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The Uniform Commercial Code in Minnesota: Article 9 — Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

This article is one of several being published to acquaint Minnesota practitioners with the newly enacted Uniform Commercial Code. Mr. Greene examines and comments on the Documents of Title Article of the UCC.

Jack W. Greene*

I. INTRODUCTION

The purpose of this article is to provide a basic explanation of Minnesota's version of article 9 of the Uniform Commercial Code, with particular emphasis on the new filing provisions. A number of complementary enactments are also discussed. These enactments were made mainly to harmonize existing Minnesota statutes with article 9. A new statute in part governing transactions involving the financing of personal property or fixtures of "public utilities," is also considered. No attempt is made here to analyze article 9 to the depth necessary to achieve a thorough working knowledge of the Code's provisions. To this end, following this article, the reader is provided with a selected bibliography of sources which are of particular merit. However, this list does not exhaust the field of meritorious publications.

Effective July 1, 1966, article 9 replaces and substantially changes existing Minnesota chattel security law. For the first

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1. ALI & NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM COMMERCIAL CODE, 1962 OFFICIAL TEXT WITH COMMENTS [hereinafter cited as Code; hereinafter referred to in text as Code; the official comments will be hereinafter cited as Code § . . . , comment; citations to provisions of article 9 containing nonuniform Minnesota variations or an optional or alternative provision are to MINN. STAT. ANN. § 336... (Temp. pamph. 1965)].

2. The chattel security laws which were expressly repealed are as follows: MINN. STAT. §§ 511.01-.05, 511.06 (amended Laws 1963, ch. 173, § 1), 511.07-.32, 514.80-.86, 514.87 (amended Laws 1963, ch. 59, § 1), 514.88-.91, 521.01-.07, 522.01-.18 (1961). In addition, Code § 10-103 operates to repeal all other laws
time, however, security interests in personal property will be controlled by one coherent and substantially uniform body of law. The complexity of the changes in the law introduced by article 9 are too often overemphasized. The individual who is familiar with existing chattel security law will soon recognize familiar patterns of rights and duties dressed up in unfamiliar verbiage.

II. SCOPE

In general, article 9 governs the creation, perfection, and enforcement of security interests in personal property and fixtures in Minnesota. Usually, the security interest is created by a written security agreement, perfected by filing of public notice or by obtaining possession of the collateral, and enforced upon default according to detailed rules. The individual in whose favor a security interest is created is the "secured party," and the individual who owes payment or other performance of the obligation secured is the "debtor."

With certain exceptions, article 9 applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also
(b) to any sale of accounts, contract rights or chattel paper.

Although the intention of the parties generally determines whether a security interest is created, the sale of accounts, contract rights and parts of laws relating to secured transactions which are inconsistent with article 9.

For an annotated discussion of the significant changes article 9 makes in Minnesota law, see A STUDY OF THE EFFECT OF THE UNIFORM COMMERCIAL CODE ON MINNESOTA LAW (1964) [hereinafter cited MINN. STUDY].

3. One should be aware that article 9 has been adopted in several states, including Minnesota, with a number of nonuniform variations.

4. "Security interest" is the term used by the Code to describe similar interests which exist under present law, such as the lien of a chattel mortgage or title retained by a conditional vendor. See CODE § 1-201(37).

5. A security agreement is analogous to familiar security instruments under existing law, such as the chattel mortgage, factor's lien agreement, and conditional sales contract. See CODE § 9-105, comment.

6. E.g., chattel mortgagee, conditional vendor, pledgee. See CODE § 9-105(1)(i).

7. E.g., chattel mortgagor, conditional vendee, pledgor. See CODE § 9-105(1)(d).

8. CODE § 9-102(1).
or chattel paper is covered within the scope of article 9 whether or not there was any intent to create a security interest. 9

Those transactions not covered by article 9 include: a security interest subject to a statute of the United States to the extent the statute regulates the incidents of security interests in the particular type of property; 10 a landlord's lien; a statutory or common law lien, except to the extent article 9 states rules of priority as to such liens; an assignment of wages; an equipment trust covering railway rolling stock; certain sales or transfers of accounts, contract rights or chattel paper which are not commercial financing transactions; 11 a transfer of an interest or claim in or under any policy of insurance; a right under a judgment or of setoff; except as otherwise provided in section 9–313 relating to fixtures, an interest in, or lien on, real estate, including a lease or rents thereunder; a transfer of a tort claim; and a transfer of any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization. 12

Finally, transactions subject to article 9 may also be subject to other Minnesota regulatory statutes such as the Motor Vehicle Retail Installment Sales Act. 13 In the case of a conflict between relevant Code provisions and any such statute, the provisions of the statute control. 14

9. See Code § 9–102, comment 1. The fact that article 9 was intended to cover only consensual security interests results in the exclusion of statutory liens except to the extent stated in rules of priority in Code § 9–310. See Code §§ 9–102(2), 9–104(c).


11. For example, sales of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, assignments of accounts, contract rights or chattel paper which is for the purpose of collection only, and, transfers of contract rights to an assignee who is also to do the performance under the contract, are transactions not covered by article 9. See Code § 9–104(f).

12. See Code § 9–104(g)–(k).


III. FRAMEWORK OF ARTICLE 9

A. SECURITY AGREEMENT

Under the Code a security interest is generally not enforceable against the debtor or third parties unless the collateral is in the possession of the secured party or the debtor has signed a written security agreement. However, the formal requirements of the security agreement are minimal since it need only (1) create or provide for a security interest in favor of the secured party, (2) contain a description of the collateral (if the collateral is crops, standing timber to be cut, or oil, gas, or minerals to be extracted, a description of the land concerned is also required), and (3) be signed by the debtor. Attestations, acknowledgments and other formalities commonly provided for under pre-Code law are not required.

Although a written security agreement is not always required, as in the case of a possessory pledge transaction, it is desirable to have one in the vast majority of cases. Clear identification of the collateral and specification of the respective rights and duties of the parties is highly desirable.

59 (Industrial loan and thrift companies), and 56 (small loans), §§ 48.158–157 (installment loans by banks and trust companies), §§ 168.66–77 (motor vehicle retail installment sales), §§ 223.13–16 (indebtedness of certain utilities), and §§ 384.01–06 (usury) (1961). Failure to comply with the foregoing statutes has only the effect stated therein for purposes of article 9.

15. See CODE § 9–203(1).

16. See CODE § 9–203(1)(b). The requirement that the agreement create or provide for a security interest follows from the definition of the term “security agreement.” See CODE § 9–105(1)(h). The required description is sufficient if it “reasonably identifies” the real or personal property described. See CODE § 9–110. If proceeds are claimed, the term covers proceeds of any character. See CODE § 9–203(1)(b). “Proceeds” means whatever is received upon disposition of collateral, including the account arising when a contract right matures. Proceeds are classified as “cash proceeds” (money, checks and the like) and “noncash proceeds” (all other proceeds). See CODE § 9–306(1).


18. For example, CODE § 9–207 states certain rights and duties of the parties when collateral is in the possession of the secured party, and that the secured party is liable for any loss caused by his failure to meet any obligation imposed. Depending on the relative bargaining power of the parties, the secured party may wish to change these obligations or define the standards by which his performance is to be measured by agreement with the debtor. See generally CODE § 1–102(3) with regard to the power of the parties to vary the effect of the Code by agreement.
Article 9 broadly validates after acquired property clauses in security agreements and allows a present transfer of collateral to be security for present as well as future advances. Article 9 greatly facilitates the process of covering after acquired property and protecting future advances whether or not such advances are given pursuant to a prior commitment.

B. ATTACHMENT OF SECURITY INTEREST

A security interest is not enforceable against collateral until it "attaches" to the collateral. The security interest attaches when all of the following events occur: (1) there is "agreement" that it attaches, (2) the debtor has "rights" in the collateral, and (3) the secured party gives "value." These events may occur in any chronological order; but once they have all occurred the security interest attaches automatically unless otherwise agreed.

For certain troublesome cases the Code provides rules to assist in determining at what point in time the debtor acquires "rights" in certain types of collateral. For purposes of attachment a debtor has no rights in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived, in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut, in a contract right until the contract has been made, and in an account until it comes into existence. "Value" is generally deemed to be given when it consists of any consideration sufficient to support a simple contract.

19. See Code §§ 9-204(3), 9-108. However, to prevent one lender from attaining a monopoly on the financing of any one debtor through the use of an all-inclusive after-acquired property clause, article 9 restricts the effectiveness of an after-acquired property clause in several instances. See, e.g., Code §§ 9-204(4) (crops and consumer goods), 9-312(3), (4) (purchase money security interests), 9-308 (purchase of chattel paper and nonnegotiable instruments).

20. See Code § 9-204(5). However, security interests based on future advances may also be subordinated to conflicting purchase money security interests in the same collateral, just as in the case of interests in after-acquired collateral. See Code §§ 9-312(3), (4); Code § 9-204, comment 8.

21. For example, under pre-Code Minnesota law it was impossible to create a valid interest in the equipment, inventory and accounts of a borrower, whether now owned or hereafter acquired, under one security instrument. This is possible under article 9. The prior commitment in the case of future advances is expressly made unnecessary by Code § 9-204(5).

22. See Code § 9-204(1). See the broad definition of "agreement" in Code § 1-201(3).


25. Code § 1-201.
C. Perfection of Security Interest

Even though a security interest has attached to the collateral, it is not necessarily good against parties other than the debtor. To perfect the security interest the secured party must usually take the additional step of taking actual or constructive possession of the collateral or making a public notice filing. Generally, once the security interest is perfected it is good against third parties.

To determine the steps necessary to perfect a security interest in the collateral, it is first necessary to classify the different types of collateral. Collateral is divided into three general kinds of property under the Code: (1) "goods," (2) property whose transfer is by delivery of an indispensable piece of paper (specialties), and (3) intangibles. "Goods," in turn, are classified into "consumer goods," "equipment," "farm products" and "inventory." In borderline cases the primary use to which goods are put should determine their classification. Specialties include "chattel paper" (writings evidencing both a monetary obligation and a security interest in or a lease of specific goods, e.g., conditional sales contract), "documents" (documents of title such as a warehouse receipt or bill of lading), and "instruments" (negotiable instruments, bonds and investment securities). Examples of intangibles are an "account" (right to payment for goods sold or leased or for services rendered not evidenced by an instrument or chattel paper) and a "contract right" (a right to payment not yet earned by such performance as to render it an account, and not evidenced by an instrument or chattel paper). The classes of collateral under the Code are mutually exclusive; the same property cannot fall into more than one classification at the same time as to the same person. Once a classification of the collateral is made, one can determine what is necessary to perfect the security

28. See Code § 9–105(f) for a definition of "goods."
29. The general classification "specialties" and "intangibles" are not defined in the Code and are used here simply to differentiate between property which is either negotiable or, to a greater or lesser extent, is dealt with as if negotiable (specialties), and property which is not evidenced by an indispensable writing (intangibles). See Code § 9–106, comment.
31. Id., comment 2.
32. See Code § 9–105(1)(b) for a definition of "chattel paper."
33. See Code §§ 9–105(1)(e), 1–201 for the definition of "document."
34. See Code § 9–105(g) for the definition of "instrument."
interest against third parties. If a public notice filing is required (or desirable), the place of filing is also controlled in part by the classification of the collateral.

The document to be filed is called a "financing statement," \textsuperscript{36} analogous in function and purpose to the familiar notice of creation of factor's lien or statement of trust receipt financing. The formal requirements of a financing statement are minimal. It must (1) be signed by the debtor and the secured party, (2) contain the mailing address of the debtor and an address of the secured party from which information concerning the security interest can be obtained, and (3) contain a description of the collateral by type or item and, if it covers crops or fixtures, a description of the real estate concerned and the name of the record owner thereof.\textsuperscript{37} A copy of the security agreement meeting the above requirements is sufficient as a financing statement.\textsuperscript{38}

The proper place to file a financing statement, when filing is required or desirable under the Minnesota version of section

\textsuperscript{36} Ibid. See Code § 9—302(1).

\textsuperscript{37} See Minn. Stat. Ann. § 336.9—402(1) (Temp. pamph. 1965). Minnesota has adopted nonuniform variations to Code § 9—402(1), (3) by requiring that the name of the record owner of the real estate described be stated in the financing statement. Several states have done likewise, see Minn. Study 841, and the variation is now under study by the Permanent Editorial Board for the Uniform Commercial Code. See Kripke, Fixtures Under the Uniform Commercial Code, 64 ColuM. L. Rev. 44, 52 (1964). The variation is grounded on the need to integrate Code filings with the real estate records where crops or fixtures are covered by the financing statement. If the legal description is not set forth, it is thought that difficulty for parties searching the files will be reduced or avoided if it is required that the name of the record owner be stated. The searcher would then have two points of reference: a "description" (see Code § 9—110) of the real estate and also the name of the record owner thereof. See the complementary variation with regard to fixtures in Minn. Stat. Ann. § 336.9—403(4) (Temp. pamph. 1965), which requires the filing officer to index statements covering goods which are or are to become fixtures according to the name of the record owner as well as according to the name of the debtor appearing on the statements.

The argument against the Minnesota variation is that if the searcher cannot determine from available records what real estate is described in the financing statement because the description is too general, the financing statement is simply not properly filed because the description does not "reasonably identify what is described" as required by Code § 9—110. Moreover, by requiring the name of the record owner to be stated, ease and convenience of filing is impaired and a trap for the unwary is created, particularly for out-of-state financiers.

\textsuperscript{38} See Minn. Stat. Ann. § 336.9—402(1) (Temp. pamph. 1965). Note that many security instruments in use today probably do not meet the requirements of this section because they are not signed by the secured party; i.e. most conditional sales contracts and chattel mortgages.
depends upon one or more of four variables: location


(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, or motor vehicles which are not inventory, then in the office of the register of deeds in the county of the debtor's residence if the debtor is an individual who is a resident of this state but if the debtor is an individual who is not a resident of this state or is a corporation, partnership or other organization then in the office of the secretary of state, and in addition when the collateral is crops in the office of the register of deeds in the county where the land on which the crops are growing or to be grown is located;

(b) When the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office of the register of deeds in the county where the real estate concerned is located;

(c) In all other cases, in the office of the secretary of state.

The nonfiling exception in the case of a purchase money security interest in farm equipment (priced not in excess of $2,500) and consumer goods does not apply to a "motor vehicle required to be licensed." See Code § 9-302(1)(c), (d). Accordingly, a filing is required to perfect such an interest if the vehicle is not covered by a certificate of title upon which the security interest is required to be noted. See Code §§ 9-302(3), 9-103(4). To date, Minnesota has not adopted a certificate of title law covering motor vehicles of the types described in § 9-302(3)(b).

The net effect of adding the term "motor vehicles other than inventory" to subsection (1) was simply to require local filing in the case of a resident individual in whose hands the motor vehicle would be classified as "equipment." See Code § 9-109(2). In view of the limited scope of the inclusion, it may have been unnecessary; it will tend to create confusion if care is not taken to maintain the conformity of the definition of "motor vehicle" in § 336.9-401(5) with the term "motor vehicle required to be licensed" in § 9-302(1). The term should be amended out, in any event, when and if Minnesota adopts the certificate of title law described in Minn. Stat. Ann. § 336.9-302(3)(b) (Temp. pamph. 1965).

The Code sets out three alternative filing systems. While the Minnesota version of § 9-401(1) does not conform to any one of the alternatives, it is most like the second alternative. A nonuniform subsection (5), providing a definition of "motor vehicle" corresponding to the definition in the motor vehicle licensing law, Minn. Stat. § 168.011, subd. 4 (1961), was also added to § 9-401 because of the nonuniform inclusion of motor vehicles in subsection (1).
of the collateral, use of the collateral, residence of the debtor, and status of the debtor. Good faith filing in an improper place or failure to file in all required places is effective with regard to collateral for which a proper filing was made. Also, it is effective with regard to collateral covered by the financing statement against any person having knowledge of the contents thereof. A filing which is made in the proper place in Minnesota continues to be effective “even though the debtor’s residence in this state or the use of the collateral, whichever controlled the original filing, is thereafter changed.”

The above quoted language is an unjustifiable nonuniform variation that somehow slipped by the observers of the Code’s progress in the Legislature. Section 9-401(3) of the 1962 official text does not contain the words “in this state.” Their inclusion in the Minnesota version seems to require one to differentiate between change of residence within the state and change of residence between states. Since refiling in the case of intrastate changes is expressly made unnecessary, the inference that refiling is required for interstate moves could be made. This result was probably unintended and the additional words should be amended out. There is no good reason for differentiating between the two types of changes in residence if refiling is not required when the debtor changes his residence within the state. On the other hand, if the debtor changes his residence to another Code state and also removes the collateral to that state, refiling may be required due to

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40. See Code § 9-401(2).
42. Compare Code § 9-401(3):

    A filing which is made in the proper place in this state continues effective even though the debtor’s residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

44. Compare alternative subsection (3) of Code § 9-401, which was not adopted in Minnesota:

    A filing which is made in the proper county continues effective for four months after a change to another county of the debtor’s residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.
the operation of sections 9–401(4) and 9–103. But this is an entirely different situation from a mere change of residence between states.

As adopted, the section is also subject to criticism for omitting change of "location of the collateral." If it was intended to require a refiling when collateral is moved from one county to another within the state, alternative subsection (3) should have been adopted. However, again, it is believed this omission was inadvertent. The omission of "place of business" is justifiable because the debtor's place of business is not a variable which controls the place of filing.

The adoption of nonuniform section 336.9–401(1) gives rise to a further defect in section 336.9–401(3) which should be corrected. It was stated above that place of filing under the Minnesota version depends upon one or more of four variables: location of the collateral, classification of the collateral (or its use), residence of the debtor, and status of the debtor (whether an individual or a business entity). Note, however, that section 336.9–401(3) does not cover a change in the status of the debtor from a resident individual to a business entity. Such a change in status is not covered in the uniform text because place of filing is not made to depend on whether the debtor is an individual or a business entity. It should be covered in the Minnesota version, however, so long as section 336.9–401(1) provides a different place of filing as to resident individuals and business entities. All of this illustrates, perhaps, the dangers of adopting nonuniform variations in the Code, a pitfall which Minnesota has avoided, except in a few significant instances.

Filing is effective under article 9 upon presentation of the financing statement and tender of the filing fee, or upon acceptance of the statement by the filing officer. The filing continues effective from the date of filing until sixty days after the maturity date stated in the financing statement if five years or less. The filing is effective for five years from the effective date if the debt is payable on demand or no maturity date is stated. Once the effective filing period has lapsed the security interest becomes unperfected. But the period of perfection may be extended prior to any lapse for successive five year periods if the secured party files a "continuation statement." This statement need be signed only by the secured party, identify the original

45. See Code § 9–403(1).
46. See Code § 9–403(2).
statement by file number and state that the original statement is still effective.\footnote{47}

While as a general rule a financing statement must be filed under article 9 to perfect a security interest unless the secured party has actual or constructive possession of the collateral, a financing statement need not be filed to perfect the following non-possessory interests: (1) a purchase money security interest\footnote{48} in farm equipment having a purchase price not in excess of $2,500, or in consumer goods;\footnote{49} (2) an assignment of accounts or contract rights which does not transfer a "significant" part of the outstanding accounts or contract rights of the assignor;\footnote{50} (3) a security interest of a collecting bank, which is governed by article 4,\footnote{51} or a security interest arising solely under the sales article, so long as the debtor does not have or does not lawfully obtain possession of the goods;\footnote{52} and (4) a security interest in property subject to a statute of the United States which provides for national registration or filing, or a statute of Minnesota which provides for central filing or requires indication of the security interest on a certificate of title.\footnote{53} A security interest in such property can be perfected only by registration or filing under such statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.\footnote{54} For example, it would seem that a security interest in goods which are or are to

\footnote{47. See \textit{Code} § 9-403(3).}
\footnote{48. \textit{Code} § 9-107 provides that: A security interest is a "purchase money security interest" to the extent that it is (a) taken or retained by the seller of the collateral to secure all or part of its price; or (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.}
\footnote{49. \textit{Code} §§ 9-302(1)(c)-(d). In both cases, fixtures and motor vehicles required to be licensed are excluded. Note, however, that a buyer of these goods takes free of the security interest if he buys without knowledge of the security interest, for value and for his own farming operations or his own personal family or household purposes unless, prior to such purchase, the secured party has filed a financing statement covering such goods. See \textit{Code} § 9-307(2).}
\footnote{50. \textit{Code} § 9-302(1) (e).}
\footnote{51. \textit{Code} § 9-302(1) (f).}
\footnote{52. See \textit{Code} §§ 9-302(1) (f), 9-113.}
\footnote{53. See \textit{Minn. Stat. Ann.} § 336.9-302(3) (Temp. pamph. 1965). Alternative a-subsection (3) (b) of \textit{Code} § 9-302 was adopted in Minnesota.}
\footnote{54. \textit{Code} § 9-302(4).}
become fixtures by their affixation to registered land in Minnesota would be perfected by indication of the interest on the certificate of title by the registrar of titles.55 Sections 9–302(3)(b),(4) have been so construed in Massachusetts and Illinois where the Torrens system of land registration is also in effect. The interests described in (1) through (4) above are continuously perfected to the extent mentioned without any further action by the secured party.

Furthermore, a financing statement is not required to be filed to temporarily perfect the following interests: (1) a security interest in instruments or negotiable documents of title for a period of twenty-one days from the time the interest attaches, but only to the extent the interest arises for new value given under a written security agreement56 (once the secured party takes possession of this type of collateral within the twenty-one day period, his interest is continuously perfected and dates from the time it attached);57 (2) a security interest in instruments, negotiable documents or goods in possession of a bailee who has not issued a negotiable document of title for the goods for a twenty-one day period, but only if (a) the negotiable documents or goods were made available to the debtor for the purpose of ultimate sale or exchange, or for transportation or processing preliminary to their ultimate sale or exchange, or (b) the instruments were delivered to the debtor for the purpose of ultimate sale or exchange, presentation, collection, renewal or registration of transfer;58 and (3) a security interest in proceeds of collateral, in which a security interest was originally perfected by the secured party, for a ten day period dating from the debtor’s receipt of the proceeds. The security interest may be continuous if the secured party takes possession of, or files a financing statement covering, the proceeds within the ten day period.59

In the case of a "purchase money security interest" in collateral

55. Minn. Stat. § 508.64 (1961). Compare Minn. Stat. § 508.48 (1961). The importance of having the security interest so indicated is clear in view of the special procedure on default provided for by Code § 9–313(5) relating to fixtures. A secured party who has priority under that section over the claims of all persons who have an interest in the real estate may remove his collateral. This is subject only to the obligation to reimburse any encumbrancer or owner of the real estate for the cost of repair of any physical injury. Cf. Minn. Stat. § 508.25 (1961).
57. Code § 9–303(2). Taking possession is the only method of perfecting the interest for longer than twenty-one days. See Code § 9–304(1), (2).
58. See Code § 9–304(5).
other than inventory, perfection of the interest is made retroactive if a financing statement is filed within ten days after the collateral comes into the debtor's possession.60 If a financing statement is filed within ten days after goods classified as inventory come into the debtor's possession, perfection is also retroactive but only against bulk purchasers from the debtor and lien creditors of the debtor (and a fortiori the trustee in bankruptcy).61

D. Priorities

For the first time in Minnesota chattel security law, detailed rules will be stated for resolving conflicting security interests in the same collateral. For example, a particularly vexatious problem now exists under the Minnesota Factor's Lien Act62 and the Uniform Trust Receipts Act.63 In both statutes, it is simply not clear which financer has priority in the following fact situation. Bank A files against debtor on February 1. Bank B makes a nonpurchase money advance against collateral of the debtor on April 1 and files against debtor. Bank A makes an advance against the same collateral on May 1. Which bank has priority, the first to file or the first to make an advance? Article 9 resolves this conflict in favor of Bank A, the first to file; it makes no difference whether Bank A had actual knowledge of Bank B's advance and filing.64

Article 9 also states a considerable number of special rules for resolving conflicting interests in the same collateral where the "first to file" rule does not produce the best result. For example, special rules are stated in the case of purchase money security interests,65 fixtures66 (goods which are or are to become attached to realty), accessions (goods which are or are to become attached

60. See Code § 9–312(4).
61. See Code §§ 9–301(2).
64. See Code §§ 9–312(5)(a).
65. In the foregoing example of Bank A and B, Bank B would have priority if its advance created a purchase money security interest under Code § 9–312(4) or, in the case of inventory, under Code § 9–312(3) if it properly notified Bank A before the debtor obtained possession of the inventory.
66. See Code § 9–313. While the Code does not purport to define the term "fixtures," stating that non-Code law governs, note that Code § 9–312(4) provides a partial exclusionary definition by providing that no security interest exists under article 9 in goods "incorporated into a structure" (e.g., lumber, bricks, tile, cement, glass, and metal work) unless the structure remains personal property under applicable law.
to other goods without loss of their identity), and products (goods which are or are to become commingled with other goods with loss of their identity).

E. ENFORCEMENT OF SECURITY INTERESTS

Generally, article 9 greatly expands the remedies available to the secured party after default under the security agreement, with the primary goal being to maximize realization on a disposition of the collateral. At the same time, however, the Code retains basic safeguards the law has usually afforded the defaulting debtor.

Upon default, the secured party may enforce his security interest by any available judicial procedure. Unless otherwise agreed, he may take possession of the collateral and sell, lease or otherwise dispose of it in its existing condition or "following any commercially reasonable preparation or processing." Such dispositions may be made by public or private proceedings, but every aspect of a disposition must be commercially reasonable. In addition, the secured party must give reasonable notification of the intended disposition to the debtor and, unless the collateral is consumer goods, to other secured parties who have filed a financing statement covering the collateral or are otherwise known to have an interest therein. No such notification is required if the collateral is perishable or threatens to decline speedily in value, or if it is of a type customarily sold in a recognized market. The secured party may buy in at a judicial or public sale, and at a private sale if the collateral is of a type customarily sold in a recognized market or is the subject of widely distributed price quotations.

Except in the case of consumer goods for which more than sixty per cent of the purchase price has been paid, the secured party may retain the collateral in satisfaction of the obligation.

70. See Code § 9–501(1).
72. Code § 9–504(1).
of the debtor, provided the debtor or any other secured party
who has been notified does not object within thirty days following
notification.\textsuperscript{74}

IV. COMPLEMENTARY ENACTMENTS

In conjunction with the adoption of article 9, it was also neces-
sary or desirable to amend a number of existing Minnesota statu-
tory provisions and to adopt a bill providing for an exception to
the filing provisions of article 9 in the case of certain public utility
filings. In general, only minor changes were made, and the follow-
ing discussion is designed merely to bring these changes to the
attention of the reader and to briefly summarize the more im-
portant changes in terms of the framework of article 9.

It was heretofore noted that an equipment trust covering rail-
way rolling stock is expressly excluded from the scope of article
9.\textsuperscript{75} Pre-Code Minnesota law provided for a public notice filing
in such a transaction and the marking of each engine or car to
indicate its ownership.\textsuperscript{76} The latter requirement will be eliminated,
effective July 1, 1966, although the same kind of public notice
filing with the secretary of state and register of deeds will continue
to be required.\textsuperscript{77} Other equipment trusts are governed by the
Code and the filing provisions of article 9.\textsuperscript{78}

Minnesota Statutes, section 222.18 (1961), dealing with the
recording of combination real and personal property mortgages
given by a railroad, telegraph, or telephone company, was amend-
ed to make clear that its recording provisions relating to personal
property covered by such a mortgage, remain effective notwith-
standing the provisions of the Code.\textsuperscript{79} Absent such an amendment
article 9 would govern the perfection of a security interest in the
personal property (and, if desired, in the fixtures).\textsuperscript{80} This can be
viewed as requiring superfluous filings.

Several sections of Minnesota Statutes governing the public
notice filing and enforcement of a variety of statutory liens upon
goods were amended in an apparent attempt to integrate these
provisions with the filing and, in some cases, the enforcement

\textsuperscript{74} See Code § 9–505.
\textsuperscript{75} See text accompanying note 10 supra.
\textsuperscript{76} Minn. Stat. § 222.17 (1961). This provision governed filing as to all
transactions in the nature of equipment trusts, not merely those involving
railway rolling stock.
\textsuperscript{78} See Code § 9–104(e), comment 5.
\textsuperscript{80} See Code § 9–313(1).
provisions of article 9. Generally, if a filing is required under pre-Code law the proper place to file will be governed by part 4 of article 9. Enforcement of the lien, if formerly governed by the chattel mortgage laws, will be governed by part 5 of article 9. For example, enforcement of a statutory motor vehicle lien is not changed; enforcement of a farm products processor’s lien is changed. In both cases the place of filing will be governed by section 336.9-401(1). Minnesota Statutes, section 168.71(d) (1961), provided, in effect, that an assignment of chattel paper by a retail seller of motor vehicles is valid as against third parties without a filing or recording of the assignment. This was consistent with other Minnesota law validating assignments of accounts receivable without filing. However, under section 9-302 a filing is required to perfect a security interest in chattel paper. In view of the inconsistency that would otherwise exist between these two provisions, section 168.71(d) was amended by deleting its last sentence validating assignments without filing. Thus, a filing will be required to perfect the transferee’s (secured party’s) interest if motor vehicle installment contracts are sold or assigned in a transaction to which article 9 applies.

The final complementary enactment to be noted in this discussion is a new statute governing, in part, financing statements covering personal property or fixtures of a “public utility.” Its primary purpose is to state exceptions to certain filing provisions that were thought to be unnecessarily burdensome. For example, transmitting utilities may grant a security interest in a vast network of pipes, conduits, or transmission wires located in several

84. Code § 9–302(1).
86. See Minn. Stat. Ann. §§ 800.111–.113 (Temp. pamph. 1965). A “public utility” for purposes of this statute is defined in § 1 as:

persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for the production, generation, transmission, or distribution at retail of gas, electric, or telephone service for the public and in such transmission and distribution use, or have a right to use, public roads, streets, alleys, or any other public way for the purpose of constructing, using, operating, or maintaining wires, pipes, conduits, or other facilities. No municipality producing or furnishing gas, electric, or telephone service is deemed a public utility under this definition. No person is deemed to be a public utility if it produces or furnishes its services to less than 50 persons.
counties of the state. A problem would have arisen in this type of transaction because the collateral may be classified as "equipment" or "fixtures." If the collateral is fixtures the real estate concerned must be described, the record owner must be named and a financing statement must be filed in each county in which the real estate is located. On the other hand, if the collateral is classified as equipment, it is not necessary to describe the real estate or to state the record owner's name and the proper place to file is the office of the secretary of state. Obviously the prudent procedure to be followed here, as in every case where the classification of the collateral is doubtful, would be to comply with all the requirements of Article 9 applicable to both classifications. Accordingly, the secured party would have to file in every county in which the pipes, conduits or transmission wires were located and, in addition, with the secretary of state.

The newly adopted public utility filing provisions eliminate this problem by simply requiring a central filing with the secretary of state. The financing statement need not include a description of the real estate or the name of the record owner. The filing is effective until five years after a stated maturity date in the case of nonfixture personal property and fifteen years in the case of fixtures annexed to real property. If no maturity date is stated, filing is effective until the security interest is released or terminated. This period of effectiveness will prove to be substantially longer than the period provided in section 9-403(2) in view of the long term financing that is typically involved. If not displaced by a specific provision of the public utility statute, Article 9 applies to a transaction within its scope involving personal property or fixtures of a "public utility."

Several other states have also adopted so-called "transmitting utility" filing exceptions. However, these statutes are in a form recommended by the Permanent Editorial Board established by the sponsors of the Code and do not extend the effective period of filing beyond that provided by the Code as the Minnesota statute does. But, since utility financing is usually long term, perhaps Minnesota's longer period of effectiveness is more desirable.

87. See Minn. Stat. Ann. § 336.9-402, 336.9-401(1)(b) (Temp. pamph. 1965). If the real estate concerned was registered land, the interest may have to be noted on the certificate of title in lieu of filing under § 336.9-401(1)(b). See note 55 supra.
91. See, e.g., Mont. Laws 1965, ch. 76.
It is interesting to note an apparent conflict between the new public utility filing statute and the amended provision governing recordings regarding property of a railroad, telegraph or telephone company. The conflict could arise, for example, when a telephone company which falls within the definition of "public utility" gives a combination mortgage on its real and personal property (including fixtures). On the one hand, Minnesota Statute section 222.18, as amended, states that the personal property "belonging or appertaining" to real property is deemed a part of the telephone line. Notwithstanding the provisions of the Code, the central and local recordings provided for constitute notice of the rights of all parties in the real and personal property covered by the mortgage. On the other hand, the new public utility filing provisions would apply to the personal property or fixtures covered by the mortgage, and a central filing, not a combined local and central recording, would be required.

It may be possible to reconcile the seeming conflict in these provisions by construing "personal property belonging or appertaining" to real property as meaning "fixtures." Note that section 9-313 gives the secured party the option of perfecting a security interest in fixtures under "the law applicable to real estate," and section 222.18 could be construed as the law applicable to real estate for purposes of section 9-313. The public utility provisions could then be construed as applying to security interests created in all personal property of the telephone public utility except personal property "belonging or appertaining to" real property. As a practical matter, however, the financing statement will cover both types of property. It is anomalous to require a multiplicity of filings or recordings when the purpose of the public utility filing statute is to provide for central filing only in transactions of this kind.

V. CONCLUSION

With a few notable exceptions, the Minnesota version of article 9 of the Code conforms with the 1962 official text. Where nonuniform variations exist, there is a compelling need for change in only one instance — section 336.9-401(3) relating to the effect of a change in the residence of the debtor or a change in the use to which the collateral is put when these factors controlled the

93. See note 86 supra.
place of original filing under section 336.9-401(1). While it would have been desirable to have adopted one of the uniform alternatives for place of filing under section 9-401(1), the Minnesota variation does not seem to present any particular difficulty once the section is appropriately amended.

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