day grace period from the time the debtor first acquires possession of the collateral.

D. [2.52] How To File

Section 9-516(a) of the UCC provides that “communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.” 810

ILCS 5/9-516(a). Consequently, it is extremely important to retain a time-stamped copy of all filings in the event of an error in the Secretary of State's Office. The fact that the filing office fails to index a record correctly does not, however, alter its effectiveness. 810 ILCS 5/9-517.

The language of UCC §9-516(a) is sufficiently broader than its corollary from the former Article 9 (former UCC §9-403(1)) to permit electronic filing.

E. [2.53] Financing Statement Forms

The UCC Financing Statement (Form UCC1) is ordinarily used by secured parties who file with the Secretary of State's Office and do not have to file in the real estate records. The UCC Financing Statement Addendum (Form UCC1Ad) is ordinarily used by secured parties who file in the county, such as for perfecting security interests in timber to be cut, as-extracted collateral, or fixtures. The approved forms are contained in UCC §9-521 and are available and fillable online at www.cyberdriveillinois.com/departments/business_services/uniform_commercial_code/home.html.

F. [2.54] How To Amend a Financing Statement

An amendment must identify the initial financing statement by its file number and, if the amendment relates to an initial financing statement that was filed in the office where a mortgage is filed, it must provide the date and time that the initial financing statement was filed as well as the information specified in UCC §9-502(b), as described in §2.49 above. 810 ILCS 5/9-512(a). An amendment does not extend the period of effectiveness of the financing statement to which it relates. 810 ILCS 5/9-512(b). An amendment adding collateral or a debtor is effective as to the new collateral only from the date of filing the amendment. 810 ILCS 5/9-512(c), 5/9-512(d). An amendment that deletes all debtors or secured parties of record without providing any new names is ineffective. 810 ILCS 5/9-512(e). Note that separate amendments are not necessary to effect multiple changes to a financing statement. A single amendment is sufficient to make multiple changes. See Official Comment 2, 810 ILCS 5/9-512. The approved forms are contained at UCC §9-521(b) and are available and fillable online at www.cyberdriveillinois.com/departments/business_services/uniform_commercial_code/home.html.

An amendment, other than one adding collateral or a debtor, may be filed only if the secured party of record authorizes the filing. 810 ILCS 5/9-509(d)(1). If the amendment is a termination statement (see §2.60 below), it may be filed only if the secured party of record has failed to file or send a termination statement when it is required to do so under UCC §9-513(a) or §9-513(c), the debtor authorizes the filing, and the termination statement so indicates. 810 ILCS 5/9-509(d)(2). If there is more than one secured party of record, any one of them may authorize the filing of an amendment under UCC §9-509(d). 810 ILCS 5/9-509(e).

G. [2.55] When Filing Office Can Reject Filings

A filing office that accepts written records may not refuse to accept a written initial financing statement, financing statement addendum, financing statement amendment, or financing statement amendment addendum in the proper format except for a reason set forth in UCC §9-516(b). 810 ILCS 5/9-521. Even if the financing statement is sufficient (see §§2.35 – 2.49 above),

filing offices are authorized and, in fact, required to reject filings that do not fulfill several additional requirements. 810 ILCS 5/9-520(a). A filing office may reject a filing only for these reasons, and if rejected for one of these reasons, the filing is ineffective. 810 ILCS 5/9-520(a), 5/9-516(b).

To avoid rejection, an initial financing statement must fulfill the following requirements as well as the “sufficiency” requirements described in §§2.35 – 2.49 above:

1. It must be communicated by a method or medium authorized by the filing office. 810 ILCS 5/9-516(b)(1).

2. The filing fee and recordation tax (for fixture filings) must be tendered with the financing statement. 810 ILCS 5/9-516(b)(2).

3. If the debtor is an individual, the debtor’s last name must be clear. 810 ILCS 5/9-516(b)(3)(C).

4. A record to be filed in the real property records must give a sufficient description of the real property. 810 ILCS 5/9-516(b)(3)(D).

5. The secured party’s mailing address must be included. 810 ILCS 5/9-516(b)(4).

6. The debtor’s mailing address must be included. 810 ILCS 5/9-516(b)(5)(A).

7. The financing statement must state whether the debtor is an individual or an organization and, if the debtor is an organization, the type of organization, a jurisdiction of organization, and an organizational identification number (or state that the debtor has none). 810 ILCS 5/9-516(b)(5)(B), 5/9-516(b)(5)(C).

Filing offices may reject amendments that do not contain specified information. 810 ILCS 5/9-516(b). A continuation statement not filed within six months before the financing statement lapses may be rejected. 810 ILCS 5/9-516(b)(7). If the filing office is unable to read information in the financing statement, the statement is deemed not to include the information. 810 ILCS 5/9-516(c)(1).

A financing statement that is rejected for a reason not specified in UCC §9-502 or §9-516 is effective as a filed financing statement, except against a purchaser of the collateral who gives value in reasonable reliance on the absence of the financing statement. 810 ILCS 5/9-516(d). If the filing office accepts a financing statement that it should have rejected, the financing statement is effective if it is “sufficient.” Official Comment 3, 810 ILCS 5/9-520.

If the filing office rejects a record, it must tell the person that presented the record that the record has been rejected, the reason for the rejection, and a date and time the record would have been filed. 810 ILCS 5/9-520(b). The communication must be made at the time and in the manner prescribed by filing office rule. *Id.*

H. [2.56] Inaccurate or Wrongfully Filed Records

If a financing statement is inaccurate or filed wrongfully, the debtor (or any person under whose name the record is indexed) may file a correction statement. 810 ILCS 5/9-518(a). This correction statement does not change the legal effect of the filed record. 810 ILCS 5/9-518(c). The correction statement must identify the record to which it relates by its file number or, if the correction statement relates to a real property records filing, the information required for statements filed in the real property records office; state that it is a correction statement; and give an explanation of why the debtor believes the record is inaccurate or wrongful and how the record should actually read. 810 ILCS 5/9-518(b).

I. [2.57] Filing Office Indexing Errors

The risk of a filing office indexing error is borne by searchers. Even if a record is indexed improperly so that it cannot be found through a search, it is effective. 810 ILCS 5/9-517.

IV. [2.58] CONTINUATION STATEMENT

A continuation statement may be filed by the secured party within six months prior to the expiration of the original financing statement. 810 ILCS 5/9-515(d). Because a continuation statement is a type of amendment, the secured party must comply with the rules of UCC §9-512(a) regarding amendments to a financing statement, as discussed at §2.54 above. 810 ILCS 5/9-512(a). The filing of a timely continuation statement extends the effectiveness of a financing statement for five years from the time the financing statement would have become ineffective. 810 ILCS 5/9-515(e).

V. [2.59] STATEMENT OF RELEASE

In order to release all or part of any collateral described in a financing statement, a statement of release (which is a type of amendment) must comply with the rules of UCC §9-512(a) regarding amendments to a financing statement, as discussed at §2.54 above. 810 ILCS 5/9-512(a).

VI. [2.60] TERMINATION STATEMENT

When there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, a secured party with a financing statement covering consumer goods must, within 20 days after receiving an authenticated demand, file a termination statement with the Secretary of State (UCC §§9-513(a), 9-513(b)), and, for property other than consumer goods (with certain exceptions discussed below), the secured party must, within 20 days after receiving an authenticated demand from a debtor, send a termination statement to the debtor (UCC §9-513(c)(1)). 810 ILCS 5/9-513(a) through 5/9-513(c)(1). (Even if there is no demand, a party with a security interest in consumer goods must file a termination statement within one month. 810 ILCS 5/9-513(b)(1).)

When a financing statement covers (a) accounts or chattel paper that has been sold but as to which the account debtor has discharged its obligation (UCC §9-513(c)(2)), or (b) goods that were the subject of a consignment to the debtor but that are no longer in the debtor's possession (UCC §9-513(c)(3)), the secured party must send a termination statement to the debtor within 20 days of receiving an authenticated demand from the debtor. 810 ILCS 5/9-513(c)(2), 5/9-513(c)(3).

A termination statement, which is a type of amendment, must comply with the rules of UCC §9-512(a) regarding amendments to a financing statement, as discussed at §2.54 above. Upon the filing of a termination statement, the financing statement to which it relates ceases to be effective. 810 ILCS 5/9-513(d).

VII. [2.61] STATEMENT OF ASSIGNMENT

A financing statement itself may disclose an assignment of a security interest by providing the name and mailing address of the assignee as the name and address of the secured party. 810 ILCS 5/9-514(a). Alternatively, a secured party may assign all or part of its rights by filing an amendment that identifies the initial financing statement to which it relates by file number, provides the name of the assignor, and provides the name and mailing address of the assignee. 810 ILCS 5/9-514(b). Note, however, that mortgages filed as fixture filings can be assigned only under other applicable state law. 810 ILCS 5/9-514(c). After the assignee becomes the secured party of record, he or she alone has standing to sue to enforce the claim. *Art Signs, Inc. v. Schaumburg State Bank*, 162 Ill.App.3d 955, 516 N.E.2d 341, 114 Ill.Dec. 186 (1st Dist. 1987).

VIII. [2.62] CONSIGNMENT/LEASE STATEMENT

Transactions, like consignments and leases, will sometimes be intended as security devices. 810 ILCS 5/1-201(37). Consequently, unless the resulting security interest is perfected, it may become subordinate to the rights of a bankruptcy trustee or competing lien or security interest holder.

As a precautionary measure, parties like consignors and lessors may, under UCC §9-505(a), file protective financing statements using the terms “consignor,” “consignee,” “lessor,” “lessee,” or the like instead of the terms “secured party” and “debtor.” 810 ILCS 5/9-505(a). The filing “is not of itself a factor in determining whether the collateral secures an obligation.” 810 ILCS 5/9-505(b).

IX. [2.63] REQUESTS FOR INFORMATION

Sections 9-523(a) and 9-523(b) of the UCC provide methods for obtaining copies of filed documents. 810 ILCS 5/9-523(a), 5/9-523(b). Section 9-523(c) provides a method for obtaining reports of searches of filed documents. 810 ILCS 5/9-523(c).

X. [2.64] SECRETARY OF STATE'S RULES AND REGULATIONS

The Illinois Secretary of State has promulgated rules consistent with revised Article 9 and in harmony with the rules and practices of filing offices in other states. 810 ILCS 5/9-526. The Secretary of State's rules are found at 14 Ill.Admin. Code pt. 180.

Besides creating some useful definitions, the rules provide key guidance regarding when tender of a record, such as a financing statement or amendment, is complete. Tender of such a record is complete at the time of personal delivery at the Office of the Secretary of State's UCC Division in Springfield. 14 Ill.Admin. Code §180.11(a)(1). In the case of records delivered by courier or postal service, however, the time of delivery is not the time of tender. Instead, tender is not complete until the next close of business following the time of delivery for financing statements. 14 Ill.Admin. Code §§180.11(a)(2), 180.11(a)(3). The rules make it clear that regardless of mode of delivery, the tender is complete even though the record may not have been accepted by the Secretary of State for filing and may be subsequently rejected. *Id.*

The rules confirm that the forms prescribed by UCC §9-521 are acceptable. 14 Ill.Admin. Code §180.12. These forms are available and fillable on the Secretary of State's Web site at www.cyberdriveillinois.com/departments/business_services/uniform_commercial_code/home.html. However, the Secretary of State's Office maintains some requirements for filings that must be followed, or the forms may be rejected:

a. Names and addresses of the debtor and secured party must be in capital letters and in at least 12-point Times New Roman font. 14 Ill.Admin. Code §180.12(a).

b. Two paper copies of the record must be submitted along with a self-addressed, stamped envelope if the remitter is to receive one copy as an acknowledgment. 14 Ill.Admin. Code §180.12(b).

c. The record must contain the full legal name of the debtor, indicate whether it is an individual or an organization, and in the case of an organization, state its jurisdiction of organization and its organization ID number. (Illinois organizations all have an ID number provided by the Secretary of State.) However, disclosure of social security numbers or tax ID numbers is optional. 14 Ill.Admin. Code §180.12(c).

d. Filing fees are \$20, and search fees are \$10 per name, plus \$1 per page of copies received. 14 Ill.Admin. Code §180.13.

The rules confirm that the Secretary of State's duties are ministerial in determining whether to accept or refuse a filing. The Secretary of State will not determine the legal sufficiency of a record, the existence of a security interest, or the accuracy of information or create any presumption that a record is correct in whole or in part. 14 Ill.Admin. Code §180.15(a). The Secretary of State will refuse a UCC financing statement if it contains more than one secured party or assignee name or address and some certain names or addresses are missing or illegible or no address is given in the applicable field. 14 Ill.Admin. Code §180.15(b). Addresses should include street address, city, state, and postal code. *Id.*

The Secretary of State will return a rejected record along with the filing fee but undertakes no obligation to advise the remitter of defects. 14 Ill.Admin. Code §§180.15(c), 180.15(d). If it is later determined that the filing officer's initial refusal to accept a record was in error, then the filing officer will file the record with the filing date and time when the actual filing occurs, but it will also file a statement stating that the effective date and time of filing was the date when the UCC record was originally tendered for filing. 14 Ill.Admin. Code §180.15(e).

14 Ill.Admin. Code §180.18 describes the rules followed by the Secretary of State for indexing names. The Secretary of State will ignore "ending noise words" on the list promulgated and adopted by the International Association of Corporation Administrators. This list includes common ending words such as "Corp," "Corporation," and "Co." 14 Ill.Admin. Code §180.18(b)(4).

The search rules make it essential that the full name of an individual or organization debtor appear on the record. Except for "ending noise words," all other words are searchable and will restrict the results returned. For first and middle names of individuals, searches treat an initial as the logical equivalent of all names that begin with that initial. Thus, a search for "John A. Smith" would retrieve all filings against persons named "John Smith" with any middle name beginning with the letter "A" or with the middle initial "A." If no middle initial is included in the request, all records for John Smith with any middle name or initial will be returned. 14 Ill.Admin. Code §180.18(b)(7). The rules bear close study with respect to the method used in the search logic of the Secretary of State's Office. This is crucial. A record that is not disclosed by a search using the full name of the debtor will be ineffective because it is seriously misleading.

XI. APPENDIX

A. [2.65] Information for State and County Filing

The Secretary of State's Web site provides online filing, and the UCC forms may be filled and printed and mailed to

Secretary of State
UCC Division
Howlett Building, Room 350 W
502 South Second Street
Springfield, IL 62756

Visit www.cyberdriveillinois.com/departments/business_services/uniform_commercial_code/home.html for complete information and forms.

For a complete list of Illinois county courthouse addresses for county filing, visit www.cyberdriveillinois.com/departments/archives/cntyaddr.html.

B. [2.66] Perfection Chart

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Accounts — 810 ILCS 5/9-102(a)(2).	Filing.	Filing collateral.	General rule.
Accounts and payment intangibles assigned — 810 ILCS 5/9-102(a)(2), 5/9-102(a)(61).	Automatic.*	Filing collateral.	*Cannot be a significant part of assignor's accounts or payment intangibles.
Aircraft, engines, and propellers (over 750 hp).	Other statute — 49 U.S.C. §§44107, 44108; 14 C.F.R. pts. 47, 49.	Filing collateral.	File with Federal Aviation Administration in Oklahoma City. Also file overlapping UCC to perfect in-flight logs, records, and related equipment.
Aircraft parts of “certified air carrier.”	Other statute — 49 U.S.C. §§44107, 44108, 44705.	Filing collateral.	File with FAA in Oklahoma City.
Assignment for benefit of creditors.	Automatic.	Filing collateral.	
Beneficial interest in decedent's estate.	Automatic.	Filing collateral.	
Beneficial interest in Illinois land trust.	Control or filing.	Non-filing collateral.	Filing was mandatory until nonstandard amendment took effect January 1, 2002.
Certificated securities.	Possession.	Non-filing collateral.	Take “delivery” under 810 ILCS 5/8-301.
Certificates of deposit — 810 ILCS 5/9-102(a)(29), 5/9-102(a)(49).	Control.	Non-filing collateral.	Follow rules for “Investment property” (if applicable) or control agreement for “Deposit accounts.”
Chattel paper, electronic — 810 ILCS 5/9-102(a)(11).	Control or filing.	Non-filing collateral.	810 ILCS 5/9-105 describes special “control” methods.
Chattel paper, tangible — 810 ILCS 5/9-102(a)(11).	Possession or filing.	Non-filing collateral.	810 ILCS 5/9-312(a), 5/9-313(a). Add legend to chattel paper to notify others of security interest.

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Check.	Possession or filing. Automatic.*	Non-filing collateral.	Type of “Instrument.” NOTE: Secured party also can be “holder in due course.” *Special rule for collecting bank’s security interest under 810 ILCS 5/4-210.
Commodity contract or account — 810 ILCS 5/9-102(a)(14), 5/9-102(a)(15).	Control or filing. Automatic.*	Non-filing collateral.	Type of “Investment property.” *Security interest of commodity intermediary.
Consignments — 810 ILCS 5/9-102(a)(20).	Filing or possession.	Filing collateral.	Follows purchase-money security interest rules in 810 ILCS 5/9-317, 5/9-324.
Copyrights.	Other statute — 17 U.S.C. §101, <i>et seq.</i> Filing.*	Filing collateral.	File security agreement with U.S. Copyright Office. *File precautionary UCC financing statement against any goods that incorporate the copyright.
Deposit accounts — 810 ILCS 5/9-102(a)(29).	Control.*	Non-filing collateral.	Control mandatory. *Automatic perfection by control for depository bank’s security interest — 810 ILCS 5/9-104(a)(1).
Equipment — 810 ILCS 5/9-102(a)(33).	Filing.	Filing collateral.	
Farm products — 810 ILCS 5/9-102(a)(34).	Filing.	Filing collateral.	Central filing with legal description — 810 ILCS 5/9-501, 5/9-502.
Fixtures — 810 ILCS 5/9-102(a)(41).	Filing.	Filing collateral.	Local filing with legal description.
General intangibles — 810 ILCS 5/9-102(a)(42).	Filing.	Filing collateral.	Catchall if not otherwise covered.

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Goods — 810 ILCS 5/9-102(a)(44).	Filing or possession.*	Filing collateral.	*Perfection by bailee in possession requires authenticated acknowledgment by bailee — 810 ILCS 5/9-313(c).
Goods covered by negotiable documents — 810 ILCS 5/7-104.	Filing or possession. Perfect against document.*	Filing collateral.	General “goods” rule. *Gives superpriority over secured party who files against goods or obtains possession thereof — 810 ILCS 5/9-312(c). NOTE: Secured party can be “holder” of negotiable document — 810 ILCS 5/7-301.
Goods covered by nonnegotiable documents — 810 ILCS 5/7-104.	Filing or possession. Other.*	Filing collateral.	General “goods” rule. *Issuance of nonnegotiable documents in name of secured party or bailee’s receipt of notice of secured party’s interest — 810 ILCS 5/9-312(d).
Healthcare insurance receivables — 810 ILCS 5/9-102(a)(46).	Filing. Automatic.*	Filing collateral.	Subset of “Accounts.” *Automatic only if assigned to healthcare provider.
Instruments — 810 ILCS 5/9-102(a)(47).	Possession or filing.	Non-filing collateral.	
Inventory — 810 ILCS 5/9-102(a)(48).	Filing or possession.	Filing collateral.	NOTE: Additional pre-delivery notice and perfection deadline for purchase-money security interest — 810 ILCS 5/9-324(b).

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Investment property — 810 ILCS 5/9-102(a)(49).	Control or filing. Automatic.*	Non-filing collateral.	General rule — 810 ILCS 5/9-312(a), 5/9-314(a). *Automatic perfection of interest of broker or securities intermediary only.
Letter-of-credit documents.	Automatic.	Filing collateral.	Security interest in favor of letter-of-credit issuer or nominated person.
Letter-of-credit rights — 810 ILCS 5/9-102(a)(51).	Control.	Non-filing collateral.	Control mandatory.
Licenses of patents, trademarks, copyrights.	Other statute.	Filing collateral.	File license agreement and assignment with appropriate U.S. agency. Precautionary UCC filing with U.S. Patent and Trademark Office or U.S. Copyright Office.
Money.	Possession.		810 ILCS 5/9-312(b)(3).
Negotiable documents.	Possession or filing.	Non-filing collateral.	Possession primes security interests in documents or covered goods perfected by filing.
Patents.	Other statute — 35 U.S.C. §100, <i>et seq.</i>	Filing collateral.	File collateral patent assignment with U.S. Patent and Trademark Office. *File precautionary UCC financing statement.
Payment intangibles sold — 810 ILCS 5/9-102(a)(61).	Automatic.	Filing collateral.	
Promissory notes sold — 810 ILCS 5/9-102(a)(65).	Automatic.	Filing collateral.	
Purchase-money security interest in consumer goods — 810 ILCS 5/9-102(a)(23).	Automatic or filing.*	Filing collateral.	*NOTE: Filing required to defeat a buyer of consumer goods — 810 ILCS 5/9-320(b).
Purchase-money security interest in goods — 810 ILCS 5/9-102(a)(44), 5/9-103.	Filing.	Filing collateral.	NOTE: Additional pre-delivery notice and perfection for purchase-money security interest in inventory collateral — 810 ILCS 5/9-324(b), 5/9-324(c).

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Rail cars.	Other statute — 49 U.S.C. §11301, <i>et seq.</i>	Filing collateral.	File with U.S. Surface Transportation Board.
Security interest arising from sale of financial assets — 810 ILCS 5/8-102(a)(9).	Possession or control. Automatic.*	Non-filing collateral.	See type of financial asset for general rules. *Security interest of securities intermediary or buyer of security. See type of financial asset for general rules.
Securities account or entitlements.	Control.	Non-filing collateral.	Control agreement with custodian of account.
Ships.	Other statute — 46 U.S.C. §31321, <i>et seq.</i>	Filing collateral.	File with Secretary of Transportation.
Supporting obligations and liens.	Automatic.	Filing collateral.	Perfected upon support of underlying collateral — 810 ILCS 5/9-308(d), 5/9-308(e).
Timber and as-extracted collateral — 810 ILCS 5/9-102(a)(6).	Filing.	Filing collateral.	Local filing with legal description.
Title vehicles, boats, and goods.	Other state statutes. Possession.* Filing.**	Filing collateral.	Secured party listed on title as owner or secured party (depends on title statute). *Possession can perfect for title vehicles brought into new state until prior title lapses (<i>e.g.</i> , by surrender of title and application to title agency in new state). **Filing mandatory for inventory held for sale by dealer in that trade or held for lease or out on lease by such a dealer.

Collateral	Perfection Method(s)	Proceeds Rule	Comments
Trademarks, trade names, service marks, etc., and licenses thereof.	Filing. Other statute* — 15 U.S.C. §1051, <i>et seq.</i>	Filing collateral.	*Also file assignment with U.S. Patent and Trademark Office. NOTE: Trademark assignment also must refer to debtor's goodwill, and secured party should take security interest in equipment or formula associated with trademark to prevent loss due to separation of trademark.

