

CONTENTS

Forewordxi
Preface	xv

Chapter 1

Overview of Security Interests	1
A. Historical Roots of Article 9	3
B. Overview of Article 9	4
1. Structure	4
2. Organization	5
3. Supplementary Provisions	6
C. Terminology	6
1. Parties	6
2. Collateral Classification	8
a. Tangible Property: Goods	9
b. Intangible Property	10
c. Other Classifications	11
d. Fixtures	12
D. Scope of Article 9	12
1. Security for Obligations	12
2. Agricultural Liens	12
3. Certain Consignments	13
4. Certain Sales of Intangible Property	14
5. Excluded Personal Property	15
6. Mixed Transactions	16
7. Federal and Governmental Preemption	16

Chapter 2

Creating a Security Interest	19
A. The Security Agreement	20
1. Authenticated by Debtor	21

2.	Description of Collateral	21
3.	Other Requisites	22
a.	Future Advances	23
b.	After-Acquired Property	23
4.	Additional Provisions	24
a.	Covenants	24
b.	Default	25
c.	Acceleration	25
B.	Debtor's Rights in the Collateral	25
1.	Mere Possession Inadequate	26
2.	Rights Secured Party Obtains	26
3.	Rights in Consignment and Sale Transactions	27
4.	When Rights Obtained	28
C.	Secured Party Giving Value	28
D.	Automatic Attachment	29
E.	Statutory Attachment	30
F.	Restructured Businesses – New Debtors	31
G.	Transfers and Proceeds	31
1.	Continuation on Transfer	32
2.	Right to Proceeds	32
3.	Resulting Collateral	34
H.	Disguised Security Interests	34
1.	Leases	35
2.	Sales of Intangible Collateral and Consignments	35

Chapter 3

	Perfecting a Security Interest	37
A.	Perfection by Filing	38
1.	Content of Initial Financing Statement	39
a.	Requirements for Legal Effectiveness	40
i.	Debtor's Name	40
ii.	Secured Party's Name	43
iii.	Indication of Collateral	43
iv.	Real Property Filings – Fixtures, Timber, and Minerals	44

b.	Requirements for Acceptance by Filing Office . . .	45
i.	Presentation	45
ii.	Content	45
iii.	Improper Rejection by Filing Office	46
c.	Farm Products	46
d.	Precautionary Filings	47
2.	Financing Statement Forms	47
3.	Authorization to File	51
4.	Where to File	52
a.	Fixtures	53
b.	Timber to be Cut and As-Extracted Collateral . . .	53
c.	Transmitting Utilities	54
5.	Related Subsequent Filings	55
a.	Authorization	55
b.	Content and Effective Date	55
i.	Transfer by Secured Party	56
ii.	Change in Debtor's Name	56
iii.	New Debtor Bound by Security Agreement . . .	57
c.	Lapse and Continuation	57
d.	Termination	58
6.	Objections to Filings	59
B.	Perfection by Possession or Control	60
1.	Perfection by Possession (or Delivery)	60
a.	Possession via Third Party	61
b.	Delivery of Certificated Security	62
c.	Time of Possession or Delivery	62
2.	Perfection by Control	63
a.	Deposit Accounts	63
b.	Letter-of-Credit Rights	64
c.	Investment Property	64
d.	Electronic Chattel Paper and Electronic Documents	66
C.	Perfection by Other Methods	67
1.	Automatic Perfection	67
a.	Financing Consumer Purchases	67

b.	Securities Entitlements and Commodities	
	Contracts	68
c.	Certain Sales and Assignments	68
d.	Financing Investment Intermediaries	69
e.	Security Interests Created by the UCC	69
f.	Certain Noncommercial Assignments	70
g.	Temporary Perfection	70
h.	Proceeds	71
i.	Supporting Obligations	72
2.	Certificates of Title	72
3.	Other Statutory Schemes	73
a.	Required Federal Registrations	73
b.	Federal Book Entry Securities	74
c.	Copyrights and “Mask Works”	74
d.	Patents and Federal Trademarks	74
4.	Personal Property Excluded from Article 9	75
D.	Determining Applicable Law	75
1.	Perfection by Filing	77
a.	Law Governing Perfection	77
b.	Law Governing Priority and Effect of Perfection or Nonperfection	78
2.	Perfection by Possession	78
3.	Certificates of Title	79
4.	Investment Property	80
5.	Deposit Accounts	81
6.	Letter-of-Credit Rights	81
7.	Changes in Law Governing Perfection	82
E.	Searching for Competing Claims	84
1.	Financing Statements	84
a.	Methods of Searching	84
b.	Filing System Deficiencies	85
c.	Under Which Names to Search	86
d.	Where to Search	87
2.	Interests without Financing Statements	88

Chapter 4

Determining Priority	91
A. Priority Based on First in Time	93
1. First to Attach	93
2. First to File or Perfect	94
a. Between Secured Parties	94
b. Secured Party versus Lien Creditor	94
c. Prefiling for Priority	95
d. Effect of Knowledge	95
e. Future Advances	96
f. Proceeds	97
g. Supporting Obligations	99
3. First to Perfect	99
a. Between Secured Parties	99
b. Commingled Goods	99
c. Rights of Certain Buyers, Lessees, and Licensees	100
d. Secured Party versus Real Property Interests ..	101
B. Superpriority – Exceptions to First in Time	101
1. Purchase-Money Priority	102
a. Creating a Purchase-Money Security Interest ..	102
b. Priority between Secured Parties	103
i. Goods Other Than Inventory or Livestock ..	104
ii. Inventory	104
iii. Livestock	106
iv. Crop Production	106
c. Priority over Interests Outside Article 9	107
i. Lien Creditors, Buyers, and Lessees	107
ii. Fixtures and Crops	108
d. Justification	109
2. Buyers, Lessees, and Licensees	110
a. Ordinary Course of Business	110
b. Consumers Buying from Consumers	111
c. New Certificate of Title	111
d. Foreclosures	112

3.	Rules for Bona Fide Purchasers	112
a.	Negotiable Collateral	112
i.	Negotiable Instruments.	113
ii.	Investment Securities	113
iii.	Negotiable Documents of Title.	115
b.	Transferees of Money and Funds	115
c.	Chattel Paper and Instruments	116
4.	Specialized Priority Rules.	118
a.	Priority to Investment Property	118
b.	Control of Deposit Accounts	119
c.	Code-Created Security Interests.	120
d.	Possessory Liens	121
e.	Accessions	121
5.	Multiple Debtors.	121
a.	Transferred Collateral.	121
b.	Changes in Business Structure	122
C.	Priority Rules Outside Article 9	123
1.	Other State and Federal Laws.	124
a.	Tax Liens	124
b.	Other Liens.	124
c.	Federal Claims	124
d.	Other Laws Governing Security Interests	125
2.	Omissions from Article 9	126
D.	Bankruptcy Considerations.	126
E.	The Fragile Nature of Priority	127

Chapter 5

Default – Realizing on the Collateral	129
A. Right to Enforce Security Interests	131
B. Repossession.	132
C. Collecting Payments.	134
D. Nonjudicial Foreclosure	135
1. Notice Requirements.	135
a. Notice to Debtors and Obligors	136
b. Notice to Others Claiming the Collateral.	136

c.	Content of the Notice	138
d.	Timing of the Notice	141
2.	Commercially Reasonable Sales	142
3.	Mandatory Foreclosure	143
E.	Application of Proceeds	143
1.	Applying Cash Proceeds	144
a.	When Obligation is Secured	144
b.	Sales and Consignments	144
2.	Noncash Proceeds	145
3.	Junior Creditor Foreclosure	146
4.	Obligation for Deficiency	147
5.	Special Deficiency and Surplus Rules	148
a.	Acquisition by Interested Party	148
b.	Consumer Goods Transactions	148
F.	Strict Foreclosure	150
1.	Procedure for Strict Foreclosure	150
2.	Rules if Only Partial Satisfaction of Debt	152
3.	Consumer Rules	152
G.	Limitations on the Secured Party's Rights	152
1.	Redemption Rights	152
2.	Nonwaivable Rights	153
3.	Good Faith	154
4.	Liability for Damages	155
a.	Action for Deficiency or Surplus	155
b.	Consumer Statutory Damages	157
c.	Limitations on Liability	157
H.	Rights of Transferees at Foreclosure	158
I.	Remedies Outside Code	159

Chapter 6

	Issues from the Transition to Revised Article 9	161
A.	Transactions Subject to Transition	162
1.	Transactions New to Revised Article 9	162
2.	Straddle Transactions	163
3.	Traditional Security Interests in Transition	164

B.	Actions Taken in Transition	165
1.	Reattachment during First Year	165
2.	Perfection during First Year	166
a.	Filing Initial Financing Statements	167
b.	Springing Perfection.	167
3.	Financing Statement Filing Location	168
4.	Continuing Financing Statements	168
a.	Regular Continuation Statements	168
b.	Continuation by New Initial Financing Statements	169
5.	Amending Financing Statements	170
6.	Terminating Financing Statements	170
C.	Transition's Effect on Priority	171
D.	Searches Involving the Transition Period	171

Chapter 7

Transition – First Five Years Under 2010

Amendments	173	
A.	Transactions Subject to Transition	174
B.	Actions to be Taken in Transition.	175
1.	Perfection during First Year	175
2.	Financing Statement Perfection	176
3.	Continuing Financing Statements	176
a.	Regular Continuation Statements	176
b.	Continuation by New Initial Financing Statements	177
4.	Amending Financing Statements	178
5.	Terminating Financing Statements	178
C.	Priority during Transition	178
D.	Searches during First Five Years	179

Bibliography	181
About the Author	191