

12A:9-707

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 386
NJSA: 12A:9-707 (UCC-chapter 9)
BILL NO: S2690 (Substituted for A3917)
SPONSOR(S): Martin
DATE INTRODUCED: November 8, 2001
COMMITTEE: **ASSEMBLY:** ----
 SENATE: Commerce
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** January 7, 2002
 SENATE: December 17, 2001
DATE OF APPROVAL: January 8, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

S2690

SPONSORS STATEMENT: (Begins on page 134 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A3917

SPONSORS STATEMENT: (Begins on page 134 of original bill) Yes

(Bill and Sponsors Statement identical to S2690)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: Yes

974.901 New Jersey Law Revision Commission Annual Report 1999, February 1, 2000.

L446 (See pages attached—11-13; Appendix H; Appendix M)

1999

HEARINGS: No

NEWSPAPER ARTICLES: No

SENATE, No. 2690

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 8, 2001

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Concerns chapter 9 of the Uniform Commercial Code.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.12A:9-102 is amended to read as follows:
8 12A:9-102. Definitions and Index of Definitions.

9 **[a.]** (a) Chapter 9 definitions. In this chapter:

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

13 (2) **["Account,"]** "Account", except as used in **[**"account for,"
14 (a) "account for", means a right to payment of a monetary obligation,
15 whether or not earned by performance, (i) for property that has been
16 or is to be sold, leased, licensed, assigned, or otherwise disposed of,
17 (ii) for services rendered or to be rendered, (iii) for a policy of
18 insurance issued or to be issued, (iv) for a secondary obligation
19 incurred or to be incurred, (v) for energy provided or to be provided,
20 (vi) for the use or hire of a vessel under a charter or other contract,
21 (vii) arising out of the use of a credit or charge card or information
22 contained on or for use with the card, or (viii) as winnings in a lottery
23 or other game of chance operated or sponsored by a State,
24 governmental unit of a State, or person licensed or authorized to
25 operate the game by a State or governmental unit of a State. The term
26 includes health-care-insurance receivables and bondable transition
27 property. **[(b)]** The term does not include (i) rights to payment
28 evidenced by chattel paper or an instrument, (ii) commercial tort
29 claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-
30 credit rights or letters of credit, or (vi) rights to payment for money or
31 funds advanced or sold, other than rights arising out of the use of a
32 credit or charge card or information contained on or for use with the
33 card.

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

38 (4) **[**"Accounting,"] "Accounting", except as used in **[**"accounting
39 for,"] "accounting for", means a record:

40 **[(a)]** (A) authenticated by a secured party;

41 **[(b)]** (B) indicating the aggregate unpaid secured obligations as of
42 a date not more than 35 days earlier or 35 days later than the date of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 the record; and

2 [(c)] (C) identifying the components of the obligations in
3 reasonable detail.

4 (5) “Agricultural lien” means an interest [, other than a security
5 interest,] in farm products:

6 [(a)] (A) which secures payment or performance of an obligation
7 for:

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

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

12 [(b)] (B) which is created by statute in favor of a person [who]
13 that:

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

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

18 [(c)] (C) whose effectiveness does not depend on the person’s
19 possession of the personal property.

20 (6) “As-extracted collateral” means:

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

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

25 (ii) attaches to the minerals as extracted; or

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

29 (7) “Authenticate” means:

30 [(a)] (A) to sign; or

31 [(b)] (B) to execute or otherwise adopt a symbol, or encrypt or
32 similarly process a record in whole or in part, with the present intent
33 of the authenticating person to identify the person and adopt or accept
34 a record.

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

38 [(9)] (8.1) “Bondable transition property” shall have the meaning
39 set forth in section 3 of P.L. [1990] 1999, c.23 (C.48:3-51).

40 [(10)] (9) “Cash proceeds” means proceeds that are money,
41 checks, deposit accounts, or the like.

42 [(11)] (10) “Certificate of title” means a certificate of title with
43 respect to which a statute provides for the security interest in question
44 to be indicated on the certificate as a condition or result of the security
45 interest’s obtaining priority over the rights of a lien creditor with

1 respect to the collateral.

2 ~~[(12)] (11)~~ “Chattel paper” means a record or records that
3 evidence both a monetary obligation and a security interest in specific
4 goods, a security interest in specific goods and software used in the
5 goods, a security interest in specific goods and license of software
6 used in the goods, a lease of specific goods, or a lease of specific
7 goods and license of software used in the goods. In this paragraph,
8 “monetary obligation” means a monetary obligation secured by the
9 goods or owed under a lease of the goods and includes a monetary
10 obligation with respect to software used in the goods. The term does
11 not include (i) charters or other contracts involving the use or hire of
12 a vessel or (ii) records that evidence a right to payment arising out of
13 the use of a credit or charge card or information contained on or for
14 use with the card. If a transaction is evidenced by records that include
15 an instrument or series of instruments, the group of records taken
16 together constitutes chattel paper.

17 ~~[(13)] (12)~~ “Collateral” means the property subject to a security
18 interest or agricultural lien. The term includes:

19 ~~[(a)] (A)~~ proceeds to which a security interest attaches;

20 ~~[(b)] (B)~~ accounts, chattel paper, payment intangibles, and
21 promissory notes that have been sold; and

22 ~~[(c)] (C)~~ goods that are the subject of a consignment.

23 ~~[(14)] (13)~~ “Commercial tort claim” means a claim arising in tort
24 with respect to which:

25 ~~[(a)] (A)~~ the claimant is an organization; or

26 ~~[(b)] (B)~~ the claimant is an individual and the claim:

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

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

30 ~~[(15)] (14)~~ “Commodity account” means an account maintained
31 by a commodity intermediary in which a commodity contract is carried
32 for a commodity customer.

33 ~~[(16)] (15)~~ “Commodity contract” means a commodity futures
34 contract, an option on a commodity futures contract, a commodity
35 option, or another contract ~~[or option]~~ if the contract or option is:

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

39 ~~[(b)] (B)~~ traded on a foreign commodity board of trade, exchange,
40 or market, and is carried on the books of a commodity intermediary
41 for a commodity customer.

42 ~~[(17)] (16)~~ “Commodity customer” means a person for which a
43 commodity intermediary carries a commodity contract on its books.

44 ~~[(18)] (17)~~ “Commodity intermediary” means a person ~~[who]~~
45 that:

- 1 [(a)] (A) is registered as a futures commission merchant under
2 federal commodities law; or
- 3 [(b)] (B) in the ordinary course of its business provides clearance
4 or settlement services for a board of trade that has been designated as
5 a contract market pursuant to federal commodities law.
- 6 [(19)] (18) “Communicate” means:
- 7 [(a)] (A) to send a written or other tangible record;
- 8 [(b)] (B) to transmit a record by any means agreed upon by the
9 persons sending and receiving the record; or
- 10 [(c)] (C) in the case of transmission of a record to or by a filing
11 office, to transmit a record by any means prescribed by filing-office
12 rule.
- 13 [(20)] (19) “Consignee” means a merchant to which goods are
14 delivered in a consignment.
- 15 [(21)] (20) “Consignment” means a transaction, regardless of its
16 form, in which a person delivers goods to a merchant for the purpose
17 of sale and:
- 18 [(a)] (A) the merchant:
- 19 (i) deals in goods of that kind under a name other than the name of
20 the person making delivery;
- 21 (ii) is not an auctioneer; and
- 22 (iii) is not generally known by its creditors to be substantially
23 engaged in selling the goods of others;
- 24 [(b)] (B) with respect to each delivery, the aggregate value of the
25 goods is \$1,000 or more at the time of delivery;
- 26 [(c)] (C) the goods are not consumer goods immediately before
27 delivery; and
- 28 [(d)] (D) the transaction does not create a security interest that
29 secures an obligation.
- 30 [(22)] (21) “Consignor” means a person [who] that delivers
31 goods to a consignee in a consignment.
- 32 [(23)] (22) “Consumer debtor” means a debtor in a consumer
33 transaction.
- 34 [(24)] (23) “Consumer goods” means goods that are used or
35 bought for use primarily for personal, family, or household purposes.
- 36 [(25)] (24) “Consumer-goods transaction” means a consumer
37 transaction in which:
- 38 [(a)] (A) an individual incurs an obligation primarily for personal,
39 family, or household purposes; and
- 40 [(b)] (B) a security interest in consumer goods secures the
41 obligation.
- 42 [(26)] (25) “Consumer obligor” means an obligor who is an
43 individual and who incurred the obligation as part of a transaction
44 entered into primarily for personal, family, or household purposes.
- 45 [(27)] (26) “Consumer transaction” means a transaction in which

1 [(a)] (i) an individual incurs an obligation primarily for personal,
2 family, or household purposes, [(b)] (ii) a security interest secures
3 the obligation, and [(c)] (iii) the collateral is held or acquired
4 primarily for personal, family, or household purposes. The term
5 includes consumer-goods transactions.

6 [(28)] (27) “Continuation statement” means an amendment of a
7 financing statement which:

8 [(a)] (A) identifies, by its file number, the initial financing
9 statement to which it relates; and

10 [(b)] (B) indicates that it is a continuation statement for, or that it
11 is filed to continue the effectiveness of, the identified financing
12 statement.

13 [(29)] (28) “Debtor” means:

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

16 [(b)] (B) a seller of accounts, chattel paper, payment intangibles,
17 or promissory notes; or

18 [(c)] (C) a consignee.

19 [(30)] (29) “Deposit account” means a demand, time, savings,
20 passbook, or similar account maintained with a bank. The term does
21 not include investment property or accounts evidenced by an
22 instrument.

23 [(31)] (30) “Document” means a document of title or a receipt of
24 the type described in 12A:7-201(2).

25 [(32)] (31) “Electronic chattel paper” means chattel paper
26 evidenced by a record or records consisting of information stored in
27 an electronic medium.

28 [(33)] (32) “Encumbrance” means a right, other than an ownership
29 interest, in real property. The term includes mortgages and other liens
30 on real property.

31 [(34)] (33) “Equipment” means goods other than inventory, farm
32 products, or consumer goods.

33 [(35)] (34) “Farm products” means goods, other than standing
34 timber, with respect to which the debtor is engaged in a farming
35 operation and which are:

36 [(a)] (A) crops grown, growing, or to be grown, including:

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

38 (ii) aquatic goods produced in aquacultural operations;

39 [(b)] (B) livestock, born or unborn, including aquatic goods
40 produced in aquacultural operations;

41 [(c)] (C) supplies used or produced in a farming operation; or

42 [(d)] (D) products of crops or livestock in their unmanufactured
43 states.

44 [(36)] (35) “Farming operation” means raising, cultivating,
45 propagating, fattening, grazing, or any other farming, livestock, or

1 aquacultural operation.

2 [(37)] (36) “File number” means the number assigned to an initial
3 financing statement pursuant to 12A:9-519 [a.] (a).

4 [(38)] (37) “Filing office” means an office designated in
5 12A:9-501 as the place to file a financing statement.

6 [(39)] (38) “Filing-office rule” means a rule adopted pursuant to
7 12A:9-526.

8 [(40)] (39) “Financing statement” means a record or records
9 composed of an initial financing statement and any filed record relating
10 to the initial financing statement.

11 [(40.1)] (40) “Fixture filing” means the filing of a financing
12 statement covering goods that are or are to become fixtures and
13 satisfying 12A:9-502 [a. and b.] (a) and (b). The term includes the
14 filing of a financing statement covering goods of a transmitting utility
15 which are or are to become fixtures.

16 (41) “Fixtures” means goods that have become so related to
17 particular real property that an interest in them arises under real
18 property law.

19 (42) “General intangible” means any personal property, including
20 things in action, other than accounts, chattel paper, commercial tort
21 claims, deposit accounts, documents, goods, instruments, investment
22 property, letter-of-credit rights, letters of credit, money, and oil, gas,
23 or other minerals before extraction. The term includes payment
24 intangibles and software.

25 (43) “Good faith” means honesty in fact and the observance of
26 reasonable commercial standards of fair dealing.

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

45 (45) “Governmental unit” means a subdivision, agency,

1 department, county, parish, municipality, or other unit of the
2 government of the United States, a state, or a foreign country. The
3 term includes an organization having a separate corporate existence if
4 the organization is eligible to issue debt on which interest is exempt
5 from income taxation under the laws of the United States.

6 (46) “Health-care-insurance receivable” means an interest in or
7 claim under a policy of insurance which is a right to payment of a
8 monetary obligation for health-care goods or services provided or to
9 be provided.

10 (47) “Instrument” means a negotiable instrument or any other
11 writing that evidences a right to the payment of a monetary obligation,
12 is not itself a security agreement or lease, and is of a type that in
13 ordinary course of business is transferred by delivery with any
14 necessary indorsement or assignment. The term does not include [(a)]
15 (i) investment property, [(b)] (ii) letters of credit, or [(c)] (iii)
16 writings that evidence a right to payment arising out of the use of a
17 credit or charge card or information contained on or for use with the
18 card.

19 (48) “Inventory” means goods, other than farm products, which:
20 [(a)] (A) are leased by a person as lessor;
21 [(b)] (B) are held by a person for sale or lease or to be furnished
22 under a contract of service;
23 [(c)] (C) are furnished by a person under a contract of service; or
24 [(d)] (D) consist of raw materials, work in process, or materials
25 used or consumed in a business.

26 (49) “Investment property” means a security, whether certificated
27 or uncertificated, security entitlement, securities account, commodity
28 contract, or commodity account.

29 (50) “Jurisdiction of organization”, with respect to a registered
30 organization, means the jurisdiction under whose law the organization
31 is organized.

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

37 (52) “Lien creditor” means:

38 [(a)] (A) a creditor that has acquired a lien on the property
39 involved by attachment, levy, or the like;

40 [(b)] (B) an assignee for benefit of creditors from the time of
41 assignment;

42 [(c)] (C) a trustee in bankruptcy from the date of the filing of the
43 petition; or

44 [(d)] (D) a receiver in equity from the time of appointment.

45 (53) “Manufactured home” means a structure, transportable in one

1 or more sections, which, in the traveling mode, is eight body feet or
2 more in width or 40 body feet or more in length, or, when erected on
3 site, is 320 or more square feet, and which is built on a permanent
4 chassis and designed to be used as a dwelling with or without a
5 permanent foundation when connected to the required utilities, and
6 includes the plumbing, heating, air-conditioning, and electrical systems
7 contained therein. The term includes any structure that meets all of
8 the requirements of this paragraph except the size requirements and
9 with respect to which the manufacturer voluntarily files a certification
10 required by the United States Secretary of Housing and Urban
11 Development and complies with the standards established under Title
12 42 of the United States Code.

13 (54) “Manufactured-home transaction” means a secured
14 transaction:

15 [(a)] (A) that creates a purchase-money security interest in a
16 manufactured home, other than a manufactured home held as
17 inventory; or

18 [(b)] (B) in which a manufactured home, other than a
19 manufactured home held as inventory, is the primary collateral.

20 (55) “Mortgage” means a consensual interest in real property,
21 including fixtures, which secures payment or performance of an
22 obligation.

23 (56) “New debtor” means a person that becomes bound as debtor
24 under 12A:9-203 [d.] (d) by a security agreement previously entered
25 into by another person.

26 (57) “New value” means [(a)] (i) money, [(b)] (ii) money’s worth
27 in property, services, or new credit, or [(c)] (iii) release by a
28 transferee of an interest in property previously transferred to the
29 transferee. The term does not include an obligation substituted for
30 another obligation.

31 (58) “Noncash proceeds” means proceeds other than cash
32 proceeds.

33 (59) “Obligor” means a person [who] that, with respect to an
34 obligation secured by a security interest in or an agricultural lien on
35 the collateral, [(a)] (i) owes payment or other performance of the
36 obligation, [(b)] (ii) has provided property other than the collateral to
37 secure payment or other performance of the obligation, or [(c)] (iii)
38 is otherwise accountable in whole or in part for payment or other
39 performance of the obligation. The term does not include issuers or
40 nominated persons under a letter of credit.

41 (60) “Original debtor”, except as used in 12A:9-310(c), means a
42 person [who] that, as debtor, entered into a security agreement to
43 which a new debtor has become bound under 12A:9-203 [d.] (d).

44 (61) “Payment intangible” means a general intangible under which
45 the account debtor’s principal obligation is a monetary obligation.

1 (62) “Person related to”, with respect to an individual, means:

2 [(a)] (A) the spouse of the individual;

3 [(b)] (B) a brother, brother-in-law, sister, or sister-in-law of the
4 individual;

5 [(c)] (C) an ancestor or lineal descendant of the individual or the
6 individual’s spouse; or

7 [(d)] (D) any other relative, by blood or marriage, of the individual
8 or the individual’s spouse who shares the same home with the
9 individual.

10 (63) “Person related to”, with respect to an organization, means:

11 [(a)] (A) a person directly or indirectly controlling, controlled by,
12 or under common control with the organization;

13 [(b)] (B) an officer or director of, or a person performing similar
14 functions with respect to, the organization;

15 [(c)] (C) an officer or director of, or a person performing similar
16 functions with respect to, a person described in subparagraph [(a)]
17 (A);

18 [(d)] (D) the spouse of an individual described in subparagraph
19 [(a), (b), or (c)] (A), (B) or (C); or

20 [(e)] (E) an individual who is related by blood or marriage to an
21 individual described in subparagraph [(a), (b), (c), or (d)] (A), (B) (C)
22 or (D) and shares the same home with the individual.

23 (64) “Proceeds”, except as used in 12A:9-609(b), means the
24 following property:

25 [(a)] (A) whatever is acquired upon the sale, lease, license,
26 exchange, or other disposition of collateral;

27 [(b)] (B) whatever is collected on, or distributed on account of,
28 collateral;

29 [(c)] (C) rights arising out of collateral;

30 [(d)] (D) to the extent of the value of collateral, claims arising out
31 of the loss, nonconformity, or interference with the use of, defects or
32 infringement of rights in, or damage to, the collateral; or

33 [(e)] (E) to the extent of the value of collateral and to the extent
34 payable to the debtor or the secured party, insurance payable by reason
35 of the loss or nonconformity of, defects or infringement of rights in,
36 or damage to, the collateral.

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

41 (66) “Proposal” means a record authenticated by a secured party
42 which includes the terms on which the secured party is willing to
43 accept collateral in full or partial satisfaction of the obligation it
44 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

45 (67) “Public-finance transaction” means a secured transaction in

1 connection with which:

2 [(a)] (A) debt securities are issued;

3 [(b)] (B) all or a portion of the securities issued have an initial
4 stated maturity of at least 20 years; and

5 [(c)] (C) the debtor, obligor, secured party, account debtor or
6 other person obligated on collateral, assignor or assignee of a secured
7 obligation, or assignor or assignee of a security interest is a state or a
8 governmental unit of a state.

9 (68) “Pursuant to commitment”, with respect to an advance made
10 or other value given by a secured party, means pursuant to the secured
11 party’s obligation, whether or not a subsequent event of default or
12 other event not within the secured party’s control has relieved or may
13 relieve the secured party from its obligation.

14 (69) “Record”, except as used in “for record”, “of record”, “record
15 or legal title”, and “record owner”, means information that is inscribed
16 on a tangible medium or which is stored in an electronic or other
17 medium and is retrievable in perceivable form.

18 (70) “Registered organization” means an organization organized
19 solely under the law of a single state or the United States and as to
20 which the state or the United States must maintain a public record
21 showing the organization to have been organized.

22 (71) “Secondary obligor” means an obligor to the extent that:

23 [(a)] (A) the obligor’s obligation is secondary; or

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

27 (72) “Secured party” means:

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

31 [(b)] (B) a person that holds an agricultural lien;

32 [(c)] (C) a consignor;

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

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

38 [(f)] (F) a person that holds a security interest arising under
39 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), [or]
40 12A:4-210, or 12A:5-118.

41 (73) “Security agreement” means an agreement that creates or
42 provides for a security interest.

43 (74) “Send”, in connection with a record or notification, means:

44 [(a)] (A) to deposit in the mail, deliver for transmission, or
45 transmit by any other usual means of communication, with postage or

1 cost of transmission provided for, addressed to any address reasonable
2 under the circumstances; or

3 [(b)] (B) to cause the record or notification to be received within
4 the time that it would have been received if properly sent under
5 subparagraph [(a)] (A).

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

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

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

18 (78) "Tangible chattel paper" means chattel paper evidenced by a
19 record or records consisting of information that is inscribed on a
20 tangible medium.

21 (79) "Termination statement" means an amendment of a financing
22 statement which:

23 [(a)] (A) identifies, by its file number, the initial financing
24 statement to which it relates; and

25 [(b)] (B) indicates either that it is a termination statement or that
26 the identified financing statement is no longer effective.

27 (80) "Transmitting utility" means a person primarily engaged in the
28 business of:

29 [(a)] (A) operating a railroad, subway, street railway, or trolley
30 bus;

31 [(b)] (B) transmitting communications electrically,
32 electromagnetically, or by light;

33 [(c)] (C) transmitting goods by pipeline or sewer; or

34 [(d)] (D) transmitting or producing and transmitting electricity,
35 steam, gas, or water.

36 [b.] (b) Definitions in other chapters. The following definitions in
37 other chapters apply to this chapter:

38 "Applicant" 12A:5-102.

39 "Beneficiary" 12A:5-102.

40 "Broker" 12A:8-102.

41 "Certificated security" 12A:8-102.

42 "Check" 12A:3-104.

43 "Clearing corporation" 12A:8-102.

44 "Contract for sale" 12A:2-106.

45 "Customer" 12A:4-104.

1	“Entitlement holder”	12A:8-102.
2	“Financial asset”	12A:8-102.
3	“Holder in due course”	12A:3-302.
4	“Issuer” (with respect to a letter of	
5	credit or letter-of-credit right)	12A:5-102.
6	“Issuer” (with respect to a security)	12A:8-201.
7	“Lease”	12A:2A-103.
8	“Lease agreement”	12A:2A-103.
9	“Lease contract”	12A:2A-103.
10	“Leasehold interest”	12A:2A-103.
11	“Lessee”	12A:2A-103.
12	“Lessee in ordinary course of business”	12A:2A-103.
13	“Lessor”	12A:2A-103.
14	“Lessor’s residual interest”	12A:2A-103.
15	“Letter of credit”	12A:5-102.
16	“Merchant”	12A:2-104.
17	“Negotiable instrument”	12A:3-104.
18	“Nominated person”	12A:5-102.
19	“Note”	12A:3-104.
20	“Proceeds of a letter of credit”	12A:5-114.
21	“Prove”	12A:3-103.
22	“Sale”	12A:2-106.
23	“Securities account”	12A:8-501.
24	“Securities intermediary”	12A:8-102.
25	“Security”	12A:8-102.
26	“Security certificate”	12A:8-102.
27	“Security entitlement”	12A:8-102.
28	“Uncertificated security”	12A:8-102.

29 [c.] (c) Chapter 1 definitions and principles. Chapter 1 contains
 30 general definitions and principles of construction and interpretation
 31 applicable throughout this chapter.
 32 (cf: N.J.S.12A:9-102)

33

34 2. N.J.S.12A:9-103 is amended to read as follows:

35 12A:9-103. Purchase-Money Security Interest; Application of
 36 Payments; Burden of Establishing.

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

38 (1) “purchase-money collateral” means goods or software that
 39 [secure] secures a purchase-money obligation incurred with respect
 40 to that collateral; and

41 (2) “purchase-money obligation” means an obligation of an obligor
 42 incurred as all or part of the price of the collateral or for value given
 43 to enable the debtor to acquire rights in or the use of the collateral if
 44 the value is in fact so used.

45 [b.] (b) Purchase-money security interest in goods. A security
 46 interest in goods is a purchase-money security interest:

1 (1) to the extent that the goods are purchase-money collateral with
2 respect to that security interest;

3 (2) if the security interest is in inventory that is or was purchase-
4 money collateral, also to the extent that the security interest secures
5 a purchase-money obligation incurred with respect to other inventory
6 in which the secured party holds or held a purchase-money security
7 interest; and

8 (3) also to the extent that the security interest secures a purchase-
9 money obligation incurred with respect to software in which the
10 secured party holds or held a purchase-money security interest.

11 **[c.] (c)** Purchase-money security interest in software. A security
12 interest in software is a purchase-money security interest to the extent
13 that the security interest also secures a purchase-money obligation
14 incurred with respect to goods in which the secured party holds or
15 held a purchase-money security interest if:

16 (1) the debtor acquired its interest in the software in an integrated
17 transaction in which it acquired an interest in the goods; and

18 (2) the debtor acquired its interest in the software for the principal
19 purpose of using the software in the goods.

20 **[d.] (d)** Consignor's inventory purchase-money security interest.
21 The security interest of a consignor in goods that are the subject of a
22 consignment is a purchase-money security interest in inventory.

23 **[e.] (e)** Application of payment in non-consumer-goods
24 transaction. In a transaction other than a consumer-goods transaction,
25 if the extent to which a security interest is a purchase-money security
26 interest depends on the application of a payment to a particular
27 obligation, the payment **[shall]** must be applied:

28 (1) in accordance with any reasonable method of application to
29 which the parties agree;

30 (2) in the absence of the parties' agreement to a reasonable method,
31 in accordance with any intention of the obligor manifested at or before
32 the time of payment; or

33 (3) in the absence of an agreement to a reasonable method and a
34 timely manifestation of the obligor's intention, in the following order:

35 **[(a)] (A)** to obligations that are not secured; and

36 **[(b)] (B)** if more than one obligation is secured, to obligations
37 secured by purchase-money security interests in the order in which
38 those obligations were incurred.

39 **[f.] (f)** No loss of status of purchase-money security interest in
40 non-consumer-goods transaction. In a transaction other than a
41 consumer-goods transaction, a purchase-money security interest does
42 not lose its status as such, even if:

43 (1) the purchase-money collateral also secures an obligation that is
44 not a purchase-money obligation;

45 (2) collateral that is not purchase-money collateral also secures the
46 purchase-money obligation; or

1 (3) the purchase-money obligation has been renewed, refinanced,
2 consolidated, or restructured.

3 [g.] (g) Burden of proof in non-consumer-goods transaction. In
4 a transaction other than a consumer-goods transaction, a secured party
5 claiming a purchase-money security interest has the burden of
6 establishing the extent to which the security interest is a purchase-
7 money security interest.

8 [h.] (h) Non-consumer-goods transactions; no inference. The
9 limitation of the rules in subsections [e., f., and g. of this section] (e),
10 (f) and (g) to transactions other than consumer-goods transactions is
11 intended to leave to the court the determination of the proper rules in
12 consumer-goods transactions. The court may not infer from that
13 limitation the nature of the proper rule in consumer-goods transactions
14 and may continue to apply established approaches.

15 (cf: N.J.S.12A:9-103)

16

17 3. N.J.S.12A:9-104 is amended to read as follows:

18 12A:9-104. Control of Deposit Account.

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

21 (1) the secured party is the bank with which the deposit account is
22 maintained;

23 (2) the debtor, secured party, and bank have agreed in an
24 authenticated record that the bank will comply with instructions
25 originated by the secured party directing disposition of the funds in the
26 deposit account without further consent by the debtor; or

27 (3) the secured party becomes the bank's customer with respect to
28 the deposit account.

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

32 (cf: N.J.S.12A:9-104)

33

34 4. N.J.S.12A:9-105 is amended to read as follows:

35 12A:9-105. Control of Electronic Chattel Paper.

36 A secured party has control of electronic chattel paper if the record
37 or records comprising the chattel paper are created, stored, and
38 assigned in such a manner that:

39 [a. A] (1) a single authoritative copy of the record or records
40 exists which is unique, identifiable and, except as otherwise provided
41 in paragraphs [d., e. and f.] (4), (5), and (6), unalterable;

42 [b. The] (2) the authoritative copy identifies the secured party as
43 the assignee of the record or records;

44 [c. The] (3) the authoritative copy is communicated to and
45 maintained by the secured party or its designated custodian;

1 [d. Copies] (4) copies or revisions that add or change an identified
2 assignee of the authoritative copy can be made only with the
3 participation of the secured party;

4 [e. Each] (5) each copy of the authoritative copy and any copy of
5 a copy is readily identifiable as a copy that is not the authoritative
6 copy; and

7 [f.] (6) any revision of the authoritative copy is readily identifiable
8 as an authorized or unauthorized revision.

9 (cf: N.J.S.12A:9-105)

10
11 5. N.J.S.12A:9-106 is amended to read as follows:

12 12A:9-106. Control of Investment Property.

13 [a.] (a) Control under 12A:8-106. A person has control of a
14 certificated security, uncertificated security, or security entitlement as
15 provided in 12A:8-106.

16 [b.] (b) Control of commodity contract. A secured party has
17 control of a commodity contract if:

18 (1) the secured party is the commodity intermediary with which the
19 commodity contract is carried; or

20 (2) the commodity customer, secured party, and commodity
21 intermediary have agreed that the commodity intermediary will apply
22 any value distributed on account of the commodity contract as directed
23 by the secured party without further consent by the commodity
24 customer.

25 [c.] (c) Effect of control of securities account or commodity
26 account. A secured party having control of all security entitlements or
27 commodity contracts carried in a securities account or commodity
28 account has control over the securities account or commodity account.

29 (cf: N.J.S.12A:9-106)

30
31 6. N.J.S.12A:9-108 is amended to read as follows:

32 12A:9-108. Sufficiency of Description.

33 [a.] (a) Sufficiency of description. Except as otherwise provided
34 in subsections [c., d., e. and f. of this section] (c), (d), (e) and (f), a
35 description of personal or real property is sufficient, whether or not it
36 is specific, if it reasonably identifies what is described.

37 [b.] (b) Examples of reasonable identification. Except as
38 otherwise provided in subsection [d. of this section] (d), a description
39 of collateral reasonably identifies the collateral if it identifies the
40 collateral by:

41 (1) specific listing;

42 (2) category;

43 (3) except as otherwise provided in subsection [e. of this section]
44 (e), a type of collateral defined in the Uniform Commercial Code;

45 (4) quantity;

1 (5) computational or allocational formula or procedure; or
2 (6) except as otherwise provided in subsection [c. of this section]
3 (c), any other method, if the identity of the collateral is objectively
4 determinable.

5 [c.] (c) Supergeneric description not sufficient. A description of
6 collateral as “all the debtor’s assets” or “all the debtor’s personal
7 property” or using words of similar import does not reasonably
8 identify the collateral.

9 [d.] (d) Investment property. Except as otherwise provided in
10 subsection [e. of this section] (e), a description of a security
11 entitlement, securities account, or commodity account is sufficient if
12 it describes:

- 13 (1) the collateral by those terms or as investment property; or
14 (2) the underlying financial asset or commodity contract.

15 [e.] (e) When description by type insufficient. A description only
16 by type of collateral defined in the Uniform Commercial Code is an
17 insufficient description of:

- 18 (1) a commercial tort claim; or
19 (2) in a consumer transaction, consumer goods, a security
20 entitlement, a securities account, or a commodity account

21 [f.] (f) Bondable transition property. A description of bondable
22 transition property is sufficient if it refers to the bondable stranded
23 costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51),
24 establishing the bondable transition property.

25 (cf: N.J.S.12A:9-108)

26

27 7. N.J.S.12A:9-109 is amended to read as follows:

28 12A:9-109. Scope.

29 [a.] (a) General scope of chapter. Except as otherwise provided
30 in subsections [c. and d. of this section] (c) and (d), this chapter
31 applies to:

- 32 (1) a transaction, regardless of its form, that creates a security
33 interest in personal property or fixtures by contract;
34 (2) an agricultural lien;
35 (3) a sale of accounts, chattel paper, payment intangibles, or
36 promissory notes;
37 (4) a consignment;
38 (5) a security interest arising under 12A:2-401, 12A:2-505,
39 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and
40 (6) a security interest arising under 12A:4-210 or 12A:5-118.

41 [b.] (b) Security interest in secured obligation. The application of
42 this chapter to a security interest in a secured obligation is not affected
43 by the fact that the obligation is itself secured by a transaction or
44 interest to which this chapter does not apply.

45 [c.] (c) Extent to which chapter does not apply. This chapter does

- 1 not apply to the extent that:
- 2 (1) a statute, regulation, or treaty of the United States preempts
3 this chapter; or
- 4 (2) another statute of this State expressly governs the creation,
5 perfection, priority, or enforcement of a security interest created by
6 this State or a governmental unit of this State;
- 7 (3) a statute of another state, a foreign country, or a governmental
8 unit of another state or a foreign country, other than a statute
9 generally applicable to security interests, expressly governs creation,
10 perfection, priority, or enforcement of a security interest created by
11 the state, country, or governmental unit; or
- 12 (4) the rights of a transferee beneficiary or nominated person under
13 a letter of credit are independent and superior under 12A:5-114.
- 14 **[d.] (d)** Inapplicability of chapter. This chapter does not apply to:
- 15 (1) a landlord's lien, other than an agricultural lien;
- 16 (2) a lien, other than an agricultural lien, given by statute or other
17 rule of law for services or materials, but 12A:9-333 applies with
18 respect to priority of the lien;
- 19 (3) an assignment of a claim for wages, salary, or other
20 compensation of an employee;
- 21 (4) a sale of accounts, chattel paper, payment intangibles, or
22 promissory notes as part of a sale of the business out of which they
23 arose;
- 24 (5) an assignment of accounts, chattel paper, payment intangibles,
25 or promissory notes which is for the purpose of collection only;
- 26 (6) an assignment of a right to payment under a contract to an
27 assignee that is also obligated to perform under the contract;
- 28 (7) an assignment of a single account, payment intangible, or
29 promissory note to an assignee in full or partial satisfaction of a
30 preexisting indebtedness;
- 31 (8) a transfer of an interest in or an assignment of a claim under
32 a policy of insurance, other than an assignment by or to a health-care
33 provider of a health-care-insurance receivable and any subsequent
34 assignment of the right to payment, but 12A:9-315 and 12A:9-322
35 apply with respect to proceeds and priorities in proceeds;
- 36 (9) an assignment of a right represented by a judgment, other than
37 a judgment taken on a right to payment that was collateral;
- 38 (10) a right of recoupment or set-off, but:
- 39 **[(a)] (A)** 12A:9-340 applies with respect to the effectiveness of
40 rights of recoupment or set-off against deposit accounts; and
- 41 **[(b)] (B)** 12A:9-404 applies with respect to defenses or claims of
42 an account debtor;
- 43 (11) the creation or transfer of an interest in or lien on real
44 property, including a lease or rents thereunder, except to the extent
45 that provision is made for:
- 46 **[(a)] (A)** liens on real property in 12A:9-203 and 12A:9-308;

- 1 **[(b)] (B)** fixtures in 12A:9-334; and
2 **[(c)] (C)** fixture filings in 12A:9-501, 12A:9-502, 12A:9-512
3 **[and],** 12A:9-516 and 12A:9-519; and
4 **[(d)] (D)** security agreements covering personal and real property
5 in 12A:9-604;
6 (12) an assignment of a claim arising in tort, other than a
7 commercial tort claim, but 12A:9-315 and 12A:9-322 apply with
8 respect to proceeds and priorities in proceeds;
9 (13) an assignment of a deposit account in a consumer transaction,
10 but 12A:9-315 and 12A:9-322 apply with respect to proceeds and
11 priorities in proceeds; or
12 (14) a transfer by a government or governmental unit.
13 (cf: N.J.S.12A:9-109)

14

15 8. N.J.S.12A:9-201 is amended to read as follows:

16 12A:9-201. General Effectiveness of Security Agreement.

17 **[a.] (a)** General effectiveness. Except as otherwise provided in the
18 Uniform Commercial Code, a security agreement is effective according
19 to its terms between the parties, against purchasers of the collateral,
20 and against creditors.

21 **[b.] (b)** Applicable consumer laws and other law. A transaction
22 subject to this chapter is subject to any applicable rule of law which
23 establishes a different rule for consumers and to (1) any other statute
24 or regulation of this State that regulates the rates, charges,
25 agreements, and practices for loans, credit sales, or other extensions
26 of credit and (2) any consumer protection statute or regulation of this
27 State.

28 **[c.] (c)** Other applicable law controls. In case of conflict between
29 this chapter and a rule of law, statute, or regulation described in
30 subsection **[b. of this section] (b)**, the rule of law, statute, or
31 regulation controls. Failure to comply with a statute or regulation
32 described in subsection **[b.] (b)** has only the effect the statute or
33 regulation specifies.

34 **[d.] (d)** Further deference to other applicable law. This chapter
35 does not:

36 (1) validate any rate, charge, agreement, or practice that violates
37 a rule of law, statute, or regulation described in subsection **[b. of this**
38 **section] (b)**; or

39 (2) extend the application of the rule of law, statute, or regulation
40 to a transaction not otherwise subject to it.

41 (cf: N.J.S.12A:9-201)

42

43 9. N.J.S.12A:9-203 is amended to read as follows:

44 12A:9-203. Attachment and Enforceability of Security Interest;
45 Proceeds; Supporting Obligations; Formal Requisites.

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

5 **[b.] (b)** Enforceability. Except as otherwise provided in
6 subsections **[c.] (c)** through **[i. of this section] (i)**, a security interest
7 is enforceable against the debtor and third parties with respect to the
8 collateral only if :

9 (1) value has been given;

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

12 (3) one of the following conditions is met:

13 **[(a)] (A)** the debtor has authenticated a security agreement that
14 provides a description of the collateral and, if the security interest
15 covers timber to be cut, a description of the land concerned;

16 **[(b)] (B)** the collateral is not a certificated security and is in the
17 possession of the secured party under 12A:9-313 pursuant to the
18 debtor's security agreement;

19 **[(c)] (C)** the collateral is a certificated security in registered form
20 and the security certificate has been delivered to the secured party
21 under 12A:8-301 pursuant to the debtor's security agreement; or

22 **[(d)] (D)** the collateral is deposit accounts, electronic chattel
23 paper, investment property, or letter-of-credit rights, and the secured
24 party has control under 12A:9-104, 12A:9-105, 12A:9-106, or
25 12A:9-107 pursuant to the debtor's security agreement.

26 **[c.] (c)** Other Uniform Commercial Code provisions. Subsection
27 **[b. of this section] (b)** is subject to 12A:4-210 on the security interest
28 of a collecting bank, 12A:5-118 on the security interest of a letter-of-
29 credit issuer or nominated person, 12A:9-110 on a security interest
30 arising under Chapter 2 or 2A, and 12A:9-206 on security interests in
31 investment property.

32 **[d.] (d)** When person becomes bound by another person's security
33 agreement. A person becomes bound as debtor by a security
34 agreement entered into by another person if, by operation of law other
35 than this chapter or by contract:

36 (1) the security agreement becomes effective to create a security
37 interest in the person's property; or

38 (2) the person becomes generally obligated for the obligations of
39 the other person, including the obligation secured under the security
40 agreement, and acquires or succeeds to all or substantially all of the
41 assets of the other person.

42 **[e.] (e)** Effect of new debtor becoming bound. If a new debtor
43 becomes bound as debtor by a security agreement entered into by
44 another person:

45 (1) the agreement satisfies **[paragraph (3) of]** subsection **[b. of]**

1 this section] (b) (3) with respect to existing or after-acquired
2 property of the new debtor to the extent the property is described in
3 the agreement; and

4 (2) another agreement is not necessary to make a security interest
5 in the property enforceable.

6 [f.] (f) Proceeds and supporting obligations. The attachment of
7 a security interest in collateral gives the secured party the rights to
8 proceeds provided by 12A:9-315 and is also attachment of a security
9 interest in a supporting obligation for the collateral.

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

15 [h.] (h) Security entitlement carried in securities account. The
16 attachment of a security interest in a securities account is also
17 attachment of a security interest in the security entitlements carried in
18 the securities account.

19 [i.] (i) Commodity contracts carried in commodity account. The
20 attachment of a security interest in a commodity account is also
21 attachment of a security interest in the commodity contracts carried in
22 the commodity account.

23 [j.] (j) Bondable transition property. Bondable transition property
24 is presently existing property for all purposes, including for purposes
25 of [paragraph (2) of] subsection [b. of this section] (b) (2), whether
26 or not the revenues and proceeds arising under the property have
27 accrued and notwithstanding that the value of the property may
28 depend upon customer use of electricity or performance of service by
29 electric public utilities, or both.

30 (cf: N.J.S.12A:9-203)

31

32 10. N.J.S.12A:9-204 is amended to read as follows:

33 12A:9-204. After-acquired Property; Future Advances.

34 [a.] (a) After-acquired collateral. Except as otherwise provided
35 in subsection [b. of this section] (b), a security agreement may create
36 or provide for a security interest in after-acquired collateral.

37 [b.] (b) When after-acquired property clause not effective. A
38 security interest does not attach under a term constituting an
39 after-acquired property clause to:

40 (1) consumer goods, other than an accession when given as
41 additional security, unless the debtor acquires rights in them within 10
42 days after the secured party gives value; or

43 (2) a commercial tort claim.

44 [c.] (c) Future advances and other value. A security agreement
45 may provide that collateral secures, or that accounts, chattel paper,

1 payment intangibles, or promissory notes are sold in connection with,
2 future advances or other value, whether or not the advances or value
3 are given pursuant to commitment.

4 (cf: N.J.S.12A:9-204)

5

6 11. N.J.S.12A:9-205 is amended to read as follows:

7 12A:9-205. Use or Disposition of Collateral Permissible.

8 **[a.]** (a) When security interest not invalid or fraudulent. A
9 security interest is not invalid or fraudulent against creditors solely
10 because:

11 (1) the debtor has the right or ability to:

12 **[(a)]** (A) use, commingle, or dispose of all or part of the
13 collateral, including returned or repossessed goods;

14 **[(b)]** (B) collect, compromise, enforce, or otherwise deal with
15 collateral;

16 **[(c)]** (C) accept the return of collateral or make repossessions; or

17 **[(d)]** (D) use, commingle, or dispose of proceeds; or

18 (2) the secured party fails to require the debtor to account for
19 proceeds or replace collateral.

20 **[b.]** (b) Requirements of possession not relaxed. This section
21 does not relax the requirements of possession if attachment,
22 perfection, or enforcement of a security interest depends upon
23 possession of the collateral by the secured party.

24 (cf: N.J.S.12A:9-205)

25

26 12. N.J.S.12A:9-206 is amended to read as follows:

27 12A:9-206. Security Interest Arising in Purchase or Delivery of
28 Financial Asset.

29 **[a.]** (a) Security interest when person buys through securities
30 intermediary. A security interest in favor of a securities intermediary
31 attaches to a person's security entitlement if:

32 (1) the person buys a financial asset through the securities
33 intermediary in a transaction in which the person is obligated to pay
34 the purchase price to the securities intermediary at the time of the
35 purchase; and

36 (2) the securities intermediary credits the financial asset to the
37 buyer's securities account before the buyer pays the securities
38 intermediary.

39 **[b.]** (b) Security interest secures obligation to pay for financial
40 asset. The security interest described in subsection **[a. of this section]**
41 (a) secures the person's obligation to pay for the financial asset.

42 **[c.]** (c) Security interest in payment against delivery transaction.
43 A security interest in favor of a person **[who]** that delivers a
44 certificated security or other financial asset represented by a writing
45 attaches to the security or other financial asset if:

1 (1) the security or other financial asset:
2 [(a)] (A) in the ordinary course of business is transferred by
3 delivery with any necessary indorsement or assignment; and
4 [(b)] (B) is delivered under an agreement between persons in the
5 business of dealing with such securities or financial assets; and
6 (2) the agreement calls for delivery against payment.
7 [d.] (d) Security interest secures obligation to pay for delivery.
8 The security interest described in subsection [c. of this section] (c)
9 secures the obligation to make payment for the delivery.
10 (cf: N.J.S.12A:9-206)

11

12 13. N.J.S.12A:9-207 is amended to read as follows:
13 [12A:9-207. BLANK.]
14 (cf: N.J.S.12A:9-207)

15

16 14. N.J.S.12A:9-208 is amended to read as follows:
17 [12A:9-208.] 12A:9-207. Rights and Duties of Secured Party
18 Having Possession or Control of Collateral.

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

25 [b.] (b) Expenses, risks, duties, and rights when secured party in
26 possession. Except as otherwise provided in subsection [d. of this
27 section] (d), if a secured party has possession of collateral:

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

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

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

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

37 [(a)] (A) for the purpose of preserving the collateral or its value;

38 [(b)] (B) as permitted by an order of a court having competent
39 jurisdiction; or

40 [(c)] (C) except in the case of consumer goods, in the manner and
41 to the extent agreed by the debtor.

42 [c.] (c) Duties and rights when secured party in possession or
43 control. Except as otherwise provided in subsection [d. of this
44 section] (d), a secured party having possession of collateral or control
45 of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

9 (1) subsection a. of this section does not apply unless the secured
10 party is entitled under an agreement:

11 **[(a)] (A)** to charge back uncollected collateral; or

12 **[(b)] (B)** otherwise to full or limited recourse against the debtor
13 or a secondary obligor based on the nonpayment or other default of an
14 account debtor or other obligor on the collateral; and

15 (2) subsections **[b. and c. of this section] (b) and (c)** do not apply.
16 (cf: N.J.S.12A:9-208)

17

18 15. N.J.S.12A:9-209 is amended to read as follows:

19 **[12A:9-209.] 12A:9-208.** Additional Duties of Secured Party
20 Having Control of Collateral.

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

25 **[b.] (b)** Duties of secured party after receiving demand from
26 debtor. Within 10 days after receiving an authenticated demand by the
27 debtor:

28 (1) a secured party having control of a deposit account under
29 12A:9-104 **[a.] (a)** (2) shall send to the bank with which the deposit
30 account is maintained an authenticated statement that releases the bank
31 from any further obligation to comply with instructions originated by
32 the secured party;

33 (2) a secured party having control of a deposit account under
34 12A:9-104 **[a.] (a)** (3) shall:

35 **[(a)] (A)** pay the debtor the balance on deposit in the deposit
36 account; or

37 **[(b)] (B)** transfer the balance on deposit into a deposit account in
38 the debtor's name;

39 (3) a secured party, other than a buyer, having control of electronic
40 chattel paper under 12A:9-105 shall:

41 **[(a)] (A)** communicate the authoritative copy of the electronic
42 chattel paper to the debtor or its designated custodian;

43 **[(b)] (B)** if the debtor designates a custodian that is the designated
44 custodian with which the authoritative copy of the electronic chattel
45 paper is maintained for the secured party, communicate to the

1 custodian an authenticated record releasing the designated custodian
2 from any further obligation to comply with instructions originated by
3 the secured party and instructing the custodian to comply with
4 instructions originated by the debtor; and

5 [(c)] (C) take appropriate action to enable the debtor or its
6 designated custodian to make copies of or revisions to the
7 authoritative copy which add or change an identified assignee of the
8 authoritative copy without the consent of the secured party;

9 (4) a secured party having control of investment property under
10 12A:8-106 d. (2) or 12A:9-106 [b.] (b) shall send to the securities
11 intermediary or commodity intermediary with which the security
12 entitlement or commodity contract is maintained an authenticated
13 record that releases the securities intermediary or commodity
14 intermediary from any further obligation to comply with entitlement
15 orders or directions originated by the secured party; and

16 (5) a secured party having control of a letter-of-credit right under
17 12A:9-107 shall send to each person having an unfulfilled obligation
18 to pay or deliver proceeds of the letter of credit to the secured party
19 an authenticated release from any further obligation to pay or deliver
20 proceeds of the letter of credit to the secured party.

21 (cf: N.J.S.12A:9-209)

22
23 16. N.J.S.12A:9-210 is amended to read as follows:

24 [12A:9-210.] 12A:9-209 Duties of Secured Party If Account
25 Debtor Has Been Notified of Assignment.

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

28 (1) there is no outstanding secured obligation; and

29 (2) the secured party is not committed to make advances, incur
30 obligations, or otherwise give value.

31 [b.] (b) Duties of secured party after receiving demand from
32 debtor. Within 10 days after receiving an authenticated demand by the
33 debtor, a secured party shall send to an account debtor that has
34 received notification of an assignment to the secured party as assignee
35 under 12A:9-406 [a.] (a) an authenticated record that releases the
36 account debtor from any further obligation to the secured party.

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

40 (cf: N.J.S.12A:9-210)

41
42 17. N.J.S.12A:9-211 is amended to read as follows:

43 [12A:9-211.] 12A:9-210. Request for Accounting; Request
44 Regarding List of Collateral or Statement of Account.

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

1 (1) "Request" means a record of a type described in paragraph (2),
2 (3), or (4) [of this section].

3 (2) "Request for an accounting" means a record authenticated by
4 a debtor requesting that the recipient provide an accounting of the
5 unpaid obligations secured by collateral and reasonably identifying the
6 transaction or relationship that is the subject of the request.

7 (3) "Request regarding a list of collateral" means a record
8 authenticated by a debtor requesting that the recipient approve or
9 correct a list of what the debtor believes to be the collateral securing
10 an obligation and reasonably identifying the transaction or relationship
11 that is the subject of the request.

12 (4) "Request regarding a statement of account" means a record
13 authenticated by a debtor requesting that the recipient approve or
14 correct a statement indicating what the debtor believes to be the
15 aggregate amount of unpaid obligations secured by collateral as of a
16 specified date and reasonably identifying the transaction or relationship
17 that is the subject of the request.

18 [b.] (b) Duty to respond to requests. Subject to subsections [c.,
19 d., e. and f. of this section] (c), (d), (e), and (f), a secured party, other
20 than a buyer of accounts, chattel paper, payment intangibles, or
21 promissory notes or a consignor, shall comply with a request within 14
22 days after receipt:

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

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

28 [c.] (c) Request regarding list of collateral; statement concerning
29 type of collateral. A secured party that claims a security interest in all
30 of a particular type of collateral owned by the debtor may comply with
31 a request regarding a list of collateral by sending to the debtor an
32 authenticated record including a statement to that effect within 14 days
33 after receipt.

34 [d.] (d) Request regarding list of collateral; no interest claimed.
35 A person [who] that receives a request regarding a list of collateral,
36 claims no interest in the collateral when it receives the request, and
37 claimed an interest in the collateral at an earlier time shall comply with
38 the request within 14 days after receipt by sending to the debtor an
39 authenticated record:

40 (1) disclaiming any interest in the collateral; and

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

44 [e.] (e) Request for accounting or regarding statement of account;
45 no interest in obligation claimed. A person [who] that receives a

1 request for an accounting or a request regarding a statement of
2 account, claims no interest in the obligations when it receives the
3 request, and claimed an interest in the obligations at an earlier time
4 shall comply with the request within 14 days after receipt by sending
5 to the debtor an authenticated record:

6 (1) disclaiming any interest in the obligations; and

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

10 [f.] (f) Charges for responses. A debtor is entitled without charge
11 to one response to a request under this section during any six-month
12 period. The secured party may require payment of a charge not
13 exceeding \$25 for each additional response.

14 (cf: N.J.S. 12A:9-211)

15

16 18. N.J.S.12A:9-301 is amended to read as follows:

17 12A:9-301. Law Governing Perfection and Priority of Security
18 Interests.

19 Except as otherwise provided in sections 12A:9-303 through
20 12A:9-306, the following rules determine the law governing
21 perfection, the effect of perfection or nonperfection, and the priority
22 of a security interest in collateral:

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

27 [b.] (2) While collateral is located in a jurisdiction, the local law
28 of that jurisdiction governs perfection, the effect of perfection or
29 nonperfection, and the priority of a possessory security interest in that
30 collateral.

31 [c.] (3) Except as otherwise provided in [subsection d. of this
32 section] paragraph (4), while negotiable documents, goods,
33 instruments, money, or tangible chattel paper [are] is located in a
34 jurisdiction, the local law of that jurisdiction governs:

35 [(1) the] (A) perfection of a security interest in the goods by filing
36 a fixture filing;

37 [(2) the] (B) perfection of a security interest in timber to be cut;
38 and

39 [(3)] (C) the effect of perfection or nonperfection and the priority
40 of a nonpossessory security interest in the collateral.

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

45 [e.] (5) Notwithstanding [subsection a. of this section] paragraph

1 (1), the local law of this State shall govern the perfection, the effect of
2 perfection or nonperfection, and the priority of a security interest in
3 bondable transition property.

4 (cf: N.J.S.12A:9-301)

5

6 19. N.J.S.12A:9-303 is amended to read as follows:

7 12A:9-303. Law Governing Perfection and Priority of Security
8 Interests in Goods Covered by a Certificate of Title.

9 [a.] (a) Applicability of section. This section applies to goods
10 covered by a certificate of title, even if there is no other relationship
11 between the jurisdiction under whose certificate of title the goods are
12 covered and the goods or the debtor.

13 [b.] (b) When goods covered by certificate of title. Goods
14 become covered by a certificate of title when a valid application for
15 the certificate of title and the applicable fee are delivered to the
16 appropriate authority. Goods cease to be covered by a certificate of
17 title at the earlier of the time the certificate of title ceases to be
18 effective under the law of the issuing jurisdiction [and] or the time the
19 goods become covered subsequently by a certificate of title issued by
20 another jurisdiction.

21 [c.] (c) Applicable law. The local law of the jurisdiction under
22 whose certificate of title the goods are covered governs perfection, the
23 effect of perfection or nonperfection, and the priority of a security
24 interest in goods covered by a certificate of title from the time the
25 goods become covered by the certificate of title until the goods cease
26 to be covered by the certificate of title.

27 (cf: N.J.S.12A:9-303)

28

29 20. N.J.S.12A:9-304 is amended to read as follows:

30 12A:9-304. Law Governing Perfection and Priority of Security
31 Interests in Deposit Accounts.

32 [a.] (a) Law of bank's jurisdiction governs. The local law of a
33 bank's jurisdiction governs perfection, the effect of perfection or
34 nonperfection, and the priority of a security interest in a deposit
35 account maintained with that bank.

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

38 (1) If an agreement between the bank and [the debtor] its
39 customer governing the deposit account expressly provides that a
40 particular jurisdiction is the bank's jurisdiction for purposes of this
41 part, this chapter, or the Uniform Commercial Code, that jurisdiction
42 is the bank's jurisdiction.

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

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

6 (4) If none of the preceding paragraphs [(1) through (3) of this
7 subsection] applies, the bank's jurisdiction is the jurisdiction in which
8 the office identified in an account statement as the office serving the
9 customer's account is located.

10 (5) If none of the preceding paragraphs [(1) through (4) of this
11 subsection] applies, the bank's jurisdiction is the jurisdiction in which
12 the chief executive office of the bank is located.

13 (cf: N.J.S.12A:9-304)

14
15 21. N.J.S.12A:9-305 is amended to read as follows:

16 12A:9-305. Law Governing Perfection and Priority of Security
17 Interests in Investment Property.

18 [a.] (a) Governing law: general rules. Except as otherwise
19 provided in subsection [c. of this section] (c), the following rules
20 apply:

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

25 (2) The local law of the issuer's jurisdiction as specified in [of]
26 12A:8-110 d. governs perfection, the effect of perfection or
27 nonperfection, and the priority of a security interest in an
28 uncertificated security.

29 (3) The local law of the securities intermediary's jurisdiction as
30 specified in 12A:8-110 e. governs perfection, the effect of perfection
31 or nonperfection, and the priority of a security interest in a security
32 entitlement or securities account.

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

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

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

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

6 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
7 applies and an agreement between the commodity intermediary and
8 commodity customer governing the commodity account expressly
9 provides that the commodity account is maintained at an office in a
10 particular jurisdiction, that jurisdiction is the commodity intermediary's
11 jurisdiction.

12 (4) If none of the preceding paragraphs [(1) through (3) of this
13 subsection] applies, the commodity intermediary's jurisdiction is the
14 jurisdiction in which the office identified in an account statement as the
15 office serving the commodity customer's account is located.

16 (5) If none of the preceding paragraphs [(1) through (4) of this
17 subsection] applies, the commodity intermediary's jurisdiction is the
18 jurisdiction in which the chief executive office of the commodity
19 intermediary is located.

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

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

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

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

28 (cf: N.J.S.12A:9-305)

29

30 22. N.J.S.12A:9-306 is amended to read as follows:

31 12A:9-306. Law Governing Perfection and Priority of Security
32 Interests in Letter-of-Credit Rights.

33 [a.] (a) Governing law: issuer's or nominated person's jurisdiction.
34 Subject to subsection [c. of this section] (c), the local law of the
35 issuer's jurisdiction or a nominated person's jurisdiction governs
36 perfection, the effect of perfection or nonperfection, and the priority
37 of a security interest in a letter-of-credit right if the issuer's jurisdiction
38 or nominated person's jurisdiction is a state.

39 [b.] (b) Issuer's or nominated person's jurisdiction. For purposes
40 of this part, an issuer's jurisdiction or nominated person's jurisdiction
41 is the jurisdiction whose law governs the liability of the issuer or
42 nominated person with respect to the letter-of-credit right as provided
43 in 12A:5-116.

44 [c.] (c) When section not applicable. This section does not apply
45 to a security interest that is perfected only under 12A:9-308 [d.] (d).
46 (cf: N.J.S.12A:9-306)

1 23. N.J.S.12A:9-307 is amended to read as follows:

2 12A:9-307. Location of Debtor.

3 [a.] (a) "Place of business." In this section, "place of business"
4 means a place where a debtor conducts its affairs.

5 [b.] (b) Debtor's location: general rules. Except as otherwise
6 provided in this section, the following rules determine a debtor's
7 location:

8 (1) A debtor who is an individual is located at the individual's
9 principal residence.

10 (2) A debtor that is an organization and has only one place of
11 business is located at its place of business.

12 (3) A debtor that is an organization and has more than one place
13 of business is located at its chief executive office.

14 [c.] (c) Limitation of applicability of subsection [b.] (b).
15 Subsection [b. of this section] (b) applies only if a debtor's residence,
16 place of business, or chief executive office, as applicable, is located in
17 a jurisdiction whose law generally requires information concerning the
18 existence of a nonpossessory security interest to be made generally
19 available in a filing, recording, or registration system as a condition or
20 result of the security interest's obtaining priority over the rights of a
21 lien creditor with respect to the collateral. If subsection [b.] (b) does
22 not apply, the debtor is located in the District of Columbia.

23 [d.] (d) Continuation of location: cessation of existence, etc. A
24 person [who] that ceases to exist, have a residence, or have a place
25 of business continues to be located in the jurisdiction specified by
26 subsections [b. and c of this section] (b) and (c).

27 [e.] (e) Location of registered organization organized under state
28 law. A registered organization that is organized under the law of a
29 state is located in that state.

30 [f.] (f) Location of registered organization organized under federal
31 law; bank branches and agencies. Except as otherwise provided in
32 subsection [i. of this section] (i), a registered organization that is
33 organized under the law of the United States and a branch or agency
34 of a bank that is not organized under the law of the United States or
35 a state are located:

36 (1) in the state that the law of the United States designates, if the
37 law designates a state of location;

38 (2) in the state that the registered organization, branch, or agency
39 designates, if the law of the United States authorizes the registered
40 organization, branch, or agency to designate its state of location; or

41 (3) in the District of Columbia, if neither paragraph (1) nor
42 paragraph (2) [of this subsection] applies.

43 [g.] (g) Continuation of location: change in status of registered
44 organization. A registered organization continues to be located in the
45 jurisdiction specified by subsection [e. or f. of this section] (e) or (f)

1 notwithstanding:

2 (1) the suspension, revocation, forfeiture, or lapse of the registered
3 organization's status as such in its jurisdiction of organization; or

4 (2) the dissolution, winding up, or cancellation of the existence of
5 the registered organization.

6 [h.] (h) Location of United States. The United States is located
7 in the District of Columbia.

8 [i.] (i) Location of foreign bank branch or agency if licensed in
9 only one state. A branch or agency of a bank that is not organized
10 under the law of the United States or a state is located in the state in
11 which the branch or agency is licensed, if all branches and agencies of
12 the bank are licensed in only one state.

13 [j.] (j) Location of foreign air carrier. A foreign air carrier
14 [covered] under the Federal Aviation Act of 1958, as amended (49
15 U.S.C. s.1301 et seq.), is located at the designated office of the agent
16 upon which service of process may be made on behalf of the carrier.

17 [k.] (k) Section applies only to this part. This section applies only
18 for purposes of this part.

19 (cf: N.J.S.12A:9-307)

20

21 24. N.J.S.12A:9-308 is amended to read as follows:

22 12A:9-308. When Security Interest or Agricultural Lien Is
23 Perfected; Continuity of Perfection.

24 [a.] (a) Perfection of security interest. Except as otherwise
25 provided in this section and 12A:9-309, a security interest is perfected
26 if it has attached and all of the applicable requirements for perfection
27 in 12A:9-310 through 12A:9-316 have been satisfied. A security
28 interest is perfected when it attaches if the applicable requirements are
29 satisfied before the security interest attaches.

30 [b.] (b) Perfection of agricultural lien. An agricultural lien is
31 perfected if it has become effective and all of the applicable
32 requirements for perfection in 12A:9-310 have been satisfied. An
33 agricultural lien is perfected when it becomes effective if the applicable
34 requirements are satisfied before the agricultural lien becomes
35 effective.

36 [c.] (c) Continuous perfection; perfection by different methods.
37 A security interest or agricultural lien is perfected continuously if it is
38 originally perfected by one method under this chapter and is later
39 perfected by another method under this chapter, without an
40 intermediate period when it was unperfected.

41 [d.] (d) Supporting obligation. Perfection of a security interest in
42 collateral also perfects a security interest in a supporting obligation for
43 the collateral.

44 [e.] (e) Lien securing right to payment. Perfection of a security
45 interest in a right to payment or performance also perfects a security

1 interest in a security interest, mortgage, or other lien on personal or
2 real property securing the right.

3 [f.] (f) Security entitlement carried in securities account.
4 Perfection of a security interest in a securities account also perfects a
5 security interest in the security entitlements carried in the securities
6 account.

7 [g.] (g) Commodity contract carried in commodity account.
8 Perfection of a security interest in a commodity account also perfects
9 a security interest in the commodity contracts carried in the
10 commodity account.

11 (cf: N.J.S.12A:9-308)

12

13 25. N.J.S.12A:9-309 is amended to read as follows:

14 12A:9-309. Security Interest Perfected upon Attachment.

15 The following security interests are perfected when they attach:

16 [a.] (1) a purchase-money security interest in consumer goods,
17 except as otherwise provided in 12A:9-311 [b.] (b) with respect to
18 consumer goods that are subject to a statute or treaty described in
19 12A:9-311 [a.] (a);

20 [b.] (2) an assignment of accounts or payment intangibles which
21 does not by itself or in conjunction with other assignments to the same
22 assignee transfer a significant part of the assignor's outstanding
23 accounts or payment intangibles;

24 [c.] (3) a sale of a payment intangible;

25 [d.] (4) a sale of a promissory note;

26 [e.] (5) a security interest created by the assignment of a
27 health-care-insurance receivable to the provider of the health-care
28 goods or services;

29 [f.] (6) a security interest arising under 12A:2-401, 12A:2-505,
30 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of
31 the collateral;

32 [g.] (7) security interest of a collecting bank arising under
33 12A:4-210;

34 [h.] (8) a security interest of an issuer or nominated person arising
35 under 12A:5-118;

36 (9) a security interest arising in the delivery of a financial asset
37 under 12A:9-206 [c.] (c);

38 [i.] (10) a security interest in investment property created by a
39 broker or securities intermediary;

40 [j.] (11) a security interest in a commodity contract or a
41 commodity account created by a commodity intermediary;

42 [k.] (12) An assignment for the benefit of all creditors of the
43 transferor and subsequent transfers by the assignee thereunder; and

44 [l.] (13) A security interest created by an assignment of a
45 beneficial interest in a decedent's estate.

46 (cf: N.J.S.12A:9-309)

1 26. N.J.S.12A:9-310 is amended to read as follows:

2 12A:9-310. When Filing Required to Perfect Security Interest or
3 Agricultural Lien; Security Interests and Agricultural Liens to Which
4 Filing Provisions Do Not Apply.

5 [a.] (a) General rule: perfection by filing. Except as otherwise
6 provided in subsection [b. of this section] (b) and 12A:9-312 [b.] (b),
7 a financing statement [shall] must be filed to perfect all security
8 interests and agricultural liens.

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

11 (1) that is perfected under [subsections d., e., f. or g. of]
12 12A:9-308 (d), (e), (f) or (g);

13 (2) that is perfected under 12A:9-309 when it attaches;

14 (3) in property subject to a statute, regulation, or treaty described
15 in of 12A:9-311 [a.] (a);

16 (4) in goods in possession of a bailee which is perfected under
17 12A:9-312 [d.] (d) (1) or (2);

18 (5) in certificated securities, documents, goods, or instruments
19 which is perfected without filing or possession under [subsection e.,
20 f. or g. of] 12A:9-312 (e), (f) or (g);

21 (6) in collateral in the secured party's possession under 12A:9-313;

22 (7) in a certificated security which is perfected by delivery of the
23 security certificate to the secured party under 12A:9-313;

24 (8) in deposit accounts, electronic chattel paper, investment
25 property, or letter-of-credit rights which is perfected by control under
26 12A:9-314;

27 (9) in proceeds which is perfected under 12A:9-315; or

28 (10) that is perfected under 12A:9-316.

29 [c.] (c) Assignment of perfected security interest. If a secured
30 party assigns a perfected security interest or agricultural lien, a filing
31 under this chapter is not required to continue the perfected status of
32 the security interest against creditors of and transferees from the
33 original debtor.

34 (cf: N.J.S.12A:9-310)

35

36 27. N.J.S.12A:9-311 is amended to read as follows:

37 12A:9-311. Perfection of Security Interests in Property Subject to
38 Certain Statutes, Regulations, and Treaties.

39 [a.] (a) Security interest subject to other law. Except as otherwise
40 provided in subsection [d. of this section] (d), the filing of a financing
41 statement is not necessary or effective to perfect a security interest in
42 property subject to:

43 (1) a statute, regulation, or treaty of the United States whose
44 requirements for a security interest's obtaining priority over the rights
45 of a lien creditor with respect to the property preempt 12A:9-310 [a.]

1 (a);

2 (2) the "motor vehicle certificate of ownership law," R.S.39:10-1
3 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152
4 (C.12:7A-1 et seq.) or successor statutes or law; or

5 (3) a certificate-of-title statute of another jurisdiction which
6 provides for a security interest to be indicated on the certificate as a
7 condition or result of the security interest's obtaining priority over the
8 rights of a lien creditor with respect to the property.

9 [b.] (b) Compliance with other law. Compliance with the
10 requirements of a statute, regulation, or treaty described in subsection
11 [a. of this section] (a) for obtaining priority over the rights of a lien
12 creditor is equivalent to the filing of a financing statement under this
13 chapter. Except as otherwise provided in subsection [d. of this
14 section] (d), 12A:9-313 and [subsections d. and e. of] 12A:9-316 (d)
15 and (e) for goods covered by a certificate of title, a security interest in
16 property subject to a statute, regulation, or treaty described in
17 subsection [a. of this section] (a) may be perfected only by
18 compliance with those requirements, and a security interest so
19 perfected remains perfected notwithstanding a change in the use or
20 transfer of possession of the collateral.

21 [c.] (c) Duration and renewal of perfection. Except as otherwise
22 provided in subsection [d. of this section] (d) and [subsections d. and
23 e. of] 12A:9-316 (d) and (e), duration and renewal of perfection of a
24 security interest perfected by compliance with the requirements
25 prescribed by a statute, regulation, or treaty described in subsection
26 [a.] (a) are governed by the statute, regulation, or treaty. In other
27 respects, the security interest is subject to this chapter.

28 [d.] (d) Inapplicability to certain inventory. During any period in
29 which collateral subject to a statute specified in subsection (a) (2) is
30 inventory held for sale or lease by a person or leased by that person as
31 lessor and that person is in the business of selling [or leasing] goods
32 of that kind, this section does not apply to a security interest in that
33 collateral created by that person [as debtor].

34 (cf: N.J.S.12A:9-311)

35

36 28. N.J.S.12A:9-312 is amended to read as follows:

37 12A:9-312. Perfection of Security Interests in Chattel Paper,
38 Deposit Accounts, Documents, Goods Covered by Documents,
39 Instruments, Investment Property, Letter-of-credit Rights, and Money;
40 Perfection by Permissive Filing; Temporary Perfection Without Filing
41 or Transfer of Possession.

42 [a.] (a) Perfection by filing permitted. A security interest in
43 chattel paper, negotiable documents, instruments, or investment
44 property may be perfected by filing.

45 [b.] (b) Control or possession of certain collateral. Except as

1 otherwise provided in [subsections c. and d. of] 12A:9-315 (c) and
2 (d) for proceeds:

3 (1) a security interest in a deposit account may be perfected only
4 by control under 12A:9-314;

5 (2) and except as otherwise provided in 12A:9-308 [d.] (d), a
6 security interest in a letter-of-credit right may be perfected only by
7 control under 12A:9-314; and

8 (3) a security interest in money may be perfected only by the
9 secured party's taking possession under 12A:9-313.

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

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

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

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

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

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

24 or

25 (3) filing as to the goods.

26 [e.] (e) Temporary perfection: new value. A security interest in
27 certificated securities, negotiable documents, or instruments is
28 perfected without filing or the taking of possession for a period of 20
29 days from the time it attaches to the extent that it arises for new value
30 given under an authenticated security agreement.

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

37 (1) ultimate sale or exchange; or

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

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

46 (1) ultimate sale or exchange; or

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

3 **[h.] (h)** Expiration of temporary perfection. After the 20-day
4 period specified in subsection **[e., f. or g. of this section]** **(e), (f) or**
5 **(g)** expires, perfection depends upon compliance with this chapter.
6 (cf: N.J.S.12A:9-312)

7

8 29. N.J.S.12A:9-313 is amended to read as follows:

9 12A:9-313. When Possession by or Delivery to Secured Party
10 Perfects Security Interest Without Filing.

11 **[a.] (a)** Perfection by possession or delivery. Except as otherwise
12 provided in subsection **[b.] (b)**, a secured party may perfect a security
13 interest in negotiable documents, goods, instruments, money, or
14 tangible chattel paper by taking possession of the collateral. A secured
15 party may perfect a security interest in certificated securities by taking
16 delivery of the certificated securities under 12A:8-301.

17 **[b.] (b)** Goods covered by certificate of title. With respect to
18 goods covered by a certificate of title issued by this State, a secured
19 party may perfect a security interest in the goods by taking possession
20 of the goods only in the circumstances described in 12A:9-316 **[d.]**
21 **(d)**.

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

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

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

34 **[d.] (d)** Time of perfection by possession; continuation of
35 perfection. If perfection of a security interest depends upon
36 possession of the collateral by a secured party, perfection occurs no
37 earlier than the time the secured party takes possession and continues
38 only while the secured party retains possession.

39 **[e.] (e)** Time of perfection by delivery; continuation of perfection.
40 A security interest in a certificated security in registered form is
41 perfected by delivery when delivery of the certificated security occurs
42 under 12A:8-301 and remains perfected by delivery until the debtor
43 obtains possession of the security certificate.

44 **[f.] (f)** Acknowledgment not required. A person in possession of
45 collateral is not required to acknowledge that it holds possession for

1 a secured party's benefit.

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

5 (1) the acknowledgment is effective under subsection [c. of this
6 section] (c) or [subsection a. of] 12A:8-301 (a), even if the
7 acknowledgment violates the rights of a debtor; and

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

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

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

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

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

28 (cf: N.J.S.12A:9-313)

29

30 30. N.J.S.12A:9-314 is amended to read as follows:

31 12A:9-314. Perfection by Control.

32 [a.] (a) Perfection by control. A security interest in investment
33 property, deposit accounts, letter-of-credit rights, or electronic chattel
34 paper may be perfected by control of the collateral under 12A:9-104,
35 12A:9-105, 12A:9-106 or 12A:9-107.

36 [b.] (b) Specified collateral: time of perfection by control;
37 continuation of perfection. A security interest in deposit accounts,
38 electronic chattel paper, or letter-of-credit rights is perfected by
39 control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured
40 party obtains control and remains perfected by control only while the
41 secured party retains control.

42 [c.] (c) Investment property: time of perfection by control;
43 continuation of perfection. A security interest in investment property
44 is perfected by control under 12A:9-106 from the time the secured
45 party obtains control and remains perfected by control until:

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

2 (2) one of the following occurs:

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

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

7 [(c)] (C) if the collateral is a security entitlement, the debtor is or
8 becomes the entitlement holder.

9 (cf: N.J.S.12A:9-314)

10

11 31. N.J.S.12A:9-315 is amended to read as follows:

12 12A:9-315. Secured Party's Rights on Disposition of Collateral and
13 in Proceeds.

14 [a.] (a) Disposition of collateral: continuation of security interest
15 or agricultural lien; proceeds. Except as otherwise provided in this
16 chapter and in 12A:2-403(2):

17 (1) a security interest or agricultural lien continues in collateral
18 notwithstanding sale, lease, license, exchange, or other disposition
19 thereof unless the secured party authorized the disposition free of the
20 security interest or agricultural lien; and

21 (2) a security interest attaches to any identifiable proceeds of
22 collateral.

23 [b.] (b) When commingled proceeds identifiable. Proceeds that
24 are commingled with other property are identifiable proceeds:

25 (1) if the proceeds are goods, to the extent provided by 12A:9-336;
26 and

27 (2) if the proceeds are not goods, to the extent that the secured
28 party identifies the proceeds by a method of tracing, including
29 application of equitable principles, that is permitted under law other
30 than this chapter with respect to commingled property of the type
31 involved.

32 [c.] (c) Perfection of security interest in proceeds. A security
33 interest in proceeds is a perfected security interest if the security
34 interest in the original collateral was perfected.

35 [d.] (d) Continuation of perfection. A perfected security interest
36 in proceeds becomes unperfected on the 21st day after the security
37 interest attaches to the proceeds unless:

38 (1) the following conditions are satisfied:

39 [(a)] (A) a filed financing statement covers the original collateral;

40 [(b)] (B) the proceeds are collateral in which a security interest
41 may be perfected by filing in the office in which the financing
42 statement has been filed; and

43 [(c)] (C) the proceeds are not acquired with cash proceeds;

44 (2) the proceeds are identifiable cash proceeds; or

45 (3) the security interest in the proceeds is perfected other than

1 under subsection [c. of this section] (c) when the security interest
2 attaches to the proceeds or within 20 days thereafter.

3 [e.] (e) When perfected security interest in proceeds becomes
4 unperfected. If a filed financing statement covers the original
5 collateral, a security interest in proceeds which remains perfected
6 under [paragraph (1) of] subsection [d. of this section] (d) (1)
7 becomes unperfected at the later of:

8 (1) when the effectiveness of the filed financing statement lapses
9 under 12A:9-515 or is terminated under 12A:9-513; or

10 (2) the 21st day after the security interest attaches to the proceeds.
11 (cf: N.J.S.12A:9-315)

12

13 32. N.J.S.12A:9-316 is amended to read as follows:

14 12A:9-316. Continued Perfection of Security Interest Following
15 Change in Governing Law.

16 [a.] (a) General rule: effect on perfection of change in governing
17 law. A security interest perfected pursuant to the law of the
18 jurisdiction designated in 12A:9-301 [a.] (1) or 12A:9-305 [c.] (c)
19 remains perfected until the earliest of:

20 (1) the time perfection would have ceased under the law of that
21 jurisdiction;

22 (2) the expiration of four months after a change of the debtor's
23 location to another jurisdiction; or

24 (3) the expiration of one year after a transfer of collateral to a
25 person [who] that thereby becomes a debtor and is located in another
26 jurisdiction.

27 [b.] (b) Security interest perfected or unperfected under law of
28 new jurisdiction. If a security interest described in subsection [a. of
29 this section] (a) becomes perfected under the law of the other
30 jurisdiction before the earliest time or event described in that
31 subsection, it remains perfected thereafter. If the security interest
32 does not become perfected under the law of the other jurisdiction
33 before the earliest time or event, it becomes unperfected and is deemed
34 never to have been perfected as against a purchaser of the collateral
35 for value.

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

40 (1) the collateral is located in one jurisdiction and subject to a
41 security interest perfected under the law of that jurisdiction;

42 (2) thereafter the collateral is brought into another jurisdiction; and

43 (3) upon entry into the other jurisdiction, the security interest is
44 perfected under the law of the other jurisdiction.

45 [d.] (d) Goods covered by certificate of title from this State.

1 Except as otherwise provided in subsection [e. of this section] (e), a
2 security interest in goods covered by a certificate of title which is
3 perfected by any method under the law of another jurisdiction when
4 the goods become covered by a certificate of title from this State
5 remains perfected until the security interest would have become
6 unperfected under the law of the other jurisdiction had the goods not
7 become so covered.

8 [e.] (e) When subsection [d.] (d) security interest becomes
9 unperfected against purchasers. A security interest described in
10 subsection [d. of this section] (d) becomes unperfected as against a
11 purchaser of the goods for value and is deemed never to have been
12 perfected as against a purchaser of the goods for value if the
13 applicable requirements for perfection under 12A:9-311 [b.] (b) or
14 12A:9-313 are not satisfied before the earlier of:

15 (1) the time the security interest would have become unperfected
16 under the law of the other jurisdiction had the goods not become
17 covered by a certificate of title from this State; or

18 (2) the expiration of four months after the goods had become so
19 covered.

20 [f.] (f) Change in jurisdiction of bank, issuer, nominated person,
21 securities intermediary, or commodity intermediary. A security
22 interest in deposit accounts, letter-of-credit rights, or investment
23 property which is perfected under the law of the bank's jurisdiction,
24 the issuer's jurisdiction, a nominated person's jurisdiction, the
25 securities intermediary's jurisdiction, or the commodity intermediary's
26 jurisdiction, as applicable, remains perfected until the earlier of:

27 (1) the time the security interest would have become unperfected
28 under the law of that jurisdiction; or

29 (2) the expiration of four months after a change of the applicable
30 jurisdiction to another jurisdiction.

31 [g.] (g) Subsection [f.] (f) security interest perfected or
32 unperfected under law of new jurisdiction. If a security interest
33 described in subsection [f. of this section] (f) becomes perfected
34 under the law of the other jurisdiction before the earlier of the time or
35 the end of the period described in that subsection, it remains perfected
36 thereafter. If the security interest does not become perfected under
37 the law of the other jurisdiction before the earlier of that time or the
38 end of that period, it becomes unperfected and is deemed never to
39 have been perfected as against a purchaser of the collateral for value.
40 (cf: N.J.S.12A:9-316)

41

42 33. N.J.S.12A:9-317 is amended to read as follows:

43 12A:9-317. Interests That Take Priority Over or Take Free of
44 Security Interest or Agricultural Lien.

45 [a.] (a) Conflicting security interests and rights of lien creditors.
46 A security interest or agricultural lien is subordinate to the rights of:

1 (1) a person entitled to priority under 12A:9-322; and
2 (2) except as otherwise provided in subsection [e. of this section]
3 (e), a person who becomes a lien creditor before the earlier of the
4 time:

5 (A) the security interest or agricultural lien is perfected; or
6 (B) one of the conditions specified in 12A:9-203 (b) (3) is met and
7 a financing statement covering the collateral is filed.

8 [b.] (b) Buyers that receive delivery. Except as otherwise
9 provided in subsection [e. of this section] (e), a buyer, other than a
10 secured party, of tangible chattel paper, documents, goods,
11 instruments, or a security certificate takes free of a security interest or
12 agricultural lien if the buyer gives value and receives delivery of the
13 collateral without knowledge of the security interest or agricultural
14 lien and before it is perfected.

15 [c.] (c) Lessees that receive delivery. Except as otherwise
16 provided in subsection [e. of this section] (e), a lessee of goods takes
17 free of a security interest or agricultural lien if the lessee gives value
18 and receives delivery of the collateral without knowledge of the
19 security interest or agricultural lien and before it is perfected.

20 [d.] (d) Licensees and buyers of certain collateral. A licensee of
21 a general intangible or a buyer, other than a secured party, of
22 accounts, electronic chattel paper, general intangibles, or investment
23 property other than a certificated security takes free of a security
24 interest if the licensee or buyer gives value without knowledge of the
25 security interest and before it is perfected.

26 [e.] (e) Purchase-money security interest. Except as otherwise
27 provided in 12A:9-320 and 12A:9-321, if a person files a financing
28 statement with respect to a purchase-money security interest before or
29 within 20 days after the debtor receives delivery of the collateral, the
30 security interest takes priority over the rights of a buyer, lessee, or lien
31 creditor which arise between the time the security interest attaches and
32 the time of filing.

33 (cf: N.J.S.12A:9-317)

34

35 34. N.J.S.12A:9-318 is amended to read as follows:

36 12A:9-318. No Interest Retained in Right to Payment That Is Sold;
37 Rights and Title of Seller of Account or Chattel Paper with Respect to
38 Creditors and Purchasers.

39 [a.] (a) Seller retains no interest. A debtor that has sold an
40 account, chattel paper, payment intangible, or promissory note does
41 not retain a legal or equitable interest in the collateral sold.

42 [b.] (b) Deemed rights of debtor if buyer's security interest
43 unperfected. For purposes of determining the rights of creditors of,
44 and purchasers for value of an account or chattel paper from, a debtor
45 that has sold an account or chattel paper, while the buyer's security

1 interest is unperfected, the debtor is deemed to have rights and title to
2 the account or chattel paper identical to those the debtor sold.
3 (cf: N.J.S.12A:9-318)

4

5 35. N.J.S.12A:9-319 is amended to read as follows:

6 12A:9-319. Rights and Title of Consignee with Respect to
7 Creditors and Purchasers.

8 [a.] (a) Consignee has consignor's rights. Except as otherwise
9 provided in subsection [b.] (b), for purposes of determining the rights
10 of creditors of, and purchasers for value of goods from, a consignee,
11 while the goods are in the possession of the consignee, the consignee
12 is deemed to have rights and title to the goods identical to those the
13 consignor had or had power to transfer.

14 [b.] (b) Applicability of other law. For purposes of determining
15 the rights of a creditor of a consignee, law other than this chapter
16 determines the rights and title of a consignee while goods are in the
17 consignee's possession if, under this part, a perfected security interest
18 held by the consignor would have priority over the rights of the
19 creditor.

20 (cf: N.J.S.12A:9-319)

21

22 36. N.J.S.12A:9-320 is amended to read as follows:

23 12A:9-320. Buyer of Goods.

24 [a.] (a) Buyer in ordinary course of business. Except as otherwise
25 provided in subsection [e. of this section] (e), a buyer in ordinary
26 course of business, other than a person buying farm products from a
27 person engaged in farming operations, takes free of a security interest
28 created by the buyer's seller, even if the security interest is perfected
29 and the buyer knows of its existence.

30 [b.] (b) Buyer of consumer goods. Except as otherwise provided
31 in subsection [e.] (e), a buyer of goods from a person who used or
32 bought the goods for use primarily for personal, family, or household
33 purposes takes free of a security interest, even if perfected, if the
34 buyer buys:

35 (1) without knowledge of the security interest;

36 (2) for value;

37 (3) primarily for the buyer's personal, family, or household
38 purposes; and

39 (4) before the filing of a financing statement covering the goods.

40 [c.] (c) Effectiveness of filing for subsection [b.] (b). To the
41 extent that it affects the priority of a security interest over a buyer of
42 goods under subsection [b. of this section] (b), the period of
43 effectiveness of a filing made in the jurisdiction in which the seller is
44 located is governed by 12A:9-316 [a. and b.] (a) and (b).

45 [d.] (d) Buyer in ordinary course of business at wellhead or

1 minehead. A buyer in ordinary course of business buying oil, gas, or
2 other minerals at the wellhead or minehead or after extraction takes
3 free of an interest arising out of an encumbrance.

4 [e.] (e) Possessory security interest not affected. Subsections [a.
5 and b. of this section] (a) and (b) do not affect a security interest in
6 goods in the possession of the secured party under 12A:9-313.
7 (cf: N.J.S.12A:9-320)

8

9 37. N.J.S.12A:9-321 is amended to read as follows:

10 12A:9-321. Licensee of General Intangible and Lessee of Goods
11 in Ordinary Course of Business.

12 [a.] (a) "Licensee in ordinary course of business." In this section,
13 "licensee in ordinary course of business" means a person [who] that
14 becomes a licensee of a general intangible in good faith, without
15 knowledge that the license violates the rights of another person in the
16 general intangible, and in the ordinary course from a person in the
17 business of licensing general intangibles of that kind. A person
18 becomes a licensee in the ordinary course if the license to the person
19 comports with the usual or customary practices in the kind of business
20 in which the licensor is engaged or with the licensor's own usual or
21 customary practices.

22 [b.] (b) Rights of licensee in ordinary course of business. A
23 licensee in ordinary course of business takes its rights under a
24 nonexclusive license free of a security interest in the general intangible
25 created by the licensor, even if the security interest is perfected and the
26 licensee knows of its existence.

27 [c.] (c) Rights of lessee in ordinary course of business. A lessee in
28 ordinary course of business takes its leasehold interest free of a
29 security interest in the goods created by the lessor, even if the security
30 interest is perfected and the lessee knows of its existence.

31 (cf: N.J.S.12A:9-321)

32

33 38. N.J.S.12A:9-322 is amended to read as follows:

34 12A:9-322. Priorities Among Conflicting Security Interests in and
35 Agricultural Liens on Same Collateral.

36 [a.] (a) General priority rules. Except as otherwise provided in
37 this section, priority among conflicting security interests and
38 agricultural liens in the same collateral is determined according to the
39 following rules:

40 (1) Conflicting perfected security interests and agricultural liens
41 rank according to priority in time of filing or perfection. Priority dates
42 from the earlier of the time a filing covering the collateral is first made
43 or the security interest or agricultural lien is first perfected, if there is
44 no period thereafter when there is neither filing nor perfection.

45 (2) A perfected security interest or agricultural lien has priority
46 over a conflicting unperfected security interest or agricultural lien.

1 (3) The first security interest or agricultural lien to attach or
2 become effective has priority if conflicting security interests and
3 agricultural liens are unperfected.

4 [b.] (b) Time of perfection: proceeds and supporting obligations.
5 For the purposes of [paragraph (1) of] subsection [a. of this section]
6 (a) (1):

7 (1) the time of filing or perfection as to a security interest in
8 collateral is also the time of filing or perfection as to a security interest
9 in proceeds; and

10 (2) the time of filing or perfection as to a security interest in
11 collateral supported by a supporting obligation is also the time of filing
12 or perfection as to a security interest in the supporting obligation.

13 [c.] (c) Special priority rules: proceeds and supporting
14 obligations. Except as otherwise provided in subsection [f. of this
15 section] (f), a security interest in collateral which qualifies for priority
16 over a conflicting security interest under 12A:9-327, 12A:9-328,
17 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a
18 conflicting security interest in:

19 (1) any supporting obligation for the collateral; and

20 (2) proceeds of the collateral if:

21 [(a)] (A) the security interest in proceeds is perfected;

22 [(b)] (B) the proceeds are cash proceeds or of the same type as
23 the collateral; and

24 [(c)] (C) in the case of proceeds that are proceeds of proceeds, all
25 intervening proceeds are cash proceeds, proceeds of the same type as
26 the collateral, or an account relating to the collateral.

27 [d.] (d) First-to-file priority rule for certain collateral. Subject to
28 subsection [e.] (e) and except as otherwise provided in subsection [f.
29 of this section] (f), if a security interest in chattel paper, deposit
30 accounts, negotiable documents, instruments, investment property, or
31 letter-of-credit rights is perfected by a method other than filing,
32 conflicting perfected security interests in proceeds of the collateral
33 rank according to priority in time of filing.

34 [e.] (e) Applicability of subsection [d.] (d). Subsection [d. of this
35 section] (d) applies only if the proceeds of the collateral are not cash
36 proceeds, chattel paper, negotiable documents, instruments,
37 investment property, or letter-of-credit rights.

38 [f.] (f) Limitations on subsections [a.] (a) through [e.] (e).
39 Subsections [a.] (a) through [e. of this section] (e) are subject to:

40 (1) subsection [g.] (g) and the other provisions of this part;

41 (2) 12A:4-210 with respect to a security interest of a collecting
42 bank; [and]

43 (3) 12A:5-118 with respect to a security interest of an issuer or
44 nominated person; and

45 (4) 12A:9-110 with respect to a security interest arising under

1 Chapter 2 or 2A.

2 ~~g.] (g)~~ Priority under agricultural lien statute. A perfected
3 agricultural lien on collateral has priority over a conflicting security
4 interest in or agricultural lien on the same collateral if the statute
5 creating the agricultural lien so provides.

6 (cf: N.J.S.12A:9-322)

7

8 39. N.J.S.12A:9-323 is amended to read as follows:

9 12A:9-323. Future Advances.

10 ~~a.] (a)~~ When priority based on time of advance. Except as
11 otherwise provided in subsection ~~c. of this section] (c)~~, for purposes
12 of determining the priority of a perfected security interest under
13 12A:9-322 ~~a.] (a)~~ (1), perfection of the security interest dates from
14 the time an advance is made to the extent that the security interest
15 secures an advance that:

16 (1) is made while the security interest is perfected only:

17 (a) under 12A:9-309 when it attaches; or

18 (b) temporarily under 12A:9-312 ~~e., f., or g.] (e), (f) or (g)~~; and

19 (2) is not made pursuant to a commitment entered into before or
20 while the security interest is perfected by a method other than under
21 12A:9-309 or 12A:9-312 ~~e., f., or g] (e), (f) or (g)~~.

22 ~~b.] (b)~~ Lien creditor. Except as otherwise provided in subsection
23 ~~c. of this section] (c)~~, a security interest is subordinate to the rights
24 of a person ~~who] that~~ becomes a lien creditor to the extent that the
25 security interest secures an advance made more than 45 days after the
26 person becomes a lien creditor unless the advance is made:

27 (1) without knowledge of the lien; or

28 (2) pursuant to a commitment entered into without knowledge of
29 the lien.

30 ~~c.] (c)~~ Buyer of receivables. Subsections ~~a. and b. of this~~
31 ~~section] (a) and (b)~~ do not apply to a security interest held by a
32 secured party that is a buyer of accounts, chattel paper, payment
33 intangibles, or promissory notes, or a consignor.

34 ~~d.] (d)~~ Buyer of goods. Except as otherwise provided in
35 subsection ~~e. of this section] (e)~~, a buyer of goods other than a buyer
36 in ordinary course of business takes free of a security interest to the
37 extent that it secures advances made after the earlier of:

38 (1) the time the secured party acquires knowledge of the buyer's
39 purchase; or

40 (2) 45 days after the purchase.

41 ~~e.] (e)~~ Advances made pursuant to commitment: priority of
42 buyer of goods. Subsection ~~d. of this section] (d)~~ does not apply if
43 the advance is made pursuant to a commitment entered into without
44 knowledge of the buyer's purchase and before the expiration of the
45 45-day period.

1 **[f.] (f)** Lessee of goods. Except as otherwise provided in
2 subsection **[g. of this section] (g)**, a lessee of goods, other than a
3 lessee in ordinary course of business, takes the leasehold interest free
4 of a security interest to the extent that it secures advances made after
5 the earlier of:

- 6 (1) the time the secured party acquires knowledge of the lease; or
- 7 (2) 45 days after the lease contract becomes enforceable.

8 **[g.] (g)** Advances made pursuant to commitment: priority of
9 lessee of goods. Subsection **[f. of this section] (f)** does not apply if
10 the advance is made pursuant to a commitment entered into without
11 knowledge of the lease and before the expiration of the 45-day period.
12 (cf: N.J.S.12A:9-323)

13

14 40. N.J.S.12A:9-324 is amended to read as follows:

15 12A:9-324. Priority of Purchase-Money Security Interests.

16 **[a.] (a)** General rule: purchase-money priority. Except as
17 otherwise provided in subsection **[g. of this section] (g)**, a perfected
18 purchase-money security interest in goods other than inventory or
19 livestock has priority over a conflicting security interest in the same
20 goods, and, except as otherwise provided in 12A:9-327, a perfected
21 security interest in its identifiable proceeds also has priority, if the
22 purchase-money security interest is perfected when the debtor receives
23 possession of the collateral or within 20 days thereafter.

24 **[b.] (b)** Inventory purchase-money priority. Subject to subsection
25 c. and except as otherwise provided in subsection **[g. of this section]**
26 **(g)**, a perfected purchase-money security interest in inventory has
27 priority over a conflicting security interest in the same inventory, has
28 priority over a conflicting security interest in chattel paper or an
29 instrument constituting proceeds of the inventory and in proceeds of
30 the chattel paper, if so provided in 12A:9-330, and, except as
31 otherwise provided in 12A:9-327, also has priority in identifiable cash
32 proceeds of the inventory to the extent the identifiable cash proceeds
33 are received on or before the delivery of the inventory to a buyer, if:

- 34 (1) the purchase-money security interest is perfected when the
35 debtor receives possession of the inventory;
- 36 (2) the purchase-money secured party sends an authenticated
37 notification to the holder of the conflicting security interest;
- 38 (3) the holder of the conflicting security interest receives the
39 notification within five years before the debtor receives possession of
40 the inventory; and
- 41 (4) the notification states that the person sending the notification
42 has or expects to acquire a purchase-money security interest in
43 inventory of the debtor and describes the inventory.

44 **[c.] (c)** Holders of conflicting inventory security interests to be
45 notified. **[Paragraphs 2 through 4 of subsection b. of this section]**

1 Subsections (b) (2) through (4) apply only if the holder of the
2 conflicting security interest had filed a financing statement covering
3 the same types of inventory:

4 (1) if the purchase-money security interest is perfected by filing,
5 before the date of the filing; or

6 (2) if the purchase-money security interest is temporarily perfected
7 without filing or possession under 12A:9-312 ~~[f.] (f)~~, before the
8 beginning of the 20-day period thereunder.

9 ~~[d.] (d)~~ Livestock purchase-money priority. Subject to subsection
10 ~~[e.] (e)~~ and except as otherwise provided in subsection ~~[g. of this~~
11 ~~section] (g)~~, a perfected purchase-money security interest in livestock
12 that are farm products has priority over a conflicting security interest
13 in the same livestock, and, except as otherwise provided in 12A:9-327,
14 a perfected security interest in their identifiable proceeds and
15 identifiable products in their unmanufactured states also has priority,
16 if:

17 (1) the purchase-money security interest is perfected when the
18 debtor receives possession of the livestock;

19 (2) the purchase-money secured party sends an authenticated
20 notification to the holder of the conflicting security interest;

21 (3) the holder of the conflicting security interest receives the
22 notification within six months before the debtor receives possession of
23 the livestock; and

24 (4) the notification states that the person sending the notification
25 has or expects to acquire a purchase-money security interest in
26 livestock of the debtor and describes the livestock.

27 ~~[e.] (e)~~ Holders of conflicting livestock security interests to be
28 notified. ~~[Paragraphs 2 through 4 of subsection d. of this section]~~
29 Subsections (d) (2) through (4) apply only if the holder of the
30 conflicting security interest had filed a financing statement covering
31 the same types of livestock:

32 (1) if the purchase-money security interest is perfected by filing,
33 before the date of the filing; or

34 (2) if the purchase-money security interest is temporarily perfected
35 without filing or possession under 12A:9-312 ~~[f.] (f)~~, before the
36 beginning of the 20-day period thereunder.

37 ~~[f.] (f)~~ Software purchase-money priority. Except as otherwise
38 provided in subsection ~~[g. of this section] (g)~~, a perfected
39 purchase-money security interest in software has priority over a
40 conflicting security interest in the same collateral, and, except as
41 otherwise provided in 12A:9-327, a perfected security interest in its
42 identifiable proceeds also has priority, to the extent that the
43 purchase-money security interest in the goods in which the software
44 was acquired for use has priority in the goods and proceeds of the
45 goods under this section.

1 **[g.]** (g) Conflicting purchase-money security interests. If more
2 than one security interest qualifies for priority in the same collateral
3 under subsection **[a., b., d., or f. of this section]** (a), (b), (d) or (f):

4 (1) a security interest securing an obligation incurred as all or part
5 of the price of the collateral has priority over a security interest
6 securing an obligation incurred for value given to enable the debtor to
7 acquire rights in or the use of collateral; and

8 (2) in all other cases, 12A:9-322 **[a.]** (a) applies to the qualifying
9 security interests.

10 (cf: N.J.S.12A:9-324)

11
12 41. N.J.S.12A:9-325 is amended to read as follows:

13 12A:9-325. Priority of Security Interests in Transferred Collateral.

14 **[a.]** (a) Subordination of security interest in transferred collateral.
15 Except as otherwise provided in subsection **[b. of this section]** (b), a
16 security interest created by a debtor is subordinate to a security
17 interest in the same collateral created by another person if:

18 (1) the debtor acquired the collateral subject to the security interest
19 created by the other person;

20 (2) the security interest created by the other person was perfected
21 when the debtor acquired the collateral; and

22 (3) there is no period thereafter when the security interest is
23 unperfected.

24 **[b.]** (b) Limitation of subsection **[a.]** (a) subordination.
25 Subsection **[a. of this section]** (a) subordinates a security interest only
26 if the security interest:

27 (1) otherwise would have priority solely under 12A:9-322 **[a.]** (a)
28 or 12A:9-324; or

29 (2) arose solely under 12A:2-711(3) or **[2A-508(5)]**12A:2A-
30 508(5).

31 (cf: N.J.S.12A:9-325)

32
33 42. N.J.S.12A:9-326 is amended to read as follows:

34 12A:9-326. Priority of Security Interests Created by New Debtor.

35 **[a.]** (a) Subordination of security interest created by new debtor.
36 Subject to subsection **[b. of this section]** (b), a security interest
37 created by a new debtor which is perfected by a filed financing
38 statement that is effective solely under 12A:9-508 in collateral in
39 which a new debtor has or acquires rights is subordinate to a security
40 interest in the same collateral which is perfected other than by a filed
41 financing statement that is effective solely under 12A:9-508.

42 **[b.]** (b) Priority under other provisions; multiple original debtors.
43 The other provisions of this part determine the priority among
44 conflicting security interests in the same collateral perfected by filed
45 financing statements that are effective solely under 12A:9-508.

1 However, if the security agreements to which a new debtor became
2 bound as debtor were not entered into by the same original debtor, the
3 conflicting security interests rank according to priority in time of the
4 new debtor's having become bound.

5 (cf: N.J.S.12A:9-326)

6

7 43. N.J.S.12A:9-327 is amended to read as follows:

8 12A:9-327. Priority of Security Interests in Deposit Account.

9 The following rules govern priority among conflicting security
10 interests in the same deposit account:

11 [a.] (1) A security interest held by a secured party having control
12 of the deposit account under 12A:9-104 has priority over a conflicting
13 security interest held by a secured party that does not have control.

14 [b.] (2) Except as otherwise provided in [subsections c. and d. of
15 this section] paragraphs (3) and (4), security interests perfected by
16 control under 12A:9-314 rank according to priority in time of
17 obtaining control.

18 [c.] (3) Except as otherwise provided in [subsection d. of this
19 section] paragraph (4), a security interest held by the bank with which
20 the deposit account is maintained has priority over a conflicting
21 security interest held by another secured party.

22 [d.] (4) A security interest perfected by control under 12A:9-104
23 [a.] (a) (3) has priority over a security interest held by the bank with
24 which the deposit account is maintained.

25 (cf: N.J.S.12A:9-327)

26

27 44. N.J.S.12A:9-328 is amended to read as follows:

28 12A:9-328. Priority of Security Interests in Investment Property.

29 The following rules govern priority among conflicting security
30 interests in the same investment property:

31 [a.] (1) A security interest held by a secured party having control
32 of investment property under 12A:9-106 has priority over a security
33 interest held by a secured party that does not have control of the
34 investment property.

35 [b.] (2) Except as otherwise provided in [sections c. and d. of this
36 section] paragraphs (3) and (4), conflicting security interests held by
37 secured parties each of which has control under 12A:9-106 rank
38 according to priority in time of:

39 [(1)] (A) if the collateral is a security, obtaining control;

40 [(2)] (B) if the collateral is a security entitlement carried in a
41 securities account and:

42 [(a)] (i) if the secured party obtained control under 12A:8-106

43 [d.] (d) (1), the secured party's becoming the person for which the
44 securities account is maintained;

45 [(b)] (ii) if the secured party obtained control under 12A:8-106

1 [d.] (d) (2), the securities intermediary's agreement to comply with
2 the secured party's entitlement orders with respect to security
3 entitlements carried or to be carried in the securities account; or

4 [(c)] (iii) if the secured party obtained control through another
5 person under 12A:8-106 [d.] (d) (3), the time on which priority would
6 be based under this paragraph if the other person were the secured
7 party; or

8 [(3)] (C) if the collateral is a commodity contract carried with a
9 commodity intermediary, the satisfaction of the requirement for
10 control specified in 12A:9-106 [b.] (b) (2) with respect to commodity
11 contracts carried or to be carried with the commodity intermediary.

12 [c.] (3) A security interest held by a securities intermediary in a
13 security entitlement or a securities account maintained with the
14 securities intermediary has priority over a conflicting security interest
15 held by another secured party.

16 [d.] (4) A security interest held by a commodity intermediary in a
17 commodity contract or a commodity account maintained with the
18 commodity intermediary has priority over a conflicting security interest
19 held by another secured party.

20 [e.] (5) A security interest in a certificated security in registered
21 form which is perfected by taking delivery under 12A:9-313 [a.] (a)
22 and not by control under 12A:9-314 has priority over a conflicting
23 security interest perfected by a method other than control.

24 [f.] (6) Conflicting security interests created by a broker,
25 securities intermediary, or commodity intermediary which are
26 perfected without control under 12A:9-106 rank equally.

27 [g.] (7) In all other cases, priority among conflicting security
28 interests in investment property is governed by 12A:9-322 and
29 12A:9-323.

30 (cf: N.J.S.12A:9-328)

31

32 45. N.J.S.12A:9-329 is amended to read as follows:

33 12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

34 The following rules govern priority among conflicting security
35 interests in the same letter-of-credit right:

36 [a.] (1) A security interest held by a secured party having control
37 of the letter-of-credit right under 12A:9-107 has priority to the extent
38 of its control over a conflicting security interest held by a secured
39 party that does not have control.

40 [b.] (2) Security interests perfected by control under 12A:9-314
41 rank according to priority in time of obtaining control.

42 (cf: N.J.S.12A:9-329)

43

44 46. N.J.S.12A:9-330 is amended to read as follows:

45 12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

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

5 (1) in good faith and in the ordinary course of the purchaser's
6 business, the purchaser gives new value and takes possession of the
7 chattel paper or obtains control of the chattel paper under 12A:9-105;
8 and

9 (2) the chattel paper does not indicate that it has been assigned to
10 an identified assignee other than the purchaser.

11 **[b.] (b)** Purchaser's priority: other security interests. A purchaser
12 of chattel paper has priority over a security interest in the chattel paper
13 which is claimed other than merely as proceeds of inventory subject to
14 a security interest if the purchaser gives new value and takes
15 possession of the chattel paper or obtains control of the chattel paper
16 under 12A:9-105 in good faith, in the ordinary course of the
17 purchaser's business, and without knowledge that the purchase violates
18 the rights of the secured party.

19 **[c.] (c)** Chattel paper purchaser's priority in proceeds. Except as
20 otherwise provided in 12A:9-327, a purchaser having priority in
21 chattel paper under subsection **[a. or b. of this section] (a) or (b)** also
22 has priority in proceeds of the chattel paper to the extent that:

23 (1) 12A:9-322 provides for priority in the proceeds; or

24 (2) the proceeds consist of the specific goods covered by the
25 chattel paper or cash proceeds of the specific goods, even if the
26 purchaser's security interest in the proceeds is unperfected.

27 **[d.] (d)** Instrument purchaser's priority. Except as otherwise
28 provided in 12A:9-331 **[subsection a.] (a)**, a purchaser of an
29 instrument has priority over a security interest in the instrument
30 perfected by a method other than possession if the purchaser gives
31 value and takes possession of the instrument in good faith and without
32 knowledge that the purchase violates the rights of the secured party.

33 **[e.] (e)** Holder of purchase-money security interest gives new
34 value. For purposes of subsections **[a. and b. of this section] (a) and**
35 **(b)**, the holder of a purchase-money security interest in inventory gives
36 new value for chattel paper constituting proceeds of the inventory.

37 **[f.] (f)** Indication of assignment gives knowledge. For purposes
38 of subsections **[b. and d. of this section] (b) and (d)**, if chattel paper
39 or an instrument indicates that it has been assigned to an identified
40 secured party other than the purchaser, a purchaser of the chattel
41 paper or instrument has knowledge that the purchase violates the
42 rights of the secured party.

43 (cf: N.J.S.12A:9-330)

44
45 47. N.J.S.12A:9-331 is amended to read as follows:

1 12A:9-331. Priority of Rights of Purchasers of Instruments,
2 Documents, and Securities Under Other Chapters; Priority of Interests
3 in Financial Assets and Security Entitlements Under Chapter 8.

4 [a.] (a) Rights under Chapters 3, 7, and 8 not limited. This
5 chapter does not limit the rights of a holder in due course of a
6 negotiable instrument, a holder to which a negotiable document of title
7 has been duly negotiated, or a protected purchaser of a security.
8 These holders or purchasers take priority over an earlier security
9 interest, even if perfected, to the extent provided in Chapters 3, 7, and
10 8.

11 [b.] (b) Protection under Chapter 8. This chapter does not limit
12 the rights of or impose liability on a person to the extent that the
13 person is protected against the assertion of a claim under Chapter 8.

14 [c.] (c) Filing not notice. Filing under this chapter does not
15 constitute notice of a claim or defense to the holders, or purchasers,
16 or persons described in subsections [a. and b of this section] (a) and
17 (b).

18 (cf: N.J.S.12A:9-331)

19
20 48. N.J.S.12A:9-332 is amended to read as follows:

21 12A:9-332. Transfer of Money; Transfer of Funds from Deposit
22 Account.

23 [a.] (a) Transferee of money. A transferee of money takes the
24 money free of a security interest unless the transferee acts in collusion
25 with the debtor in violating the rights of the secured party.

26 [b.] (b) Transferee of funds from deposit account. A transferee of
27 funds from a deposit account takes the funds free of a security interest
28 in the deposit account unless the transferee acts in collusion with the
29 debtor in violating the rights of the secured party.

30 (cf: N.J.S.12A:9-332)

31
32 49. N.J.S.12A:9-333 is amended to read as follows:

33 12A:9-333. Priority of Certain Liens Arising by Operation of Law.

34 [a.] (a) "Possessory lien." In this section, "possessory lien" means
35 an interest, other than a security interest or an agricultural lien:

36 (1) which secures payment or performance of an obligation for
37 services or materials furnished with respect to goods by a person in the
38 ordinary course of the person's business;

39 (2) which is created by statute or rule of law in favor of the person;
40 and

41 (3) whose effectiveness depends on the person's possession of the
42 goods.

43 [b.] (b) Priority of possessory lien. A possessory lien on goods
44 has priority over a security interest in the goods unless the lien is
45 created by a statute that expressly provides otherwise.

46 (cf: N.J.S.12A:9-333)

1 50. N.J.S.12A:9-334 is amended to read as follows:

2 12A:9-334. Priority of Security Interests in Fixtures and Crops.

3 [a.] (a) Security interest in fixtures under this chapter. A security
4 interest under this chapter may be created in goods that are fixtures or
5 may continue in goods that become fixtures. A security interest does
6 not exist under this chapter in ordinary building materials incorporated
7 into an improvement on land.

8 [b.] (b) Security interest in fixtures under real-property law. This
9 chapter does not prevent creation of an encumbrance upon fixtures
10 under real property law.

11 [c.] (c) General rule: subordination of security interest in fixtures.
12 In cases not governed by subsections [d.] (d) through [h. of this
13 section] (h), a security interest in fixtures is subordinate to a
14 conflicting interest of an encumbrancer or owner of the related real
15 property other than the debtor.

16 [d.] (d) Fixtures purchase-money priority. Except as otherwise
17 provided in subsection [h. of this section] (h), a perfected security
18 interest in fixtures has priority over a conflicting interest of an
19 encumbrancer or owner of the real property if the debtor has an
20 interest of record in or is in possession of the real property and:

- 21 (1) the security interest is a purchase-money security interest;
22 (2) the interest of the encumbrancer or owner arises before the
23 goods become fixtures; and
24 (3) the security interest is perfected by a fixture filing before the
25 goods become fixtures or within 20 days thereafter.

26 [e.] (e) Priority of security interest in fixtures over interests in real
27 property. A perfected security interest in fixtures has priority over a
28 conflicting interest of an encumbrancer or owner of the real property
29 [or a lien on real property obtained by legal or equitable proceedings]
30 if:

31 (1) the debtor has an interest of record in the real property or is in
32 possession of the real property and the security interest:

33 [(a)] (A) is perfected by a fixture filing before the interest of the
34 encumbrancer or the owner is of record; and

35 [(b)] (B) has priority over any conflicting interest of a predecessor
36 in title of the encumbrancer or owner;

37 (2) before the goods become fixtures, the security interest is
38 perfected by any method permitted by this chapter and the fixtures are
39 readily removable:

40 [(a)] (A) factory or office machines;

41 [(b)] (B) equipment that is not primarily used or leased for use in
42 the operation of the real property; or

43 [(c)] (C) replacements of domestic appliances that are consumer
44 goods;

45 (3) the conflicting interest is a lien on real property obtained by

1 legal or equitable proceedings after the security interest was perfected
2 by any method permitted by this chapter; or

3 (4) the security interest is:

4 [(a)] (A) created in a manufactured home in a manufactured-home
5 transaction; and

6 [(b)] (B) perfected pursuant to a statute described in 12A:9-311

7 [a.] (a) (2).

8 [f.] (f) Priority based on consent, disclaimer, or right to remove.

9 A security interest in fixtures, whether or not perfected, has priority
10 over a conflicting interest of an encumbrancer or owner of the real
11 property if:

12 (1) the encumbrancer or owner has, in an authenticated record,
13 consented to the security interest or disclaimed an interest in the goods
14 as fixtures; or

15 (2) the debtor has a right to remove the goods as against the
16 encumbrancer or owner.

17 [g.] (g) Continuation of paragraph (f) (2) [of subsection f. of this
18 section] priority. The priority of the security interest under paragraph
19 (f) (2) [of subsection f. of this section] continues for a reasonable
20 time if the debtor's right to remove the goods as against the
21 encumbrancer or owner terminates.

22 [h.] (h) Priority of construction mortgage. A mortgage is a
23 construction mortgage to the extent that it secures an obligation
24 incurred for the construction of an improvement on land, including the
25 acquisition cost of the land, if a recorded record of the mortgage so
26 indicates. Except as otherwise provided in subsections [e. and f. of
27 this section] (e) and (f), a security interest in fixtures is subordinate to
28 a construction mortgage if a record of the mortgage is recorded before
29 the goods become fixtures and the goods become fixtures before the
30 completion of the construction. A mortgage has this priority to the
31 same extent as a construction mortgage to the extent that it is given to
32 refinance a construction mortgage.

33 [i.] (i) Priority of security interest in crops. A perfected security
34 interest in crops growing on real property has priority over a
35 conflicting interest of an encumbrancer or owner of the real property
36 if the debtor has an interest of record in or is in possession of the real
37 property.

38 [j.] (j) Subsection [i.] (i) prevails. Subsection [i. of this section]
39 (i) prevails over any inconsistent provisions of state law.

40 (cf: N.J.S.12A:9-334)

41

42 51. N.J.S.12A:9-335 is amended to read as follows:

43 12A:9-335. Accessions.

44 [a.] (a) Creation of security interest in accession. A security
45 interest may be created in an accession and continues in collateral that

1 becomes an accession.

2 [b.] (b) Perfection of security interest. If a security interest is
3 perfected when the collateral becomes an accession, the security
4 interest remains perfected in the collateral.

5 [c.] (c) Priority of security interest. Except as otherwise provided
6 in subsection [d. of this section] (d), the other provisions of this part
7 determine the priority of a security interest in an accession.

8 [d.] (d) Compliance with certificate-of-title statute. A security
9 interest in an accession is subordinate to a security interest in the
10 whole which is perfected by compliance with the requirements of a
11 certificate-of-title statute under 12A:9-311 [b.] (b).

12 [e.] (e) Removal of accession after default. After default, subject
13 to Part 6 [of this chapter], a secured party may remove an accession
14 from other goods if the security interest in the accession has priority
15 over the claims of every person having an interest in the whole.

16 [f.] (f) Reimbursement following removal. A secured party that
17 removes an accession from other goods under subsection [e. of this
18 section] (e) shall promptly reimburse any holder of a security interest
19 or other lien on, or owner of, the whole or of the other goods, other
20 than the debtor, for the cost of repair of any physical injury to the
21 whole or the other goods. The secured party need not reimburse the
22 holder or owner for any diminution in value of the whole or the other
23 goods caused by the absence of the accession removed or by any
24 necessity for replacing it. A person entitled to reimbursement may
25 refuse permission to remove until the secured party gives adequate
26 assurance for the performance of the obligation to reimburse.

27 (cf: N.J.S.12A:9-335)

28

29 52. N.J.S.12A:9-336 is amended to read as follows:

30 12A:9-336. Commingled Goods.

31 [a.] (a) "Commingled goods." In this section, "commingled
32 goods" means goods that are physically united with other goods in
33 such a manner that their identity is lost in a product or mass.

34 [b.] (b) No security interest in commingled goods as such. A
35 security interest does not exist in commingled goods as such.
36 However, a security interest may attach to a product or mass that
37 results when goods become commingled goods.

38 [c.] (c) Attachment of security interest to product or mass. If
39 collateral becomes commingled goods, a security interest attaches to
40 the product or mass.

41 [d.] (d) Perfection of security interest. If a security interest in
42 collateral is perfected before the collateral becomes commingled
43 goods, the security interest that attaches to the product or mass under
44 subsection [c. of this section] (c) is perfected.

45 [e.] (e) Priority of security interest. Except as otherwise provided

1 in subsection [f.] (f), the other provisions of this part determine the
2 priority of a security interest that attaches to the product or mass
3 under subsection [c. of this section] (c).

4 [f.] (f) Conflicting security interests in product or mass. If more
5 than one security interest attaches to the product or mass under
6 subsection [c. of this section] (c), the following rules determine
7 priority:

8 (1) A security interest that is perfected under subsection [d.] (d)
9 has priority over a security interest that is unperfected at the time the
10 collateral becomes commingled goods.

11 (2) If more than one security interest is perfected under subsection
12 [d.] (d), the security interests rank equally in proportion to the value
13 of the collateral at the time it became commingled goods.

14 (cf: N.J.S.12A:9-336)

15

16 53. N.J.S.12A:9-337 is amended to read as follows:

17 12A:9-337. Priority of Security Interests in Goods Covered by
18 Certificate of Title.

19 If, while a security interest in goods is perfected by any method
20 under the law of another jurisdiction, this State issues a certificate of
21 title that does not show that the goods are subject to the security
22 interest or contain a statement that they may be subject to security
23 interests not shown on the certificate:

24 [a.] (1) a buyer of the goods, other than a person in the business
25 of selling goods of that kind, takes free of the security interest if the
26 buyer gives value and receives delivery of the goods after issuance of
27 the certificate and without knowledge of the security interest; and

28 [b.] (2) the security interest is subordinate to a conflicting security
29 interest in the goods that attaches, and is perfected under 12A:9-311
30 [b.] (b), after issuance of the certificate and without the conflicting
31 secured party's knowledge of the security interest.

32 (cf: N.J.S.12A:9-337)

33

34 54. N.J.S.12A:9-338 is amended to read as follows:

35 12A:9-338. Priority of Security Interest or Agricultural Lien
36 Perfected by Filed Financing Statement Providing Certain Incorrect
37 Information.

38 If a security interest or agricultural lien is perfected by a filed
39 financing statement providing information described in 12A:9-516 [b.]
40 (b) (5) which is incorrect at the time the financing statement is filed:

41 [a.] (1) the security interest or agricultural lien is subordinate to
42 a conflicting perfected security interest in the collateral to the extent
43 that the holder of the conflicting security interest gives value in
44 reasonable reliance upon the incorrect information; and

45 [b.] (2) a purchaser, other than a secured party, of the collateral

1 takes free of the security interest or agricultural lien to the extent that,
2 in reasonable reliance upon the incorrect information, the purchaser
3 gives value and, in the case of chattel paper, documents, goods,
4 instruments, or a security certificate, receives delivery of the collateral.
5 (cf: N.J.S.12A:9-338)

6

7 55. N.J.S.12A:9-340 is amended to read as follows:

8 12A:9-340. Effectiveness of Right of Recoupment or Set-off
9 Against Deposit Account.

10 [a.] (a) Exercise of recoupment or set-off. Except as otherwise
11 provided in subsection [c. of this section] (c), a bank with which a
12 deposit account is maintained may exercise any right of recoupment or
13 set-off against a secured party that holds a security interest in the
14 deposit account.

15 [b.] (b) Recoupment or set-off not affected by security interest.
16 Except as otherwise provided in subsection [c. of this section] (c), the
17 application of this chapter to a security interest in a deposit account
18 does not affect a right of recoupment or set-off of the secured party
19 as to a deposit account maintained with the secured party.

20 [c.] (c) When set-off ineffective. The exercise by a bank of a
21 set-off against a deposit account is ineffective against a secured party
22 that holds a security interest in the deposit account which is perfected
23 by control under 12A:9-104 (a) (3), if the set-off is based on a claim
24 against the debtor.

25 (cf: N.J.S.12A:9-340)

26

27 56. N.J.S.12A:9-341 is amended to read as follows:

28 12A:9-341. Bank's Rights and Duties with Respect to Deposit
29 Account.

30 Except as otherwise provided in 12A:9-340 [c.] (c), and unless the
31 bank otherwise agrees in an authenticated record, a bank's rights and
32 duties with respect to a deposit account maintained with the bank are
33 not terminated, suspended, or modified by:

34 [a.] (1) the creation, attachment, or perfection of a security
35 interest in the deposit account;

36 [b.] (2) the bank's knowledge of the security interest; or

37 [c.] (3) the bank's receipt of instructions from the secured party.

38 (cf: N.J.S.12A:9-341)

39

40 57. N.J.S.12A:9-342 is amended to read as follows:

41 12A:9-342. Bank's Right to Refuse to Enter into or Disclose
42 Existence of Control Agreement.

43 This chapter does not require a bank to enter into an agreement of
44 the kind described in 12A:9-104 [a.] (a) (2), even if its customer so
45 requests or directs. A bank that has entered into such an agreement

1 is not required to confirm the existence of the agreement to another
2 person unless requested to do so by its customer.

3 (cf: N.J.S.12A:9-342)

4

5 58. N.J.S.12A:9-401 is amended to read as follows:

6 12A:9-401. Alienability of Debtor's Rights.

7 [a.] (a) Other law governs alienability; exceptions. Except as
8 otherwise provided in subsection [b. of this section] (b) and
9 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's
10 rights in collateral may be voluntarily or involuntarily transferred is
11 governed by law other than this chapter.

12 [b.] (b) Agreement does not prevent transfer. An agreement
13 between the debtor and secured party which prohibits a transfer of the
14 debtor's rights in collateral or makes the transfer a default does not
15 prevent the transfer from taking effect.

16 (cf: N.J.S.12A:9-401)

17

18 59. N.J.S.12A:9-403 is amended to read as follows:

19 12A:9-403. Agreement Not to Assert Defenses Against Assignee.

20 [a.] (a) "Value." In this section, "value" has the meaning provided
21 in 12A:3-303 a.

22 [b.] (b) Agreement not to assert claim or defense. Except as
23 otherwise provided in this section, an agreement between an account
24 debtor and an assignor not to assert against an assignee any claim or
25 defense that the account debtor may have against the assignor is
26 enforceable by an assignee that takes an assignment:

27 (1) for value;

28 (2) in good faith;

29 (3) without notice of a claim of a property or possessory right to
30 the property assigned; and

31 (4) without notice of a defense or claim in recoupment of the type
32 that may be asserted against a person entitled to enforce a negotiable
33 instrument under 12A:3-305 a.

34 [c.] (c) When subsection [b.] (b) not applicable. Subsection [b.
35 of this section] (b) does not apply to defenses of a type that may be
36 asserted against a holder in due course of a negotiable instrument
37 under 12A:3-305 b.

38 [d.] (d) Omission of required statement in consumer transaction.
39 In a consumer transaction, if a record evidences the account debtor's
40 obligation, law other than this chapter requires that the record include
41 a statement to the effect that the rights of an assignee are subject to
42 claims or defenses that the account debtor could assert against the
43 original obligee, and the record does not include such a statement:

44 (1) the record has the same effect as if the record included such a
45 statement; and

46 (2) the account debtor may assert against an assignee those claims

1 and defenses that would have been available if the record included
2 such a statement.

3 [e.] (e) Rule for individual under other law. This section is subject
4 to law other than this chapter which establishes a different rule for an
5 account debtor who is an individual and who incurred the obligation
6 primarily for personal, family, or household purposes.

7 [f.] (f) Other law not displaced. Except as otherwise provided in
8 subsection [d. of this section] (d), this section does not displace law
9 other than this chapter which gives effect to an agreement by an
10 account debtor not to assert a claim or defense against an assignee.
11 (cf: N.J.S.12A:9-403)

12

13 60. N.J.S.12A:9-404 is amended to read as follows:

14 12A:9-404. Rights Acquired by Assignee; Claims and Defenses
15 Against Assignee.

16 [a.] (a) Assignee's rights subject to terms, claims, and defenses;
17 exceptions. Unless an account debtor has made an enforceable
18 agreement not to assert defenses or claims, and subject to subsections
19 [b.] (b) through [e. of this section] (e), the rights of an assignee are
20 subject to:

21 (1) all terms of the agreement between the account debtor and
22 assignor and any defense or claim in recoupment arising from the
23 transaction that gave rise to the contract; and

24 (2) any other defense or claim of the account debtor against the
25 assignor which accrues before the account debtor receives a
26 notification of the assignment authenticated by the assignor or the
27 assignee.

28 [b.] (b) Account debtor's claim reduces amount owed to assignee.
29 Subject to subsection [c.] (c) and except as otherwise provided in
30 subsection [d. of this section] (d), the claim of an account debtor
31 against an assignor may be asserted against an assignee under
32 subsection [a.] (a) only to reduce the amount the account debtor
33 owes.

34 [c.] (c) Rule for individual under other law. This section is subject
35 to law other than this chapter which establishes a different rule for an
36 account debtor who is an individual and who incurred the obligation
37 primarily for personal, family, or household purposes.

38 [d.] (d) Omission of required statement in consumer transaction.
39 In a consumer transaction, if a record evidences the account debtor's
40 obligation, law other than this chapter requires that the record include
41 a statement to the effect that the account debtor's recovery against an
42 assignee with respect to claims and defenses against the assignor may
43 not exceed amounts paid by the account debtor under the record, and
44 the record does not include such a statement, the extent to which a
45 claim of an account debtor against the assignor may be asserted

1 against an assignee is determined as if the record included such a
2 statement.

3 [e.] (e) Inapplicability to health-care-insurance receivable. This
4 section does not apply to an assignment of a health-care-insurance
5 receivable.

6 (cf: N.J.S.12A:9-404)

7

8 61. N.J.S.12A:9-405 is amended to read as follows:

9 12A:9-405. Modification of Assigned Contract.

10 [a.] (a) Effect of modification on assignee. A modification of or
11 substitution for an assigned contract is effective against an assignee if
12 made in good faith. The assignee acquires corresponding rights under
13 the modified or substituted contract. The assignment may provide that
14 the modification or substitution is a breach of contract by the assignor.
15 This subsection is subject to subsections [b.] (b) through [d. of this
16 section] (d).

17 [b.] (b) Applicability of subsection [a.] (a). Subsection [a. of this
18 section] (a) applies to the extent that:

19 (1) the right to payment or a part thereof under an assigned
20 contract has not been fully earned by performance; or

21 (2) the right to payment or a part thereof has been fully earned by
22 performance and the account debtor has not received notification of
23 the assignment under 12A:9-406 [a.] (a).

24 [c.] (c) Rule for individual under other law. This section is subject
25 to law other than this chapter which establishes a different rule for an
26 account debtor who is an individual and who incurred the obligation
27 primarily for personal, family, or household purposes.

28 [d.] (d) Inapplicability to health-care-insurance receivable. This
29 section does not apply to an assignment of a health-care-insurance
30 receivable.

31 (cf: N.J.S.12A:9-405)

32

33 62. N.J.S.12A:9-406 is amended to read as follows:

34 12A:9-406. Discharge of Account Debtor; Notification of
35 Assignment; Identification and Proof of Assignment; Restrictions on
36 Assignment of Accounts, Chattel Paper, Payment Intangibles, and
37 Promissory Notes Ineffective.

38 [a.] (a) Discharge of account debtor; effect of notification.
39 Subject to subsections [b.] (b) through [i. of this section] (i), an
40 account debtor on an account, chattel paper, or a payment intangible
41 may discharge its obligation by paying the assignor until, but not after,
42 the account debtor receives a notification, authenticated by the
43 assignor or the assignee, that the amount due or to become due has
44 been assigned and that payment is to be made to the assignee. After
45 receipt of the notification, the account debtor may discharge its

1 obligation by paying the assignee and may not discharge the obligation
2 by paying the assignor.

3 **[b.] (b)** When notification ineffective. Subject to subsection **[h.]**
4 **(h)**, notification is ineffective under subsection **[a. of this section] (a)**:

5 (1) if it does not reasonably identify the rights assigned;

6 (2) to the extent that an agreement between an account debtor and
7 a seller of a payment intangible limits the account debtor's duty to pay
8 a person other than the seller and the limitation is effective under law
9 other than this chapter; or

10 (3) at the option of an account debtor, if the notification notifies
11 the account debtor to make less than the full amount of any installment
12 or other periodic payment to the assignee, even if:

13 **[(a)] (A)** only a portion of the account, chattel paper, or **[general]**
14 **payment** intangible has been assigned to that assignee;

15 **[(b)] (B)** a portion has been assigned to another assignee; or

16 **[(c)] (C)** the account debtor knows that the assignment to that
17 assignee is limited.

18 **[c.] (c)** Proof of assignment. Subject to subsection **[h. of this]**
19 **section] (h)**, if requested by the account debtor, an assignee shall
20 seasonably furnish reasonable proof that the assignment has been
21 made. Unless the assignee complies, the account debtor may discharge
22 its obligation by paying the assignor, even if the account debtor has
23 received a notification under subsection **[a. of this section] (a)**.

24 **[d.] (d)** Term restricting assignment generally ineffective. Except
25 as otherwise provided in subsection **[e. of this section] (e)**,
26 12A:2A-303 and 12A:9-407, and subject to subsection **[h. of this]**
27 **section] (h)**, a term in an agreement between an account debtor and
28 an assignor or in a promissory note is ineffective to the extent that it:

29 (1) prohibits, restricts, or requires the consent of the account
30 debtor or person obligated on the promissory note to the assignment
31 or transfer of, or the creation, attachment, perfection, or enforcement
32 of a security interest in, the account, chattel paper, payment intangible,
33 or promissory note; or

34 (2) provides that the assignment or transfer or the creation,
35 attachment, perfection, or enforcement of the security interest may
36 give rise to a default, breach, right of recoupment, claim, defense,
37 termination, right of termination, or remedy under the account, chattel
38 paper, payment intangible, or promissory note.

39 **[e.] (e)** Inapplicability of subsection **[d.] (d)** to certain sales.
40 Subsection **[d. of this section] (d)** does not apply to the sale of a
41 payment intangible or promissory note.

42 **[f.] (f)** Legal restrictions on assignment generally ineffective.
43 Except as otherwise provided in **[subsection j. of this section]**
44 **12A:2A-303 and 12A:9-407 and subject to subsections [h. and i. of]**
45 **this section] (h), (i) and (j)**, a rule of law, statute, or regulation that

1 prohibits, restricts, or requires the consent of a government,
2 governmental body or official, or account debtor to the assignment or
3 transfer of, or creation of a security interest in, an account or chattel
4 paper is ineffective to the extent that the rule of law, statute, or
5 regulation:

6 (1) prohibits, restricts, or requires the consent of the government,
7 governmental body or official, or account debtor to the assignment or
8 transfer of, or the creation, attachment, perfection, or enforcement of
9 a security interest in the account or chattel paper; or

10 (2) provides that the assignment or transfer or the creation,
11 attachment, perfection, or enforcement of the security interest may
12 give rise to a default, breach, right of recoupment, claim, defense,
13 termination, right of termination, or remedy under the account or
14 chattel paper.

15 [g.] (g) Subsection [b. paragraph] (b) (3) not waivable. Subject
16 to subsection [h.] (h), an account debtor may not waive or vary its
17 option under subsection [b.] (b) (3) [of this section].

18 [h.] (h) Rule for individual under other law. This section is
19 subject to law other than this chapter which establishes a different rule
20 for an account debtor who is an individual and who incurred the
21 obligation primarily for personal, family, or household purposes.

22 [i.] (i) Inapplicability [to health-care-insurance receivable]. This
23 section does not apply to an assignment of a health-care-insurance
24 receivable. Subsection (f) does not apply to an assignment or transfer
25 of, or the creation, attachment, perfection or enforcement of a security
26 interest in, a right the transfer of which is prohibited or restricted by
27 any of the following statutes to the extent that the statute is
28 inconsistent with subsection (f): R.S.34:15-29 (workers'
29 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
30 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
31 (structured settlement agreements).

32 [j.] (j) Section prevails over specified inconsistent law. [This]
33 Except to the extent otherwise provided in subsection (i), this section
34 prevails over any inconsistent [provisions] provision of an existing or
35 future statute, rule or regulation of this State [statutes, rules, and
36 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
37 (C.5:9-13)], unless the provision is contained in a statute of this State,
38 refers expressly to this section and states that the provision prevails
39 over this section.

40 (cf: N.J.S.12A:9-406)

41

42 63. N.J.S.12A:9-407 is amended to read as follows:

43 12A:9-407. Restrictions on Creation or Enforcement of Security
44 Interest in Leasehold Interest or in Lessor's Residual Interest.

45 [a.] (a) Term restricting assignment generally ineffective. Except

1 as otherwise provided in subsection [b. of this section] (b), a term in
2 a lease agreement is ineffective to the extent that it:

3 (1) prohibits, restricts, or requires the consent of a party to the
4 lease to the assignment or transfer of, or the creation, attachment,
5 perfection, or enforcement of a security interest in, an interest of a
6 party under the lease contract or in the lessor's residual interest in the
7 goods; or

8 (2) provides that the assignment or transfer or the creation,
9 attachment, perfection, or enforcement of the security interest may
10 give rise to a default, breach, right of recoupment, claim, defense,
11 termination, right of termination, or remedy under the lease.

12 [b.] (b) Effectiveness of certain terms. Except as otherwise
13 provided in 12A:2A-303 [g.] (7), a term described in [paragraph (2)
14 of subsection a. of this section] subsection (a) (2) is effective to the
15 extent that there is:

16 (1) a transfer by the lessee of the lessee's right of possession or use
17 of the goods in violation of the term; or

18 (2) a delegation of a material performance of either party to the
19 lease contract in violation of the term.

20 [c.] (c) Security interest not material impairment. The creation,
21 attachment, perfection, or enforcement of a security interest in the
22 lessor's interest under the lease contract or the lessor's residual interest
23 in the goods is not a transfer that materially impairs the lessee's
24 prospect of obtaining return performance or materially changes the
25 duty of or materially increases the burden or risk imposed on the lessee
26 within the purview of 12A:2A-303 [d.] (4) unless, and then only to
27 the extent that, enforcement actually results in a delegation of material
28 performance of the lessor.

29 (cf: N.J.S.12A:9-407)

30

31 64. N.J.S.12A:9-408 is amended to read as follows:

32 12A:9-408. Restrictions on Assignment of Promissory Notes,
33 Health-care-insurance Receivables, and Certain General Intangibles
34 Ineffective.

35 [a.] (a) Term restricting assignment generally ineffective. Except
36 as otherwise provided in subsection [b. of this section] (b), a term in
37 a promissory note or in an agreement between an account debtor and
38 a debtor which relates to a health-care-insurance receivable or a
39 general intangible, including a contract, permit, license, or franchise,
40 and which term prohibits, restricts, or requires the consent of the
41 person obligated on the promissory note or the account debtor to, the
42 assignment or transfer of, or creation, attachment, or perfection of a
43 security interest in, the promissory note, health-care-insurance
44 receivable, or general intangible, is ineffective to the extent that the
45 term:

46 (1) would impair the creation, attachment, or perfection of a

1 security interest; or

2 (2) provides that the assignment or transfer or the creation,
3 attachment, or perfection of the security interest may give rise to a
4 default, breach, right of recoupment, claim, defense, termination, right
5 of termination, or remedy under the promissory note,
6 health-care-insurance receivable, or general intangible.

7 [b.] (b) Applicability of subsection [a.] (a) to sales of certain
8 rights to payment. Subsection [a. of this section] (a) applies to a
9 security interest in a payment intangible or promissory note only if the
10 security interest arises out of a sale of the payment intangible or
11 promissory note.

12 [c.] (c) Legal restrictions on assignment generally ineffective.
13 Except as provided in subsection [e. of this section] (e), a rule of law,
14 statute, or regulation that prohibits, restricts, or requires the consent
15 of a government, governmental body or official, person obligated on
16 a promissory note, or account debtor to the assignment or transfer of,
17 or creation of a security interest in, a promissory note,
18 health-care-insurance receivable, or general intangible, including a
19 contract, permit, license, or franchise between an account debtor and
20 a debtor, is ineffective to the extent that the rule of law, statute, or
21 regulation:

22 (1) would impair the creation, attachment, or perfection of a
23 security interest; or

24 (2) provides that the assignment or transfer or the creation,
25 attachment, or perfection of the security interest may give rise to a
26 default, breach, right of recoupment, claim, defense, termination, right
27 of termination, or remedy under the promissory note,
28 health-care-insurance receivable, or general intangible.

29 [d.] (d) Limitation on ineffectiveness under subsections [a. and
30 c.] (a) and (c). To the extent that a term in a promissory note or in an
31 agreement between an account debtor and a debtor which relates to a
32 health-care-insurance receivable or general intangible or a rule of law,
33 statute, or regulation described in subsection [c.] (c) would be
34 effective under law other than this chapter but is ineffective under
35 subsection [a. or c. of this section] (a) or (c), the creation,
36 attachment, or perfection of a security interest in the promissory note,
37 health-care-insurance receivable, or general intangible:

38 (1) is not enforceable against the person obligated on the
39 promissory note or the account debtor;

40 (2) does not impose a duty or obligation on the person obligated
41 on the promissory note or the account debtor;

42 (3) does not require the person obligated on the promissory note
43 or the account debtor to recognize the security interest, pay or render
44 performance to the secured party, or accept payment or performance
45 from the secured party;

46 (4) does not entitle the secured party to use or assign the debtor's

1 rights under the promissory note, health-care-insurance receivable, or
2 general intangible, including any related information or materials
3 furnished to the debtor in the transaction giving rise to the promissory
4 note, health-care-insurance receivable, or general intangible;

5 (5) does not entitle the secured party to use, assign, possess, or
6 have access to any trade secrets or confidential information of the
7 person obligated on the promissory note or the account debtor; and

8 (6) does not entitle the secured party to enforce the security
9 interest in the promissory note, health-care-insurance receivable, or
10 general intangible.

11 [e.] (e) Section prevails over specified inconsistent law. [This]
12 Except to the extent otherwise provided in subsection (f), this section
13 prevails over any inconsistent [provisions] provision of an existing or
14 future statute, rule or regulation of this State [statutes, rules, and
15 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
16 (C.5:9-13) , unless the provision is contained in a statute of this State,
17 refers expressly to this section and states that the provision prevails
18 over this section.

19 (f) Inapplicability. Subsection (c) does not apply to an assignment
20 or transfer of, or the creation, attachment, perfection or enforcement
21 of a security interest in, a right the transfer of which is prohibited or
22 restricted by any of the following statutes to the extent that the statute
23 is inconsistent with subsection (c): R.S.34:15-29 (workers'
24 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
25 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
26 (structured settlement agreements).

27 (cf: N.J.S.12A:9-408)

28

29 65. N.J.S.12A:9-409 is amended to read as follows:

30 12A:9-409. Restrictions on Assignment of Letter-of-credit Rights
31 Ineffective.

32 [a.] (a) Term or law restricting assignment generally ineffective.
33 A term in a letter of credit or a rule of law, statute, regulation, custom,
34 or practice applicable to the letter of credit which prohibits, restricts,
35 or requires the consent of an applicant, issuer, or nominated person to
36 a beneficiary's assignment of or creation of a security interest in a
37 letter-of-credit right is ineffective to the extent that the term or rule of
38 law, statute, regulation, custom, or practice:

39 (1) would impair the creation, attachment, or perfection of a
40 security interest in the letter-of-credit right; or

41 (2) provides that the assignment or the creation, attachment, or
42 perfection of the security interest may give rise to a default, breach,
43 right of recoupment, claim, defense, termination, right of termination,
44 or remedy under the letter-of-credit right.

45 [b.] (b) Limitation on ineffectiveness under subsection [a.] (a).
46 To the extent that a term in a letter of credit is ineffective under

1 subsection [a.] (a) but would be effective under law other than this
2 chapter or a custom or practice applicable to the letter of credit, to the
3 transfer of a right to draw or otherwise demand performance under the
4 letter of credit, or to the assignment of a right to proceeds of the letter
5 of credit, the creation, attachment, or perfection of a security interest
6 in the letter-of-credit right:

7 (1) is not enforceable against the applicant, issuer, nominated
8 person, or transferee beneficiary;

9 (2) imposes no duties or obligations on the applicant, issuer,
10 nominated person, or transferee beneficiary; and

11 (3) does not require the applicant, issuer, nominated person, or
12 transferee beneficiary to recognize the security interest, pay or render
13 performance to the secured party, or accept payment or other
14 performance from the secured party.

15 (cf: N.J.S.12A:9-409)

16

17 66. N.J.S.12A:9-501 is amended to read as follows:

18 12A:9-501. Filing Office.

19 Filing offices.

20 [a.] (a) Except as otherwise provided in subsection [b. of this
21 section] (b), if the local law of this State governs perfection of a
22 security interest or agricultural lien, the office in which to file a
23 financing statement to perfect the security interest or agricultural lien
24 is :

25 (1) the office designated for the filing or recording of a record of
26 a mortgage on the related real property, if:

27 [(a)] (A) the collateral is as-extracted collateral or timber to be
28 cut; or

29 [(b)] (B) the financing statement is filed as a fixture filing and the
30 collateral is goods that are or are to become fixtures; or

31 (2) the Division of Commercial Recording or other office
32 designated by Executive Order, in all other cases, including a case in
33 which the collateral is goods that are or are to become fixtures and the
34 financing statement is not filed as a fixture filing.

35 [b.] (b) Filing office for transmitting utilities. The office in which
36 to file a financing statement to perfect a security interest in collateral,
37 including fixtures, of a transmitting utility is the Division of
38 Commercial Recording or other office designated by Executive Order.
39 The financing statement also constitutes a fixture filing as to the
40 collateral indicated in the financing statement which is or is to become
41 fixtures.

42 (cf: N.J.S.12A:9-501)

43

44 67. N.J.S.12A:9-502 is amended to read as follows:

45 12A:9-502. Contents of Financing Statement; Record of Mortgage
46 as Financing Statement; Time of Filing Financing Statement.

1 **[a.] (a)** Sufficiency of financing statement. Subject to subsection
2 **[b. of this section] (b)**, a financing statement is sufficient only if it:
3 (1) provides the name of the debtor;
4 (2) provides the name of the secured party or a representative of
5 the secured party; and
6 (3) indicates the collateral covered by the financing statement.

7 **[b.] (b)** Real-property-related financing statements. Except as
8 otherwise provided in 12A:9-501 **[b.] (b)**, to be sufficient, a financing
9 statement that covers as-extracted collateral or timber to be cut, or
10 which is filed as a fixture filing and covers goods that are or are to
11 become fixtures, **[shall] must** satisfy subsection **[a. of this section] (a)**
12 and also:

13 (1) indicate that it covers this type of collateral;
14 (2) indicate that it is to be filed in the real property records;
15 (3) provide a description of the real property to which the collateral
16 is related sufficient to **[identify] give constructive notice of a**
17 **mortgage under the law of this State if the description were contained**
18 **in a record of the mortgage of the real property;** and
19 (4) if the debtor does not have an interest of record in the real
20 property, provide the name of a record owner.

21 **[c.] (c)** Record of mortgage as financing statement. A record of
22 a mortgage is effective, from the date of recording, as a **[filed]**
23 financing statement filed as a fixture filing or as a financing statement
24 covering as-extracted collateral or timber to be cut **[or fixtures]** only
25 if:

26 (1) the record indicates the goods or accounts that it covers;
27 (2) the goods are or are to become fixtures related to the real
28 property described in the record or the collateral is related to the real
29 property described in the record and is as-extracted collateral or
30 timber to be cut;
31 (3) the record satisfies the requirements for a financing statement
32 in this section other than an indication that it is to be filed in the real
33 property records; and
34 (4) the record is recorded.

35 **[d.] (d)** Filing before security agreement or attachment. A
36 financing statement may be filed before a security agreement is made
37 or a security interest otherwise attaches.

38 (cf: N.J.S.12A:9-502)

39

40 68. N.J.S.12A:9-503 is amended to read as follows:

41 12A:9-503. Name of Debtor and Secured Party.

42 **[a.] (a)** Sufficiency of debtor's name. A financing statement
43 sufficiently provides the name of the debtor:

44 (1) if the debtor is a registered organization, only if the financing
45 statement provides the name of the debtor indicated on the public

1 record of the debtor's jurisdiction of organization which shows the
2 debtor to have been organized;

3 (2) if the debtor is a decedent's estate, only if the financing
4 statement provides the name of the decedent and indicates that the
5 debtor is an estate;

6 (3) if the debtor is a trust or a trustee acting with respect to
7 property held in trust, only if the financing statement:

8 [(a)] (A) provides the name specified for the trust in its organic
9 documents or, if no name is specified, provides the name of the settlor
10 and additional information sufficient to distinguish the debtor from
11 other trusts having one or more of the same settlors; and

12 [(b)] (B) indicates, in the debtor's name or otherwise, that the
13 debtor is a trust or is a trustee acting with respect to property held in
14 trust; and

15 (4) in other cases:

16 [(a)] (A) if the debtor has a name, only if it provides the individual
17 or organizational name of the debtor; and

18 [(b)] (B) if the debtor does not have a name, only if it provides the
19 names of the partners, members, associates, or other persons
20 comprising the debtor.

21 [b.] (b) Additional debtor-related information. A financing
22 statement that provides the name of the debtor in accordance with
23 subsection [a. of this section] (a) is not rendered ineffective by the
24 absence of:

25 (1) a trade name or other name of the debtor; or

26 (2) unless required under [paragraph (4) (b) of] subsection [a. of
27 this section] (a) (4) (B), names of partners, members, associates, or
28 other persons comprising the debtor.

29 [c.] (c) Debtor's trade name insufficient. A financing statement
30 that provides only the debtor's trade name does not sufficiently provide
31 the name of the debtor.

32 [d.] (d) Representative capacity. Failure to indicate the
33 representative capacity of a secured party or representative of a
34 secured party does not affect the sufficiency of a financing statement.

35 [e.] (e) Multiple debtors and secured parties. A financing
36 statement may provide the name of more than one debtor and the name
37 of more than one secured party.

38 (cf: N.J.S.12A:9-503)

39

40 69. N.J.S.12A:9-504 is amended to read as follows:

41 12A:9-504. Indication of Collateral.

42 A financing statement sufficiently indicates the collateral that it
43 covers if the financing statement provides:

44 [a.] (1) a description of the collateral pursuant to 12A:9-108; or

45 [b.] (2) an indication that the financing statement covers all assets

1 or all personal property.

2 (cf: N.J.S.12A:9-504)

3

4 70. N.J.S.12A:9-505 is amended to read as follows:

5 12A:9-505. Filing and Compliance with Other Statutes and
6 Treaties for Consignments, Leases, Other Bailments, and Other
7 Transactions.

8 [a.] (a) Use of terms other than "debtor" and "secured party." A
9 consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
10 payment intangible or promissory note may file a financing statement,
11 or may comply with a statute or treaty described in 12A:9-311 [a.]
12 (a), using the terms "consignor," "consignee," "lessor," "lessee,"
13 "bailor," "bailee," "licensor," "licensee," "owner," "registered owner,"
14 "buyer," "seller," or words of similar import, instead of the terms
15 "secured party" and "debtor".

16 [b.] (b) Effect of financing statement under subsection [a.] (a)
17 This part applies to the filing of a financing statement under subsection
18 [a. of this section] (a) and, as appropriate, to compliance that is
19 equivalent to filing a financing statement under 12A:9-311 [b.] (b),
20 but the filing or compliance is not of itself a factor in determining
21 whether the collateral secures an obligation. If it is determined for
22 another reason that the collateral secures an obligation, a security
23 interest held by the consignor, lessor, bailor, licensor, owner, or buyer
24 which attaches to the collateral is perfected by the filing or
25 compliance.

26 (cf: N.J.S.12A:9-505)

27

28 71. N.J.S.12A:9-506 is amended to read as follows:

29 12A:9-506. Effect of Errors or Omissions.

30 [a.] (a) Minor errors and omissions. A financing statement
31 substantially satisfying the requirements of this part is effective, even
32 if it has minor errors or omissions, unless the errors or omissions make
33 the financing statement seriously misleading.

34 [b.] (b) Financing statement seriously misleading. Except as
35 otherwise provided in subsection [c. of this section] (c), a financing
36 statement that fails sufficiently to provide the name of the debtor in
37 accordance with 12A:9-503 [a.] (a) is seriously misleading.

38 [c.] (c) Financing statement not seriously misleading. If a search
39 of the records of the filing office under the debtor's correct name,
40 using the filing office's standard search logic, if any, would disclose a
41 financing statement that fails sufficiently to provide the name of the
42 debtor in accordance with 12A:9-503 [a.] (a), the name provided does
43 not make the financing statement seriously misleading.

44 [d.] (d) "Debtor's correct name." For purposes of 12A:9-508 [b.]
45 (b), the "debtor's correct name" in subsection [c. of this section] (c)

1 means the correct name of the new debtor.
2 (cf: N.J.S.12A:9-506)

3

4 72. N.J.S.12A:9-507 is amended to read as follows:

5 12A:9-507. Effect of Certain Events on Effectiveness of Financing
6 Statement.

7 [a.] (a) Disposition. A filed financing statement remains effective
8 with respect to collateral that is sold, exchanged, leased, licensed, or
9 otherwise disposed of and in which a security interest or agricultural
10 lien continues, even if the secured party knows of or consents to the
11 disposition.

12 [b.] (b) Information becoming seriously misleading. Except as
13 otherwise provided in subsection [c. of this section] (c) and
14 12A:9-508, a financing statement is not rendered ineffective if, after
15 the financing statement is filed, the information provided in the
16 financing statement becomes seriously misleading under 12A:9-506.

17 [c.] (c) Change in debtor's name. If a debtor so changes its name
18 that a filed financing statement becomes seriously misleading under
19 12A:9-506:

20 (1) the financing statement is effective to perfect a security interest
21 in collateral acquired by the debtor before, or within four months after,
22 the change; and

23 (2) the financing statement is not effective to perfect a security
24 interest in collateral acquired by the debtor more than four months
25 after the change, unless an amendment to the financing statement
26 which renders the financing statement not seriously misleading is filed
27 within four months after the change.

28 (cf: N.J.S.12A:9-507)

29

30 73. N.J.S.12A:9-508 is amended to read as follows:

31 12A:9-508. Effectiveness of Financing Statement If New Debtor
32 Becomes Bound by Security Agreement.

33 [a.] (a) Financing statement naming original debtor. Except as
34 otherwise provided in this section, a filed financing statement naming
35 an original debtor is effective to perfect a security interest in collateral
36 in which a new debtor has or acquires rights to the extent that the
37 financing statement would have been effective had the original debtor
38 acquired rights in the collateral.

39 [b.] (b) Financing statement becoming seriously misleading. If the
40 difference between the name of the original debtor and that of the new
41 debtor causes a filed financing statement that is effective under
42 subsection [a. of this section] (a) to be seriously misleading under
43 12A:9-506:

44 (1) the financing statement is effective to perfect a security interest
45 in collateral acquired by the new debtor before, and within four
46 months after, the new debtor becomes bound under 12A:9-203 [d.]

1 (d); and

2 (2) the financing statement is not effective to perfect a security
3 interest in collateral acquired by the new debtor more than four
4 months after the new debtor becomes bound under 12A:9-203 [d.] (d)
5 unless an initial financing statement providing the name of the new
6 debtor is filed before the expiration of that time.

7 [c.] (c) When section not applicable. This section does not apply
8 to collateral as to which a filed financing statement remains effective
9 against the new debtor under 12A:9-507 [a.] (a).
10 (cf: N.J.S.12A:9-508)

11

12 74. N.J.S.12A:9-509 is amended to read as follows:

13 12A:9-509. Persons Entitled to File a Record.

14 [a.] (a) Person entitled to file record. A person may file an initial
15 financing statement, amendment that adds collateral covered by a
16 financing statement, or amendment that adds a debtor to a financing
17 statement only if:

18 (1) the debtor authorizes the filing in an authenticated record or
19 pursuant to subsection (b) or (c); or

20 (2) the person holds an agricultural lien that has become effective
21 at the time of filing and the financing statement covers only collateral
22 in which the person holds an agricultural lien.

23 [b.] (b) Security agreement as authorization. By authenticating or
24 becoming bound as debtor by a security agreement, a debtor or new
25 debtor authorizes the filing of an initial financing statement, and an
26 amendment, covering:

27 (1) the collateral described in the security agreement; and

28 (2) property that becomes collateral under 12A:9-315 [a.] (a) (2),
29 whether or not the security agreement expressly covers proceeds.

30 [c.] (c) Acquisition of collateral as authorization. By acquiring
31 collateral in which a security interest or agricultural lien continues
32 under 12A:9-315 [a.] (a) (1), a debtor authorizes the filing of an
33 initial financing statement, and an amendment, covering the collateral
34 and property that becomes collateral under 12A:9-315 [a.] (a) (2).

35 [d.] (d) Person entitled to file certain amendments. A person may
36 file an amendment other than an amendment that adds collateral
37 covered by a financing statement or an amendment that adds a debtor
38 to a financing statement only if:

39 (1) the secured party of record authorizes the filing; or

40 (2) the amendment is a termination statement for a financing
41 statement as to which the secured party of record has failed to file or
42 send a termination statement as required by 12A:9-513 [a. or c.] (a)
43 or (c), the debtor authorizes the filing, and the termination statement
44 indicates that the debtor authorized it to be filed.

45 [e.] (e) Multiple secured parties of record. If there is more than

1 one secured party of record for a financing statement, each secured
2 party of record may authorize the filing of an amendment under
3 subsection [d. of this section] (d).

4 (cf: N.J.S.12A:9-509)

5

6 75. N.J.S.12A:9-510 is amended to read as follows:

7 12A:9-510. Effectiveness of Filed Record.

8 [a.] (a) Filed record effective if authorized. A filed record is
9 effective only to the extent that it was filed by a person [who] that
10 may file it under 12A:9-509.

11 [b.] (b) Authorization by one secured party of record. A record
12 authorized by one secured party of record does not affect the financing
13 statement with respect to another secured party of record.

14 [c.] (c) Continuation statement not timely filed. A continuation
15 statement that is not filed within the six-month period prescribed by
16 12A:9-515 [d.] (d) is ineffective.

17 (cf: N.J.S.12A:9-510)

18

19 76. N.J.S.12A:9-511 is amended to read as follows:

20 12A:9-511. Secured Party of Record.

21 [a.] (a) Secured party of record. A secured party of record with
22 respect to a financing statement is a person whose name is provided as
23 the name of the secured party or a representative of the secured party
24 in an initial financing statement that has been filed. If an initial
25 financing statement is filed under 12A:9-514 [a.] (a), the assignee
26 named in the initial financing statement is the secured party of record
27 with respect to the financing statement.

28 [b.] (b) Amendment naming secured party of record. If an
29 amendment of a financing statement which provides the name of a
30 person as a secured party or a representative of a secured party is
31 filed, the person named in the amendment is a secured party of record.
32 If an amendment is filed under 12A:9-514 [b.] (b), the assignee named
33 in the amendment is a secured party of record.

34 [c.] (c) Amendment deleting secured party of record. A person
35 remains a secured party of record until the filing of an amendment of
36 the financing statement which deletes the person.

37 (cf: N.J.S.12A:9-511)

38

39 77. N.J.S.12A:9-512 is amended to read as follows:

40 12A:9-512. Amendment of Financing Statement.

41 [a.] (a) Amendment of information in financing statement. Subject
42 to 12A:9-509, a person may add or delete collateral covered by,
43 continue or terminate the effectiveness of, or, subject to subsection [e.
44 of this section] (e), otherwise amend the information provided in, a
45 financing statement by filing an amendment that:

1 (1) identifies, by its file number, the initial financing statement to
2 which the amendment relates; and

3 (2) if the amendment relates to an initial financing statement filed
4 in a filing office described in 12A:9-501 [a.] (a) (1), provides the
5 information specified in 12A:9-502 [b.] (b).

6 [b.] (b) Period of effectiveness not affected. Except as otherwise
7 provided in 12A:9-515, the filing of an amendment does not extend the
8 period of effectiveness of the financing statement.

9 [c.] (c) Effectiveness of amendment adding collateral. A financing
10 statement that is amended by an amendment that adds collateral is
11 effective as to the added collateral only from the date of the filing of
12 the amendment.

13 [d.] (d) Effectiveness of amendment adding debtor. A financing
14 statement that is amended by an amendment that adds a debtor is
15 effective as to the added debtor only from the date of the filing of the
16 amendment.

17 [e.] (e) Certain amendments ineffective. An amendment is
18 ineffective to the extent it:

19 (1) purports to delete all debtors and fails to provide the name of
20 a debtor to be covered by the financing statement; or

21 (2) purports to delete all secured parties of record and fails to
22 provide the name of a new secured party of record.

23 (cf: N.J.S.12A:9-512)

24

25 78. N.J.S.12A:9-513 is amended to read as follows:

26 12A:9-513. Termination Statement.

27 [a.] (a) Consumer goods. A secured party shall cause the secured
28 party of record for a financing statement to file a termination statement
29 for the financing statement if the financing statement covers consumer
30 goods and:

31 (1) there is no obligation secured by the collateral covered by the
32 financing statement and no commitment to make an advance, incur an
33 obligation, or otherwise give value; or

34 (2) the debtor did not authorize the filing of the initial financing
35 statement.

36 [b.] (b) Time for compliance with subsection [a.] (a). To comply
37 with subsection [a. of this section] (a), a secured party shall cause the
38 secured party of record to file the termination statement:

39 (1) within one month after there is no obligation secured by the
40 collateral covered by the financing statement and no commitment to
41 make an advance, incur an obligation, or otherwise give value; or

42 (2) if earlier, within 20 days after the secured party receives an
43 authenticated demand from a debtor.

44 [c.] (c) Other collateral. In cases not governed by subsection [a.
45 of this section] (a), within 20 days after a secured party receives an

1 authenticated demand from a debtor, the secured party shall cause the
2 secured party of record for a financing statement to send to the debtor
3 a termination statement for the financing statement or file the
4 termination statement in the filing office if:

5 (1) except in the case of a financing statement covering accounts
6 or chattel paper that has been sold or goods that are the subject of a
7 consignment, there is no obligation secured by the collateral covered
8 by the financing statement and no commitment to make an advance,
9 incur an obligation, or otherwise give value;

10 (2) the financing statement covers accounts or chattel paper that
11 **[have]** has been sold but as to which the account debtor or other
12 person obligated has discharged its obligation;

13 (3) the financing statement covers goods that were the subject of
14 a consignment to the debtor but are not in the debtor's possession; or

15 (4) the debtor did not authorize the filing of the initial financing
16 statement.

17 **[d.] (d)** Effect of filing termination statement. Except as
18 otherwise provided in 12A:9-510, upon the filing of a termination
19 statement with the filing office, the financing statement to which the
20 termination statement relates ceases to be effective. Except as
21 otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g),
22 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a
23 termination statement relating to a financing statement that indicates
24 that the debtor is a transmitting utility also causes the effectiveness of
25 the financing statement to lapse.

26 (cf: N.J.S.12A:9-513)

27
28 79. N.J.S.12A:9-514 is amended to read as follows:

29 12A:9-514. Assignment of Powers of Secured Party of Record.

30 **[a.] (a)** Assignment reflected on initial financing statement.
31 Except as otherwise provided in **[this chapter]** subsection (c), an
32 initial financing statement may reflect an assignment of all of the
33 secured party's power to authorize an amendment to the financing
34 statement by providing the name and mailing address of the assignee
35 as the name and address of the secured party.

36 **[b.] (b)** Assignment of filed financing statement. Except as
37 otherwise provided in **[this chapter]** subsection (c), a secured party of
38 record may assign of record all or part of its power to authorize an
39 amendment to a financing statement by filing in the filing office an
40 amendment of the financing statement which:

41 (1) identifies, by its file number, the initial financing statement to
42 which it relates;

43 (2) provides the name of the assignor; and

44 (3) provides the name and mailing address of the assignee.

45 **[c.] (c)** Assignment of record of mortgage. An assignment of
46 record of a security interest in a fixture covered by a record of a

1 mortgage which is effective as a filed financing statement filed as a
2 fixture filing under 12A:9-502 ~~[c.] (c)~~ may be made only by an
3 assignment of record of the mortgage in the manner provided by law
4 of this State other than the Uniform Commercial Code.
5 (cf: N.J.S.12A:9-514)

6
7 80. N.J.S.12A:9-515 is amended to read as follows:

8 12A:9-515. Duration and Effectiveness of Financing Statement;
9 Effect of Lapsed Financing Statement.

10 ~~[a.] (a)~~ Five-year effectiveness. Except as otherwise provided in
11 subsections ~~[b., e., f. and g.] (b), (e), (f) and (g)~~, a filed financing
12 statement is effective for a period of five years after the date of filing.

13 ~~[b.] (b)~~ Public-finance or manufactured-home transaction. Except
14 as otherwise provided in subsections ~~[e., f. and g. of this section] (e),~~
15 ~~(f) and (g)~~, an initial financing statement filed in connection with a
16 public-finance transaction or manufactured-home transaction is
17 effective for a period of 30 years after the date of filing if it indicates
18 that it is filed in connection with a public-finance transaction or
19 manufactured-home transaction.

20 ~~[c.]~~ Bondable transition property. If a filed financing statement
21 relates to a security interest in bondable transition property and the
22 financing statement so states, it is effective until a termination
23 statement is filed.

24 ~~d.] (c)~~ Lapse and continuation of financing statement. The
25 effectiveness of a filed financing statement lapses on the expiration of
26 the period of its effectiveness unless before the lapse a continuation
27 statement is filed pursuant to subsection ~~[e. of this section] (d)~~. Upon
28 lapse, a financing statement ceases to be effective and any security
29 interest or agricultural lien that was perfected by the financing
30 statement becomes unperfected, unless the security interest is
31 perfected otherwise. If the security interest or agricultural lien
32 becomes unperfected upon lapse, it is deemed never to have been
33 perfected as against a purchaser of the collateral for value.

34 ~~[e.] (d)~~ When continuation statement may be filed. A continuation
35 statement may be filed only within six months before the expiration of
36 the five-year period specified in subsection ~~[a.] (a)~~ or the 30-year
37 period specified in subsection ~~[b. of this section] (b)~~, whichever is
38 applicable.

39 ~~[f.] (e)~~ Effect of filing continuation statement. Except as
40 otherwise provided in 12A:9-510, upon timely filing of a continuation
41 statement, the effectiveness of the initial financing statement continues
42 for a period of five years commencing on the day on which the
43 financing statement would have become ineffective in the absence of
44 the filing. Upon the expiration of the five-year period, the financing
45 statement lapses in the same manner as provided in subsection ~~[d.]~~

1 (c), unless, before the lapse, another continuation statement is filed
2 pursuant to subsection [e. of this section] (d). Succeeding
3 continuation statements may be filed in the same manner to continue
4 the effectiveness of the initial financing statement.

5 [g.] (f) Transmitting utility financing statement. If a debtor is a
6 transmitting utility and a filed financing statement so indicates, the
7 financing statement is effective until a termination statement is filed.

8 [h.] (g) Record of mortgage as financing statement. A record of
9 mortgage that is effective as a [filed] financing statement filed as a
10 fixture filing under 12A:9-502 [c.] (c) remains effective as a [filed]
11 financing statement filed as a fixture filing until the mortgage is
12 released or satisfied of record or its effectiveness otherwise terminates
13 as to the real property.

14 (h) Bondable transition property. If a filed financing statement
15 relates to a security interest in bondable transition property and the
16 financing statement so states, it is effective until a termination
17 statement is filed.

18 (cf: N.J.S.12A:9-515)

19
20 81. N.J.S.12A:9-516 is amended to read as follows:

21 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

22 [a.] (a) What constitutes filing. Except as otherwise provided in
23 subsection [b. of this section] (b), communication of a record to a
24 filing office and tender of the filing fee or acceptance of the record by
25 the filing office constitutes filing.

26 [b.] (b) Refusal to accept record; filing does not occur. Filing
27 does not occur with respect to a record that a filing office refuses to
28 accept because:

29 (1) the record is not communicated by a method or medium of
30 communication authorized by the filing office;

31 (2) an amount equal to or greater than the applicable filing fee is
32 not tendered;

33 (3) the filing office is unable to index the record because:

34 [(a)] (A) in the case of an initial financing statement, the record
35 does not provide a name for the debtor;

36 [(b)] (B) in the case of an amendment or correction statement, the
37 record:

38 (i) does not identify the initial financing statement as required by
39 12A:9-512 or 12A:9-518, as applicable; or

40 (ii) identifies an initial financing statement whose effectiveness has
41 lapsed under 12A:9-515;

42 [(c)] (C) in the case of an initial financing statement that provides
43 the name of a debtor identified as an individual or an amendment that
44 provides a name of a debtor identified as an individual which was not
45 previously provided in the financing statement to which the record

1 relates, the record does not identify the debtor's last name; or
2 ~~[(d)] (D)~~ in the case of a record filed or recorded in the filing
3 office described in 12A:9-501 ~~(a) (1)~~, the record does not provide a
4 sufficient description of the real property to which it relates;
5 (4) in the case of an initial financing statement or an amendment
6 that adds a secured party of record, the record does not provide a
7 name and mailing address for the secured party of record;
8 (5) in the case of an initial financing statement or an amendment
9 that provides a name of a debtor which was not previously provided
10 in the financing statement to which the amendment relates, the record
11 does not:
12 ~~[(a)] (A)~~ provide a mailing address for the debtor;
13 ~~[(b)] (B)~~ indicate whether the debtor is an individual or an
14 organization; or
15 ~~[(c)] (C)~~ if the financing statement indicates that the debtor is an
16 organization, provide:
17 (i) a type of organization for the debtor;
18 (ii) a jurisdiction of organization for the debtor; or
19 (iii) an organizational identification number for the debtor or
20 indicate that the debtor has none;
21 (6) in the case of an assignment reflected in an initial financing
22 statement under 12A:9-514 ~~[a.] (a)~~ or an amendment filed under
23 12A:9-514 ~~[b.] (b)~~, the record does not provide a name and mailing
24 address for the assignee; or
25 (7) in the case of a continuation statement, the record is not filed
26 within the six-month period prescribed by 12A:9-515 ~~[e.] (d)~~.
27 ~~[c.] (c)~~ Rules applicable to subsection ~~[b.] (b)~~. For purposes of
28 subsection ~~[b. of this section] (b)~~:
29 (1) a record does not provide information if the filing office is
30 unable to read or decipher the information; and
31 (2) a record that does not indicate that it is an amendment or
32 identify an initial financing statement to which it relates, as required by
33 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.
34 ~~[d.] (d)~~ Refusal to accept record; record effective as filed record.
35 A record that is communicated to the filing office with tender of the
36 filing fee, but which the filing office refuses to accept for a reason
37 other than one set forth in subsection ~~[b. of this section] (b)~~, is
38 effective as a filed record except as against a purchaser of the
39 collateral which gives value in reasonable reliance upon the absence of
40 the record from the files.
41 (cf: N.J.S.12A:9-516)
42
43 82. N.J.S.12A:9-518 is amended to read as follows:
44 12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed
45 Record.

1 **[a.] (a)** Correction statement. A person may file in the filing office
2 a correction statement with respect to a record indexed there under the
3 person's name if the person believes that the record is inaccurate or
4 was wrongfully filed.

5 **[b.] (b)** Sufficiency of correction statement. A correction
6 statement **[shall] must**:

7 (1) identify the record to which it relates by the file number
8 assigned to the initial financing statement to which the record relates;

9 (2) indicate that it is a correction statement; and

10 (3) provide the basis for the person's belief that the record is
11 inaccurate and indicate the manner in which the person believes the
12 record should be amended to cure any inaccuracy or provide the basis
13 for the person's belief that the record was wrongfully filed.

14 **[c.] (c)** Record not affected by correction statement. The filing of
15 a correction statement does not affect the effectiveness of an initial
16 financing statement or other filed record.

17 (cf: N.J.S.12A:9-518)

18

19 83. N.J.S.12A:9-519 is amended to read as follows:

20 12A:9-519. Numbering, Maintaining, and Indexing Records;
21 Communicating Information Provided in Records.

22 **[a.] (a)** Filing office duties. For each record filed in a filing office,
23 the filing office shall:

24 (1) assign a unique number to the filed record;

25 (2) create a record that bears the number assigned to the filed
26 record and the date and time of filing;

27 (3) maintain the filed record for public inspection; and

28 (4) index the filed record in accordance with subsections **[c., d.,**
29 **and e. of this section] (c), (d) and (e).**

30 **[b.] (b)** File number. A file number assigned after January 1,
31 2002, **[shall] must** include a digit that:

32 (1) is mathematically derived from or related to the other digits of
33 the file number; and

34 (2) aids the filing office in determining whether a number
35 communicated as the file number includes a single-digit or
36 transpositional error.

37 **[c.] (c)** Indexing: general. Except as otherwise provided in
38 subsections **[d. and e. of this section] (d) and (e),** the filing office
39 shall:

40 (1) index an initial financing statement according to the name of
41 the debtor and index all filed records relating to the initial financing
42 statement in a manner that associates with one another an initial
43 financing statement and all filed records relating to the initial financing
44 statement; and

45 (2) index a record that provides a name of a debtor which was not

1 previously provided in the financing statement to which the record
2 relates also according to the name that was not previously provided.

3 [d.] (d) Indexing: real-property-related financing statement. If a
4 financing statement is filed as a fixture filing or covers as-extracted
5 collateral or timber to be cut, the filing office shall index it:

6 (1) under the names of the debtor and of each owner of record
7 shown on the financing statement as if they were the mortgagors under
8 a mortgage of the real property described; and

9 (2) to the extent that the law of this State provides for indexing of
10 records or mortgages under the name of the mortgagees, under the
11 name of the secured party as if the secured party were the mortgagee
12 thereunder, or, if the indexing is by description, as if the financing
13 statement were a record of a mortgage of the real property described.

14 [e.] (e) Indexing: real-property-related assignment. If a financing
15 statement is filed as a fixture filing or covers as-extracted collateral or
16 timber to be cut, the filing office shall index an assignment filed under
17 12A:9-514 [a.] (a) or an amendment filed under 12A:9-514 [b.] (b):

18 (1) under the name of the assignor as grantor; and

19 (2) to the extent that the law of this State provides for indexing a
20 record of the assignment of a mortgage under the name of the
21 assignee, under the name of the assignee.

22 [f.] (f) Retrieval and association capability. The filing office shall
23 maintain a capability:

24 (1) to retrieve a record by the name of the debtor and by the file
25 number assigned to the initial financing statement to which the record
26 relates; and

27 (2) to associate and retrieve with one another an initial financing
28 statement and each filed record relating to the initial financing
29 statement.

30 [g.] (g) Removal of debtor's name. The filing office may not
31 remove a debtor's name from the index until one year after the
32 effectiveness of a financing statement naming the debtor lapses under
33 12A:9-515 with respect to all secured parties of record.

34 [h.] (h) Timeliness of filing office performance. The filing office
35 shall perform the acts required by subsections [a.] (a) through [e. of
36 this section] (e) at the time and in the manner prescribed by
37 filing-office rule, but not later than two business days after the filing
38 office receives the record in question.

39 [i.] (i) Inapplicability to real property related filing office.
40 Subsections [b. and h. of this section] (b) and (h) do not apply to a
41 filing office described in 12A:9-501 [a.] (a) (1).

42 (cf: N.J.S.12A:9-519)

43

44 84. N.J.S.12A:9-520 is amended to read as follows:

45 12A:9-520. Acceptance and Refusal to Accept Record.

1 [a.] (a) Mandatory refusal to accept record. A filing office shall
2 refuse to accept a record for filing for a reason set forth in 12A:9-516
3 [b.] (b) and may refuse to accept a record for filing only for a reason
4 set forth in 12A:9-516 [b.] (b).

5 [b.] (b) Communication concerning refusal. If a filing office
6 refuses to accept a record for filing, it shall communicate to the person
7 [who] that presented the record the fact of and reason for the refusal
8 and the date and time the record would have been filed had the filing
9 office accepted it. The communication [shall] must be made at the
10 time and in the manner prescribed by filing-office rule but, in the case
11 of a filing office described in 12A:9-501 (a) (2), in no event more than
12 two business days after the filing office receives the record.

13 [c.] (c) When filed financing statement effective. A filed financing
14 statement satisfying 12A:9-502 [a. and b.] (a) and (b) is effective,
15 even if the filing office is required to refuse to accept it for filing under
16 subsection [a. of this section] (a). However, 12A:9-338 applies to a
17 filed financing statement providing information described in 12A:9-516
18 [b.] (b) (5) which is incorrect at the time the financing statement is
19 filed.

20 [d.] (d) Separate application to multiple debtors. If a record
21 communicated to a filing office provides information that relates to
22 more than one debtor, this part applies as to each debtor separately.
23 (cf: N.J.S.12A:9-520)

24

25 85. N.J.S.12A:9-521 is amended to read as follows:

26 12A:9-521. Uniform Form of Written Financing Statement and
27 Amendment.

28 [a.] (a) Initial financing statement form. A filing office that
29 accepts written records may not refuse to accept a written initial
30 financing statement in the following form and format except for a
31 reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
------------	-------------	--------

1c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
------	-------	-------------	---------

1d. TAX ID #: SSN OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
			<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
------------	-------------	--------

2c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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2d. TAX ID #: SSN OR EIN

ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
			<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME	MIDDLE NAME	SUFFIX
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3c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable):

<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
--	--	--	---------------------------------------	-----------------------------------	---

6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) ALL Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

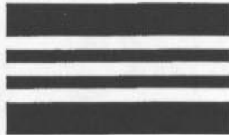
17. Check only if applicable and check only one box.
Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction -- effective 30 years
 Filed in connection with a Public-Finance Transaction -- effective 30 years

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1 **[b.]** (b) Amendment form. A filing office that accepts written
2 records may not refuse to accept a written record in the following
3 form and format except for a reason set forth in 12A:9-516 **[b.]** (b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # _____ 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME _____

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME _____

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE
--------------------------	----------------------------------	--------------------------	----------------------------------	---

8. AMENDMENT (COLLATERAL CHANGE); check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME _____

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 3 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 (cf: N.J.S.12A:9-521)

2

3 86. N.J.S.12A:9-522 is amended to read as follows:

4 12A:9-522. Maintenance and Destruction of Records.

5 [a.] (a) Post-lapse maintenance and retrieval of information.

6 The filing office shall maintain a record of the information provided
7 in a filed financing statement for at least one year after the
8 effectiveness of the financing statement has lapsed under 12A:9-515
9 with respect to all secured parties of record. The record shall be
10 retrievable by using the name of the debtor and [;

11 (1) if the record was filed in the filing office described in 12A:9-
12 501 a. (1),] by using the file number assigned to the initial financing
13 statement to which the record relates [and the date that record was
14 filed; or

15 (2) if the record was filed in the office described in 12A:9-501 a.
16 (2), by using the file number assigned to the initial financing
17 statement to which the record relates] .

18 [b.] (b) Destruction of written records. Except to the extent
19 that a statute governing disposition of public records provides
20 otherwise, the filing office immediately may destroy any written
21 record evidencing a financing statement. However, if the filing
22 office destroys a written record, it shall maintain another record of
23 the financing statement which complies with subsection [a. of this
24 section] (a).

25 (cf: N.J.S.12A:9-522)

26

27 87. N.J.S.12A:9-523 is amended to read as follows:

28 12A:9-523. Information from Filing Office; Sale or License of
29 Records.

30 [a.] (a) Acknowledgment of filing written record. If a person
31 [who] ~~that~~ files a written record requests an acknowledgment of the
32 filing, the filing office shall send to the person an image of the
33 record showing the number assigned to the record pursuant to
34 12A:9-519 [a.] (a) (1) and the date and time of the filing of the
35 record. However, if the person furnishes a copy of the record to the
36 filing office, the filing office may instead:

37 (1) note upon the copy the number assigned to the record
38 pursuant to 12A:9-519 [a.] (a) (1) and the date and time of the
39 filing of the record; and

40 (2) send the copy to the person.

41 [b.] (b) Acknowledgment of filing other record. If a person files
42 a record other than a written record, the filing office shall
43 communicate to the person an acknowledgment that provides:

44 (1) the information in the record;

45 (2) the number assigned to the record pursuant to 12A:9-519 [a.]

1 (a) (1); and

2 (3) the date and time of the filing of the record.

3 [c.] (c) Communication of requested information. The filing
4 office shall communicate or otherwise make available in a record the
5 following information to any person [who] that requests it:

6 (1) whether there is on file on a date and time specified by the
7 filing office, but not a date earlier than three business days before
8 the filing office receives the request, any financing statement that:

9 [(a)] (A) designates a particular debtor or, if the request so
10 states, designates a particular debtor at the address specified in the
11 request;

12 [(b)] (B) has not lapsed under 12A:9-515 with respect to all
13 secured parties of record; and

14 [(c)] (C) if the request so states, has lapsed under 12A:9-515
15 and a record of which is maintained by the filing office under
16 12A:9-522 [a.] (a);

17 (2) the date and time of filing of each financing statement; and

18 (3) the information provided in each financing statement.

19 [d.] (d) Medium for communicating information. In complying
20 with its duty under subsection [c. of this section] (c), the filing
21 office may communicate information in any medium. However, if
22 requested, the filing office shall communicate information by issuing
23 [its written certificate as] a record that can be admitted into
24 evidence in the courts of this State without extrinsic evidence of its
25 authenticity.

26 [e.] (e) Timeliness of filing office performance. The filing office
27 shall perform the acts required by subsections [a.] (a) through [d.
28 of this section] (d) at the time and in the manner prescribed by
29 filing-office rule, but not later than two business days after the filing
30 office receives the request.

31 [f.] (f) Public availability of records. At least weekly, the
32 Secretary of State shall offer to sell or license to the public on a
33 nonexclusive basis, in bulk, copies of all records filed in it under this
34 part, in every medium from time to time available to the filing office.
35 (cf: N.J.S.12A:9-523)

36

37 88. N.J.S.12A:9-524 is amended to read as follows:

38 12A:9-524. Delay by Filing Office.

39 Delay by the filing office beyond a time limit prescribed by this
40 part is excused if:

41 [a.] (1) the delay is caused by interruption of communication or
42 computer facilities, war, emergency conditions, failure of equipment,
43 or other circumstances beyond control of the filing office; and

44 [b.] (2) the filing office exercises reasonable diligence under the
45 circumstances.

1 (cf: N.J.S.12A:9-524)

2 89. N.J.S.12A:9-525 is amended to read as follows:

3 12A:9-525. Fees.

4 [a.] (a) Initial financing statement or other record: general rule.

5 [The] Except as otherwise provided in subsection (d), the fees for
6 filing and indexing records under this part are:

7 (1) \$25 for financing statement;

8 (2) \$25 for continuation statement;

9 (3) \$25 for amendment statement;

10 (4) \$25 for partial release;

11 (5) \$25 for assignment;

12 (6) \$25 termination statement; and

13 (7) \$1 for copy of any filed financing statement.

14 [b.] (b) Number of names. [The] Except as otherwise provided
15 in subsection (d), the number of names required to be indexed does
16 not affect the amount of the fee in subsection [a. of this section]
17 (a).

18 [c.] (c) Response to information request. The fee for
19 responding to a request for information from the filing office,
20 including for issuing a certificate of search showing whether there is
21 on file any financing statement naming a particular debtor, is \$25.

22 [d.] (d) Record of mortgage. This section does not require a fee
23 with respect to a record of mortgage which is effective as a
24 financing statement filed as a fixture filing or as a financing
25 statement covering as-extracted collateral or timber to be cut under
26 12A:9-502 [c.] (c). However, the recording and satisfaction fees
27 that otherwise would be applicable to the record of the mortgage
28 apply.

29 (cf: N.J.S.12A:9-525)

30

31 90. N.J.S.12A:9-526 is amended to read as follows:

32 12A:9-526. Filing-Office Rules.

33 [a.] (a) Adoption of filing-office rules. The Division of
34 Commercial Recording or other office designated by Executive
35 Order [may] shall adopt and publish rules to implement this chapter.

36 The filing-office rules [shall] must be:

37 (1) consistent with this chapter; and

38 (2) adopted and published in accordance with the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 [b.] (b) Harmonization of rules. To keep the filing-office rules
41 and practices of the filing office in harmony with the rules and
42 practices of filing offices in other jurisdictions that enact
43 substantially this part, and to keep the technology used by the filing
44 office compatible with the technology used by filing offices in other
45 jurisdictions that enact substantially this part, the Division of

1 Commercial Recording, so far as is consistent with the purposes,
2 policies, and provisions of this chapter, in adopting, amending, and
3 repealing filing-office rules, shall:

4 (1) consult with filing offices in other jurisdictions that enact
5 substantially this part; and

6 (2) consult the most recent version of the Model Rules
7 promulgated by the International Association of Corporate
8 Administrators or any successor organization; and

9 (3) take into consideration the rules and practices of, and the
10 technology used by, filing offices in other jurisdictions that enact
11 substantially this part.

12 (cf: N.J.S.12A:9-526)

13

14 91. N.J.S.12A:9-601 is amended to read as follows:

15 12A:9-601. Rights After Default; Judicial Enforcement;
16 Consignor or Buyer of Accounts, Chattel Paper, Payment
17 Intangibles, or Promissory Notes.

18 [a.] (a) Rights of secured party after default. After default, a
19 secured party has the rights provided in this part and, except as
20 otherwise provided in 12A:9-602, those provided by agreement of
21 the parties. A secured party:

22 (1) may reduce a claim to judgment, foreclose, or otherwise
23 enforce the claim, security interest, or agricultural lien by any
24 available judicial procedure; and

25 (2) if the collateral is documents, may proceed either as to the
26 documents or as to the goods they cover.

27 [b.] (b) Rights and duties of secured party in possession or
28 control. A secured party in possession of collateral or control of
29 collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107
30 has the rights and duties provided in [12A:9-208] 12A:9-207.

31 [c.] (c) Rights cumulative; simultaneous exercise. The rights
32 under subsections [a. and b. of this section] (a) and (b) are
33 cumulative and may be exercised simultaneously.

34 [d.] (d) Rights of debtor and obligor. Except as otherwise
35 provided in subsection [g. of this section] (g) and 12A:9-605, after
36 default, a debtor and an obligor have the rights provided in this part
37 and by agreement of the parties.

38 [e.] (e) Lien of levy after judgment. If a secured party has
39 reduced its claim to judgment, the lien of any levy that may be made
40 upon the collateral by virtue of an execution based upon the
41 judgment relates back to the earliest of:

42 (1) the date of perfection of the security interest or agricultural
43 lien in the collateral;

44 (2) the date of filing a financing statement covering the
45 collateral; or

46 (3) any date specified in a statute under which the agricultural

1 lien was created.

2 [f.] (f) Execution sale. A sale pursuant to an execution is a
3 foreclosure of the security interest or agricultural lien by judicial
4 procedure within the meaning of this section. A secured party may
5 purchase at the sale and thereafter hold the collateral free of any
6 other requirements of this chapter.

7 [g.] (g) Consignor or buyer of certain rights to payment.
8 Except as otherwise provided in 12A:9-607 [c.] (c), this part
9 imposes no duties upon a secured party that is a consignor or is a
10 buyer of accounts, chattel paper, payment intangibles, or promissory
11 notes.

12 (cf: N.J.S.12A:9-601)

13

14 92. N.J.S.12A:9-602 is amended to read as follows:

15 12A:9-602. Waiver and Variance of Rights and Duties.

16 Except as otherwise provided in 12A:9-624, to the extent that
17 they give rights to a debtor or obligor and impose duties on a
18 secured party, the debtor or obligor may not waive or vary the rules
19 stated in the following listed sections:

20 (1) [12A:9-208b.(4)(c)] 12A:9-207 (b) (4) (C), which deals with
21 use and operation of the collateral by the secured party;

22 (2) [12A:9-211] 12A:9-210, which deals with requests for an
23 accounting and requests concerning a list of collateral and statement
24 of account;

25 (3) 12A:9-607 [c.] (c), which deals with collection and
26 enforcement of collateral;

27 (4) 12A:9-608 [a.] (a), and 12A:9-615 [c.] (c) to the extent
28 that they deal with application or payment of noncash proceeds of
29 collection, enforcement, or disposition;

30 (5) 12A:9-608 [a.] (a) and 12A:9-615 [d.] (d) to the extent that
31 they require accounting for or payment of surplus proceeds of
32 collateral;

33 (6) 12A:9-609 to the extent that it imposes upon a secured party
34 that takes possession of collateral without judicial process the duty
35 to do so without breach of the peace;

36 (7) 12A:9-610 [b.] (b), 12A:9-611, 12A:9-613 and 12A:9-614,
37 which deal with disposition of collateral;

38 (8) 12A:9-615 [f.] (f), which deals with calculation of a
39 deficiency or surplus when a disposition is made to the secured
40 party, a person related to the secured party, or a secondary obligor;

41 (9) 12A:9-616, which deals with explanation of the calculation of
42 a surplus or deficiency;

43 (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with
44 acceptance of collateral in satisfaction of obligation;

45 (11) 12A:9-623, which deals with redemption of collateral;

1 (12) 12A:9-624, which deals with permissible waivers; and
2 (13) 12A:9-625 and 12A:9-626, which deal with the secured
3 party's liability for failure to comply with this chapter.
4 (cf: N.J.S.12A:9-602)

5
6 93. N.J.S.12A:9-603 is amended to read as follows:
7 12A:9-603. Agreement on Standards Concerning Rights and
8 Duties.

9 [a.] (a) Agreed standards. The parties may determine by
10 agreement the standards measuring the fulfillment of the rights of a
11 debtor or obligor and the duties of a secured party under a rule
12 stated in 12A:9-602 if the standards are not manifestly unreasonable.

13 [b.] (b) Agreed standards inapplicable to breach of peace.
14 Subsection [a. of this section] (a) does not apply to the duty under
15 12A:9-609 to refrain from breaching the peace.
16 (cf: N.J.S.12A:9-603)

17
18 94. N.J.S.12A:9-604 is amended to read as follows:
19 12A:9-604. Procedure If Security Agreement Covers Real
20 Property or Fixtures.

21 [a.] (a) Enforcement: personal and real property. If a security
22 agreement covers both personal and real property, a secured party
23 may proceed:

24 (1) under this part as to the personal property without
25 prejudicing any rights with respect to the real property; or

26 (2) as to both the personal property and the real property in
27 accordance with the rights with respect to the real property, in
28 which case the other provisions of this part do not apply.

29 [b.] (b) Enforcement: fixtures. Subject to subsection [c. of this
30 section] (c), if a security agreement covers goods that are or
31 become fixtures, a secured party may proceed:

32 (1) under this part; or

33 (2) in accordance with the rights with respect to real property, in
34 which case the other provisions of this part do not apply.

35 [c.] (c) Removal of fixtures. Subject to the other provisions of
36 this part, if a secured party holding a security interest in fixtures has
37 priority over all owners and encumbrancers of the real property, the
38 secured party, after default, may remove the collateral from the real
39 property.

40 [d.] (d) Injury caused by removal. A secured party that removes
41 collateral shall promptly reimburse any encumbrancer or owner of
42 the real property, other than the debtor, for the cost of repair of any
43 physical injury caused by the removal. The secured party need not
44 reimburse the encumbrancer or owner for any diminution in value of
45 the real property caused by the absence of the goods removed or by
46 any necessity of replacing them. A person entitled to reimbursement

1 may refuse permission to remove until the secured party gives
2 adequate assurance for the performance of the obligation to
3 reimburse.

4 (cf: N.J.S.12A:9-604)

5

6 95. N.J.S.12A:9-605 is amended to read as follows:

7 12A:9-605. Unknown Debtor or Secondary Obligor.

8 A secured party does not owe a duty based on its status as
9 secured party:

10 [a.] (1) to a person who is a debtor or obligor, unless the
11 secured party knows:

12 [(1)] (A) that the person is a debtor or obligor;

13 [(2)] (B) the identity of the person; and

14 [(3)] (C) how to communicate with the person; or

15 [b.] (2) to a secured party or lienholder that has filed a financing
16 statement against a person, unless the secured party knows:

17 [(1)] (A) that the person is a debtor; and

18 [(2)] (B) the identity of the person.

19 (cf: N.J.S.12A:9-605)

20

21 96. N.J.S.12A:9-607 is amended to read as follows:

22 12A:9-607. Collection and Enforcement by Secured Party.

23 [a.] (a) Collection and enforcement generally. If so agreed, and
24 in any event after default, a secured party:

25 (1) may notify an account debtor or other person obligated on
26 collateral to make payment or otherwise render performance to or
27 for the benefit of the secured party;

28 (2) may take any proceeds to which the secured party is entitled
29 under 12A:9-315;

30 (3) may enforce the obligations of an account debtor or other
31 person obligated on collateral and exercise the rights of the debtor
32 with respect to the obligation of the account debtor or other person
33 obligated on collateral to make payment or otherwise render
34 performance to the debtor, and with respect to any property that
35 secures the obligation of the account debtor or other person
36 obligated on the collateral;

37 (4) if it holds a security interest in a deposit account perfected by
38 control under 12A:9-104 [a.] (a) (1), may apply the balance of the
39 deposit account to the obligation secured by the deposit account;
40 and

41 (5) if it holds a security interest in a deposit account perfected by
42 control under 12A:9-104 [a.] (a) (2) or (3), may instruct the bank
43 to pay the balance of the deposit account to or for the benefit of the
44 secured party.

45 [b.] (b) Nonjudicial enforcement of mortgage. If necessary to

1 enable a secured party to exercise under subsection (a) (3) the right
2 of a debtor to enforce a mortgage nonjudicially [under paragraph
3 (3) of subsection a. of this section], the secured party may record in
4 the office in which a record of the mortgage is recorded:

5 (1) a copy of the security agreement that creates or provides for
6 a security interest in the obligation secured by the mortgage; and

7 (2) the secured party's sworn affidavit in recordable form stating
8 that:

9 [(a)] (A) a default has occurred; and

10 [(b)] (B) the secured party is entitled to enforce the mortgage
11 nonjudicially.

12 [(c)] (c) Commercially reasonable collection and enforcement. A
13 secured party shall proceed in a commercially reasonable manner if
14 the secured party:

15 (1) undertakes to collect from or enforce an obligation of an
16 account debtor or other person obligated on collateral; and

17 (2) is entitled to charge back uncollected collateral or otherwise
18 to full or limited recourse against the debtor or a secondary obligor.

19 [(d)] (d) Expenses of collection and enforcement. A secured
20 party may deduct from the collections made pursuant to subsection
21 [c. of this section] (c), reasonable expenses of collection and
22 enforcement, including reasonable attorney's fees and legal expenses
23 incurred by the secured party.

24 [(e)] (e) Duties to secured party not affected. This section does
25 not determine whether an account debtor, bank, or other person
26 obligated on collateral owes a duty to a secured party.

27 (cf: N.J.S.12A:9-607)

28
29 97. N.J.S.12A:9-608 is amended to read as follows:

30 12A:9-608. Application of Proceeds of Collection or
31 Enforcement; Liability for Deficiency and Right to Surplus.

32 [(a)] (a) Application of proceeds, surplus, and deficiency if
33 obligation secured. If a security interest or agricultural lien secures
34 payment or performance of an obligation, the following rules apply:

35 (1) A secured party shall apply or pay over for application the
36 cash proceeds of collection or enforcement under [this section]
37 12A:9-607 in the following order to:

38 [(a)] (A) the reasonable expenses of collection and enforcement
39 and, to the extent provided for by agreement and not prohibited by
40 law, reasonable attorney's fees and legal expenses incurred by the
41 secured party;

42 [(b)] (B) the satisfaction of obligations secured by the security
43 interest or agricultural lien under which the collection or
44 enforcement is made; and

45 [(c)] (C) the satisfaction of obligations secured by any

1 subordinate security interest in or other lien on the collateral subject
2 to the security interest or agricultural lien under which the collection
3 or enforcement is made if the secured party receives an
4 authenticated demand for proceeds before distribution of the
5 proceeds is completed.

6 (2) If requested by a secured party, a holder of a subordinate
7 security interest or other lien shall furnish reasonable proof of the
8 interest or lien within a reasonable time. Unless the holder complies,
9 the secured party need not comply with the holder's demand under
10 [subparagraph (c) of] paragraph (1) ~~(C)~~ [of this subsection].

11 (3) A secured party need not apply or pay over for application
12 noncash proceeds of collection and enforcement under [this section]
13 12A:9-607 unless the failure to do so would be commercially
14 unreasonable. A secured party that applies or pays over for
15 application noncash proceeds shall do so in a commercially
16 reasonable manner.

17 (4) A secured party shall account to and pay a debtor for any
18 surplus, and the obligor is liable for any deficiency.

19 [b.] (b) No surplus or deficiency in sales of certain rights to
20 payment. If the underlying transaction is a sale of accounts, chattel
21 paper, payment intangibles, or promissory notes, the debtor is not
22 entitled to any surplus, and the obligor is not liable for any
23 deficiency.

24 (cf: N.J.S.12A:9-608)

25

26 98. N.J.S.12A:9-609 is amended to read as follows:

27 12A:9-609. Secured Party's Right to Take Possession after
28 Default.

29 [a.] (a) Possession; rendering equipment unusable; disposition
30 on debtor's premises. After default, a secured party:

31 (1) may take possession of the collateral; and

32 (2) without removal, may render equipment unusable and dispose
33 of collateral on a debtor's premises under 12A:9-610.

34 [b.] (b) Judicial and nonjudicial process. A secured party may
35 proceed under subsection [a.] (a):

36 (1) pursuant to judicial process; or

37 (2) without judicial process, if it proceeds without breach of the
38 peace.

39 [c.] (c) Assembly of collateral. If so agreed, and in any event
40 after default, a secured party may require the debtor to assemble the
41 collateral and make it available to the secured party at a place to be
42 designated by the secured party which is reasonably convenient to
43 both parties.

44 (cf: N.J.S.12A:9-609)

45

46 99. N.J.S.12A:9-610 is amended to read as follows:

1 12A:9-610. Disposition of Collateral after Default.

2 [a.] (a) Disposition after default. After default, a secured party
3 may sell, lease, license, or otherwise dispose of any or all of the
4 collateral in its present condition or following any commercially
5 reasonable preparation or processing.

6 [b.] (b) Commercially reasonable disposition. Every aspect of a
7 disposition of collateral, including the method, manner, time, place,
8 and other terms, [shall] must be commercially reasonable. If
9 commercially reasonable, a secured party may dispose of collateral
10 by public or private proceedings, by one or more contracts, as a unit
11 or in parcels, and at any time and place and on any terms.

12 [c.] (c) Purchase by secured party. A secured party may
13 purchase collateral:

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that
16 is customarily sold on a recognized market or the subject of widely
17 distributed standard price quotations.

18 [d.] (d) Warranties on disposition. A contract for sale, lease,
19 license, or other disposition includes the warranties relating to title,
20 possession, quiet enjoyment, and the like which by operation of law
21 accompany a voluntary disposition of property of the kind subject to
22 the contract.

23 [e.] (e) Disclaimer of warranties. A secured party may disclaim
24 or modify warranties under subsection [d. of this section] (d):

25 (1) in a manner that would be effective to disclaim or modify the
26 warranties in a voluntary disposition of property of the kind subject
27 to the contract of disposition; or

28 (2) by communicating to the purchaser a record evidencing the
29 contract for disposition and including an express disclaimer or
30 modification of the warranties.

31 [f.] (f) Record sufficient to disclaim warranties. A record is
32 sufficient to disclaim warranties under subsection [e. of this section]
33 (e) if it indicates "There is no warranty relating to title, possession,
34 quiet enjoyment, or the like in this disposition" or uses words of
35 similar import.

36 (cf: N.J.S.12A:9-610)

37

38 100. N.J.S.12A:9-611 is amended to read as follows:

39 12A:9-611. Notification Before Disposition of Collateral.

40 [a.] (a) "Notification date." In this section, "notification date"
41 means the earlier of the date on which:

42 (1) a secured party sends to the debtor and any secondary
43 obligor an authenticated notification of disposition; or

44 (2) the debtor and any secondary obligor waive the right to
45 notification.

1 **[b.] (b)** Notification of disposition required. Except as
2 otherwise provided in subsection **[d. of this section] (d)**, a secured
3 party that disposes of collateral under 12A:9-610 shall send to the
4 persons specified in subsection **[c. of this section] (c)** a reasonable
5 authenticated notification of disposition.

6 **[c.] (c)** Persons to be notified. To comply with subsection **[b.**
7 **of this section] (b)**, the secured party shall send an authenticated
8 notification of disposition to:

- 9 (1) the debtor;
- 10 (2) any secondary obligor; and
- 11 (3) if the collateral is other than consumer goods:

12 **[(a)] (A)** any other person from which the secured party has
13 received, before the notification date, an authenticated notification
14 of a claim of an interest in the collateral;

15 **[(b)] (B)** any other secured party or lienholder that, 10 days
16 before the notification date, held a security interest in or other lien
17 on the collateral perfected by the filing of a financing statement that:

- 18 (i) identified the collateral;
- 19 (ii) was indexed under the debtor's name as of that date; and
- 20 (iii) was filed in the office in which to file a financing statement
21 against the debtor covering the collateral as of that date; and

22 **[(c)] (C)** any other secured party that, 10 days before the
23 notification date, held a security interest in the collateral perfected
24 by compliance with a statute, regulation, or treaty described in
25 12A:9-311 **[a.] (a)**.

26 **[d.] (d)** Subsection **[b.] (b)** inapplicable: perishable collateral;
27 recognized market. Subsection **[b. of this section] (b)** does not
28 apply if the collateral is perishable or threatens to decline speedily in
29 value or is of a type customarily sold on a recognized market.

30 **[e.] (e)** Compliance with subsection **[c. paragraph (3)**
31 **subparagraph (b)] (c) (3) (B)**. A secured party complies with the
32 requirement for notification prescribed by subsection **[c. paragraph**
33 **(3) subparagraph (b) of this section] (c) (3) (B)** if:

- 34 (1) not later than 20 days or earlier than 30 days before the
35 notification date, the secured party requests, in a commercially
36 reasonable manner, information concerning financing statements
37 indexed under the debtor's name in the office indicated in **[that]**
38 subsection **[c. paragraph (3) subparagraph (b)] (c) (3) (B)**; and

- 39 (2) before the notification date, the secured party:

40 **[(a)] (A)** did not receive a response to the request for
41 information; or

42 **[(b)] (B)** received a response to the request for information and
43 sent an authenticated notification of disposition to each secured
44 party or other lienholder named in that response whose financing
45 statement covered the collateral.

1 (cf: N.J.S.12A:9-611)

2

3 101. N.J.S.12A:9-612 is amended to read as follows:

4 12A:9-612. Timeliness of Notification Before Disposition of
5 Collateral.

6 [a.] (a) Reasonable time is question of fact. Except as otherwise
7 provided in subsection [b. of this section] (b), whether a
8 notification is sent within a reasonable time is a question of fact.

9 [b.] (b) 10-day period sufficient in non-consumer transaction.
10 In a transaction other than a consumer transaction, a notification of
11 disposition sent after default and 10 days or more before the earliest
12 time of disposition set forth in the notification is sent within a
13 reasonable time before the disposition.

14 (cf: N.J.S.12A:9-612)

15

16 102. N.J.S.12A:9-613 is amended to read as follows:

17 12A:9-613. Contents and Form of Notification Before
18 Disposition of Collateral: General.

19 Except in a consumer-goods transaction, the following rules
20 apply:

21 [a.] (1) The contents of a notification of disposition are
22 sufficient if the notification:

23 [(1)] (A) describes the debtor and the secured party;

24 [(2)] (B) describes the collateral that is the subject of the
25 intended disposition;

26 [(3)] (C) states the method of intended disposition;

27 [(4)] (D) states that the debtor is entitled to an accounting of
28 the unpaid indebtedness and states the charge, if any, for an
29 accounting; and

30 [(5)] (E) states the time and place of a public [sale] disposition
31 or the time after which any other disposition is to be made.

32 [b.] (2) Whether the contents of a notification that lacks any of
33 the information specified in [subsection a. of this section] paragraph
34 (1) are nevertheless sufficient is a question of fact.

35 [c.] (3) The contents of a notification providing substantially the
36 information specified in [subsection a.] paragraph (1) are sufficient,
37 even if the notification includes:

38 [(1)] (A) information not specified by that paragraph; or

39 [(2)] (B) minor errors that are not seriously misleading.

40 [d.] (4) A particular phrasing of the notification is not required.

41 [e.] (5) The following form of notification and the form
42 appearing in 12A:9-614 [c.] (3), when completed, each provides
43 sufficient information:

1 NOTIFICATION OF DISPOSITION OF COLLATERAL
2 To: (Name of debtor, obligor, or other person to which the
3 notification is sent)
4 From: (Name, address, and telephone number of secured party)
5 Name of Debtor(s): (Include only if debtor(s) are not an addressee)
6 (For a public disposition:)
7 We will sell or lease or license, as applicable the (describe collateral)
8 to the highest qualified bidder in public as follows:
9 Day and Date:
10 Time:
11 Place:
12 (For a private disposition:)
13 We will sell or lease or license, as applicable the (describe collateral)
14 privately sometime after (day and date).
15 You are entitled to an accounting of the unpaid indebtedness
16 secured by the property that we intend to sell (or lease or license, as
17 applicable) (for a charge of \$ _____). You may request
18 an accounting by calling us at (telephone number)
19 (End of Form)
20 (cf: N.J.S.12A:9-613)
21

22 103. N.J.S.12A:9-614 is amended to read as follows:
23 12A:9-614. Contents and Form of Notification Before
24 Disposition of Collateral: Consumer-goods Transaction.
25 In a consumer-goods transaction, the following rules apply:
26 [a.] (1) A notification of disposition [shall] must provide the
27 following information:
28 [(1)] (A) the information specified in 12A:9-613 [a.] (1);
29 [(2)] (B) a description of any liability for a deficiency of the
30 person to which the notification is sent;
31 [(3)] (C) a telephone number from which the amount that
32 [shall] must be paid to the secured party to redeem the collateral
33 under 12A:9-623 is available; and
34 [(4)] (D) a telephone number or mailing address from which
35 additional information concerning the disposition and the obligation
36 secured is available.
37 [b.] (2) A particular phrasing of the notification is not required.
38 [c.] (3) The following form of notification, when completed,
39 provides sufficient information:
40 (Name and address of secured party)
41 (Date)
42

43 NOTICE OF OUR PLAN TO SELL PROPERTY
44 (Name and address of any obligor who is also a debtor)
45 Subject: (Identification of Transaction)
46 We have your (describe collateral), because you broke promises in

1 our agreement.
2 (For a public disposition:)
3 We will sell (describe collateral) at public sale. A sale could include
4 a lease or license. The sale will be held as follows:
5 Date:
6 Time:
7 Place:
8 You may attend the sale and bring bidders if you want.
9 (For a private disposition:)
10 We will sell (describe collateral) at private sale sometime after
11 (date). A sale could include a lease or license.
12 The money that we get from the sale (after paying our costs) will
13 reduce the amount you owe. If we get less money than you owe,
14 you (will or will not, as applicable) still owe us the difference. If we
15 get more money than you owe, you will get the extra money, unless
16 we must pay it to someone else.
17 You can get the property back at any time before we sell it by
18 paying us the full amount you owe (not just the past due payments),
19 including our expenses. To learn the exact amount you must pay,
20 call us at (telephone number).
21 If you want us to explain to you in writing how we have figured the
22 amount that you owe us, you may call us at (telephone number) or
23 write us at (secured party's address) and request a written
24 explanation. We will charge you \$ for the explanation if
25 we sent you another written explanation of the amount you owe us
26 within the last six months.
27 If you need more information about the sale call us at (telephone
28 number) or write us at (secured party's address).
29 We are sending this notice to the following other people who have
30 an interest in (describe collateral) or who owe money under your
31 agreement:
32 (Names of all other debtors and obligors, if any.)
33 (End of Form)
34 [d.] (4) A notification in the form of [subsection c. of this
35 section] paragraph (3) is sufficient, even if additional information
36 appears at the end of the form.
37 [e.] (5) A notification in the form of [subsection c.] paragraph
38 (3) is sufficient, even if it includes errors in information not required
39 by [subsection a. of this section] paragraph (1), unless the error is
40 misleading with respect to rights arising under this chapter.
41 [f.] (6) If a notification under this section is not in the form of
42 [subsection c.] paragraph (3), law other than this chapter
43 determines the effect of including information not required by
44 [subsection a. of this section] paragraph (1).
45 (cf: N.J.S.12A:9-614)

1 104. N.J.S.12A:9-615 is amended to read as follows:
2 12A:9-615. Application of Proceeds of Disposition; Liability for
3 Deficiency and Right to Surplus.

4 [a.] (a) Application of proceeds. A secured party shall apply or
5 pay over for application the cash proceeds of disposition under
6 12A:9-610 in the following order:

7 (1) the reasonable expenses of retaking, holding, preparing for
8 disposition, processing, and disposing, and, to the extent provided
9 for by agreement and not prohibited by law, reasonable attorney's
10 fees and legal expenses incurred by the secured party;

11 (2) the satisfaction of obligations secured by the security interest
12 or agricultural lien under which the disposition is made;

13 (3) the satisfaction of obligations secured by any subordinate
14 security interest in or other subordinate lien on the collateral if:

15 [(a)] (A) the secured party receives from the holder of the
16 subordinate security interest or other lien an authenticated demand
17 for proceeds before distribution of the proceeds is completed; and

18 [(b)] (B) in a case in which a consignor has an interest in the
19 collateral, the subordinate security interest or other lien is senior to
20 the interest of the consignor; and

21 (4) a secured party that is a consignor of the collateral if the
22 secured party receives from the consignor an authenticated demand
23 for proceeds before distribution of the proceeds is completed.

24 [b.] (b) Proof of subordinate interest. If requested by a secured
25 party, a holder of a subordinate security interest or other lien shall
26 furnish reasonable proof of the interest or lien within a reasonable
27 time. Unless the holder does so, the secured party need not comply
28 with the holder's demand under [paragraph (3) of] subsection [a. of
29 this section] (a)(3).

30 [c.] (c) Application of noncash proceeds. A secured party need
31 not apply or pay over for application noncash proceeds of
32 disposition under [this section] 12A:9-610 unless the failure to do
33 so would be commercially unreasonable. A secured party that
34 applies or pays over for application noncash proceeds shall do so in
35 a commercially reasonable manner.

36 [d.] (d) Surplus or deficiency if obligation secured. If the
37 security interest under which a disposition is made secures payment
38 or performance of an obligation, after making the payments and
39 applications required by subsection [a.] (a) and permitted by
40 subsection [c. of this section] (c):

41 (1) unless [paragraph (4) of] subsection [a.] (a)(4) requires the
42 secured party to apply or pay over cash proceeds to a consignor, the
43 secured party shall account to and pay a debtor for any surplus; and

44 (2) the obligor is liable for any deficiency.

45 [e.] (e) No surplus or deficiency in sales of certain rights to

1 payment. If the underlying transaction is a sale of accounts, chattel
2 paper, payment intangibles, or promissory notes:

3 (1) the debtor is not entitled to any surplus; and

4 (2) the obligor is not liable for any deficiency.

5 **[f.] (f)** Calculation of surplus or deficiency in disposition to
6 person related to secured party. The surplus or deficiency following
7 a disposition is calculated based on the amount of proceeds that
8 would have been realized in a disposition complying with this part to
9 a transferee other than the secured party, a person related to the
10 secured party, or a secondary obligor if:

11 (1) the transferee in the disposition is the secured party, a person
12 related to the secured party, or a secondary obligor; and

13 (2) the amount of proceeds of the disposition is significantly
14 below the range of proceeds that a complying disposition to a person
15 other than the secured party, a person related to the secured party,
16 or a secondary obligor would have brought.

17 **[g.] (g)** Cash proceeds received by junior secured party. A
18 secured party that receives cash proceeds of a disposition in good
19 faith and without knowledge that the receipt violates the rights of
20 the holder of a security interest or other lien that is not subordinate
21 to the security interest or agricultural lien under which the
22 disposition is made:

23 (1) takes the cash proceeds free of the security interest or other
24 lien;

25 (2) is not obligated to apply the proceeds of the disposition to
26 the satisfaction of obligations secured by the security interest or
27 other lien; and

28 (3) is not obligated to account to or pay the holder of the
29 security interest or other lien for any surplus.

30 (cf: N.J.S.12A:9-615)

31

32 105. N.J.S.12A:9-616 is amended to read as follows:

33 12A:9-616. Explanation of Calculation of Surplus or Deficiency.

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

35 (1) "Explanation" means a writing that:

36 **[(a)] (A)** states the amount of the surplus or deficiency;

37 **[(b)] (B)** provides an explanation, in accordance with subsection
38 **[c. of this section] (c)** of how the secured party calculated the
39 surplus or deficiency;

40 **[(c)] (C)** states, if applicable, that future debits, credits, charges,
41 including additional credit service charges or interest, rebates, and
42 expenses may affect the amount of the surplus or deficiency; and

43 **[(d)] (D)** provides a telephone number or mailing address from
44 which additional information concerning the transaction is available.

45 (2) "Request" means a record:

- 1 [(a)] (A) authenticated by a debtor or consumer obligor;
- 2 [(b)] (B) requesting that the recipient provide an explanation;
- 3 and
- 4 [(c)] (C) sent after disposition of the collateral under
- 5 12A:9-610.
- 6 [b.] (b) Explanation of calculation. In a consumer-goods
- 7 transaction in which the debtor is entitled to a surplus or a consumer
- 8 obligor is liable for a deficiency under 12A:9-615, the secured party
- 9 shall:
- 10 (1) send an explanation to the debtor or consumer obligor, as
- 11 applicable, after the disposition and:
- 12 [(a)] (A) before or when the secured party accounts to the
- 13 debtor and pays any surplus or first makes written demand on the
- 14 consumer obligor after the disposition for payment of the deficiency;
- 15 and
- 16 [(b)] (B) within 14 days after receipt of a request; or
- 17 (2) in the case of a consumer obligor who is liable for a
- 18 deficiency, within 14 days after receipt of a request, send to the
- 19 consumer obligor a record waiving the secured party's right to a
- 20 deficiency.
- 21 [c.] (c) Required information. To comply with subsection [a.
- 22 paragraph (1) subparagraph (b)] (a) (1) (B), a writing [shall] must
- 23 provide the following information in the following order:
- 24 (1) the aggregate amount of obligations secured by the security
- 25 interest under which the disposition was made, and, if the amount
- 26 reflects a rebate of unearned interest or credit service charge, an
- 27 indication of that fact, calculated as of a specified date:
- 28 [(a)] (A) if the secured party takes or receives possession of the
- 29 collateral after default, not more than 35 days before the secured
- 30 party takes or receives possession; or
- 31 [(b)] (B) if the secured party takes or receives possession of the
- 32 collateral before default or does not take possession of the
- 33 collateral, not more than 35 days before the disposition;
- 34 (2) the amount of proceeds of the disposition;
- 35 (3) the aggregate amount of the obligations after deducting the
- 36 amount of proceeds;
- 37 (4) the amount, in the aggregate or by type, and types of
- 38 expenses, including expenses of retaking, holding, preparing for
- 39 disposition, processing, and disposing of the collateral, and
- 40 attorney's fees secured by the collateral which are known to the
- 41 secured party and relate to the current disposition;
- 42 (5) the amount, in the aggregate or by type, and types of credits,
- 43 including rebates of interest or credit service charges, to which the
- 44 obligor is known to be entitled and which are not reflected in the
- 45 amount in paragraph (1); and

1 (6) the amount of the surplus or deficiency.

2 [d.] (d) Substantial compliance. A particular phrasing of the
3 explanation is not required. An explanation complying substantially
4 with the requirements of subsection [a. of this section] (a) is
5 sufficient, even if it includes minor errors that are not seriously
6 misleading.

7 [e.] (e) Charges for responses. A debtor or consumer obligor is
8 entitled without charge to one response to a request under this
9 section during any six-month period in which the secured party did
10 not send to the debtor or consumer obligor an explanation pursuant
11 to [paragraph (1) of] subsection [b.] (b) (1). The secured party
12 may require payment of a charge not exceeding \$25 for each
13 additional response.

14 (cf: N.J.S.12A:9-616)

15

16 106. N.J.S.12A:9-617 is amended to read as follows:

17 12A:9-617. Rights of Transferee of Collateral.

18 [a.] (a) Effects of disposition. A secured party's disposition of
19 collateral after default:

20 (1) transfers to a transferee for value all of the debtor's rights in
21 the collateral;

22 (2) discharges the security interest under which the disposition is
23 made; and

24 (3) discharges any subordinate security interest or other
25 subordinate lien.

26 [b.] (b) Rights of good-faith transferee. A transferee that acts in
27 good faith takes free of the rights and interests described in
28 subsection [a. of this section] (a), even if the secured party fails to
29 comply with this chapter or the requirements of any judicial
30 proceeding.

31 [c.] (c) Rights of other transferee. If a transferee does not take
32 free of the rights and interests described in subsection [a. of this
33 section] (a), the transferee takes the collateral subject to:

34 (1) the debtor's rights in the collateral;

35 (2) the security interest or agricultural lien under which the
36 disposition is made; and

37 (3) any other security interest or other lien.

38 (cf: N.J.S.12A:9-617)

39

40 107. N.J.S.12A:9-618 is amended to read as follows:

41 12A:9-618. Rights and Duties of Certain Secondary Obligor.

42 [a.] (a) Rights and duties of secondary obligor. A secondary
43 obligor acquires the rights and becomes obligated to perform the
44 duties of the secured party after the secondary obligor:

45 (1) receives an assignment of a secured obligation from the

1 secured party;

2 (2) receives a transfer of collateral from the secured party and
3 agrees to accept the rights and assume the duties of the secured
4 party; or

5 (3) is subrogated to the rights of a secured party with respect to
6 collateral.

7 **[b.] (b)** Effect of assignment, transfer, or subrogation. An
8 assignment, transfer, or subrogation described in subsection **[a. of**
9 **this section] (a)**:

10 (1) is not a disposition of collateral under 12A:9-610; and

11 (2) relieves the secured party of further duties under this chapter.

12 (cf: N.J.S.12A:9-618)

13

14 108. N.J.S.12A:9-619 is amended to read as follows:

15 12A:9-619. Transfer of Record or Legal Title.

16 **[a.] (a)** "Transfer statement." In this section, "transfer
17 statement" means a record authenticated by a secured party stating:

18 (1) that the debtor has defaulted in connection with an obligation
19 secured by specified collateral;

20 (2) that the secured party has exercised its post-default remedies
21 with respect to the collateral;

22 (3) that, by reason of the exercise, a transferee has acquired the
23 rights of the debtor in the collateral; and

24 (4) the name and mailing address of the secured party, debtor,
25 and transferee.

26 **[b.] (b)** Effect of transfer statement. A transfer statement
27 entitles the transferee to the transfer of record of all rights of the
28 debtor in the collateral specified in the statement in any official
29 filing, recording, registration, or certificate-of-title system covering
30 the collateral. If a transfer statement is presented with the applicable
31 fee and request form to the official or office responsible for
32 maintaining the system, the official or office shall:

33 (1) accept the transfer statement;

34 (2) promptly amend its records to reflect the transfer; and

35 (3) if applicable, issue a new appropriate certificate of title in the
36 name of the transferee.

37 **[c.] (c)** Transfer not a disposition; no relief of secured party's
38 duties. A transfer of the record or legal title to collateral to a
39 secured party under subsection **[b. of this section] (b)** or otherwise
40 is not of itself a disposition of collateral under this chapter and does
41 not of itself relieve the secured party of its duties under this chapter.
42 (cf: N.J.S.12A:9-619)

43

44 109. N.J.S.12A:9-620 is amended to read as follows:

45 12A:9-620. Acceptance of Collateral in Full or Partial
46 Satisfaction of Obligation; Compulsory Disposition of Collateral.

1 **[a.] (a)** Conditions to acceptance in satisfaction. Except as
2 otherwise provided in subsection **[g. of this section] (g)**, a secured
3 party may accept collateral in full or partial satisfaction of the
4 obligation it secures only if:

5 (1) the debtor consents to the acceptance under subsection **[c. of**
6 **this section] (c)**;

7 (2) the secured party does not receive, within the time set forth
8 in subsection **[d. of this section] (d)**, a notification of objection to
9 the proposal authenticated by:

10 **[(a)] (A)** a person to which the secured party was required to
11 send a proposal under 12A:9-621; or

12 **[(b)] (B)** any other person, other than the debtor, holding an
13 interest in the collateral subordinate to the security interest that is
14 the subject of the proposal;

15 (3) if the collateral is consumer goods, the collateral is not in the
16 possession of the debtor when the debtor consents to the
17 acceptance; and

18 (4) subsection **[e. of this section] (e)** does not require the
19 secured party to dispose of the collateral or the debtor waives the
20 requirement pursuant to 12A:9-624.

21 **[b.] (b)** Purported acceptance ineffective. A purported or
22 apparent acceptance of collateral under this section is ineffective
23 unless:

24 (1) the secured party consents to the acceptance in an
25 authenticated record or sends a proposal to the debtor; and

26 (2) the conditions of subsection a. are met.

27 **[c.] (c)** Debtor's consent. For purposes of this section:

28 (1) a debtor consents to an acceptance of collateral in partial
29 satisfaction of the obligation it secures only if the debtor agrees to
30 the terms of the acceptance in a record authenticated after default;
31 and

32 (2) a debtor consents to an acceptance of collateral in full
33 satisfaction of the obligation it secures only if the debtor agrees to
34 the terms of the acceptance in a record authenticated after default or
35 the secured party:

36 **[(a)] (A)** sends to the debtor after default a proposal that is
37 unconditional or subject only to a condition that collateral not in the
38 possession of the secured party be preserved or maintained;

39 **[(b)] (B)** in the proposal, proposes to accept collateral in full
40 satisfaction of the obligation it secures; and

41 **[(c)] (C)** does not receive a notification of objection
42 authenticated by the debtor within 20 days after the proposal is sent.

43 **[d.] (d)** Effectiveness of notification. To be effective under
44 **[paragraph (2) of]** subsection **[a. of this section] (a) (2)**, a
45 notification of objection **[shall] must** be received by the secured

1 party:

2 (1) in the case of a person to which the proposal was sent
3 pursuant to 12A:9-621, within 20 days after notification was sent to
4 that person; and

5 (2) in other cases:

6 ~~[(a)] (A)~~ within 20 days after the last notification was sent
7 pursuant to 12A:9-621; or

8 ~~[(b)] (B)~~ if a notification was not sent, before the debtor
9 consents to the acceptance under subsection ~~[c. of this section] (c)~~.

10 ~~[e.] (e)~~ Mandatory disposition of consumer goods. A secured
11 party that has taken possession of collateral shall dispose of the
12 collateral pursuant to 12A:9-610 within the time specified in
13 subsection ~~[f. of this section] (f)~~ if:

14 (1) 60 percent of the cash price has been paid in the case of a
15 purchase-money security interest in consumer goods; or

16 (2) 60 percent of the principal amount of the obligation secured
17 has been paid in the case of a non-purchase-money security interest
18 in consumer goods.

19 ~~[f.] (f)~~ Compliance with mandatory disposition requirement. To
20 comply with subsection ~~[e. of this section] (e)~~, the secured party
21 shall dispose of the collateral:

22 (1) within 90 days after taking possession; or

23 (2) within any longer period to which the debtor and all
24 secondary obligors have agreed in an agreement to that effect
25 entered into and authenticated after default.

26 ~~[g.] (g)~~ No partial satisfaction in consumer transaction. In a
27 consumer transaction, a secured party may not accept collateral in
28 partial satisfaction of the obligation it secures.

29 (cf: N.J.S.12A:9-620)

30

31 110. N.J.S.12A:9-621 is amended to read as follows:

32 12A:9-621. Notification of Proposal to Accept Collateral.

33 ~~[a.] (a)~~ Persons to which proposal to be sent. A secured party
34 that desires to accept collateral in full or partial satisfaction of the
35 obligation it secures shall send its proposal to:

36 (1) any person from which the secured party has received, before
37 the debtor consented to the acceptance, an authenticated notification
38 of a claim of an interest in the collateral;

39 (2) any other secured party or lienholder that, 10 days before the
40 debtor consented to the acceptance, held a security interest in or
41 other lien on the collateral perfected by the filing of a financing
42 statement that:

43 ~~[(a)] (A)~~ identified the collateral;

44 ~~[(b)] (B)~~ was indexed under the debtor's name as of that date;
45 and

1 [(c)] (C) was filed in the office or offices in which to file a
2 financing statement against the debtor covering the collateral as of
3 that date; and

4 (3) any other secured party that, 10 days before the debtor
5 consented to the acceptance, held a security interest in the collateral
6 perfected by compliance with a statute, regulation, or treaty
7 described in 12A:9-311 [a.] (a).

8 [b.] (b) Proposal to be sent to secondary obligor in partial
9 satisfaction. A secured party that desires to accept collateral in
10 partial satisfaction of the obligation it secures shall send its proposal
11 to any secondary obligor in addition to the persons described in
12 subsection [a. of this section] (a).

13 (cf: N.J.S.12A:9-621)

14

15 111. N.J.S.12A:9-622 is amended to read as follows:

16 12A:9-622. Effect of Acceptance of Collateral.

17 [a.] (a) Effect of acceptance. A secured party's acceptance of
18 collateral in full or partial satisfaction of the obligation it secures:

19 (1) discharges the obligation to the extent consented to by the
20 debtor;

21 (2) transfers to the secured party all of a debtor's rights in the
22 collateral;

23 (3) discharges the security interest or agricultural lien that is the
24 subject of the debtor's consent and any subordinate security interest
25 or other subordinate lien; and

26 (4) terminates any other subordinate interest.

27 [b.] (b) Discharge of subordinate interest notwithstanding
28 noncompliance. A subordinate interest is discharged or terminated
29 under subsection [a. of this section] (a), even if the secured party
30 fails to comply with this chapter.

31 (cf: N.J.S.12A:9-622)

32

33 112. N.J.S.12A:9-623 is amended to read as follows:

34 12A:9-623. Right to Redeem Collateral.

35 [a.] (a) Persons that may redeem. A debtor, any secondary
36 obligor, or any other secured party or lienholder may redeem
37 collateral.

38 [b.] (b) Requirements for redemption. To redeem collateral, a
39 person shall tender:

40 (1) fulfillment of all obligations secured by the collateral; and

41 (2) the reasonable expenses and attorney's fees described in
42 12A:9-615 [a.] (a) (1).

43 [c.] (c) When redemption may occur. A redemption may occur
44 at any time before a secured party:

45 (1) has collected collateral under 12A:9-607;

1 (2) has disposed of collateral or entered into a contract for its
2 disposition under 12A:9-610; or

3 (3) has accepted collateral in full or partial satisfaction of the
4 obligation it secures under 12A:9-622.

5 (cf: N.J.S.12A:9-623)

6

7 113. N.J.S.12A:9-624 is amended to read as follows:

8 12A:9-624. Waiver.

9 [a.] (a) Waiver of disposition notification. A debtor or
10 secondary obligor may waive the right to notification of disposition
11 of collateral under 12A:9-611 only by an agreement to that effect
12 entered into and authenticated after default.

13 [b.] (b) Waiver of mandatory disposition. A debtor may waive
14 the right to require disposition of collateral under 12A:9-620 [e.]
15 (e) only by an agreement to that effect entered into and
16 authenticated after default.

17 [c.] (c) Waiver of redemption right. Except in a
18 consumer-goods transaction, a debtor or secondary obligor may
19 waive the right to redeem collateral under 12A:9-623 only by an
20 agreement to that effect entered into and authenticated after default.

21 (cf: N.J.S.12A:9-624)

22

23 114. N.J.S.12A:9-625 is amended to read as follows:

24 12A:9-625. Remedies for Secured Party's Failure to Comply with
25 Chapter.

26 [a.] (a) Judicial orders concerning noncompliance. If it is
27 established that a secured party is not proceeding in accordance with
28 this chapter, a court may order or restrain collection, enforcement,
29 or disposition of collateral on appropriate terms and conditions.

30 [b.] (b) Damages for noncompliance. Subject to subsections
31 [c., d. and f. of this section] (c), (d) and (f), a person is liable for
32 damages in the amount of any loss caused by a failure to comply
33 with this chapter. Loss caused by a failure to comply [with a request
34 under 12A:9-211] may include loss resulting from the debtor's
35 inability to obtain, or increased costs of, alternative financing.

36 [c.] (c) Persons entitled to recover damages; statutory damages
37 in consumer-goods transaction. Except as otherwise provided in
38 12A:9-628:

39 (1) a person [who] that, at the time of the failure, was a debtor,
40 was an obligor, or held a security interest in or other lien on the
41 collateral may recover damages under subsection [b. of this section]
42 (b) for its loss; and

43 (2) if the collateral is consumer goods, a person [who] that was
44 a debtor or a secondary obligor at the time a secured party failed to
45 comply with this part may recover for that failure in any event an

1 amount not less than the credit service charge plus 10 percent of the
2 principal amount of the obligation or the time-price differential plus
3 10 percent of the cash price.

4 **[d.] (d)** Recovery when deficiency eliminated or reduced. A
5 debtor whose deficiency is eliminated under 12A:9-626 may recover
6 damages for the loss of any surplus. However, a debtor or
7 secondary obligor whose deficiency is eliminated or reduced under
8 12A:9-626 may not otherwise recover under subsection **[b. of this**
9 **section] (b)** for noncompliance with the provisions of this part
10 relating to collection, enforcement, disposition, or acceptance.

11 **[e.] (e)** Statutory damages: noncompliance with specified
12 provisions. In addition to any damages recoverable under
13 subsection **[b. of this section] (b)**, the debtor, consumer obligor, or
14 person named as a debtor in a filed record, as applicable, may
15 recover \$500 in each case from a person **[who] that**:

16 (1) fails to comply with **[12A:9-208] 12A:9-207**;

17 (2) fails to comply with **[12A:9-209] 12A:9-208**;

18 (3) **[fails to comply with 12A:9-210**;

19 (4) **[files a record that the person is not entitled to file under**
20 **12A:9-509 [a.] (a)**;

21 **[(5)] (4)** fails to cause the secured party of record to file or send
22 a termination statement as required by 12A:9-513 **[a. or c.] (a) or**
23 **(c)**;

24 **[(6)] (5)** fails to comply with 12A:9-616 **[b.] (b)** (1) and whose
25 failure is part of a pattern, or consistent with a practice, of
26 noncompliance; or

27 **[(7)] (6)** fails to comply with 12A:9-616**[b.] (b)** (2).

28 **[f.] (f)** Statutory damages: noncompliance with **[12A:9-211]**
29 **12A:9-210**. A debtor or consumer obligor may recover damages
30 under subsection **[b. of this section] (b)** and, in addition, \$500 in
31 each case from a person **[who] that**, without reasonable cause, fails
32 to comply with a request under **[12A:9-211] 12A:9-210**. A
33 recipient of a request under **[12A:9-211] 12A:9-210** which never
34 claimed an interest in the collateral or obligations that are the subject
35 of a request under that section has a reasonable excuse for failure to
36 comply with the request within the meaning of this subsection.

37 **[g.] (g)** Limitation of security interest: noncompliance with
38 **[12A:9-211] 12A:9-210**. If a secured party fails to comply with a
39 request regarding a list of collateral or a statement of account under
40 **[12A:9-211] 12A:9-210**, the secured party may claim a security
41 interest only as shown in the list or statement included in the request
42 as against a person **[who] that** is reasonably misled by the failure.

43 (cf: N.J.S.12A:9-625)

1 115. N.J.S.12A:9-626 is amended to read as follows:

2 12A:9-626. Action in Which Deficiency or Surplus Is in Issue.

3 **[a.]** (a) Applicable rules if amount of deficiency or surplus in
4 issue. In an action arising from a transaction in which the amount of
5 a deficiency or surplus is in issue, the following rules apply:

6 (1) A secured party need not prove compliance with the
7 provisions of this part relating to collection, enforcement,
8 disposition, or acceptance unless the debtor or a secondary obligor
9 places the secured party's compliance in issue.

10 (2) If the secured party's compliance is placed in issue, the
11 secured party has the burden of establishing that the collection,
12 enforcement, disposition, or acceptance was conducted in
13 accordance with this part.

14 (3) Except as otherwise provided in 12A:9-628, if a secured
15 party fails to prove that the collection, enforcement, disposition, or
16 acceptance was conducted in accordance with the provisions of this
17 part relating to collection, enforcement, disposition, or acceptance,
18 the liability of a debtor or a secondary obligor for a deficiency is
19 limited to an amount by which the sum of the secured obligation,
20 expenses, and attorney's fees exceeds the greater of:

21 **[(a)]** (A) the proceeds of the collection, enforcement,
22 disposition, or acceptance; or

23 **[(b)]** (B) the amount of proceeds that would have been realized
24 had the noncomplying secured party proceeded in accordance with
25 the provisions of this part relating to collection, enforcement,
26 disposition, or acceptance.

27 (4) For purposes of **[subparagraph (b) of]** paragraph (3) **[of this**
28 **section]** (B), the amount of proceeds that would have been realized
29 is equal to the sum of the secured obligation, expenses, and
30 attorney's fees unless the secured party proves that the amount is
31 less than that sum.

32 (5) If a deficiency or surplus is calculated under 12A:9-615 **[f.]**
33 (f), the debtor or obligor has the burden of establishing that the
34 amount of proceeds of the disposition is significantly below the
35 range of prices that a complying disposition to a person other than
36 the secured party, a person related to the secured party, or a
37 secondary obligor would have brought.

38 (cf: N.J.S.12A:9-626)

39

40 116. N.J.S.12A:9-627 is amended to read as follows:

41 12A:9-627. Determination of Whether Conduct Was
42 Commercially Reasonable.

43 **[a.]** (a) Greater amount obtainable under other circumstances;
44 no preclusion of commercial reasonableness. The fact that a greater
45 amount could have been obtained by a collection, enforcement,
46 disposition, or acceptance at a different time or in a different method

1 from that selected by the secured party is not of itself sufficient to
2 preclude the secured party from establishing that the collection,
3 enforcement, disposition, or acceptance was made in a commercially
4 reasonable manner.

5 **[b.] (b)** Dispositions that are commercially reasonable. A
6 disposition of collateral is made in a commercially reasonable
7 manner if the disposition is made:

- 8 (1) in the usual manner on any recognized market;
- 9 (2) at the price current in any recognized market at the time of
10 the disposition; or
- 11 (3) otherwise in conformity with reasonable commercial practices
12 among dealers in the type of property that was the subject of the
13 disposition.

14 **[c.] (c)** Approval by court or on behalf of creditors. A
15 collection, enforcement, disposition, or acceptance is commercially
16 reasonable if it has been approved:

- 17 (1) in a judicial proceeding;
- 18 (2) by a bona fide creditors' committee;
- 19 (3) by a representative of creditors; or
- 20 (4) by an assignee for the benefit of creditors.

21 **[d.] (d)** Approval under subsection **[c.] (c)** not necessary;
22 absence of approval has no effect. Approval under subsection **[c. of**
23 **this section] (c)** need not be obtained, and lack of approval does not
24 mean that the collection, enforcement, disposition, or acceptance is
25 not commercially reasonable.

26 (cf: N.J.S.12A:9-627)

27

28 117. N.J.S.12A:9-628 is amended to read as follows:

29 12A:9-628. Nonliability and Limitation on Liability of Secured
30 Party; Liability of Secondary Obligor.

31 **[a.] (a)** Limitation of liability of secured party for
32 noncompliance with chapter. Unless a secured party knows that a
33 person is a debtor or obligor, knows the identity of the person, and
34 knows how to communicate with the person:

- 35 (1) the secured party is not liable to the person, or to a secured
36 party or lienholder that has filed a financing statement against the
37 person, for failure to comply with this chapter; and
- 38 (2) the secured party's failure to comply with this chapter does
39 not affect the liability of the person for a deficiency.

40 **[b.] (b)** Limitation of liability based on status as secured party.
41 A secured party is not liable because of its status as secured party:

- 42 (1) to a person who is a debtor or obligor, unless the secured
43 party knows:

44 **[(a)] (A)** that the person is a debtor or obligor;

45 **[(b)] (B)** the identity of the person; and

1 [(c)] (C) how to communicate with the person; or
2 (2) to a secured party or lienholder that has filed a financing
3 statement against a person, unless the secured party knows:

4 [(a)] (A) that the person is a debtor; and

5 [(b)] (B) the identity of the person.

6 [(c.)] (c) Limitation of liability if reasonable belief that transaction
7 not a consumer-goods transaction or consumer transaction. A
8 secured party is not liable to any person, and a person's liability for a
9 deficiency is not affected, because of any act or omission arising out
10 of the secured party's reasonable belief that a transaction is not a
11 consumer-goods transaction or a consumer transaction or that goods
12 are not consumer goods, if the secured party's belief is based on its
13 reasonable reliance on:

14 (1) a debtor's representation concerning the purpose for which
15 collateral was to be used, acquired, or held; or

16 (2) an obligor's representation concerning the purpose for which
17 a secured obligation was incurred.

18 [(d.)] (d) Limitation of liability for statutory damages. A secured
19 party is not liable to any person under 12A:9-625 [(c.)] (c) (2) for its
20 failure to comply with 12A:9-616.

21 [(e.)] (e) Limitation of multiple liability for statutory damages. A
22 secured party is not liable under 12A:9-625 [(c.)] (c) (2) more than
23 once with respect to any one secured obligation.

24 (cf: N.J.S.12A:9-628)

25

26 118. N.J.S.12A:9-701 is amended to read as follows:

27 12A:9-701. Effective Date.

28 This chapter shall take effect on July 1, 2001. References in this
29 part to "this chapter" are to Chapter 9 of the Uniform Commercial
30 Code as enacted by P.L.2001, c.117 and P.L. , c. (pending before
31 the Legislature as this bill). References in this part to "former
32 Chapter 9" are to Chapter 9 of the Uniform Commercial Code
33 (12A:9-101 et seq.) as in effect before July 1, 2001.

34 (cf: N.J.S.12A:9-701)

35

36 119. N.J.S.12A:9-702 is amended to read as follows:

37 12A:9-702. Savings Clause.

38 [(a.)] (a) Pre-effective-date transactions or liens. Except as
39 otherwise provided in this part, this chapter applies to a transaction
40 or lien within its scope, even if the transaction or lien was entered
41 into or created before this chapter takes effect.

42 [(b.)] (b) Continuing validity. Except as otherwise provided in
43 subsection [(c. of this section)] (c) and 12A:9-703 through
44 [12A:9-708] 12A:9-709:

45 (1) transactions and liens that were not governed by former

1 Chapter 9, were validly entered into or created before this chapter
2 takes effect, and would be subject to this chapter if they had been
3 entered into or created after this chapter takes effect, and the rights,
4 duties, and interests flowing from those transactions and liens remain
5 valid after this chapter takes effect; and

6 (2) the transactions and liens may be terminated, completed,
7 consummated, and enforced as required or permitted by this chapter
8 or by the law that otherwise would apply if this chapter had not
9 taken effect.

10 [c.] (c) Pre-effective-date proceedings. This chapter does not
11 affect an action, case, or proceeding commenced before this chapter
12 takes effect.

13 (cf: N.J.S.12A:9-702)

14

15 120. N.J.S.12A:9-703 is amended to read as follows:

16 12A:9-703. Security Interest Perfected Before Effective Date.

17 [a.] (a) Continuing priority over lien creditor: perfection
18 requirements satisfied. A security interest that is enforceable
19 immediately before this chapter takes effect and would have priority
20 over the rights of a person [who] that becomes a lien creditor at
21 that time is a perfected security interest under this chapter if, when
22 this chapter takes effect, the applicable requirements for
23 enforceability and perfection under this chapter are satisfied without
24 further action.

25 [b.] (b) Continuing priority over lien creditor: perfection
26 requirements not satisfied. Except as otherwise provided in
27 12A:9-705, if, immediately before this chapter takes effect, a
28 security interest is enforceable and would have priority over the
29 rights of a person [who] that becomes a lien creditor at that time,
30 but the applicable requirements for enforceability or perfection under
31 this chapter are not satisfied when this chapter takes effect, the
32 security interest:

33 (1) is a perfected security interest for one year after this chapter
34 takes effect;

35 (2) remains enforceable thereafter only if the security interest
36 becomes enforceable under 12A:9-203 before the year expires; and

37 (3) remains perfected thereafter only if the applicable
38 requirements for perfection under this chapter are satisfied before
39 the year expires.

40 (cf: N.J.S.12A:9-703)

41

42 121. N.J.S.12A:9-704 is amended to read as follows:

43 12A:9-704. Security Interest Unperfected Before Effective Date.

44 A security interest that is enforceable immediately before this
45 chapter takes effect but which would be subordinate to the rights of
46 a person [who] that becomes a lien creditor at that time:

1 [a.] (1) remains an enforceable security interest for one year
2 after this chapter takes effect;

3 [b.] (2) remains enforceable thereafter if the security interest
4 becomes enforceable under 12A:9-203 when this chapter takes effect
5 or within one year thereafter; and

6 [c.] (3) becomes perfected:

7 [(1)] (A) without further action, when this chapter takes effect if
8 the applicable requirements for perfection under this chapter are
9 satisfied before or at that time; or

10 [(2)] (B) when the applicable requirements for perfection are
11 satisfied if the requirements are satisfied after that time.

12 (cf: N.J.S.12A:9-704)

13

14 122. N.J.S.12A:9-705 is amended to read as follows:

15 12A:9-705. Effectiveness of Action Taken Before Effective
16 Date.

17 [a.] (a) Pre-effective-date action; one-year perfection period
18 unless reperfected. If action, other than the filing of a financing
19 statement, is taken before this chapter takes effect and the action
20 would have resulted in priority of a security interest over the rights
21 of a person [who] that becomes a lien creditor had the security
22 interest become enforceable before this chapter takes effect, the
23 action is effective to perfect a security interest that attaches under
24 this chapter within one year after this chapter takes effect. An
25 attached security interest becomes unperfected one year after this
26 chapter takes effect unless the security interest becomes a perfected
27 security interest under this chapter before the expiration of that
28 period.

29 [b.] (b) Pre-effective-date filing. The filing of a financing
30 statement before this chapter takes effect is effective to perfect a
31 security interest to the extent the filing would satisfy the applicable
32 requirements for perfection under this chapter.

33 [c.] (c) Pre-effective-date filing in jurisdiction formerly
34 governing perfection. This chapter does not render ineffective an
35 effective financing statement that, before this chapter takes effect, is
36 filed and satisfies the applicable requirements for perfection under
37 the law of the jurisdiction governing perfection as provided in
38 former 12A:9-103. However, except as otherwise provided in
39 subsections [d. and e. of this section] (d) and (e) and 12A:9-706,
40 the financing statement ceases to be effective at the earlier of:

41 (1) the time the financing statement would have ceased to be
42 effective under the law of the jurisdiction in which it is filed; or

43 (2) June 30, 2006.

44 [d.] (d) Continuation statement. The filing of a continuation
45 statement after this chapter takes effect does not continue the

1 effectiveness of the financing statement filed before this chapter
2 takes effect. However, upon the timely filing of a continuation
3 statement after this chapter takes effect and in accordance with the
4 law of the jurisdiction governing perfection as provided in Part 3,
5 the effectiveness of a financing statement filed in the same office in
6 that jurisdiction before this chapter takes effect continues for the
7 period provided by the law of that jurisdiction.

8 [e.] (e) Application of [of] subsection [c. paragraph] (c) (2) to
9 transmitting utility financing statement. Subsection [c. paragraph]
10 (c) (2) of this section applies to a financing statement that, before
11 this chapter takes effect, is filed against a transmitting utility and
12 satisfies the applicable requirements for perfection under the law of
13 the jurisdiction governing perfection as provided in former
14 12A:9-103 only to the extent that Part 3 provides that the law of a
15 jurisdiction other than the jurisdiction in which the financing
16 statement is filed governs perfection of a security interest in
17 collateral covered by the financing statement.

18 [f.] (f) Application of Part 5. A financing statement that
19 includes a financing statement filed before this chapter takes effect
20 and a continuation statement filed after this chapter takes effect is
21 effective only to the extent that it satisfies the requirements of Part 5
22 for an initial financing statement.

23 (cf: N.J.S.12A:9-705)

24

25 123. N.J.S.12A:9-706 is amended to read as follows:

26 12A:9-706. When Initial Financing Statement Suffices to
27 Continue Effectiveness of Financing Statement.

28 [a.] (a) Initial financing statement in lieu of continuation
29 statement. The filing of an initial financing statement in the office
30 specified in 12A:9-501 continues the effectiveness of a financing
31 statement filed before this chapter takes effect if:

32 (1) the filing of an initial financing statement in that office would
33 be effective to perfect a security interest under this chapter;

34 (2) the pre-effective-date financing statement was filed in an
35 office in another state or another office in this State; and

36 (3) the initial financing statement satisfies subsection [c. of this
37 section] (c).

38 [b.] (b) Period of continued effectiveness. The filing of an initial
39 financing statement under subsection [a. of this section] (a)
40 continues the effectiveness of the pre-effective-date financing
41 statement:

42 (1) if the initial financing statement is filed before this chapter
43 takes effect, for the period provided in former 12A:9-403 with
44 respect to a financing statement; and

45 (2) if the initial financing statement is filed after this chapter
46 takes effect, for the period provided in 12A:9-515 with respect to an

1 initial financing statement.

2 **[c.] (c)** Requirements for initial financing statement under
3 subsection **[a.] (a)**. To be effective for purposes of subsection **[a.**
4 **of this section] (a)**, an initial financing statement shall:

5 (1) satisfy the requirements of Part 5 for an initial financing
6 statement;

7 (2) identify the pre-effective-date financing statement by
8 indicating the office in which the financing statement was filed and
9 providing the dates of filing and file numbers, if any, of the financing
10 statement and of the most recent continuation statement filed with
11 respect to the financing statement; and

12 (3) indicate that the pre-effective-date financing statement
13 remains effective.

14 (cf: N.J.S.12A:9-706)

15

16 124. N.J.S.12A:9-707 is amended to read as follows:

17 **[12A:9-707.] 12A:9-708.** Persons Entitled to File Initial
18 Financing Statement or Continuation Statement.

19 A person may file an initial financing statement or a continuation
20 statement under this part if:

21 **[a.] (1)** the secured party of record authorizes the filing; and

22 **[b.] (2)** the filing is necessary under this part:

23 **[(1)] (A)** to continue the effectiveness of a financing statement
24 filed before this chapter takes effect; or

25 **[(2)] (B)** to perfect or continue the perfection of a security
26 interest.

27 (cf: N.J.S.12A:9-707)

28

29 125. (New section) Title 12A, chapter 9 is supplemented as
30 follows:

31 12A:9-707. Amendment of pre-effective-date financing
32 statement.

33 (a) "Pre-effective-date financing statement". In this section, "pre-
34 effective-date financing statement" means a financing statement filed
35 before this chapter takes effect.

36 (b) Applicable law. After this chapter takes effect, a person may
37 add or delete collateral covered by, continue or terminate the
38 effectiveness of, or otherwise amend the information provided in, a
39 pre-effective-date financing statement only in accordance with the
40 law of the jurisdiction governing perfection as provided in Part 3.
41 However, the effectiveness of a pre-effective-date financing
42 statement also may be terminated in accordance with the law of the
43 jurisdiction in which the financing statement is filed.

44 (c) Method of amending: general rule. Except as otherwise
45 provided in subsection (d), if the law of this State governs perfection
46 of a security interest, the information in a pre-effective-date

1 financing statement may be amended after this chapter takes effect
2 only if:

3 (1) the pre-effective-date financing statement and an amendment
4 are filed in the office specified in 12A:9-501;

5 (2) an amendment is filed in the office specified in 12A:9-501
6 concurrently with, or after the filing in that office of, an initial
7 financing statement that satisfies 12A:9-706(c); or

8 (3) an initial financing statement that provides the information as
9 amended and satisfies 12A:9-706(c) is filed in the office specified in
10 12A:9-501.

11 (d) Method of amending: continuation. If the law of this State
12 governs perfection of a security interest, the effectiveness of a pre-
13 effective-date financing statement may be continued only under
14 12A:9-705(d) and (f) or 12A:9-706.

15 (e) Method of amending: additional termination rule. Whether or
16 not the law of this State governs perfection of a security interest, the
17 effectiveness of a pre-effective-date financing statement filed in this
18 State may be terminated after this chapter takes effect by filing a
19 termination statement in the office in which the pre-effective-date
20 financing statement is filed, unless an initial financing statement that
21 satisfies 12A:9-706(c) has been filed in the office specified by the law
22 of the jurisdiction governing perfection as provided in Part 3 as the
23 office in which to file a financing statement. The preceding sentence
24 applies only to the office described in 12A:9-501(a)(2).

25

26 126. N.J.S.12A:9-708 is amended to read as follows:

27 [~~12A:9-708.~~] 12A:9-709 Priority.

28 [a.] (a) Law governing priority. This chapter determines the
29 priority of conflicting claims to collateral. However, if the relative
30 priorities of the claims were established before this chapter takes
31 effect, former Chapter 9 determines priority.

32 [b.] (b) Priority if security interest becomes enforceable under
33 12A:9-203. For purposes of 12A:9-322 [a.] (a), the priority of a
34 security interest that becomes enforceable under 12A:9-203 of this
35 chapter dates from the time this chapter takes effect if the security
36 interest is perfected under this chapter by the filing of a financing
37 statement before this chapter takes effect which would not have
38 been effective to perfect the security interest under former Chapter
39 9. This subsection does not apply to conflicting security interests
40 each of which is perfected by the filing of such a financing
41 statement.

42 (cf: N.J.S.12A:9-708)

43

44 127. (New section) Title 12A, chapter 9 is supplemented as
45 follows:

46 12A:9-710. Retroactivity Provision.

1 This act, P.L. , c. , amends and supplements P.L.2001, c.117
2 and shall take effect immediately and shall be applied retroactively to
3 July 1, 2001.

4 If, on or after July 1, 2001 and prior to the effective date of this
5 act, action required for the attachment, perfection or priority of a
6 security interest under Post-Amendment Chapter 9 was taken, but
7 was not heretofore effective, such action shall be effective when
8 taken.

9 If, on or after July 1, 2001 and prior to the effective date of this
10 act, action required for the attachment, perfection or priority of a
11 security interest under Pre-Amendment Chapter 9 was taken and
12 was heretofore effective, but is not effective under Post-Amendment
13 Chapter 9, such action shall be deemed effective when taken if,
14 within 60 days after the effective date of this act, any other action
15 required under Post-Amendment Chapter 9 for such attachment,
16 perfection or priority is taken, except to the extent that, after the
17 effective date of this act and before the time such other required
18 action is taken, a purchaser has given value in reasonable reliance
19 upon such other required action not having been taken.

20 As used in this section, "Pre-Amendment Chapter 9" means
21 Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117
22 (12A:9-101 through 12A:9-708) as constituted before giving effect
23 to this act, and "Post-Amendment Chapter 9" means Chapter 9 of
24 Title 12A of the New Jersey Statutes (12A:9-101 through
25 12A:9-709) as amended and supplemented by this act.

26

27 128. (New section) Title 12A, chapter 1 is supplemented as
28 follows:

29 12A:1-109. Section Captions.

30 Section captions are part of the Uniform Commercial Code. The
31 subsection headings in Chapter 9 on Secured Transactions (12A:9-
32 101 et seq.) are not part of that chapter or of the Uniform
33 Commercial Code.

34

35 129. N.J.S.12A:1-201 is amended to read as follows:

36 12A:1-201. General definitions.

37 Subject to additional definitions contained in the subsequent
38 chapters of [this act] the Uniform Commercial Code which are
39 applicable to specific chapters or subchapters thereof, and unless the
40 context otherwise requires, in [this act] the Uniform Commercial
41 Code:

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

45 (2) "Aggrieved party" means a party entitled to resort to a
46 remedy.

1 (3) "Agreement" means the bargain of the parties in fact as found
2 in their language or by implication from other circumstances
3 including course of dealing or usage of trade or course of
4 performance as provided in [this act] the Uniform Commercial
5 Code (12A:1-205 [and], 2-208 and 2A-207). Whether an
6 agreement has legal consequences is determined by the provisions in
7 [this act] the Uniform Commercial Code, if applicable; otherwise by
8 the law of contracts (12A:1-103). (Compare "Contract.")

9 (4) "Bank" means any person engaged in the business of banking.

10 (5) "Bearer" means the person in possession of an instrument,
11 document of title, or certificated security payable to bearer or
12 indorsed in blank.

13 (6) "Bill of lading" means a document evidencing the receipt of
14 goods for shipment issued by a person engaged in the business of
15 transporting or forwarding goods, and includes an airbill.

16 "Airbill" means a document serving for air transportation as a bill
17 of lading does for marine or rail transportation, and includes an air
18 consignment note or air waybill.

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

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

24 (9) "Buyer in ordinary course of business" means a person who
25 buys goods in good faith, without knowledge that the sale violates
26 the rights of another person in the goods, and in ordinary course
27 from a person, other than a pawnbroker, in the business of selling
28 goods of that kind. A person buys goods in ordinary course if the
29 sale to the person comports with the usual or customary practices in
30 the kind of business in which the seller is engaged or with the seller's
31 own usual or customary practices. A person who sells oil, gas or
32 other minerals at the wellhead or minehead is a person in the
33 business of selling goods of that kind. A buyer in ordinary course of
34 business may buy for cash, by exchange of other property or on
35 secured or unsecured credit, and may acquire goods or documents of
36 title under a pre-existing contract for sale. Only a buyer that takes
37 possession of the goods or has a right to recover the goods from the
38 seller under Chapter 2 may be a buyer in ordinary course of
39 business. A person who acquires goods in a transfer in bulk or as
40 security for or in total or partial satisfaction of a money debt is not a
41 buyer in ordinary course of business.

42 (10) "Conspicuous": A term or cause is conspicuous when it is
43 so written that a reasonable person against whom it is to operate
44 ought to have noticed it. A printed heading in capitals (as:
45 NON-NEGOTIABLE BILL OF LADING) is conspicuous.
46 Language in the body of a form is "conspicuous" if it is in larger or

1 other contrasting type or color. But in a telegram any stated term is
2 "conspicuous." Whether a term or clause is "conspicuous" or not is
3 for decision by the court.

4 (11) "Contract" means the total legal obligation which results
5 from the parties' agreement as affected by [this act] the Uniform
6 Commercial Code and any other applicable rules of law. (Compare
7 "Agreement.")

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

13 (13) "Defendant" includes a person in the position of defendant
14 in a cross-action or counterclaim.

15 (14) "Delivery" with respect to instruments, documents of title,
16 chattel paper, or certificated securities means voluntary transfer of
17 possession.

18 (15) "Document of title" includes bill of lading, dock warrant,
19 dock receipt, warehouse receipt, or order for the delivery of goods,
20 and also any other document which in the regular course of business
21 or financing is treated as adequately evidencing that the person in
22 possession of it is entitled to receive, hold and dispose of the
23 document and the goods it covers. To be a document of title a
24 document shall purport to be issued by or addressed to a bailee and
25 purport to cover goods in the bailee's possession which are either
26 identified or are fungible portions of an identified mass.

27 (16) "Fault" means wrongful act, omission or breach.

28 (17) "Fungible" with respect to goods or securities means goods
29 or securities of which any unit is, by nature or usage of trade, the
30 equivalent of any other like unit. Goods which are not fungible shall
31 be deemed fungible for the purposes of [this act] the Uniform
32 Commercial Code to the extent that under a particular agreement or
33 document unlike units are treated as equivalents.

34 (18) "Genuine" means free of forgery or counterfeiting.

35 (19) "Good faith" means honesty in fact in the conduct or
36 transaction concerned.

37 (20) "Holder," with respect to a negotiable instrument, means the
38 person in possession if the instrument is payable to bearer or, in the
39 case of an instrument payable to an identified person, if the identified
40 person is in possession. "Holder" with respect to a document of title
41 means the person in possession if the goods are deliverable to bearer
42 or to the order of the person in possession.

43 (21) To "honor" is to pay or accept and pay, where a credit so
44 engages to purchase or discount a draft complying with the terms of
45 the credit.

46 (22) "Insolvency proceedings" includes any assignment for the

1 benefit of creditors or other proceedings intended to liquidate or
2 rehabilitate the estate of the person involved.

3 (23) A person is "insolvent" who either has ceased to pay the
4 person's debts in the ordinary course of business or cannot pay the
5 person's debts as they become due or is insolvent within the meaning
6 of the federal bankruptcy law.

7 (24) "Money" means a medium of exchange authorized or
8 adopted by a domestic or foreign government and includes a
9 monetary unit of account established by an intergovernmental
10 organization or by agreement between two or more nations.

11 (25) A person has "notice" of a fact when:

12 (a) The person has actual knowledge of it; or

13 (b) The person has received a notice or notification of it; or

14 (c) From all the facts and circumstances known to the person at
15 the time in question the person has reason to know that it exists.

16 A person "knows" or has "knowledge" of a fact when the person
17 has actual knowledge of it. "Discover" or "learn" or a word or
18 phrase of similar import refers to knowledge rather than to reason to
19 know. The time and circumstances under which a notice or
20 notification may cease to be effective are not determined by [this
21 act] the Uniform Commercial Code.

22 (26) A person "notifies" or "gives" a notice or notification to
23 another by taking such steps as may be reasonably required to
24 inform the other in ordinary course whether or not the other actually
25 comes to know of it. A person "receives" a notice or notification
26 when:

27 (a) It comes to the person's attention; or

28 (b) It is duly delivered at the place of business through which the
29 contract was made or at any other place held out by the person as
30 the place for receipt of such communications.

31 (27) Notice, knowledge or a notice or notification received by an
32 organization is effective for a particular transaction from the time
33 when it is brought to the attention of the individual conducting that
34 transaction, and in any event from the time when it would have been
35 brought to the attention of the individual if the organization had
36 exercised due diligence. An organization exercises due diligence if it
37 maintains reasonable routines for communicating significant
38 information to the person conducting the transaction and there is
39 reasonable compliance with the routines. Due diligence does not
40 require an individual acting for the organization to communicate
41 information unless such communication is part of the individual's
42 regular duties or unless the individual has reason to know of the
43 transaction and that the transaction would be materially affected by
44 the information.

45 (28) "Organization" includes a corporation, government or
46 governmental subdivision or agency, business trust, estate, trust,

1 partnership or association, two or more persons having a joint or
2 common interest, or any other legal or commercial entity.

3 (29) "Party," as distinct from "third party," means a person who
4 has engaged in a transaction or made an agreement within [this act]
5 the Uniform Commercial Code.

6 (30) "Person" includes an individual or an organization (See
7 12A:1-102).

8 (31) "Presumption" or "presumed" means that the trier of fact
9 shall find the existence of the fact presumed unless and until
10 evidence is introduced which would support a finding of its
11 nonexistence.

12 (32) "Purchase" includes taking by sale, discount, negotiation,
13 mortgage, pledge, lien, security interest, issue or reissue, gift or any
14 other voluntary transaction creating an interest in property.

15 (33) "Purchaser" means a person who takes by purchase.

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

18 (35) "Representative" includes an agent, an officer of a
19 corporation or association, and a trustee, executor or administrator
20 of an estate, or any other person empowered to act for another.

21 (36) "Rights" includes remedies.

22 (37) "Security interest" means an interest in personal property or
23 fixtures which secures payment or performance of an obligation.
24 The term also includes any interest of a consignor and a buyer of
25 accounts, chattel paper, a payment intangible, or a promissory note
26 in a transaction that is subject to Chapter 9. The special property
27 interest of a buyer of goods on identification of those goods to a
28 contract for sale under 12A:2-401 is not a "security interest," but a
29 buyer may also acquire a "security interest" by complying with
30 Chapter 9. Except as otherwise provided in 12A:2-505, the right of
31 a seller or lessor of goods under Chapter 2 or 2A to retain or
32 acquire possession of the goods is not a "security interest," but a
33 seller or lessor may also acquire a "security interest" by complying
34 with Chapter 9. The retention or reservation of title by a seller of
35 goods notwithstanding shipment or delivery to the buyer
36 (12A:2-401) is limited in effect to a reservation of a "security
37 interest." Whether a lease is intended as security is to be determined
38 by the facts of each case; however, (a) the inclusion of an option to
39 purchase does not of itself make the lease one intended for security,
40 and (b) an agreement that upon compliance with the terms of the
41 lease the lessee shall become or has the option to become the owner
42 of the property for no additional consideration or for a nominal
43 consideration does make the lease one intended for security.

44 Whether a transaction creates a lease or security interest is
45 determined by the facts of each case; however, a transaction creates
46 a security interest if the consideration the lessee is to pay the lessor

1 for the right to possession and use of the goods is an obligation for
2 the term of the lease not subject to termination by the lessee, and

3 (a) the original term of the lease is equal to or greater than the
4 remaining economic life of the goods,

5 (b) the lessee is bound to renew the lease for the remaining
6 economic life of the goods or is bound to become the owner of the
7 goods,

8 (c) the lessee has an option to renew the lease for the remaining
9 economic life of the goods for no additional consideration or
10 nominal additional consideration upon compliance with the lease
11 agreement, or

12 (d) the lessee has an option to become the owner of the goods
13 for no additional consideration or nominal additional consideration
14 upon compliance with the lease agreement.

15 A transaction does not create a security interest merely because it
16 provides that

17 (a) the present value of the consideration the lessee is obligated
18 to pay the lessor for the right to possession and use of the goods is
19 substantially equal to or is greater than the fair market value of the
20 goods at the time the lease is entered into,

21 (b) the lessee assumes risk of loss of the goods, or agrees to pay
22 taxes, insurance, filing, recording, or registration fees, or service or
23 maintenance costs with respect to the goods,

24 (c) the lessee has an option to renew the lease or to become the
25 owner of the goods,

26 (d) the lessee has an option to renew the lease for a fixed rent
27 that is equal to or greater than the reasonably predictable fair market
28 rent for the use of the goods for the term of the renewal at the time
29 the option is to be performed, or

30 (e) the lessee has an option to become the owner of the goods
31 for a fixed price that is equal to or greater than the reasonably
32 predictable fair market value of the goods at the time the option is to
33 be performed.

34 For purposes of this subsection (37):

35 Additional consideration is not nominal if (i) when the option to
36 renew the lease is granted to the lessee the rent is stated to be the
37 fair market rent for the use of the goods for the term of the renewal
38 determined at the time the option is to be performed, or (ii) when
39 [the option to become the owner of the goods is granted to the
40 lessee] the option to become the owner of the goods is granted to
41 the lessee the price is stated to be the fair market value of the goods
42 determined at the time the option is to be performed. Additional
43 consideration is nominal if it is less than the lessee's reasonably
44 predictable cost of performing under the lease agreement if the
45 option is not exercised;

46 "Reasonably predictable" and "remaining economic life of the

1 goods" are to be determined with reference to the facts and
2 circumstances at the time the transaction is entered into; and

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

11 (38) "Send" in connection with any writing or notice means to
12 deposit in the mail or deliver for transmission by any other usual
13 means of communication with postage or cost of transmission
14 provided for and properly addressed and in the case of an instrument
15 to an address specified thereon or otherwise agreed, or if there be
16 none to any address reasonable under the circumstances. The receipt
17 of any writing or notice within the time at which it would have
18 arrived if properly sent has the effect of a proper sending.

19 (39) "Signed" includes any symbol executed or adopted by a
20 party with present intention to authenticate a writing.

21 (40) "Surety" includes guarantor.

22 (41) "Telegram" includes a message transmitted by radio,
23 teletype, cable, any mechanical method of transmission, or the like.

24 (42) "Term" means that portion of an agreement which relates to
25 a particular matter.

26 (43) "Unauthorized" signature or indorsement means one made
27 without actual, implied, or apparent authority and includes a forgery.

28 (44) "Value." Except as otherwise provided with respect to
29 negotiable instruments and bank collections (12A:3-303, 12A:4-210
30 and 12A:4-211), a person gives "value" for rights if the person
31 acquires them:

32 (a) In return for a binding commitment to extend credit or for the
33 extension of immediately available credit whether or not drawn upon
34 and whether or not a charge-back is provided for in the event of
35 difficulties in collection; or

36 (b) As security for or in total or partial satisfaction of a
37 pre-existing claim; or

38 (c) By accepting delivery pursuant to a pre-existing contract for
39 purchase; or

40 (d) Generally, in return for any consideration sufficient to
41 support a simple contract.

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

44 (46) "Written" or "writing" includes printing, typewriting, or any
45 other intentional reduction to tangible form.

46 (cf: P.L.2001, c.117, s.3)

1 130. N.J.S.12A:1-206 is amended to read as follows:
2 12A:1-206. Statute of Frauds for Kinds of Personal Property Not
3 Otherwise Covered.

4 (1) Except in the cases described in subsection (2) [of this
5 section] a contract for the sale of personal property is not
6 enforceable by way of action or defense beyond five thousand
7 dollars in amount or value of remedy unless there is some writing
8 which indicates that a contract for sale has been made between the
9 parties at a defined or stated price, reasonably identifies the subject
10 matter, and is signed by the party against whom enforcement is
11 sought or by his authorized agent.

12 (2) Subsection (1) [of this section] does not apply to contracts
13 for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor
14 to security agreements ([12A:9-201] 12A:9-203).

15 (cf: P.L.2001, c.117, s.4)

16

17 131. N.J.S.12A:2A-103 is amended to read as follows:

18 12A:2A-103. Definitions and index of definitions.

19 (1) In this chapter unless the context otherwise requires:

20 (a) "Buyer in ordinary course of business" means a person who in
21 good faith and without knowledge that the sale to the person is in
22 violation of the ownership rights or security interest or leasehold
23 interest of a third party in the goods buys in ordinary course from a
24 person in the business of selling goods of that kind but does not
25 include a pawnbroker. "Buying" may be for cash or by exchange of
26 other property or on secured or unsecured credit and includes
27 receiving goods or documents of title under a pre-existing contract
28 for sale but does not include a transfer in bulk or as security for or in
29 total or partial satisfaction of a money debt.

30 (b) "Cancellation" occurs when either party puts an end to the
31 lease contract for default by the other party.

32 (c) "Commercial unit" means such a unit of goods as by
33 commercial usage is a single whole for purposes of lease and
34 division of which materially impairs its character or value on the
35 market or in use. A commercial unit may be a single [chapter]
36 article, as a machine, or a set of [chapters] articles, as a suite of
37 furniture or a line of machinery, or a quantity, as a gross or carload,
38 or any other unit treated in use or in the relevant market as a single
39 whole.

40 (d) "Conforming" goods or performance under a lease contract
41 means goods or performance that are in accordance with the
42 obligations under the lease contract.

43 (e) "Consumer lease" means a lease that a lessor regularly
44 engaged in the business of leasing or selling makes to a lessee who is
45 a natural person and who takes under the lease primarily for a
46 personal, family, or household purpose.

- 1 (f) "Fault" means wrongful act, omission, breach, or default.
- 2 (g) "Finance lease" means a lease with respect to which:
- 3 (i) the lessor does not select, manufacture, or supply the goods;
- 4 (ii) the lessor acquires the goods or the right to possession and
- 5 use of the goods in connection with the lease; and
- 6 (iii) one of the following occurs:
- 7 (A) the lessee receives a copy of the contract by which the lessor
- 8 acquired the goods or the right to possession and use of the goods
- 9 before signing the lease contract;
- 10 (B) the lessee's approval of the contract by which the lessor
- 11 acquired the goods or the right to possession and use of the goods is
- 12 a condition to effectiveness of the lease contract;
- 13 (C) the lessee, before signing the lease contract, receives an
- 14 accurate and complete statement designating the promises and
- 15 warranties, and any disclaimers of warranties, limitations or
- 16 modifications of remedies, or liquidated damages, including those of
- 17 a third party, such as the manufacturer of the goods, provided to the
- 18 lessor by the person supplying the goods in connection with or as
- 19 part of the contract by which the lessor acquired the goods or the
- 20 right to possession and use of the goods; or
- 21 (D) if the lease is not a consumer lease, the lessor, before the
- 22 lessee signs the lease contract, informs the lessee in writing (a) of
- 23 the identity of the person supplying the goods to the lessor, unless
- 24 the lessee has selected that person and directed the lessor to acquire
- 25 the goods or the right to possession and use of the goods from that
- 26 person, (b) that the lessee is entitled under this chapter to the
- 27 promises and warranties, including those of any third party, provided
- 28 to the lessor by the person supplying the goods in connection with
- 29 or as part of the contract by which the lessor acquired the goods or
- 30 the right to possession and use of the goods, and (c) that the lessee
- 31 may communicate with the person supplying the goods to the lessor
- 32 and receive an accurate and complete statement of those promises
- 33 and warranties, including any disclaimers and limitations of them or
- 34 of remedies.
- 35 (h) "Goods" means all things that are movable at the time of
- 36 identification to the lease contract, or are fixtures (12A:2A-309), but
- 37 the term does not include money, documents, instruments, accounts,
- 38 chattel paper, general intangibles, or minerals or the like, including
- 39 oil and gas, before extraction. The term also includes the unborn
- 40 young of animals.
- 41 (i) "Installment lease contract" means a lease contract that
- 42 authorizes or requires the delivery of goods in separate lots to be
- 43 separately accepted, even though the lease contract contains a clause
- 44 "each delivery is a separate lease" or its equivalent.
- 45 (j) "Lease" means a transfer of the right to possession and use of
- 46 goods for a term in return for consideration, but a sale, including a

1 sale on approval or a sale or return, or retention or creation of a
2 security interest is not a lease. Unless the context clearly indicates
3 otherwise, the term includes a sublease.

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

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

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

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

19 (o) "Lessee in ordinary course of business" means a person who
20 in good faith and without knowledge that the lease to the person is
21 in violation of the ownership rights or security interest or leasehold
22 interest of a third party in the goods leases in ordinary course from a
23 person in the business of selling or leasing goods of that kind but
24 does not include a pawnbroker. "Leasing" may be for cash or by
25 exchange of other property or on secured or unsecured credit and
26 includes receiving goods or documents of title under a pre-existing
27 lease contract but does not include a transfer in bulk or as security
28 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

43 (u) "Present value" means the amount as of a date certain of one
44 or more sums payable in the future, discounted to the date certain.
45 The discount is determined by the interest rate specified by the
46 parties if the rate was not manifestly unreasonable at the time the

1 transaction was entered into; otherwise, the discount is determined
 2 by a commercially reasonable rate that takes into account the facts
 3 and circumstances of each case at the time the transaction was
 4 entered into.

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

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

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

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

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

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

20	"Accessions"	12A:2A-310(1).
21	"Construction mortgage"	12A:2A-309(1)(d).
22	"Encumbrance"	12A:2A-309(1)(e).
23	"Fixtures"	12A:2A-309(1)(a).
24	<u>"Fixture filing"</u>	<u>12A:2A-309(1)(b).</u>
25	"Purchase money lease"	12A:2A-309(1)(c).

26 (3) The following definitions in other Chapters apply to this
 27 Chapter:

28	"Account"	12A: 9-102(a)(2).
29	"Between merchants"	12A:2-104(3).
30	"Buyer"	12A:2-103(1)(a).
31	"Chattel paper"	12A:9-102(a)(12).
32	"Consumer goods"	12A:9-102(a)(24).
33	"Document"	12A:9-102(a) [(21)](31) .
34	"Entrusting"	12A:2-403(3).
35	"General intangible"	12A:9-102(a)(42).
36	"Good faith"	2A:2-103(1)(b).
37	"Instrument"	12A:9-102(a)(47).
38	"Merchant"	12A:2-104(1).
39	"Mortgage"	12A:9-102(a)(55).
40	"Pursuant to commitment"	12A:9-102(a)(68).
41	"Receipt"	12A:2-103(1)(c).
42	"Sale"	12A:2-106(1).
43	"Sale on approval"	12A:2-326.
44	"Sale or return"	12A:2-326.
45	"Seller"	12A:2-103(1)(d).

46 (4) In addition chapter 1 contains general definitions and

1 principles of construction and interpretation applicable throughout
2 this chapter.

3 (cf: P.L. 2001, c.117, s.10)

4

5 132. N.J.S.12A:2A-307 is amended to read as follows:

6 12A:2A-307. Priority of liens arising by attachment or levy on,
7 security interests in, and other claims to goods.

8 (1) Except as otherwise provided in 12A:2A-306, a creditor of a
9 lessee takes subject to the lease contract.

10 (2) Except as otherwise provided in subsection (3) and in
11 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to
12 the lease contract unless [:

13 (a)] the creditor holds a lien that attached to the goods before
14 the lease contract became enforceable [;

15 (b) the creditor holds a security interest in the goods and the
16 lessee did not give value and receive delivery of the goods without
17 knowledge of the security interest; or

18 (c) the creditor holds a security interest in the goods which was
19 perfected (12A:9-303) before the lease contract became
20 enforceable].

21 (3) Except as otherwise provided in 12A:9-317, 12A:9-321 and
22 12A:9-323, a lessee takes a leasehold interest subject to a security
23 interest held by a creditor of the lessor.

24 (cf: P.L.2001, c.117, s.12)

25

26 133. N.J.S.12A:8-103 is amended to read as follows:

27 12A:8-103. Rule for Determining whether Certain Obligations
28 and Interests are Securities or Financial Assets.

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

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

40 c. An interest in a partnership or limited liability company is not
41 a security unless it is dealt in or traded on securities exchanges or in
42 securities markets, its terms expressly provide that it is a security
43 governed by this chapter, or it is an investment company security.
44 However, an interest in a partnership or limited liability company is a
45 financial asset if it is held in a securities account.

46 d. A writing that is a security certificate is governed by this

1 chapter and not by chapter 3, even though it also meets the
2 requirements of that chapter. However, a negotiable instrument
3 governed by chapter 3 is a financial asset if it is held in a securities
4 account.

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

8 f. A commodity contract, as defined in [12A:9-102 (a) (16)]
9 12A:9-102 (a) (15), is not a security or a financial asset.
10 (cf: P.L.2001, c.117, s.17)

11

12 134. N.J.S.12A:8-110 is amended to read as follows:

13 12A:8-110. Applicability; Choice of Law.

14 a. The local law of the issuer's jurisdiction, as specified in
15 subsection d. of this section, governs:

16 (1) the validity of a security;

17 (2) the rights and duties of the issuer with respect to registration
18 of transfer;

19 (3) the effectiveness of registration of transfer by the issuer;

20 (4) whether the issuer owes any duties to an adverse claimant to
21 a security; and

22 (5) whether an adverse claim can be asserted against a person to
23 whom transfer of a certificated or uncertificated security is
24 registered or a person who obtains control of an uncertificated
25 security.

26 b. The local law of the securities intermediary's jurisdiction, as
27 specified in subsection e. of this section, governs:

28 (1) acquisition of a security entitlement from the securities
29 intermediary;

30 (2) the rights and duties of the securities intermediary and
31 entitlement holder arising out of a security entitlement;

32 (3) whether the securities intermediary owes any duties to an
33 adverse claimant to a security entitlement; and

34 (4) whether an adverse claim can be asserted against a person
35 who acquires a security entitlement from the securities intermediary
36 or a person who purchases a security entitlement or interest therein
37 from an entitlement holder.

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

42 d. "Issuer's jurisdiction" means the jurisdiction under which the
43 issuer of the security is organized or, if permitted by the law of that
44 jurisdiction, the law of another jurisdiction specified by the issuer.
45 An issuer organized under the law of this State may specify the law
46 of another jurisdiction as the law governing the matters specified in

1 paragraphs (2) through (5) of subsection a. of this section.

2 e. The following rules determine a “securities intermediary’s
3 jurisdiction” for purposes of this section:

4 (1) If an agreement between the securities intermediary and its
5 entitlement holder governing the securities account expressly
6 provides that a particular jurisdiction is the securities intermediary’s
7 jurisdiction for purposes of this part, this chapter, or [this Act] the
8 Uniform Commercial Code, that jurisdiction is the securities
9 intermediary’s jurisdiction.

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

15 (3) If neither paragraph (1) nor paragraph (2) of this subsection
16 e. applies and an agreement between the securities intermediary and
17 its entitlement holder governing the securities account expressly
18 provides that the securities account is maintained at an office in a
19 particular jurisdiction, that jurisdiction is the securities
20 intermediary’s jurisdiction.

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

25 (5) If none of the preceding paragraphs applies, the securities
26 intermediary’s jurisdiction is the jurisdiction in which the chief
27 executive office of the securities intermediary is located.

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

34 (cf: P.L.2001, c.117, s.19)

35

36 135. N.J.S.12A:8-510 is amended to read as follows:

37 12A:8-510. Rights of Purchaser of Security Entitlement from
38 Entitlement Holder.

39 a. In a case not covered by the priority rules in Chapter 9 or the
40 rules stated in subsection c. of this section, an action based on an
41 adverse claim to a financial asset or security entitlement, whether
42 framed in conversion, replevin, constructive trust, equitable lien, or
43 other theory, may not be asserted against a person who purchases a
44 security entitlement, or an interest therein, from an entitlement
45 holder if the purchaser gives value, does not have notice of the
46 adverse claim, and obtains control.

1 b. If an adverse claim could not have been asserted against an
2 entitlement holder under 12A:8-502, the adverse claim cannot be
3 asserted against a person who purchases a security entitlement, or an
4 interest therein, from the entitlement holder.

5 c. In a case not covered by the priority rules in Chapter 9, a
6 purchaser for value of a security entitlement, or an interest therein,
7 who obtains control has priority over a purchaser of a security
8 entitlement, or an interest therein, who does not obtain control.
9 Except as otherwise provided in subsection d of this section,
10 purchasers who have control rank according to priority in time of:

11 (1) the purchaser's becoming the person for whom the securities
12 account, in which the security entitlement is carried, is maintained, if
13 the purchaser obtained control under 12A:8-106d. (1); [or]

14 (2) the securities intermediary's agreement to comply with the
15 purchaser's entitlement orders with respect to security entitlements
16 carried or to be carried in the securities account in which the
17 security entitlement is carried, if the purchaser obtained control
18 under 12A:8-106d. (2); or

19 (3) if the purchaser obtained control through another person
20 under 12A:8-106 d. (3), the time on which priority would be based
21 under this subsection if the other person were the secured party.

22 d. A securities intermediary as purchaser has priority over a
23 conflicting purchaser who has control unless otherwise agreed by the
24 securities intermediary.

25 (cf: P.L.2001, c.117, s.22)

26
27 136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to
28 read as follows:

29 27. a. For purposes of this act, and the Uniform Commercial
30 Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable
31 transition property, as defined in N.J.S. [12A:9-102a (9)] 12A:9-
32 102 (a) (8.1), shall constitute an account. For purposes of this act,
33 and the Uniform Commercial Code - Secured Transactions,
34 N.J.S.12A:9-101 et seq., bondable transition property shall be in
35 existence whether or not the revenues or proceeds in respect thereof
36 have accrued, in accordance with subsection c. of section 22 of this
37 act. The validity, perfection or priority of any security interest in
38 bondable transition property shall not be defeated or adversely
39 affected by changes to the bondable stranded costs rate order or to
40 the transition bond charges payable by any customer. Any
41 description of bondable transition property in a security agreement
42 or other agreement or a financing statement shall be sufficient if it
43 refers to the bondable stranded costs rate order establishing the
44 bondable transition property.

45 b. In addition to the other rights and remedies provided or
46 authorized by this act, and by the Uniform Commercial Code -

1 Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in
2 default under a security agreement and the collateral is bondable
3 transition property, then upon application by the secured party, the
4 board or any court of competent jurisdiction shall order the
5 sequestration and payment to the secured party of all collections and
6 other proceeds of such bondable transition property up to the value
7 of the property. In the event of any conflicts, priority among
8 pledgees, transferees or secured parties shall be determined under
9 N.J.S.12A:9-101 et seq.. The secured party shall account to the
10 debtor for any surplus and, unless otherwise agreed, the debtor shall
11 be liable for any deficiency.

12 (cf: P.L.2001, c.117, s.29)

13

14 137. N.J.S.2A:25-1 is amended to read as follows:

15 2A:25-1. All contracts for the sale and conveyance of real estate,
16 all judgments and decrees recovered in any of the courts of this
17 state or of the United States or in any of the courts of any other
18 state of the United States and all choses in action arising on
19 contract shall be assignable, and the assignee may sue thereon in his
20 own name. In such an action, the person sued shall be allowed, not
21 only all set-offs, discounts and defenses he has against the assignee,
22 but also all set-offs, discounts and defenses he had against the
23 assignor before notice of such assignment was given to him. The
24 assignment of a sealed instrument by writing not under seal shall be
25 as valid as if under seal.

26 The assignee for a valuable consideration of any chose in action
27 may, although the assignor is dead, sue for and recover the same in
28 his own name. The person sued in any such action shall be allowed
29 not only all set-offs, discounts and defenses he has against the
30 assignee, but also all set-offs, discounts and defenses he had against
31 the assignor or his representatives before notice of such assignment
32 was given to him.

33 Security interests in commercial tort claims may be created,
34 attached, perfected and enforced in accordance with Chapter 9 of
35 Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

36 (cf: N.J.S.2A:25-1)

37

38 138. This act shall take effect immediately, and shall have
39 retroactive effect in accordance with section 127 of this act.

40

41

42

STATEMENT

43

44 This bill insures that the New Jersey law governing secured
45 transactions is essentially uniform with the law in other states which
46 have enacted revised Article 9 to the Uniform Commercial Code.

1 Revised Article 9 has been enacted in all 50 states and became
2 effective in New Jersey on July 1, 2001.

3 The bill adds certain provisions jointly approved by the National
4 Conference of Commissioners on Uniform State Laws and The
5 American Law Institute, some transition-related, for inclusion in
6 revised Article 9, which was enacted in New Jersey as P.L.2001,
7 c.117. The bill also amends N.J.S.2A:25-1 to conform the
8 assignment provisions in the civil law with revised Article 9 which
9 allows granting a security interest in a commercial tort claim, and
10 makes certain technical corrections to P.L.2001, c.117.

11 The bill is designed to be effective retroactively to July 1, 2001 so
12 that the provisions of law governing secured transactions in New
13 Jersey will be congruent with the law in other states as of July 1,
14 2001.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2690

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2001

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2690.

This bill, as amended by the committee, insures that the New Jersey law governing secured transactions is essentially uniform with the law in other states which have enacted revised Article 9 to the Uniform Commercial Code. Revised Article 9 has been enacted in all 50 states and became effective in New Jersey on July 1, 2001.

The bill adds certain provisions jointly approved by the National Conference of Commissioners on Uniform State Laws and The American Law Institute, some transition-related, for inclusion in revised Article 9, which was enacted in New Jersey as P.L.2001, c.117. The bill also amends N.J.S.2A:25-1 to conform the assignment provisions in the civil law with revised Article 9 which allows granting a security interest in a commercial tort claim, and makes certain technical corrections to P.L.2001, c.117.

The primary substantive change in this bill from the prior UCC Chapter 9 revision is in the area of transition. Specifically, the bill adds a provision that concerns the case in which a person has filed a financing statement prior to July 1, 2001 under the previous UCC Chapter 9, and then seeks to amend that financing statement after July 1, 2001 under the Revised Chapter 9. Those provisions are found in section 125 of the bill (12A:9-707).

The bill is designed to be effective retroactively to July 1, 2001 so that the provisions of law governing secured transactions in New Jersey will be congruent with the law in other states as of July 1, 2001.

The committee amended section 7 of the bill to delete language that would apply Chapter 9 to government created security interests, except to the extent that another statute expressly governs the creation, perfection, priority or enforcement of the security interest. This language was deleted because of a concern that the language would interfere with certain government transfers. The remainder of the amendments make additional technical corrections to P.L.2001, c.117.

[First Reprint]

SENATE, No. 2690

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 8, 2001

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblymen Bateman and Caraballo

SYNOPSIS

Concerns chapter 9 of the Uniform Commercial Code.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on November 19, 2001,
with amendments.



(Sponsorship Updated As Of: 1/8/2002)

1 AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.12A:9-102 is amended to read as follows:
8 12A:9-102. Definitions and Index of Definitions.

9 **[a.]** (a) Chapter 9 definitions. In this chapter:

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

13 (2) **["Account,"]** "Account", except as used in **["account for,"**
14 **(a)]** "account for", means a right to payment of a monetary obligation,
15 whether or not earned by performance, (i) for property that has been
16 or is to be sold, leased, licensed, assigned, or otherwise disposed of,
17 (ii) for services rendered or to be rendered, (iii) for a policy of
18 insurance issued or to be issued, (iv) for a secondary obligation
19 incurred or to be incurred, (v) for energy provided or to be provided,
20 (vi) for the use or hire of a vessel under a charter or other contract,
21 (vii) arising out of the use of a credit or charge card or information
22 contained on or for use with the card, or (viii) as winnings in a lottery
23 or other game of chance operated or sponsored by a State,
24 governmental unit of a State, or person licensed or authorized to
25 operate the game by a State or governmental unit of a State. The term
26 includes health-care-insurance receivables and bondable transition
27 property. **[(b)]** The term does not include (i) rights to payment
28 evidenced by chattel paper or an instrument, (ii) commercial tort
29 claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-
30 credit rights or letters of credit, or (vi) rights to payment for money or
31 funds advanced or sold, other than rights arising out of the use of a
32 credit or charge card or information contained on or for use with the
33 card.

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

38 (4) **["Accounting,"]** "Accounting", except as used in **["accounting**
39 **for,"]** "accounting for", means a record:

40 **[(a)]** (A) authenticated by a secured party;

41 **[(b)]** (B) indicating the aggregate unpaid secured obligations as of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 19, 2001.

1 a date not more than 35 days earlier or 35 days later than the date of
2 the record; and
3 [(c)] (C) identifying the components of the obligations in
4 reasonable detail.
5 (5) “Agricultural lien” means an interest [, other than a security
6 interest,] in farm products:
7 [(a)] (A) which secures payment or performance of an obligation
8 for:
9 (i) goods or services furnished in connection with a debtor’s
10 farming operation; or
11 (ii) rent on real property leased by a debtor in connection with its
12 farming operation;
13 [(b)] (B) which is created by statute in favor of a person [who]
14 that:
15 (i) in the ordinary course of its business furnished goods or services
16 to a debtor in connection with a debtor’s farming operation; or
17 (ii) leased real property to a debtor in connection with the debtor’s
18 farming operation; and
19 [(c)] (C) whose effectiveness does not depend on the person’s
20 possession of the personal property.
21 (6) “As-extracted collateral” means:
22 [(a)] (A) oil, gas, or other minerals that are subject to a security
23 interest that:
24 (i) is created by a debtor having an interest in the minerals before
25 extraction; and
26 (ii) attaches to the minerals as extracted; or
27 [(b)] (B) accounts arising out of the sale at the wellhead or
28 minehead of oil, gas, or other minerals in which the debtor had an
29 interest before extraction.
30 (7) “Authenticate” means:
31 [(a)] (A) to sign; or
32 [(b)] (B) to execute or otherwise adopt a symbol, or encrypt or
33 similarly process a record in whole or in part, with the present intent
34 of the authenticating person to identify the person and adopt or accept
35 a record.
36 (8) “Bank” means an organization that is engaged in the business
37 of banking. The term includes savings banks, savings and loan
38 associations, credit unions, and trust companies.
39 [(9)] (8.1) “Bondable transition property” shall have the meaning
40 set forth in section 3 of P.L. [1990] 1999, c.23 (C.48:3-51).
41 [(10)] (9) “Cash proceeds” means proceeds that are money,
42 checks, deposit accounts, or the like.
43 [(11)] (10) “Certificate of title” means a certificate of title with
44 respect to which a statute provides for the security interest in question
45 to be indicated on the certificate as a condition or result of the security

1 interest's obtaining priority over the rights of a lien creditor with
2 respect to the collateral.

3 [(12)] (11) "Chattel paper" means a record or records that
4 evidence both a monetary obligation and a security interest in specific
5 goods, a security interest in specific goods and software used in the
6 goods, a security interest in specific goods and license of software
7 used in the goods, a lease of specific goods, or a lease of specific
8 goods and license of software used in the goods. In this paragraph,
9 "monetary obligation" means a monetary obligation secured by the
10 goods or owed under a lease of the goods and includes a monetary
11 obligation with respect to software used in the goods. The term does
12 not include (i) charters or other contracts involving the use or hire of
13 a vessel or (ii) records that evidence a right to payment arising out of
14 the use of a credit or charge card or information contained on or for
15 use with the card. If a transaction is evidenced by records that include
16 an instrument or series of instruments, the group of records taken
17 together constitutes chattel paper.

18 [(13)] (12) "Collateral" means the property subject to a security
19 interest or agricultural lien. The term includes:

20 [(a)] (A) proceeds to which a security interest attaches;

21 [(b)] (B) accounts, chattel paper, payment intangibles, and
22 promissory notes that have been sold; and

23 [(c)] (C) goods that are the subject of a consignment.

24 [(14)] (13) "Commercial tort claim" means a claim arising in tort
25 with respect to which:

26 [(a)] (A) the claimant is an organization; or

27 [(b)] (B) the claimant is an individual and the claim:

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

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

31 [(15)] (14) "Commodity account" means an account maintained
32 by a commodity intermediary in which a commodity contract is carried
33 for a commodity customer.

34 [(16)] (15) "Commodity contract" means a commodity futures
35 contract, an option on a commodity futures contract, a commodity
36 option, or another contract [or option] if the contract or option is:

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

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

43 [(17)] (16) "Commodity customer" means a person for which a
44 commodity intermediary carries a commodity contract on its books.

45 [(18)] (17) "Commodity intermediary" means a person [who]

1 that:

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

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

7 [(19)] (18) “Communicate” means:

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

9 [(b)] (B) to transmit a record by any means agreed upon by the
10 persons sending and receiving the record; or

11 [(c)] (C) in the case of transmission of a record to or by a filing
12 office, to transmit a record by any means prescribed by filing-office
13 rule.

14 [(20)] (19) “Consignee” means a merchant to which goods are
15 delivered in a consignment.

16 [(21)] (20) “Consignment” means a transaction, regardless of its
17 form, in which a person delivers goods to a merchant for the purpose
18 of sale and:

19 [(a)] (A) the merchant:

20 (i) deals in goods of that kind under a name other than the name of
21 the person making delivery;

22 (ii) is not an auctioneer; and

23 (iii) is not generally known by its creditors to be substantially
24 engaged in selling the goods of others;

25 [(b)] (B) with respect to each delivery, the aggregate value of the
26 goods is \$1,000 or more at the time of delivery;

27 [(c)] (C) the goods are not consumer goods immediately before
28 delivery; and

29 [(d)] (D) the transaction does not create a security interest that
30 secures an obligation.

31 [(22)] (21) “Consignor” means a person [who] that delivers
32 goods to a consignee in a consignment.

33 [(23)] (22) “Consumer debtor” means a debtor in a consumer
34 transaction.

35 [(24)] (23) “Consumer goods” means goods that are used or
36 bought for use primarily for personal, family, or household purposes.

37 [(25)] (24) “Consumer-goods transaction” means a consumer
38 transaction in which:

39 [(a)] (A) an individual incurs an obligation primarily for personal,
40 family, or household purposes; and

41 [(b)] (B) a security interest in consumer goods secures the
42 obligation.

43 [(26)] (25) “Consumer obligor” means an obligor who is an
44 individual and who incurred the obligation as part of a transaction
45 entered into primarily for personal, family, or household purposes.

1 [(27)] (26) “Consumer transaction” means a transaction in which
2 [(a)] (i) an individual incurs an obligation primarily for personal,
3 family, or household purposes, [(b)] (ii) a security interest secures
4 the obligation, and [(c)] (iii) the collateral is held or acquired
5 primarily for personal, family, or household purposes. The term
6 includes consumer-goods transactions.

7 [(28)] (27) “Continuation statement” means an amendment of a
8 financing statement which:

9 [(a)] (A) identifies, by its file number, the initial financing
10 statement to which it relates; and

11 [(b)] (B) indicates that it is a continuation statement for, or that it
12 is filed to continue the effectiveness of, the identified financing
13 statement.

14 [(29)] (28) “Debtor” means:

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

17 [(b)] (B) a seller of accounts, chattel paper, payment intangibles,
18 or promissory notes; or

19 [(c)] (C) a consignee.

20 [(30)] (29) “Deposit account” means a demand, time, savings,
21 passbook, or similar account maintained with a bank. The term does
22 not include investment property or accounts evidenced by an
23 instrument.

24 [(31)] (30) “Document” means a document of title or a receipt of
25 the type described in 12A:7-201(2).

26 [(32)] (31) “Electronic chattel paper” means chattel paper
27 evidenced by a record or records consisting of information stored in
28 an electronic medium.

29 [(33)] (32) “Encumbrance” means a right, other than an ownership
30 interest, in real property. The term includes mortgages and other liens
31 on real property.

32 [(34)] (33) “Equipment” means goods other than inventory, farm
33 products, or consumer goods.

34 [(35)] (34) “Farm products” means goods, other than standing
35 timber, with respect to which the debtor is engaged in a farming
36 operation and which are:

37 [(a)] (A) crops grown, growing, or to be grown, including:

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

39 (ii) aquatic goods produced in aquacultural operations;

40 [(b)] (B) livestock, born or unborn, including aquatic goods
41 produced in aquacultural operations;

42 [(c)] (C) supplies used or produced in a farming operation; or

43 [(d)] (D) products of crops or livestock in their unmanufactured
44 states.

45 [(36)] (35) “Farming operation” means raising, cultivating,

1 propagating, fattening, grazing, or any other farming, livestock, or
2 aquacultural operation.

3 [(37)] (36) “File number” means the number assigned to an initial
4 financing statement pursuant to 12A:9-519 [a.] (a).

5 [(38)] (37) “Filing office” means an office designated in
6 12A:9-501 as the place to file a financing statement.

7 [(39)] (38) “Filing-office rule” means a rule adopted pursuant to
8 12A:9-526.

9 [(40)] (39) “Financing statement” means a record or records
10 composed of an initial financing statement and any filed record relating
11 to the initial financing statement.

12 [(40.1)] (40) “Fixture filing” means the filing of a financing
13 statement covering goods that are or are to become fixtures and
14 satisfying 12A:9-502 [a. and b.] (a) and (b). The term includes the
15 filing of a financing statement covering goods of a transmitting utility
16 which are or are to become fixtures.

17 (41) “Fixtures” means goods that have become so related to
18 particular real property that an interest in them arises under real
19 property law.

20 (42) “General intangible” means any personal property, including
21 things in action, other than accounts, chattel paper, commercial tort
22 claims, deposit accounts, documents, goods, instruments, investment
23 property, letter-of-credit rights, letters of credit, money, and oil, gas,
24 or other minerals before extraction. The term includes payment
25 intangibles and software.

26 (43) “Good faith” means honesty in fact and the observance of
27 reasonable commercial standards of fair dealing.

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

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

7 (46) “Health-care-insurance receivable” means an interest in or
8 claim under a policy of insurance which is a right to payment of a
9 monetary obligation for health-care goods or services provided or to
10 be provided.

11 (47) “Instrument” means a negotiable instrument or any other
12 writing that evidences a right to the payment of a monetary obligation,
13 is not itself a security agreement or lease, and is of a type that in
14 ordinary course of business is transferred by delivery with any
15 necessary indorsement or assignment. The term does not include [(a)]
16 (i) investment property, [(b)] (ii) letters of credit, or [(c)] (iii)
17 writings that evidence a right to payment arising out of the use of a
18 credit or charge card or information contained on or for use with the
19 card.

20 (48) “Inventory” means goods, other than farm products, which:

21 [(a)] (A) are leased by a person as lessor;

22 [(b)] (B) are held by a person for sale or lease or to be furnished
23 under a contract of service;

24 [(c)] (C) are furnished by a person under a contract of service; or

25 [(d)] (D) consist of raw materials, work in process, or materials
26 used or consumed in a business.

27 (49) “Investment property” means a security, whether certificated
28 or uncertificated, security entitlement, securities account, commodity
29 contract, or commodity account.

30 (50) “Jurisdiction of organization”, with respect to a registered
31 organization, means the jurisdiction under whose law the organization
32 is organized.

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

38 (52) “Lien creditor” means:

39 [(a)] (A) a creditor that has acquired a lien on the property
40 involved by attachment, levy, or the like;

41 [(b)] (B) an assignee for benefit of creditors from the time of
42 assignment;

43 [(c)] (C) a trustee in bankruptcy from the date of the filing of the
44 petition; or

45 [(d)] (D) a receiver in equity from the time of appointment.

1 (53) “Manufactured home” means a structure, transportable in one
2 or more sections, which, in the traveling mode, is eight body feet or
3 more in width or 40 body feet or more in length, or, when erected on
4 site, is 320 or more square feet, and which is built on a permanent
5 chassis and designed to be used as a dwelling with or without a
6 permanent foundation when connected to the required utilities, and
7 includes the plumbing, heating, air-conditioning, and electrical systems
8 contained therein. The term includes any structure that meets all of
9 the requirements of this paragraph except the size requirements and
10 with respect to which the manufacturer voluntarily files a certification
11 required by the United States Secretary of Housing and Urban
12 Development and complies with the standards established under Title
13 42 of the United States Code.

14 (54) “Manufactured-home transaction” means a secured
15 transaction:

16 [(a)] (A) that creates a purchase-money security interest in a
17 manufactured home, other than a manufactured home held as
18 inventory; or

19 [(b)] (B) in which a manufactured home, other than a
20 manufactured home held as inventory, is the primary collateral.

21 (55) “Mortgage” means a consensual interest in real property,
22 including fixtures, which secures payment or performance of an
23 obligation.

24 (56) “New debtor” means a person that becomes bound as debtor
25 under 12A:9-203 [d.] (d) by a security agreement previously entered
26 into by another person.

27 (57) “New value” means [(a)] (i) money, [(b)] (ii) money’s worth
28 in property, services, or new credit, or [(c)] (iii) release by a
29 transferee of an interest in property previously transferred to the
30 transferee. The term does not include an obligation substituted for
31 another obligation.

32 (58) “Noncash proceeds” means proceeds other than cash
33 proceeds.

34 (59) “Obligor” means a person [who] that, with respect to an
35 obligation secured by a security interest in or an agricultural lien on
36 the collateral, [(a)] (i) owes payment or other performance of the
37 obligation, [(b)] (ii) has provided property other than the collateral to
38 secure payment or other performance of the obligation, or [(c)] (iii)
39 is otherwise accountable in whole or in part for payment or other
40 performance of the obligation. The term does not include issuers or
41 nominated persons under a letter of credit.

42 (60) “Original debtor”, except as used in 12A:9-310(c), means a
43 person [who] that, as debtor, entered into a security agreement to
44 which a new debtor has become bound under 12A:9-203 [d.] (d).

45 (61) “Payment intangible” means a general intangible under which

- 1 the account debtor's principal obligation is a monetary obligation.
- 2 (62) "Person related to", with respect to an individual, means:
- 3 [(a)] (A) the spouse of the individual;
- 4 [(b)] (B) a brother, brother-in-law, sister, or sister-in-law of the
5 individual;
- 6 [(c)] (C) an ancestor or lineal descendant of the individual or the
7 individual's spouse; or
- 8 [(d)] (D) any other relative, by blood or marriage, of the individual
9 or the individual's spouse who shares the same home with the
10 individual.
- 11 (63) "Person related to", with respect to an organization, means:
- 12 [(a)] (A) a person directly or indirectly controlling, controlled by,
13 or under common control with the organization;
- 14 [(b)] (B) an officer or director of, or a person performing similar
15 functions with respect to, the organization;
- 16 [(c)] (C) an officer or director of, or a person performing similar
17 functions with respect to, a person described in subparagraph [(a)]
18 (A);
- 19 [(d)] (D) the spouse of an individual described in subparagraph
20 [(a), (b), or (c)] (A), (B) or (C); or
- 21 [(e)] (E) an individual who is related by blood or marriage to an
22 individual described in subparagraph [(a), (b), (c), or (d)] (A), (B) (C)
23 or (D) and shares the same home with the individual.
- 24 (64) "Proceeds", except as used in 12A:9-609(b), means the
25 following property:
- 26 [(a)] (A) whatever is acquired upon the sale, lease, license,
27 exchange, or other disposition of collateral;
- 28 [(b)] (B) whatever is collected on, or distributed on account of,
29 collateral;
- 30 [(c)] (C) rights arising out of collateral;
- 31 [(d)] (D) to the extent of the value of collateral, claims arising out
32 of the loss, nonconformity, or interference with the use of, defects or
33 infringement of rights in, or damage to, the collateral; or
- 34 [(e)] (E) to the extent of the value of collateral and to the extent
35 payable to the debtor or the secured party, insurance payable by reason
36 of the loss or nonconformity of, defects or infringement of rights in,
37 or damage to, the collateral.
- 38 (65) "Promissory note" means an instrument that evidences a
39 promise to pay a monetary obligation, does not evidence an order to
40 pay, and does not contain an acknowledgment by a bank that the bank
41 has received for deposit a sum of money or funds.
- 42 (66) "Proposal" means a record authenticated by a secured party
43 which includes the terms on which the secured party is willing to
44 accept collateral in full or partial satisfaction of the obligation it
45 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

1 (67) “Public-finance transaction” means a secured transaction in
2 connection with which:

3 [(a)] (A) debt securities are issued;

4 [(b)] (B) all or a portion of the securities issued have an initial
5 stated maturity of at least 20 years; and

6 [(c)] (C) the debtor, obligor, secured party, account debtor or
7 other person obligated on collateral, assignor or assignee of a secured
8 obligation, or assignor or assignee of a security interest is a state or a
9 governmental unit of a state.

10 (68) “Pursuant to commitment”, with respect to an advance made
11 or other value given by a secured party, means pursuant to the secured
12 party’s obligation, whether or not a subsequent event of default or
13 other event not within the secured party’s control has relieved or may
14 relieve the secured party from its obligation.

15 (69) “Record”, except as used in “for record”, “of record”, “record
16 or legal title”, and “record owner”, means information that is inscribed
17 on a tangible medium or which is stored in an electronic or other
18 medium and is retrievable in perceivable form.

19 (70) “Registered organization” means an organization organized
20 solely under the law of a single state or the United States and as to
21 which the state or the United States must maintain a public record
22 showing the organization to have been organized.

23 (71) “Secondary obligor” means an obligor to the extent that:

24 [(a)] (A) the obligor’s obligation is secondary; or

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

28 (72) “Secured party” means:

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

32 [(b)] (B) a person that holds an agricultural lien;

33 [(c)] (C) a consignor;

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

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

39 [(f)] (F) a person that holds a security interest arising under
40 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), [or]
41 12A:4-210, or 12A:5-118.

42 (73) “Security agreement” means an agreement that creates or
43 provides for a security interest.

44 (74) “Send”, in connection with a record or notification, means:

45 [(a)] (A) to deposit in the mail, deliver for transmission, or

1 transmit by any other usual means of communication, with postage or
 2 cost of transmission provided for, addressed to any address reasonable
 3 under the circumstances; or

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

7 (75) “Software” means a computer program and any supporting
 8 information provided in connection with a transaction relating to the
 9 program. The term does not include a computer program that is
 10 included in the definition of goods.

11 (76) “State” means a state of the United States, the District of
 12 Columbia, Puerto Rico, the United States Virgin Islands, or any
 13 territory or insular possession subject to the jurisdiction of the United
 14 States.

15 (77) “Supporting obligation” means a letter-of-credit right or
 16 secondary obligation that supports the payment or performance of an
 17 account, chattel paper, a document, a general intangible, an
 18 instrument, or investment property.

19 (78) “Tangible chattel paper” means chattel paper evidenced by a
 20 record or records consisting of information that is inscribed on a
 21 tangible medium.

22 (79) “Termination statement” means an amendment of a financing
 23 statement which:

24 ~~[(a)] (A)~~ identifies, by its file number, the initial financing
 25 statement to which it relates; and

26 ~~[(b)] (B)~~ indicates either that it is a termination statement or that
 27 the identified financing statement is no longer effective.

28 (80) “Transmitting utility” means a person primarily engaged in the
 29 business of:

30 ~~[(a)] (A)~~ operating a railroad, subway, street railway, or trolley
 31 bus;

32 ~~[(b)] (B)~~ transmitting communications electrically,
 33 electromagnetically, or by light;

34 ~~[(c)] (C)~~ transmitting goods by pipeline or sewer; or

35 ~~[(d)] (D)~~ transmitting or producing and transmitting electricity,
 36 steam, gas, or water.

37 ~~[b.] (b)~~ Definitions in other chapters. The following definitions in
 38 other chapters apply to this chapter:

39 “Applicant” 12A:5-102.

40 “Beneficiary” 12A:5-102.

41 “Broker” 12A:8-102.

42 “Certificated security” 12A:8-102.

43 “Check” 12A:3-104.

44 “Clearing corporation” 12A:8-102.

45 “Contract for sale” 12A:2-106.

1	“Customer”	12A:4-104.
2	“Entitlement holder”	12A:8-102.
3	“Financial asset”	12A:8-102.
4	“Holder in due course”	12A:3-302.
5	“Issuer” (with respect to a letter of	
6	credit or letter-of-credit right)	12A:5-102.
7	“Issuer” (with respect to a security)	12A:8-201.
8	“Lease”	12A:2A-103.
9	“Lease agreement”	12A:2A-103.
10	“Lease contract”	12A:2A-103.
11	“Leasehold interest”	12A:2A-103.
12	“Lessee”	12A:2A-103.
13	“Lessee in ordinary course of business”	12A:2A-103.
14	“Lessor”	12A:2A-103.
15	“Lessor’s residual interest”	12A:2A-103.
16	“Letter of credit”	12A:5-102.
17	“Merchant”	12A:2-104.
18	“Negotiable instrument”	12A:3-104.
19	“Nominated person”	12A:5-102.
20	“Note”	12A:3-104.
21	“Proceeds of a letter of credit”	12A:5-114.
22	“Prove”	12A:3-103.
23	“Sale”	12A:2-106.
24	“Securities account”	12A:8-501.
25	“Securities intermediary”	12A:8-102.
26	“Security”	12A:8-102.
27	“Security certificate”	12A:8-102.
28	“Security entitlement”	12A:8-102.
29	“Uncertificated security”	12A:8-102.

30 **[c.] (c)** Chapter 1 definitions and principles. Chapter 1 contains
 31 general definitions and principles of construction and interpretation
 32 applicable throughout this chapter.
 33 (cf: N.J.S.12A:9-102)

34
 35 2. N.J.S.12A:9-103 is amended to read as follows:

36 12A:9-103. Purchase-Money Security Interest; Application of
 37 Payments; Burden of Establishing.

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

39 (1) “purchase-money collateral” means goods or software that
 40 **[secure] secures** a purchase-money obligation incurred with respect
 41 to that collateral; and

42 (2) “purchase-money obligation” means an obligation of an obligor
 43 incurred as all or part of the price of the collateral or for value given
 44 to enable the debtor to acquire rights in or the use of the collateral if
 45 the value is in fact so used.

46 **[b.] (b)** Purchase-money security interest in goods. A security

1 interest in goods is a purchase-money security interest:

2 (1) to the extent that the goods are purchase-money collateral with
3 respect to that security interest;

4 (2) if the security interest is in inventory that is or was purchase-
5 money collateral, also to the extent that the security interest secures
6 a purchase-money obligation incurred with respect to other inventory
7 in which the secured party holds or held a purchase-money security
8 interest; and

9 (3) also to the extent that the security interest secures a purchase-
10 money obligation incurred with respect to software in which the
11 secured party holds or held a purchase-money security interest.

12 **[c.] (c)** Purchase-money security interest in software. A security
13 interest in software is a purchase-money security interest to the extent
14 that the security interest also secures a purchase-money obligation
15 incurred with respect to goods in which the secured party holds or
16 held a purchase-money security interest if:

17 (1) the debtor acquired its interest in the software in an integrated
18 transaction in which it acquired an interest in the goods; and

19 (2) the debtor acquired its interest in the software for the principal
20 purpose of using the software in the goods.

21 **[d.] (d)** Consignor's inventory purchase-money security interest.
22 The security interest of a consignor in goods that are the subject of a
23 consignment is a purchase-money security interest in inventory.

24 **[e.] (e)** Application of payment in non-consumer-goods
25 transaction. In a transaction other than a consumer-goods transaction,
26 if the extent to which a security interest is a purchase-money security
27 interest depends on the application of a payment to a particular
28 obligation, the payment **[shall] must** be applied:

29 (1) in accordance with any reasonable method of application to
30 which the parties agree;

31 (2) in the absence of the parties' agreement to a reasonable method,
32 in accordance with any intention of the obligor manifested at or before
33 the time of payment; or

34 (3) in the absence of an agreement to a reasonable method and a
35 timely manifestation of the obligor's intention, in the following order:

36 **[(a)] (A)** to obligations that are not secured; and

37 **[(b)] (B)** if more than one obligation is secured, to obligations
38 secured by purchase-money security interests in the order in which
39 those obligations were incurred.

40 **[f.] (f)** No loss of status of purchase-money security interest in
41 non-consumer-goods transaction. In a transaction other than a
42 consumer-goods transaction, a purchase-money security interest does
43 not lose its status as such, even if:

44 (1) the purchase-money collateral also secures an obligation that is
45 not a purchase-money obligation;

46 (2) collateral that is not purchase-money collateral also secures the

1 purchase-money obligation; or

2 (3) the purchase-money obligation has been renewed, refinanced,
3 consolidated, or restructured.

4 [g.] (g) Burden of proof in non-consumer-goods transaction. In
5 a transaction other than a consumer-goods transaction, a secured party
6 claiming a purchase-money security interest has the burden of
7 establishing the extent to which the security interest is a purchase-
8 money security interest.

9 [h.] (h) Non-consumer-goods transactions; no inference. The
10 limitation of the rules in subsections [e., f., and g. of this section] (e),
11 (f) and (g) to transactions other than consumer-goods transactions is
12 intended to leave to the court the determination of the proper rules in
13 consumer-goods transactions. The court may not infer from that
14 limitation the nature of the proper rule in consumer-goods transactions
15 and may continue to apply established approaches.
16 (cf: N.J.S.12A:9-103)

17

18 3. N.J.S.12A:9-104 is amended to read as follows:

19 12A:9-104. Control of Deposit Account.

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

22 (1) the secured party is the bank with which the deposit account is
23 maintained;

24 (2) the debtor, secured party, and bank have agreed in an
25 authenticated record that the bank will comply with instructions
26 originated by the secured party directing disposition of the funds in the
27 deposit account without further consent by the debtor; or

28 (3) the secured party becomes the bank's customer with respect to
29 the deposit account.

30 [b.] (b) Debtor's right to direct disposition. A secured party that
31 has satisfied subsection [a.] (a) has control, even if the debtor retains
32 the right to direct the disposition of funds from the deposit account.
33 (cf: N.J.S.12A:9-104)

34

35 4. N.J.S.12A:9-105 is amended to read as follows:

36 12A:9-105. Control of Electronic Chattel Paper.

37 A secured party has control of electronic chattel paper if the record
38 or records comprising the chattel paper are created, stored, and
39 assigned in such a manner that:

40 [a. A] (1) a single authoritative copy of the record or records
41 exists which is unique, identifiable and, except as otherwise provided
42 in paragraphs [d., e. and f.] (4), (5), and (6), unalterable;

43 [b. The] (2) the authoritative copy identifies the secured party as
44 the assignee of the record or records;

45 [c. The] (3) the authoritative copy is communicated to and

1 maintained by the secured party or its designated custodian;

2 [d. Copies] (4) copies or revisions that add or change an identified
3 assignee of the authoritative copy can be made only with the
4 participation of the secured party;

5 [e. Each] (5) each copy of the authoritative copy and any copy of
6 a copy is readily identifiable as a copy that is not the authoritative
7 copy; and

8 [f.] (6) any revision of the authoritative copy is readily identifiable
9 as an authorized or unauthorized revision.

10 (cf: N.J.S.12A:9-105)

11

12 5. N.J.S.12A:9-106 is amended to read as follows:

13 12A:9-106. Control of Investment Property.

14 [a.] (a) Control under 12A:8-106. A person has control of a
15 certificated security, uncertificated security, or security entitlement as
16 provided in 12A:8-106.

17 [b.] (b) Control of commodity contract. A secured party has
18 control of a commodity contract if:

19 (1) the secured party is the commodity intermediary with which the
20 commodity contract is carried; or

21 (2) the commodity customer, secured party, and commodity
22 intermediary have agreed that the commodity intermediary will apply
23 any value distributed on account of the commodity contract as directed
24 by the secured party without further consent by the commodity
25 customer.

26 [c.] (c) Effect of control of securities account or commodity
27 account. A secured party having control of all security entitlements or
28 commodity contracts carried in a securities account or commodity
29 account has control over the securities account or commodity account.

30 (cf: N.J.S.12A:9-106)

31

32 6. N.J.S.12A:9-108 is amended to read as follows:

33 12A:9-108. Sufficiency of Description.

34 [a.] (a) Sufficiency of description. Except as otherwise provided
35 in subsections [c., d., e. and f. of this section] (c), (d), (e) and (f), a
36 description of personal or real property is sufficient, whether or not it
37 is specific, if it reasonably identifies what is described.

38 [b.] (b) Examples of reasonable identification. Except as
39 otherwise provided in subsection [d. of this section] (d), a description
40 of collateral reasonably identifies the collateral if it identifies the
41 collateral by:

42 (1) specific listing;

43 (2) category;

44 (3) except as otherwise provided in subsection [e. of this section]

45 (e), a type of collateral defined in the Uniform Commercial Code;

1 (4) quantity;
2 (5) computational or allocational formula or procedure; or
3 (6) except as otherwise provided in subsection [c. of this section]
4 (c), any other method, if the identity of the collateral is objectively
5 determinable.

6 [c.] (c) Supergeneric description not sufficient. A description of
7 collateral as “all the debtor’s assets” or “all the debtor’s personal
8 property” or using words of similar import does not reasonably
9 identify the collateral.

10 [d.] (d) Investment property. Except as otherwise provided in
11 subsection [e. of this section] (e), a description of a security
12 entitlement, securities account, or commodity account is sufficient if
13 it describes:

- 14 (1) the collateral by those terms or as investment property; or
15 (2) the underlying financial asset or commodity contract.

16 [e.] (e) When description by type insufficient. A description only
17 by type of collateral defined in the Uniform Commercial Code is an
18 insufficient description of:

- 19 (1) a commercial tort claim; or
20 (2) in a consumer transaction, consumer goods, a security
21 entitlement, a securities account, or a commodity account

22 [f.] (f) Bondable transition property. A description of bondable
23 transition property is sufficient if it refers to the bondable stranded
24 costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51),
25 establishing the bondable transition property.

26 (cf: N.J.S.12A:9-108)

27

28 7. N.J.S.12A:9-109 is amended to read as follows:

29 12A:9-109. Scope.

30 [a.] (a) General scope of chapter. Except as otherwise provided
31 in subsections [c. and d. of this section] (c) and (d), this chapter
32 applies to:

- 33 (1) a transaction, regardless of its form, that creates a security
34 interest in personal property or fixtures by contract;
35 (2) an agricultural lien;
36 (3) a sale of accounts, chattel paper, payment intangibles, or
37 promissory notes;
38 (4) a consignment;
39 (5) a security interest arising under 12A:2-401, 12A:2-505,
40 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and
41 (6) a security interest arising under 12A:4-210 or 12A:5-118.

42 [b.] (b) Security interest in secured obligation. The application of
43 this chapter to a security interest in a secured obligation is not affected
44 by the fact that the obligation is itself secured by a transaction or
45 interest to which this chapter does not apply.

- 1 **[c.] (c)** Extent to which chapter does not apply. This chapter does
2 not apply to the extent that:
- 3 (1) a statute, regulation, or treaty of the United States preempts
4 this chapter; or
- 5 (2) ¹[another statute of this State expressly governs the creation,
6 perfection, priority, or enforcement of a security interest created by
7 this State or a governmental unit of this State;
- 8 (3) a statute of another state, a foreign country, or a governmental
9 unit of another state or a foreign country, other than a statute
10 generally applicable to security interests, expressly governs creation,
11 perfection, priority, or enforcement of a security interest created by
12 the state, country, or governmental unit; or
- 13 (4)]¹ the rights of a transferee beneficiary or nominated person
14 under a letter of credit are independent and superior under 12A:5-114.
- 15 **[d.] (d)** Inapplicability of chapter. This chapter does not apply to:
- 16 (1) a landlord's lien, other than an agricultural lien;
- 17 (2) a lien, other than an agricultural lien, given by statute or other
18 rule of law for services or materials, but 12A:9-333 applies with
19 respect to priority of the lien;
- 20 (3) an assignment of a claim for wages, salary, or other
21 compensation of an employee;
- 22 (4) a sale of accounts, chattel paper, payment intangibles, or
23 promissory notes as part of a sale of the business out of which they
24 arose;
- 25 (5) an assignment of accounts, chattel paper, payment intangibles,
26 or promissory notes which is for the purpose of collection only;
- 27 (6) an assignment of a right to payment under a contract to an
28 assignee that is also obligated to perform under the contract;
- 29 (7) an assignment of a single account, payment intangible, or
30 promissory note to an assignee in full or partial satisfaction of a
31 preexisting indebtedness;
- 32 (8) a transfer of an interest in or an assignment of a claim under
33 a policy of insurance, other than an assignment by or to a health-care
34 provider of a health-care-insurance receivable and any subsequent
35 assignment of the right to payment, but 12A:9-315 and 12A:9-322
36 apply with respect to proceeds and priorities in proceeds;
- 37 (9) an assignment of a right represented by a judgment, other than
38 a judgment taken on a right to payment that was collateral;
- 39 (10) a right of recoupment or set-off, but:
- 40 **[(a)] (A)** 12A:9-340 applies with respect to the effectiveness of
41 rights of recoupment or set-off against deposit accounts; and
- 42 **[(b)] (B)** 12A:9-404 applies with respect to defenses or claims of
43 an account debtor;
- 44 (11) the creation or transfer of an interest in or lien on real
45 property, including a lease or rents thereunder, except to the extent
46 that provision is made for:

- 1 **[(a)] (A)** liens on real property in 12A:9-203 and 12A:9-308;
2 **[(b)] (B)** fixtures in 12A:9-334; and
3 **[(c)] (C)** fixture filings in 12A:9-501, 12A:9-502, 12A:9-512
4 **[and],** 12A:9-516 **and** 12A:9-519; and
5 **[(d)] (D)** security agreements covering personal and real property
6 in 12A:9-604;
7 (12) an assignment of a claim arising in tort, other than a
8 commercial tort claim, but 12A:9-315 and 12A:9-322 apply with
9 respect to proceeds and priorities in proceeds;
10 (13) an assignment of a deposit account in a consumer transaction,
11 but 12A:9-315 and 12A:9-322 apply with respect to proceeds and
12 priorities in proceeds; or
13 (14) a transfer by a government or governmental unit.
14 (cf: N.J.S.12A:9-109)

15

16 8. N.J.S.12A:9-201 is amended to read as follows:

17 12A:9-201. General Effectiveness of Security Agreement.

18 **[a.] (a)** General effectiveness. Except as otherwise provided in the
19 Uniform Commercial Code, a security agreement is effective according
20 to its terms between the parties, against purchasers of the collateral,
21 and against creditors.

22 **[b.] (b)** Applicable consumer laws and other law. A transaction
23 subject to this chapter is subject to any applicable rule of law which
24 establishes a different rule for consumers and to (1) any other statute
25 or regulation of this State that regulates the rates, charges,
26 agreements, and practices for loans, credit sales, or other extensions
27 of credit and (2) any consumer protection statute or regulation of this
28 State.

29 **[c.] (c)** Other applicable law controls. In case of conflict between
30 this chapter and a rule of law, statute, or regulation described in
31 subsection **[b. of this section] (b)**, the rule of law, statute, or
32 regulation controls. Failure to comply with a statute or regulation
33 described in subsection **[b.] (b)** has only the effect the statute or
34 regulation specifies.

35 **[d.] (d)** Further deference to other applicable law. This chapter
36 does not:

37 (1) validate any rate, charge, agreement, or practice that violates
38 a rule of law, statute, or regulation described in subsection **[b. of this**
39 **section] (b)**; or

40 (2) extend the application of the rule of law, statute, or regulation
41 to a transaction not otherwise subject to it.

42 (cf: N.J.S.12A:9-201)

43

44 9. N.J.S.12A:9-203 is amended to read as follows:

45 12A:9-203. Attachment and Enforceability of Security Interest;

1 Proceeds; Supporting Obligations; Formal Requisites.

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

6 [b.] (b) Enforceability. Except as otherwise provided in
7 subsections [c.] (c) through [i. of this section] (i), a security interest
8 is enforceable against the debtor and third parties with respect to the
9 collateral only if :

10 (1) value has been given;

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

13 (3) one of the following conditions is met:

14 [(a)] (A) the debtor has authenticated a security agreement that
15 provides a description of the collateral and, if the security interest
16 covers timber to be cut, a description of the land concerned;

17 [(b)] (B) the collateral is not a certificated security and is in the
18 possession of the secured party under 12A:9-313 pursuant to the
19 debtor's security agreement;

20 [(c)] (C) the collateral is a certificated security in registered form
21 and the security certificate has been delivered to the secured party
22 under 12A:8-301 pursuant to the debtor's security agreement; or

23 [(d)] (D) the collateral is deposit accounts, electronic chattel
24 paper, investment property, or letter-of-credit rights, and the secured
25 party has control under 12A:9-104, 12A:9-105, 12A:9-106, or
26 12A:9-107 pursuant to the debtor's security agreement.

27 [c.] (c) Other Uniform Commercial Code provisions. Subsection
28 [b. of this section] (b) is subject to 12A:4-210 on the security interest
29 of a collecting bank, 12A:5-118 on the security interest of a letter-of-
30 credit issuer or nominated person, 12A:9-110 on a security interest
31 arising under Chapter 2 or 2A, and 12A:9-206 on security interests in
32 investment property.

33 [d.] (d) When person becomes bound by another person's security
34 agreement. A person becomes bound as debtor by a security
35 agreement entered into by another person if, by operation of law other
36 than this chapter or by contract:

37 (1) the security agreement becomes effective to create a security
38 interest in the person's property; or

39 (2) the person becomes generally obligated for the obligations of
40 the other person, including the obligation secured under the security
41 agreement, and acquires or succeeds to all or substantially all of the
42 assets of the other person.

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

1 (1) the agreement satisfies [paragraph (3) of] subsection [b. of
2 this section] (b) (3) with respect to existing or after-acquired
3 property of the new debtor to the extent the property is described in
4 the agreement; and

5 (2) another agreement is not necessary to make a security interest
6 in the property enforceable.

7 [f.] (f) Proceeds and supporting obligations. The attachment of
8 a security interest in collateral gives the secured party the rights to
9 proceeds provided by 12A:9-315 and is also attachment of a security
10 interest in a supporting obligation for the collateral.

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

16 [h.] (h) Security entitlement carried in securities account. The
17 attachment of a security interest in a securities account is also
18 attachment of a security interest in the security entitlements carried in
19 the securities account.

20 [i.] (i) Commodity contracts carried in commodity account. The
21 attachment of a security interest in a commodity account is also
22 attachment of a security interest in the commodity contracts carried in
23 the commodity account.

24 [j.] (j) Bondable transition property. Bondable transition property
25 is presently existing property for all purposes, including for purposes
26 of [paragraph (2) of] subsection [b. of this section] (b) (2), whether
27 or not the revenues and proceeds arising under the property have
28 accrued and notwithstanding that the value of the property may
29 depend upon customer use of electricity or performance of service by
30 electric public utilities, or both.

31 (cf: N.J.S.12A:9-203)

32
33 10. N.J.S.12A:9-204 is amended to read as follows:

34 12A:9-204. After-acquired Property; Future Advances.

35 [a.] (a) After-acquired collateral. Except as otherwise provided
36 in subsection [b. of this section] (b), a security agreement may create
37 or provide for a security interest in after-acquired collateral.

38 [b.] (b) When after-acquired property clause not effective. A
39 security interest does not attach under a term constituting an
40 after-acquired property clause to:

41 (1) consumer goods, other than an accession when given as
42 additional security, unless the debtor acquires rights in them within 10
43 days after the secured party gives value; or

44 (2) a commercial tort claim.

45 [c.] (c) Future advances and other value. A security agreement

1 may provide that collateral secures, or that accounts, chattel paper,
2 payment intangibles, or promissory notes are sold in connection with,
3 future advances or other value, whether or not the advances or value
4 are given pursuant to commitment.

5 (cf: N.J.S.12A:9-204)

6

7 11. N.J.S.12A:9-205 is amended to read as follows:

8 12A:9-205. Use or Disposition of Collateral Permissible.

9 **[a.] (a)** When security interest not invalid or fraudulent. A
10 security interest is not invalid or fraudulent against creditors solely
11 because:

12 (1) the debtor has the right or ability to:

13 **[(a)] (A)** use, commingle, or dispose of all or part of the
14 collateral, including returned or repossessed goods;

15 **[(b)] (B)** collect, compromise, enforce, or otherwise deal with
16 collateral;

17 **[(c)] (C)** accept the return of collateral or make repossessions; or

18 **[(d)] (D)** use, commingle, or dispose of proceeds; or

19 (2) the secured party fails to require the debtor to account for
20 proceeds or replace collateral.

21 **[b.] (b)** Requirements of possession not relaxed. This section
22 does not relax the requirements of possession if attachment,
23 perfection, or enforcement of a security interest depends upon
24 possession of the collateral by the secured party.

25 (cf: N.J.S.12A:9-205)

26

27 12. N.J.S.12A:9-206 is amended to read as follows:

28 12A:9-206. Security Interest Arising in Purchase or Delivery of
29 Financial Asset.

30 **[a.] (a)** Security interest when person buys through securities
31 intermediary. A security interest in favor of a securities intermediary
32 attaches to a person's security entitlement if:

33 (1) the person buys a financial asset through the securities
34 intermediary in a transaction in which the person is obligated to pay
35 the purchase price to the securities intermediary at the time of the
36 purchase; and

37 (2) the securities intermediary credits the financial asset to the
38 buyer's securities account before the buyer pays the securities
39 intermediary.

40 **[b.] (b)** Security interest secures obligation to pay for financial
41 asset. The security interest described in subsection **[a. of this section]**
42 **(a)** secures the person's obligation to pay for the financial asset.

43 **[c.] (c)** Security interest in payment against delivery transaction.
44 A security interest in favor of a person **[who]** that delivers a
45 certificated security or other financial asset represented by a writing

1 attaches to the security or other financial asset if:

2 (1) the security or other financial asset:

3 [(a)] (A) in the ordinary course of business is transferred by
4 delivery with any necessary indorsement or assignment; and

5 [(b)] (B) is delivered under an agreement between persons in the
6 business of dealing with such securities or financial assets; and

7 (2) the agreement calls for delivery against payment.

8 [d.] (d) Security interest secures obligation to pay for delivery.

9 The security interest described in subsection [c. of this section] (c)
10 secures the obligation to make payment for the delivery.

11 (cf: N.J.S.12A:9-206)

12

13 13. N.J.S.12A:9-207 is amended to read as follows:

14 [12A:9-207. BLANK.]

15 (cf: N.J.S.12A:9-207)

16

17 14. N.J.S.12A:9-208 is amended to read as follows:

18 [12A:9-208.] ~~12A:9-207.~~ Rights and Duties of Secured Party
19 Having Possession or Control of Collateral.

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

26 [b.] (b) Expenses, risks, duties, and rights when secured party in
27 possession. Except as otherwise provided in subsection [d. of this
28 section] (d), if a secured party has possession of collateral:

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

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

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

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

38 [(a)] (A) for the purpose of preserving the collateral or its value;

39 [(b)] (B) as permitted by an order of a court having competent
40 jurisdiction; or

41 [(c)] (C) except in the case of consumer goods, in the manner and
42 to the extent agreed by the debtor.

43 [c.] (c) Duties and rights when secured party in possession or
44 control. Except as otherwise provided in subsection [d. of this
45 section] (d), a secured party having possession of collateral or control

1 of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

10 (1) subsection ¹**[a. of this section] (a)**¹ does not apply unless the
11 secured party is entitled under an agreement:

12 **[(a)] (A)** to charge back uncollected collateral; or

13 **[(b)] (B)** otherwise to full or limited recourse against the debtor
14 or a secondary obligor based on the nonpayment or other default of an
15 account debtor or other obligor on the collateral; and

16 (2) subsections **[b. and c. of this section] (b) and (c)** do not apply.
17 (cf: N.J.S.12A:9-208)

18

19 15. N.J.S.12A:9-209 is amended to read as follows:

20 **[12A:9-209.] 12A:9-208.** Additional Duties of Secured Party
21 Having Control of Collateral.

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

26 **[b.] (b)** Duties of secured party after receiving demand from
27 debtor. Within 10 days after receiving an authenticated demand by the
28 debtor:

29 (1) a secured party having control of a deposit account under
30 12A:9-104 **[a.] (a)** (2) shall send to the bank with which the deposit
31 account is maintained an authenticated statement that releases the bank
32 from any further obligation to comply with instructions originated by
33 the secured party;

34 (2) a secured party having control of a deposit account under
35 12A:9-104 **[a.] (a)** (3) shall:

36 **[(a)] (A)** pay the debtor the balance on deposit in the deposit
37 account; or

38 **[(b)] (B)** transfer the balance on deposit into a deposit account in
39 the debtor's name;

40 (3) a secured party, other than a buyer, having control of electronic
41 chattel paper under 12A:9-105 shall:

42 **[(a)] (A)** communicate the authoritative copy of the electronic
43 chattel paper to the debtor or its designated custodian;

44 **[(b)] (B)** if the debtor designates a custodian that is the designated
45 custodian with which the authoritative copy of the electronic chattel

1 paper is maintained for the secured party, communicate to the
2 custodian an authenticated record releasing the designated custodian
3 from any further obligation to comply with instructions originated by
4 the secured party and instructing the custodian to comply with
5 instructions originated by the debtor; and

6 ~~[(c)] (C)~~ take appropriate action to enable the debtor or its
7 designated custodian to make copies of or revisions to the
8 authoritative copy which add or change an identified assignee of the
9 authoritative copy without the consent of the secured party;

10 (4) a secured party having control of investment property under
11 12A:8-106 d. (2) or 12A:9-106 ~~[b.] (b)~~ shall send to the securities
12 intermediary or commodity intermediary with which the security
13 entitlement or commodity contract is maintained an authenticated
14 record that releases the securities intermediary or commodity
15 intermediary from any further obligation to comply with entitlement
16 orders or directions originated by the secured party; and

17 (5) a secured party having control of a letter-of-credit right under
18 12A:9-107 shall send to each person having an unfulfilled obligation
19 to pay or deliver proceeds of the letter of credit to the secured party
20 an authenticated release from any further obligation to pay or deliver
21 proceeds of the letter of credit to the secured party.

22 (cf: N.J.S.12A:9-209)

23

24 16. N.J.S.12A:9-210 is amended to read as follows:

25 ~~[12A:9-210.] 12A:9-209~~ Duties of Secured Party If Account
26 Debtor Has Been Notified of Assignment.

27 ~~[a.] (a)~~ Applicability of section. Except as otherwise provided in
28 subsection ~~[c.] (c)~~, this section applies if:

29 (1) there is no outstanding secured obligation; and

30 (2) the secured party is not committed to make advances, incur
31 obligations, or otherwise give value.

32 ~~[b.] (b)~~ Duties of secured party after receiving demand from
33 debtor. Within 10 days after receiving an authenticated demand by the
34 debtor, a secured party shall send to an account debtor that has
35 received notification of an assignment to the secured party as assignee
36 under 12A:9-406 ~~[a.] (a)~~ an authenticated record that releases the
37 account debtor from any further obligation to the secured party.

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

41 (cf: N.J.S.12A:9-210)

42

43 17. N.J.S.12A:9-211 is amended to read as follows:

44 ~~[12A:9-211.] 12A:9-210.~~ Request for Accounting; Request
45 Regarding List of Collateral or Statement of Account.

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

2 (1) "Request" means a record of a type described in paragraph (2),
3 (3), or (4) **[of this section]**.

4 (2) "Request for an accounting" means a record authenticated by
5 a debtor requesting that the recipient provide an accounting of the
6 unpaid obligations secured by collateral and reasonably identifying the
7 transaction or relationship that is the subject of the request.

8 (3) "Request regarding a list of collateral" means a record
9 authenticated by a debtor requesting that the recipient approve or
10 correct a list of what the debtor believes to be the collateral securing
11 an obligation and reasonably identifying the transaction or relationship
12 that is the subject of the request.

13 (4) "Request regarding a statement of account" means a record
14 authenticated by a debtor requesting that the recipient approve or
15 correct a statement indicating what the debtor believes to be the
16 aggregate amount of unpaid obligations secured by collateral as of a
17 specified date and reasonably identifying the transaction or relationship
18 that is the subject of the request.

19 **[b.] (b)** Duty to respond to requests. Subject to subsections **[c.,**
20 **d., e. and f. of this section]** **(c), (d), (e), and (f)**, a secured party, other
21 than a buyer of accounts, chattel paper, payment intangibles, or
22 promissory notes or a consignor, shall comply with a request within 14
23 days after receipt:

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

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

29 **[c.] (c)** Request regarding list of collateral; statement concerning
30 type of collateral. A secured party that claims a security interest in all
31 of a particular type of collateral owned by the debtor may comply with
32 a request regarding a list of collateral by sending to the debtor an
33 authenticated record including a statement to that effect within 14 days
34 after receipt.

35 **[d.] (d)** Request regarding list of collateral; no interest claimed.
36 A person **[who]** that receives a request regarding a list of collateral,
37 claims no interest in the collateral when it receives the request, and
38 claimed an interest in the collateral at an earlier time shall comply with
39 the request within 14 days after receipt by sending to the debtor an
40 authenticated record:

41 (1) disclaiming any interest in the collateral; and

42 (2) if known to the **[person]** recipient, providing the name and
43 mailing address of any assignee of or successor to the **[person's]**
44 recipient's interest in the collateral.

45 **[e.] (e)** Request for accounting or regarding statement of account;

1 no interest in obligation claimed. A person [who] that receives a
2 request for an accounting or a request regarding a statement of
3 account, claims no interest in the obligations when it receives the
4 request, and claimed an interest in the obligations at an earlier time
5 shall comply with the request within 14 days after receipt by sending
6 to the debtor an authenticated record:

7 (1) disclaiming any interest in the obligations; and

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

11 [f.] (f) Charges for responses. A debtor is entitled without charge
12 to one response to a request under this section during any six-month
13 period. The secured party may require payment of a charge not
14 exceeding \$25 for each additional response.

15 (cf: N.J.S. 12A:9-211)

16

17 18. N.J.S.12A:9-301 is amended to read as follows:

18 12A:9-301. Law Governing Perfection and Priority of Security
19 Interests.

20 Except as otherwise provided in sections 12A:9-303 through
21 12A:9-306, the following rules determine the law governing
22 perfection, the effect of perfection or nonperfection, and the priority
23 of a security interest in collateral:

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

28 [b.] (2) While collateral is located in a jurisdiction, the local law
29 of that jurisdiction governs perfection, the effect of perfection or
30 nonperfection, and the priority of a possessory security interest in that
31 collateral.

32 [c.] (3) Except as otherwise provided in [subsection d. of this
33 section] paragraph (4), while negotiable documents, goods,
34 instruments, money, or tangible chattel paper [are] is located in a
35 jurisdiction, the local law of that jurisdiction governs:

36 [(1) the] (A) perfection of a security interest in the goods by filing
37 a fixture filing;

38 [(2) the] (B) perfection of a security interest in timber to be cut;
39 and

40 [(3)] (C) the effect of perfection or nonperfection and the priority
41 of a nonpossessory security interest in the collateral.

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

1 [e.] (5) Notwithstanding [subsection a. of this section] paragraph
2 (1), the local law of this State shall govern the perfection, the effect of
3 perfection or nonperfection, and the priority of a security interest in
4 bondable transition property.

5 (cf: N.J.S.12A:9-301)

6

7 19. N.J.S.12A:9-303 is amended to read as follows:

8 12A:9-303. Law Governing Perfection and Priority of Security
9 Interests in Goods Covered by a Certificate of Title.

10 [a.] (a) Applicability of section. This section applies to goods
11 covered by a certificate of title, even if there is no other relationship
12 between the jurisdiction under whose certificate of title the goods are
13 covered and the goods or the debtor.

14 [b.] (b) When goods covered by certificate of title. Goods
15 become covered by a certificate of title when a valid application for
16 the certificate of title and the applicable fee are delivered to the
17 appropriate authority. Goods cease to be covered by a certificate of
18 title at the earlier of the time the certificate of title ceases to be
19 effective under the law of the issuing jurisdiction [and] or the time the
20 goods become covered subsequently by a certificate of title issued by
21 another jurisdiction.

22 [c.] (c) Applicable law. The local law of the jurisdiction under
23 whose certificate of title the goods are covered governs perfection, the
24 effect of perfection or nonperfection, and the priority of a security
25 interest in goods covered by a certificate of title from the time the
26 goods become covered by the certificate of title until the goods cease
27 to be covered by the certificate of title.

28 (cf: N.J.S.12A:9-303)

29

30 20. N.J.S.12A:9-304 is amended to read as follows:

31 12A:9-304. Law Governing Perfection and Priority of Security
32 Interests in Deposit Accounts.

33 [a.] (a) Law of bank's jurisdiction governs. The local law of a
34 bank's jurisdiction governs perfection, the effect of perfection or
35 nonperfection, and the priority of a security interest in a deposit
36 account maintained with that bank.

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

39 (1) If an agreement between the bank and [the debtor] its
40 customer governing the deposit account expressly provides that a
41 particular jurisdiction is the bank's jurisdiction for purposes of this
42 part, this chapter, or the Uniform Commercial Code, that jurisdiction
43 is the bank's jurisdiction.

44 (2) If paragraph (1) [of this subsection] does not apply and an
45 agreement between the bank and its customer governing the deposit

1 account expressly provides that the agreement is governed by the law
2 of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

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

8 (4) If none of the preceding paragraphs [(1) through (3) of this
9 subsection] applies, the bank's jurisdiction is the jurisdiction in which
10 the office identified in an account statement as the office serving the
11 customer's account is located.

12 (5) If none of the preceding paragraphs [(1) through (4) of this
13 subsection] applies, the bank's jurisdiction is the jurisdiction in which
14 the chief executive office of the bank is located.

15 (cf: N.J.S.12A:9-304)

16

17 21. N.J.S.12A:9-305 is amended to read as follows:

18 12A:9-305. Law Governing Perfection and Priority of Security
19 Interests in Investment Property.

20 [a.] (a) Governing law: general rules. Except as otherwise
21 provided in subsection [c. of this section] (c), the following rules
22 apply:

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

27 (2) The local law of the issuer's jurisdiction as specified in [of]
28 12A:8-110 d. governs perfection, the effect of perfection or
29 nonperfection, and the priority of a security interest in an
30 uncertificated security.

31 (3) The local law of the securities intermediary's jurisdiction as
32 specified in 12A:8-110 e. governs perfection, the effect of perfection
33 or nonperfection, and the priority of a security interest in a security
34 entitlement or securities account.

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

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

42 (1) If an agreement between the commodity intermediary and
43 commodity customer governing the commodity account expressly
44 provides that a particular jurisdiction is the commodity intermediary's
45 jurisdiction for purposes of this part, this chapter, or the Uniform

1 Commercial Code, that jurisdiction is the commodity intermediary's
2 jurisdiction.

3 (2) If paragraph (1) [of this subsection] does not apply and an
4 agreement between the commodity intermediary and commodity
5 customer governing the commodity account expressly provides that
6 the agreement is governed by the law of a particular jurisdiction, that
7 jurisdiction is the commodity intermediary's jurisdiction.

8 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
9 applies and an agreement between the commodity intermediary and
10 commodity customer governing the commodity account expressly
11 provides that the commodity account is maintained at an office in a
12 particular jurisdiction, that jurisdiction is the commodity intermediary's
13 jurisdiction.

14 (4) If none of the preceding paragraphs [(1) through (3) of this
15 subsection] applies, the commodity intermediary's jurisdiction is the
16 jurisdiction in which the office identified in an account statement as the
17 office serving the commodity customer's account is located.

18 (5) If none of the preceding paragraphs [(1) through (4) of this
19 subsection] applies, the commodity intermediary's jurisdiction is the
20 jurisdiction in which the chief executive office of the commodity
21 intermediary is located.

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

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

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

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

30 (cf: N.J.S.12A:9-305)

31

32 22. N.J.S.12A:9-306 is amended to read as follows:

33 12A:9-306. Law Governing Perfection and Priority of Security
34 Interests in Letter-of-Credit Rights.

35 [a.] (a) Governing law: issuer's or nominated person's jurisdiction.
36 Subject to subsection [c. of this section] (c), the local law of the
37 issuer's jurisdiction or a nominated person's jurisdiction governs
38 perfection, the effect of perfection or nonperfection, and the priority
39 of a security interest in a letter-of-credit right if the issuer's jurisdiction
40 or nominated person's jurisdiction is a state.

41 [b.] (b) Issuer's or nominated person's jurisdiction. For purposes
42 of this part, an issuer's jurisdiction or nominated person's jurisdiction
43 is the jurisdiction whose law governs the liability of the issuer or
44 nominated person with respect to the letter-of-credit right as provided
45 in 12A:5-116.

46 [c.] (c) When section not applicable. This section does not apply

1 to a security interest that is perfected only under 12A:9-308 [d.] (d).
2 (cf: N.J.S.12A:9-306)

3

4 23. N.J.S.12A:9-307 is amended to read as follows:

5 12A:9-307. Location of Debtor.

6 [a.] (a) "Place of business." In this section, "place of business"
7 means a place where a debtor conducts its affairs.

8 [b.] (b) Debtor's location: general rules. Except as otherwise
9 provided in this section, the following rules determine a debtor's
10 location:

11 (1) A debtor who is an individual is located at the individual's
12 principal residence.

13 (2) A debtor that is an organization and has only one place of
14 business is located at its place of business.

15 (3) A debtor that is an organization and has more than one place
16 of business is located at its chief executive office.

17 [c.] (c) Limitation of applicability of subsection [b.] (b).
18 Subsection [b. of this section] (b) applies only if a debtor's residence,
19 place of business, or chief executive office, as applicable, is located in
20 a jurisdiction whose law generally requires information concerning the
21 existence of a nonpossessory security interest to be made generally
22 available in a filing, recording, or registration system as a condition or
23 result of the security interest's obtaining priority over the rights of a
24 lien creditor with respect to the collateral. If subsection [b.] (b) does
25 not apply, the debtor is located in the District of Columbia.

26 [d.] (d) Continuation of location: cessation of existence, etc. A
27 person [who] that ceases to exist, have a residence, or have a place
28 of business continues to be located in the jurisdiction specified by
29 subsections [b. and c of this section] (b) and (c).

30 [e.] (e) Location of registered organization organized under state
31 law. A registered organization that is organized under the law of a
32 state is located in that state.

33 [f.] (f) Location of registered organization organized under federal
34 law; bank branches and agencies. Except as otherwise provided in
35 subsection [i. of this section] (i), a registered organization that is
36 organized under the law of the United States and a branch or agency
37 of a bank that is not organized under the law of the United States or
38 a state are located:

39 (1) in the state that the law of the United States designates, if the
40 law designates a state of location;

41 (2) in the state that the registered organization, branch, or agency
42 designates, if the law of the United States authorizes the registered
43 organization, branch, or agency to designate its state of location; or

44 (3) in the District of Columbia, if neither paragraph (1) nor
45 paragraph (2) [of this subsection] applies.

1 **[g.] (g)** Continuation of location: change in status of registered
2 organization. A registered organization continues to be located in the
3 jurisdiction specified by subsection **[e. or f. of this section] (e) or (f)**
4 notwithstanding:

5 (1) the suspension, revocation, forfeiture, or lapse of the registered
6 organization's status as such in its jurisdiction of organization; or

7 (2) the dissolution, winding up, or cancellation of the existence of
8 the registered organization.

9 **[h.] (h)** Location of United States. The United States is located
10 in the District of Columbia.

11 **[i.] (i)** Location of foreign bank branch or agency if licensed in
12 only one state. A branch or agency of a bank that is not organized
13 under the law of the United States or a state is located in the state in
14 which the branch or agency is licensed, if all branches and agencies of
15 the bank are licensed in only one state.

16 **[j.] (j)** Location of foreign air carrier. A foreign air carrier
17 **[covered]** under the Federal Aviation Act of 1958, as amended (49
18 U.S.C. s.1301 et seq.), is located at the designated office of the agent
19 upon which service of process may be made on behalf of the carrier.

20 **[k.] (k)** Section applies only to this part. This section applies only
21 for purposes of this part.

22 (cf: N.J.S.12A:9-307)

23

24 24. N.J.S.12A:9-308 is amended to read as follows:

25 12A:9-308. When Security Interest or Agricultural Lien Is
26 Perfected; Continuity of Perfection.

27 **[a.] (a)** Perfection of security interest. Except as otherwise
28 provided in this section and 12A:9-309, a security interest is perfected
29 if it has attached and all of the applicable requirements for perfection
30 in 12A:9-310 through 12A:9-316 have been satisfied. A security
31 interest is perfected when it attaches if the applicable requirements are
32 satisfied before the security interest attaches.

33 **[b.] (b)** Perfection of agricultural lien. An agricultural lien is
34 perfected if it has become effective and all of the applicable
35 requirements for perfection in 12A:9-310 have been satisfied. An
36 agricultural lien is perfected when it becomes effective if the applicable
37 requirements are satisfied before the agricultural lien becomes
38 effective.

39 **[c.] (c)** Continuous perfection; perfection by different methods.
40 A security interest or agricultural lien is perfected continuously if it is
41 originally perfected by one method under this chapter and is later
42 perfected by another method under this chapter, without an
43 intermediate period when it was unperfected.

44 **[d.] (d)** Supporting obligation. Perfection of a security interest in
45 collateral also perfects a security interest in a supporting obligation for

1 the collateral.

2 [e.] (e) Lien securing right to payment. Perfection of a security
3 interest in a right to payment or performance also perfects a security
4 interest in a security interest, mortgage, or other lien on personal or
5 real property securing the right.

6 [f.] (f) Security entitlement carried in securities account.
7 Perfection of a security interest in a securities account also perfects a
8 security interest in the security entitlements carried in the securities
9 account.

10 [g.] (g) Commodity contract carried in commodity account.
11 Perfection of a security interest in a commodity account also perfects
12 a security interest in the commodity contracts carried in the
13 commodity account.

14 (cf: N.J.S.12A:9-308)

15

16 25. N.J.S.12A:9-309 is amended to read as follows:

17 12A:9-309. Security Interest Perfected upon Attachment.

18 The following security interests are perfected when they attach:

19 [a.] (1) a purchase-money security interest in consumer goods,
20 except as otherwise provided in 12A:9-311 [b.] (b) with respect to
21 consumer goods that are subject to a statute or treaty described in
22 12A:9-311 [a.] (a);

23 [b.] (2) an assignment of accounts or payment intangibles which
24 does not by itself or in conjunction with other assignments to the same
25 assignee transfer a significant part of the assignor's outstanding
26 accounts or payment intangibles;

27 [c.] (3) a sale of a payment intangible;

28 [d.] (4) a sale of a promissory note;

29 [e.] (5) a security interest created by the assignment of a
30 health-care-insurance receivable to the provider of the health-care
31 goods or services;

32 [f.] (6) a security interest arising under 12A:2-401, 12A:2-505,
33 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of
34 the collateral;

35 [g.] (7) security interest of a collecting bank arising under
36 12A:4-210;

37 [h.] (8) a security interest of an issuer or nominated person arising
38 under 12A:5-118;

39 (9) a security interest arising in the delivery of a financial asset
40 under 12A:9-206 [c.] (c);

41 [i.] (10) a security interest in investment property created by a
42 broker or securities intermediary;

43 [j.] (11) a security interest in a commodity contract or a
44 commodity account created by a commodity intermediary;

45 [k.] (12) An assignment for the benefit of all creditors of the
46 transferor and subsequent transfers by the assignee thereunder; and

1 **[1.] (13)** A security interest created by an assignment of a
2 beneficial interest in a decedent's estate.

3 (cf: N.J.S.12A:9-309)

4

5 26. N.J.S.12A:9-310 is amended to read as follows:

6 12A:9-310. When Filing Required to Perfect Security Interest or
7 Agricultural Lien; Security Interests and Agricultural Liens to Which
8 Filing Provisions Do Not Apply.

9 **[a.] (a)** General rule: perfection by filing. Except as otherwise
10 provided in subsection **[b. of this section] (b)** and 12A:9-312 **[b.] (b)**,
11 a financing statement **[shall] must** be filed to perfect all security
12 interests and agricultural liens.

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

15 (1) that is perfected under **[subsections d., e., f. or g. of]**
16 12A:9-308 **(d), (e), (f) or (g)**;

17 (2) that is perfected under 12A:9-309 when it attaches;

18 (3) in property subject to a statute, regulation, or treaty described
19 in of 12A:9-311 **[a.] (a)**;

20 (4) in goods in possession of a bailee which is perfected under
21 12A:9-312 **[d.] (d)** (1) or (2);

22 (5) in certificated securities, documents, goods, or instruments
23 which is perfected without filing or possession under **[subsection e.,**
24 **f. or g. of] 12A:9-312 (e), (f) or (g)**;

25 (6) in collateral in the secured party's possession under 12A:9-313;

26 (7) in a certificated security which is perfected by delivery of the
27 security certificate to the secured party under 12A:9-313;

28 (8) in deposit accounts, electronic chattel paper, investment
29 property, or letter-of-credit rights which is perfected by control under
30 12A:9-314;

31 (9) in proceeds which is perfected under 12A:9-315; or

32 (10) that is perfected under 12A:9-316.

33 **[c.] (c)** Assignment of perfected security interest. If a secured
34 party assigns a perfected security interest or agricultural lien, a filing
35 under this chapter is not required to continue the perfected status of
36 the security interest against creditors of and transferees from the
37 original debtor.

38 (cf: N.J.S.12A:9-310)

39

40 27. N.J.S.12A:9-311 is amended to read as follows:

41 12A:9-311. Perfection of Security Interests in Property Subject to
42 Certain Statutes, Regulations, and Treaties.

43 **[a.] (a)** Security interest subject to other law. Except as otherwise
44 provided in subsection **[d. of this section] (d)**, the filing of a financing
45 statement is not necessary or effective to perfect a security interest in

1 property subject to:

2 (1) a statute, regulation, or treaty of the United States whose
3 requirements for a security interest's obtaining priority over the rights
4 of a lien creditor with respect to the property preempt 12A:9-310 [a.]
5 (a);

6 (2) the "motor vehicle certificate of ownership law," R.S.39:10-1
7 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152
8 (C.12:7A-1 et seq.) or successor statutes or law; or

9 (3) a certificate-of-title statute of another jurisdiction which
10 provides for a security interest to be indicated on the certificate as a
11 condition or result of the security interest's obtaining priority over the
12 rights of a lien creditor with respect to the property.

13 [b.] (b) Compliance with other law. Compliance with the
14 requirements of a statute, regulation, or treaty described in subsection
15 [a. of this section] (a) for obtaining priority over the rights of a lien
16 creditor is equivalent to the filing of a financing statement under this
17 chapter. Except as otherwise provided in subsection [d. of this
18 section] (d), 12A:9-313 and [subsections d. and e. of] 12A:9-316 (d)
19 and (e) for goods covered by a certificate of title, a security interest in
20 property subject to a statute, regulation, or treaty described in
21 subsection [a. of this section] (a) may be perfected only by
22 compliance with those requirements, and a security interest so
23 perfected remains perfected notwithstanding a change in the use or
24 transfer of possession of the collateral.

25 [c.] (c) Duration and renewal of perfection. Except as otherwise
26 provided in subsection [d. of this section] (d) and [subsections d. and
27 e. of] 12A:9-316 (d) and (e), duration and renewal of perfection of a
28 security interest perfected by compliance with the requirements
29 prescribed by a statute, regulation, or treaty described in subsection
30 [a.] (a) are governed by the statute, regulation, or treaty. In other
31 respects, the security interest is subject to this chapter.

32 [d.] (d) Inapplicability to certain inventory. During any period in
33 which collateral subject to a statute specified in subsection (a) (2) is
34 inventory held for sale or lease by a person or leased by that person as
35 lessor and that person is in the business of selling [or leasing] goods
36 of that kind, this section does not apply to a security interest in that
37 collateral created by that person [as debtor].

38 (cf: N.J.S.12A:9-311)

39

40 28. N.J.S.12A:9-312 is amended to read as follows:

41 12A:9-312. Perfection of Security Interests in Chattel Paper,
42 Deposit Accounts, Documents, Goods Covered by Documents,
43 Instruments, Investment Property, Letter-of-credit Rights, and Money;
44 Perfection by Permissive Filing; Temporary Perfection Without Filing
45 or Transfer of Possession.

1 **[a.] (a)** Perfection by filing permitted. A security interest in
2 chattel paper, negotiable documents, instruments, or investment
3 property may be perfected by filing.

4 **[b.] (b)** Control or possession of certain collateral. Except as
5 otherwise provided in **[subsections c. and d. of]** 12A:9-315 **(c) and**
6 **(d)** for proceeds:

7 (1) a security interest in a deposit account may be perfected only
8 by control under 12A:9-314;

9 (2) and except as otherwise provided in 12A:9-308 **[d.] (d)**, a
10 security interest in a letter-of-credit right may be perfected only by
11 control under 12A:9-314; and

12 (3) a security interest in money may be perfected only by the
13 secured party's taking possession under 12A:9-313.

14 **[c.] (c)** Goods covered by negotiable document. While goods are
15 in the possession of a bailee that has issued a negotiable document
16 covering the goods:

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

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

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

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

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

28 or

29 (3) filing as to the goods.

30 **[e.] (e)** Temporary perfection: new value. A security interest in
31 certificated securities, negotiable documents, or instruments is
32 perfected without filing or the taking of possession for a period of 20
33 days from the time it attaches to the extent that it arises for new value
34 given under an authenticated security agreement.

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

41 (1) ultimate sale or exchange; or

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

45 **[g.] (g)** Temporary perfection: delivery of security certificate or

1 instrument to debtor. A perfected security interest in a certificated
2 security or instrument remains perfected for 20 days without filing if
3 the secured party delivers the security certificate or instrument to the
4 debtor for the purpose of:

5 (1) ultimate sale or exchange; or

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

8 [h.] (h) Expiration of temporary perfection. After the 20-day
9 period specified in subsection [e., f. or g. of this section] (e), (f) or
10 (g) expires, perfection depends upon compliance with this chapter.
11 (cf: N.J.S.12A:9-312)

12

13 29. N.J.S.12A:9-313 is amended to read as follows:

14 12A:9-313. When Possession by or Delivery to Secured Party
15 Perfects Security Interest Without Filing.

16 [a.] (a) Perfection by possession or delivery. Except as otherwise
17 provided in subsection [b.] (b), a secured party may perfect a security
18 interest in negotiable documents, goods, instruments, money, or
19 tangible chattel paper by taking possession of the collateral. A secured
20 party may perfect a security interest in certificated securities by taking
21 delivery of the certificated securities under 12A:8-301.

22 [b.] (b) Goods covered by certificate of title. With respect to
23 goods covered by a certificate of title issued by this State, a secured
24 party may perfect a security interest in the goods by taking possession
25 of the goods only in the circumstances described in 12A:9-316 [d.]
26 (d).

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

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

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

39 [d.] (d) Time of perfection by possession; continuation of
40 perfection. If perfection of a security interest depends upon
41 possession of the collateral by a secured party, perfection occurs no
42 earlier than the time the secured party takes possession and continues
43 only while the secured party retains possession.

44 [e.] (e) Time of perfection by delivery; continuation of perfection.
45 A security interest in a certificated security in registered form is

1 perfected by delivery when delivery of the certificated security occurs
2 under 12A:8-301 and remains perfected by delivery until the debtor
3 obtains possession of the security certificate.

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

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

10 (1) the acknowledgment is effective under subsection **[c. of this**
11 **section] (c)** or **[subsection a. of] 12A:8-301 (a)**, even if the
12 acknowledgment violates the rights of a debtor; and

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

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

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

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

26 **[i.] (i)** Effect of delivery under subsection **[h.] (h)**; no duties or
27 confirmation. A secured party does not relinquish possession, even if
28 a delivery under subsection **[h.] (h)**¹ **[of this section]**¹ violates the
29 rights of a debtor. A person to which collateral is delivered under
30 subsection **[h.] (h)** does not owe any duty to the secured party and is
31 not required to confirm the delivery to another person unless the
32 person otherwise agrees or law other than this chapter otherwise
33 provides.

34 (cf: N.J.S.12A:9-313)

35

36 30. N.J.S.12A:9-314 is amended to read as follows:

37 12A:9-314. Perfection by Control.

38 **[a.] (a)** Perfection by control. A security interest in investment
39 property, deposit accounts, letter-of-credit rights, or electronic chattel
40 paper may be perfected by control of the collateral under 12A:9-104,
41 12A:9-105, 12A:9-106 or 12A:9-107.

42 **[b.] (b)** Specified collateral: time of perfection by control;
43 continuation of perfection. A security interest in deposit accounts,
44 electronic chattel paper, or letter-of-credit rights is perfected by
45 control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured

1 party obtains control and remains perfected by control only while the
2 secured party retains control.

3 [c.] (c) Investment property: time of perfection by control;
4 continuation of perfection. A security interest in investment property
5 is perfected by control under 12A:9-106 from the time the secured
6 party obtains control and remains perfected by control until:

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

8 (2) one of the following occurs:

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

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

13 [(c)] (C) if the collateral is a security entitlement, the debtor is or
14 becomes the entitlement holder.

15 (cf: N.J.S.12A:9-314)

16

17 31. N.J.S.12A:9-315 is amended to read as follows:

18 12A:9-315. Secured Party's Rights on Disposition of Collateral and
19 in Proceeds.

20 [a.] (a) Disposition of collateral: continuation of security interest
21 or agricultural lien; proceeds. Except as otherwise provided in this
22 chapter and in 12A:2-403(2):

23 (1) a security interest or agricultural lien continues in collateral
24 notwithstanding sale, lease, license, exchange, or other disposition
25 thereof unless the secured party authorized the disposition free of the
26 security interest or agricultural lien; and

27 (2) a security interest attaches to any identifiable proceeds of
28 collateral.

29 [b.] (b) When commingled proceeds identifiable. Proceeds that
30 are commingled with other property are identifiable proceeds:

31 (1) if the proceeds are goods, to the extent provided by 12A:9-336;
32 and

33 (2) if the proceeds are not goods, to the extent that the secured
34 party identifies the proceeds by a method of tracing, including
35 application of equitable principles, that is permitted under law other
36 than this chapter with respect to commingled property of the type
37 involved.

38 [c.] (c) Perfection of security interest in proceeds. A security
39 interest in proceeds is a perfected security interest if the security
40 interest in the original collateral was perfected.

41 [d.] (d) Continuation of perfection. A perfected security interest
42 in proceeds becomes unperfected on the 21st day after the security
43 interest attaches to the proceeds unless:

44 (1) the following conditions are satisfied:

45 [(a)] (A) a filed financing statement covers the original collateral;

1 ~~[(b)] (B)~~ the proceeds are collateral in which a security interest
2 may be perfected by filing in the office in which the financing
3 statement has been filed; and

4 ~~[(c)] (C)~~ the proceeds are not acquired with cash proceeds;

5 (2) the proceeds are identifiable cash proceeds; or

6 (3) the security interest in the proceeds is perfected other than
7 under subsection ~~[c. of this section]~~ ~~(c)~~ when the security interest
8 attaches to the proceeds or within 20 days thereafter.

9 ~~[e.] (e)~~ When perfected security interest in proceeds becomes
10 unperfected. If a filed financing statement covers the original
11 collateral, a security interest in proceeds which remains perfected
12 under ~~[paragraph (1) of]~~ subsection ~~[d. of this section]~~ ~~(d) (1)~~
13 becomes unperfected at the later of:

14 (1) when the effectiveness of the filed financing statement lapses
15 under 12A:9-515 or is terminated under 12A:9-513; or

16 (2) the 21st day after the security interest attaches to the proceeds.
17 (cf: N.J.S.12A:9-315)

18

19 32. N.J.S.12A:9-316 is amended to read as follows:

20 12A:9-316. Continued Perfection of Security Interest Following
21 Change in Governing Law.

22 ~~[a.] (a)~~ General rule: effect on perfection of change in governing
23 law. A security interest perfected pursuant to the law of the
24 jurisdiction designated in 12A:9-301 ~~[a.] (1)~~ or 12A:9-305 ~~[c.] (c)~~
25 remains perfected until the earliest of:

26 (1) the time perfection would have ceased under the law of that
27 jurisdiction;

28 (2) the expiration of four months after a change of the debtor's
29 location to another jurisdiction; or

30 (3) the expiration of one year after a transfer of collateral to a
31 person ~~[who]~~ that thereby becomes a debtor and is located in another
32 jurisdiction.

33 ~~[b.] (b)~~ Security interest perfected or unperfected under law of
34 new jurisdiction. If a security interest described in subsection ~~[a. of~~
35 ~~this section]~~ ~~(a)~~ becomes perfected under the law of the other
36 jurisdiction before the earliest time or event described in that
37 subsection, it remains perfected thereafter. If the security interest
38 does not become perfected under the law of the other jurisdiction
39 before the earliest time or event, it becomes unperfected and is deemed
40 never to have been perfected as against a purchaser of the collateral
41 for value.

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

1 (1) the collateral is located in one jurisdiction and subject to a
2 security interest perfected under the law of that jurisdiction;

3 (2) thereafter the collateral is brought into another jurisdiction; and

4 (3) upon entry into the other jurisdiction, the security interest is
5 perfected under the law of the other jurisdiction.

6 [d.] (d) Goods covered by certificate of title from this State.
7 Except as otherwise provided in subsection [e. of this section] (e), a
8 security interest in goods covered by a certificate of title which is
9 perfected by any method under the law of another jurisdiction when
10 the goods become covered by a certificate of title from this State
11 remains perfected until the security interest would have become
12 unperfected under the law of the other jurisdiction had the goods not
13 become so covered.

14 [e.] (e) When subsection [d.] (d) security interest becomes
15 unperfected against purchasers. A security interest described in
16 subsection [d. of this section] (d) becomes unperfected as against a
17 purchaser of the goods for value and is deemed never to have been
18 perfected as against a purchaser of the goods for value if the
19 applicable requirements for perfection under 12A:9-311 [b.] (b) or
20 12A:9-313 are not satisfied before the earlier of:

21 (1) the time the security interest would have become unperfected
22 under the law of the other jurisdiction had the goods not become
23 covered by a certificate of title from this State; or

24 (2) the expiration of four months after the goods had become so
25 covered.

26 [f.] (f) Change in jurisdiction of bank, issuer, nominated person,
27 securities intermediary, or commodity intermediary. A security
28 interest in deposit accounts, letter-of-credit rights, or investment
29 property which is perfected under the law of the bank's jurisdiction,
30 the issuer's jurisdiction, a nominated person's jurisdiction, the
31 securities intermediary's jurisdiction, or the commodity intermediary's
32 jurisdiction, as applicable, remains perfected until the earlier of:

33 (1) the time the security interest would have become unperfected
34 under the law of that jurisdiction; or

35 (2) the expiration of four months after a change of the applicable
36 jurisdiction to another jurisdiction.

37 [g.] (g) Subsection [f.] (f) security interest perfected or
38 unperfected under law of new jurisdiction. If a security interest
39 described in subsection [f. of this section] (f) becomes perfected
40 under the law of the other jurisdiction before the earlier of the time or
41 the end of the period described in that subsection, it remains perfected
42 thereafter. If the security interest does not become perfected under
43 the law of the other jurisdiction before the earlier of that time or the
44 end of that period, it becomes unperfected and is deemed never to
45 have been perfected as against a purchaser of the collateral for value.
46 (cf: N.J.S.12A:9-316)

1 33. N.J.S.12A:9-317 is amended to read as follows:

2 12A:9-317. Interests That Take Priority Over or Take Free of
3 Security Interest or Agricultural Lien.

4 [a.] (a) Conflicting security interests and rights of lien creditors.

5 A security interest or agricultural lien is subordinate to the rights of:

6 (1) a person entitled to priority under 12A:9-322; and

7 (2) except as otherwise provided in subsection [e. of this section]

8 (e), a person ¹[who] that¹ becomes a lien creditor before the earlier
9 of the time;

10 (A) the security interest or agricultural lien is perfected; or

11 (B) one of the conditions specified in 12A:9-203 (b)(3) is met and

12 a financing statement covering the collateral is filed.

13 [b.] (b) Buyers that receive delivery. Except as otherwise

14 provided in subsection [e. of this section] (e), a buyer, other than a

15 secured party, of tangible chattel paper, documents, goods,

16 instruments, or a security certificate takes free of a security interest or

17 agricultural lien if the buyer gives value and receives delivery of the

18 collateral without knowledge of the security interest or agricultural

19 lien and before it is perfected.

20 [c.] (c) Lessees that receive delivery. Except as otherwise

21 provided in subsection [e. of this section] (e), a lessee of goods takes

22 free of a security interest or agricultural lien if the lessee gives value

23 and receives delivery of the collateral without knowledge of the

24 security interest or agricultural lien and before it is perfected.

25 [d.] (d) Licensees and buyers of certain collateral. A licensee of

26 a general intangible or a buyer, other than a secured party, of

27 accounts, electronic chattel paper, general intangibles, or investment

28 property other than a certificated security takes free of a security

29 interest if the licensee or buyer gives value without knowledge of the

30 security interest and before it is perfected.

31 [e.] (e) Purchase-money security interest. Except as otherwise

32 provided in 12A:9-320 and 12A:9-321, if a person files a financing

33 statement with respect to a purchase-money security interest before or

34 within 20 days after the debtor receives delivery of the collateral, the

35 security interest takes priority over the rights of a buyer, lessee, or lien

36 creditor which arise between the time the security interest attaches and

37 the time of filing.

38 (cf: N.J.S.12A:9-317)

39

40 34. N.J.S.12A:9-318 is amended to read as follows:

41 12A:9-318. No Interest Retained in Right to Payment That Is Sold;

42 Rights and Title of Seller of Account or Chattel Paper with Respect to

43 Creditors and Purchasers.

44 [a.] (a) Seller retains no interest. A debtor that has sold an

45 account, chattel paper, payment intangible, or promissory note does

1 not retain a legal or equitable interest in the collateral sold.

2 **[b.] (b)** Deemed rights of debtor if buyer's security interest
3 unperfected. For purposes of determining the rights of creditors of,
4 and purchasers for value of an account or chattel paper from, a debtor
5 that has sold an account or chattel paper, while the buyer's security
6 interest is unperfected, the debtor is deemed to have rights and title to
7 the account or chattel paper identical to those the debtor sold.

8 (cf: N.J.S.12A:9-318)

9

10 35. N.J.S.12A:9-319 is amended to read as follows:

11 12A:9-319. Rights and Title of Consignee with Respect to
12 Creditors and Purchasers.

13 **[a.] (a)** Consignee has consignor's rights. Except as otherwise
14 provided in subsection **[b.] (b)**, for purposes of determining the rights
15 of creditors of, and purchasers for value of goods from, a consignee,
16 while the goods are in the possession of the consignee, the consignee
17 is deemed to have rights and title to the goods identical to those the
18 consignor had or had power to transfer.

19 **[b.] (b)** Applicability of other law. For purposes of determining
20 the rights of a creditor of a consignee, law other than this chapter
21 determines the rights and title of a consignee while goods are in the
22 consignee's possession if, under this part, a perfected security interest
23 held by the consignor would have priority over the rights of the
24 creditor.

25 (cf: N.J.S.12A:9-319)

26

27 36. N.J.S.12A:9-320 is amended to read as follows:

28 12A:9-320. Buyer of Goods.

29 **[a.] (a)** Buyer in ordinary course of business. Except as otherwise
30 provided in subsection **[e. of this section] (e)**, a buyer in ordinary
31 course of business, other than a person buying farm products from a
32 person engaged in farming operations, takes free of a security interest
33 created by the buyer's seller, even if the security interest is perfected
34 and the buyer knows of its existence.

35 **[b.] (b)** Buyer of consumer goods. Except as otherwise provided
36 in subsection **[e.] (e)**, a buyer of goods from a person who used or
37 bought the goods for use primarily for personal, family, or household
38 purposes takes free of a security interest, even if perfected, if the
39 buyer buys:

40 (1) without knowledge of the security interest;

41 (2) for value;

42 (3) primarily for the buyer's personal, family, or household
43 purposes; and

44 (4) before the filing of a financing statement covering the goods.

45 **[c.] (c)** Effectiveness of filing for subsection **[b.] (b)**. To the

1 extent that it affects the priority of a security interest over a buyer of
2 goods under subsection [b. of this section] (b), the period of
3 effectiveness of a filing made in the jurisdiction in which the seller is
4 located is governed by 12A:9-316 [a. and b.] (a) and (b).

5 [d.] (d) Buyer in ordinary course of business at wellhead or
6 minehead. A buyer in ordinary course of business buying oil, gas, or
7 other minerals at the wellhead or minehead or after extraction takes
8 free of an interest arising out of an encumbrance.

9 [e.] (e) Possessory security interest not affected. Subsections [a.
10 and b. of this section] (a) and (b) do not affect a security interest in
11 goods in the possession of the secured party under 12A:9-313.

12 (cf: N.J.S.12A:9-320)

13
14 37. N.J.S.12A:9-321 is amended to read as follows:

15 12A:9-321. Licensee of General Intangible and Lessee of Goods
16 in Ordinary Course of Business.

17 [a.] (a) "Licensee in ordinary course of business." In this section,
18 "licensee in ordinary course of business" means a person [who] that
19 becomes a licensee of a general intangible in good faith, without
20 knowledge that the license violates the rights of another person in the
21 general intangible, and in the ordinary course from a person in the
22 business of licensing general intangibles of that kind. A person
23 becomes a licensee in the ordinary course if the license to the person
24 comports with the usual or customary practices in the kind of business
25 in which the licensor is engaged or with the licensor's own usual or
26 customary practices.

27 [b.] (b) Rights of licensee in ordinary course of business. A
28 licensee in ordinary course of business takes its rights under a
29 nonexclusive license free of a security interest in the general intangible
30 created by the licensor, even if the security interest is perfected and the
31 licensee knows of its existence.

32 [c.] (c) Rights of lessee in ordinary course of business. A lessee in
33 ordinary course of business takes its leasehold interest free of a
34 security interest in the goods created by the lessor, even if the security
35 interest is perfected and the lessee knows of its existence.

36 (cf: N.J.S.12A:9-321)

37
38 38. N.J.S.12A:9-322 is amended to read as follows:

39 12A:9-322. Priorities Among Conflicting Security Interests in and
40 Agricultural Liens on Same Collateral.

41 [a.] (a) General priority rules. Except as otherwise provided in
42 this section, priority among conflicting security interests and
43 agricultural liens in the same collateral is determined according to the
44 following rules:

45 (1) Conflicting perfected security interests and agricultural liens

1 rank according to priority in time of filing or perfection. Priority dates
2 from the earlier of the time a filing covering the collateral is first made
3 or the security interest or agricultural lien is first perfected, if there is
4 no period thereafter when there is neither filing nor perfection.

5 (2) A perfected security interest or agricultural lien has priority
6 over a conflicting unperfected security interest or agricultural lien.

7 (3) The first security interest or agricultural lien to attach or
8 become effective has priority if conflicting security interests and
9 agricultural liens are unperfected.

10 **[b.] (b)** Time of perfection: proceeds and supporting obligations.
11 For the purposes of **[paragraph (1) of]** subsection **[a. of this section]**
12 **(a) (1)**:

13 (1) the time of filing or perfection as to a security interest in
14 collateral is also the time of filing or perfection as to a security interest
15 in proceeds; and

16 (2) the time of filing or perfection as to a security interest in
17 collateral supported by a supporting obligation is also the time of filing
18 or perfection as to a security interest in the supporting obligation.

19 **[c.] (c)** Special priority rules: proceeds and supporting
20 obligations. Except as otherwise provided in subsection **[f. of this**
21 **section] (f)**, a security interest in collateral which qualifies for priority
22 over a conflicting security interest under 12A:9-327, 12A:9-328,
23 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a
24 conflicting security interest in:

25 (1) any supporting obligation for the collateral; and

26 (2) proceeds of the collateral if:

27 **[(a)] (A)** the security interest in proceeds is perfected;

28 **[(b)] (B)** the proceeds are cash proceeds or of the same type as
29 the collateral; and

30 **[(c)] (C)** in the case of proceeds that are proceeds of proceeds, all
31 intervening proceeds are cash proceeds, proceeds of the same type as
32 the collateral, or an account relating to the collateral.

33 **[d.] (d)** First-to-file priority rule for certain collateral. Subject to
34 subsection **[e.] (e)** and except as otherwise provided in subsection **[f.**
35 **of this section] (f)**, if a security interest in chattel paper, deposit
36 accounts, negotiable documents, instruments, investment property, or
37 letter-of-credit rights is perfected by a method other than filing,
38 conflicting perfected security interests in proceeds of the collateral
39 rank according to priority in time of filing.

40 **[e.] (e)** Applicability of subsection **[d.] (d)**. Subsection **[d. of this**
41 **section] (d)** applies only if the proceeds of the collateral are not cash
42 proceeds, chattel paper, negotiable documents, instruments,
43 investment property, or letter-of-credit rights.

44 **[f.] (f)** Limitations on subsections **[a.] (a)** through **[e.] (e)**.
45 Subsections **[a.] (a)** through **[e. of this section] (e)** are subject to:

1 (1) subsection [g.] (g) and the other provisions of this part;

2 (2) 12A:4-210 with respect to a security interest of a collecting
3 bank; [and]

4 (3) 12A:5-118 with respect to a security interest of an issuer or
5 nominated person; and

6 (4) 12A:9-110 with respect to a security interest arising under
7 Chapter 2 or 2A.

8 [g.] (g) Priority under agricultural lien statute. A perfected
9 agricultural lien on collateral has priority over a conflicting security
10 interest in or agricultural lien on the same collateral if the statute
11 creating the agricultural lien so provides.

12 (cf: N.J.S.12A:9-322)

13

14 39. N.J.S.12A:9-323 is amended to read as follows:

15 12A:9-323. Future Advances.

16 [a.] (a) When priority based on time of advance. Except as
17 otherwise provided in subsection [c. of this section] (c), for purposes
18 of determining the priority of a perfected security interest under
19 12A:9-322 [a.] (a) (1), perfection of the security interest dates from
20 the time an advance is made to the extent that the security interest
21 secures an advance that:

22 (1) is made while the security interest is perfected only:

23 ¹[a.] (A)¹ under 12A:9-309 when it attaches; or

24 ¹[(b)] (B)¹ temporarily under 12A:9-312 [e., f., or g.] (e), (f) or
25 (g); and

26 (2) is not made pursuant to a commitment entered into before or
27 while the security interest is perfected by a method other than under
28 12A:9-309 or 12A:9-312 [e., f., or g] (e), (f) or (g).

29 [b.] (b) Lien creditor. Except as otherwise provided in subsection
30 [c. of this section] (c), a security interest is subordinate to the rights
31 of a person [who] that becomes a lien creditor to the extent that the
32 security interest secures an advance made more than 45 days after the
33 person becomes a lien creditor unless the advance is made:

34 (1) without knowledge of the lien; or

35 (2) pursuant to a commitment entered into without knowledge of
36 the lien.

37 [c.] (c) Buyer of receivables. Subsections [a. and b. of this
38 section] (a) and (b) do not apply to a security interest held by a
39 secured party that is a buyer of accounts, chattel paper, payment
40 intangibles, or promissory notes, or a consignor.

41 [d.] (d) Buyer of goods. Except as otherwise provided in
42 subsection [e. of this section] (e), a buyer of goods other than a buyer
43 in ordinary course of business takes free of a security interest to the
44 extent that it secures advances made after the earlier of:

45 (1) the time the secured party acquires knowledge of the buyer's

1 purchase; or

2 (2) 45 days after the purchase.

3 [e.] (e) Advances made pursuant to commitment: priority of
4 buyer of goods. Subsection [d. of this section] (d) does not apply if
5 the advance is made pursuant to a commitment entered into without
6 knowledge of the buyer's purchase and before the expiration of the
7 45-day period.

8 [f.] (f) Lessee of goods. Except as otherwise provided in
9 subsection [g. of this section] (g), a lessee of goods, other than a
10 lessee in ordinary course of business, takes the leasehold interest free
11 of a security interest to the extent that it secures advances made after
12 the earlier of:

13 (1) the time the secured party acquires knowledge of the lease; or

14 (2) 45 days after the lease contract becomes enforceable.

15 [g.] (g) Advances made pursuant to commitment: priority of
16 lessee of goods. Subsection [f. of this section] (f) does not apply if
17 the advance is made pursuant to a commitment entered into without
18 knowledge of the lease and before the expiration of the 45-day period.
19 (cf: N.J.S.12A:9-323)

20

21 40. N.J.S.12A:9-324 is amended to read as follows:

22 12A:9-324. Priority of Purchase-Money Security Interests.

23 [a.] (a) General rule: purchase-money priority. Except as
24 otherwise provided in subsection [g. of this section] (g), a perfected
25 purchase-money security interest in goods other than inventory or
26 livestock has priority over a conflicting security interest in the same
27 goods, and, except as otherwise provided in 12A:9-327, a perfected
28 security interest in its identifiable proceeds also has priority, if the
29 purchase-money security interest is perfected when the debtor receives
30 possession of the collateral or within 20 days thereafter.

31 [b.] (b) Inventory purchase-money priority. Subject to subsection
32 ¹[c.] (c)¹ and except as otherwise provided in subsection [g. of this
33 section] (g), a perfected purchase-money security interest in inventory
34 has priority over a conflicting security interest in the same inventory,
35 has priority over a conflicting security interest in chattel paper or an
36 instrument constituting proceeds of the inventory and in proceeds of
37 the chattel paper, if so provided in 12A:9-330, and, except as
38 otherwise provided in 12A:9-327, also has priority in identifiable cash
39 proceeds of the inventory to the extent the identifiable cash proceeds
40 are received on or before the delivery of the inventory to a buyer, if:

41 (1) the purchase-money security interest is perfected when the
42 debtor receives possession of the inventory;

43 (2) the purchase-money secured party sends an authenticated
44 notification to the holder of the conflicting security interest;

45 (3) the holder of the conflicting security interest receives the
46 notification within five years before the debtor receives possession of

1 the inventory; and

2 (4) the notification states that the person sending the notification
3 has or expects to acquire a purchase-money security interest in
4 inventory of the debtor and describes the inventory.

5 [c.] (c) Holders of conflicting inventory security interests to be
6 notified. [Paragraphs 2 through 4 of subsection b. of this section]
7 Subsections (b) (2) through (4) apply only if the holder of the
8 conflicting security interest had filed a financing statement covering
9 the same types of inventory:

10 (1) if the purchase-money security interest is perfected by filing,
11 before the date of the filing; or

12 (2) if the purchase-money security interest is temporarily perfected
13 without filing or possession under 12A:9-312 [f.] (f), before the
14 beginning of the 20-day period thereunder.

15 [d.] (d) Livestock purchase-money priority. Subject to subsection
16 [e.] (e) and except as otherwise provided in subsection [g. of this
17 section] (g), a perfected purchase-money security interest in livestock
18 that are farm products has priority over a conflicting security interest
19 in the same livestock, and, except as otherwise provided in 12A:9-327,
20 a perfected security interest in their identifiable proceeds and
21 identifiable products in their unmanufactured states also has priority,
22 if:

23 (1) the purchase-money security interest is perfected when the
24 debtor receives possession of the livestock;

25 (2) the purchase-money secured party sends an authenticated
26 notification to the holder of the conflicting security interest;

27 (3) the holder of the conflicting security interest receives the
28 notification within six months before the debtor receives possession of
29 the livestock; and

30 (4) the notification states that the person sending the notification
31 has or expects to acquire a purchase-money security interest in
32 livestock of the debtor and describes the livestock.

33 [e.] (e) Holders of conflicting livestock security interests to be
34 notified. [Paragraphs 2 through 4 of subsection d. of this section]
35 Subsections (d) (2) through (4) apply only if the holder of the
36 conflicting security interest had filed a financing statement covering
37 the same types of livestock:

38 (1) if the purchase-money security interest is perfected by filing,
39 before the date of the filing; or

40 (2) if the purchase-money security interest is temporarily perfected
41 without filing or possession under 12A:9-312 [f.] (f), before the
42 beginning of the 20-day period thereunder.

43 [f.] (f) Software purchase-money priority. Except as otherwise
44 provided in subsection [g. of this section] (g), a perfected
45 purchase-money security interest in software has priority over a
46 conflicting security interest in the same collateral, and, except as

1 otherwise provided in 12A:9-327, a perfected security interest in its
2 identifiable proceeds also has priority, to the extent that the
3 purchase-money security interest in the goods in which the software
4 was acquired for use has priority in the goods and proceeds of the
5 goods under this section.

6 **[g.] (g)** Conflicting purchase-money security interests. If more
7 than one security interest qualifies for priority in the same collateral
8 under subsection **[a., b., d., or f. of this section] (a), (b), (d) or (f):**

9 (1) a security interest securing an obligation incurred as all or part
10 of the price of the collateral has priority over a security interest
11 securing an obligation incurred for value given to enable the debtor to
12 acquire rights in or the use of collateral; and

13 (2) in all other cases, 12A:9-322 **[a.] (a)** applies to the qualifying
14 security interests.

15 (cf: N.J.S.12A:9-324)

16

17 41. N.J.S.12A:9-325 is amended to read as follows:

18 12A:9-325. Priority of Security Interests in Transferred Collateral.

19 **[a.] (a)** Subordination of security interest in transferred collateral.

20 Except as otherwise provided in subsection **[b. of this section] (b)**, a
21 security interest created by a debtor is subordinate to a security
22 interest in the same collateral created by another person if:

23 (1) the debtor acquired the collateral subject to the security interest
24 created by the other person;

25 (2) the security interest created by the other person was perfected
26 when the debtor acquired the collateral; and

27 (3) there is no period thereafter when the security interest is
28 unperfected.

29 **[b.] (b)** Limitation of subsection **[a.] (a)** subordination.

30 Subsection **[a. of this section] (a)** subordinates a security interest only
31 if the security interest:

32 (1) otherwise would have priority solely under 12A:9-322 **[a.] (a)**
33 or 12A:9-324; or

34 (2) arose solely under 12A:2-711(3) or **[2A-508(5)]12A:2A-**
35 **508(5)**.

36 (cf: N.J.S.12A:9-325)

37

38 42. N.J.S.12A:9-326 is amended to read as follows:

39 12A:9-326. Priority of Security Interests Created by New Debtor.

40 **[a.] (a)** Subordination of security interest created by new debtor.

41 Subject to subsection **[b. of this section] (b)**, a security interest
42 created by a new debtor which is perfected by a filed financing
43 statement that is effective solely under 12A:9-508 in collateral in
44 which a new debtor has or acquires rights is subordinate to a security
45 interest in the same collateral which is perfected other than by a filed
46 financing statement that is effective solely under 12A:9-508.

1 **[b.] (b)** Priority under other provisions; multiple original debtors.
2 The other provisions of this part determine the priority among
3 conflicting security interests in the same collateral perfected by filed
4 financing statements that are effective solely under 12A:9-508.
5 However, if the security agreements to which a new debtor became
6 bound as debtor were not entered into by the same original debtor, the
7 conflicting security interests rank according to priority in time of the
8 new debtor's having become bound.
9 (cf: N.J.S.12A:9-326)

10

11 43. N.J.S.12A:9-327 is amended to read as follows:

12 12A:9-327. Priority of Security Interests in Deposit Account.

13 The following rules govern priority among conflicting security
14 interests in the same deposit account:15 **[a.] (1)** A security interest held by a secured party having control
16 of the deposit account under 12A:9-104 has priority over a conflicting
17 security interest held by a secured party that does not have control.18 **[b.] (2)** Except as otherwise provided in **[subsections c. and d. of**
19 **this section]** paragraphs (3) and (4), security interests perfected by
20 control under 12A:9-314 rank according to priority in time of
21 obtaining control.22 **[c.] (3)** Except as otherwise provided in **[subsection d. of this**
23 **section]** paragraph (4), a security interest held by the bank with which
24 the deposit account is maintained has priority over a conflicting
25 security interest held by another secured party.26 **[d.] (4)** A security interest perfected by control under 12A:9-104
27 **[a.] (a)** (3) has priority over a security interest held by the bank with
28 which the deposit account is maintained.

29 (cf: N.J.S.12A:9-327)

30

31 44. N.J.S.12A:9-328 is amended to read as follows:

32 12A:9-328. Priority of Security Interests in Investment Property.

33 The following rules govern priority among conflicting security
34 interests in the same investment property:35 **[a.] (1)** A security interest held by a secured party having control
36 of investment property under 12A:9-106 has priority over a security
37 interest held by a secured party that does not have control of the
38 investment property.39 **[b.] (2)** Except as otherwise provided in **[sections c. and d. of this**
40 **section]** paragraphs (3) and (4), conflicting security interests held by
41 secured parties each of which has control under 12A:9-106 rank
42 according to priority in time of:43 **[(1)] (A)** if the collateral is a security, obtaining control;44 **[(2)] (B)** if the collateral is a security entitlement carried in a
45 securities account and:46 **[(a)] (i)** if the secured party obtained control under 12A:8-106

1 [d.] (d) (1), the secured party's becoming the person for which the
2 securities account is maintained;

3 [(b)] (ii) if the secured party obtained control under 12A:8-106
4 [d.] (d) (2), the securities intermediary's agreement to comply with
5 the secured party's entitlement orders with respect to security
6 entitlements carried or to be carried in the securities account; or

7 [(c)] (iii) if the secured party obtained control through another
8 person under 12A:8-106 [d.] (d) (3), the time on which priority would
9 be based under this paragraph if the other person were the secured
10 party; or

11 [(3)] (C) if the collateral is a commodity contract carried with a
12 commodity intermediary, the satisfaction of the requirement for
13 control specified in 12A:9-106 [(b)] (b) (2) with respect to commodity
14 contracts carried or to be carried with the commodity intermediary.

15 [(c.)] (3) A security interest held by a securities intermediary in a
16 security entitlement or a securities account maintained with the
17 securities intermediary has priority over a conflicting security interest
18 held by another secured party.

19 [(d.)] (4) A security interest held by a commodity intermediary in a
20 commodity contract or a commodity account maintained with the
21 commodity intermediary has priority over a conflicting security interest
22 held by another secured party.

23 [(e.)] (5) A security interest in a certificated security in registered
24 form which is perfected by taking delivery under 12A:9-313 [(a.)] (a)
25 and not by control under 12A:9-314 has priority over a conflicting
26 security interest perfected by a method other than control.

27 [(f.)] (6) Conflicting security interests created by a broker,
28 securities intermediary, or commodity intermediary which are
29 perfected without control under 12A:9-106 rank equally.

30 [(g.)] (7) In all other cases, priority among conflicting security
31 interests in investment property is governed by 12A:9-322 and
32 12A:9-323.

33 (cf: N.J.S.12A:9-328)

34

35 45. N.J.S.12A:9-329 is amended to read as follows:

36 12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

37 The following rules govern priority among conflicting security
38 interests in the same letter-of-credit right:

39 [(a.)] (1) A security interest held by a secured party having control
40 of the letter-of-credit right under 12A:9-107 has priority to the extent
41 of its control over a conflicting security interest held by a secured
42 party that does not have control.

43 [(b.)] (2) Security interests perfected by control under 12A:9-314
44 rank according to priority in time of obtaining control.

45 (cf: N.J.S.12A:9-329)

1 46. N.J.S.12A:9-330 is amended to read as follows:

2 12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

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

7 (1) in good faith and in the ordinary course of the purchaser's
8 business, the purchaser gives new value and takes possession of the
9 chattel paper or obtains control of the chattel paper under 12A:9-105;
10 and

11 (2) the chattel paper does not indicate that it has been assigned to
12 an identified assignee other than the purchaser.

13 [b.] (b) Purchaser's priority: other security interests. A purchaser
14 of chattel paper has priority over a security interest in the chattel paper
15 which is claimed other than merely as proceeds of inventory subject to
16 a security interest if the purchaser gives new value and takes
17 possession of the chattel paper or obtains control of the chattel paper
18 under 12A:9-105 in good faith, in the ordinary course of the
19 purchaser's business, and without knowledge that the purchase violates
20 the rights of the secured party.

21 [c.] (c) Chattel paper purchaser's priority in proceeds. Except as
22 otherwise provided in 12A:9-327, a purchaser having priority in
23 chattel paper under subsection [a. or b. of this section] (a) or (b) also
24 has priority in proceeds of the chattel paper to the extent that:

25 (1) 12A:9-322 provides for priority in the proceeds; or

26 (2) the proceeds consist of the specific goods covered by the
27 chattel paper or cash proceeds of the specific goods, even if the
28 purchaser's security interest in the proceeds is unperfected.

29 [d.] (d) Instrument purchaser's priority. Except as otherwise
30 provided in 12A:9-331 [subsection a.] (a), a purchaser of an
31 instrument has priority over a security interest in the instrument
32 perfected by a method other than possession if the purchaser gives
33 value and takes possession of the instrument in good faith and without
34 knowledge that the purchase violates the rights of the secured party.

35 [e.] (e) Holder of purchase-money security interest gives new
36 value. For purposes of subsections [a. and b. of this section] (a) and
37 (b), the holder of a purchase-money security interest in inventory gives
38 new value for chattel paper constituting proceeds of the inventory.

39 [f.] (f) Indication of assignment gives knowledge. For purposes
40 of subsections [b. and d. of this section] (b) and (d), if chattel paper
41 or an instrument indicates that it has been assigned to an identified
42 secured party other than the purchaser, a purchaser of the chattel
43 paper or instrument has knowledge that the purchase violates the
44 rights of the secured party.

45 (cf: N.J.S.12A:9-330)

1 47. N.J.S.12A:9-331 is amended to read as follows:

2 12A:9-331. Priority of Rights of Purchasers of Instruments,
3 Documents, and Securities Under Other Chapters; Priority of Interests
4 in Financial Assets and Security Entitlements Under Chapter 8.

5 [a.] (a) Rights under Chapters 3, 7, and 8 not limited. This
6 chapter does not limit the rights of a holder in due course of a
7 negotiable instrument, a holder to which a negotiable document of title
8 has been duly negotiated, or a protected purchaser of a security.
9 These holders or purchasers take priority over an earlier security
10 interest, even if perfected, to the extent provided in Chapters 3, 7, and
11 8.

12 [b.] (b) Protection under Chapter 8. This chapter does not limit
13 the rights of or impose liability on a person to the extent that the
14 person is protected against the assertion of a claim under Chapter 8.

15 [c.] (c) Filing not notice. Filing under this chapter does not
16 constitute notice of a claim or defense to the holders, or purchasers,
17 or persons described in subsections [a. and b of this section] (a) and
18 (b).

19 (cf: N.J.S.12A:9-331)

20

21 48. N.J.S.12A:9-332 is amended to read as follows:

22 12A:9-332. Transfer of Money; Transfer of Funds from Deposit
23 Account.

24 [a.] (a) Transferee of money. A transferee of money takes the
25 money free of a security interest unless the transferee acts in collusion
26 with the debtor in violating the rights of the secured party.

27 [b.] (b) Transferee of funds from deposit account. A transferee of
28 funds from a deposit account takes the funds free of a security interest
29 in the deposit account unless the transferee acts in collusion with the
30 debtor in violating the rights of the secured party.

31 (cf: N.J.S.12A:9-332)

32

33 49. N.J.S.12A:9-333 is amended to read as follows:

34 12A:9-333. Priority of Certain Liens Arising by Operation of Law.

35 [a.] (a) "Possessory lien." In this section, "possessory lien" means
36 an interest, other than a security interest or an agricultural lien:

37 (1) which secures payment or performance of an obligation for
38 services or materials furnished with respect to goods by a person in the
39 ordinary course of the person's business;

40 (2) which is created by statute or rule of law in favor of the person;

41 and

42 (3) whose effectiveness depends on the person's possession of the
43 goods.

44 [b.] (b) Priority of possessory lien. A possessory lien on goods
45 has priority over a security interest in the goods unless the lien is

1 created by a statute that expressly provides otherwise.
2 (cf: N.J.S.12A:9-333)

3

4 50. N.J.S.12A:9-334 is amended to read as follows:

5 12A:9-334. Priority of Security Interests in Fixtures and Crops.

6 **[a.] (a)** Security interest in fixtures under this chapter. A security
7 interest under this chapter may be created in goods that are fixtures or
8 may continue in goods that become fixtures. A security interest does
9 not exist under this chapter in ordinary building materials incorporated
10 into an improvement on land.

11 **[b.] (b)** Security interest in fixtures under real-property law. This
12 chapter does not prevent creation of an encumbrance upon fixtures
13 under real property law.

14 **[c.] (c)** General rule: subordination of security interest in fixtures.
15 In cases not governed by subsections **[d.] (d)** through **[h. of this**
16 **section] (h)**, a security interest in fixtures is subordinate to a
17 conflicting interest of an encumbrancer or owner of the related real
18 property other than the debtor.

19 **[d.] (d)** Fixtures purchase-money priority. Except as otherwise
20 provided in subsection **[h. of this section] (h)**, a perfected security
21 interest in fixtures has priority over a conflicting interest of an
22 encumbrancer or owner of the real property if the debtor has an
23 interest of record in or is in possession of the real property and:

24 (1) the security interest is a purchase-money security interest;

25 (2) the interest of the encumbrancer or owner arises before the
26 goods become fixtures; and

27 (3) the security interest is perfected by a fixture filing before the
28 goods become fixtures or within 20 days thereafter.

29 **[e.] (e)** Priority of security interest in fixtures over interests in real
30 property. A perfected security interest in fixtures has priority over a
31 conflicting interest of an encumbrancer or owner of the real property
32 **[or a lien on real property obtained by legal or equitable proceedings]**
33 if:

34 (1) the debtor has an interest of record in the real property or is in
35 possession of the real property and the security interest:

36 **[(a)] (A)** is perfected by a fixture filing before the interest of the
37 encumbrancer or the owner is of record; and

38 **[(b)] (B)** has priority over any conflicting interest of a predecessor
39 in title of the encumbrancer or owner;

40 (2) before the goods become fixtures, the security interest is
41 perfected by any method permitted by this chapter and the fixtures are
42 readily removable:

43 **[(a)] (A)** factory or office machines;

44 **[(b)] (B)** equipment that is not primarily used or leased for use in
45 the operation of the real property; or

1 ~~[(c)] (C)~~ replacements of domestic appliances that are consumer
2 goods;

3 (3) the conflicting interest is a lien on real property obtained by
4 legal or equitable proceedings after the security interest was perfected
5 by any method permitted by this chapter; or

6 ~~(4)~~ the security interest is:

7 ~~[(a)] (A)~~ created in a manufactured home in a manufactured-home
8 transaction; and

9 ~~[(b)] (B)~~ perfected pursuant to a statute described in 12A:9-311
10 ~~[a.] (a)~~ (2).

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

15 (1) the encumbrancer or owner has, in an authenticated record,
16 consented to the security interest or disclaimed an interest in the goods
17 as fixtures; or

18 (2) the debtor has a right to remove the goods as against the
19 encumbrancer or owner.

20 ~~[(g.) (g)]~~ Continuation of paragraph ~~(f)~~ (2) ~~[of subsection f. of this~~
21 ~~section]~~ priority. The priority of the security interest under paragraph
22 ~~(f)~~ (2) ~~[of subsection f. of this section]~~ continues for a reasonable
23 time if the debtor's right to remove the goods as against the
24 encumbrancer or owner terminates.

25 ~~[(h.) (h)]~~ Priority of construction mortgage. A mortgage is a
26 construction mortgage to the extent that it secures an obligation
27 incurred for the construction of an improvement on land, including the
28 acquisition cost of the land, if a recorded record of the mortgage so
29 indicates. Except as otherwise provided in subsections ~~[e. and f. of~~
30 ~~this section]~~ ~~(e) and (f)~~, a security interest in fixtures is subordinate to
31 a construction mortgage if a record of the mortgage is recorded before
32 the goods become fixtures and the goods become fixtures before the
33 completion of the construction. A mortgage has this priority to the
34 same extent as a construction mortgage to the extent that it is given to
35 refinance a construction mortgage.

36 ~~[(i.) (i)]~~ Priority of security interest in crops. A perfected security
37 interest in crops growing on real property has priority over a
38 conflicting interest of an encumbrancer or owner of the real property
39 if the debtor has an interest of record in or is in possession of the real
40 property.

41 ~~[(j.) (j)]~~ Subsection ~~[i.] (i)~~ prevails. Subsection ~~[i. of this section]~~
42 ~~(i)~~ prevails over any inconsistent provisions of state law.

43 (cf: N.J.S.12A:9-334)

44

45 51. N.J.S.12A:9-335 is amended to read as follows:

1 12A:9-335. Accessions.

2 [a.] (a) Creation of security interest in accession. A security
3 interest may be created in an accession and continues in collateral that
4 becomes an accession.

5 [b.] (b) Perfection of security interest. If a security interest is
6 perfected when the collateral becomes an accession, the security
7 interest remains perfected in the collateral.

8 [c.] (c) Priority of security interest. Except as otherwise provided
9 in subsection [d. of this section] (d), the other provisions of this part
10 determine the priority of a security interest in an accession.

11 [d.] (d) Compliance with certificate-of-title statute. A security
12 interest in an accession is subordinate to a security interest in the
13 whole which is perfected by compliance with the requirements of a
14 certificate-of-title statute under 12A:9-311 [b.] (b).

15 [e.] (e) Removal of accession after default. After default, subject
16 to Part 6 [of this chapter], a secured party may remove an accession
17 from other goods if the security interest in the accession has priority
18 over the claims of every person having an interest in the whole.

19 [f.] (f) Reimbursement following removal. A secured party that
20 removes an accession from other goods under subsection [e. of this
21 section] (e) shall promptly reimburse any holder of a security interest
22 or other lien on, or owner of, the whole or of the other goods, other
23 than the debtor, for the cost of repair of any physical injury to the
24 whole or the other goods. The secured party need not reimburse the
25 holder or owner for any diminution in value of the whole or the other
26 goods caused by the absence of the accession removed or by any
27 necessity for replacing it. A person entitled to reimbursement may
28 refuse permission to remove until the secured party gives adequate
29 assurance for the performance of the obligation to reimburse.

30 (cf: N.J.S.12A:9-335)

31

32 52. N.J.S.12A:9-336 is amended to read as follows:

33 12A:9-336. Commingled Goods.

34 [a.] (a) "Commingled goods." In this section, "commingled
35 goods" means goods that are physically united with other goods in
36 such a manner that their identity is lost in a product or mass.

37 [b.] (b) No security interest in commingled goods as such. A
38 security interest does not exist in commingled goods as such.
39 However, a security interest may attach to a product or mass that
40 results when goods become commingled goods.

41 [c.] (c) Attachment of security interest to product or mass. If
42 collateral becomes commingled goods, a security interest attaches to
43 the product or mass.

44 [d.] (d) Perfection of security interest. If a security interest in
45 collateral is perfected before the collateral becomes commingled

1 goods, the security interest that attaches to the product or mass under
2 subsection [c. of this section] (c) is perfected.

3 [e.] (e) Priority of security interest. Except as otherwise provided
4 in subsection [f.] (f), the other provisions of this part determine the
5 priority of a security interest that attaches to the product or mass
6 under subsection [c. of this section] (c).

7 [f.] (f) Conflicting security interests in product or mass. If more
8 than one security interest attaches to the product or mass under
9 subsection [c. of this section] (c), the following rules determine
10 priority:

11 (1) A security interest that is perfected under subsection [d.] (d)
12 has priority over a security interest that is unperfected at the time the
13 collateral becomes commingled goods.

14 (2) If more than one security interest is perfected under subsection
15 [d.] (d), the security interests rank equally in proportion to the value
16 of the collateral at the time it became commingled goods.
17 (cf: N.J.S.12A:9-336)

18

19 53. N.J.S.12A:9-337 is amended to read as follows:

20 12A:9-337. Priority of Security Interests in Goods Covered by
21 Certificate of Title.

22 If, while a security interest in goods is perfected by any method
23 under the law of another jurisdiction, this State issues a certificate of
24 title that does not show that the goods are subject to the security
25 interest or contain a statement that they may be subject to security
26 interests not shown on the certificate:

27 [a.] (1) a buyer of the goods, other than a person in the business
28 of selling goods of that kind, takes free of the security interest if the
29 buyer gives value and receives delivery of the goods after issuance of
30 the certificate and without knowledge of the security interest; and

31 [b.] (2) the security interest is subordinate to a conflicting security
32 interest in the goods that attaches, and is perfected under 12A:9-311
33 [b.] (b), after issuance of the certificate and without the conflicting
34 secured party's knowledge of the security interest.

35 (cf: N.J.S.12A:9-337)

36

37 54. N.J.S.12A:9-338 is amended to read as follows:

38 12A:9-338. Priority of Security Interest or Agricultural Lien
39 Perfected by Filed Financing Statement Providing Certain Incorrect
40 Information.

41 If a security interest or agricultural lien is perfected by a filed
42 financing statement providing information described in 12A:9-516 [b.]
43 (b) (5) which is incorrect at the time the financing statement is filed:

44 [a.] (1) the security interest or agricultural lien is subordinate to
45 a conflicting perfected security interest in the collateral to the extent

1 that the holder of the conflicting security interest gives value in
2 reasonable reliance upon the incorrect information; and

3 [b.] (2) a purchaser, other than a secured party, of the collateral
4 takes free of the security interest or agricultural lien to the extent that,
5 in reasonable reliance upon the incorrect information, the purchaser
6 gives value and, in the case of chattel paper, documents, goods,
7 instruments, or a security certificate, receives delivery of the collateral.
8 (cf: N.J.S.12A:9-338)

9

10 55. N.J.S.12A:9-340 is amended to read as follows:

11 12A:9-340. Effectiveness of Right of Recoupment or Set-off
12 Against Deposit Account.

13 [a.] (a) Exercise of recoupment or set-off. Except as otherwise
14 provided in subsection [c. of this section] (c), a bank with which a
15 deposit account is maintained may exercise any right of recoupment or
16 set-off against a secured party that holds a security interest in the
17 deposit account.

18 [b.] (b) Recoupment or set-off not affected by security interest.
19 Except as otherwise provided in subsection [c. of this section] (c), the
20 application of this chapter to a security interest in a deposit account
21 does not affect a right of recoupment or set-off of the secured party
22 as to a deposit account maintained with the secured party.

23 [c.] (c) When set-off ineffective. The exercise by a bank of a
24 set-off against a deposit account is ineffective against a secured party
25 that holds a security interest in the deposit account which is perfected
26 by control under 12A:9-104 (a) (3), if the set-off is based on a claim
27 against the debtor.

28 (cf: N.J.S.12A:9-340)

29

30 56. N.J.S.12A:9-341 is amended to read as follows:

31 12A:9-341. Bank's Rights and Duties with Respect to Deposit
32 Account.

33 Except as otherwise provided in 12A:9-340 [c.] (c), and unless the
34 bank otherwise agrees in an authenticated record, a bank's rights and
35 duties with respect to a deposit account maintained with the bank are
36 not terminated, suspended, or modified by:

37 [a.] (1) the creation, attachment, or perfection of a security
38 interest in the deposit account;

39 [b.] (2) the bank's knowledge of the security interest; or

40 [c.] (3) the bank's receipt of instructions from the secured party.

41 (cf: N.J.S.12A:9-341)

42

43 57. N.J.S.12A:9-342 is amended to read as follows:

44 12A:9-342. Bank's Right to Refuse to Enter into or Disclose
45 Existence of Control Agreement.

1 This chapter does not require a bank to enter into an agreement of
2 the kind described in 12A:9-104 [a.] (a) (2), even if its customer so
3 requests or directs. A bank that has entered into such an agreement
4 is not required to confirm the existence of the agreement to another
5 person unless requested to do so by its customer.
6 (cf: N.J.S.12A:9-342)

7

8 58. N.J.S.12A:9-401 is amended to read as follows:
9 12A:9-401. Alienability of Debtor's Rights.

10 [a.] (a) Other law governs alienability; exceptions. Except as
11 otherwise provided in subsection [b. of this section] (b) and
12 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's
13 rights in collateral may be voluntarily or involuntarily transferred is
14 governed by law other than this chapter.

15 [b.] (b) Agreement does not prevent transfer. An agreement
16 between the debtor and secured party which prohibits a transfer of the
17 debtor's rights in collateral or makes the transfer a default does not
18 prevent the transfer from taking effect.
19 (cf: N.J.S.12A:9-401)

20

21 59. N.J.S.12A:9-403 is amended to read as follows:

22 12A:9-403. Agreement Not to Assert Defenses Against Assignee.

23 [a.] (a) "Value." In this section, "value" has the meaning provided
24 in 12A:3-303 a.

25 [b.] (b) Agreement not to assert claim or defense. Except as
26 otherwise provided in this section, an agreement between an account
27 debtor and an assignor not to assert against an assignee any claim or
28 defense that the account debtor may have against the assignor is
29 enforceable by an assignee that takes an assignment:

30 (1) for value;

31 (2) in good faith;

32 (3) without notice of a claim of a property or possessory right to
33 the property assigned; and

34 (4) without notice of a defense or claim in recoupment of the type
35 that may be asserted against a person entitled to enforce a negotiable
36 instrument under 12A:3-305 a.

37 [c.] (c) When subsection [b.] (b) not applicable. Subsection [b.
38 of this section] (b) does not apply to defenses of a type that may be
39 asserted against a holder in due course of a negotiable instrument
40 under 12A:3-305 b.

41 [d.] (d) Omission of required statement in consumer transaction.
42 In a consumer transaction, if a record evidences the account debtor's
43 obligation, law other than this chapter requires that the record include
44 a statement to the effect that the rights of an assignee are subject to
45 claims or defenses that the account debtor could assert against the

1 original obligee, and the record does not include such a statement:

2 (1) the record has the same effect as if the record included such a
3 statement; and

4 (2) the account debtor may assert against an assignee those claims
5 and defenses that would have been available if the record included
6 such a statement.

7 [e.] (e) Rule for individual under other law. This section is subject
8 to law other than this chapter which establishes a different rule for an
9 account debtor who is an individual and who incurred the obligation
10 primarily for personal, family, or household purposes.

11 [f.] (f) Other law not displaced. Except as otherwise provided in
12 subsection [d. of this section] (d), this section does not displace law
13 other than this chapter which gives effect to an agreement by an
14 account debtor not to assert a claim or defense against an assignee.
15 (cf: N.J.S.12A:9-403)

16

17 60. N.J.S.12A:9-404 is amended to read as follows:

18 12A:9-404. Rights Acquired by Assignee; Claims and Defenses
19 Against Assignee.

20 [a.] (a) Assignee's rights subject to terms, claims, and defenses;
21 exceptions. Unless an account debtor has made an enforceable
22 agreement not to assert defenses or claims, and subject to subsections
23 [b.] (b) through [e. of this section] (e), the rights of an assignee are
24 subject to:

25 (1) all terms of the agreement between the account debtor and
26 assignor and any defense or claim in recoupment arising from the
27 transaction that gave rise to the contract; and

28 (2) any other defense or claim of the account debtor against the
29 assignor which accrues before the account debtor receives a
30 notification of the assignment authenticated by the assignor or the
31 assignee.

32 [b.] (b) Account debtor's claim reduces amount owed to assignee.
33 Subject to subsection [c.] (c) and except as otherwise provided in
34 subsection [d. of this section] (d), the claim of an account debtor
35 against an assignor may be asserted against an assignee under
36 subsection [a.] (a) only to reduce the amount the account debtor
37 owes.

38 [c.] (c) Rule for individual under other law. This section is subject
39 to law other than this chapter which establishes a different rule for an
40 account debtor who is an individual and who incurred the obligation
41 primarily for personal, family, or household purposes.

42 [d.] (d) Omission of required statement in consumer transaction.
43 In a consumer transaction, if a record evidences the account debtor's
44 obligation, law other than this chapter requires that the record include
45 a statement to the effect that the account debtor's recovery against an

1 assignee with respect to claims and defenses against the assignor may
2 not exceed amounts paid by the account debtor under the record, and
3 the record does not include such a statement, the extent to which a
4 claim of an account debtor against the assignor may be asserted
5 against an assignee is determined as if the record included such a
6 statement.

7 [e.] (e) Inapplicability to health-care-insurance receivable. This
8 section does not apply to an assignment of a health-care-insurance
9 receivable.

10 (cf: N.J.S.12A:9-404)

11

12 61. N.J.S.12A:9-405 is amended to read as follows:

13 12A:9-405. Modification of Assigned Contract.

14 [a.] (a) Effect of modification on assignee. A modification of or
15 substitution for an assigned contract is effective against an assignee if
16 made in good faith. The assignee acquires corresponding rights under
17 the modified or substituted contract. The assignment may provide that
18 the modification or substitution is a breach of contract by the assignor.
19 This subsection is subject to subsections [b.] (b) through [d. of this
20 section] (d).

21 [b.] (b) Applicability of subsection [a.] (a). Subsection [a. of this
22 section] (a) applies to the extent that:

23 (1) the right to payment or a part thereof under an assigned
24 contract has not been fully earned by performance; or

25 (2) the right to payment or a part thereof has been fully earned by
26 performance and the account debtor has not received notification of
27 the assignment under 12A:9-406 [a.] (a).

28 [c.] (c) Rule for individual under other law. This section is subject
29 to law other than this chapter which establishes a different rule for an
30 account debtor who is an individual and who incurred the obligation
31 primarily for personal, family, or household purposes.

32 [d.] (d) Inapplicability to health-care-insurance receivable. This
33 section does not apply to an assignment of a health-care-insurance
34 receivable.

35 (cf: N.J.S.12A:9-405)

36

37 62. N.J.S.12A:9-406 is amended to read as follows:

38 12A:9-406. Discharge of Account Debtor; Notification of
39 Assignment; Identification and Proof of Assignment; Restrictions on
40 Assignment of Accounts, Chattel Paper, Payment Intangibles, and
41 Promissory Notes Ineffective.

42 [a.] (a) Discharge of account debtor; effect of notification.
43 Subject to subsections [b.] (b) through [i. of this section] (i), an
44 account debtor on an account, chattel paper, or a payment intangible
45 may discharge its obligation by paying the assignor until, but not after,

1 the account debtor receives a notification, authenticated by the
2 assignor or the assignee, that the amount due or to become due has
3 been assigned and that payment is to be made to the assignee. After
4 receipt of the notification, the account debtor may discharge its
5 obligation by paying the assignee and may not discharge the obligation
6 by paying the assignor.

7 **[b.] (b)** When notification ineffective. Subject to subsection **[h.]**
8 **(h)**, notification is ineffective under subsection **[a. of this section] (a)**:

9 (1) if it does not reasonably identify the rights assigned;

10 (2) to the extent that an agreement between an account debtor and
11 a seller of a payment intangible limits the account debtor's duty to pay
12 a person other than the seller and the limitation is effective under law
13 other than this chapter; or

14 (3) at the option of an account debtor, if the notification notifies
15 the account debtor to make less than the full amount of any installment
16 or other periodic payment to the assignee, even if:

17 **[a.] (A)** only a portion of the account, chattel paper, or **[general]**
18 **payment** intangible has been assigned to that assignee;

19 **[b.] (B)** a portion has been assigned to another assignee; or

20 **[c.] (C)** the account debtor knows that the assignment to that
21 assignee is limited.

22 **[c.] (c)** Proof of assignment. Subject to subsection **[h. of this]**
23 **section] (h)**, if requested by the account debtor, an assignee shall
24 seasonably furnish reasonable proof that the assignment has been
25 made. Unless the assignee complies, the account debtor may discharge
26 its obligation by paying the assignor, even if the account debtor has
27 received a notification under subsection **[a. of this section] (a)**.

28 **[d.] (d)** Term restricting assignment generally ineffective. Except
29 as otherwise provided in subsection **[e. of this section] (e)**,
30 12A:2A-303 and 12A:9-407, and subject to subsection **[h. of this]**
31 **section] (h)**, a term in an agreement between an account debtor and
32 an assignor or in a promissory note is ineffective to the extent that it:

33 (1) prohibits, restricts, or requires the consent of the account
34 debtor or person obligated on the promissory note to the assignment
35 or transfer of, or the creation, attachment, perfection, or enforcement
36 of a security interest in, the account, chattel paper, payment intangible,
37 or promissory note; or

38 (2) provides that the assignment or transfer or the creation,
39 attachment, perfection, or enforcement of the security interest may
40 give rise to a default, breach, right of recoupment, claim, defense,
41 termination, right of termination, or remedy under the account, chattel
42 paper, payment intangible, or promissory note.

43 **[e.] (e)** Inapplicability of subsection **[d.] (d)** to certain sales.
44 Subsection **[d. of this section] (d)** does not apply to the sale of a
45 payment intangible or promissory note.

1 [f.] (f) Legal restrictions on assignment generally ineffective.
2 Except as otherwise provided in [subsection j. of this section]
3 12A:2A-303 and 12A:9-407 and subject to subsections [h. and i. of
4 this section] (h), (i) and (j), a rule of law, statute, or regulation that
5 prohibits, restricts, or requires the consent of a government,
6 governmental body or official, or account debtor to the assignment or
7 transfer of, or creation of a security interest in, an account or chattel
8 paper is ineffective to the extent that the rule of law, statute, or
9 regulation:

10 (1) prohibits, restricts, or requires the consent of the government,
11 governmental body or official, or account debtor to the assignment or
12 transfer of, or the creation, attachment, perfection, or enforcement of
13 a security interest in the account or chattel paper; or

14 (2) provides that the assignment or transfer or the creation,
15 attachment, perfection, or enforcement of the security interest may
16 give rise to a default, breach, right of recoupment, claim, defense,
17 termination, right of termination, or remedy under the account or
18 chattel paper.

19 [g.] (g) Subsection [b. paragraph] (b) (3) not waivable. Subject
20 to subsection [h.] (h), an account debtor may not waive or vary its
21 option under subsection [b.] (b) (3) [of this section].

22 [h.] (h) Rule for individual under other law. This section is
23 subject to law other than this chapter which establishes a different rule
24 for an account debtor who is an individual and who incurred the
25 obligation primarily for personal, family, or household purposes.

26 [i.] (i) Inapplicability [to health-care-insurance receivable]. This
27 section does not apply to an assignment of a health-care-insurance
28 receivable. Subsection (f) does not apply to an assignment or transfer
29 of, or the creation, attachment, perfection or enforcement of a security
30 interest in, a right the transfer of which is prohibited or restricted by
31 any of the following statutes to the extent that the statute is
32 inconsistent with subsection (f): R.S.34:15-29 (workers'
33 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
34 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
35 (structured settlement agreements).

36 [j.] (j) Section prevails over specified inconsistent law. [This]
37 Except to the extent otherwise provided in subsection (i), this section
38 prevails over any inconsistent [provisions] provision of an existing or
39 future statute, rule or regulation of this State [statutes, rules, and
40 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
41 (C.5:9-13)], unless the provision is contained in a statute of this State,
42 refers expressly to this section and states that the provision prevails
43 over this section.

44 (cf: N.J.S.12A:9-406)

1 63. N.J.S.12A:9-407 is amended to read as follows:

2 12A:9-407. Restrictions on Creation or Enforcement of Security
3 Interest in Leasehold Interest or in Lessor's Residual Interest.

4 **[a.] (a)** Term restricting assignment generally ineffective. Except
5 as otherwise provided in subsection **[b. of this section] (b)**, a term in
6 a lease agreement is ineffective to the extent that it:

7 (1) prohibits, restricts, or requires the consent of a party to the
8 lease to the assignment or transfer of, or the creation, attachment,
9 perfection, or enforcement of a security interest in, an interest of a
10 party under the lease contract or in the lessor's residual interest in the
11 goods; or

12 (2) provides that the assignment or transfer or the creation,
13 attachment, perfection, or enforcement of the security interest may
14 give rise to a default, breach, right of recoupment, claim, defense,
15 termination, right of termination, or remedy under the lease.

16 **[b.] (b)** Effectiveness of certain terms. Except as otherwise
17 provided in 12A:2A-303 **[g.] (7)**, a term described in **[paragraph (2)**
18 **of subsection a. of this section] subsection (a) (2)** is effective to the
19 extent that there is:

20 (1) a transfer by the lessee of the lessee's right of possession or use
21 of the goods in violation of the term; or

22 (2) a delegation of a material performance of either party to the
23 lease contract in violation of the term.

24 **[c.] (c)** Security interest not material impairment. The creation,
25 attachment, perfection, or enforcement of a security interest in the
26 lessor's interest under the lease contract or the lessor's residual interest
27 in the goods is not a transfer that materially impairs the lessee's
28 prospect of obtaining return performance or materially changes the
29 duty of or materially increases the burden or risk imposed on the lessee
30 within the purview of 12A:2A-303 **[d.] (4)** unless, and then only to
31 the extent that, enforcement actually results in a delegation of material
32 performance of the lessor.

33 (cf: N.J.S.12A:9-407)

34

35 64. N.J.S.12A:9-408 is amended to read as follows:

36 12A:9-408. Restrictions on Assignment of Promissory Notes,
37 Health-care-insurance Receivables, and Certain General Intangibles
38 Ineffective.

39 **[a.] (a)** Term restricting assignment generally ineffective. Except
40 as otherwise provided in subsection **[b. of this section] (b)**, a term in
41 a promissory note or in an agreement between an account debtor and
42 a debtor which relates to a health-care-insurance receivable or a
43 general intangible, including a contract, permit, license, or franchise,
44 and which term prohibits, restricts, or requires the consent of the
45 person obligated on the promissory note or the account debtor to, the

1 assignment or transfer of, or creation, attachment, or perfection of a
2 security interest in, the promissory note, health-care-insurance
3 receivable, or general intangible, is ineffective to the extent that the
4 term:

5 (1) would impair the creation, attachment, or perfection of a
6 security interest; or

7 (2) provides that the assignment or transfer or the creation,
8 attachment, or perfection of the security interest may give rise to a
9 default, breach, right of recoupment, claim, defense, termination, right
10 of termination, or remedy under the promissory note,
11 health-care-insurance receivable, or general intangible.

12 **[b.] (b)** Applicability of subsection **[a.] (a)** to sales of certain
13 rights to payment. Subsection **[a. of this section] (a)** applies to a
14 security interest in a payment intangible or promissory note only if the
15 security interest arises out of a sale of the payment intangible or
16 promissory note.

17 **[c.] (c)** Legal restrictions on assignment generally ineffective.
18 Except as provided in subsection **[e. of this section] (e)**, a rule of law,
19 statute, or regulation that prohibits, restricts, or requires the consent
20 of a government, governmental body or official, person obligated on
21 a promissory note, or account debtor to the assignment or transfer of,
22 or creation of a security interest in, a promissory note,
23 health-care-insurance receivable, or general intangible, including a
24 contract, permit, license, or franchise between an account debtor and
25 a debtor, is ineffective to the extent that the rule of law, statute, or
26 regulation:

27 (1) would impair the creation, attachment, or perfection of a
28 security interest; or

29 (2) provides that the assignment or transfer or the creation,
30 attachment, or perfection of the security interest may give rise to a
31 default, breach, right of recoupment, claim, defense, termination, right
32 of termination, or remedy under the promissory note,
33 health-care-insurance receivable, or general intangible.

34 **[d.] (d)** Limitation on ineffectiveness under subsections **[a. and**
35 **c.] (a) and (c)**. To the extent that a term in a promissory note or in an
36 agreement between an account debtor and a debtor which relates to a
37 health-care-insurance receivable or general intangible or a rule of law,
38 statute, or regulation described in subsection **[c.] (c)** would be
39 effective under law other than this chapter but is ineffective under
40 subsection **[a. or c. of this section] (a) or (c)**, the creation,
41 attachment, or perfection of a security interest in the promissory note,
42 health-care-insurance receivable, or general intangible:

43 (1) is not enforceable against the person obligated on the
44 promissory note or the account debtor;

45 (2) does not impose a duty or obligation on the person obligated
46 on the promissory note or the account debtor;

1 (3) does not require the person obligated on the promissory note
2 or the account debtor to recognize the security interest, pay or render
3 performance to the secured party, or accept payment or performance
4 from the secured party;

5 (4) does not entitle the secured party to use or assign the debtor's
6 rights under the promissory note, health-care-insurance receivable, or
7 general intangible, including any related information or materials
8 furnished to the debtor in the transaction giving rise to the promissory
9 note, health-care-insurance receivable, or general intangible;

10 (5) does not entitle the secured party to use, assign, possess, or
11 have access to any trade secrets or confidential information of the
12 person obligated on the promissory note or the account debtor; and

13 (6) does not entitle the secured party to enforce the security
14 interest in the promissory note, health-care-insurance receivable, or
15 general intangible.

16 [e.] (e) Section prevails over specified inconsistent law. [This]
17 Except to the extent otherwise provided in subsection (f), this section
18 prevails over any inconsistent [provisions] provision of an existing or
19 future statute, rule or regulation of this State [statutes, rules, and
20 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
21 (C.5:9-13) , unless the provision is contained in a statute of this State,
22 refers expressly to this section and states that the provision prevails
23 over this section.

24 (f) Inapplicability. Subsection (c) does not apply to an assignment
25 or transfer of, or the creation, attachment, perfection or enforcement
26 of a security interest in, a right the transfer of which is prohibited or
27 restricted by any of the following statutes to the extent that the statute
28 is inconsistent with subsection (c): R.S.34:15-29 (workers'
29 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
30 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
31 (structured settlement agreements).

32 (cf: N.J.S.12A:9-408)

33
34 65. N.J.S.12A:9-409 is amended to read as follows:

35 12A:9-409. Restrictions on Assignment of Letter-of-credit Rights
36 Ineffective.

37 [a.] (a) Term or law restricting assignment generally ineffective.
38 A term in a letter of credit or a rule of law, statute, regulation, custom,
39 or practice applicable to the letter of credit which prohibits, restricts,
40 or requires the consent of an applicant, issuer, or nominated person to
41 a beneficiary's assignment of or creation of a security interest in a
42 letter-of-credit right is ineffective to the extent that the term or rule of
43 law, statute, regulation, custom, or practice:

44 (1) would impair the creation, attachment, or perfection of a
45 security interest in the letter-of-credit right; or

46 (2) provides that the assignment or the creation, attachment, or

1 perfection of the security interest may give rise to a default, breach,
2 right of recoupment, claim, defense, termination, right of termination,
3 or remedy under the letter-of-credit right.

4 **[b.] (b)** Limitation on ineffectiveness under subsection **[a.] (a)**.
5 To the extent that a term in a letter of credit is ineffective under
6 subsection **[a.] (a)** but would be effective under law other than this
7 chapter or a custom or practice applicable to the letter of credit, to the
8 transfer of a right to draw or otherwise demand performance under the
9 letter of credit, or to the assignment of a right to proceeds of the letter
10 of credit, the creation, attachment, or perfection of a security interest
11 in the letter-of-credit right:

12 (1) is not enforceable against the applicant, issuer, nominated
13 person, or transferee beneficiary;

14 (2) imposes no duties or obligations on the applicant, issuer,
15 nominated person, or transferee beneficiary; and

16 (3) does not require the applicant, issuer, nominated person, or
17 transferee beneficiary to recognize the security interest, pay or render
18 performance to the secured party, or accept payment or other
19 performance from the secured party.

20 (cf: N.J.S.12A:9-409)

21

22 66. N.J.S.12A:9-501 is amended to read as follows:

23 12A:9-501. Filing Office.

24 Filing offices.

25 **[a.] (a)** Except as otherwise provided in subsection **[b. of this**
26 **section] (b)**, if the local law of this State governs perfection of a
27 security interest or agricultural lien, the office in which to file a
28 financing statement to perfect the security interest or agricultural lien
29 is :

30 (1) the office designated for the filing or recording of a record of
31 a mortgage on the related real property, if:

32 **[(a)] (A)** the collateral is as-extracted collateral or timber to be
33 cut; or

34 **[(b)] (B)** the financing statement is filed as a fixture filing and the
35 collateral is goods that are or are to become fixtures; or

36 (2) the Division of Commercial Recording or other office
37 designated by Executive Order, in all other cases, including a case in
38 which the collateral is goods that are or are to become fixtures and the
39 financing statement is not filed as a fixture filing.

40 **[b.] (b)** Filing office for transmitting utilities. The office in which
41 to file a financing statement to perfect a security interest in collateral,
42 including fixtures, of a transmitting utility is the Division of
43 Commercial Recording or other office designated by Executive Order.
44 The financing statement also constitutes a fixture filing as to the
45 collateral indicated in the financing statement which is or is to become
46 fixtures.

1 (cf: N.J.S.12A:9-501)

2 67. N.J.S.12A:9-502 is amended to read as follows:

3 12A:9-502. Contents of Financing Statement; Record of Mortgage
4 as Financing Statement; Time of Filing Financing Statement.

5 **[a.] (a)** Sufficiency of financing statement. Subject to subsection
6 **[b. of this section] (b)**, a financing statement is sufficient only if it:

7 (1) provides the name of the debtor;

8 (2) provides the name of the secured party or a representative of
9 the secured party; and

10 (3) indicates the collateral covered by the financing statement.

11 **[b.] (b)** Real-property-related financing statements. Except as
12 otherwise provided in 12A:9-501 **[b.] (b)**, to be sufficient, a financing
13 statement that covers as-extracted collateral or timber to be cut, or
14 which is filed as a fixture filing and covers goods that are or are to
15 become fixtures, **[shall] must** satisfy subsection **[a. of this section] (a)**
16 and also:

17 (1) indicate that it covers this type of collateral;

18 (2) indicate that it is to be filed in the real property records;

19 (3) provide a description of the real property to which the collateral
20 is related sufficient to **[identify] give constructive notice of a**
21 **mortgage under the law of this State if the description were contained**
22 **in a record of the mortgage of** the real property; and

23 (4) if the debtor does not have an interest of record in the real
24 property, provide the name of a record owner.

25 **[c.] (c)** Record of mortgage as financing statement. A record of
26 a mortgage is effective, from the date of recording, as a **[filed]**
27 financing statement filed as a fixture filing or as a financing statement
28 covering as-extracted collateral or timber to be cut **[or fixtures]** only
29 if:

30 (1) the record indicates the goods or accounts that it covers;

31 (2) the goods are or are to become fixtures related to the real
32 property described in the record or the collateral is related to the real
33 property described in the record and is as-extracted collateral or
34 timber to be cut;

35 (3) the record satisfies the requirements for a financing statement
36 in this section other than an indication that it is to be filed in the real
37 property records; and

38 (4) the record is recorded.

39 **[d.] (d)** Filing before security agreement or attachment. A
40 financing statement may be filed before a security agreement is made
41 or a security interest otherwise attaches.

42 (cf: N.J.S.12A:9-502)

43

44 68. N.J.S.12A:9-503 is amended to read as follows:

45 12A:9-503. Name of Debtor and Secured Party.

1 **[a.] (a)** Sufficiency of debtor's name. A financing statement
2 sufficiently provides the name of the debtor:

3 (1) if the debtor is a registered organization, only if the financing
4 statement provides the name of the debtor indicated on the public
5 record of the debtor's jurisdiction of organization which shows the
6 debtor to have been organized;

7 (2) if the debtor is a decedent's estate, only if the financing
8 statement provides the name of the decedent and indicates that the
9 debtor is an estate;

10 (3) if the debtor is a trust or a trustee acting with respect to
11 property held in trust, only if the financing statement:

12 **[(a)] (A)** provides the name specified for the trust in its organic
13 documents or, if no name is specified, provides the name of the settlor
14 and additional information sufficient to distinguish the debtor from
15 other trusts having one or more of the same settlors; and

16 **[(b)] (B)** indicates, in the debtor's name or otherwise, that the
17 debtor is a trust or is a trustee acting with respect to property held in
18 trust; and

19 (4) in other cases:

20 **[(a)] (A)** if the debtor has a name, only if it provides the individual
21 or organizational name of the debtor; and

22 **[(b)] (B)** if the debtor does not have a name, only if it provides the
23 names of the partners, members, associates, or other persons
24 comprising the debtor.

25 **[b.] (b)** Additional debtor-related information. A financing
26 statement that provides the name of the debtor in accordance with
27 subsection **[a. of this section] (a)** is not rendered ineffective by the
28 absence of:

29 (1) a trade name or other name of the debtor; or

30 (2) unless required under **[paragraph (4) (b) of]** subsection **[a. of**
31 **this section] (a) (4) (B)**, names of partners, members, associates, or
32 other persons comprising the debtor.

33 **[c.] (c)** Debtor's trade name insufficient. A financing statement
34 that provides only the debtor's trade name does not sufficiently provide
35 the name of the debtor.

36 **[d.] (d)** Representative capacity. Failure to indicate the
37 representative capacity of a secured party or representative of a
38 secured party does not affect the sufficiency of a financing statement.

39 **[e.] (e)** Multiple debtors and secured parties. A financing
40 statement may provide the name of more than one debtor and the name
41 of more than one secured party.

42 (cf: N.J.S.12A:9-503)

43

44 69. N.J.S.12A:9-504 is amended to read as follows:

45 12A:9-504. Indication of Collateral.

1 A financing statement sufficiently indicates the collateral that it
2 covers if the financing statement provides:

3 [a.] (1) a description of the collateral pursuant to 12A:9-108; or

4 [b.] (2) an indication that the financing statement covers all assets
5 or all personal property.

6 (cf: N.J.S.12A:9-504)

7

8 70. N.J.S.12A:9-505 is amended to read as follows:

9 12A:9-505. Filing and Compliance with Other Statutes and
10 Treaties for Consignments, Leases, Other Bailments, and Other
11 Transactions.

12 [a.] (a) Use of terms other than "debtor" and "secured party." A
13 consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
14 payment intangible or promissory note may file a financing statement,
15 or may comply with a statute or treaty described in 12A:9-311 [a.]
16 (a), using the terms "consignor," "consignee," "lessor," "lessee,"
17 "bailor," "bailee," "licensor," "licensee," "owner," "registered owner,"
18 "buyer," "seller," or words of similar import, instead of the terms
19 "secured party" and "debtor".

20 [b.] (b) Effect of financing statement under subsection [a.] (a)
21 This part applies to the filing of a financing statement under subsection
22 [a. of this section] (a) and, as appropriate, to compliance that is
23 equivalent to filing a financing statement under 12A:9-311 [b.] (b),
24 but the filing or compliance is not of itself a factor in determining
25 whether the collateral secures an obligation. If it is determined for
26 another reason that the collateral secures an obligation, a security
27 interest held by the consignor, lessor, bailor, licensor, owner, or buyer
28 which attaches to the collateral is perfected by the filing or
29 compliance.

30 (cf: N.J.S.12A:9-505)

31

32 71. N.J.S.12A:9-506 is amended to read as follows:

33 12A:9-506. Effect of Errors or Omissions.

34 [a.] (a) Minor errors and omissions. A financing statement
35 substantially satisfying the requirements of this part is effective, even
36 if it has minor errors or omissions, unless the errors or omissions make
37 the financing statement seriously misleading.

38 [b.] (b) Financing statement seriously misleading. Except as
39 otherwise provided in subsection [c. of this section] (c), a financing
40 statement that fails sufficiently to provide the name of the debtor in
41 accordance with 12A:9-503 [a.] (a) is seriously misleading.

42 [c.] (c) Financing statement not seriously misleading. If a search
43 of the records of the filing office under the debtor's correct name,
44 using the filing office's standard search logic, if any, would disclose a
45 financing statement that fails sufficiently to provide the name of the

1 debtor in accordance with 12A:9-503 [a.] (a), the name provided does
2 not make the financing statement seriously misleading.

3 [d.] (d) "Debtor's correct name." For purposes of 12A:9-508 [b.]
4 (b), the "debtor's correct name" in subsection [c. of this section] (c)
5 means the correct name of the new debtor.
6 (cf: N.J.S.12A:9-506)

7

8 72. N.J.S.12A:9-507 is amended to read as follows:

9 12A:9-507. Effect of Certain Events on Effectiveness of Financing
10 Statement.

11 [a.] (a) Disposition. A filed financing statement remains effective
12 with respect to collateral that is sold, exchanged, leased, licensed, or
13 otherwise disposed of and in which a security interest or agricultural
14 lien continues, even if the secured party knows of or consents to the
15 disposition.

16 [b.] (b) Information becoming seriously misleading. Except as
17 otherwise provided in subsection [c. of this section] (c) and
18 12A:9-508, a financing statement is not rendered ineffective if, after
19 the financing statement is filed, the information provided in the
20 financing statement becomes seriously misleading under 12A:9-506.

21 [c.] (c) Change in debtor's name. If a debtor so changes its name
22 that a filed financing statement becomes seriously misleading under
23 12A:9-506:

24 (1) the financing statement is effective to perfect a security interest
25 in collateral acquired by the debtor before, or within four months after,
26 the change; and

27 (2) the financing statement is not effective to perfect a security
28 interest in collateral acquired by the debtor more than four months
29 after the change, unless an amendment to the financing statement
30 which renders the financing statement not seriously misleading is filed
31 within four months after the change.

32 (cf: N.J.S.12A:9-507)

33

34 73. N.J.S.12A:9-508 is amended to read as follows:

35 12A:9-508. Effectiveness of Financing Statement If New Debtor
36 Becomes Bound by Security Agreement.

37 [a.] (a) Financing statement naming original debtor. Except as
38 otherwise provided in this section, a filed financing statement naming
39 an original debtor is effective to perfect a security interest in collateral
40 in which a new debtor has or acquires rights to the extent that the
41 financing statement would have been effective had the original debtor
42 acquired rights in the collateral.

43 [b.] (b) Financing statement becoming seriously misleading. If the
44 difference between the name of the original debtor and that of the new
45 debtor causes a filed financing statement that is effective under

1 subsection [a. of this section] (a) to be seriously misleading under
2 12A:9-506:

3 (1) the financing statement is effective to perfect a security interest
4 in collateral acquired by the new debtor before, and within four
5 months after, the new debtor becomes bound under 12A:9-203 [d.]
6 (d); and

7 (2) the financing statement is not effective to perfect a security
8 interest in collateral acquired by the new debtor more than four
9 months after the new debtor becomes bound under 12A:9-203 [d.] (d)
10 unless an initial financing statement providing the name of the new
11 debtor is filed before the expiration of that time.

12 [c.] (c) When section not applicable. This section does not apply
13 to collateral as to which a filed financing statement remains effective
14 against the new debtor under 12A:9-507 [a.] (a).
15 (cf: N.J.S.12A:9-508)

16

17 74. N.J.S.12A:9-509 is amended to read as follows:

18 12A:9-509. Persons Entitled to File a Record.

19 [a.] (a) Person entitled to file record. A person may file an initial
20 financing statement, amendment that adds collateral covered by a
21 financing statement, or amendment that adds a debtor to a financing
22 statement only if:

23 (1) the debtor authorizes the filing in an authenticated record or
24 pursuant to subsection (b) or (c); or

25 (2) the person holds an agricultural lien that has become effective
26 at the time of filing and the financing statement covers only collateral
27 in which the person holds an agricultural lien.

28 [b.] (b) Security agreement as authorization. By authenticating or
29 becoming bound as debtor by a security agreement, a debtor or new
30 debtor authorizes the filing of an initial financing statement, and an
31 amendment, covering:

32 (1) the collateral described in the security agreement; and

33 (2) property that becomes collateral under 12A:9-315 [a.] (a) (2),
34 whether or not the security agreement expressly covers proceeds.

35 [c.] (c) Acquisition of collateral as authorization. By acquiring
36 collateral in which a security interest or agricultural lien continues
37 under 12A:9-315 [a.] (a) (1), a debtor authorizes the filing of an
38 initial financing statement, and an amendment, covering the collateral
39 and property that becomes collateral under 12A:9-315 [a.] (a) (2).

40 [d.] (d) Person entitled to file certain amendments. A person may
41 file an amendment other than an amendment that adds collateral
42 covered by a financing statement or an amendment that adds a debtor
43 to a financing statement only if:

44 (1) the secured party of record authorizes the filing; or

45 (2) the amendment is a termination statement for a financing

1 statement as to which the secured party of record has failed to file or
2 send a termination statement as required by 12A:9-513 [a. or c.] (a)
3 or (c), the debtor authorizes the filing, and the termination statement
4 indicates that the debtor authorized it to be filed.

5 [e.] (e) Multiple secured parties of record. If there is more than
6 one secured party of record for a financing statement, each secured
7 party of record may authorize the filing of an amendment under
8 subsection [d. of this section] (d).

9 (cf: N.J.S.12A:9-509)

10
11 75. N.J.S.12A:9-510 is amended to read as follows:

12 12A:9-510. Effectiveness of Filed Record.

13 [a.] (a) Filed record effective if authorized. A filed record is
14 effective only to the extent that it was filed by a person [who] that
15 may file it under 12A:9-509.

16 [b.] (b) Authorization by one secured party of record. A record
17 authorized by one secured party of record does not affect the financing
18 statement with respect to another secured party of record.

19 [c.] (c) Continuation statement not timely filed. A continuation
20 statement that is not filed within the six-month period prescribed by
21 12A:9-515 [d.] (d) is ineffective.

22 (cf: N.J.S.12A:9-510)

23
24 76. N.J.S.12A:9-511 is amended to read as follows:

25 12A:9-511. Secured Party of Record.

26 [a.] (a) Secured party of record. A secured party of record with
27 respect to a financing statement is a person whose name is provided as
28 the name of the secured party or a representative of the secured party
29 in an initial financing statement that has been filed. If an initial
30 financing statement is filed under 12A:9-514 [a.] (a), the assignee
31 named in the initial financing statement is the secured party of record
32 with respect to the financing statement.

33 [b.] (b) Amendment naming secured party of record. If an
34 amendment of a financing statement which provides the name of a
35 person as a secured party or a representative of a secured party is
36 filed, the person named in the amendment is a secured party of record.
37 If an amendment is filed under 12A:9-514 [b.] (b), the assignee named
38 in the amendment is a secured party of record.

39 [c.] (c) Amendment deleting secured party of record. A person
40 remains a secured party of record until the filing of an amendment of
41 the financing statement which deletes the person.

42 (cf: N.J.S.12A:9-511)

43
44 77. N.J.S.12A:9-512 is amended to read as follows:

45 12A:9-512. Amendment of Financing Statement.

1 **[a.] (a)** Amendment of information in financing statement. Subject
2 to 12A:9-509, a person may add or delete collateral covered by,
3 continue or terminate the effectiveness of, or, subject to subsection **[e.**
4 of this section] **(e)**, otherwise amend the information provided in, a
5 financing statement by filing an amendment that:

6 (1) identifies, by its file number, the initial financing statement to
7 which the amendment relates; and

8 (2) if the amendment relates to an initial financing statement filed
9 in a filing office described in 12A:9-501 **[a.] (a)** (1), provides the
10 information specified in 12A:9-502 **[b.] (b)**.

11 **[b.] (b)** Period of effectiveness not affected. Except as otherwise
12 provided in 12A:9-515, the filing of an amendment does not extend the
13 period of effectiveness of the financing statement.

14 **[c.] (c)** Effectiveness of amendment adding collateral. A financing
15 statement that is amended by an amendment that adds collateral is
16 effective as to the added collateral only from the date of the filing of
17 the amendment.

18 **[d.] (d)** Effectiveness of amendment adding debtor. A financing
19 statement that is amended by an amendment that adds a debtor is
20 effective as to the added debtor only from the date of the filing of the
21 amendment.

22 **[e.] (e)** Certain amendments ineffective. An amendment is
23 ineffective to the extent it:

24 (1) purports to delete all debtors and fails to provide the name of
25 a debtor to be covered by the financing statement; or

26 (2) purports to delete all secured parties of record and fails to
27 provide the name of a new secured party of record.

28 (cf: N.J.S.12A:9-512)

29

30 78. N.J.S.12A:9-513 is amended to read as follows:

31 12A:9-513. Termination Statement.

32 **[a.] (a)** Consumer goods. A secured party shall cause the secured
33 party of record for a financing statement to file a termination statement
34 for the financing statement if the financing statement covers consumer
35 goods and:

36 (1) there is no obligation secured by the collateral covered by the
37 financing statement and no commitment to make an advance, incur an
38 obligation, or otherwise give value; or

39 (2) the debtor did not authorize the filing of the initial financing
40 statement.

41 **[b.] (b)** Time for compliance with subsection **[a.] (a)**. To comply
42 with subsection **[a. of this section] (a)**, a secured party shall cause the
43 secured party of record to file the termination statement:

44 (1) within one month after there is no obligation secured by the
45 collateral covered by the financing statement and no commitment to

1 make an advance, incur an obligation, or otherwise give value; or
2 (2) if earlier, within 20 days after the secured party receives an
3 authenticated demand from a debtor.

4 [c.] (c) Other collateral. In cases not governed by subsection [a.
5 of this section] (a), within 20 days after a secured party receives an
6 authenticated demand from a debtor, the secured party shall cause the
7 secured party of record for a financing statement to send to the debtor
8 a termination statement for the financing statement or file the
9 termination statement in the filing office if:

10 (1) except in the case of a financing statement covering accounts
11 or chattel paper that has been sold or goods that are the subject of a
12 consignment, there is no obligation secured by the collateral covered
13 by the financing statement and no commitment to make an advance,
14 incur an obligation, or otherwise give value;

15 (2) the financing statement covers accounts or chattel paper that
16 [have] has been sold but as to which the account debtor or other
17 person obligated has discharged its obligation;

18 (3) the financing statement covers goods that were the subject of
19 a consignment to the debtor but are not in the debtor's possession; or

20 (4) the debtor did not authorize the filing of the initial financing
21 statement.

22 [d.] (d) Effect of filing termination statement. Except as
23 otherwise provided in 12A:9-510, upon the filing of a termination
24 statement with the filing office, the financing statement to which the
25 termination statement relates ceases to be effective. Except as
26 otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g),
27 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a
28 termination statement relating to a financing statement that indicates
29 that the debtor is a transmitting utility also causes the effectiveness of
30 the financing statement to lapse.

31 (cf: N.J.S.12A:9-513)

32

33 79. N.J.S.12A:9-514 is amended to read as follows:

34 12A:9-514. Assignment of Powers of Secured Party of Record.

35 [a.] (a) Assignment reflected on initial financing statement.
36 Except as otherwise provided in [this chapter] subsection (c), an
37 initial financing statement may reflect an assignment of all of the
38 secured party's power to authorize an amendment to the financing
39 statement by providing the name and mailing address of the assignee
40 as the name and address of the secured party.

41 [b.] (b) Assignment of filed financing statement. Except as
42 otherwise provided in [this chapter] subsection (c), a secured party of
43 record may assign of record all or part of its power to authorize an
44 amendment to a financing statement by filing in the filing office an
45 amendment of the financing statement which:

46 (1) identifies, by its file number, the initial financing statement to

1 which it relates;

2 (2) provides the name of the assignor; and

3 (3) provides the name and mailing address of the assignee.

4 [c.] (c) Assignment of record of mortgage. An assignment of
5 record of a security interest in a fixture covered by a record of a
6 mortgage which is effective as a ¹[filed]¹ financing statement filed as
7 a fixture filing under 12A:9-502 [c.] (c) may be made only by an
8 assignment of record of the mortgage in the manner provided by law
9 of this State other than the Uniform Commercial Code.
10 (cf: N.J.S.12A:9-514)

11

12 80. N.J.S.12A:9-515 is amended to read as follows:

13 12A:9-515. Duration and Effectiveness of Financing Statement;
14 Effect of Lapsed Financing Statement.

15 [a.] (a) Five-year effectiveness. Except as otherwise provided in
16 subsections [b., e., f. and g.] (b), (e), (f) and (g), a filed financing
17 statement is effective for a period of five years after the date of filing.

18 [b.] (b) Public-finance or manufactured-home transaction. Except
19 as otherwise provided in subsections [e., f. and g. of this section] (e),
20 (f) and (g), an initial financing statement filed in connection with a
21 public-finance transaction or manufactured-home transaction is
22 effective for a period of 30 years after the date of filing if it indicates
23 that it is filed in connection with a public-finance transaction or
24 manufactured-home transaction.

25 [c. Bondable transition property. If a filed financing statement
26 relates to a security interest in bondable transition property and the
27 financing statement so states, it is effective until a termination
28 statement is filed.

29 d.] (c) Lapse and continuation of financing statement. The
30 effectiveness of a filed financing statement lapses on the expiration of
31 the period of its effectiveness unless before the lapse a continuation
32 statement is filed pursuant to subsection [e. of this section] (d). Upon
33 lapse, a financing statement ceases to be effective and any security
34 interest or agricultural lien that was perfected by the financing
35 statement becomes unperfected, unless the security interest is
36 perfected otherwise. If the security interest or agricultural lien
37 becomes unperfected upon lapse, it is deemed never to have been
38 perfected as against a purchaser of the collateral for value.

39 [e.] (d) When continuation statement may be filed. A continuation
40 statement may be filed only within six months before the expiration of
41 the five-year period specified in subsection [a.] (a) or the 30-year
42 period specified in subsection [b. of this section] (b), whichever is
43 applicable.

44 [f.] (e) Effect of filing continuation statement. Except as
45 otherwise provided in 12A:9-510, upon timely filing of a continuation

1 statement, the effectiveness of the initial financing statement continues
2 for a period of five years commencing on the day on which the
3 financing statement would have become ineffective in the absence of
4 the filing. Upon the expiration of the five-year period, the financing
5 statement lapses in the same manner as provided in subsection [d.]
6 (c), unless, before the lapse, another continuation statement is filed
7 pursuant to subsection [e. of this section] (d). Succeeding
8 continuation statements may be filed in the same manner to continue
9 the effectiveness of the initial financing statement.

10 [g.] (f) Transmitting utility financing statement. If a debtor is a
11 transmitting utility and a filed financing statement so indicates, the
12 financing statement is effective until a termination statement is filed.

13 [h.] (g) Record of mortgage as financing statement. A record of
14 mortgage that is effective as a [filed] financing statement filed as a
15 fixture filing under 12A:9-502 [c.] (c) remains effective as a [filed]
16 financing statement filed as a fixture filing until the mortgage is
17 released or satisfied of record or its effectiveness otherwise terminates
18 as to the real property.

19 (h) Bondable transition property. If a filed financing statement
20 relates to a security interest in bondable transition property and the
21 financing statement so states, it is effective until a termination
22 statement is filed.

23 (cf: N.J.S.12A:9-515)

24
25 81. N.J.S.12A:9-516 is amended to read as follows:

26 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

27 [a.] (a) What constitutes filing. Except as otherwise provided in
28 subsection [b. of this section] (b), communication of a record to a
29 filing office and tender of the filing fee or acceptance of the record by
30 the filing office constitutes filing.

31 [b.] (b) Refusal to accept record; filing does not occur. Filing
32 does not occur with respect to a record that a filing office refuses to
33 accept because:

34 (1) the record is not communicated by a method or medium of
35 communication authorized by the filing office;

36 (2) an amount equal to or greater than the applicable filing fee is
37 not tendered;

38 (3) the filing office is unable to index the record because:

39 [(a)] (A) in the case of an initial financing statement, the record
40 does not provide a name for the debtor;

41 [(b)] (B) in the case of an amendment or correction statement, the
42 record:

43 (i) does not identify the initial financing statement as required by
44 12A:9-512 or 12A:9-518, as applicable; or

45 (ii) identifies an initial financing statement whose effectiveness has

1 lapsed under 12A:9-515;

2 ~~[(c)] (C)~~ in the case of an initial financing statement that provides
3 the name of a debtor identified as an individual or an amendment that
4 provides a name of a debtor identified as an individual which was not
5 previously provided in the financing statement to which the record
6 relates, the record does not identify the debtor's last name; or

7 ~~[(d)] (D)~~ in the case of a record filed or recorded in the filing
8 office described in 12A:9-501 ~~(a) (1)~~, the record does not provide a
9 sufficient description of the real property to which it relates;

10 (4) in the case of an initial financing statement or an amendment
11 that adds a secured party of record, the record does not provide a
12 name and mailing address for the secured party of record;

13 (5) in the case of an initial financing statement or an amendment
14 that provides a name of a debtor which was not previously provided
15 in the financing statement to which the amendment relates, the record
16 does not:

17 ~~[(a)] (A)~~ provide a mailing address for the debtor;

18 ~~[(b)] (B)~~ indicate whether the debtor is an individual or an
19 organization; or

20 ~~[(c)] (C)~~ if the financing statement indicates that the debtor is an
21 organization, provide:

22 (i) a type of organization for the debtor;

23 (ii) a jurisdiction of organization for the debtor; or

24 (iii) an organizational identification number for the debtor or
25 indicate that the debtor has none;

26 (6) in the case of an assignment reflected in an initial financing
27 statement under 12A:9-514 ~~[a.] (a)~~ or an amendment filed under
28 12A:9-514 ~~[b.] (b)~~, the record does not provide a name and mailing
29 address for the assignee; or

30 (7) in the case of a continuation statement, the record is not filed
31 within the six-month period prescribed by 12A:9-515 ~~[e.] (d)~~.

32 ~~[c.] (c)~~ Rules applicable to subsection ~~[b.] (b)~~. For purposes of
33 subsection ~~[b. of this section] (b)~~:

34 (1) a record does not provide information if the filing office is
35 unable to read or decipher the information; and

36 (2) a record that does not indicate that it is an amendment or
37 identify an initial financing statement to which it relates, as required by
38 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.

39 ~~[d.] (d)~~ Refusal to accept record; record effective as filed record.
40 A record that is communicated to the filing office with tender of the
41 filing fee, but which the filing office refuses to accept for a reason
42 other than one set forth in subsection ~~[b. of this section] (b)~~, is
43 effective as a filed record except as against a purchaser of the
44 collateral which gives value in reasonable reliance upon the absence of
45 the record from the files.

1 (cf: N.J.S.12A:9-516)

1 82. N.J.S.12A:9-518 is amended to read as follows:

2 12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed
3 Record.

4 [a.] (a) Correction statement. A person may file in the filing office
5 a correction statement with respect to a record indexed there under the
6 person's name if the person believes that the record is inaccurate or
7 was wrongfully filed.

8 [b.] (b) Sufficiency of correction statement. A correction
9 statement [shall] must:

10 (1) identify the record to which it relates by the file number
11 assigned to the initial financing statement to which the record relates;

12 (2) indicate that it is a correction statement; and

13 (3) provide the basis for the person's belief that the record is
14 inaccurate and indicate the manner in which the person believes the
15 record should be amended to cure any inaccuracy or provide the basis
16 for the person's belief that the record was wrongfully filed.

17 [c.] (c) Record not affected by correction statement. The filing of
18 a correction statement does not affect the effectiveness of an initial
19 financing statement or other filed record.

20 (cf: N.J.S.12A:9-518)

21

22 83. N.J.S.12A:9-519 is amended to read as follows:

23 12A:9-519. Numbering, Maintaining, and Indexing Records;
24 Communicating Information Provided in Records.

25 [a.] (a) Filing office duties. For each record filed in a filing office,
26 the filing office shall:

27 (1) assign a unique number to the filed record;

28 (2) create a record that bears the number assigned to the filed
29 record and the date and time of filing;

30 (3) maintain the filed record for public inspection; and

31 (4) index the filed record in accordance with subsections [c., d.,
32 and e. of this section] (c), (d) and (e).

33 [b.] (b) File number. A file number assigned after January 1,
34 2002, [shall] must include a digit that:

35 (1) is mathematically derived from or related to the other digits of
36 the file number; and

37 (2) aids the filing office in determining whether a number
38 communicated as the file number includes a single-digit or
39 transpositional error.

40 [c.] (c) Indexing: general. Except as otherwise provided in
41 subsections [d. and e. of this section] (d) and (e), the filing office
42 shall:

43 (1) index an initial financing statement according to the name of
44 the debtor and index all filed records relating to the initial financing
45 statement in a manner that associates with one another an initial

1 financing statement and all filed records relating to the initial financing
2 statement; and

3 (2) index a record that provides a name of a debtor which was not
4 previously provided in the financing statement to which the record
5 relates also according to the name that was not previously provided.

6 [d.] (d) Indexing: real-property-related financing statement. If a
7 financing statement is filed as a fixture filing or covers as-extracted
8 collateral or timber to be cut, the filing office shall index it:

9 (1) under the names of the debtor and of each owner of record
10 shown on the financing statement as if they were the mortgagors under
11 a mortgage of the real property described; and

12 (2) to the extent that the law of this State provides for indexing of
13 records or mortgages under the name of the mortgagees, under the
14 name of the secured party as if the secured party were the mortgagee
15 thereunder, or, if the indexing is by description, as if the financing
16 statement were a record of a mortgage of the real property described.

17 [e.] (e) Indexing: real-property-related assignment. If a financing
18 statement is filed as a fixture filing or covers as-extracted collateral or
19 timber to be cut, the filing office shall index an assignment filed under
20 12A:9-514 [a.] (a) or an amendment filed under 12A:9-514 [b.] (b):

21 (1) under the name of the assignor as grantor; and

22 (2) to the extent that the law of this State provides for indexing a
23 record of the assignment of a mortgage under the name of the
24 assignee, under the name of the assignee.

25 [f.] (f) Retrieval and association capability. The filing office shall
26 maintain a capability:

27 (1) to retrieve a record by the name of the debtor and by the file
28 number assigned to the initial financing statement to which the record
29 relates; and

30 (2) to associate and retrieve with one another an initial financing
31 statement and each filed record relating to the initial financing
32 statement.

33 [g.] (g) Removal of debtor's name. The filing office may not
34 remove a debtor's name from the index until one year after the
35 effectiveness of a financing statement naming the debtor lapses under
36 12A:9-515 with respect to all secured parties of record.

37 [h.] (h) Timeliness of filing office performance. The filing office
38 shall perform the acts required by subsections [a.] (a) through [e. of
39 this section] (e) at the time and in the manner prescribed by
40 filing-office rule, but not later than two business days after the filing
41 office receives the record in question.

42 [i.] (i) Inapplicability to real property related filing office.
43 Subsections [b. and h. of this section] (b) and (h) do not apply to a
44 filing office described in 12A:9-501 [a.] (a) (1).

45 (cf: N.J.S.12A:9-519)

1 84. N.J.S.12A:9-520 is amended to read as follows:

2 12A:9-520. Acceptance and Refusal to Accept Record.

3 [a.] (a) Mandatory refusal to accept record. A filing office shall
4 refuse to accept a record for filing for a reason set forth in 12A:9-516

5 [b.] (b) and may refuse to accept a record for filing only for a reason
6 set forth in 12A:9-516 [b.] (b).

7 [b.] (b) Communication concerning refusal. If a filing office
8 refuses to accept a record for filing, it shall communicate to the person
9 [who] that presented the record the fact of and reason for the refusal
10 and the date and time the record would have been filed had the filing
11 office accepted it. The communication [shall] must be made at the
12 time and in the manner prescribed by filing-office rule but, in the case
13 of a filing office described in 12A:9-501 (a) (2), in no event more than
14 two business days after the filing office receives the record.

15 [c.] (c) When filed financing statement effective. A filed financing
16 statement satisfying 12A:9-502 [a. and b.] (a) and (b) is effective,
17 even if the filing office is required to refuse to accept it for filing under
18 subsection [a. of this section] (a). However, 12A:9-338 applies to a
19 filed financing statement providing information described in 12A:9-516
20 [b.] (b) (5) which is incorrect at the time the financing statement is
21 filed.

22 [d.] (d) Separate application to multiple debtors. If a record
23 communicated to a filing office provides information that relates to
24 more than one debtor, this part applies as to each debtor separately.
25 (cf: N.J.S.12A:9-520)

26

27 85. N.J.S.12A:9-521 is amended to read as follows:

28 12A:9-521. Uniform Form of Written Financing Statement and
29 Amendment.

30 [a.] (a) Initial financing statement form. A filing office that
31 accepts written records may not refuse to accept a written initial
32 financing statement in the following form and format except for a
33 reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum If applicable. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) If applicable. ADDITIONAL FEE: optional. All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

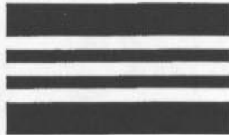
15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.
Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction -- effective 30 years
 Filed in connection with a Public-Finance Transaction -- effective 30 years

1 [b.] (b) Amendment form. A filing office that accepts written
2 records may not refuse to accept a written record in the following
3 form and format except for a reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name changed) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, if applicable.

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID #, if any NONE

8. AMENDMENT (COLLATERAL CHANGE); check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 3 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 (cf: N.J.S.12A:9-521)

2

3 86. N.J.S.12A:9-522 is amended to read as follows:

4 12A:9-522. Maintenance and Destruction of Records.

5 [a.] (a) Post-lapse maintenance and retrieval of information.

6 The filing office shall maintain a record of the information provided
7 in a filed financing statement for at least one year after the
8 effectiveness of the financing statement has lapsed under 12A:9-515
9 with respect to all secured parties of record. The record ¹[shall]
10 must¹ be retrievable by using the name of the debtor and [;

11 (1) if the record was filed in the filing office described in 12A:9-
12 501 a. (1),] by using the file number assigned to the initial financing
13 statement to which the record relates [and the date that record was
14 filed; or

15 (2) if the record was filed in the office described in 12A:9-501 a.
16 (2), by using the file number assigned to the initial financing
17 statement to which the record relates] .

18 [b.] (b) Destruction of written records. Except to the extent
19 that a statute governing disposition of public records provides
20 otherwise, the filing office immediately may destroy any written
21 record evidencing a financing statement. However, if the filing
22 office destroys a written record, it shall maintain another record of
23 the financing statement which complies with subsection [a. of this
24 section] (a).

25 (cf: N.J.S.12A:9-522)

26

27 87. N.J.S.12A:9-523 is amended to read as follows:

28 12A:9-523. Information from Filing Office; Sale or License of
29 Records.

30 [a.] (a) Acknowledgment of filing written record. If a person
31 [who] that files a written record requests an acknowledgment of the
32 filing, the filing office shall send to the person an image of the
33 record showing the number assigned to the record pursuant to
34 12A:9-519 [a.] (a) (1) and the date and time of the filing of the
35 record. However, if the person furnishes a copy of the record to the
36 filing office, the filing office may instead:

37 (1) note upon the copy the number assigned to the record
38 pursuant to 12A:9-519 [a.] (a) (1) and the date and time of the
39 filing of the record; and

40 (2) send the copy to the person.

41 [b.] (b) Acknowledgment of filing other record. If a person files
42 a record other than a written record, the filing office shall
43 communicate to the person an acknowledgment that provides:

44 (1) the information in the record;

45 (2) the number assigned to the record pursuant to 12A:9-519 [a.]

1 (a) (1); and

2 (3) the date and time of the filing of the record.

3 **[c.]** (c) Communication of requested information. The filing
4 office shall communicate or otherwise make available in a record the
5 following information to any person **[who]** that requests it:

6 (1) whether there is on file on a date and time specified by the
7 filing office, but not a date earlier than three business days before
8 the filing office receives the request, any financing statement that:

9 **[(a)]** (A) designates a particular debtor or, if the request so
10 states, designates a particular debtor at the address specified in the
11 request;

12 **[(b)]** (B) has not lapsed under 12A:9-515 with respect to all
13 secured parties of record; and

14 **[(c)]** (C) if the request so states, has lapsed under 12A:9-515
15 and a record of which is maintained by the filing office under
16 12A:9-522 **[a.]** (a);

17 (2) the date and time of filing of each financing statement; and

18 (3) the information provided in each financing statement.

19 **[d.]** (d) Medium for communicating information. In complying
20 with its duty under subsection **[c. of this section]** (c), the filing
21 office may communicate information in any medium. However, if
22 requested, the filing office shall communicate information by issuing
23 **[its written certificate as]** a record that can be admitted into
24 evidence in the courts of this State without extrinsic evidence of its
25 authenticity.

26 **[e.]** (e) Timeliness of filing office performance. The filing office
27 shall perform the acts required by subsections **[a.]** (a) through **[d.**
28 **of this section]** (d) at the time and in the manner prescribed by
29 filing-office rule, but not later than two business days after the filing
30 office receives the request.

31 **[f.]** (f) Public availability of records. At least weekly, the
32 Secretary of State shall offer to sell or license to the public on a
33 nonexclusive basis, in bulk, copies of all records filed in it under this
34 part, in every medium from time to time available to the filing office.
35 (cf: N.J.S.12A:9-523)

36

37 88. N.J.S.12A:9-524 is amended to read as follows:

38 12A:9-524. Delay by Filing Office.

39 Delay by the filing office beyond a time limit prescribed by this
40 part is excused if:

41 **[a.]** (1) the delay is caused by interruption of communication or
42 computer facilities, war, emergency conditions, failure of equipment,
43 or other circumstances beyond control of the filing office; and

44 **[b.]** (2) the filing office exercises reasonable diligence under the
45 circumstances.

1 (cf: N.J.S.12A:9-524)

2 89. N.J.S.12A:9-525 is amended to read as follows:

3 12A:9-525. Fees.

4 [a.] (a) Initial financing statement or other record: general rule.

5 [The] Except as otherwise provided in subsection (d), the fees for
6 filing and indexing records under this part are:

7 (1) \$25 for financing statement;

8 (2) \$25 for continuation statement;

9 (3) \$25 for amendment statement;

10 (4) \$25 for partial release;

11 (5) \$25 for assignment;

12 (6) \$25 termination statement; and

13 (7) \$1 for copy of any filed financing statement.

14 [b.] (b) Number of names. [The] Except as otherwise provided
15 in subsection (d), the number of names required to be indexed does
16 not affect the amount of the fee in subsection [a. of this section]
17 (a).

18 [c.] (c) Response to information request. The fee for
19 responding to a request for information from the filing office,
20 including for issuing a certificate of search showing whether there is
21 on file any financing statement naming a particular debtor, is \$25.

22 [d.] (d) Record of mortgage. This section does not require a fee
23 with respect to a record of mortgage which is effective as a
24 financing statement filed as a fixture filing or as a financing
25 statement covering as-extracted collateral or timber to be cut under
26 12A:9-502 [c.] (c). However, the recording and satisfaction fees
27 that otherwise would be applicable to the record of the mortgage
28 apply.

29 (cf: N.J.S.12A:9-525)

30

31 90. N.J.S.12A:9-526 is amended to read as follows:

32 12A:9-526. Filing-Office Rules.

33 [a.] (a) Adoption of filing-office rules. The Division of
34 Commercial Recording or other office designated by Executive
35 Order [may] shall adopt and publish rules to implement this chapter.

36 The filing-office rules [shall] must be:

37 (1) consistent with this chapter; and

38 (2) adopted and published in accordance with the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 [b.] (b) Harmonization of rules. To keep the filing-office rules
41 and practices of the filing office in harmony with the rules and
42 practices of filing offices in other jurisdictions that enact
43 substantially this part, and to keep the technology used by the filing
44 office compatible with the technology used by filing offices in other
45 jurisdictions that enact substantially this part, the Division of

1 Commercial Recording, so far as is consistent with the purposes,
2 policies, and provisions of this chapter, in adopting, amending, and
3 repealing filing-office rules, shall:

4 (1) consult with filing offices in other jurisdictions that enact
5 substantially this part; and

6 (2) consult the most recent version of the Model Rules
7 promulgated by the International Association of Corporate
8 Administrators or any successor organization; and

9 (3) take into consideration the rules and practices of, and the
10 technology used by, filing offices in other jurisdictions that enact
11 substantially this part.

12 (cf: N.J.S.12A:9-526)

13

14 91. N.J.S.12A:9-601 is amended to read as follows:

15 12A:9-601. Rights After Default; Judicial Enforcement;
16 Consignor or Buyer of Accounts, Chattel Paper, Payment
17 Intangibles, or Promissory Notes.

18 [a.] (a) Rights of secured party after default. After default, a
19 secured party has the rights provided in this part and, except as
20 otherwise provided in 12A:9-602, those provided by agreement of
21 the parties. A secured party:

22 (1) may reduce a claim to judgment, foreclose, or otherwise
23 enforce the claim, security interest, or agricultural lien by any
24 available judicial procedure; and

25 (2) if the collateral is documents, may proceed either as to the
26 documents or as to the goods they cover.

27 [b.] (b) Rights and duties of secured party in possession or
28 control. A secured party in possession of collateral or control of
29 collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107
30 has the rights and duties provided in [12A:9-208] 12A:9-207.

31 [c.] (c) Rights cumulative; simultaneous exercise. The rights
32 under subsections [a. and b. of this section] (a) and (b) are
33 cumulative and may be exercised simultaneously.

34 [d.] (d) Rights of debtor and obligor. Except as otherwise
35 provided in subsection [g. of this section] (g) and 12A:9-605, after
36 default, a debtor and an obligor have the rights provided in this part
37 and by agreement of the parties.

38 [e.] (e) Lien of levy after judgment. If a secured party has
39 reduced its claim to judgment, the lien of any levy that may be made
40 upon the collateral by virtue of an execution based upon the
41 judgment relates back to the earliest of:

42 (1) the date of perfection of the security interest or agricultural
43 lien in the collateral;

44 (2) the date of filing a financing statement covering the
45 collateral; or

46 (3) any date specified in a statute under which the agricultural

1 lien was created.

2 [f.] (f) Execution sale. A sale pursuant to an execution is a
3 foreclosure of the security interest or agricultural lien by judicial
4 procedure within the meaning of this section. A secured party may
5 purchase at the sale and thereafter hold the collateral free of any
6 other requirements of this chapter.

7 [g.] (g) Consignor or buyer of certain rights to payment.
8 Except as otherwise provided in 12A:9-607 [c.] (c), this part
9 imposes no duties upon a secured party that is a consignor or is a
10 buyer of accounts, chattel paper, payment intangibles, or promissory
11 notes.

12 (cf: N.J.S.12A:9-601)

13

14 92. N.J.S.12A:9-602 is amended to read as follows:

15 12A:9-602. Waiver and Variance of Rights and Duties.

16 Except as otherwise provided in 12A:9-624, to the extent that
17 they give rights to a debtor or obligor and impose duties on a
18 secured party, the debtor or obligor may not waive or vary the rules
19 stated in the following listed sections:

20 (1) [12A:9-208b.(4)(c)] 12A:9-207 (b) (4) (C), which deals with
21 use and operation of the collateral by the secured party;

22 (2) [12A:9-211] 12A:9-210, which deals with requests for an
23 accounting and requests concerning a list of collateral and statement
24 of account;

25 (3) 12A:9-607 [c.] (c), which deals with collection and
26 enforcement of collateral;

27 (4) 12A:9-608 [a.] (a), and 12A:9-615 [c.] (c) to the extent
28 that they deal with application or payment of noncash proceeds of
29 collection, enforcement, or disposition;

30 (5) 12A:9-608 [a.] (a) and 12A:9-615 [d.] (d) to the extent that
31 they require accounting for or payment of surplus proceeds of
32 collateral;

33 (6) 12A:9-609 to the extent that it imposes upon a secured party
34 that takes possession of collateral without judicial process the duty
35 to do so without breach of the peace;

36 (7) 12A:9-610 [b.] (b), 12A:9-611, 12A:9-613 and 12A:9-614,
37 which deal with disposition of collateral;

38 (8) 12A:9-615 [f.] (f), which deals with calculation of a
39 deficiency or surplus when a disposition is made to the secured
40 party, a person related to the secured party, or a secondary obligor;

41 (9) 12A:9-616, which deals with explanation of the calculation of
42 a surplus or deficiency;

43 (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with
44 acceptance of collateral in satisfaction of obligation;

45 (11) 12A:9-623, which deals with redemption of collateral;

1 (12) 12A:9-624, which deals with permissible waivers; and
2 (13) 12A:9-625 and 12A:9-626, which deal with the secured
3 party's liability for failure to comply with this chapter.
4 (cf: N.J.S.12A:9-602)

5
6 93. N.J.S.12A:9-603 is amended to read as follows:
7 12A:9-603. Agreement on Standards Concerning Rights and
8 Duties.

9 [a.] (a) Agreed standards. The parties may determine by
10 agreement the standards measuring the fulfillment of the rights of a
11 debtor or obligor and the duties of a secured party under a rule
12 stated in 12A:9-602 if the standards are not manifestly unreasonable.

13 [b.] (b) Agreed standards inapplicable to breach of peace.
14 Subsection [a. of this section] (a) does not apply to the duty under
15 12A:9-609 to refrain from breaching the peace.
16 (cf: N.J.S.12A:9-603)

17
18 94. N.J.S.12A:9-604 is amended to read as follows:
19 12A:9-604. Procedure If Security Agreement Covers Real
20 Property or Fixtures.

21 [a.] (a) Enforcement: personal and real property. If a security
22 agreement covers both personal and real property, a secured party
23 may proceed:

24 (1) under this part as to the personal property without
25 prejudicing any rights with respect to the real property; or

26 (2) as to both the personal property and the real property in
27 accordance with the rights with respect to the real property, in
28 which case the other provisions of this part do not apply.

29 [b.] (b) Enforcement: fixtures. Subject to subsection [c. of this
30 section] (c), if a security agreement covers goods that are or
31 become fixtures, a secured party may proceed:

32 (1) under this part; or

33 (2) in accordance with the rights with respect to real property, in
34 which case the other provisions of this part do not apply.

35 [c.] (c) Removal of fixtures. Subject to the other provisions of
36 this part, if a secured party holding a security interest in fixtures has
37 priority over all owners and encumbrancers of the real property, the
38 secured party, after default, may remove the collateral from the real
39 property.

40 [d.] (d) Injury caused by removal. A secured party that removes
41 collateral shall promptly reimburse any encumbrancer or owner of
42 the real property, other than the debtor, for the cost of repair of any
43 physical injury caused by the removal. The secured party need not
44 reimburse the encumbrancer or owner for any diminution in value of
45 the real property caused by the absence of the goods removed or by
46 any necessity of replacing them. A person entitled to reimbursement

1 may refuse permission to remove until the secured party gives
2 adequate assurance for the performance of the obligation to
3 reimburse.

4 (cf: N.J.S.12A:9-604)

5

6 95. N.J.S.12A:9-605 is amended to read as follows:

7 12A:9-605. Unknown Debtor or Secondary Obligor.

8 A secured party does not owe a duty based on its status as
9 secured party:

10 [a.] (1) to a person who is a debtor or obligor, unless the
11 secured party knows:

12 [(1)] (A) that the person is a debtor or obligor;

13 [(2)] (B) the identity of the person; and

14 [(3)] (C) how to communicate with the person; or

15 [b.] (2) to a secured party or lienholder that has filed a financing
16 statement against a person, unless the secured party knows:

17 [(1)] (A) that the person is a debtor; and

18 [(2)] (B) the identity of the person.

19 (cf: N.J.S.12A:9-605)

20

21 96. N.J.S.12A:9-607 is amended to read as follows:

22 12A:9-607. Collection and Enforcement by Secured Party.

23 [a.] (a) Collection and enforcement generally. If so agreed, and
24 in any event after default, a secured party:

25 (1) may notify an account debtor or other person obligated on
26 collateral to make payment or otherwise render performance to or
27 for the benefit of the secured party;

28 (2) may take any proceeds to which the secured party is entitled
29 under 12A:9-315;

30 (3) may enforce the obligations of an account debtor or other
31 person obligated on collateral and exercise the rights of the debtor
32 with respect to the obligation of the account debtor or other person
33 obligated on collateral to make payment or otherwise render
34 performance to the debtor, and with respect to any property that
35 secures the obligation of the account debtor or other person
36 obligated on the collateral;

37 (4) if it holds a security interest in a deposit account perfected by
38 control under 12A:9-104 [a.] (a) (1), may apply the balance of the
39 deposit account to the obligation secured by the deposit account;
40 and

41 (5) if it holds a security interest in a deposit account perfected by
42 control under 12A:9-104 [a.] (a) (2) or (3), may instruct the bank
43 to pay the balance of the deposit account to or for the benefit of the
44 secured party.

45 [b.] (b) Nonjudicial enforcement of mortgage. If necessary to

1 enable a secured party to exercise under subsection (a) (3) the right
2 of a debtor to enforce a mortgage nonjudicially [under paragraph
3 (3) of subsection a. of this section], the secured party may record in
4 the office in which a record of the mortgage is recorded:

5 (1) a copy of the security agreement that creates or provides for
6 a security interest in the obligation secured by the mortgage; and

7 (2) the secured party's sworn affidavit in recordable form stating
8 that:

9 [(a)] (A) a default has occurred; and

10 [(b)] (B) the secured party is entitled to enforce the mortgage
11 nonjudicially.

12 [(c.)] (c) Commercially reasonable collection and enforcement. A
13 secured party shall proceed in a commercially reasonable manner if
14 the secured party:

15 (1) undertakes to collect from or enforce an obligation of an
16 account debtor or other person obligated on collateral; and

17 (2) is entitled to charge back uncollected collateral or otherwise
18 to full or limited recourse against the debtor or a secondary obligor.

19 [(d.)] (d) Expenses of collection and enforcement. A secured
20 party may deduct from the collections made pursuant to subsection
21 [c. of this section] (c), reasonable expenses of collection and
22 enforcement, including reasonable attorney's fees and legal expenses
23 incurred by the secured party.

24 [(e.)] (e) Duties to secured party not affected. This section does
25 not determine whether an account debtor, bank, or other person
26 obligated on collateral owes a duty to a secured party.

27 (cf: N.J.S.12A:9-607)

28
29 97. N.J.S.12A:9-608 is amended to read as follows:

30 12A:9-608. Application of Proceeds of Collection or
31 Enforcement; Liability for Deficiency and Right to Surplus.

32 [(a.)] (a) Application of proceeds, surplus, and deficiency if
33 obligation secured. If a security interest or agricultural lien secures
34 payment or performance of an obligation, the following rules apply:

35 (1) A secured party shall apply or pay over for application the
36 cash proceeds of collection or enforcement under [this section]
37 12A:9-607 in the following order to:

38 [(a)] (A) the reasonable expenses of collection and enforcement
39 and, to the extent provided for by agreement and not prohibited by
40 law, reasonable attorney's fees and legal expenses incurred by the
41 secured party;

42 [(b)] (B) the satisfaction of obligations secured by the security
43 interest or agricultural lien under which the collection or
44 enforcement is made; and

45 [(c)] (C) the satisfaction of obligations secured by any

1 subordinate security interest in or other lien on the collateral subject
2 to the security interest or agricultural lien under which the collection
3 or enforcement is made if the secured party receives an
4 authenticated demand for proceeds before distribution of the
5 proceeds is completed.

6 (2) If requested by a secured party, a holder of a subordinate
7 security interest or other lien shall furnish reasonable proof of the
8 interest or lien within a reasonable time. Unless the holder complies,
9 the secured party need not comply with the holder's demand under
10 [subparagraph (c) of] paragraph (1) ~~(C)~~ [of this subsection].

11 (3) A secured party need not apply or pay over for application
12 noncash proceeds of collection and enforcement under [this section]
13 12A:9-607 unless the failure to do so would be commercially
14 unreasonable. A secured party that applies or pays over for
15 application noncash proceeds shall do so in a commercially
16 reasonable manner.

17 (4) A secured party shall account to and pay a debtor for any
18 surplus, and the obligor is liable for any deficiency.

19 [b.] (b) No surplus or deficiency in sales of certain rights to
20 payment. If the underlying transaction is a sale of accounts, chattel
21 paper, payment intangibles, or promissory notes, the debtor is not
22 entitled to any surplus, and the obligor is not liable for any
23 deficiency.

24 (cf: N.J.S.12A:9-608)

25

26 98. N.J.S.12A:9-609 is amended to read as follows:

27 12A:9-609. Secured Party's Right to Take Possession after
28 Default.

29 [a.] (a) Possession; rendering equipment unusable; disposition
30 on debtor's premises. After default, a secured party:

31 (1) may take possession of the collateral; and

32 (2) without removal, may render equipment unusable and dispose
33 of collateral on a debtor's premises under 12A:9-610.

34 [b.] (b) Judicial and nonjudicial process. A secured party may
35 proceed under subsection [a.] (a):

36 (1) pursuant to judicial process; or

37 (2) without judicial process, if it proceeds without breach of the
38 peace.

39 [c.] (c) Assembly of collateral. If so agreed, and in any event
40 after default, a secured party may require the debtor to assemble the
41 collateral and make it available to the secured party at a place to be
42 designated by the secured party which is reasonably convenient to
43 both parties.

44 (cf: N.J.S.12A:9-609)

45

46 99. N.J.S.12A:9-610 is amended to read as follows:

1 12A:9-610. Disposition of Collateral after Default.

2 [a.] (a) Disposition after default. After default, a secured party
3 may sell, lease, license, or otherwise dispose of any or all of the
4 collateral in its present condition or following any commercially
5 reasonable preparation or processing.

6 [b.] (b) Commercially reasonable disposition. Every aspect of a
7 disposition of collateral, including the method, manner, time, place,
8 and other terms, [shall] must be commercially reasonable. If
9 commercially reasonable, a secured party may dispose of collateral
10 by public or private proceedings, by one or more contracts, as a unit
11 or in parcels, and at any time and place and on any terms.

12 [c.] (c) Purchase by secured party. A secured party may
13 purchase collateral:

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that
16 is customarily sold on a recognized market or the subject of widely
17 distributed standard price quotations.

18 [d.] (d) Warranties on disposition. A contract for sale, lease,
19 license, or other disposition includes the warranties relating to title,
20 possession, quiet enjoyment, and the like which by operation of law
21 accompany a voluntary disposition of property of the kind subject to
22 the contract.

23 [e.] (e) Disclaimer of warranties. A secured party may disclaim
24 or modify warranties under subsection [d. of this section] (d):

25 (1) in a manner that would be effective to disclaim or modify the
26 warranties in a voluntary disposition of property of the kind subject
27 to the contract of disposition; or

28 (2) by communicating to the purchaser a record evidencing the
29 contract for disposition and including an express disclaimer or
30 modification of the warranties.

31 [f.] (f) Record sufficient to disclaim warranties. A record is
32 sufficient to disclaim warranties under subsection [e. of this section]
33 (e) if it indicates "There is no warranty relating to title, possession,
34 quiet enjoyment, or the like in this disposition" or uses words of
35 similar import.

36 (cf: N.J.S.12A:9-610)

37

38 100. N.J.S.12A:9-611 is amended to read as follows:

39 12A:9-611. Notification Before Disposition of Collateral.

40 [a.] (a) "Notification date." In this section, "notification date"
41 means the earlier of the date on which:

42 (1) a secured party sends to the debtor and any secondary
43 obligor an authenticated notification of disposition; or

44 (2) the debtor and any secondary obligor waive the right to
45 notification.

1 **[b.] (b)** Notification of disposition required. Except as
2 otherwise provided in subsection **[d. of this section] (d)**, a secured
3 party that disposes of collateral under 12A:9-610 shall send to the
4 persons specified in subsection **[c. of this section] (c)** a reasonable
5 authenticated notification of disposition.

6 **[c.] (c)** Persons to be notified. To comply with subsection **[b.**
7 **of this section] (b)**, the secured party shall send an authenticated
8 notification of disposition to:

- 9 (1) the debtor;
- 10 (2) any secondary obligor; and
- 11 (3) if the collateral is other than consumer goods:

12 **[(a)] (A)** any other person from which the secured party has
13 received, before the notification date, an authenticated notification
14 of a claim of an interest in the collateral;

15 **[(b)] (B)** any other secured party or lienholder that, 10 days
16 before the notification date, held a security interest in or other lien
17 on the collateral perfected by the filing of a financing statement that:

- 18 (i) identified the collateral;
- 19 (ii) was indexed under the debtor's name as of that date; and
- 20 (iii) was filed in the office in which to file a financing statement
21 against the debtor covering the collateral as of that date; and

22 **[(c)] (C)** any other secured party that, 10 days before the
23 notification date, held a security interest in the collateral perfected
24 by compliance with a statute, regulation, or treaty described in
25 12A:9-311 **[a.] (a)**.

26 **[d.] (d)** Subsection **[b.] (b)** inapplicable: perishable collateral;
27 recognized market. Subsection **[b. of this section] (b)** does not
28 apply if the collateral is perishable or threatens to decline speedily in
29 value or is of a type customarily sold on a recognized market.

30 **[e.] (e)** Compliance with subsection **[c. paragraph (3)**
31 **subparagraph (b)] (c) (3) (B)**. A secured party complies with the
32 requirement for notification prescribed by subsection **[c. paragraph**
33 **(3) subparagraph (b) of this section] (c) (3) (B)** if:

- 34 (1) not later than 20 days or earlier than 30 days before the
35 notification date, the secured party requests, in a commercially
36 reasonable manner, information concerning financing statements
37 indexed under the debtor's name in the office indicated in **[that]**
38 subsection **[c. paragraph (3) subparagraph (b)] (c) (3) (B)**; and

- 39 (2) before the notification date, the secured party:

40 **[(a)] (A)** did not receive a response to the request for
41 information; or

42 **[(b)] (B)** received a response to the request for information and
43 sent an authenticated notification of disposition to each secured
44 party or other lienholder named in that response whose financing
45 statement covered the collateral.

1 (cf: N.J.S.12A:9-611)

2

3 101. N.J.S.12A:9-612 is amended to read as follows:

4 12A:9-612. Timeliness of Notification Before Disposition of
5 Collateral.

6 [a.] (a) Reasonable time is question of fact. Except as otherwise
7 provided in subsection [b. of this section] (b), whether a
8 notification is sent within a reasonable time is a question of fact.

9 [b.] (b) 10-day period sufficient in non-consumer transaction.
10 In a transaction other than a consumer transaction, a notification of
11 disposition sent after default and 10 days or more before the earliest
12 time of disposition set forth in the notification is sent within a
13 reasonable time before the disposition.

14 (cf: N.J.S.12A:9-612)

15

16 102. N.J.S.12A:9-613 is amended to read as follows:

17 12A:9-613. Contents and Form of Notification Before
18 Disposition of Collateral: General.

19 Except in a consumer-goods transaction, the following rules
20 apply:

21 [a.] (1) The contents of a notification of disposition are
22 sufficient if the notification:

23 [(1)] (A) describes the debtor and the secured party;

24 [(2)] (B) describes the collateral that is the subject of the
25 intended disposition;

26 [(3)] (C) states the method of intended disposition;

27 [(4)] (D) states that the debtor is entitled to an accounting of
28 the unpaid indebtedness and states the charge, if any, for an
29 accounting; and

30 [(5)] (E) states the time and place of a public [sale] disposition
31 or the time after which any other disposition is to be made.

32 [b.] (2) Whether the contents of a notification that lacks any of
33 the information specified in [subsection a. of this section] paragraph
34 (1) are nevertheless sufficient is a question of fact.

35 [c.] (3) The contents of a notification providing substantially the
36 information specified in [subsection a.] paragraph (1) are sufficient,
37 even if the notification includes:

38 [(1)] (A) information not specified by that paragraph; or

39 [(2)] (B) minor errors that are not seriously misleading.

40 [d.] (4) A particular phrasing of the notification is not required.

41 [e.] (5) The following form of notification and the form
42 appearing in 12A:9-614 [c.] (3), when completed, each provides
43 sufficient information:

1 NOTIFICATION OF DISPOSITION OF COLLATERAL
2 To: (Name of debtor, obligor, or other person to which the
3 notification is sent)
4 From: (Name, address, and telephone number of secured party)
5 Name of Debtor(s): (Include only if debtor(s) are not an addressee)
6 (For a public disposition:)
7 We will sell or lease or license, as applicable the (describe collateral)
8 to the highest qualified bidder in public as follows:
9 Day and Date:
10 Time:
11 Place:
12 (For a private disposition:)
13 We will sell or lease or license, as applicable the (describe collateral)
14 privately sometime after (day and date).
15 You are entitled to an accounting of the unpaid indebtedness
16 secured by the property that we intend to sell (or lease or license, as
17 applicable) (for a charge of \$ _____). You may request
18 an accounting by calling us at (telephone number)
19 (End of Form)
20 (cf: N.J.S.12A:9-613)
21

22 103. N.J.S.12A:9-614 is amended to read as follows:
23 12A:9-614. Contents and Form of Notification Before
24 Disposition of Collateral: Consumer-goods Transaction.

25 In a consumer-goods transaction, the following rules apply:
26 [a.] (1) A notification of disposition [shall] must provide the
27 following information:

28 [(1)] (A) the information specified in 12A:9-613 [a.] (1);

29 [(2)] (B) a description of any liability for a deficiency of the
30 person to which the notification is sent;

31 [(3)] (C) a telephone number from which the amount that
32 [shall] must be paid to the secured party to redeem the collateral
33 under 12A:9-623 is available; and

34 [(4)] (D) a telephone number or mailing address from which
35 additional information concerning the disposition and the obligation
36 secured is available.

37 [b.] (2) A particular phrasing of the notification is not required.

38 [c.] (3) The following form of notification, when completed,
39 provides sufficient information:

40 (Name and address of secured party)

41 (Date)

42

43 NOTICE OF OUR PLAN TO SELL PROPERTY

44 (Name and address of any obligor who is also a debtor)

45 Subject: (Identification of Transaction)

46 We have your (describe collateral), because you broke promises in

1 our agreement.
2 (For a public disposition:)
3 We will sell (describe collateral) at public sale. A sale could include
4 a lease or license. The sale will be held as follows:
5 Date:
6 Time:
7 Place:
8 You may attend the sale and bring bidders if you want.
9 (For a private disposition:)
10 We will sell (describe collateral) at private sale sometime after
11 (date). A sale could include a lease or license.
12 The money that we get from the sale (after paying our costs) will
13 reduce the amount you owe. If we get less money than you owe,
14 you (will or will not, as applicable) still owe us the difference. If we
15 get more money than you owe, you will get the extra money, unless
16 we must pay it to someone else.
17 You can get the property back at any time before we sell it by
18 paying us the full amount you owe (not just the past due payments),
19 including our expenses. To learn the exact amount you must pay,
20 call us at (telephone number).
21 If you want us to explain to you in writing how we have figured the
22 amount that you owe us, you may call us at (telephone number) or
23 write us at (secured party's address) and request a written
24 explanation. We will charge you \$ for the explanation if
25 we sent you another written explanation of the amount you owe us
26 within the last six months.
27 If you need more information about the sale call us at (telephone
28 number) or write us at (secured party's address).
29 We are sending this notice to the following other people who have
30 an interest in (describe collateral) or who owe money under your
31 agreement:
32 (Names of all other debtors and obligors, if any.)
33 (End of Form)
34 [d.] (4) A notification in the form of [subsection c. of this
35 section] paragraph (3) is sufficient, even if additional information
36 appears at the end of the form.
37 [e.] (5) A notification in the form of [subsection c.] paragraph
38 (3) is sufficient, even if it includes errors in information not required
39 by [subsection a. of this section] paragraph (1), unless the error is
40 misleading with respect to rights arising under this chapter.
41 [f.] (6) If a notification under this section is not in the form of
42 [subsection c.] paragraph (3), law other than this chapter
43 determines the effect of including information not required by
44 [subsection a. of this section] paragraph (1).
45 (cf: N.J.S.12A:9-614)

1 104. N.J.S.12A:9-615 is amended to read as follows:
2 12A:9-615. Application of Proceeds of Disposition; Liability for
3 Deficiency and Right to Surplus.

4 [a.] (a) Application of proceeds. A secured party shall apply or
5 pay over for application the cash proceeds of disposition under
6 12A:9-610 in the following order:

7 (1) the reasonable expenses of retaking, holding, preparing for
8 disposition, processing, and disposing, and, to the extent provided
9 for by agreement and not prohibited by law, reasonable attorney's
10 fees and legal expenses incurred by the secured party;

11 (2) the satisfaction of obligations secured by the security interest
12 or agricultural lien under which the disposition is made;

13 (3) the satisfaction of obligations secured by any subordinate
14 security interest in or other subordinate lien on the collateral if:

15 [(a)] (A) the secured party receives from the holder of the
16 subordinate security interest or other lien an authenticated demand
17 for proceeds before distribution of the proceeds is completed; and

18 [(b)] (B) in a case in which a consignor has an interest in the
19 collateral, the subordinate security interest or other lien is senior to
20 the interest of the consignor; and

21 (4) a secured party that is a consignor of the collateral if the
22 secured party receives from the consignor an authenticated demand
23 for proceeds before distribution of the proceeds is completed.

24 [b.] (b) Proof of subordinate interest. If requested by a secured
25 party, a holder of a subordinate security interest or other lien shall
26 furnish reasonable proof of the interest or lien within a reasonable
27 time. Unless the holder does so, the secured party need not comply
28 with the holder's demand under [paragraph (3) of] subsection [a. of
29 this section] (a)(3).

30 [c.] (c) Application of noncash proceeds. A secured party need
31 not apply or pay over for application noncash proceeds of
32 disposition under [this section] 12A:9-610 unless the failure to do
33 so would be commercially unreasonable. A secured party that
34 applies or pays over for application noncash proceeds shall do so in
35 a commercially reasonable manner.

36 [d.] (d) Surplus or deficiency if obligation secured. If the
37 security interest under which a disposition is made secures payment
38 or performance of an obligation, after making the payments and
39 applications required by subsection [a.] (a) and permitted by
40 subsection [c. of this section] (c):

41 (1) unless [paragraph (4) of] subsection [a.] (a)(4) requires the
42 secured party to apply or pay over cash proceeds to a consignor, the
43 secured party shall account to and pay a debtor for any surplus; and

44 (2) the obligor is liable for any deficiency.

45 [e.] (e) No surplus or deficiency in sales of certain rights to

1 payment. If the underlying transaction is a sale of accounts, chattel
2 paper, payment intangibles, or promissory notes:

3 (1) the debtor is not entitled to any surplus; and

4 (2) the obligor is not liable for any deficiency.

5 **[f.] (f)** Calculation of surplus or deficiency in disposition to
6 person related to secured party. The surplus or deficiency following
7 a disposition is calculated based on the amount of proceeds that
8 would have been realized in a disposition complying with this part to
9 a transferee other than the secured party, a person related to the
10 secured party, or a secondary obligor if:

11 (1) the transferee in the disposition is the secured party, a person
12 related to the secured party, or a secondary obligor; and

13 (2) the amount of proceeds of the disposition is significantly
14 below the range of proceeds that a complying disposition to a person
15 other than the secured party, a person related to the secured party,
16 or a secondary obligor would have brought.

17 **[g.] (g)** Cash proceeds received by junior secured party. A
18 secured party that receives cash proceeds of a disposition in good
19 faith and without knowledge that the receipt violates the rights of
20 the holder of a security interest or other lien that is not subordinate
21 to the security interest or agricultural lien under which the
22 disposition is made:

23 (1) takes the cash proceeds free of the security interest or other
24 lien;

25 (2) is not obligated to apply the proceeds of the disposition to
26 the satisfaction of obligations secured by the security interest or
27 other lien; and

28 (3) is not obligated to account to or pay the holder of the
29 security interest or other lien for any surplus.

30 (cf: N.J.S.12A:9-615)

31

32 105. N.J.S.12A:9-616 is amended to read as follows:

33 12A:9-616. Explanation of Calculation of Surplus or Deficiency.

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

35 (1) "Explanation" means a writing that:

36 **[(a)] (A)** states the amount of the surplus or deficiency;

37 **[(b)] (B)** provides an explanation, in accordance with subsection
38 **[c. of this section] (c)** of how the secured party calculated the
39 surplus or deficiency;

40 **[(c)] (C)** states, if applicable, that future debits, credits, charges,
41 including additional credit service charges or interest, rebates, and
42 expenses may affect the amount of the surplus or deficiency; and

43 **[(d)] (D)** provides a telephone number or mailing address from
44 which additional information concerning the transaction is available.

45 (2) "Request" means a record:

- 1 [(a)] (A) authenticated by a debtor or consumer obligor;
- 2 [(b)] (B) requesting that the recipient provide an explanation;
- 3 and
- 4 [(c)] (C) sent after disposition of the collateral under
- 5 12A:9-610.
- 6 [b.] (b) Explanation of calculation. In a consumer-goods
- 7 transaction in which the debtor is entitled to a surplus or a consumer
- 8 obligor is liable for a deficiency under 12A:9-615, the secured party
- 9 shall:
- 10 (1) send an explanation to the debtor or consumer obligor, as
- 11 applicable, after the disposition and:
- 12 [(a)] (A) before or when the secured party accounts to the
- 13 debtor and pays any surplus or first makes written demand on the
- 14 consumer obligor after the disposition for payment of the deficiency;
- 15 and
- 16 [(b)] (B) within 14 days after receipt of a request; or
- 17 (2) in the case of a consumer obligor who is liable for a
- 18 deficiency, within 14 days after receipt of a request, send to the
- 19 consumer obligor a record waiving the secured party's right to a
- 20 deficiency.
- 21 [c.] (c) Required information. To comply with subsection [a.
- 22 paragraph (1) subparagraph (b)] (a) (1) (B), a writing [shall] must
- 23 provide the following information in the following order:
- 24 (1) the aggregate amount of obligations secured by the security
- 25 interest under which the disposition was made, and, if the amount
- 26 reflects a rebate of unearned interest or credit service charge, an
- 27 indication of that fact, calculated as of a specified date:
- 28 [(a)] (A) if the secured party takes or receives possession of the
- 29 collateral after default, not more than 35 days before the secured
- 30 party takes or receives possession; or
- 31 [(b)] (B) if the secured party takes or receives possession of the
- 32 collateral before default or does not take possession of the
- 33 collateral, not more than 35 days before the disposition;
- 34 (2) the amount of proceeds of the disposition;
- 35 (3) the aggregate amount of the obligations after deducting the
- 36 amount of proceeds;
- 37 (4) the amount, in the aggregate or by type, and types of
- 38 expenses, including expenses of retaking, holding, preparing for
- 39 disposition, processing, and disposing of the collateral, and
- 40 attorney's fees secured by the collateral which are known to the
- 41 secured party and relate to the current disposition;
- 42 (5) the amount, in the aggregate or by type, and types of credits,
- 43 including rebates of interest or credit service charges, to which the
- 44 obligor is known to be entitled and which are not reflected in the
- 45 amount in paragraph (1); and

1 (6) the amount of the surplus or deficiency.

2 [d.] (d) Substantial compliance. A particular phrasing of the
3 explanation is not required. An explanation complying substantially
4 with the requirements of subsection [a. of this section] (a) is
5 sufficient, even if it includes minor errors that are not seriously
6 misleading.

7 [e.] (e) Charges for responses. A debtor or consumer obligor is
8 entitled without charge to one response to a request under this
9 section during any six-month period in which the secured party did
10 not send to the debtor or consumer obligor an explanation pursuant
11 to [paragraph (1) of] subsection [b.] (b) (1). The secured party
12 may require payment of a charge not exceeding \$25 for each
13 additional response.

14 (cf: N.J.S.12A:9-616)

15

16 106. N.J.S.12A:9-617 is amended to read as follows:

17 12A:9-617. Rights of Transferee of Collateral.

18 [a.] (a) Effects of disposition. A secured party's disposition of
19 collateral after default:

20 (1) transfers to a transferee for value all of the debtor's rights in
21 the collateral;

22 (2) discharges the security interest under which the disposition is
23 made; and

24 (3) discharges any subordinate security interest or other
25 subordinate lien.

26 [b.] (b) Rights of good-faith transferee. A transferee that acts in
27 good faith takes free of the rights and interests described in
28 subsection [a. of this section] (a), even if the secured party fails to
29 comply with this chapter or the requirements of any judicial
30 proceeding.

31 [c.] (c) Rights of other transferee. If a transferee does not take
32 free of the rights and interests described in subsection [a. of this
33 section] (a), the transferee takes the collateral subject to:

34 (1) the debtor's rights in the collateral;

35 (2) the security interest or agricultural lien under which the
36 disposition is made; and

37 (3) any other security interest or other lien.

38 (cf: N.J.S.12A:9-617)

39

40 107. N.J.S.12A:9-618 is amended to read as follows:

41 12A:9-618. Rights and Duties of Certain Secondary Obligor.

42 [a.] (a) Rights and duties of secondary obligor. A secondary
43 obligor acquires the rights and becomes obligated to perform the
44 duties of the secured party after the secondary obligor:

45 (1) receives an assignment of a secured obligation from the

1 secured party;

2 (2) receives a transfer of collateral from the secured party and
3 agrees to accept the rights and assume the duties of the secured
4 party; or

5 (3) is subrogated to the rights of a secured party with respect to
6 collateral.

7 **[b.] (b)** Effect of assignment, transfer, or subrogation. An
8 assignment, transfer, or subrogation described in subsection **[a. of**
9 **this section] (a)**:

10 (1) is not a disposition of collateral under 12A:9-610; and

11 (2) relieves the secured party of further duties under this chapter.

12 (cf: N.J.S.12A:9-618)

13

14 108. N.J.S.12A:9-619 is amended to read as follows:

15 12A:9-619. Transfer of Record or Legal Title.

16 **[a.] (a)** "Transfer statement." In this section, "transfer
17 statement" means a record authenticated by a secured party stating:

18 (1) that the debtor has defaulted in connection with an obligation
19 secured by specified collateral;

20 (2) that the secured party has exercised its post-default remedies
21 with respect to the collateral;

22 (3) that, by reason of the exercise, a transferee has acquired the
23 rights of the debtor in the collateral; and

24 (4) the name and mailing address of the secured party, debtor,
25 and transferee.

26 **[b.] (b)** Effect of transfer statement. A transfer statement
27 entitles the transferee to the transfer of record of all rights of the
28 debtor in the collateral specified in the statement in any official
29 filing, recording, registration, or certificate-of-title system covering
30 the collateral. If a transfer statement is presented with the applicable
31 fee and request form to the official or office responsible for
32 maintaining the system, the official or office shall:

33 (1) accept the transfer statement;

34 (2) promptly amend its records to reflect the transfer; and

35 (3) if applicable, issue a new appropriate certificate of title in the
36 name of the transferee.

37 **[c.] (c)** Transfer not a disposition; no relief of secured party's
38 duties. A transfer of the record or legal title to collateral to a
39 secured party under subsection **[b. of this section] (b)** or otherwise
40 is not of itself a disposition of collateral under this chapter and does
41 not of itself relieve the secured party of its duties under this chapter.
42 (cf: N.J.S.12A:9-619)

43

44 109. N.J.S.12A:9-620 is amended to read as follows:

45 12A:9-620. Acceptance of Collateral in Full or Partial
46 Satisfaction of Obligation; Compulsory Disposition of Collateral.

1 **[a.] (a)** Conditions to acceptance in satisfaction. Except as
2 otherwise provided in subsection **[g. of this section] (g)**, a secured
3 party may accept collateral in full or partial satisfaction of the
4 obligation it secures only if:

5 (1) the debtor consents to the acceptance under subsection **[c. of**
6 **this section] (c)**;

7 (2) the secured party does not receive, within the time set forth
8 in subsection **[d. of this section] (d)**, a notification of objection to
9 the proposal authenticated by:

10 **[(a)] (A)** a person to which the secured party was required to
11 send a proposal under 12A:9-621; or

12 **[(b)] (B)** any other person, other than the debtor, holding an
13 interest in the collateral subordinate to the security interest that is
14 the subject of the proposal;

15 (3) if the collateral is consumer goods, the collateral is not in the
16 possession of the debtor when the debtor consents to the
17 acceptance; and

18 (4) subsection **[e. of this section] (e)** does not require the
19 secured party to dispose of the collateral or the debtor waives the
20 requirement pursuant to 12A:9-624.

21 **[b.] (b)** Purported acceptance ineffective. A purported or
22 apparent acceptance of collateral under this section is ineffective
23 unless:

24 (1) the secured party consents to the acceptance in an
25 authenticated record or sends a proposal to the debtor; and

26 (2) the conditions of subsection ¹**[a.] (a)**¹ are met.

27 **[c.] (c)** Debtor's consent. For purposes of this section:

28 (1) a debtor consents to an acceptance of collateral in partial
29 satisfaction of the obligation it secures only if the debtor agrees to
30 the terms of the acceptance in a record authenticated after default;
31 and

32 (2) a debtor consents to an acceptance of collateral in full
33 satisfaction of the obligation it secures only if the debtor agrees to
34 the terms of the acceptance in a record authenticated after default or
35 the secured party:

36 **[(a)] (A)** sends to the debtor after default a proposal that is
37 unconditional or subject only to a condition that collateral not in the
38 possession of the secured party be preserved or maintained;

39 **[(b)] (B)** in the proposal, proposes to accept collateral in full
40 satisfaction of the obligation it secures; and

41 **[(c)] (C)** does not receive a notification of objection
42 authenticated by the debtor within 20 days after the proposal is sent.

43 **[d.] (d)** Effectiveness of notification. To be effective under
44 **[paragraph (2) of] subsection [a. of this section] (a) (2)**, a
45 notification of objection **[shall] must** be received by the secured

1 party:

2 (1) in the case of a person to which the proposal was sent
3 pursuant to 12A:9-621, within 20 days after notification was sent to
4 that person; and

5 (2) in other cases:

6 ~~[(a)]~~ ~~(A)~~ within 20 days after the last notification was sent
7 pursuant to 12A:9-621; or

8 ~~[(b)]~~ ~~(B)~~ if a notification was not sent, before the debtor
9 consents to the acceptance under subsection ~~[c. of this section]~~ ~~(c)~~.

10 ~~[e.]~~ ~~(e)~~ Mandatory disposition of consumer goods. A secured
11 party that has taken possession of collateral shall dispose of the
12 collateral pursuant to 12A:9-610 within the time specified in
13 subsection ~~[f. of this section]~~ ~~(f)~~ if:

14 (1) 60 percent of the cash price has been paid in the case of a
15 purchase-money security interest in consumer goods; or

16 (2) 60 percent of the principal amount of the obligation secured
17 has been paid in the case of a non-purchase-money security interest
18 in consumer goods.

19 ~~[f.]~~ ~~(f)~~ Compliance with mandatory disposition requirement. To
20 comply with subsection ~~[e. of this section]~~ ~~(e)~~, the secured party
21 shall dispose of the collateral:

22 (1) within 90 days after taking possession; or

23 (2) within any longer period to which the debtor and all
24 secondary obligors have agreed in an agreement to that effect
25 entered into and authenticated after default.

26 ~~[g.]~~ ~~(g)~~ No partial satisfaction in consumer transaction. In a
27 consumer transaction, a secured party may not accept collateral in
28 partial satisfaction of the obligation it secures.

29 (cf: N.J.S.12A:9-620)

30

31 110. N.J.S.12A:9-621 is amended to read as follows:

32 12A:9-621. Notification of Proposal to Accept Collateral.

33 ~~[a.]~~ ~~(a)~~ Persons to which proposal to be sent. A secured party
34 that desires to accept collateral in full or partial satisfaction of the
35 obligation it secures shall send its proposal to:

36 (1) any person from which the secured party has received, before
37 the debtor consented to the acceptance, an authenticated notification
38 of a claim of an interest in the collateral;

39 (2) any other secured party or lienholder that, 10 days before the
40 debtor consented to the acceptance, held a security interest in or
41 other lien on the collateral perfected by the filing of a financing
42 statement that:

43 ~~[(a)]~~ ~~(A)~~ identified the collateral;

44 ~~[(b)]~~ ~~(B)~~ was indexed under the debtor's name as of that date;

45 and

1 [(c)] (C) was filed in the office or offices in which to file a
2 financing statement against the debtor covering the collateral as of
3 that date; and

4 (3) any other secured party that, 10 days before the debtor
5 consented to the acceptance, held a security interest in the collateral
6 perfected by compliance with a statute, regulation, or treaty
7 described in 12A:9-311 [a.] (a).

8 [b.] (b) Proposal to be sent to secondary obligor in partial
9 satisfaction. A secured party that desires to accept collateral in
10 partial satisfaction of the obligation it secures shall send its proposal
11 to any secondary obligor in addition to the persons described in
12 subsection [a. of this section] (a).

13 (cf: N.J.S.12A:9-621)

14

15 111. N.J.S.12A:9-622 is amended to read as follows:

16 12A:9-622. Effect of Acceptance of Collateral.

17 [a.] (a) Effect of acceptance. A secured party's acceptance of
18 collateral in full or partial satisfaction of the obligation it secures:

19 (1) discharges the obligation to the extent consented to by the
20 debtor;

21 (2) transfers to the secured party all of a debtor's rights in the
22 collateral;

23 (3) discharges the security interest or agricultural lien that is the
24 subject of the debtor's consent and any subordinate security interest
25 or other subordinate lien; and

26 (4) terminates any other subordinate interest.

27 [b.] (b) Discharge of subordinate interest notwithstanding
28 noncompliance. A subordinate interest is discharged or terminated
29 under subsection [a. of this section] (a), even if the secured party
30 fails to comply with this chapter.

31 (cf: N.J.S.12A:9-622)

32

33 112. N.J.S.12A:9-623 is amended to read as follows:

34 12A:9-623. Right to Redeem Collateral.

35 [a.] (a) Persons that may redeem. A debtor, any secondary
36 obligor, or any other secured party or lienholder may redeem
37 collateral.

38 [b.] (b) Requirements for redemption. To redeem collateral, a
39 person shall tender:

40 (1) fulfillment of all obligations secured by the collateral; and

41 (2) the reasonable expenses and attorney's fees described in
42 12A:9-615 [a.] (a) (1).

43 [c.] (c) When redemption may occur. A redemption may occur
44 at any time before a secured party:

45 (1) has collected collateral under 12A:9-607;

1 (2) has disposed of collateral or entered into a contract for its
2 disposition under 12A:9-610; or

3 (3) has accepted collateral in full or partial satisfaction of the
4 obligation it secures under 12A:9-622.

5 (cf: N.J.S.12A:9-623)

6

7 113. N.J.S.12A:9-624 is amended to read as follows:

8 12A:9-624. Waiver.

9 [a.] (a) Waiver of disposition notification. A debtor or
10 secondary obligor may waive the right to notification of disposition
11 of collateral under 12A:9-611 only by an agreement to that effect
12 entered into and authenticated after default.

13 [b.] (b) Waiver of mandatory disposition. A debtor may waive
14 the right to require disposition of collateral under 12A:9-620 [e.]
15 (e) only by an agreement to that effect entered into and
16 authenticated after default.

17 [c.] (c) Waiver of redemption right. Except in a
18 consumer-goods transaction, a debtor or secondary obligor may
19 waive the right to redeem collateral under 12A:9-623 only by an
20 agreement to that effect entered into and authenticated after default.
21 (cf: N.J.S.12A:9-624)

22

23 114. N.J.S.12A:9-625 is amended to read as follows:

24 12A:9-625. Remedies for Secured Party's Failure to Comply with
25 Chapter.

26 [a.] (a) Judicial orders concerning noncompliance. If it is
27 established that a secured party is not proceeding in accordance with
28 this chapter, a court may order or restrain collection, enforcement,
29 or disposition of collateral on appropriate terms and conditions.

30 [b.] (b) Damages for noncompliance. Subject to subsections
31 [c., d. and f. of this section] (c), (d) and (f), a person is liable for
32 damages in the amount of any loss caused by a failure to comply
33 with this chapter. Loss caused by a failure to comply [with a request
34 under 12A:9-211] may include loss resulting from the debtor's
35 inability to obtain, or increased costs of, alternative financing.

36 [c.] (c) Persons entitled to recover damages; statutory damages
37 in consumer-goods transaction. Except as otherwise provided in
38 12A:9-628:

39 (1) a person [who] that, at the time of the failure, was a debtor,
40 was an obligor, or held a security interest in or other lien on the
41 collateral may recover damages under subsection [b. of this section]
42 (b) for its loss; and

43 (2) if the collateral is consumer goods, a person [who] that was
44 a debtor or a secondary obligor at the time a secured party failed to
45 comply with this part may recover for that failure in any event an

1 amount not less than the credit service charge plus 10 percent of the
2 principal amount of the obligation or the time-price differential plus
3 10 percent of the cash price.

4 **[d.] (d)** Recovery when deficiency eliminated or reduced. A
5 debtor whose deficiency is eliminated under 12A:9-626 may recover
6 damages for the loss of any surplus. However, a debtor or
7 secondary obligor whose deficiency is eliminated or reduced under
8 12A:9-626 may not otherwise recover under subsection **[b. of this**
9 **section] (b)** for noncompliance with the provisions of this part
10 relating to collection, enforcement, disposition, or acceptance.

11 **[e.] (e)** Statutory damages: noncompliance with specified
12 provisions. In addition to any damages recoverable under
13 subsection **[b. of this section] (b)**, the debtor, consumer obligor, or
14 person named as a debtor in a filed record, as applicable, may
15 recover \$500 in each case from a person **[who] that**:

16 (1) fails to comply with **[12A:9-208] 12A:9-207**;

17 (2) fails to comply with **[12A:9-209] 12A:9-208**;

18 (3) **[fails to comply with 12A:9-210**;

19 (4) **[files a record that the person is not entitled to file under**
20 **12A:9-509 [a.] (a)**;

21 **[(5)] (4)** fails to cause the secured party of record to file or send
22 a termination statement as required by 12A:9-513 **[a. or c.] (a) or**
23 **(c)**;

24 **[(6)] (5)** fails to comply with 12A:9-616 **[b.] (b)** (1) and whose
25 failure is part of a pattern, or consistent with a practice, of
26 noncompliance; or

27 **[(7)] (6)** fails to comply with 12A:9-616**[b.] (b)** (2).

28 **[f.] (f)** Statutory damages: noncompliance with **[12A:9-211]**
29 **12A:9-210**. A debtor or consumer obligor may recover damages
30 under subsection **[b. of this section] (b)** and, in addition, \$500 in
31 each case from a person **[who] that**, without reasonable cause, fails
32 to comply with a request under **[12A:9-211] 12A:9-210**. A
33 recipient of a request under **[12A:9-211] 12A:9-210** which never
34 claimed an interest in the collateral or obligations that are the subject
35 of a request under that section has a reasonable excuse for failure to
36 comply with the request within the meaning of this subsection.

37 **[g.] (g)** Limitation of security interest: noncompliance with
38 **[12A:9-211] 12A:9-210**. If a secured party fails to comply with a
39 request regarding a list of collateral or a statement of account under
40 **[12A:9-211] 12A:9-210**, the secured party may claim a security
41 interest only as shown in the list or statement included in the request
42 as against a person **[who] that** is reasonably misled by the failure.

43 (cf: N.J.S.12A:9-625)

1 115. N.J.S.12A:9-626 is amended to read as follows:
2 12A:9-626. Action in Which Deficiency or Surplus Is in Issue.
3 **[a.] (a)** Applicable rules if amount of deficiency or surplus in
4 issue. In an action arising from a transaction in which the amount of
5 a deficiency or surplus is in issue, the following rules apply:
6 (1) A secured party need not prove compliance with the
7 provisions of this part relating to collection, enforcement,
8 disposition, or acceptance unless the debtor or a secondary obligor
9 places the secured party's compliance in issue.
10 (2) If the secured party's compliance is placed in issue, the
11 secured party has the burden of establishing that the collection,
12 enforcement, disposition, or acceptance was conducted in
13 accordance with this part.
14 (3) Except as otherwise provided in 12A:9-628, if a secured
15 party fails to prove that the collection, enforcement, disposition, or
16 acceptance was conducted in accordance with the provisions of this
17 part relating to collection, enforcement, disposition, or acceptance,
18 the liability of a debtor or a secondary obligor for a deficiency is
19 limited to an amount by which the sum of the secured obligation,
20 expenses, and attorney's fees exceeds the greater of:
21 **[(a)] (A)** the proceeds of the collection, enforcement,
22 disposition, or acceptance; or
23 **[(b)] (B)** the amount of proceeds that would have been realized
24 had the noncomplying secured party proceeded in accordance with
25 the provisions of this part relating to collection, enforcement,
26 disposition, or acceptance.
27 (4) For purposes of **[subparagraph (b) of]** paragraph (3) **[of this**
28 **section] (B)**, the amount of proceeds that would have been realized
29 is equal to the sum of the secured obligation, expenses, and
30 attorney's fees unless the secured party proves that the amount is
31 less than that sum.
32 (5) If a deficiency or surplus is calculated under 12A:9-615 **[f.]**
33 **(f)**, the debtor or obligor has the burden of establishing that the
34 amount of proceeds of the disposition is significantly below the
35 range of prices that a complying disposition to a person other than
36 the secured party, a person related to the secured party, or a
37 secondary obligor would have brought.
38 (cf: N.J.S.12A:9-626)

39

40 116. N.J.S.12A:9-627 is amended to read as follows:
41 12A:9-627. Determination of Whether Conduct Was
42 Commercially Reasonable.

43 **[a.] (a)** Greater amount obtainable under other circumstances;
44 no preclusion of commercial reasonableness. The fact that a greater
45 amount could have been obtained by a collection, enforcement,
46 disposition, or acceptance at a different time or in a different method

1 from that selected by the secured party is not of itself sufficient to
2 preclude the secured party from establishing that the collection,
3 enforcement, disposition, or acceptance was made in a commercially
4 reasonable manner.

5 **[b.] (b)** Dispositions that are commercially reasonable. A
6 disposition of collateral is made in a commercially reasonable
7 manner if the disposition is made:

- 8 (1) in the usual manner on any recognized market;
- 9 (2) at the price current in any recognized market at the time of
10 the disposition; or
- 11 (3) otherwise in conformity with reasonable commercial practices
12 among dealers in the type of property that was the subject of the
13 disposition.

14 **[c.] (c)** Approval by court or on behalf of creditors. A
15 collection, enforcement, disposition, or acceptance is commercially
16 reasonable if it has been approved:

- 17 (1) in a judicial proceeding;
- 18 (2) by a bona fide creditors' committee;
- 19 (3) by a representative of creditors; or
- 20 (4) by an assignee for the benefit of creditors.

21 **[d.] (d)** Approval under subsection **[c.] (c)** not necessary;
22 absence of approval has no effect. Approval under subsection **[c. of**
23 **this section] (c)** need not be obtained, and lack of approval does not
24 mean that the collection, enforcement, disposition, or acceptance is
25 not commercially reasonable.

26 (cf: N.J.S.12A:9-627)

27

28 117. N.J.S.12A:9-628 is amended to read as follows:

29 12A:9-628. Nonliability and Limitation on Liability of Secured
30 Party; Liability of Secondary Obligor.

31 **[a.] (a)** Limitation of liability of secured party for
32 noncompliance with chapter. Unless a secured party knows that a
33 person is a debtor or obligor, knows the identity of the person, and
34 knows how to communicate with the person:

- 35 (1) the secured party is not liable to the person, or to a secured
36 party or lienholder that has filed a financing statement against the
37 person, for failure to comply with this chapter; and
- 38 (2) the secured party's failure to comply with this chapter does
39 not affect the liability of the person for a deficiency.

40 **[b.] (b)** Limitation of liability based on status as secured party.
41 A secured party is not liable because of its status as secured party:

- 42 (1) to a person who is a debtor or obligor, unless the secured
43 party knows:

44 **[(a)] (A)** that the person is a debtor or obligor;

45 **[(b)] (B)** the identity of the person; and

1 [(c)] (C) how to communicate with the person; or
2 (2) to a secured party or lienholder that has filed a financing
3 statement against a person, unless the secured party knows:

4 [(a)] (A) that the person is a debtor; and

5 [(b)] (B) the identity of the person.

6 [(c.)] (c) Limitation of liability if reasonable belief that transaction
7 not a consumer-goods transaction or consumer transaction. A
8 secured party is not liable to any person, and a person's liability for a
9 deficiency is not affected, because of any act or omission arising out
10 of the secured party's reasonable belief that a transaction is not a
11 consumer-goods transaction or a consumer transaction or that goods
12 are not consumer goods, if the secured party's belief is based on its
13 reasonable reliance on:

14 (1) a debtor's representation concerning the purpose for which
15 collateral was to be used, acquired, or held; or

16 (2) an obligor's representation concerning the purpose for which
17 a secured obligation was incurred.

18 [(d.)] (d) Limitation of liability for statutory damages. A secured
19 party is not liable to any person under 12A:9-625 [(c.)] (c) (2) for its
20 failure to comply with 12A:9-616.

21 [(e.)] (e) Limitation of multiple liability for statutory damages. A
22 secured party is not liable under 12A:9-625 [(c.)] (c) (2) more than
23 once with respect to any one secured obligation.

24 (cf: N.J.S.12A:9-628)

25

26 118. N.J.S.12A:9-701 is amended to read as follows:

27 12A:9-701. Effective Date.

28 This chapter shall take effect on July 1, 2001. References in this
29 part to "this chapter" are to Chapter 9 of the Uniform Commercial
30 Code as enacted by P.L.2001, c.117 and P.L. , c. (pending before
31 the Legislature as this bill). References in this part to "former
32 Chapter 9" are to Chapter 9 of the Uniform Commercial Code
33 (12A:9-101 et seq.) as in effect before July 1, 2001.

34 (cf: N.J.S.12A:9-701)

35

36 119. N.J.S.12A:9-702 is amended to read as follows:

37 12A:9-702. Savings Clause.

38 [(a.)] (a) Pre-effective-date transactions or liens. Except as
39 otherwise provided in this part, this chapter applies to a transaction
40 or lien within its scope, even if the transaction or lien was entered
41 into or created before this chapter takes effect.

42 [(b.)] (b) Continuing validity. Except as otherwise provided in
43 subsection [(c. of this section)] (c) and 12A:9-703 through
44 [12A:9-708] 12A:9-709:

45 (1) transactions and liens that were not governed by former

1 Chapter 9, were validly entered into or created before this chapter
2 takes effect, and would be subject to this chapter if they had been
3 entered into or created after this chapter takes effect, and the rights,
4 duties, and interests flowing from those transactions and liens remain
5 valid after this chapter takes effect; and

6 (2) the transactions and liens may be terminated, completed,
7 consummated, and enforced as required or permitted by this chapter
8 or by the law that otherwise would apply if this chapter had not
9 taken effect.

10 [c.] (c) Pre-effective-date proceedings. This chapter does not
11 affect an action, case, or proceeding commenced before this chapter
12 takes effect.

13 (cf: N.J.S.12A:9-702)

14

15 120. N.J.S.12A:9-703 is amended to read as follows:

16 12A:9-703. Security Interest Perfected Before Effective Date.

17 [a.] (a) Continuing priority over lien creditor: perfection
18 requirements satisfied. A security interest that is enforceable
19 immediately before this chapter takes effect and would have priority
20 over the rights of a person [who] that becomes a lien creditor at
21 that time is a perfected security interest under this chapter if, when
22 this chapter takes effect, the applicable requirements for
23 enforceability and perfection under this chapter are satisfied without
24 further action.

25 [b.] (b) Continuing priority over lien creditor: perfection
26 requirements not satisfied. Except as otherwise provided in
27 12A:9-705, if, immediately before this chapter takes effect, a
28 security interest is enforceable and would have priority over the
29 rights of a person [who] that becomes a lien creditor at that time,
30 but the applicable requirements for enforceability or perfection under
31 this chapter are not satisfied when this chapter takes effect, the
32 security interest:

33 (1) is a perfected security interest for one year after this chapter
34 takes effect;

35 (2) remains enforceable thereafter only if the security interest
36 becomes enforceable under 12A:9-203 before the year expires; and

37 (3) remains perfected thereafter only if the applicable
38 requirements for perfection under this chapter are satisfied before
39 the year expires.

40 (cf: N.J.S.12A:9-703)

41

42 121. N.J.S.12A:9-704 is amended to read as follows:

43 12A:9-704. Security Interest Unperfected Before Effective Date.

44 A security interest that is enforceable immediately before this
45 chapter takes effect but which would be subordinate to the rights of
46 a person [who] that becomes a lien creditor at that time:

1 [a.] (1) remains an enforceable security interest for one year
2 after this chapter takes effect;

3 [b.] (2) remains enforceable thereafter if the security interest
4 becomes enforceable under 12A:9-203 when this chapter takes effect
5 or within one year thereafter; and

6 [c.] (3) becomes perfected:

7 [(1)] (A) without further action, when this chapter takes effect if
8 the applicable requirements for perfection under this chapter are
9 satisfied before or at that time; or

10 [(2)] (B) when the applicable requirements for perfection are
11 satisfied if the requirements are satisfied after that time.

12 (cf: N.J.S.12A:9-704)

13

14 122. N.J.S.12A:9-705 is amended to read as follows:

15 12A:9-705. Effectiveness of Action Taken Before Effective
16 Date.

17 [a.] (a) Pre-effective-date action; one-year perfection period
18 unless reperfected. If action, other than the filing of a financing
19 statement, is taken before this chapter takes effect and the action
20 would have resulted in priority of a security interest over the rights
21 of a person [who] that becomes a lien creditor had the security
22 interest become enforceable before this chapter takes effect, the
23 action is effective to perfect a security interest that attaches under
24 this chapter within one year after this chapter takes effect. An
25 attached security interest becomes unperfected one year after this
26 chapter takes effect unless the security interest becomes a perfected
27 security interest under this chapter before the expiration of that
28 period.

29 [b.] (b) Pre-effective-date filing. The filing of a financing
30 statement before this chapter takes effect is effective to perfect a
31 security interest to the extent the filing would satisfy the applicable
32 requirements for perfection under this chapter.

33 [c.] (c) Pre-effective-date filing in jurisdiction formerly
34 governing perfection. This chapter does not render ineffective an
35 effective financing statement that, before this chapter takes effect, is
36 filed and satisfies the applicable requirements for perfection under
37 the law of the jurisdiction governing perfection as provided in
38 former 12A:9-103. However, except as otherwise provided in
39 subsections [d. and e. of this section] (d) and (e) and 12A:9-706,
40 the financing statement ceases to be effective at the earlier of:

41 (1) the time the financing statement would have ceased to be
42 effective under the law of the jurisdiction in which it is filed; or

43 (2) June 30, 2006.

44 [d.] (d) Continuation statement. The filing of a continuation
45 statement after this chapter takes effect does not continue the

1 effectiveness of the financing statement filed before this chapter
2 takes effect. However, upon the timely filing of a continuation
3 statement after this chapter takes effect and in accordance with the
4 law of the jurisdiction governing perfection as provided in Part 3,
5 the effectiveness of a financing statement filed in the same office in
6 that jurisdiction before this chapter takes effect continues for the
7 period provided by the law of that jurisdiction.

8 [e.] (e) Application of [of] subsection [c. paragraph] (c) (2) to
9 transmitting utility financing statement. Subsection [c. paragraph]
10 (c) (2) of this section applies to a financing statement that, before
11 this chapter takes effect, is filed against a transmitting utility and
12 satisfies the applicable requirements for perfection under the law of
13 the jurisdiction governing perfection as provided in former
14 12A:9-103 only to the extent that Part 3 provides that the law of a
15 jurisdiction other than the jurisdiction in which the financing
16 statement is filed governs perfection of a security interest in
17 collateral covered by the financing statement.

18 [f.] (f) Application of Part 5. A financing statement that
19 includes a financing statement filed before this chapter takes effect
20 and a continuation statement filed after this chapter takes effect is
21 effective only to the extent that it satisfies the requirements of Part 5
22 for an initial financing statement.

23 (cf: N.J.S.12A:9-705)

24

25 123. N.J.S.12A:9-706 is amended to read as follows:

26 12A:9-706. When Initial Financing Statement Suffices to
27 Continue Effectiveness of Financing Statement.

28 [a.] (a) Initial financing statement in lieu of continuation
29 statement. The filing of an initial financing statement in the office
30 specified in 12A:9-501 continues the effectiveness of a financing
31 statement filed before this chapter takes effect if:

32 (1) the filing of an initial financing statement in that office would
33 be effective to perfect a security interest under this chapter;

34 (2) the pre-effective-date financing statement was filed in an
35 office in another state or another office in this State; and

36 (3) the initial financing statement satisfies subsection [c. of this
37 section] (c).

38 [b.] (b) Period of continued effectiveness. The filing of an initial
39 financing statement under subsection [a. of this section] (a)
40 continues the effectiveness of the pre-effective-date financing
41 statement:

42 (1) if the initial financing statement is filed before this chapter
43 takes effect, for the period provided in former 12A:9-403 with
44 respect to a financing statement; and

45 (2) if the initial financing statement is filed after this chapter
46 takes effect, for the period provided in 12A:9-515 with respect to an

1 initial financing statement.

2 [c.] (c) Requirements for initial financing statement under
3 subsection [a.] (a). To be effective for purposes of subsection [a.
4 of this section] (a), an initial financing statement shall:

5 (1) satisfy the requirements of Part 5 for an initial financing
6 statement;

7 (2) identify the pre-effective-date financing statement by
8 indicating the office in which the financing statement was filed and
9 providing the dates of filing and file numbers, if any, of the financing
10 statement and of the most recent continuation statement filed with
11 respect to the financing statement; and

12 (3) indicate that the pre-effective-date financing statement
13 remains effective.

14 (cf: N.J.S.12A:9-706)

15

16 124. N.J.S.12A:9-707 is amended to read as follows:

17 [12A:9-707.] 12A:9-708. Persons Entitled to File Initial
18 Financing Statement or Continuation Statement.

19 A person may file an initial financing statement or a continuation
20 statement under this part if:

21 [a.] (1) the secured party of record authorizes the filing; and

22 [b.] (2) the filing is necessary under this part:

23 [(1)] (A) to continue the effectiveness of a financing statement
24 filed before this chapter takes effect; or

25 [(2)] (B) to perfect or continue the perfection of a security
26 interest.

27 (cf: N.J.S.12A:9-707)

28

29 125. (New section) Title 12A, chapter 9 is supplemented as
30 follows:

31 12A:9-707. Amendment of ¹[pre-effective-date financing
32 statement] Pre-effective-date Financing Statement¹.

33 (a) "Pre-effective-date financing statement". In this section, "pre-
34 effective-date financing statement" means a financing statement filed
35 before this chapter takes effect.

36 (b) Applicable law. After this chapter takes effect, a person may
37 add or delete collateral covered by, continue or terminate the
38 effectiveness of, or otherwise amend the information provided in, a
39 pre-effective-date financing statement only in accordance with the
40 law of the jurisdiction governing perfection as provided in Part 3.
41 However, the effectiveness of a pre-effective-date financing
42 statement also may be terminated in accordance with the law of the
43 jurisdiction in which the financing statement is filed.

44 (c) Method of amending: general rule. Except as otherwise
45 provided in subsection (d), if the law of this State governs perfection

1 of a security interest, the information in a pre-effective-date
2 financing statement may be amended after this chapter takes effect
3 only if:

4 (1) the pre-effective-date financing statement and an amendment
5 are filed in the office specified in 12A:9-501;

6 (2) an amendment is filed in the office specified in 12A:9-501
7 concurrently with, or after the filing in that office of, an initial
8 financing statement that satisfies 12A:9-706(c); or

9 (3) an initial financing statement that provides the information as
10 amended and satisfies 12A:9-706(c) is filed in the office specified in
11 12A:9-501.

12 (d) Method of amending: continuation. If the law of this State
13 governs perfection of a security interest, the effectiveness of a pre-
14 effective-date financing statement may be continued only under
15 12A:9-705(d) and (f) or 12A:9-706.

16 (e) Method of amending: additional termination rule. Whether or
17 not the law of this State governs perfection of a security interest, the
18 effectiveness of a pre-effective-date financing statement filed in this
19 State may be terminated after this chapter takes effect by filing a
20 termination statement in the office in which the pre-effective-date
21 financing statement is filed, unless an initial financing statement that
22 satisfies 12A:9-706(c) has been filed in the office specified by the
23 law of the jurisdiction governing perfection as provided in Part 3 as
24 the office in which to file a financing statement. The preceding
25 sentence applies only to the office described in 12A:9-501(a)(2).

26

27 126. N.J.S.12A:9-708 is amended to read as follows:

28 [~~12A:9-708.~~] 12A:9-709 Priority.

29 [a.] (a) Law governing priority. This chapter determines the
30 priority of conflicting claims to collateral. However, if the relative
31 priorities of the claims were established before this chapter takes
32 effect, former Chapter 9 determines priority.

33 [b.] (b) Priority if security interest becomes enforceable under
34 12A:9-203. For purposes of 12A:9-322 [a.] (a), the priority of a
35 security interest that becomes enforceable under 12A:9-203 of this
36 chapter dates from the time this chapter takes effect if the security
37 interest is perfected under this chapter by the filing of a financing
38 statement before this chapter takes effect which would not have
39 been effective to perfect the security interest under former Chapter
40 9. This subsection does not apply to conflicting security interests
41 each of which is perfected by the filing of such a financing
42 statement.

43 (cf: N.J.S.12A:9-708)

44

45 127. (New section) Title 12A, chapter 9 is supplemented as
46 follows:

1 12A:9-710. Retroactivity Provision.

2 This act, P.L. , c. , amends and supplements P.L.2001, c.117
3 and shall take effect immediately and shall be applied retroactively to
4 July 1, 2001.

5 If, on or after July 1, 2001 and prior to the effective date of this
6 act, action required for the attachment, perfection or priority of a
7 security interest under Post-Amendment Chapter 9 was taken, but
8 was not heretofore effective, such action shall be effective when
9 taken.

10 If, on or after July 1, 2001 and prior to the effective date of this
11 act, action required for the attachment, perfection or priority of a
12 security interest under Pre-Amendment Chapter 9 was taken and
13 was heretofore effective, but is not effective under Post-Amendment
14 Chapter 9, such action shall be deemed effective when taken if,
15 within 60 days after the effective date of this act, any other action
16 required under Post-Amendment Chapter 9 for such attachment,
17 perfection or priority is taken, except to the extent that, after the
18 effective date of this act and before the time such other required
19 action is taken, a purchaser has given value in reasonable reliance
20 upon such other required action not having been taken.

21 As used in this section, "Pre-Amendment Chapter 9" means
22 Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117
23 (12A:9-101 through 12A:9-708) as constituted before giving effect
24 to this act, and "Post-Amendment Chapter 9" means Chapter 9 of
25 Title 12A of the New Jersey Statutes (12A:9-101 through
26 12A:9-709) as amended and supplemented by this act.

27

28 128. (New section) Title 12A, chapter 1 is supplemented as
29 follows:

30 12A:1-109. Section Captions.

31 Section captions are part of the Uniform Commercial Code. The
32 subsection headings in Chapter 9 on Secured Transactions (12A:9-
33 101 et seq.) are not ¹[part] parts¹ of that chapter or of the Uniform
34 Commercial Code.

35

36 129. N.J.S.12A:1-201 is amended to read as follows:

37 12A:1-201. General definitions.

38 Subject to additional definitions contained in the subsequent
39 chapters of **[this act]** the Uniform Commercial Code which are
40 applicable to specific chapters or subchapters thereof, and unless the
41 context otherwise requires, in **[this act]** the Uniform Commercial
42 Code:

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

46 (2) "Aggrieved party" means a party entitled to resort to a

1 remedy.

2 (3) "Agreement" means the bargain of the parties in fact as found
3 in their language or by implication from other circumstances
4 including course of dealing or usage of trade or course of
5 performance as provided in [this act] the Uniform Commercial
6 Code (12A:1-205 [and], 2-208 and 2A-207). Whether an
7 agreement has legal consequences is determined by the provisions in
8 [this act] the Uniform Commercial Code, if applicable; otherwise by
9 the law of contracts (12A:1-103). (Compare "Contract.")

10 (4) "Bank" means any person engaged in the business of banking.

11 (5) "Bearer" means the person in possession of an instrument,
12 document of title, or certificated security payable to bearer or
13 indorsed in blank.

14 (6) "Bill of lading" means a document evidencing the receipt of
15 goods for shipment issued by a person engaged in the business of
16 transporting or forwarding goods, and includes an airbill.

17 "Airbill" means a document serving for air transportation as a bill
18 of lading does for marine or rail transportation, and includes an air
19 consignment note or air waybill.

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

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

25 (9) "Buyer in ordinary course of business" means a person
26 ¹[who] that¹ buys goods in good faith, without knowledge that the
27 sale violates the rights of another person in the goods, and in
28 ordinary course from a person, other than a pawnbroker, in the
29 business of selling goods of that kind. A person buys goods in
30 ordinary course if the sale to the person comports with the usual or
31 customary practices in the kind of business in which the seller is
32 engaged or with the seller's own usual or customary practices. A
33 person ¹[who] that¹ sells oil, gas or other minerals at the wellhead
34 or minehead is a person in the business of selling goods of that kind.
35 A buyer in ordinary course of business may buy for cash, by
36 exchange of other property or on secured or unsecured credit, and
37 may acquire goods or documents of title under a pre-existing
38 contract for sale. Only a buyer that takes possession of the goods or
39 has a right to recover the goods from the seller under Chapter 2 may
40 be a buyer in ordinary course of business. A person ¹[who] that¹
41 acquires goods in a transfer in bulk or as security for or in total or
42 partial satisfaction of a money debt is not a buyer in ordinary course
43 of business.

44 (10) "Conspicuous": A term or cause is conspicuous when it is
45 so written that a reasonable person against whom it is to operate
46 ought to have noticed it. A printed heading in capitals (as:

1 NON-NEGOTIABLE BILL OF LADING) is conspicuous.
2 Language in the body of a form is "conspicuous" if it is in larger or
3 other contrasting type or color. But in a telegram any stated term is
4 "conspicuous." Whether a term or clause is "conspicuous" or not is
5 for decision by the court.

6 (11) "Contract" means the total legal obligation which results
7 from the parties' agreement as affected by [this act] the Uniform
8 Commercial Code and any other applicable rules of law. (Compare
9 "Agreement.")

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

15 (13) "Defendant" includes a person in the position of defendant
16 in a cross-action or counterclaim.

17 (14) "Delivery" with respect to instruments, documents of title,
18 chattel paper, or certificated securities means voluntary transfer of
19 possession.

20 (15) "Document of title" includes bill of lading, dock warrant,
21 dock receipt, warehouse receipt, or order for the delivery of goods,
22 and also any other document which in the regular course of business
23 or financing is treated as adequately evidencing that the person in
24 possession of it is entitled to receive, hold and dispose of the
25 document and the goods it covers. To be a document of title a
26 document shall purport to be issued by or addressed to a bailee and
27 purport to cover goods in the bailee's possession which are either
28 identified or are fungible portions of an identified mass.

29 (16) "Fault" means wrongful act, omission or breach.

30 (17) "Fungible" with respect to goods or securities means goods
31 or securities of which any unit is, by nature or usage of trade, the
32 equivalent of any other like unit. Goods which are not fungible shall
33 be deemed fungible for the purposes of [this act] the Uniform
34 Commercial Code to the extent that under a particular agreement or
35 document unlike units are treated as equivalents.

36 (18) "Genuine" means free of forgery or counterfeiting.

37 (19) "Good faith" means honesty in fact in the conduct or
38 transaction concerned.

39 (20) "Holder," with respect to a negotiable instrument, means the
40 person in possession if the instrument is payable to bearer or, in the
41 case of an instrument payable to an identified person, if the identified
42 person is in possession. "Holder" with respect to a document of title
43 means the person in possession if the goods are deliverable to bearer
44 or to the order of the person in possession.

45 (21) To "honor" is to pay or accept and pay, where a credit so
46 engages to purchase or discount a draft complying with the terms of

1 the credit.

2 (22) "Insolvency proceedings" includes any assignment for the
3 benefit of creditors or other proceedings intended to liquidate or
4 rehabilitate the estate of the person involved.

5 (23) A person is "insolvent" who either has ceased to pay the
6 person's debts in the ordinary course of business or cannot pay the
7 person's debts as they become due or is insolvent within the meaning
8 of the federal bankruptcy law.

9 (24) "Money" means a medium of exchange authorized or
10 adopted by a domestic or foreign government and includes a
11 monetary unit of account established by an intergovernmental
12 organization or by agreement between two or more nations.

13 (25) A person has "notice" of a fact when:

14 (a) The person has actual knowledge of it; or

15 (b) The person has received a notice or notification of it; or

16 (c) From all the facts and circumstances known to the person at
17 the time in question the person has reason to know that it exists.

18 A person "knows" or has "knowledge" of a fact when the person
19 has actual knowledge of it. "Discover" or "learn" or a word or
20 phrase of similar import refers to knowledge rather than to reason to
21 know. The time and circumstances under which a notice or
22 notification may cease to be effective are not determined by [this
23 act] the Uniform Commercial Code.

24 (26) A person "notifies" or "gives" a notice or notification to
25 another by taking such steps as may be reasonably required to
26 inform the other in ordinary course whether or not the other actually
27 comes to know of it. A person "receives" a notice or notification
28 when:

29 (a) It comes to the person's attention; or

30 (b) It is duly delivered at the place of business through which the
31 contract was made or at any other place held out by the person as
32 the place for receipt of such communications.

33 (27) Notice, knowledge or a notice or notification received by an
34 organization is effective for a particular transaction from the time
35 when it is brought to the attention of the individual conducting that
36 transaction, and in any event from the time when it would have been
37 brought to the attention of the individual if the organization had
38 exercised due diligence. An organization exercises due diligence if it
39 maintains reasonable routines for communicating significant
40 information to the person conducting the transaction and there is
41 reasonable compliance with the routines. Due diligence does not
42 require an individual acting for the organization to communicate
43 information unless such communication is part of the individual's
44 regular duties or unless the individual has reason to know of the
45 transaction and that the transaction would be materially affected by
46 the information.

1 (28) "Organization" includes a corporation, government or
2 governmental subdivision or agency, business trust, estate, trust,
3 partnership or association, two or more persons having a joint or
4 common interest, or any other legal or commercial entity.

5 (29) "Party," as distinct from "third party," means a person who
6 has engaged in a transaction or made an agreement within [this act]
7 the Uniform Commercial Code.

8 (30) "Person" includes an individual or an organization (See
9 12A:1-102).

10 (31) "Presumption" or "presumed" means that the trier of fact
11 shall find the existence of the fact presumed unless and until
12 evidence is introduced which would support a finding of its
13 nonexistence.

14 (32) "Purchase" includes taking by sale, discount, negotiation,
15 mortgage, pledge, lien, security interest, issue or reissue, gift or any
16 other voluntary transaction creating an interest in property.

17 (33) "Purchaser" means a person who takes by purchase.

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

20 (35) "Representative" includes an agent, an officer of a
21 corporation or association, and a trustee, executor or administrator
22 of an estate, or any other person empowered to act for another.

23 (36) "Rights" includes remedies.

24 (37) "Security interest" means an interest in personal property or
25 fixtures which secures payment or performance of an obligation.
26 The term also includes any interest of a consignor and a buyer of
27 accounts, chattel paper, a payment intangible, or a promissory note
28 in a transaction that is subject to Chapter 9. The special property
29 interest of a buyer of goods on identification of those goods to a
30 contract for sale under 12A:2-401 is not a "security interest," but a
31 buyer may also acquire a "security interest" by complying with
32 Chapter 9. Except as otherwise provided in 12A:2-505, the right of
33 a seller or lessor of goods under Chapter 2 or 2A to retain or
34 acquire possession of the goods is not a "security interest," but a
35 seller or lessor may also acquire a "security interest" by complying
36 with Chapter 9. The retention or reservation of title by a seller of
37 goods notwithstanding shipment or delivery to the buyer
38 (12A:2-401) is limited in effect to a reservation of a "security
39 interest." Whether a lease is intended as security is to be determined
40 by the facts of each case; however, (a) the inclusion of an option to
41 purchase does not of itself make the lease one intended for security,
42 and (b) an agreement that upon compliance with the terms of the
43 lease the lessee shall become or has the option to become the owner
44 of the property for no additional consideration or for a nominal
45 consideration does make the lease one intended for security.

46 Whether a transaction creates a lease or security interest is

1 determined by the facts of each case; however, a transaction creates
2 a security interest if the consideration the lessee is to pay the lessor
3 for the right to possession and use of the goods is an obligation for
4 the term of the lease not subject to termination by the lessee, and

5 (a) the original term of the lease is equal to or greater than the
6 remaining economic life of the goods,

7 (b) the lessee is bound to renew the lease for the remaining
8 economic life of the goods or is bound to become the owner of the
9 goods,

10 (c) the lessee has an option to renew the lease for the remaining
11 economic life of the goods for no additional consideration or
12 nominal additional consideration upon compliance with the lease
13 agreement, or

14 (d) the lessee has an option to become the owner of the goods
15 for no additional consideration or nominal additional consideration
16 upon compliance with the lease agreement.

17 A transaction does not create a security interest merely because it
18 provides that

19 (a) the present value of the consideration the lessee is obligated
20 to pay the lessor for the right to possession and use of the goods is
21 substantially equal to or is greater than the fair market value of the
22 goods at the time the lease is entered into,

23 (b) the lessee assumes risk of loss of the goods, or agrees to pay
24 taxes, insurance, filing, recording, or registration fees, or service or
25 maintenance costs with respect to the goods,

26 (c) the lessee has an option to renew the lease or to become the
27 owner of the goods,

28 (d) the lessee has an option to renew the lease for a fixed rent
29 that is equal to or greater than the reasonably predictable fair market
30 rent for the use of the goods for the term of the renewal at the time
31 the option is to be performed, or

32 (e) the lessee has an option to become the owner of the goods
33 for a fixed price that is equal to or greater than the reasonably
34 predictable fair market value of the goods at the time the option is to
35 be performed.

36 For purposes of this subsection (37):

37 Additional consideration is not nominal if (i) when the option to
38 renew the lease is granted to the lessee the rent is stated to be the
39 fair market rent for the use of the goods for the term of the renewal
40 determined at the time the option is to be performed, or (ii) when
41 [the option to become the owner of the goods is granted to the
42 lessee] the option to become the owner of the goods is granted to
43 the lessee the price is stated to be the fair market value of the goods
44 determined at the time the option is to be performed. Additional
45 consideration is nominal if it is less than the lessee's reasonably
46 predictable cost of performing under the lease agreement if the

1 option is not exercised;

2 "Reasonably predictable" and "remaining economic life of the
3 goods" are to be determined with reference to the facts and
4 circumstances at the time the transaction is entered into; and

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

13 (38) "Send" in connection with any writing or notice means to
14 deposit in the mail or deliver for transmission by any other usual
15 means of communication with postage or cost of transmission
16 provided for and properly addressed and in the case of an instrument
17 to an address specified thereon or otherwise agreed, or if there be
18 none to any address reasonable under the circumstances. The receipt
19 of any writing or notice within the time at which it would have
20 arrived if properly sent has the effect of a proper sending.

21 (39) "Signed" includes any symbol executed or adopted by a
22 party with present intention to authenticate a writing.

23 (40) "Surety" includes guarantor.

24 (41) "Telegram" includes a message transmitted by radio,
25 teletype, cable, any mechanical method of transmission, or the like.

26 (42) "Term" means that portion of an agreement which relates to
27 a particular matter.

28 (43) "Unauthorized" signature or indorsement means one made
29 without actual, implied, or apparent authority and includes a forgery.

30 (44) "Value." Except as otherwise provided with respect to
31 negotiable instruments and bank collections (12A:3-303, 12A:4-210
32 and 12A:4-211), a person gives "value" for rights if the person
33 acquires them:

34 (a) In return for a binding commitment to extend credit or for the
35 extension of immediately available credit whether or not drawn upon
36 and whether or not a charge-back is provided for in the event of
37 difficulties in collection; or

38 (b) As security for or in total or partial satisfaction of a
39 pre-existing claim; or

40 (c) By accepting delivery pursuant to a pre-existing contract for
41 purchase; or

42 (d) Generally, in return for any consideration sufficient to
43 support a simple contract.

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

46 (46) "Written" or "writing" includes printing, typewriting, or any

1 other intentional reduction to tangible form.

2 (cf: P.L.2001, c.117, s.3)

3

4 130. N.J.S.12A:1-206 is amended to read as follows:

5 12A:1-206. Statute of Frauds for Kinds of Personal Property Not
6 Otherwise Covered.

7 (1) Except in the cases described in subsection (2) [of this
8 section] a contract for the sale of personal property is not
9 enforceable by way of action or defense beyond five thousand
10 dollars in amount or value of remedy unless there is some writing
11 which indicates that a contract for sale has been made between the
12 parties at a defined or stated price, reasonably identifies the subject
13 matter, and is signed by the party against whom enforcement is
14 sought or by his authorized agent.

15 (2) Subsection (1) [of this section] does not apply to contracts
16 for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor
17 to security agreements ([12A:9-201] 12A:9-203).

18 (cf: P.L.2001, c.117, s.4)

19

20 131. N.J.S.12A:2A-103 is amended to read as follows:

21 12A:2A-103. Definitions and index of definitions.

22 (1) In this chapter unless the context otherwise requires:

23 (a) "Buyer in ordinary course of business" means a person who in
24 good faith and without knowledge that the sale to the person is in
25 violation of the ownership rights or security interest or leasehold
26 interest of a third party in the goods buys in ordinary course from a
27 person in the business of selling goods of that kind but does not
28 include a pawnbroker. "Buying" may be for cash or by exchange of
29 other property or on secured or unsecured credit and includes
30 receiving goods or documents of title under a pre-existing contract
31 for sale but does not include a transfer in bulk or as security for or in
32 total or partial satisfaction of a money debt.

33 (b) "Cancellation" occurs when either party puts an end to the
34 lease contract for default by the other party.

35 (c) "Commercial unit" means such a unit of goods as by
36 commercial usage is a single whole for purposes of lease and
37 division of which materially impairs its character or value on the
38 market or in use. A commercial unit may be a single [chapter]
39 article, as a machine, or a set of [chapters] articles, as a suite of
40 furniture or a line of machinery, or a quantity, as a gross or carload,
41 or any other unit treated in use or in the relevant market as a single
42 whole.

43 (d) "Conforming" goods or performance under a lease contract
44 means goods or performance that are in accordance with the
45 obligations under the lease contract.

46 (e) "Consumer lease" means a lease that a lessor regularly

1 engaged in the business of leasing or selling makes to a lessee who is
2 a natural person and who takes under the lease primarily for a
3 personal, family, or household purpose.

4 (f) "Fault" means wrongful act, omission, breach, or default.

5 (g) "Finance lease" means a lease with respect to which:

6 (i) the lessor does not select, manufacture, or supply the goods;

7 (ii) the lessor acquires the goods or the right to possession and
8 use of the goods in connection with the lease; and

9 (iii) one of the following occurs:

10 (A) the lessee receives a copy of the contract by which the lessor
11 acquired the goods or the right to possession and use of the goods
12 before signing the lease contract;

13 (B) the lessee's approval of the contract by which the lessor
14 acquired the goods or the right to possession and use of the goods is
15 a condition to effectiveness of the lease contract;

16 (C) the lessee, before signing the lease contract, receives an
17 accurate and complete statement designating the promises and
18 warranties, and any disclaimers of warranties, limitations or
19 modifications of remedies, or liquidated damages, including those of
20 a third party, such as the manufacturer of the goods, provided to the
21 lessor by the person supplying the goods in connection with or as
22 part of the contract by which the lessor acquired the goods or the
23 right to possession and use of the goods; or

24 (D) if the lease is not a consumer lease, the lessor, before the
25 lessee signs the lease contract, informs the lessee in writing (a) of
26 the identity of the person supplying the goods to the lessor, unless
27 the lessee has selected that person and directed the lessor to acquire
28 the goods or the right to possession and use of the goods from that
29 person, (b) that the lessee is entitled under this chapter to the
30 promises and warranties, including those of any third party, provided
31 to the lessor by the person supplying the goods in connection with
32 or as part of the contract by which the lessor acquired the goods or
33 the right to possession and use of the goods, and (c) that the lessee
34 may communicate with the person supplying the goods to the lessor
35 and receive an accurate and complete statement of those promises
36 and warranties, including any disclaimers and limitations of them or
37 of remedies.

38 (h) "Goods" means all things that are movable at the time of
39 identification to the lease contract, or are fixtures (12A:2A-309), but
40 the term does not include money, documents, instruments, accounts,
41 chattel paper, general intangibles, or minerals or the like, including
42 oil and gas, before extraction. The term also includes the unborn
43 young of animals.

44 (i) "Installment lease contract" means a lease contract that
45 authorizes or requires the delivery of goods in separate lots to be
46 separately accepted, even though the lease contract contains a clause

1 "each delivery is a separate lease" or its equivalent.

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

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

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

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

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

22 (o) "Lessee in ordinary course of business" means a person who
23 in good faith and without knowledge that the lease to the person is
24 in violation of the ownership rights or security interest or leasehold
25 interest of a third party in the goods leases in ordinary course from a
26 person in the business of selling or leasing goods of that kind but
27 does not include a pawnbroker. "Leasing" may be for cash or by
28 exchange of other property or on secured or unsecured credit and
29 includes receiving goods or documents of title under a pre-existing
30 lease contract but does not include a transfer in bulk or as security
31 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

46 (u) "Present value" means the amount as of a date certain of one

1 or more sums payable in the future, discounted to the date certain.
 2 The discount is determined by the interest rate specified by the
 3 parties if the rate was not manifestly unreasonable at the time the
 4 transaction was entered into; otherwise, the discount is determined
 5 by a commercially reasonable rate that takes into account the facts
 6 and circumstances of each case at the time the transaction was
 7 entered into.

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

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

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

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

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

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

23 "Accessions"12A:2A-310(1).
 24 "Construction mortgage"12A:2A-309(1)(d).
 25 "Encumbrance"12A:2A-309(1)(e).
 26 "Fixtures"12A:2A-309(1)(a).
 27 "Fixture filing"12A:2A-309(1)(b).
 28 "Purchase money lease"12A:2A-309(1)(c).

29 (3) The following definitions in other Chapters apply to this
 30 Chapter:

31 "Account"12A: 9-102(a)(2).
 32 "Between merchants"12A:2-104(3).
 33 "Buyer"12A:2-103(1)(a).
 34 "Chattel paper"12A:9-102(a)(12).
 35 "Consumer goods"12A:9-102(a)(24).
 36 "Document"12A:9-102(a)[(21)](31).
 37 "Entrusting"12A:2-403(3).
 38 "General intangible"12A:9-102(a)(42).
 39 "Good faith"2A:2-103(1)(b).
 40 "Instrument"12A:9-102(a)(47).
 41 "Merchant"12A:2-104(1).
 42 "Mortgage"12A:9-102(a)(55).
 43 "Pursuant to commitment"12A:9-102(a)(68).
 44 "Receipt"12A:2-103(1)(c).
 45 "Sale"12A:2-106(1).
 46 "Sale on approval"12A:2-326.

1 "Sale or return".....12A:2-326.

2 "Seller".....12A:2-103(1)(d).

3 (4) In addition chapter 1 contains general definitions and
4 principles of construction and interpretation applicable throughout
5 this chapter.

6 (cf: P.L. 2001, c.117, s.10)

7

8 132. N.J.S.12A:2A-307 is amended to read as follows:

9 12A:2A-307. Priority of liens arising by attachment or levy on,
10 security interests in, and other claims to goods.

11 (1) Except as otherwise provided in 12A:2A-306, a creditor of a
12 lessee takes subject to the lease contract.

13 (2) Except as otherwise provided in subsection (3) and in
14 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to
15 the lease contract unless [:

16 (a)] the creditor holds a lien that attached to the goods before
17 the lease contract became enforceable [;

18 (b) the creditor holds a security interest in the goods and the
19 lessee did not give value and receive delivery of the goods without
20 knowledge of the security interest; or

21 (c) the creditor holds a security interest in the goods which was
22 perfected (12A:9-303) before the lease contract became
23 enforceable].

24 (3) Except as otherwise provided in 12A:9-317, 12A:9-321 and
25 12A:9-323, a lessee takes a leasehold interest subject to a security
26 interest held by a creditor of the lessor.

27 (cf: P.L.2001, c.117, s.12)

28

29 133. N.J.S.12A:8-103 is amended to read as follows:

30 12A:8-103. Rule for Determining whether Certain Obligations
31 and Interests are Securities or Financial Assets.

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

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

43 c. An interest in a partnership or limited liability company is not
44 a security unless it is dealt in or traded on securities exchanges or in
45 securities markets, its terms expressly provide that it is a security
46 governed by this chapter, or it is an investment company security.

1 However, an interest in a partnership or limited liability company is a
2 financial asset if it is held in a securities account.

3 d. A writing that is a security certificate is governed by this
4 chapter and not by chapter 3, even though it also meets the
5 requirements of that chapter. However, a negotiable instrument
6 governed by chapter 3 is a financial asset if it is held in a securities
7 account.

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

11 f. A commodity contract, as defined in [12A:9-102 (a) (16)]
12 12A:9-102 (a) (15), is not a security or a financial asset.
13 (cf: P.L.2001, c.117, s.17)

14

15 134. N.J.S.12A:8-110 is amended to read as follows:

16 12A:8-110. Applicability; Choice of Law.

17 a. The local law of the issuer's jurisdiction, as specified in
18 subsection d. of this section, governs:

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

29 b. The local law of the securities intermediary's jurisdiction, as
30 specified in subsection e. of this section, governs:

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

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

45 d. "Issuer's jurisdiction" means the jurisdiction under which the
46 issuer of the security is organized or, if permitted by the law of that

1 jurisdiction, the law of another jurisdiction specified by the issuer.
2 An issuer organized under the law of this State may specify the law
3 of another jurisdiction as the law governing the matters specified in
4 paragraphs (2) through (5) of subsection a. of this section.

5 e. The following rules determine a “securities intermediary’s
6 jurisdiction” for purposes of this section:

7 (1) If an agreement between the securities intermediary and its
8 entitlement holder governing the securities account expressly
9 provides that a particular jurisdiction is the securities intermediary’s
10 jurisdiction for purposes of this part, this chapter, or [this Act] the
11 Uniform Commercial Code, that jurisdiction is the securities
12 intermediary’s jurisdiction.

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

18 (3) If neither paragraph (1) nor paragraph (2) of this subsection
19 e. applies and an agreement between the securities intermediary and
20 its entitlement holder governing the securities account expressly
21 provides that the securities account is maintained at an office in a
22 particular jurisdiction, that jurisdiction is the securities
23 intermediary’s jurisdiction.

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

28 (5) If none of the preceding paragraphs applies, the securities
29 intermediary’s jurisdiction is the jurisdiction in which the chief
30 executive office of the securities intermediary is located.

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

37 (cf: P.L.2001, c.117, s.19)

38

39 135. N.J.S.12A:8-510 is amended to read as follows:

40 12A:8-510. Rights of Purchaser of Security Entitlement from
41 Entitlement Holder.

42 a. In a case not covered by the priority rules in Chapter 9 or the
43 rules stated in subsection c. of this section, an action based on an
44 adverse claim to a financial asset or security entitlement, whether
45 framed in conversion, replevin, constructive trust, equitable lien, or
46 other theory, may not be asserted against a person who purchases a

1 security entitlement, or an interest therein, from an entitlement
2 holder if the purchaser gives value, does not have notice of the
3 adverse claim, and obtains control.

4 b. If an adverse claim could not have been asserted against an
5 entitlement holder under 12A:8-502, the adverse claim cannot be
6 asserted against a person who purchases a security entitlement, or an
7 interest therein, from the entitlement holder.

8 c. In a case not covered by the priority rules in Chapter 9, a
9 purchaser for value of a security entitlement, or an interest therein,
10 who obtains control has priority over a purchaser of a security
11 entitlement, or an interest therein, who does not obtain control.
12 Except as otherwise provided in subsection d of this section,
13 purchasers who have control rank according to priority in time of:

14 (1) the purchaser's becoming the person for whom the securities
15 account, in which the security entitlement is carried, is maintained, if
16 the purchaser obtained control under 12A:8-106d. (1); [or]

17 (2) the securities intermediary's agreement to comply with the
18 purchaser's entitlement orders with respect to security entitlements
19 carried or to be carried in the securities account in which the
20 security entitlement is carried, if the purchaser obtained control
21 under 12A:8-106d. (2); or

22 (3) if the purchaser obtained control through another person
23 under 12A:8-106 d. (3), the time on which priority would be based
24 under this subsection if the other person were the secured party.

25 d. A securities intermediary as purchaser has priority over a
26 conflicting purchaser who has control unless otherwise agreed by the
27 securities intermediary.

28 (cf: P.L.2001, c.117, s.22)

29

30 136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to
31 read as follows:

32 27. a. For purposes of this act, and the Uniform Commercial
33 Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable
34 transition property, as defined in N.J.S. [12A:9-102a (9)] 12A:9-
35 102 (a) (8.1), shall constitute an account. For purposes of this act,
36 and the Uniform Commercial Code - Secured Transactions,
37 N.J.S.12A:9-101 et seq., bondable transition property shall be in
38 existence whether or not the revenues or proceeds in respect thereof
39 have accrued, in accordance with subsection c. of section 22 of this
40 act. The validity, perfection or priority of any security interest in
41 bondable transition property shall not be defeated or adversely
42 affected by changes to the bondable stranded costs rate order or to
43 the transition bond charges payable by any customer. Any
44 description of bondable transition property in a security agreement
45 or other agreement or a financing statement shall be sufficient if it
46 refers to the bondable stranded costs rate order establishing the

1 bondable transition property.

2 b. In addition to the other rights and remedies provided or
3 authorized by this act, and by the Uniform Commercial Code -
4 Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in
5 default under a security agreement and the collateral is bondable
6 transition property, then upon application by the secured party, the
7 board or any court of competent jurisdiction shall order the
8 sequestration and payment to the secured party of all collections and
9 other proceeds of such bondable transition property up to the value
10 of the property. In the event of any conflicts, priority among
11 pledgees, transferees or secured parties shall be determined under
12 N.J.S.12A:9-101 et seq.. The secured party shall account to the
13 debtor for any surplus and, unless otherwise agreed, the debtor shall
14 be liable for any deficiency.

15 (cf: P.L.2001, c.117, s.29)

16

17 137. N.J.S.2A:25-1 is amended to read as follows:

18 2A:25-1. All contracts for the sale and conveyance of real estate,
19 all judgments and decrees recovered in any of the courts of this
20 state or of the United States or in any of the courts of any other
21 state of the United States and all choses in action arising on
22 contract shall be assignable, and the assignee may sue thereon in his
23 own name. In such an action, the person sued shall be allowed, not
24 only all set-offs, discounts and defenses he has against the assignee,
25 but also all set-offs, discounts and defenses he had against the
26 assignor before notice of such assignment was given to him. The
27 assignment of a sealed instrument by writing not under seal shall be
28 as valid as if under seal.

29 The assignee for a valuable consideration of any chose in action
30 may, although the assignor is dead, sue for and recover the same in
31 his own name. The person sued in any such action shall be allowed
32 not only all set-offs, discounts and defenses he has against the
33 assignee, but also all set-offs, discounts and defenses he had against
34 the assignor or his representatives before notice of such assignment
35 was given to him.

36 Security interests in commercial tort claims may be created,
37 attached, perfected and enforced in accordance with Chapter 9 of
38 Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

39 (cf: N.J.S.2A:25-1)

40

41 138. This act shall take effect immediately, and shall have
42 retroactive effect in accordance with section 127 of this act.

ASSEMBLY, No. 3917

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 8, 2001

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

SYNOPSIS

Concerns chapter 9 of the Uniform Commercial Code.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.12A:9-102 is amended to read as follows:
8 12A:9-102. Definitions and Index of Definitions.

9 **[a.]** (a) Chapter 9 definitions. In this chapter:

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

13 (2) **["Account,"]** "Account", except as used in **[**"account for,"
14 (a) "account for", means a right to payment of a monetary obligation,
15 whether or not earned by performance, (i) for property that has been
16 or is to be sold, leased, licensed, assigned, or otherwise disposed of,
17 (ii) for services rendered or to be rendered, (iii) for a policy of
18 insurance issued or to be issued, (iv) for a secondary obligation
19 incurred or to be incurred, (v) for energy provided or to be provided,
20 (vi) for the use or hire of a vessel under a charter or other contract,
21 (vii) arising out of the use of a credit or charge card or information
22 contained on or for use with the card, or (viii) as winnings in a lottery
23 or other game of chance operated or sponsored by a State,
24 governmental unit of a State, or person licensed or authorized to
25 operate the game by a State or governmental unit of a State. The term
26 includes health-care-insurance receivables and bondable transition
27 property. **[(b)]** The term does not include (i) rights to payment
28 evidenced by chattel paper or an instrument, (ii) commercial tort
29 claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-
30 credit rights or letters of credit, or (vi) rights to payment for money or
31 funds advanced or sold, other than rights arising out of the use of a
32 credit or charge card or information contained on or for use with the
33 card.

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

38 (4) **[**"Accounting,"] "Accounting", except as used in **[**"accounting
39 for,"] "accounting for", means a record:

40 **[(a)]** (A) authenticated by a secured party;

41 **[(b)]** (B) indicating the aggregate unpaid secured obligations as of
42 a date not more than 35 days earlier or 35 days later than the date of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 the record; and

2 [(c)] (C) identifying the components of the obligations in
3 reasonable detail.

4 (5) “Agricultural lien” means an interest [, other than a security
5 interest,] in farm products:

6 [(a)] (A) which secures payment or performance of an obligation
7 for:

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

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

12 [(b)] (B) which is created by statute in favor of a person [who]
13 that:

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

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

18 [(c)] (C) whose effectiveness does not depend on the person’s
19 possession of the personal property.

20 (6) “As-extracted collateral” means:

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

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

25 (ii) attaches to the minerals as extracted; or

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

29 (7) “Authenticate” means:

30 [(a)] (A) to sign; or

31 [(b)] (B) to execute or otherwise adopt a symbol, or encrypt or
32 similarly process a record in whole or in part, with the present intent
33 of the authenticating person to identify the person and adopt or accept
34 a record.

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

38 [(9)] (8.1) “Bondable transition property” shall have the meaning
39 set forth in section 3 of P.L. [1990] 1999, c.23 (C.48:3-51).

40 [(10)] (9) “Cash proceeds” means proceeds that are money,
41 checks, deposit accounts, or the like.

42 [(11)] (10) “Certificate of title” means a certificate of title with
43 respect to which a statute provides for the security interest in question
44 to be indicated on the certificate as a condition or result of the security
45 interest’s obtaining priority over the rights of a lien creditor with

1 respect to the collateral.

2 [(12)] (11) “Chattel paper” means a record or records that
3 evidence both a monetary obligation and a security interest in specific
4 goods, a security interest in specific goods and software used in the
5 goods, a security interest in specific goods and license of software
6 used in the goods, a lease of specific goods, or a lease of specific
7 goods and license of software used in the goods. In this paragraph,
8 “monetary obligation” means a monetary obligation secured by the
9 goods or owed under a lease of the goods and includes a monetary
10 obligation with respect to software used in the goods. The term does
11 not include (i) charters or other contracts involving the use or hire of
12 a vessel or (ii) records that evidence a right to payment arising out of
13 the use of a credit or charge card or information contained on or for
14 use with the card. If a transaction is evidenced by records that include
15 an instrument or series of instruments, the group of records taken
16 together constitutes chattel paper.

17 [(13)] (12) “Collateral” means the property subject to a security
18 interest or agricultural lien. The term includes:

19 [(a)] (A) proceeds to which a security interest attaches;

20 [(b)] (B) accounts, chattel paper, payment intangibles, and
21 promissory notes that have been sold; and

22 [(c)] (C) goods that are the subject of a consignment.

23 [(14)] (13) “Commercial tort claim” means a claim arising in tort
24 with respect to which:

25 [(a)] (A) the claimant is an organization; or

26 [(b)] (B) the claimant is an individual and the claim:

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

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

30 [(15)] (14) “Commodity account” means an account maintained
31 by a commodity intermediary in which a commodity contract is carried
32 for a commodity customer.

33 [(16)] (15) “Commodity contract” means a commodity futures
34 contract, an option on a commodity futures contract, a commodity
35 option, or another contract [or option] if the contract or option is:

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

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

42 [(17)] (16) “Commodity customer” means a person for which a
43 commodity intermediary carries a commodity contract on its books.

44 [(18)] (17) “Commodity intermediary” means a person [who]
45 that:

- 1 [(a)] (A) is registered as a futures commission merchant under
2 federal commodities law; or
- 3 [(b)] (B) in the ordinary course of its business provides clearance
4 or settlement services for a board of trade that has been designated as
5 a contract market pursuant to federal commodities law.
- 6 [(19)] (18) “Communicate” means:
- 7 [(a)] (A) to send a written or other tangible record;
- 8 [(b)] (B) to transmit a record by any means agreed upon by the
9 persons sending and receiving the record; or
- 10 [(c)] (C) in the case of transmission of a record to or by a filing
11 office, to transmit a record by any means prescribed by filing-office
12 rule.
- 13 [(20)] (19) “Consignee” means a merchant to which goods are
14 delivered in a consignment.
- 15 [(21)] (20) “Consignment” means a transaction, regardless of its
16 form, in which a person delivers goods to a merchant for the purpose
17 of sale and:
- 18 [(a)] (A) the merchant:
- 19 (i) deals in goods of that kind under a name other than the name of
20 the person making delivery;
- 21 (ii) is not an auctioneer; and
- 22 (iii) is not generally known by its creditors to be substantially
23 engaged in selling the goods of others;
- 24 [(b)] (B) with respect to each delivery, the aggregate value of the
25 goods is \$1,000 or more at the time of delivery;
- 26 [(c)] (C) the goods are not consumer goods immediately before
27 delivery; and
- 28 [(d)] (D) the transaction does not create a security interest that
29 secures an obligation.
- 30 [(22)] (21) “Consignor” means a person [who] that delivers
31 goods to a consignee in a consignment.
- 32 [(23)] (22) “Consumer debtor” means a debtor in a consumer
33 transaction.
- 34 [(24)] (23) “Consumer goods” means goods that are used or
35 bought for use primarily for personal, family, or household purposes.
- 36 [(25)] (24) “Consumer-goods transaction” means a consumer
37 transaction in which:
- 38 [(a)] (A) an individual incurs an obligation primarily for personal,
39 family, or household purposes; and
- 40 [(b)] (B) a security interest in consumer goods secures the
41 obligation.
- 42 [(26)] (25) “Consumer obligor” means an obligor who is an
43 individual and who incurred the obligation as part of a transaction
44 entered into primarily for personal, family, or household purposes.
- 45 [(27)] (26) “Consumer transaction” means a transaction in which

1 [(a)] (i) an individual incurs an obligation primarily for personal,
2 family, or household purposes, [(b)] (ii) a security interest secures
3 the obligation, and [(c)] (iii) the collateral is held or acquired
4 primarily for personal, family, or household purposes. The term
5 includes consumer-goods transactions.

6 [(28)] (27) “Continuation statement” means an amendment of a
7 financing statement which:

8 [(a)] (A) identifies, by its file number, the initial financing
9 statement to which it relates; and

10 [(b)] (B) indicates that it is a continuation statement for, or that it
11 is filed to continue the effectiveness of, the identified financing
12 statement.

13 [(29)] (28) “Debtor” means:

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

16 [(b)] (B) a seller of accounts, chattel paper, payment intangibles,
17 or promissory notes; or

18 [(c)] (C) a consignee.

19 [(30)] (29) “Deposit account” means a demand, time, savings,
20 passbook, or similar account maintained with a bank. The term does
21 not include investment property or accounts evidenced by an
22 instrument.

23 [(31)] (30) “Document” means a document of title or a receipt of
24 the type described in 12A:7-201(2).

25 [(32)] (31) “Electronic chattel paper” means chattel paper
26 evidenced by a record or records consisting of information stored in
27 an electronic medium.

28 [(33)] (32) “Encumbrance” means a right, other than an ownership
29 interest, in real property. The term includes mortgages and other liens
30 on real property.

31 [(34)] (33) “Equipment” means goods other than inventory, farm
32 products, or consumer goods.

33 [(35)] (34) “Farm products” means goods, other than standing
34 timber, with respect to which the debtor is engaged in a farming
35 operation and which are:

36 [(a)] (A) crops grown, growing, or to be grown, including:

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

38 (ii) aquatic goods produced in aquacultural operations;

39 [(b)] (B) livestock, born or unborn, including aquatic goods
40 produced in aquacultural operations;

41 [(c)] (C) supplies used or produced in a farming operation; or

42 [(d)] (D) products of crops or livestock in their unmanufactured
43 states.

44 [(36)] (35) “Farming operation” means raising, cultivating,
45 propagating, fattening, grazing, or any other farming, livestock, or

1 aquacultural operation.

2 [(37)] (36) “File number” means the number assigned to an initial
3 financing statement pursuant to 12A:9-519 [a.] (a).

4 [(38)] (37) “Filing office” means an office designated in
5 12A:9-501 as the place to file a financing statement.

6 [(39)] (38) “Filing-office rule” means a rule adopted pursuant to
7 12A:9-526.

8 [(40)] (39) “Financing statement” means a record or records
9 composed of an initial financing statement and any filed record relating
10 to the initial financing statement.

11 [(40.1)] (40) “Fixture filing” means the filing of a financing
12 statement covering goods that are or are to become fixtures and
13 satisfying 12A:9-502[a. and b.] (a) and (b). The term includes the
14 filing of a financing statement covering goods of a transmitting utility
15 which are or are to become fixtures.

16 (41) “Fixtures” means goods that have become so related to
17 particular real property that an interest in them arises under real
18 property law.

19 (42) “General intangible” means any personal property, including
20 things in action, other than accounts, chattel paper, commercial tort
21 claims, deposit accounts, documents, goods, instruments, investment
22 property, letter-of-credit rights, letters of credit, money, and oil, gas,
23 or other minerals before extraction. The term includes payment
24 intangibles and software.

25 (43) “Good faith” means honesty in fact and the observance of
26 reasonable commercial standards of fair dealing.

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

45 (45) “Governmental unit” means a subdivision, agency,

1 department, county, parish, municipality, or other unit of the
2 government of the United States, a state, or a foreign country. The
3 term includes an organization having a separate corporate existence if
4 the organization is eligible to issue debt on which interest is exempt
5 from income taxation under the laws of the United States.

6 (46) “Health-care-insurance receivable” means an interest in or
7 claim under a policy of insurance which is a right to payment of a
8 monetary obligation for health-care goods or services provided or to
9 be provided.

10 (47) “Instrument” means a negotiable instrument or any other
11 writing that evidences a right to the payment of a monetary obligation,
12 is not itself a security agreement or lease, and is of a type that in
13 ordinary course of business is transferred by delivery with any
14 necessary indorsement or assignment. The term does not include [(a)]
15 (i) investment property, [(b)] (ii) letters of credit, or [(c)] (iii)
16 writings that evidence a right to payment arising out of the use of a
17 credit or charge card or information contained on or for use with the
18 card.

19 (48) “Inventory” means goods, other than farm products, which:

20 [(a)] (A) are leased by a person as lessor;

21 [(b)] (B) are held by a person for sale or lease or to be furnished
22 under a contract of service;

23 [(c)] (C) are furnished by a person under a contract of service; or

24 [(d)] (D) consist of raw materials, work in process, or materials
25 used or consumed in a business.

26 (49) “Investment property” means a security, whether certificated
27 or uncertificated, security entitlement, securities account, commodity
28 contract, or commodity account.

29 (50) “Jurisdiction of organization”, with respect to a registered
30 organization, means the jurisdiction under whose law the organization
31 is organized.

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

37 (52) “Lien creditor” means:

38 [(a)] (A) a creditor that has acquired a lien on the property
39 involved by attachment, levy, or the like;

40 [(b)] (B) an assignee for benefit of creditors from the time of
41 assignment;

42 [(c)] (C) a trustee in bankruptcy from the date of the filing of the
43 petition; or

44 [(d)] (D) a receiver in equity from the time of appointment.

45 (53) “Manufactured home” means a structure, transportable in one

1 or more sections, which, in the traveling mode, is eight body feet or
2 more in width or 40 body feet or more in length, or, when erected on
3 site, is 320 or more square feet, and which is built on a permanent
4 chassis and designed to be used as a dwelling with or without a
5 permanent foundation when connected to the required utilities, and
6 includes the plumbing, heating, air-conditioning, and electrical systems
7 contained therein. The term includes any structure that meets all of
8 the requirements of this paragraph except the size requirements and
9 with respect to which the manufacturer voluntarily files a certification
10 required by the United States Secretary of Housing and Urban
11 Development and complies with the standards established under Title
12 42 of the United States Code.

13 (54) “Manufactured-home transaction” means a secured
14 transaction:

15 [(a)] (A) that creates a purchase-money security interest in a
16 manufactured home, other than a manufactured home held as
17 inventory; or

18 [(b)] (B) in which a manufactured home, other than a
19 manufactured home held as inventory, is the primary collateral.

20 (55) “Mortgage” means a consensual interest in real property,
21 including fixtures, which secures payment or performance of an
22 obligation.

23 (56) “New debtor” means a person that becomes bound as debtor
24 under 12A:9-203 [d.] (d) by a security agreement previously entered
25 into by another person.

26 (57) “New value” means [(a)] (i) money, [(b)] (ii) money’s worth
27 in property, services, or new credit, or [(c)] (iii) release by a
28 transferee of an interest in property previously transferred to the
29 transferee. The term does not include an obligation substituted for
30 another obligation.

31 (58) “Noncash proceeds” means proceeds other than cash
32 proceeds.

33 (59) “Obligor” means a person [who] that, with respect to an
34 obligation secured by a security interest in or an agricultural lien on
35 the collateral, [(a)] (i) owes payment or other performance of the
36 obligation, [(b)] (ii) has provided property other than the collateral to
37 secure payment or other performance of the obligation, or [(c)] (iii)
38 is otherwise accountable in whole or in part for payment or other
39 performance of the obligation. The term does not include issuers or
40 nominated persons under a letter of credit.

41 (60) “Original debtor”, except as used in 12A:9-310(c), means a
42 person [who] that, as debtor, entered into a security agreement to
43 which a new debtor has become bound under 12A:9-203 [d.] (d).

44 (61) “Payment intangible” means a general intangible under which
45 the account debtor’s principal obligation is a monetary obligation.

- 1 (62) “Person related to”, with respect to an individual, means:
- 2 [(a)] (A) the spouse of the individual;
- 3 [(b)] (B) a brother, brother-in-law, sister, or sister-in-law of the
4 individual;
- 5 [(c)] (C) an ancestor or lineal descendant of the individual or the
6 individual’s spouse; or
- 7 [(d)] (D) any other relative, by blood or marriage, of the individual
8 or the individual’s spouse who shares the same home with the
9 individual.
- 10 (63) “Person related to”, with respect to an organization, means:
- 11 [(a)] (A) a person directly or indirectly controlling, controlled by,
12 or under common control with the organization;
- 13 [(b)] (B) an officer or director of, or a person performing similar
14 functions with respect to, the organization;
- 15 [(c)] (C) an officer or director of, or a person performing similar
16 functions with respect to, a person described in subparagraph [(a)]
17 (A);
- 18 [(d)] (D) the spouse of an individual described in subparagraph
19 [(a), (b), or (c)] (A), (B) or (C); or
- 20 [(e)] (E) an individual who is related by blood or marriage to an
21 individual described in subparagraph [(a), (b), (c), or (d)] (A), (B) (C)
22 or (D) and shares the same home with the individual.
- 23 (64) “Proceeds”, except as used in 12A:9-609(b), means the
24 following property:
- 25 [(a)] (A) whatever is acquired upon the sale, lease, license,
26 exchange, or other disposition of collateral;
- 27 [(b)] (B) whatever is collected on, or distributed on account of,
28 collateral;
- 29 [(c)] (C) rights arising out of collateral;
- 30 [(d)] (D) to the extent of the value of collateral, claims arising out
31 of the loss, nonconformity, or interference with the use of, defects or
32 infringement of rights in, or damage to, the collateral; or
- 33 [(e)] (E) to the extent of the value of collateral and to the extent
34 payable to the debtor or the secured party, insurance payable by reason
35 of the loss or nonconformity of, defects or infringement of rights in,
36 or damage to, the collateral.
- 37 (65) “Promissory note” means an instrument that evidences a
38 promise to pay a monetary obligation, does not evidence an order to
39 pay, and does not contain an acknowledgment by a bank that the bank
40 has received for deposit a sum of money or funds.
- 41 (66) “Proposal” means a record authenticated by a secured party
42 which includes the terms on which the secured party is willing to
43 accept collateral in full or partial satisfaction of the obligation it
44 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.
- 45 (67) “Public-finance transaction” means a secured transaction in

1 connection with which:

2 [(a)] (A) debt securities are issued;

3 [(b)] (B) all or a portion of the securities issued have an initial
4 stated maturity of at least 20 years; and

5 [(c)] (C) the debtor, obligor, secured party, account debtor or
6 other person obligated on collateral, assignor or assignee of a secured
7 obligation, or assignor or assignee of a security interest is a state or a
8 governmental unit of a state.

9 (68) “Pursuant to commitment”, with respect to an advance made
10 or other value given by a secured party, means pursuant to the secured
11 party’s obligation, whether or not a subsequent event of default or
12 other event not within the secured party’s control has relieved or may
13 relieve the secured party from its obligation.

14 (69) “Record”, except as used in “for record”, “of record”, “record
15 or legal title”, and “record owner”, means information that is inscribed
16 on a tangible medium or which is stored in an electronic or other
17 medium and is retrievable in perceivable form.

18 (70) “Registered organization” means an organization organized
19 solely under the law of a single state or the United States and as to
20 which the state or the United States must maintain a public record
21 showing the organization to have been organized.

22 (71) “Secondary obligor” means an obligor to the extent that:

23 [(a)] (A) the obligor’s obligation is secondary; or

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

27 (72) “Secured party” means:

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

31 [(b)] (B) a person that holds an agricultural lien;

32 [(c)] (C) a consignor;

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

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

38 [(f)] (F) a person that holds a security interest arising under
39 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), [or]
40 12A:4-210, or 12A:5-118.

41 (73) “Security agreement” means an agreement that creates or
42 provides for a security interest.

43 (74) “Send”, in connection with a record or notification, means:

44 [(a)] (A) to deposit in the mail, deliver for transmission, or
45 transmit by any other usual means of communication, with postage or

1 cost of transmission provided for, addressed to any address reasonable
2 under the circumstances; or

3 [(b)] (B) to cause the record or notification to be received within
4 the time that it would have been received if properly sent under
5 subparagraph [(a)] (A).

6 (75) “Software” means a computer program and any supporting
7 information provided in connection with a transaction relating to the
8 program. The term does not include a computer program that is
9 included in the definition of goods.

10 (76) “State” means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands, or any
12 territory or insular possession subject to the jurisdiction of the United
13 States.

14 (77) “Supporting obligation” means a letter-of-credit right or
15 secondary obligation that supports the payment or performance of an
16 account, chattel paper, a document, a general intangible, an
17 instrument, or investment property.

18 (78) “Tangible chattel paper” means chattel paper evidenced by a
19 record or records consisting of information that is inscribed on a
20 tangible medium.

21 (79) “Termination statement” means an amendment of a financing
22 statement which:

23 [(a)] (A) identifies, by its file number, the initial financing
24 statement to which it relates; and

25 [(b)] (B) indicates either that it is a termination statement or that
26 the identified financing statement is no longer effective.

27 (80) “Transmitting utility” means a person primarily engaged in the
28 business of:

29 [(a)] (A) operating a railroad, subway, street railway, or trolley
30 bus;

31 [(b)] (B) transmitting communications electrically,
32 electromagnetically, or by light;

33 [(c)] (C) transmitting goods by pipeline or sewer; or

34 [(d)] (D) transmitting or producing and transmitting electricity,
35 steam, gas, or water.

36 [b.] (b) Definitions in other chapters. The following definitions in
37 other chapters apply to this chapter:

38 “Applicant” 12A:5-102.

39 “Beneficiary” 12A:5-102.

40 “Broker” 12A:8-102.

41 “Certificated security” 12A:8-102.

42 “Check” 12A:3-104.

43 “Clearing corporation” 12A:8-102.

44 “Contract for sale” 12A:2-106.

45 “Customer” 12A:4-104.

1	“Entitlement holder”	12A:8-102.
2	“Financial asset”	12A:8-102.
3	“Holder in due course”	12A:3-302.
4	“Issuer” (with respect to a letter of	
5	credit or letter-of-credit right)	12A:5-102.
6	“Issuer” (with respect to a security)	12A:8-201.
7	“Lease”	12A:2A-103.
8	“Lease agreement”	12A:2A-103.
9	“Lease contract”	12A:2A-103.
10	“Leasehold interest”	12A:2A-103.
11	“Lessee”	12A:2A-103.
12	“Lessee in ordinary course of business”	12A:2A-103.
13	“Lessor”	12A:2A-103.
14	“Lessor’s residual interest”	12A:2A-103.
15	“Letter of credit”	12A:5-102.
16	“Merchant”	12A:2-104.
17	“Negotiable instrument”	12A:3-104.
18	“Nominated person”	12A:5-102.
19	“Note”	12A:3-104.
20	“Proceeds of a letter of credit”	12A:5-114.
21	“Prove”	12A:3-103.
22	“Sale”	12A:2-106.
23	“Securities account”	12A:8-501.
24	“Securities intermediary”	12A:8-102.
25	“Security”	12A:8-102.
26	“Security certificate”	12A:8-102.
27	“Security entitlement”	12A:8-102.
28	“Uncertificated security”	12A:8-102.

29 [c.] (c) Chapter 1 definitions and principles. Chapter 1 contains
 30 general definitions and principles of construction and interpretation
 31 applicable throughout this chapter.
 32 (cf: N.J.S.12A:9-102)

33

34 2. N.J.S.12A:9-103 is amended to read as follows:

35 12A:9-103. Purchase-Money Security Interest; Application of
 36 Payments; Burden of Establishing.

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

38 (1) “purchase-money collateral” means goods or software that
 39 [secure] secures a purchase-money obligation incurred with respect
 40 to that collateral; and

41 (2) “purchase-money obligation” means an obligation of an obligor
 42 incurred as all or part of the price of the collateral or for value given
 43 to enable the debtor to acquire rights in or the use of the collateral if
 44 the value is in fact so used.

45 [b.] (b) Purchase-money security interest in goods. A security
 46 interest in goods is a purchase-money security interest:

1 (1) to the extent that the goods are purchase-money collateral with
2 respect to that security interest;

3 (2) if the security interest is in inventory that is or was purchase-
4 money collateral, also to the extent that the security interest secures
5 a purchase-money obligation incurred with respect to other inventory
6 in which the secured party holds or held a purchase-money security
7 interest; and

8 (3) also to the extent that the security interest secures a purchase-
9 money obligation incurred with respect to software in which the
10 secured party holds or held a purchase-money security interest.

11 **[c.] (c)** Purchase-money security interest in software. A security
12 interest in software is a purchase-money security interest to the extent
13 that the security interest also secures a purchase-money obligation
14 incurred with respect to goods in which the secured party holds or
15 held a purchase-money security interest if:

16 (1) the debtor acquired its interest in the software in an integrated
17 transaction in which it acquired an interest in the goods; and

18 (2) the debtor acquired its interest in the software for the principal
19 purpose of using the software in the goods.

20 **[d.] (d)** Consignor's inventory purchase-money security interest.
21 The security interest of a consignor in goods that are the subject of a
22 consignment is a purchase-money security interest in inventory.

23 **[e.] (e)** Application of payment in non-consumer-goods
24 transaction. In a transaction other than a consumer-goods transaction,
25 if the extent to which a security interest is a purchase-money security
26 interest depends on the application of a payment to a particular
27 obligation, the payment **[shall]** must be applied:

28 (1) in accordance with any reasonable method of application to
29 which the parties agree;

30 (2) in the absence of the parties' agreement to a reasonable method,
31 in accordance with any intention of the obligor manifested at or before
32 the time of payment; or

33 (3) in the absence of an agreement to a reasonable method and a
34 timely manifestation of the obligor's intention, in the following order:

35 **[(a)] (A)** to obligations that are not secured; and

36 **[(b)] (B)** if more than one obligation is secured, to obligations
37 secured by purchase-money security interests in the order in which
38 those obligations were incurred.

39 **[f.] (f)** No loss of status of purchase-money security interest in
40 non-consumer-goods transaction. In a transaction other than a
41 consumer-goods transaction, a purchase-money security interest does
42 not lose its status as such, even if:

43 (1) the purchase-money collateral also secures an obligation that is
44 not a purchase-money obligation;

45 (2) collateral that is not purchase-money collateral also secures the
46 purchase-money obligation; or

1 (3) the purchase-money obligation has been renewed, refinanced,
2 consolidated, or restructured.

3 [g.] (g) Burden of proof in non-consumer-goods transaction. In
4 a transaction other than a consumer-goods transaction, a secured party
5 claiming a purchase-money security interest has the burden of
6 establishing the extent to which the security interest is a purchase-
7 money security interest.

8 [h.] (h) Non-consumer-goods transactions; no inference. The
9 limitation of the rules in subsections [e., f., and g. of this section] (e),
10 (f) and (g) to transactions other than consumer-goods transactions is
11 intended to leave to the court the determination of the proper rules in
12 consumer-goods transactions. The court may not infer from that
13 limitation the nature of the proper rule in consumer-goods transactions
14 and may continue to apply established approaches.

15 (cf: N.J.S.12A:9-103)

16

17 3. N.J.S.12A:9-104 is amended to read as follows:

18 12A:9-104. Control of Deposit Account.

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

21 (1) the secured party is the bank with which the deposit account is
22 maintained;

23 (2) the debtor, secured party, and bank have agreed in an
24 authenticated record that the bank will comply with instructions
25 originated by the secured party directing disposition of the funds in the
26 deposit account without further consent by the debtor; or

27 (3) the secured party becomes the bank's customer with respect to
28 the deposit account.

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

32 (cf: N.J.S.12A:9-104)

33

34 4. N.J.S.12A:9-105 is amended to read as follows:

35 12A:9-105. Control of Electronic Chattel Paper.

36 A secured party has control of electronic chattel paper if the record
37 or records comprising the chattel paper are created, stored, and
38 assigned in such a manner that:

39 [a. A] (1) a single authoritative copy of the record or records
40 exists which is unique, identifiable and, except as otherwise provided
41 in paragraphs [d., e. and f.] (4), (5), and (6), unalterable;

42 [b. The] (2) the authoritative copy identifies the secured party as
43 the assignee of the record or records;

44 [c. The] (3) the authoritative copy is communicated to and
45 maintained by the secured party or its designated custodian;

1 [d. Copies] (4) copies or revisions that add or change an identified
2 assignee of the authoritative copy can be made only with the
3 participation of the secured party;

4 [e. Each] (5) each copy of the authoritative copy and any copy of
5 a copy is readily identifiable as a copy that is not the authoritative
6 copy; and

7 [f.] (6) any revision of the authoritative copy is readily identifiable
8 as an authorized or unauthorized revision.

9 (cf: N.J.S.12A:9-105)

10
11 5. N.J.S.12A:9-106 is amended to read as follows:

12 12A:9-106. Control of Investment Property.

13 [a.] (a) Control under 12A:8-106. A person has control of a
14 certificated security, uncertificated security, or security entitlement as
15 provided in 12A:8-106.

16 [b.] (b) Control of commodity contract. A secured party has
17 control of a commodity contract if:

18 (1) the secured party is the commodity intermediary with which the
19 commodity contract is carried; or

20 (2) the commodity customer, secured party, and commodity
21 intermediary have agreed that the commodity intermediary will apply
22 any value distributed on account of the commodity contract as directed
23 by the secured party without further consent by the commodity
24 customer.

25 [c.] (c) Effect of control of securities account or commodity
26 account. A secured party having control of all security entitlements or
27 commodity contracts carried in a securities account or commodity
28 account has control over the securities account or commodity account.

29 (cf: N.J.S.12A:9-106)

30
31 6. N.J.S.12A:9-108 is amended to read as follows:

32 12A:9-108. Sufficiency of Description.

33 [a.] (a) Sufficiency of description. Except as otherwise provided
34 in subsections [c., d., e. and f. of this section] (c), (d), (e) and (f), a
35 description of personal or real property is sufficient, whether or not it
36 is specific, if it reasonably identifies what is described.

37 [b.] (b) Examples of reasonable identification. Except as
38 otherwise provided in subsection [d. of this section] (d), a description
39 of collateral reasonably identifies the collateral if it identifies the
40 collateral by:

41 (1) specific listing;

42 (2) category;

43 (3) except as otherwise provided in subsection [e. of this section]
44 (e), a type of collateral defined in the Uniform Commercial Code;

45 (4) quantity;

1 (5) computational or allocational formula or procedure; or
2 (6) except as otherwise provided in subsection [c. of this section]
3 (c), any other method, if the identity of the collateral is objectively
4 determinable.

5 [c.] (c) Supergeneric description not sufficient. A description of
6 collateral as “all the debtor’s assets” or “all the debtor’s personal
7 property” or using words of similar import does not reasonably
8 identify the collateral.

9 [d.] (d) Investment property. Except as otherwise provided in
10 subsection [e. of this section] (e), a description of a security
11 entitlement, securities account, or commodity account is sufficient if
12 it describes:

- 13 (1) the collateral by those terms or as investment property; or
- 14 (2) the underlying financial asset or commodity contract.

15 [e.] (e) When description by type insufficient. A description only
16 by type of collateral defined in the Uniform Commercial Code is an
17 insufficient description of:

- 18 (1) a commercial tort claim; or
- 19 (2) in a consumer transaction, consumer goods, a security
20 entitlement, a securities account, or a commodity account

21 [f.] (f) Bondable transition property. A description of bondable
22 transition property is sufficient if it refers to the bondable stranded
23 costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51),
24 establishing the bondable transition property.

25 (cf: N.J.S.12A:9-108)

26

27 7. N.J.S.12A:9-109 is amended to read as follows:

28 12A:9-109. Scope.

29 [a.] (a) General scope of chapter. Except as otherwise provided
30 in subsections [c. and d. of this section] (c) and (d), this chapter
31 applies to:

- 32 (1) a transaction, regardless of its form, that creates a security
33 interest in personal property or fixtures by contract;
- 34 (2) an agricultural lien;
- 35 (3) a sale of accounts, chattel paper, payment intangibles, or
36 promissory notes;
- 37 (4) a consignment;
- 38 (5) a security interest arising under 12A:2-401, 12A:2-505,
39 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and
- 40 (6) a security interest arising under 12A:4-210 or 12A:5-118.

41 [b.] (b) Security interest in secured obligation. The application of
42 this chapter to a security interest in a secured obligation is not affected
43 by the fact that the obligation is itself secured by a transaction or
44 interest to which this chapter does not apply.

45 [c.] (c) Extent to which chapter does not apply. This chapter does

1 not apply to the extent that:

2 (1) a statute, regulation, or treaty of the United States preempts
3 this chapter; or

4 (2) another statute of this State expressly governs the creation,
5 perfection, priority, or enforcement of a security interest created by
6 this State or a governmental unit of this State;

7 (3) a statute of another state, a foreign country, or a governmental
8 unit of another state or a foreign country, other than a statute
9 generally applicable to security interests, expressly governs creation,
10 perfection, priority, or enforcement of a security interest created by
11 the state, country, or governmental unit; or

12 (4) the rights of a transferee beneficiary or nominated person under
13 a letter of credit are independent and superior under 12A:5-114.

14 **[d.] (d)** Inapplicability of chapter. This chapter does not apply to:

15 (1) a landlord's lien, other than an agricultural lien;

16 (2) a lien, other than an agricultural lien, given by statute or other
17 rule of law for services or materials, but 12A:9-333 applies with
18 respect to priority of the lien;

19 (3) an assignment of a claim for wages, salary, or other
20 compensation of an employee;

21 (4) a sale of accounts, chattel paper, payment intangibles, or
22 promissory notes as part of a sale of the business out of which they
23 arose;

24 (5) an assignment of accounts, chattel paper, payment intangibles,
25 or promissory notes which is for the purpose of collection only;

26 (6) an assignment of a right to payment under a contract to an
27 assignee that is also obligated to perform under the contract;

28 (7) an assignment of a single account, payment intangible, or
29 promissory note to an assignee in full or partial satisfaction of a
30 preexisting indebtedness;

31 (8) a transfer of an interest in or an assignment of a claim under
32 a policy of insurance, other than an assignment by or to a health-care
33 provider of a health-care-insurance receivable and any subsequent
34 assignment of the right to payment, but 12A:9-315 and 12A:9-322
35 apply with respect to proceeds and priorities in proceeds;

36 (9) an assignment of a right represented by a judgment, other than
37 a judgment taken on a right to payment that was collateral;

38 (10) a right of recoupment or set-off, but:

39 **[(a)] (A)** 12A:9-340 applies with respect to the effectiveness of
40 rights of recoupment or set-off against deposit accounts; and

41 **[(b)] (B)** 12A:9-404 applies with respect to defenses or claims of
42 an account debtor;

43 (11) the creation or transfer of an interest in or lien on real
44 property, including a lease or rents thereunder, except to the extent
45 that provision is made for:

46 **[(a)] (A)** liens on real property in 12A:9-203 and 12A:9-308;

- 1 **[(b)] (B)** fixtures in 12A:9-334; and
2 **[(c)] (C)** fixture filings in 12A:9-501, 12A:9-502, 12A:9-512
3 **[and],** 12A:9-516 and 12A:9-519; and
4 **[(d)] (D)** security agreements covering personal and real property
5 in 12A:9-604;
6 (12) an assignment of a claim arising in tort, other than a
7 commercial tort claim, but 12A:9-315 and 12A:9-322 apply with
8 respect to proceeds and priorities in proceeds;
9 (13) an assignment of a deposit account in a consumer transaction,
10 but 12A:9-315 and 12A:9-322 apply with respect to proceeds and
11 priorities in proceeds; or
12 (14) a transfer by a government or governmental unit.
13 (cf: N.J.S.12A:9-109)

14

15 8. N.J.S.12A:9-201 is amended to read as follows:

16 12A:9-201. General Effectiveness of Security Agreement.

17 **[a.] (a)** General effectiveness. Except as otherwise provided in the
18 Uniform Commercial Code, a security agreement is effective according
19 to its terms between the parties, against purchasers of the collateral,
20 and against creditors.

21 **[b.] (b)** Applicable consumer laws and other law. A transaction
22 subject to this chapter is subject to any applicable rule of law which
23 establishes a different rule for consumers and to (1) any other statute
24 or regulation of this State that regulates the rates, charges,
25 agreements, and practices for loans, credit sales, or other extensions
26 of credit and (2) any consumer protection statute or regulation of this
27 State.

28 **[c.] (c)** Other applicable law controls. In case of conflict between
29 this chapter and a rule of law, statute, or regulation described in
30 subsection **[b. of this section] (b)**, the rule of law, statute, or
31 regulation controls. Failure to comply with a statute or regulation
32 described in subsection **[b.] (b)** has only the effect the statute or
33 regulation specifies.

34 **[d.] (d)** Further deference to other applicable law. This chapter
35 does not:

36 (1) validate any rate, charge, agreement, or practice that violates
37 a rule of law, statute, or regulation described in subsection **[b. of this**
38 **section] (b)**; or

39 (2) extend the application of the rule of law, statute, or regulation
40 to a transaction not otherwise subject to it.

41 (cf: N.J.S.12A:9-201)

42

43 9. N.J.S.12A:9-203 is amended to read as follows:

44 12A:9-203. Attachment and Enforceability of Security Interest;
45 Proceeds; Supporting Obligations; Formal Requisites.

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

5 **[b.] (b)** Enforceability. Except as otherwise provided in
6 subsections **[c.] (c)** through **[i. of this section] (i)**, a security interest
7 is enforceable against the debtor and third parties with respect to the
8 collateral only if :

9 (1) value has been given;

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

12 (3) one of the following conditions is met:

13 **[(a)] (A)** the debtor has authenticated a security agreement that
14 provides a description of the collateral and, if the security interest
15 covers timber to be cut, a description of the land concerned;

16 **[(b)] (B)** the collateral is not a certificated security and is in the
17 possession of the secured party under 12A:9-313 pursuant to the
18 debtor's security agreement;

19 **[(c)] (C)** the collateral is a certificated security in registered form
20 and the security certificate has been delivered to the secured party
21 under 12A:8-301 pursuant to the debtor's security agreement; or

22 **[(d)] (D)** the collateral is deposit accounts, electronic chattel
23 paper, investment property, or letter-of-credit rights, and the secured
24 party has control under 12A:9-104, 12A:9-105, 12A:9-106, or
25 12A:9-107 pursuant to the debtor's security agreement.

26 **[c.] (c)** Other Uniform Commercial Code provisions. Subsection
27 **[b. of this section] (b)** is subject to 12A:4-210 on the security interest
28 of a collecting bank, 12A:5-118 on the security interest of a letter-of-
29 credit issuer or nominated person, 12A:9-110 on a security interest
30 arising under Chapter 2 or 2A, and 12A:9-206 on security interests in
31 investment property.

32 **[d.] (d)** When person becomes bound by another person's security
33 agreement. A person becomes bound as debtor by a security
34 agreement entered into by another person if, by operation of law other
35 than this chapter or by contract:

36 (1) the security agreement becomes effective to create a security
37 interest in the person's property; or

38 (2) the person becomes generally obligated for the obligations of
39 the other person, including the obligation secured under the security
40 agreement, and acquires or succeeds to all or substantially all of the
41 assets of the other person.

42 **[e.] (e)** Effect of new debtor becoming bound. If a new debtor
43 becomes bound as debtor by a security agreement entered into by
44 another person:

45 (1) the agreement satisfies **[paragraph (3) of]** subsection **[b. of]**

1 this section] (b)(3) with respect to existing or after-acquired property
2 of the new debtor to the extent the property is described in the
3 agreement; and

4 (2) another agreement is not necessary to make a security interest
5 in the property enforceable.

6 [f.] (f) Proceeds and supporting obligations. The attachment of
7 a security interest in collateral gives the secured party the rights to
8 proceeds provided by 12A:9-315 and is also attachment of a security
9 interest in a supporting obligation for the collateral.

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

15 [h.] (h) Security entitlement carried in securities account. The
16 attachment of a security interest in a securities account is also
17 attachment of a security interest in the security entitlements carried in
18 the securities account.

19 [i.] (i) Commodity contracts carried in commodity account. The
20 attachment of a security interest in a commodity account is also
21 attachment of a security interest in the commodity contracts carried in
22 the commodity account.

23 [j.] (j) Bondable transition property. Bondable transition property
24 is presently existing property for all purposes, including for purposes
25 of [paragraph (2) of] subsection [b. of this section] (b)(2) , whether
26 or not the revenues and proceeds arising under the property have
27 accrued and notwithstanding that the value of the property may
28 depend upon customer use of electricity or performance of service by
29 electric public utilities, or both.

30 (cf: N.J.S.12A:9-203)

31

32 10. N.J.S.12A:9-204 is amended to read as follows:

33 12A:9-204. After-acquired Property; Future Advances.

34 [a.] (a) After-acquired collateral. Except as otherwise provided
35 in subsection [b. of this section] (b), a security agreement may create
36 or provide for a security interest in after-acquired collateral.

37 [b.] (b) When after-acquired property clause not effective. A
38 security interest does not attach under a term constituting an
39 after-acquired property clause to:

40 (1) consumer goods, other than an accession when given as
41 additional security, unless the debtor acquires rights in them within 10
42 days after the secured party gives value; or

43 (2) a commercial tort claim.

44 [c.] (c) Future advances and other value. A security agreement
45 may provide that collateral secures, or that accounts, chattel paper,

1 payment intangibles, or promissory notes are sold in connection with,
2 future advances or other value, whether or not the advances or value
3 are given pursuant to commitment.

4 (cf: N.J.S.12A:9-204)

5
6 11. N.J.S.12A:9-205 is amended to read as follows:

7 12A:9-205. Use or Disposition of Collateral Permissible.

8 **[a.]** (a) When security interest not invalid or fraudulent. A
9 security interest is not invalid or fraudulent against creditors solely
10 because:

11 (1) the debtor has the right or ability to:

12 **[(a)]** (A) use, commingle, or dispose of all or part of the
13 collateral, including returned or repossessed goods;

14 **[(b)]** (B) collect, compromise, enforce, or otherwise deal with
15 collateral;

16 **[(c)]** (C) accept the return of collateral or make repossessions; or

17 **[(d)]** (D) use, commingle, or dispose of proceeds; or

18 (2) the secured party fails to require the debtor to account for
19 proceeds or replace collateral.

20 **[b.]** (b) Requirements of possession not relaxed. This section
21 does not relax the requirements of possession if attachment,
22 perfection, or enforcement of a security interest depends upon
23 possession of the collateral by the secured party.

24 (cf: N.J.S.12A:9-205)

25
26 12. N.J.S.12A:9-206 is amended to read as follows:

27 12A:9-206. Security Interest Arising in Purchase or Delivery of
28 Financial Asset.

29 **[a.]** (a) Security interest when person buys through securities
30 intermediary. A security interest in favor of a securities intermediary
31 attaches to a person's security entitlement if:

32 (1) the person buys a financial asset through the securities
33 intermediary in a transaction in which the person is obligated to pay
34 the purchase price to the securities intermediary at the time of the
35 purchase; and

36 (2) the securities intermediary credits the financial asset to the
37 buyer's securities account before the buyer pays the securities
38 intermediary.

39 **[b.]** (b) Security interest secures obligation to pay for financial
40 asset. The security interest described in subsection **[a. of this section]**
41 (a) secures the person's obligation to pay for the financial asset.

42 **[c.]** (c) Security interest in payment against delivery transaction.
43 A security interest in favor of a person **[who]** that delivers a
44 certificated security or other financial asset represented by a writing
45 attaches to the security or other financial asset if:

1 (1) the security or other financial asset:
2 [(a)] (A) in the ordinary course of business is transferred by
3 delivery with any necessary indorsement or assignment; and
4 [(b)] (B) is delivered under an agreement between persons in the
5 business of dealing with such securities or financial assets; and
6 (2) the agreement calls for delivery against payment.
7 [(d.)] (d) Security interest secures obligation to pay for delivery.
8 The security interest described in subsection [c. of this section] (c)
9 secures the obligation to make payment for the delivery.
10 (cf: N.J.S.12A:9-206)

11

12 13. N.J.S.12A:9-207 is amended to read as follows:
13 [12A:9-207. BLANK.]
14 (cf: N.J.S.12A:9-207)

15

16 14. N.J.S.12A:9-208 is amended to read as follows:
17 [12A:9-208.] 12A:9-207. Rights and Duties of Secured Party
18 Having Possession or Control of Collateral.

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

25 [b.] (b) Expenses, risks, duties, and rights when secured party in
26 possession. Except as otherwise provided in subsection [d. of this
27 section] (d), if a secured party has possession of collateral:

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

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

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

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

37 [(a)] (A) for the purpose of preserving the collateral or its value;

38 [(b)] (B) as permitted by an order of a court having competent
39 jurisdiction; or

40 [(c)] (C) except in the case of consumer goods, in the manner and
41 to the extent agreed by the debtor.

42 [c.] (c) Duties and rights when secured party in possession or
43 control. Except as otherwise provided in subsection [d. of this
44 section] (d), a secured party having possession of collateral or control
45 of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

9 (1) subsection a. of this section does not apply unless the secured
10 party is entitled under an agreement:

11 **[(a)] (A)** to charge back uncollected collateral; or

12 **[(b)] (B)** otherwise to full or limited recourse against the debtor
13 or a secondary obligor based on the nonpayment or other default of an
14 account debtor or other obligor on the collateral; and

15 (2) subsections **[b. and c. of this section] (b) and (c)** do not apply.
16 (cf: N.J.S.12A:9-208)

17

18 15. N.J.S.12A:9-209 is amended to read as follows:

19 **[12A:9-209.] 12A:9-208.** Additional Duties of Secured Party
20 Having Control of Collateral.

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

25 **[b.] (b)** Duties of secured party after receiving demand from
26 debtor. Within 10 days after receiving an authenticated demand by the
27 debtor:

28 (1) a secured party having control of a deposit account under
29 12A:9-104 **[a.] (a)** (2) shall send to the bank with which the deposit
30 account is maintained an authenticated statement that releases the bank
31 from any further obligation to comply with instructions originated by
32 the secured party;

33 (2) a secured party having control of a deposit account under
34 12A:9-104 **[a.] (a)** (3) shall:

35 **[(a)] (A)** pay the debtor the balance on deposit in the deposit
36 account; or

37 **[(b)] (B)** transfer the balance on deposit into a deposit account in
38 the debtor's name;

39 (3) a secured party, other than a buyer, having control of electronic
40 chattel paper under 12A:9-105 shall:

41 **[(a)] (A)** communicate the authoritative copy of the electronic
42 chattel paper to the debtor or its designated custodian;

43 **[(b)] (B)** if the debtor designates a custodian that is the designated
44 custodian with which the authoritative copy of the electronic chattel
45 paper is maintained for the secured party, communicate to the

1 custodian an authenticated record releasing the designated custodian
2 from any further obligation to comply with instructions originated by
3 the secured party and instructing the custodian to comply with
4 instructions originated by the debtor; and

5 [(c)] (C) take appropriate action to enable the debtor or its
6 designated custodian to make copies of or revisions to the
7 authoritative copy which add or change an identified assignee of the
8 authoritative copy without the consent of the secured party;

9 (4) a secured party having control of investment property under
10 12A:8-106 d. (2) or 12A:9-106 [b.] (b) shall send to the securities
11 intermediary or commodity intermediary with which the security
12 entitlement or commodity contract is maintained an authenticated
13 record that releases the securities intermediary or commodity
14 intermediary from any further obligation to comply with entitlement
15 orders or directions originated by the secured party; and

16 (5) a secured party having control of a letter-of-credit right under
17 12A:9-107 shall send to each person having an unfulfilled obligation
18 to pay or deliver proceeds of the letter of credit to the secured party
19 an authenticated release from any further obligation to pay or deliver
20 proceeds of the letter of credit to the secured party.

21 (cf: N.J.S.12A:9-209)

22
23 16. N.J.S.12A:9-210 is amended to read as follows:

24 [12A:9-210.] 12A:9-209 Duties of Secured Party If Account
25 Debtor Has Been Notified of Assignment.

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

28 (1) there is no outstanding secured obligation; and

29 (2) the secured party is not committed to make advances, incur
30 obligations, or otherwise give value.

31 [b.] (b) Duties of secured party after receiving demand from
32 debtor. Within 10 days after receiving an authenticated demand by the
33 debtor, a secured party shall send to an account debtor that has
34 received notification of an assignment to the secured party as assignee
35 under 12A:9-406 [a.] (a) an authenticated record that releases the
36 account debtor from any further obligation to the secured party.

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

40 (cf: N.J.S.12A:9-210)

41
42 17. N.J.S.12A:9-211 is amended to read as follows:

43 [12A:9-211.] 12A:9-210. Request for Accounting; Request
44 Regarding List of Collateral or Statement of Account.

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

1 (1) "Request" means a record of a type described in paragraph (2),
2 (3), or (4) [of this section].

3 (2) "Request for an accounting" means a record authenticated by
4 a debtor requesting that the recipient provide an accounting of the
5 unpaid obligations secured by collateral and reasonably identifying the
6 transaction or relationship that is the subject of the request.

7 (3) "Request regarding a list of collateral" means a record
8 authenticated by a debtor requesting that the recipient approve or
9 correct a list of what the debtor believes to be the collateral securing
10 an obligation and reasonably identifying the transaction or relationship
11 that is the subject of the request.

12 (4) "Request regarding a statement of account" means a record
13 authenticated by a debtor requesting that the recipient approve or
14 correct a statement indicating what the debtor believes to be the
15 aggregate amount of unpaid obligations secured by collateral as of a
16 specified date and reasonably identifying the transaction or relationship
17 that is the subject of the request.

18 [b.] (b) Duty to respond to requests. Subject to subsections [c.,
19 d., e. and f. of this section] (c), (d), (e), and (f), a secured party, other
20 than a buyer of accounts, chattel paper, payment intangibles, or
21 promissory notes or a consignor, shall comply with a request within 14
22 days after receipt:

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

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

28 [c.] (c) Request regarding list of collateral; statement concerning
29 type of collateral. A secured party that claims a security interest in all
30 of a particular type of collateral owned by the debtor may comply with
31 a request regarding a list of collateral by sending to the debtor an
32 authenticated record including a statement to that effect within 14 days
33 after receipt.

34 [d.] (d) Request regarding list of collateral; no interest claimed.
35 A person [who] that receives a request regarding a list of collateral,
36 claims no interest in the collateral when it receives the request, and
37 claimed an interest in the collateral at an earlier time shall comply with
38 the request within 14 days after receipt by sending to the debtor an
39 authenticated record:

40 (1) disclaiming any interest in the collateral; and

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

44 [e.] (e) Request for accounting or regarding statement of account;
45 no interest in obligation claimed. A person [who] that receives a

1 request for an accounting or a request regarding a statement of
2 account, claims no interest in the obligations when it receives the
3 request, and claimed an interest in the obligations at an earlier time
4 shall comply with the request within 14 days after receipt by sending
5 to the debtor an authenticated record:

6 (1) disclaiming any interest in the obligations; and

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

10 [f.] (f) Charges for responses. A debtor is entitled without charge
11 to one response to a request under this section during any six-month
12 period. The secured party may require payment of a charge not
13 exceeding \$25 for each additional response.

14 (cf: N.J.S.12A:9-211)

15

16 18. N.J.S.12A:9-301 is amended to read as follows:

17 12A:9-301. Law Governing Perfection and Priority of Security
18 Interests.

19 Except as otherwise provided in sections 12A:9-303 through
20 12A:9-306, the following rules determine the law governing
21 perfection, the effect of perfection or nonperfection, and the priority
22 of a security interest in collateral:

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

27 [b.] (2) While collateral is located in a jurisdiction, the local law
28 of that jurisdiction governs perfection, the effect of perfection or
29 nonperfection, and the priority of a possessory security interest in that
30 collateral.

31 [c.] (3) Except as otherwise provided in [subsection d. of this
32 section] paragraph (4), while negotiable documents, goods,
33 instruments, money, or tangible chattel paper [are] is located in a
34 jurisdiction, the local law of that jurisdiction governs:

35 [(1) the] (A) perfection of a security interest in the goods by filing
36 a fixture filing;

37 [(2) the] (B) perfection of a security interest in timber to be cut;
38 and

39 [(3)] (C) the effect of perfection or nonperfection and the priority
40 of a nonpossessory security interest in the collateral.

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

45 [e.] (5) Notwithstanding [subsection a. of this section] paragraph

1 (1), the local law of this State shall govern the perfection, the effect of
2 perfection or nonperfection, and the priority of a security interest in
3 bondable transition property.

4 (cf: N.J.S.12A:9-301)

5
6 19. N.J.S.12A:9-303 is amended to read as follows:

7 12A:9-303. Law Governing Perfection and Priority of Security
8 Interests in Goods Covered by a Certificate of Title.

9 [a.] (a) Applicability of section. This section applies to goods
10 covered by a certificate of title, even if there is no other relationship
11 between the jurisdiction under whose certificate of title the goods are
12 covered and the goods or the debtor.

13 [b.] (b) When goods covered by certificate of title. Goods
14 become covered by a certificate of title when a valid application for
15 the certificate of title and the applicable fee are delivered to the
16 appropriate authority. Goods cease to be covered by a certificate of
17 title at the earlier of the time the certificate of title ceases to be
18 effective under the law of the issuing jurisdiction [and] or the time the
19 goods become covered subsequently by a certificate of title issued by
20 another jurisdiction.

21 [c.] (c) Applicable law. The local law of the jurisdiction under
22 whose certificate of title the goods are covered governs perfection, the
23 effect of perfection or nonperfection, and the priority of a security
24 interest in goods covered by a certificate of title from the time the
25 goods become covered by the certificate of title until the goods cease
26 to be covered by the certificate of title.

27 (cf: N.J.S.12A:9-303)

28
29 20. N.J.S.12A:9-304 is amended to read as follows:

30 12A:9-304. Law Governing Perfection and Priority of Security
31 Interests in Deposit Accounts.

32 [a.] (a) Law of bank's jurisdiction governs. The local law of a
33 bank's jurisdiction governs perfection, the effect of perfection or
34 nonperfection, and the priority of a security interest in a deposit
35 account maintained with that bank.

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

38 (1) If an agreement between the bank and [the debtor] its
39 customer governing the deposit account expressly provides that a
40 particular jurisdiction is the bank's jurisdiction for purposes of this
41 part, this chapter, or the Uniform Commercial Code, that jurisdiction
42 is the bank's jurisdiction.

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

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

6 (4) If none of the preceding paragraphs [(1) through (3) of this
7 subsection] applies, the bank's jurisdiction is the jurisdiction in which
8 the office identified in an account statement as the office serving the
9 customer's account is located.

10 (5) If none of the preceding paragraphs [(1) through (4) of this
11 subsection] applies, the bank's jurisdiction is the jurisdiction in which
12 the chief executive office of the bank is located.

13 (cf: N.J.S.12A:9-304)

14
15 21. N.J.S.12A:9-305 is amended to read as follows:

16 12A:9-305. Law Governing Perfection and Priority of Security
17 Interests in Investment Property.

18 [a.] (a) Governing law: general rules. Except as otherwise
19 provided in subsection [c. of this section] (c), the following rules
20 apply:

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

25 (2) The local law of the issuer's jurisdiction as specified in [of]
26 12A:8-110 d. governs perfection, the effect of perfection or
27 nonperfection, and the priority of a security interest in an
28 uncertificated security.

29 (3) The local law of the securities intermediary's jurisdiction as
30 specified in 12A:8-110 e. governs perfection, the effect of perfection
31 or nonperfection, and the priority of a security interest in a security
32 entitlement or securities account.

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

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

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

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

6 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
7 applies and an agreement between the commodity intermediary and
8 commodity customer governing the commodity account expressly
9 provides that the commodity account is maintained at an office in a
10 particular jurisdiction, that jurisdiction is the commodity intermediary's
11 jurisdiction.

12 (4) If none of the preceding paragraphs [(1) through (3) of this
13 subsection] applies, the commodity intermediary's jurisdiction is the
14 jurisdiction in which the office identified in an account statement as the
15 office serving the commodity customer's account is located.

16 (5) If none of the preceding paragraphs [(1) through (4) of this
17 subsection] applies, the commodity intermediary's jurisdiction is the
18 jurisdiction in which the chief executive office of the commodity
19 intermediary is located.

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

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

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

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

28 (cf: N.J.S.12A:9-305)

29

30 22. N.J.S.12A:9-306 is amended to read as follows:

31 12A:9-306. Law Governing Perfection and Priority of Security
32 Interests in Letter-of-Credit Rights.

33 [a.] (a) Governing law: issuer's or nominated person's jurisdiction.
34 Subject to subsection [c. of this section] (c), the local law of the
35 issuer's jurisdiction or a nominated person's jurisdiction governs
36 perfection, the effect of perfection or nonperfection, and the priority
37 of a security interest in a letter-of-credit right if the issuer's jurisdiction
38 or nominated person's jurisdiction is a state.

39 [b.] (b) Issuer's or nominated person's jurisdiction. For purposes
40 of this part, an issuer's jurisdiction or nominated person's jurisdiction
41 is the jurisdiction whose law governs the liability of the issuer or
42 nominated person with respect to the letter-of-credit right as provided
43 in 12A:5-116.

44 [c.] (c) When section not applicable. This section does not apply
45 to a security interest that is perfected only under 12A:9-308 [d.] (d).
46 (cf: N.J.S.12A:9-306)

1 23. N.J.S.12A:9-307 is amended to read as follows:

2 12A:9-307. Location of Debtor.

3 [a.] (a) "Place of business." In this section, "place of business"
4 means a place where a debtor conducts its affairs.

5 [b.] (b) Debtor's location: general rules. Except as otherwise
6 provided in this section, the following rules determine a debtor's
7 location:

8 (1) A debtor who is an individual is located at the individual's
9 principal residence.

10 (2) A debtor that is an organization and has only one place of
11 business is located at its place of business.

12 (3) A debtor that is an organization and has more than one place
13 of business is located at its chief executive office.

14 [c.] (c) Limitation of applicability of subsection [b.] (b).
15 Subsection [b. of this section] (b) applies only if a debtor's residence,
16 place of business, or chief executive office, as applicable, is located in
17 a jurisdiction whose law generally requires information concerning the
18 existence of a nonpossessory security interest to be made generally
19 available in a filing, recording, or registration system as a condition or
20 result of the security interest's obtaining priority over the rights of a
21 lien creditor with respect to the collateral. If subsection [b.] (b) does
22 not apply, the debtor is located in the District of Columbia.

23 [d.] (d) Continuation of location: cessation of existence, etc. A
24 person [who] that ceases to exist, have a residence, or have a place
25 of business continues to be located in the jurisdiction specified by
26 subsections [b. and c of this section] (b) and (c).

27 [e.] (e) Location of registered organization organized under state
28 law. A registered organization that is organized under the law of a
29 state is located in that state.

30 [f.] (f) Location of registered organization organized under federal
31 law; bank branches and agencies. Except as otherwise provided in
32 subsection [i. of this section] (i), a registered organization that is
33 organized under the law of the United States and a branch or agency
34 of a bank that is not organized under the law of the United States or
35 a state are located:

36 (1) in the state that the law of the United States designates, if the
37 law designates a state of location;

38 (2) in the state that the registered organization, branch, or agency
39 designates, if the law of the United States authorizes the registered
40 organization, branch, or agency to designate its state of location; or

41 (3) in the District of Columbia, if neither paragraph (1) nor
42 paragraph (2) [of this subsection] applies.

43 [g.] (g) Continuation of location: change in status of registered
44 organization. A registered organization continues to be located in the
45 jurisdiction specified by subsection [e. or f. of this section] (e) or (f)
46 notwithstanding:

1 (1) the suspension, revocation, forfeiture, or lapse of the registered
2 organization's status as such in its jurisdiction of organization; or

3 (2) the dissolution, winding up, or cancellation of the existence of
4 the registered organization.

5 [h.] (h) Location of United States. The United States is located
6 in the District of Columbia.

7 [i.] (i) Location of foreign bank branch or agency if licensed in
8 only one state. A branch or agency of a bank that is not organized
9 under the law of the United States or a state is located in the state in
10 which the branch or agency is licensed, if all branches and agencies of
11 the bank are licensed in only one state.

12 [j.] (j) Location of foreign air carrier. A foreign air carrier
13 [covered] under the Federal Aviation Act of 1958, as amended (49
14 U.S.C. s.1301 et seq.), is located at the designated office of the agent
15 upon which service of process may be made on behalf of the carrier.

16 [k.] (k) Section applies only to this part. This section applies only
17 for purposes of this part.

18 (cf: N.J.S.12A:9-307)

19
20 24. N.J.S.12A:9-308 is amended to read as follows:

21 12A:9-308. When Security Interest or Agricultural Lien Is
22 Perfected; Continuity of Perfection.

23 [a.] (a) Perfection of security interest. Except as otherwise
24 provided in this section and 12A:9-309, a security interest is perfected
25 if it has attached and all of the applicable requirements for perfection
26 in 12A:9-310 through 12A:9-316 have been satisfied. A security
27 interest is perfected when it attaches if the applicable requirements are
28 satisfied before the security interest attaches.

29 [b.] (b) Perfection of agricultural lien. An agricultural lien is
30 perfected if it has become effective and all of the applicable
31 requirements for perfection in 12A:9-310 have been satisfied. An
32 agricultural lien is perfected when it becomes effective if the applicable
33 requirements are satisfied before the agricultural lien becomes
34 effective.

35 [c.] (c) Continuous perfection; perfection by different methods.
36 A security interest or agricultural lien is perfected continuously if it is
37 originally perfected by one method under this chapter and is later
38 perfected by another method under this chapter, without an
39 intermediate period when it was unperfected.

40 [d.] (d) Supporting obligation. Perfection of a security interest in
41 collateral also perfects a security interest in a supporting obligation for
42 the collateral.

43 [e.] (e) Lien securing right to payment. Perfection of a security
44 interest in a right to payment or performance also perfects a security
45 interest in a security interest, mortgage, or other lien on personal or
46 real property securing the right.

1 [f.] (f) Security entitlement carried in securities account.
2 Perfection of a security interest in a securities account also perfects a
3 security interest in the security entitlements carried in the securities
4 account.

5 [g.] (g) Commodity contract carried in commodity account.
6 Perfection of a security interest in a commodity account also perfects
7 a security interest in the commodity contracts carried in the
8 commodity account.
9 (cf: N.J.S.12A:9-308)

10

11 25. N.J.S.12A:9-309 is amended to read as follows:

12 12A:9-309. Security Interest Perfected upon Attachment.

13 The following security interests are perfected when they attach:

14 [a.] (1) a purchase-money security interest in consumer goods,
15 except as otherwise provided in 12A:9-311 [b.] (b) with respect to
16 consumer goods that are subject to a statute or treaty described in
17 12A:9-311 [a.] (a);

18 [b.] (2) an assignment of accounts or payment intangibles which
19 does not by itself or in conjunction with other assignments to the same
20 assignee transfer a significant part of the assignor's outstanding
21 accounts or payment intangibles;

22 [c.] (3) a sale of a payment intangible;

23 [d.] (4) a sale of a promissory note;

24 [e.] (5) a security interest created by the assignment of a
25 health-care-insurance receivable to the provider of the health-care
26 goods or services;

27 [f.] (6) a security interest arising under 12A:2-401, 12A:2-505,
28 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of
29 the collateral;

30 [g.] (7) security interest of a collecting bank arising under
31 12A:4-210;

32 [h.] (8) a security interest of an issuer or nominated person arising
33 under 12A:5-118;

34 (9) a security interest arising in the delivery of a financial asset
35 under 12A:9-206 [c.] (c);

36 [i.] (10) a security interest in investment property created by a
37 broker or securities intermediary;

38 [j.] (11) a security interest in a commodity contract or a
39 commodity account created by a commodity intermediary;

40 [k.] (12) An assignment for the benefit of all creditors of the
41 transferor and subsequent transfers by the assignee thereunder; and

42 [l.] (13) A security interest created by an assignment of a
43 beneficial interest in a decedent's estate.

44 (cf: N.J.S.12A:9-309)

45

46 26. N.J.S.12A:9-310 is amended to read as follows:

1 12A:9-310. When Filing Required to Perfect Security Interest or
2 Agricultural Lien; Security Interests and Agricultural Liens to Which
3 Filing Provisions Do Not Apply.

4 [a.] (a) General rule: perfection by filing. Except as otherwise
5 provided in subsection [b. of this section] (b) and 12A:9-312 [b.] (b),
6 a financing statement [shall] must be filed to perfect all security
7 interests and agricultural liens.

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

10 (1) that is perfected under [subsections d., e., f. or g. of]
11 12A:9-308 (d), (e), (f) or (g);

12 (2) that is perfected under 12A:9-309 when it attaches;

13 (3) in property subject to a statute, regulation, or treaty described
14 in of 12A:9-311 [a.] (a);

15 (4) in goods in possession of a bailee which is perfected under
16 12A:9-312 [d.] (d) (1) or (2);

17 (5) in certificated securities, documents, goods, or instruments
18 which is perfected without filing or possession under [subsection e.,
19 f. or g. of] 12A:9-312 (e), (f) or (g);

20 (6) in collateral in the secured party's possession under 12A:9-313;

21 (7) in a certificated security which is perfected by delivery of the
22 security certificate to the secured party under 12A:9-313;

23 (8) in deposit accounts, electronic chattel paper, investment
24 property, or letter-of-credit rights which is perfected by control under
25 12A:9-314;

26 (9) in proceeds which is perfected under 12A:9-315; or

27 (10) that is perfected under 12A:9-316.

28 [c.] (c) Assignment of perfected security interest. If a secured
29 party assigns a perfected security interest or agricultural lien, a filing
30 under this chapter is not required to continue the perfected status of
31 the security interest against creditors of and transferees from the
32 original debtor.

33 (cf: N.J.S.12A:9-310)

34

35 27. N.J.S.12A:9-311 is amended to read as follows:

36 12A:9-311. Perfection of Security Interests in Property Subject to
37 Certain Statutes, Regulations, and Treaties.

38 [a.] (a) Security interest subject to other law. Except as otherwise
39 provided in subsection [d. of this section] (d), the filing of a financing
40 statement is not necessary or effective to perfect a security interest in
41 property subject to:

42 (1) a statute, regulation, or treaty of the United States whose
43 requirements for a security interest's obtaining priority over the rights
44 of a lien creditor with respect to the property preempt 12A:9-310 [a.]
45 (a);

46 (2) the "motor vehicle certificate of ownership law," R.S.39:10-1

1 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152
2 (C.12:7A-1 et seq.) or successor statutes or law; or

3 (3) a certificate-of-title statute of another jurisdiction which
4 provides for a security interest to be indicated on the certificate as a
5 condition or result of the security interest's obtaining priority over the
6 rights of a lien creditor with respect to the property.

7 [b.] (b) Compliance with other law. Compliance with the
8 requirements of a statute, regulation, or treaty described in subsection
9 [a. of this section] (a) for obtaining priority over the rights of a lien
10 creditor is equivalent to the filing of a financing statement under this
11 chapter. Except as otherwise provided in subsection [d. of this
12 section] (d), 12A:9-313 and [subsections d. and e. of] 12A:9-316 (d)
13 and (e) for goods covered by a certificate of title, a security interest in
14 property subject to a statute, regulation, or treaty described in
15 subsection [a. of this section] (a) may be perfected only by
16 compliance with those requirements, and a security interest so
17 perfected remains perfected notwithstanding a change in the use or
18 transfer of possession of the collateral.

19 [c.] (c) Duration and renewal of perfection. Except as otherwise
20 provided in subsection [d. of this section] (d) and [subsections d. and
21 e. of] 12A:9-316 (d) and (e), duration and renewal of perfection of a
22 security interest perfected by compliance with the requirements
23 prescribed by a statute, regulation, or treaty described in subsection
24 [a.] (a) are governed by the statute, regulation, or treaty. In other
25 respects, the security interest is subject to this chapter.

26 [d.] (d) Inapplicability to certain inventory. During any period in
27 which collateral subject to a statute specified in subsection (a) (2) is
28 inventory held for sale or lease by a person or leased by that person as
29 lessor and that person is in the business of selling [or leasing] goods
30 of that kind, this section does not apply to a security interest in that
31 collateral created by that person [as debtor].

32 (cf: N.J.S.12A:9-311)

33

34 28. N.J.S.12A:9-312 is amended to read as follows:

35 12A:9-312. Perfection of Security Interests in Chattel Paper,
36 Deposit Accounts, Documents, Goods Covered by Documents,
37 Instruments, Investment Property, Letter-of-credit Rights, and Money;
38 Perfection by Permissive Filing; Temporary Perfection Without Filing
39 or Transfer of Possession.

40 [a.] (a) Perfection by filing permitted. A security interest in
41 chattel paper, negotiable documents, instruments, or investment
42 property may be perfected by filing.

43 [b.] (b) Control or possession of certain collateral. Except as
44 otherwise provided in [subsections c. and d. of] 12A:9-315 (c) and
45 (d) for proceeds:

46 (1) a security interest in a deposit account may be perfected only

1 by control under 12A:9-314;

2 (2) and except as otherwise provided in 12A:9-308 [d.] (d), a
3 security interest in a letter-of-credit right may be perfected only by
4 control under 12A:9-314; and

5 (3) a security interest in money may be perfected only by the
6 secured party's taking possession under 12A:9-313.

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

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

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

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

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

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

21 or

22 (3) filing as to the goods.

23 [e.] (e) Temporary perfection: new value. A security interest in
24 certificated securities, negotiable documents, or instruments is
25 perfected without filing or the taking of possession for a period of 20
26 days from the time it attaches to the extent that it arises for new value
27 given under an authenticated security agreement.

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

34 (1) ultimate sale or exchange; or

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

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

43 (1) ultimate sale or exchange; or

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

46 [h.] (h) Expiration of temporary perfection. After the 20-day

1 period specified in subsection [e., f. or g. of this section] (e), (f) or
2 (g) expires, perfection depends upon compliance with this chapter.
3 (cf: N.J.S.12A:9-312)

4

5 29. N.J.S.12A:9-313 is amended to read as follows:

6 12A:9-313. When Possession by or Delivery to Secured Party
7 Perfects Security Interest Without Filing.

8 [a.] (a) Perfection by possession or delivery. Except as otherwise
9 provided in subsection [b.] (b), a secured party may perfect a security
10 interest in negotiable documents, goods, instruments, money, or
11 tangible chattel paper by taking possession of the collateral. A secured
12 party may perfect a security interest in certificated securities by taking
13 delivery of the certificated securities under 12A:8-301.

14 [b.] (b) Goods covered by certificate of title. With respect to
15 goods covered by a certificate of title issued by this State, a secured
16 party may perfect a security interest in the goods by taking possession
17 of the goods only in the circumstances described in 12A:9-316 [d.]
18 (d).

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

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

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

31 [d.] (d) Time of perfection by possession; continuation of
32 perfection. If perfection of a security interest depends upon
33 possession of the collateral by a secured party, perfection occurs no
34 earlier than the time the secured party takes possession and continues
35 only while the secured party retains possession.

36 [e.] (e) Time of perfection by delivery; continuation of perfection.
37 A security interest in a certificated security in registered form is
38 perfected by delivery when delivery of the certificated security occurs
39 under 12A:8-301 and remains perfected by delivery until the debtor
40 obtains possession of the security certificate.

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

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

1 (1) the acknowledgment is effective under subsection [c. of this
2 section] (c) or [subsection a. of] 12A:8-301 (a), even if the
3 acknowledgment violates the rights of a debtor; and

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

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

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

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

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

24 (cf: N.J.S.12A:9-313)

25
26 30. N.J.S.12A:9-314 is amended to read as follows:

27 12A:9-314. Perfection by Control.

28 [a.] (a) Perfection by control. A security interest in investment
29 property, deposit accounts, letter-of-credit rights, or electronic chattel
30 paper may be perfected by control of the collateral under 12A:9-104,
31 12A:9-105, 12A:9-106 or 12A:9-107.

32 [b.] (b) Specified collateral: time of perfection by control;
33 continuation of perfection. A security interest in deposit accounts,
34 electronic chattel paper, or letter-of-credit rights is perfected by
35 control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured
36 party obtains control and remains perfected by control only while the
37 secured party retains control.

38 [c.] (c) Investment property: time of perfection by control;
39 continuation of perfection. A security interest in investment property
40 is perfected by control under 12A:9-106 from the time the secured
41 party obtains control and remains perfected by control until:

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

43 (2) one of the following occurs:

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

46 [(b)] (B) if the collateral is an uncertificated security, the issuer

1 has registered or registers the debtor as the registered owner; or
2 ~~[(c)] (C)~~ if the collateral is a security entitlement, the debtor is or
3 becomes the entitlement holder.

4 (cf: N.J.S.12A:9-314)

5

6 31. N.J.S.12A:9-315 is amended to read as follows:

7 12A:9-315. Secured Party's Rights on Disposition of Collateral and
8 in Proceeds.

9 ~~[(a.) (a)]~~ (a) Disposition of collateral: continuation of security interest
10 or agricultural lien; proceeds. Except as otherwise provided in this
11 chapter and in 12A:2-403(2):

12 (1) a security interest or agricultural lien continues in collateral
13 notwithstanding sale, lease, license, exchange, or other disposition
14 thereof unless the secured party authorized the disposition free of the
15 security interest or agricultural lien; and

16 (2) a security interest attaches to any identifiable proceeds of
17 collateral.

18 ~~[(b.) (b)]~~ (b) When commingled proceeds identifiable. Proceeds that
19 are commingled with other property are identifiable proceeds:

20 (1) if the proceeds are goods, to the extent provided by 12A:9-336;
21 and

22 (2) if the proceeds are not goods, to the extent that the secured
23 party identifies the proceeds by a method of tracing, including
24 application of equitable principles, that is permitted under law other
25 than this chapter with respect to commingled property of the type
26 involved.

27 ~~[(c.) (c)]~~ (c) Perfection of security interest in proceeds. A security
28 interest in proceeds is a perfected security interest if the security
29 interest in the original collateral was perfected.

30 ~~[(d.) (d)]~~ (d) Continuation of perfection. A perfected security interest
31 in proceeds becomes unperfected on the 21st day after the security
32 interest attaches to the proceeds unless:

33 (1) the following conditions are satisfied:

34 ~~[(a) (A)]~~ (A) a filed financing statement covers the original collateral;

35 ~~[(b) (B)]~~ (B) the proceeds are collateral in which a security interest
36 may be perfected by filing in the office in which the financing
37 statement has been filed; and

38 ~~[(c) (C)]~~ (C) the proceeds are not acquired with cash proceeds;

39 (2) the proceeds are identifiable cash proceeds; or

40 (3) the security interest in the proceeds is perfected other than
41 under subsection ~~[c. of this section]~~ (c) when the security interest
42 attaches to the proceeds or within 20 days thereafter.

43 ~~[(e.) (e)]~~ (e) When perfected security interest in proceeds becomes
44 unperfected. If a filed financing statement covers the original
45 collateral, a security interest in proceeds which remains perfected
46 under ~~[paragraph (1) of]~~ subsection ~~[d. of this section]~~ (d) (1)

1 becomes unperfected at the later of:

2 (1) when the effectiveness of the filed financing statement lapses
3 under 12A:9-515 or is terminated under 12A:9-513; or

4 (2) the 21st day after the security interest attaches to the proceeds.
5 (cf: N.J.S.12A:9-315)

6

7 32. N.J.S.12A:9-316 is amended to read as follows:

8 12A:9-316. Continued Perfection of Security Interest Following
9 Change in Governing Law.

10 [a.] (a) General rule: effect on perfection of change in governing
11 law. A security interest perfected pursuant to the law of the
12 jurisdiction designated in 12A:9-301 [a.] (1) or 12A:9-305 [c.] (c)
13 remains perfected until the earliest of:

14 (1) the time perfection would have ceased under the law of that
15 jurisdiction;

16 (2) the expiration of four months after a change of the debtor's
17 location to another jurisdiction; or

18 (3) the expiration of one year after a transfer of collateral to a
19 person [who] that thereby becomes a debtor and is located in another
20 jurisdiction.

21 [b.] (b) Security interest perfected or unperfected under law of
22 new jurisdiction. If a security interest described in subsection [a. of
23 this section] (a) becomes perfected under the law of the other
24 jurisdiction before the earliest time or event described in that
25 subsection, it remains perfected thereafter. If the security interest
26 does not become perfected under the law of the other jurisdiction
27 before the earliest time or event, it becomes unperfected and is deemed
28 never to have been perfected as against a purchaser of the collateral
29 for value.

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

34 (1) the collateral is located in one jurisdiction and subject to a
35 security interest perfected under the law of that jurisdiction;

36 (2) thereafter the collateral is brought into another jurisdiction; and

37 (3) upon entry into the other jurisdiction, the security interest is
38 perfected under the law of the other jurisdiction.

39 [d.] (d) Goods covered by certificate of title from this State.
40 Except as otherwise provided in subsection [e. of this section] (e), a
41 security interest in goods covered by a certificate of title which is
42 perfected by any method under the law of another jurisdiction when
43 the goods become covered by a certificate of title from this State
44 remains perfected until the security interest would have become
45 unperfected under the law of the other jurisdiction had the goods not
46 become so covered.

1 [e.] (e) When subsection [d.] (d) security interest becomes
2 unperfected against purchasers. A security interest described in
3 subsection [d. of this section] (d) becomes unperfected as against a
4 purchaser of the goods for value and is deemed never to have been
5 perfected as against a purchaser of the goods for value if the
6 applicable requirements for perfection under 12A:9-311 [b.] (b) or
7 12A:9-313 are not satisfied before the earlier of:

8 (1) the time the security interest would have become unperfected
9 under the law of the other jurisdiction had the goods not become
10 covered by a certificate of title from this State; or

11 (2) the expiration of four months after the goods had become so
12 covered.

13 [f.] (f) Change in jurisdiction of bank, issuer, nominated person,
14 securities intermediary, or commodity intermediary. A security
15 interest in deposit accounts, letter-of-credit rights, or investment
16 property which is perfected under the law of the bank's jurisdiction,
17 the issuer's jurisdiction, a nominated person's jurisdiction, the
18 securities intermediary's jurisdiction, or the commodity intermediary's
19 jurisdiction, as applicable, remains perfected until the earlier of:

20 (1) the time the security interest would have become unperfected
21 under the law of that jurisdiction; or

22 (2) the expiration of four months after a change of the applicable
23 jurisdiction to another jurisdiction.

24 [g.] (g) Subsection [f.] (f) security interest perfected or
25 unperfected under law of new jurisdiction. If a security interest
26 described in subsection [f. of this section] (f) becomes perfected
27 under the law of the other jurisdiction before the earlier of the time or
28 the end of the period described in that subsection, it remains perfected
29 thereafter. If the security interest does not become perfected under
30 the law of the other jurisdiction before the earlier of that time or the
31 end of that period, it becomes unperfected and is deemed never to
32 have been perfected as against a purchaser of the collateral for value.
33 (cf: N.J.S.12A:9-316)

34

35 33. N.J.S.12A:9-317 is amended to read as follows:

36 12A:9-317. Interests That Take Priority Over or Take Free of
37 Security Interest or Agricultural Lien.

38 [a.] (a) Conflicting security interests and rights of lien creditors.
39 A security interest or agricultural lien is subordinate to the rights of:

40 (1) a person entitled to priority under 12A:9-322; and

41 (2) except as otherwise provided in subsection [e. of this section]
42 (e), a person who becomes a lien creditor before the earlier of the
43 time;

44 (A) the security interest or agricultural lien is perfected; or

45 (B) one of the conditions specified in 12A:9-203 (b)(3) is met and
46 a financing statement covering the collateral is filed.

1 **[b.] (b)** Buyers that receive delivery. Except as otherwise
2 provided in subsection **[e. of this section] (e)**, a buyer, other than a
3 secured party, of tangible chattel paper, documents, goods,
4 instruments, or a security certificate takes free of a security interest or
5 agricultural lien if the buyer gives value and receives delivery of the
6 collateral without knowledge of the security interest or agricultural
7 lien and before it is perfected.

8 **[c.] (c)** Lessees that receive delivery. Except as otherwise
9 provided in subsection **[e. of this section] (e)**, a lessee of goods takes
10 free of a security interest or agricultural lien if the lessee gives value
11 and receives delivery of the collateral without knowledge of the
12 security interest or agricultural lien and before it is perfected.

13 **[d.] (d)** Licensees and buyers of certain collateral. A licensee of
14 a general intangible or a buyer, other than a secured party, of
15 accounts, electronic chattel paper, general intangibles, or investment
16 property other than a certificated security takes free of a security
17 interest if the licensee or buyer gives value without knowledge of the
18 security interest and before it is perfected.

19 **[e.] (e)** Purchase-money security interest. Except as otherwise
20 provided in 12A:9-320 and 12A:9-321, if a person files a financing
21 statement with respect to a purchase-money security interest before or
22 within 20 days after the debtor receives delivery of the collateral, the
23 security interest takes priority over the rights of a buyer, lessee, or lien
24 creditor which arise between the time the security interest attaches and
25 the time of filing.

26 (cf: N.J.S.12A:9-317)

27

28 34. N.J.S.12A:9-318 is amended to read as follows:

29 12A:9-318. No Interest Retained in Right to Payment That Is Sold;
30 Rights and Title of Seller of Account or Chattel Paper with Respect to
31 Creditors and Purchasers.

32 **[a.] (a)** Seller retains no interest. A debtor that has sold an
33 account, chattel paper, payment intangible, or promissory note does
34 not retain a legal or equitable interest in the collateral sold.

35 **[b.] (b)** Deemed rights of debtor if buyer's security interest
36 unperfected. For purposes of determining the rights of creditors of,
37 and purchasers for value of an account or chattel paper from, a debtor
38 that has sold an account or chattel paper, while the buyer's security
39 interest is unperfected, the debtor is deemed to have rights and title to
40 the account or chattel paper identical to those the debtor sold.

41 (cf: N.J.S.12A:9-318)

42

43 35. N.J.S.12A:9-319 is amended to read as follows:

44 12A:9-319. Rights and Title of Consignee with Respect to
45 Creditors and Purchasers.

46 **[a.] (a)** Consignee has consignor's rights. Except as otherwise

1 provided in subsection [b.] (b), for purposes of determining the rights
2 of creditors of, and purchasers for value of goods from, a consignee,
3 while the goods are in the possession of the consignee, the consignee
4 is deemed to have rights and title to the goods identical to those the
5 consignor had or had power to transfer.

6 [b.] (b) Applicability of other law. For purposes of determining
7 the rights of a creditor of a consignee, law other than this chapter
8 determines the rights and title of a consignee while goods are in the
9 consignee's possession if, under this part, a perfected security interest
10 held by the consignor would have priority over the rights of the
11 creditor.

12 (cf: N.J.S.12A:9-319)

13
14 36. N.J.S.12A:9-320 is amended to read as follows:

15 12A:9-320. Buyer of Goods.

16 [a.] (a) Buyer in ordinary course of business. Except as otherwise
17 provided in subsection [e. of this section] (e), a buyer in ordinary
18 course of business, other than a person buying farm products from a
19 person engaged in farming operations, takes free of a security interest
20 created by the buyer's seller, even if the security interest is perfected
21 and the buyer knows of its existence.

22 [b.] (b) Buyer of consumer goods. Except as otherwise provided
23 in subsection [e.] (e), a buyer of goods from a person who used or
24 bought the goods for use primarily for personal, family, or household
25 purposes takes free of a security interest, even if perfected, if the
26 buyer buys:

27 (1) without knowledge of the security interest;

28 (2) for value;

29 (3) primarily for the buyer's personal, family, or household
30 purposes; and

31 (4) before the filing of a financing statement covering the goods.

32 [c.] (c) Effectiveness of filing for subsection [b.] (b). To the
33 extent that it affects the priority of a security interest over a buyer of
34 goods under subsection [b. of this section] (b), the period of
35 effectiveness of a filing made in the jurisdiction in which the seller is
36 located is governed by 12A:9-316 [a. and b.] (a) and (b).

37 [d.] (d) Buyer in ordinary course of business at wellhead or
38 minehead. A buyer in ordinary course of business buying oil, gas, or
39 other minerals at the wellhead or minehead or after extraction takes
40 free of an interest arising out of an encumbrance.

41 [e.] (e) Possessory security interest not affected. Subsections [a.
42 and b. of this section] (a) and (b) do not affect a security interest in
43 goods in the possession of the secured party under 12A:9-313.

44 (cf: N.J.S.12A:9-320)

45
46 37. N.J.S.12A:9-321 is amended to read as follows:

1 12A:9-321. Licensee of General Intangible and Lessee of Goods
2 in Ordinary Course of Business.

3 [a.] (a) "Licensee in ordinary course of business." In this section,
4 "licensee in ordinary course of business" means a person [who] that
5 becomes a licensee of a general intangible in good faith, without
6 knowledge that the license violates the rights of another person in the
7 general intangible, and in the ordinary course from a person in the
8 business of licensing general intangibles of that kind. A person
9 becomes a licensee in the ordinary course if the license to the person
10 comports with the usual or customary practices in the kind of business
11 in which the licensor is engaged or with the licensor's own usual or
12 customary practices.

13 [b.] (b) Rights of licensee in ordinary course of business. A
14 licensee in ordinary course of business takes its rights under a
15 nonexclusive license free of a security interest in the general intangible
16 created by the licensor, even if the security interest is perfected and the
17 licensee knows of its existence.

18 [c.] (c) Rights of lessee in ordinary course of business. A lessee in
19 ordinary course of business takes its leasehold interest free of a
20 security interest in the goods created by the lessor, even if the security
21 interest is perfected and the lessee knows of its existence.

22 (cf: N.J.S.12A:9-321)

23
24 38. N.J.S.12A:9-322 is amended to read as follows:

25 12A:9-322. Priorities Among Conflicting Security Interests in and
26 Agricultural Liens on Same Collateral.

27 [a.] (a) General priority rules. Except as otherwise provided in
28 this section, priority among conflicting security interests and
29 agricultural liens in the same collateral is determined according to the
30 following rules:

31 (1) Conflicting perfected security interests and agricultural liens
32 rank according to priority in time of filing or perfection. Priority dates
33 from the earlier of the time a filing covering the collateral is first made
34 or the security interest or agricultural lien is first perfected, if there is
35 no period thereafter when there is neither filing nor perfection.

36 (2) A perfected security interest or agricultural lien has priority
37 over a conflicting unperfected security interest or agricultural lien.

38 (3) The first security interest or agricultural lien to attach or
39 become effective has priority if conflicting security interests and
40 agricultural liens are unperfected.

41 [b.] (b) Time of perfection: proceeds and supporting obligations.
42 For the purposes of [paragraph (1) of] subsection [a. of this section]
43 (a)(1):

44 (1) the time of filing or perfection as to a security interest in
45 collateral is also the time of filing or perfection as to a security interest
46 in proceeds; and

1 (2) the time of filing or perfection as to a security interest in
2 collateral supported by a supporting obligation is also the time of filing
3 or perfection as to a security interest in the supporting obligation.

4 [c.] (c) Special priority rules: proceeds and supporting
5 obligations. Except as otherwise provided in subsection [f. of this
6 section] (f), a security interest in collateral which qualifies for priority
7 over a conflicting security interest under 12A:9-327, 12A:9-328,
8 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a
9 conflicting security interest in:

10 (1) any supporting obligation for the collateral; and

11 (2) proceeds of the collateral if:

12 [(a)] (A) the security interest in proceeds is perfected;

13 [(b)] (B) the proceeds are cash proceeds or of the same type as
14 the collateral; and

15 [(c)] (C) in the case of proceeds that are proceeds of proceeds, all
16 intervening proceeds are cash proceeds, proceeds of the same type as
17 the collateral, or an account relating to the collateral.

18 [d.] (d) First-to-file priority rule for certain collateral. Subject to
19 subsection [e.] (e) and except as otherwise provided in subsection [f.
20 of this section] (f), if a security interest in chattel paper, deposit
21 accounts, negotiable documents, instruments, investment property, or
22 letter-of-credit rights is perfected by a method other than filing,
23 conflicting perfected security interests in proceeds of the collateral
24 rank according to priority in time of filing.

25 [e.] (e) Applicability of subsection [d.] (d). Subsection [d. of this
26 section] (d) applies only if the proceeds of the collateral are not cash
27 proceeds, chattel paper, negotiable documents, instruments,
28 investment property, or letter-of-credit rights.

29 [f.] (f) Limitations on subsections [a.] (a) through [e.] (e).
30 Subsections [a.] (a) through [e. of this section] (e) are subject to:

31 (1) subsection [g.] (g) and the other provisions of this part;

32 (2) 12A:4-210 with respect to a security interest of a collecting
33 bank; [and]

34 (3) 12A:5-118 with respect to a security interest of an issuer or
35 nominated person; and

36 (4) 12A:9-110 with respect to a security interest arising under
37 Chapter 2 or 2A.

38 [g.] (g) Priority under agricultural lien statute. A perfected
39 agricultural lien on collateral has priority over a conflicting security
40 interest in or agricultural lien on the same collateral if the statute
41 creating the agricultural lien so provides.

42 (cf: N.J.S.12A:9-322)

43
44 39. N.J.S.12A:9-323 is amended to read as follows:

45 12A:9-323. Future Advances.

46 [a.] (a) When priority based on time of advance. Except as

1 otherwise provided in subsection [c. of this section] (c), for purposes
2 of determining the priority of a perfected security interest under
3 12A:9-322 [a.] (a) (1), perfection of the security interest dates from
4 the time an advance is made to the extent that the security interest
5 secures an advance that:

- 6 (1) is made while the security interest is perfected only:
7 (a) under 12A:9-309 when it attaches; or
8 (b) temporarily under 12A:9-312 [e., f., or g.] (e), (f) or (g); and
9 (2) is not made pursuant to a commitment entered into before or
10 while the security interest is perfected by a method other than under
11 12A:9-309 or 12A:9-312 [e., f., or g] (e), (f) or (g).

12 [b.] (b) Lien creditor. Except as otherwise provided in subsection
13 [c. of this section] (c), a security interest is subordinate to the rights
14 of a person [who] that becomes a lien creditor to the extent that the
15 security interest secures an advance made more than 45 days after the
16 person becomes a lien creditor unless the advance is made:

- 17 (1) without knowledge of the lien; or
18 (2) pursuant to a commitment entered into without knowledge of
19 the lien.

20 [c.] (c) Buyer of receivables. Subsections [a. and b. of this
21 section] (a) and (b) do not apply to a security interest held by a
22 secured party that is a buyer of accounts, chattel paper, payment
23 intangibles, or promissory notes, or a consignor.

24 [d.] (d) Buyer of goods. Except as otherwise provided in
25 subsection [e. of this section] (e), a buyer of goods other than a buyer
26 in ordinary course of business takes free of a security interest to the
27 extent that it secures advances made after the earlier of:

- 28 (1) the time the secured party acquires knowledge of the buyer's
29 purchase; or
30 (2) 45 days after the purchase.

31 [e.] (e) Advances made pursuant to commitment: priority of
32 buyer of goods. Subsection [d. of this section] (d) does not apply if
33 the advance is made pursuant to a commitment entered into without
34 knowledge of the buyer's purchase and before the expiration of the
35 45-day period.

36 [f.] (f) Lessee of goods. Except as otherwise provided in
37 subsection [g. of this section] (g), a lessee of goods, other than a
38 lessee in ordinary course of business, takes the leasehold interest free
39 of a security interest to the extent that it secures advances made after
40 the earlier of:

- 41 (1) the time the secured party acquires knowledge of the lease; or
42 (2) 45 days after the lease contract becomes enforceable.

43 [g.] (g) Advances made pursuant to commitment: priority of
44 lessee of goods. Subsection [f. of this section] (f) does not apply if
45 the advance is made pursuant to a commitment entered into without

1 knowledge of the lease and before the expiration of the 45-day period.
2 (cf: N.J.S.12A:9-323)

3

4 40. N.J.S.12A:9-324 is amended to read as follows:

5 12A:9-324. Priority of Purchase-Money Security Interests.

6 **[a.] (a)** General rule: purchase-money priority. Except as
7 otherwise provided in subsection **[g. of this section] (g)**, a perfected
8 purchase-money security interest in goods other than inventory or
9 livestock has priority over a conflicting security interest in the same
10 goods, and, except as otherwise provided in 12A:9-327, a perfected
11 security interest in its identifiable proceeds also has priority, if the
12 purchase-money security interest is perfected when the debtor receives
13 possession of the collateral or within 20 days thereafter.

14 **[b.] (b)** Inventory purchase-money priority. Subject to subsection
15 c. and except as otherwise provided in subsection **[g. of this section]**
16 **(g)**, a perfected purchase-money security interest in inventory has
17 priority over a conflicting security interest in the same inventory, has
18 priority over a conflicting security interest in chattel paper or an
19 instrument constituting proceeds of the inventory and in proceeds of
20 the chattel paper, if so provided in 12A:9-330, and, except as
21 otherwise provided in 12A:9-327, also has priority in identifiable cash
22 proceeds of the inventory to the extent the identifiable cash proceeds
23 are received on or before the delivery of the inventory to a buyer, if:

24 (1) the purchase-money security interest is perfected when the
25 debtor receives possession of the inventory;

26 (2) the purchase-money secured party sends an authenticated
27 notification to the holder of the conflicting security interest;

28 (3) the holder of the conflicting security interest receives the
29 notification within five years before the debtor receives possession of
30 the inventory; and

31 (4) the notification states that the person sending the notification
32 has or expects to acquire a purchase-money security interest in
33 inventory of the debtor and describes the inventory.

34 **[c.] (c)** Holders of conflicting inventory security interests to be
35 notified. **[Paragraphs 2 through 4 of subsection b. of this section]**
36 **Subsections (b) (2) through (4)** apply only if the holder of the
37 conflicting security interest had filed a financing statement covering
38 the same types of inventory:

39 (1) if the purchase-money security interest is perfected by filing,
40 before the date of the filing; or

41 (2) if the purchase-money security interest is temporarily perfected
42 without filing or possession under 12A:9-312 **[f.] (f)**, before the
43 beginning of the 20-day period thereunder.

44 **[d.] (d)** Livestock purchase-money priority. Subject to subsection
45 **[e.] (e)** and except as otherwise provided in subsection **[g. of this**

1 section] (g), a perfected purchase-money security interest in livestock
2 that are farm products has priority over a conflicting security interest
3 in the same livestock, and, except as otherwise provided in 12A:9-327,
4 a perfected security interest in their identifiable proceeds and
5 identifiable products in their unmanufactured states also has priority,
6 if:

7 (1) the purchase-money security interest is perfected when the
8 debtor receives possession of the livestock;

9 (2) the purchase-money secured party sends an authenticated
10 notification to the holder of the conflicting security interest;

11 (3) the holder of the conflicting security interest receives the
12 notification within six months before the debtor receives possession of
13 the livestock; and

14 (4) the notification states that the person sending the notification
15 has or expects to acquire a purchase-money security interest in
16 livestock of the debtor and describes the livestock.

17 [e.] (e) Holders of conflicting livestock security interests to be
18 notified. [Paragraphs 2 through 4 of subsection d. of this section]
19 Subsections (d) (2) through (4) apply only if the holder of the
20 conflicting security interest had filed a financing statement covering
21 the same types of livestock:

22 (1) if the purchase-money security interest is perfected by filing,
23 before the date of the filing; or

24 (2) if the purchase-money security interest is temporarily perfected
25 without filing or possession under 12A:9-312 [f.] (f), before the
26 beginning of the 20-day period thereunder.

27 [f.] (f) Software purchase-money priority. Except as otherwise
28 provided in subsection [g. of this section] (g), a perfected
29 purchase-money security interest in software has priority over a
30 conflicting security interest in the same collateral, and, except as
31 otherwise provided in 12A:9-327, a perfected security interest in its
32 identifiable proceeds also has priority, to the extent that the
33 purchase-money security interest in the goods in which the software
34 was acquired for use has priority in the goods and proceeds of the
35 goods under this section.

36 [g.] (g) Conflicting purchase-money security interests. If more
37 than one security interest qualifies for priority in the same collateral
38 under subsection [a., b., d., or f. of this section] (a), (b), (d) or (f):

39 (1) a security interest securing an obligation incurred as all or part
40 of the price of the collateral has priority over a security interest
41 securing an obligation incurred for value given to enable the debtor to
42 acquire rights in or the use of collateral; and

43 (2) in all other cases, 12A:9-322 [a.] (a) applies to the qualifying
44 security interests.

45 (cf: N.J.S.12A:9-324)

1 41. N.J.S.12A:9-325 is amended to read as follows:

2 12A:9-325. Priority of Security Interests in Transferred Collateral.

3 [a.] (a) Subordination of security interest in transferred collateral.

4 Except as otherwise provided in subsection [b. of this section] (b), a
5 security interest created by a debtor is subordinate to a security
6 interest in the same collateral created by another person if:

7 (1) the debtor acquired the collateral subject to the security interest
8 created by the other person;

9 (2) the security interest created by the other person was perfected
10 when the debtor acquired the collateral; and

11 (3) there is no period thereafter when the security interest is
12 unperfected.

13 [b.] (b) Limitation of subsection [a.] (a) subordination.

14 Subsection [a. of this section] (a) subordinates a security interest only
15 if the security interest:

16 (1) otherwise would have priority solely under 12A:9-322 [a.] (a)
17 or 12A:9-324; or

18 (2) arose solely under 12A:2-711(3) or [2A-508(5)]12A:2A-
19 508(5).

20 (cf: N.J.S.12A:9-325)

21

22 42. N.J.S.12A:9-326 is amended to read as follows:

23 12A:9-326. Priority of Security Interests Created by New Debtor.

24 [a.] (a) Subordination of security interest created by new debtor.

25 Subject to subsection [b. of this section] (b), a security interest
26 created by a new debtor which is perfected by a filed financing
27 statement that is effective solely under 12A:9-508 in collateral in
28 which a new debtor has or acquires rights is subordinate to a security
29 interest in the same collateral which is perfected other than by a filed
30 financing statement that is effective solely under 12A:9-508.

31 [b.] (b) Priority under other provisions; multiple original debtors.

32 The other provisions of this part determine the priority among
33 conflicting security interests in the same collateral perfected by filed
34 financing statements that are effective solely under 12A:9-508.
35 However, if the security agreements to which a new debtor became
36 bound as debtor were not entered into by the same original debtor, the
37 conflicting security interests rank according to priority in time of the
38 new debtor's having become bound.

39 (cf: N.J.S.12A:9-326)

40

41 43. N.J.S.12A:9-327 is amended to read as follows:

42 12A:9-327. Priority of Security Interests in Deposit Account.

43 The following rules govern priority among conflicting security
44 interests in the same deposit account:

45 [a.] (1) A security interest held by a secured party having control

1 of the deposit account under 12A:9-104 has priority over a conflicting
2 security interest held by a secured party that does not have control.

3 [b.] (2) Except as otherwise provided in [subsections c. and d. of
4 this section] paragraphs (3) and (4), security interests perfected by
5 control under 12A:9-314 rank according to priority in time of
6 obtaining control.

7 [c.] (3) Except as otherwise provided in [subsection d. of this
8 section] paragraph (4), a security interest held by the bank with which
9 the deposit account is maintained has priority over a conflicting
10 security interest held by another secured party.

11 [d.] (4) A security interest perfected by control under 12A:9-104
12 [a.] (a) (3) has priority over a security interest held by the bank with
13 which the deposit account is maintained.

14 (cf: N.J.S.12A:9-327)

15

16 44. N.J.S.12A:9-328 is amended to read as follows:

17 12A:9-328. Priority of Security Interests in Investment Property.

18 The following rules govern priority among conflicting security
19 interests in the same investment property:

20 [a.] (1) A security interest held by a secured party having control
21 of investment property under 12A:9-106 has priority over a security
22 interest held by a secured party that does not have control of the
23 investment property.

24 [b.] (2) Except as otherwise provided in [sections c. and d. of this
25 section] paragraphs (3) and (4), conflicting security interests held by
26 secured parties each of which has control under 12A:9-106 rank
27 according to priority in time of:

28 [(1)] (A) if the collateral is a security, obtaining control;

29 [(2)] (B) if the collateral is a security entitlement carried in a
30 securities account and:

31 [(a)] (i) if the secured party obtained control under 12A:8-106
32 [d.] (d) (1), the secured party's becoming the person for which the
33 securities account is maintained;

34 [(b)] (ii) if the secured party obtained control under 12A:8-106
35 [d.] (d) (2), the securities intermediary's agreement to comply with
36 the secured party's entitlement orders with respect to security
37 entitlements carried or to be carried in the securities account; or

38 [(c)] (iii) if the secured party obtained control through another
39 person under 12A:8-106 [d.] (d) (3), the time on which priority would
40 be based under this paragraph if the other person were the secured
41 party; or

42 [(3)] (C) if the collateral is a commodity contract carried with a
43 commodity intermediary, the satisfaction of the requirement for
44 control specified in 12A:9-106 [b.] (b) (2) with respect to commodity
45 contracts carried or to be carried with the commodity intermediary.

1 [c.] (3) A security interest held by a securities intermediary in a
2 security entitlement or a securities account maintained with the
3 securities intermediary has priority over a conflicting security interest
4 held by another secured party.

5 [d.] (4) A security interest held by a commodity intermediary in a
6 commodity contract or a commodity account maintained with the
7 commodity intermediary has priority over a conflicting security interest
8 held by another secured party.

9 [e.] (5) A security interest in a certificated security in registered
10 form which is perfected by taking delivery under 12A:9-313 [a.] (a)
11 and not by control under 12A:9-314 has priority over a conflicting
12 security interest perfected by a method other than control.

13 [f.] (6) Conflicting security interests created by a broker,
14 securities intermediary, or commodity intermediary which are
15 perfected without control under 12A:9-106 rank equally.

16 [g.] (7) In all other cases, priority among conflicting security
17 interests in investment property is governed by 12A:9-322 and
18 12A:9-323.

19 (cf: N.J.S.12A:9-328)

20
21 45. N.J.S.12A:9-329 is amended to read as follows:

22 12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

23 The following rules govern priority among conflicting security
24 interests in the same letter-of-credit right:

25 [a.] (1) A security interest held by a secured party having control
26 of the letter-of-credit right under 12A:9-107 has priority to the extent
27 of its control over a conflicting security interest held by a secured
28 party that does not have control.

29 [b.] (2) Security interests perfected by control under 12A:9-314
30 rank according to priority in time of obtaining control.

31 (cf: N.J.S.12A:9-329)

32
33 46. N.J.S.12A:9-330 is amended to read as follows:

34 12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

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

39 (1) in good faith and in the ordinary course of the purchaser's
40 business, the purchaser gives new value and takes possession of the
41 chattel paper or obtains control of the chattel paper under 12A:9-105;
42 and

43 (2) the chattel paper does not indicate that it has been assigned to
44 an identified assignee other than the purchaser.

45 [b.] (b) Purchaser's priority: other security interests. A purchaser

1 of chattel paper has priority over a security interest in the chattel paper
2 which is claimed other than merely as proceeds of inventory subject to
3 a security interest if the purchaser gives new value and takes
4 possession of the chattel paper or obtains control of the chattel paper
5 under 12A:9-105 in good faith, in the ordinary course of the
6 purchaser's business, and without knowledge that the purchase violates
7 the rights of the secured party.

8 [c.] (c) Chattel paper purchaser's priority in proceeds. Except as
9 otherwise provided in 12A:9-327, a purchaser having priority in
10 chattel paper under subsection [a. or b. of this section] (a) or (b) also
11 has priority in proceeds of the chattel paper to the extent that:

12 (1) 12A:9-322 provides for priority in the proceeds; or

13 (2) the proceeds consist of the specific goods covered by the
14 chattel paper or cash proceeds of the specific goods, even if the
15 purchaser's security interest in the proceeds is unperfected.

16 [d.] (d) Instrument purchaser's priority. Except as otherwise
17 provided in 12A:9-331 [subsection a.] (a), a purchaser of an
18 instrument has priority over a security interest in the instrument
19 perfected by a method other than possession if the purchaser gives
20 value and takes possession of the instrument in good faith and without
21 knowledge that the purchase violates the rights of the secured party.

22 [e.] (e) Holder of purchase-money security interest gives new
23 value. For purposes of subsections [a. and b. of this section] (a) and
24 (b), the holder of a purchase-money security interest in inventory gives
25 new value for chattel paper constituting proceeds of the inventory.

26 [f.] (f) Indication of assignment gives knowledge. For purposes
27 of subsections [b. and d. of this section] (b) and (d), if chattel paper
28 or an instrument indicates that it has been assigned to an identified
29 secured party other than the purchaser, a purchaser of the chattel
30 paper or instrument has knowledge that the purchase violates the
31 rights of the secured party.

32 (cf: N.J.S.12A:9-330)

33
34 47. N.J.S.12A:9-331 is amended to read as follows:

35 12A:9-331. Priority of Rights of Purchasers of Instruments,
36 Documents, and Securities Under Other Chapters; Priority of Interests
37 in Financial Assets and Security Entitlements Under Chapter 8.

38 [a.] (a) Rights under Chapters 3, 7, and 8 not limited. This
39 chapter does not limit the rights of a holder in due course of a
40 negotiable instrument, a holder to which a negotiable document of title
41 has been duly negotiated, or a protected purchaser of a security.
42 These holders or purchasers take priority over an earlier security
43 interest, even if perfected, to the extent provided in Chapters 3, 7, and
44 8.

45 [b.] (b) Protection under Chapter 8. This chapter does not limit

1 the rights of or impose liability on a person to the extent that the
2 person is protected against the assertion of a claim under Chapter 8.

3 [c.] (c) Filing not notice. Filing under this chapter does not
4 constitute notice of a claim or defense to the holders, or purchasers,
5 or persons described in subsections [a. and b of this section] (a) and
6 (b).

7 (cf: N.J.S.12A:9-331)

8

9 48. N.J.S.12A:9-332 is amended to read as follows:

10 12A:9-332. Transfer of Money; Transfer of Funds from Deposit
11 Account.

12 [a.] (a) Transferee of money. A transferee of money takes the
13 money free of a security interest unless the transferee acts in collusion
14 with the debtor in violating the rights of the secured party.

15 [b.] (b) Transferee of funds from deposit account. A transferee of
16 funds from a deposit account takes the funds free of a security interest
17 in the deposit account unless the transferee acts in collusion with the
18 debtor in violating the rights of the secured party.

19 (cf: N.J.S.12A:9-332)

20

21 49. N.J.S.12A:9-333 is amended to read as follows:

22 12A:9-333. Priority of Certain Liens Arising by Operation of Law.

23 [a.] (a) "Possessory lien." In this section, "possessory lien" means
24 an interest, other than a security interest or an agricultural lien:

25 (1) which secures payment or performance of an obligation for
26 services or materials furnished with respect to goods by a person in the
27 ordinary course of the person's business;

28 (2) which is created by statute or rule of law in favor of the person;
29 and

30 (3) whose effectiveness depends on the person's possession of the
31 goods.

32 [b.] (b) Priority of possessory lien. A possessory lien on goods
33 has priority over a security interest in the goods unless the lien is
34 created by a statute that expressly provides otherwise.

35 (cf: N.J.S.12A:9-333)

36

37 50. N.J.S.12A:9-334 is amended to read as follows:

38 12A:9-334. Priority of Security Interests in Fixtures and Crops.

39 [a.] (a) Security interest in fixtures under this chapter. A security
40 interest under this chapter may be created in goods that are fixtures or
41 may continue in goods that become fixtures. A security interest does
42 not exist under this chapter in ordinary building materials incorporated
43 into an improvement on land.

44 [b.] (b) Security interest in fixtures under real-property law. This
45 chapter does not prevent creation of an encumbrance upon fixtures
46 under real property law.

1 [c.] (c) General rule: subordination of security interest in fixtures.
2 In cases not governed by subsections [d.] (d) through [h. of this
3 section] (h), a security interest in fixtures is subordinate to a
4 conflicting interest of an encumbrancer or owner of the related real
5 property other than the debtor.

6 [d.] (d) Fixtures purchase-money priority. Except as otherwise
7 provided in subsection [h. of this section] (h), a perfected security
8 interest in fixtures has priority over a conflicting interest of an
9 encumbrancer or owner of the real property if the debtor has an
10 interest of record in or is in possession of the real property and:

- 11 (1) the security interest is a purchase-money security interest;
12 (2) the interest of the encumbrancer or owner arises before the
13 goods become fixtures; and
14 (3) the security interest is perfected by a fixture filing before the
15 goods become fixtures or within 20 days thereafter.

16 [e.] (e) Priority of security interest in fixtures over interests in real
17 property. A perfected security interest in fixtures has priority over a
18 conflicting interest of an encumbrancer or owner of the real property
19 [or a lien on real property obtained by legal or equitable proceedings]
20 if:

- 21 (1) the debtor has an interest of record in the real property or is in
22 possession of the real property and the security interest:

23 [(a)] (A) is perfected by a fixture filing before the interest of the
24 encumbrancer or the owner is of record; and

25 [(b)] (B) has priority over any conflicting interest of a predecessor
26 in title of the encumbrancer or owner;

- 27 (2) before the goods become fixtures, the security interest is
28 perfected by any method permitted by this chapter and the fixtures are
29 readily removable:

30 [(a)] (A) factory or office machines;

31 [(b)] (B) equipment that is not primarily used or leased for use in
32 the operation of the real property; or

33 [(c)] (C) replacements of domestic appliances that are consumer
34 goods;

- 35 (3) the conflicting interest is a lien on real property obtained by
36 legal or equitable proceedings after the security interest was perfected
37 by any method permitted by this chapter; or

38 (4) the security interest is:

39 [(a)] (A) created in a manufactured home in a manufactured-home
40 transaction; and

41 [(b)] (B) perfected pursuant to a statute described in 12A:9-311
42 [a.] (a) (2).

43 [f.] (f) Priority based on consent, disclaimer, or right to remove.
44 A security interest in fixtures, whether or not perfected, has priority
45 over a conflicting interest of an encumbrancer or owner of the real

1 property if:

2 (1) the encumbrancer or owner has, in an authenticated record,
3 consented to the security interest or disclaimed an interest in the goods
4 as fixtures; or

5 (2) the debtor has a right to remove the goods as against the
6 encumbrancer or owner.

7 **[g.] (g)** Continuation of paragraph **(f) (2)** **[of subsection f. of this**
8 **section]** priority. The priority of the security interest under paragraph
9 **(f) (2)** **[of subsection f. of this section]** continues for a reasonable
10 time if the debtor's right to remove the goods as against the
11 encumbrancer or owner terminates.

12 **[h.] (h)** Priority of construction mortgage. A mortgage is a
13 construction mortgage to the extent that it secures an obligation
14 incurred for the construction of an improvement on land, including the
15 acquisition cost of the land, if a recorded record of the mortgage so
16 indicates. Except as otherwise provided in subsections **[e. and f. of**
17 **this section]** **(e) and (f)**, a security interest in fixtures is subordinate to
18 a construction mortgage if a record of the mortgage is recorded before
19 the goods become fixtures and the goods become fixtures before the
20 completion of the construction. A mortgage has this priority to the
21 same extent as a construction mortgage to the extent that it is given to
22 refinance a construction mortgage.

23 **[i.] (i)** Priority of security interest in crops. A perfected security
24 interest in crops growing on real property has priority over a
25 conflicting interest of an encumbrancer or owner of the real property
26 if the debtor has an interest of record in or is in possession of the real
27 property.

28 **[j.] (j)** Subsection **[i.] (i)** prevails. Subsection **[i. of this section]**
29 **(i)** prevails over any inconsistent provisions of state law.
30 (cf: N.J.S.12A:9-334)

31

32 51. N.J.S.12A:9-335 is amended to read as follows:
33 12A:9-335. Accessions.

34 **[a.] (a)** Creation of security interest in accession. A security
35 interest may be created in an accession and continues in collateral that
36 becomes an accession.

37 **[b.] (b)** Perfection of security interest. If a security interest is
38 perfected when the collateral becomes an accession, the security
39 interest remains perfected in the collateral.

40 **[c.] (c)** Priority of security interest. Except as otherwise provided
41 in subsection **[d. of this section]** **(d)**, the other provisions of this part
42 determine the priority of a security interest in an accession.

43 **[d.] (d)** Compliance with certificate-of-title statute. A security
44 interest in an accession is subordinate to a security interest in the
45 whole which is perfected by compliance with the requirements of a

1 certificate-of-title statute under 12A:9-311 [b.] (b).

2 [e.] (e) Removal of accession after default. After default, subject
3 to Part 6 [of this chapter], a secured party may remove an accession
4 from other goods if the security interest in the accession has priority
5 over the claims of every person having an interest in the whole.

6 [f.] (f) Reimbursement following removal. A secured party that
7 removes an accession from other goods under subsection [e. of this
8 section] (e) shall promptly reimburse any holder of a security interest
9 or other lien on, or owner of, the whole or of the other goods, other
10 than the debtor, for the cost of repair of any physical injury to the
11 whole or the other goods. The secured party need not reimburse the
12 holder or owner for any diminution in value of the whole or the other
13 goods caused by the absence of the accession removed or by any
14 necessity for replacing it. A person entitled to reimbursement may
15 refuse permission to remove until the secured party gives adequate
16 assurance for the performance of the obligation to reimburse.
17 (cf: N.J.S.12A:9-335)

18

19 52. N.J.S.12A:9-336 is amended to read as follows:

20 12A:9-336. Commingled Goods.

21 [a.] (a) "Commingled goods." In this section, "commingled
22 goods" means goods that are physically united with other goods in
23 such a manner that their identity is lost in a product or mass.

24 [b.] (b) No security interest in commingled goods as such. A
25 security interest does not exist in commingled goods as such.
26 However, a security interest may attach to a product or mass that
27 results when goods become commingled goods.

28 [c.] (c) Attachment of security interest to product or mass. If
29 collateral becomes commingled goods, a security interest attaches to
30 the product or mass.

31 [d.] (d) Perfection of security interest. If a security interest in
32 collateral is perfected before the collateral becomes commingled
33 goods, the security interest that attaches to the product or mass under
34 subsection [c. of this section] (c) is perfected.

35 [e.] (e) Priority of security interest. Except as otherwise provided
36 in subsection [f.] (f), the other provisions of this part determine the
37 priority of a security interest that attaches to the product or mass
38 under subsection [c. of this section] (c).

39 [f.] (f) Conflicting security interests in product or mass. If more
40 than one security interest attaches to the product or mass under
41 subsection [c. of this section] (c), the following rules determine
42 priority:

43 (1) A security interest that is perfected under subsection [d.] (d)
44 has priority over a security interest that is unperfected at the time the
45 collateral becomes commingled goods.

1 (2) If more than one security interest is perfected under subsection
2 **[d.] (d)**, the security interests rank equally in proportion to the value
3 of the collateral at the time it became commingled goods.

4 (cf: N.J.S.12A:9-336)

5
6 53. N.J.S.12A:9-337 is amended to read as follows:

7 12A:9-337. Priority of Security Interests in Goods Covered by
8 Certificate of Title.

9 If, while a security interest in goods is perfected by any method
10 under the law of another jurisdiction, this State issues a certificate of
11 title that does not show that the goods are subject to the security
12 interest or contain a statement that they may be subject to security
13 interests not shown on the certificate:

14 **[a.] (1)** a buyer of the goods, other than a person in the business
15 of selling goods of that kind, takes free of the security interest if the
16 buyer gives value and receives delivery of the goods after issuance of
17 the certificate and without knowledge of the security interest; and

18 **[b.] (2)** the security interest is subordinate to a conflicting security
19 interest in the goods that attaches, and is perfected under 12A:9-311

20 **[b.] (b)**, after issuance of the certificate and without the conflicting
21 secured party's knowledge of the security interest.

22 (cf: N.J.S.12A:9-337)

23
24 54. N.J.S.12A:9-338 is amended to read as follows:

25 12A:9-338. Priority of Security Interest or Agricultural Lien
26 Perfected by Filed Financing Statement Providing Certain Incorrect
27 Information.

28 If a security interest or agricultural lien is perfected by a filed
29 financing statement providing information described in 12A:9-516 **[b.]**
30 **(b) (5)** which is incorrect at the time the financing statement is filed:

31 **[a.] (1)** the security interest or agricultural lien is subordinate to
32 a conflicting perfected security interest in the collateral to the extent
33 that the holder of the conflicting security interest gives value in
34 reasonable reliance upon the incorrect information; and

35 **[b.] (2)** a purchaser, other than a secured party, of the collateral
36 takes free of the security interest or agricultural lien to the extent that,
37 in reasonable reliance upon the incorrect information, the purchaser
38 gives value and, in the case of chattel paper, documents, goods,
39 instruments, or a security certificate, receives delivery of the collateral.

40 (cf: N.J.S.12A:9-338)

41
42 55. N.J.S.12A:9-340 is amended to read as follows:

43 12A:9-340. Effectiveness of Right of Recoupment or Set-off
44 Against Deposit Account.

45 **[a.] (a)** Exercise of recoupment or set-off. Except as otherwise

1 provided in subsection [c. of this section] (c), a bank with which a
2 deposit account is maintained may exercise any right of recoupment or
3 set-off against a secured party that holds a security interest in the
4 deposit account.

5 [b.] (b) Recoupment or set-off not affected by security interest.
6 Except as otherwise provided in subsection [c. of this section] (c), the
7 application of this chapter to a security interest in a deposit account
8 does not affect a right of recoupment or set-off of the secured party
9 as to a deposit account maintained with the secured party.

10 [c.] (c) When set-off ineffective. The exercise by a bank of a
11 set-off against a deposit account is ineffective against a secured party
12 that holds a security interest in the deposit account which is perfected
13 by control under 12A:9-104 (a) (3), if the set-off is based on a claim
14 against the debtor.

15 (cf: N.J.S.12A:9-340)

16

17 56. N.J.S.12A:9-341 is amended to read as follows:

18 12A:9-341. Bank's Rights and Duties with Respect to Deposit
19 Account.

20 Except as otherwise provided in 12A:9-340 [c.] (c), and unless the
21 bank otherwise agrees in an authenticated record, a bank's rights and
22 duties with respect to a deposit account maintained with the bank are
23 not terminated, suspended, or modified by:

24 [a.] (1) the creation, attachment, or perfection of a security
25 interest in the deposit account;

26 [b.] (2) the bank's knowledge of the security interest; or

27 [c.] (3) the bank's receipt of instructions from the secured party.

28 (cf: N.J.S.12A:9-341)

29

30 57. N.J.S.12A:9-342 is amended to read as follows:

31 12A:9-342. Bank's Right to Refuse to Enter into or Disclose
32 Existence of Control Agreement.

33 This chapter does not require a bank to enter into an agreement of
34 the kind described in 12A:9-104 [a.] (a) (2), even if its customer so
35 requests or directs. A bank that has entered into such an agreement
36 is not required to confirm the existence of the agreement to another
37 person unless requested to do so by its customer.

38 (cf: N.J.S.12A:9-342)

39

40 58. N.J.S.12A:9-401 is amended to read as follows:

41 12A:9-401. Alienability of Debtor's Rights.

42 [a.] (a) Other law governs alienability; exceptions. Except as
43 otherwise provided in subsection [b. of this section] (b) and
44 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's
45 rights in collateral may be voluntarily or involuntarily transferred is

1 governed by law other than this chapter.

2 [b.] (b) Agreement does not prevent transfer. An agreement
3 between the debtor and secured party which prohibits a transfer of the
4 debtor's rights in collateral or makes the transfer a default does not
5 prevent the transfer from taking effect.

6 (cf: N.J.S.12A:9-401)

7

8 59. N.J.S.12A:9-403 is amended to read as follows:

9 12A:9-403. Agreement Not to Assert Defenses Against Assignee.

10 [a.] (a) "Value." In this section, "value" has the meaning provided
11 in 12A:3-303 a.

12 [b.] (b) Agreement not to assert claim or defense. Except as
13 otherwise provided in this section, an agreement between an account
14 debtor and an assignor not to assert against an assignee any claim or
15 defense that the account debtor may have against the assignor is
16 enforceable by an assignee that takes an assignment:

17 (1) for value;

18 (2) in good faith;

19 (3) without notice of a claim of a property or possessory right to
20 the property assigned; and

21 (4) without notice of a defense or claim in recoupment of the type
22 that may be asserted against a person entitled to enforce a negotiable
23 instrument under 12A:3-305 a.

24 [c.] (c) When subsection [b.] (b) not applicable. Subsection [b.
25 of this section] (b) does not apply to defenses of a type that may be
26 asserted against a holder in due course of a negotiable instrument
27 under 12A:3-305 b.

28 [d.] (d) Omission of required statement in consumer transaction.
29 In a consumer transaction, if a record evidences the account debtor's
30 obligation, law other than this chapter requires that the record include
31 a statement to the effect that the rights of an assignee are subject to
32 claims or defenses that the account debtor could assert against the
33 original obligee, and the record does not include such a statement:

34 (1) the record has the same effect as if the record included such a
35 statement; and

36 (2) the account debtor may assert against an assignee those claims
37 and defenses that would have been available if the record included
38 such a statement.

39 [e.] (e) Rule for individual under other law. This section is subject
40 to law other than this chapter which establishes a different rule for an
41 account debtor who is an individual and who incurred the obligation
42 primarily for personal, family, or household purposes.

43 [f.] (f) Other law not displaced. Except as otherwise provided in
44 subsection [d. of this section] (d), this section does not displace law
45 other than this chapter which gives effect to an agreement by an

1 account debtor not to assert a claim or defense against an assignee.
2 (cf: N.J.S.12A:9-403)

3

4 60. N.J.S.12A:9-404 is amended to read as follows:

5 12A:9-404. Rights Acquired by Assignee; Claims and Defenses
6 Against Assignee.

7 [a.] (a) Assignee's rights subject to terms, claims, and defenses;
8 exceptions. Unless an account debtor has made an enforceable
9 agreement not to assert defenses or claims, and subject to subsections
10 [b.] (b) through [e. of this section] (e), the rights of an assignee are
11 subject to:

12 (1) all terms of the agreement between the account debtor and
13 assignor and any defense or claim in recoupment arising from the
14 transaction that gave rise to the contract; and

15 (2) any other defense or claim of the account debtor against the
16 assignor which accrues before the account debtor receives a
17 notification of the assignment authenticated by the assignor or the
18 assignee.

19 [b.] (b) Account debtor's claim reduces amount owed to assignee.
20 Subject to subsection [c.] (c) and except as otherwise provided in
21 subsection [d. of this section] (d), the claim of an account debtor
22 against an assignor may be asserted against an assignee under
23 subsection [a.] (a) only to reduce the amount the account debtor
24 owes.

25 [c.] (c) Rule for individual under other law. This section is subject
26 to law other than this chapter which establishes a different rule for an
27 account debtor who is an individual and who incurred the obligation
28 primarily for personal, family, or household purposes.

29 [d.] (d) Omission of required statement in consumer transaction.
30 In a consumer transaction, if a record evidences the account debtor's
31 obligation, law other than this chapter requires that the record include
32 a statement to the effect that the account debtor's recovery against an
33 assignee with respect to claims and defenses against the assignor may
34 not exceed amounts paid by the account debtor under the record, and
35 the record does not include such a statement, the extent to which a
36 claim of an account debtor against the assignor may be asserted
37 against an assignee is determined as if the record included such a
38 statement.

39 [e.] (e) Inapplicability to health-care-insurance receivable. This
40 section does not apply to an assignment of a health-care-insurance
41 receivable.

42 (cf: N.J.S.12A:9-404)

43

44 61. N.J.S.12A:9-405 is amended to read as follows:

45 12A:9-405. Modification of Assigned Contract.

1 **[a.] (a)** Effect of modification on assignee. A modification of or
2 substitution for an assigned contract is effective against an assignee if
3 made in good faith. The assignee acquires corresponding rights under
4 the modified or substituted contract. The assignment may provide that
5 the modification or substitution is a breach of contract by the assignor.
6 This subsection is subject to subsections **[b.] (b)** through **[d. of this**
7 **section] (d)**.

8 **[b.] (b)** Applicability of subsection **[a.] (a)**. Subsection **[a. of this**
9 **section] (a)** applies to the extent that:

10 (1) the right to payment or a part thereof under an assigned
11 contract has not been fully earned by performance; or

12 (2) the right to payment or a part thereof has been fully earned by
13 performance and the account debtor has not received notification of
14 the assignment under 12A:9-406 **[a.] (a)**.

15 **[c.] (c)** Rule for individual under other law. This section is subject
16 to law other than this chapter which establishes a different rule for an
17 account debtor who is an individual and who incurred the obligation
18 primarily for personal, family, or household purposes.

19 **[d.] (d)** Inapplicability to health-care-insurance receivable. This
20 section does not apply to an assignment of a health-care-insurance
21 receivable.

22 (cf: N.J.S.12A:9-405)

23

24 62. N.J.S.12A:9-406 is amended to read as follows:

25 12A:9-406. Discharge of Account Debtor; Notification of
26 Assignment; Identification and Proof of Assignment; Restrictions on
27 Assignment of Accounts, Chattel Paper, Payment Intangibles, and
28 Promissory Notes Ineffective.

29 **[a.] (a)** Discharge of account debtor; effect of notification.
30 Subject to subsections **[b.] (b)** through **[i. of this section] (i)**, an
31 account debtor on an account, chattel paper, or a payment intangible
32 may discharge its obligation by paying the assignor until, but not after,
33 the account debtor receives a notification, authenticated by the
34 assignor or the assignee, that the amount due or to become due has
35 been assigned and that payment is to be made to the assignee. After
36 receipt of the notification, the account debtor may discharge its
37 obligation by paying the assignee and may not discharge the obligation
38 by paying the assignor.

39 **[b.] (b)** When notification ineffective. Subject to subsection **[h.]**
40 **(h)**, notification is ineffective under subsection **[a. of this section] (a)**:

41 (1) if it does not reasonably identify the rights assigned;

42 (2) to the extent that an agreement between an account debtor and
43 a seller of a payment intangible limits the account debtor's duty to pay
44 a person other than the seller and the limitation is effective under law
45 other than this chapter; or

1 (3) at the option of an account debtor, if the notification notifies
2 the account debtor to make less than the full amount of any installment
3 or other periodic payment to the assignee, even if:

4 ~~[(a)] (A)~~ only a portion of the account, chattel paper, or ~~[general]~~
5 ~~payment~~ intangible has been assigned to that assignee;

6 ~~[(b)] (B)~~ a portion has been assigned to another assignee; or

7 ~~[(c)] (C)~~ the account debtor knows that the assignment to that
8 assignee is limited.

9 ~~[c.] (c)~~ Proof of assignment. Subject to subsection ~~[h. of this~~
10 ~~section] (h)~~, if requested by the account debtor, an assignee shall
11 seasonably furnish reasonable proof that the assignment has been
12 made. Unless the assignee complies, the account debtor may discharge
13 its obligation by paying the assignor, even if the account debtor has
14 received a notification under subsection ~~[a. of this section] (a)~~.

15 ~~[d.] (d)~~ Term restricting assignment generally ineffective. Except
16 as otherwise provided in subsection ~~[e. of this section](e)~~,
17 12A:2A-303 and 12A:9-407, and subject to subsection ~~[h. of this~~
18 ~~section] (h)~~, a term in an agreement between an account debtor and
19 an assignor or in a promissory note is ineffective to the extent that it:

20 (1) prohibits, restricts, or requires the consent of the account
21 debtor or person obligated on the promissory note to the assignment
22 or transfer of, or the creation, attachment, perfection, or enforcement
23 of a security interest in, the account, chattel paper, payment intangible,
24 or promissory note; or

25 (2) provides that the assignment or transfer or the creation,
26 attachment, perfection, or enforcement of the security interest may
27 give rise to a default, breach, right of recoupment, claim, defense,
28 termination, right of termination, or remedy under the account, chattel
29 paper, payment intangible, or promissory note.

30 ~~[e.] (e)~~ Inapplicability of subsection ~~[d.] (d)~~ to certain sales.
31 Subsection ~~[d. of this section] (d)~~ does not apply to the sale of a
32 payment intangible or promissory note.

33 ~~[f.] (f)~~ Legal restrictions on assignment generally ineffective.
34 Except as otherwise provided in ~~[subsection j. of this section]~~
35 12A:2A-303 and 12A:9-407 and subject to subsections ~~[h. and i. of~~
36 ~~this section] (h), (i) and (j)~~, a rule of law, statute, or regulation that
37 prohibits, restricts, or requires the consent of a government,
38 governmental body or official, or account debtor to the assignment or
39 transfer of, or creation of a security interest in, an account or chattel
40 paper is ineffective to the extent that the rule of law, statute, or
41 regulation:

42 (1) prohibits, restricts, or requires the consent of the government,
43 governmental body or official, or account debtor to the assignment or
44 transfer of, or the creation, attachment, perfection, or enforcement of
45 a security interest in the account or chattel paper; or

1 (2) provides that the assignment or transfer or the creation,
2 attachment, perfection, or enforcement of the security interest may
3 give rise to a default, breach, right of recoupment, claim, defense,
4 termination, right of termination, or remedy under the account or
5 chattel paper.

6 [g.] (g) Subsection [b. paragraph] (b) (3) not waivable. Subject
7 to subsection [h.] (h), an account debtor may not waive or vary its
8 option under subsection [b.] (b) (3) [of this section].

9 [h.] (h) Rule for individual under other law. This section is
10 subject to law other than this chapter which establishes a different rule
11 for an account debtor who is an individual and who incurred the
12 obligation primarily for personal, family, or household purposes.

13 [i.] (i) Inapplicability [to health-care-insurance receivable]. This
14 section does not apply to an assignment of a health-care-insurance
15 receivable. Subsection (f) does not apply to an assignment or transfer
16 of, or the creation, attachment, perfection or enforcement of a security
17 interest in, a right the transfer of which is prohibited or restricted by
18 any of the following statutes to the extent that the statute is
19 inconsistent with subsection (f): R.S.34:15-29 (workers'
20 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
21 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
22 (structured settlement agreements).

23 [j.] (j) Section prevails over specified inconsistent law. [This]
24 Except to the extent otherwise provided in subsection (i), this section
25 prevails over any inconsistent [provisions] provision of an existing or
26 future statute, rule or regulation of this State [statutes, rules, and
27 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
28 (C.5:9-13)] , unless the provision is contained in a statute of this
29 State, refers expressly to this section and states that the provision
30 prevails over this section.

31 (cf: N.J.S.12A:9-406)

32
33 63. N.J.S.12A:9-407 is amended to read as follows:

34 12A:9-407. Restrictions on Creation or Enforcement of Security
35 Interest in Leasehold Interest or in Lessor's Residual Interest.

36 [a.] (a) Term restricting assignment generally ineffective. Except
37 as otherwise provided in subsection [b. of this section] (b), a term in
38 a lease agreement is ineffective to the extent that it:

39 (1) prohibits, restricts, or requires the consent of a party to the
40 lease to the assignment or transfer of, or the creation, attachment,
41 perfection, or enforcement of a security interest in, an interest of a
42 party under the lease contract or in the lessor's residual interest in the
43 goods; or

44 (2) provides that the assignment or transfer or the creation,
45 attachment, perfection, or enforcement of the security interest may

1 give rise to a default, breach, right of recoupment, claim, defense,
2 termination, right of termination, or remedy under the lease.

3 [b.] (b) Effectiveness of certain terms. Except as otherwise
4 provided in 12A:2A-303 [g.] (7), a term described in [paragraph (2)
5 of subsection a. of this section] subsection (a) (2) is effective to the
6 extent that there is:

7 (1) a transfer by the lessee of the lessee's right of possession or use
8 of the goods in violation of the term; or

9 (2) a delegation of a material performance of either party to the
10 lease contract in violation of the term.

11 [c.] (c) Security interest not material impairment. The creation,
12 attachment, perfection, or enforcement of a security interest in the
13 lessor's interest under the lease contract or the lessor's residual interest
14 in the goods is not a transfer that materially impairs the lessee's
15 prospect of obtaining return performance or materially changes the
16 duty of or materially increases the burden or risk imposed on the lessee
17 within the purview of 12A:2A-303 [d.] (4) unless, and then only to
18 the extent that, enforcement actually results in a delegation of material
19 performance of the lessor.

20 (cf: N.J.S.12A:9-407)

21

22 64. N.J.S.12A:9-408 is amended to read as follows:

23 12A:9-408. Restrictions on Assignment of Promissory Notes,
24 Health-care-insurance Receivables, and Certain General Intangibles
25 Ineffective.

26 [a.] (a) Term restricting assignment generally ineffective. Except
27 as otherwise provided in subsection [b. of this section] (b), a term in
28 a promissory note or in an agreement between an account debtor and
29 a debtor which relates to a health-care-insurance receivable or a
30 general intangible, including a contract, permit, license, or franchise,
31 and which term prohibits, restricts, or requires the consent of the
32 person obligated on the promissory note or the account debtor to, the
33 assignment or transfer of, or creation, attachment, or perfection of a
34 security interest in, the promissory note, health-care-insurance
35 receivable, or general intangible, is ineffective to the extent that the
36 term:

37 (1) would impair the creation, attachment, or perfection of a
38 security interest; or

39 (2) provides that the assignment or transfer or the creation,
40 attachment, or perfection of the security interest may give rise to a
41 default, breach, right of recoupment, claim, defense, termination, right
42 of termination, or remedy under the promissory note,
43 health-care-insurance receivable, or general intangible.

44 [b.] (b) Applicability of subsection [a.] (a) to sales of certain
45 rights to payment. Subsection [a. of this section] (a) applies to a

1 security interest in a payment intangible or promissory note only if the
2 security interest arises out of a sale of the payment intangible or
3 promissory note.

4 [c.] (c) Legal restrictions on assignment generally ineffective.
5 Except as provided in subsection [e. of this section] (e), a rule of law,
6 statute, or regulation that prohibits, restricts, or requires the consent
7 of a government, governmental body or official, person obligated on
8 a promissory note, or account debtor to the assignment or transfer of,
9 or creation of a security interest in, a promissory note,
10 health-care-insurance receivable, or general intangible, including a
11 contract, permit, license, or franchise between an account debtor and
12 a debtor, is ineffective to the extent that the rule of law, statute, or
13 regulation:

14 (1) would impair the creation, attachment, or perfection of a
15 security interest; or

16 (2) provides that the assignment or transfer or the creation,
17 attachment, or perfection of the security interest may give rise to a
18 default, breach, right of recoupment, claim, defense, termination, right
19 of termination, or remedy under the promissory note,
20 health-care-insurance receivable, or general intangible.

21 [d.] (d) Limitation on ineffectiveness under subsections [a. and
22 c.] (a) and (c). To the extent that a term in a promissory note or in an
23 agreement between an account debtor and a debtor which relates to a
24 health-care-insurance receivable or general intangible or a rule of law,
25 statute, or regulation described in subsection [c.] (c) would be
26 effective under law other than this chapter but is ineffective under
27 subsection [a. or c. of this section] (a) or (c), the creation,
28 attachment, or perfection of a security interest in the promissory note,
29 health-care-insurance receivable, or general intangible:

30 (1) is not enforceable against the person obligated on the
31 promissory note or the account debtor;

32 (2) does not impose a duty or obligation on the person obligated
33 on the promissory note or the account debtor;

34 (3) does not require the person obligated on the promissory note
35 or the account debtor to recognize the security interest, pay or render
36 performance to the secured party, or accept payment or performance
37 from the secured party;

38 (4) does not entitle the secured party to use or assign the debtor's
39 rights under the promissory note, health-care-insurance receivable, or
40 general intangible, including any related information or materials
41 furnished to the debtor in the transaction giving rise to the promissory
42 note, health-care-insurance receivable, or general intangible;

43 (5) does not entitle the secured party to use, assign, possess, or
44 have access to any trade secrets or confidential information of the
45 person obligated on the promissory note or the account debtor; and

46 (6) does not entitle the secured party to enforce the security

1 interest in the promissory note, health-care-insurance receivable, or
2 general intangible.

3 [e.] (e) Section prevails over specified inconsistent law. [This]
4 Except to the extent otherwise provided in subsection (f), this section
5 prevails over any inconsistent [provisions] provision of an existing or
6 future statute, rule or regulation of this State [statutes, rules, and
7 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
8 (C.5:9-13)], unless the provision is contained in a statute of this State,
9 refers expressly to this section and states that the provision prevails
10 over this section.

11 (f) Inapplicability. Subsection (c) does not apply to an assignment
12 or transfer of, or the creation, attachment, perfection or enforcement
13 of a security interest in, a right the transfer of which is prohibited or
14 restricted by any of the following statutes to the extent that the statute
15 is inconsistent with subsection (c): R.S.34:15-29 (workers'
16 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
17 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
18 (structured settlement agreements).
19 (cf: N.J.S.12A:9-408)

20

21 65. N.J.S.12A:9-409 is amended to read as follows:

22 12A:9-409. Restrictions on Assignment of Letter-of-credit Rights
23 Ineffective.

24 [a.] (a) Term or law restricting assignment generally ineffective.
25 A term in a letter of credit or a rule of law, statute, regulation, custom,
26 or practice applicable to the letter of credit which prohibits, restricts,
27 or requires the consent of an applicant, issuer, or nominated person to
28 a beneficiary's assignment of or creation of a security interest in a
29 letter-of-credit right is ineffective to the extent that the term or rule of
30 law, statute, regulation, custom, or practice:

31 (1) would impair the creation, attachment, or perfection of a
32 security interest in the letter-of-credit right; or

33 (2) provides that the assignment or the creation, attachment, or
34 perfection of the security interest may give rise to a default, breach,
35 right of recoupment, claim, defense, termination, right of termination,
36 or remedy under the letter-of-credit right.

37 [b.] (b) Limitation on ineffectiveness under subsection [a.] (a).
38 To the extent that a term in a letter of credit is ineffective under
39 subsection [a.] (a) but would be effective under law other than this
40 chapter or a custom or practice applicable to the letter of credit, to the
41 transfer of a right to draw or otherwise demand performance under the
42 letter of credit, or to the assignment of a right to proceeds of the letter
43 of credit, the creation, attachment, or perfection of a security interest
44 in the letter-of-credit right:

45 (1) is not enforceable against the applicant, issuer, nominated
46 person, or transferee beneficiary;

1 (2) imposes no duties or obligations on the applicant, issuer,
2 nominated person, or transferee beneficiary; and

3 (3) does not require the applicant, issuer, nominated person, or
4 transferee beneficiary to recognize the security interest, pay or render
5 performance to the secured party, or accept payment or other
6 performance from the secured party.

7 (cf: N.J.S.12A:9-409)

8

9 66. N.J.S.12A:9-501 is amended to read as follows:

10 12A:9-501. Filing Office.

11 Filing offices.

12 **[a.] (a)** Except as otherwise provided in subsection **[b.** of this
13 section] **(b)**, if the local law of this State governs perfection of a
14 security interest or agricultural lien, the office in which to file a
15 financing statement to perfect the security interest or agricultural lien
16 is :

17 (1) the office designated for the filing or recording of a record of
18 a mortgage on the related real property, if:

19 **[(a)] (A)** the collateral is as-extracted collateral or timber to be
20 cut; or

21 **[(b)] (B)** the financing statement is filed as a fixture filing and the
22 collateral is goods that are or are to become fixtures; or

23 (2) the Division of Commercial Recording or other office
24 designated by Executive Order, in all other cases, including a case in
25 which the collateral is goods that are or are to become fixtures and the
26 financing statement is not filed as a fixture filing.

27 **[b.] (b)** Filing office for transmitting utilities. The office in which
28 to file a financing statement to perfect a security interest in collateral,
29 including fixtures, of a transmitting utility is the Division of
30 Commercial Recording or other office designated by Executive Order.
31 The financing statement also constitutes a fixture filing as to the
32 collateral indicated in the financing statement which is or is to become
33 fixtures.

34 (cf: N.J.S.12A:9-501)

35

36 67. N.J.S.12A:9-502 is amended to read as follows:

37 12A:9-502. Contents of Financing Statement; Record of Mortgage
38 as Financing Statement; Time of Filing Financing Statement.

39 **[a.] (a)** Sufficiency of financing statement. Subject to subsection
40 **[b. of this section] (b)**, a financing statement is sufficient only if it:

41 (1) provides the name of the debtor;

42 (2) provides the name of the secured party or a representative of
43 the secured party; and

44 (3) indicates the collateral covered by the financing statement.

45 **[b.] (b)** Real-property-related financing statements. Except as

1 otherwise provided in 12A:9-501 [b.] (b), to be sufficient, a financing
2 statement that covers as-extracted collateral or timber to be cut, or
3 which is filed as a fixture filing and covers goods that are or are to
4 become fixtures, [shall] must satisfy subsection [a. of this section] (a)
5 and also:

- 6 (1) indicate that it covers this type of collateral;
- 7 (2) indicate that it is to be filed in the real property records;
- 8 (3) provide a description of the real property to which the collateral
9 is related sufficient to [identify] give constructive notice of a
10 mortgage under the law of this State if the description were contained
11 in a record of the mortgage of the real property; and
- 12 (4) if the debtor does not have an interest of record in the real
13 property, provide the name of a record owner.

14 [c.] (c) Record of mortgage as financing statement. A record of
15 a mortgage is effective, from the date of recording, as a [filed]
16 financing statement filed as a fixture filing or as a financing statement
17 covering as-extracted collateral or timber to be cut [or fixtures] only
18 if:

- 19 (1) the record indicates the goods or accounts that it covers;
- 20 (2) the goods are or are to become fixtures related to the real
21 property described in the record or the collateral is related to the real
22 property described in the record and is as-extracted collateral or
23 timber to be cut;
- 24 (3) the record satisfies the requirements for a financing statement
25 in this section other than an indication that it is to be filed in the real
26 property records; and
- 27 (4) the record is recorded.

28 [d.] (d) Filing before security agreement or attachment. A
29 financing statement may be filed before a security agreement is made
30 or a security interest otherwise attaches.

31 (cf: N.J.S.12A:9-502)

32

33 68. N.J.S.12A:9-503 is amended to read as follows:

34 12A:9-503. Name of Debtor and Secured Party.

35 [a.] (a) Sufficiency of debtor's name. A financing statement
36 sufficiently provides the name of the debtor:

- 37 (1) if the debtor is a registered organization, only if the financing
38 statement provides the name of the debtor indicated on the public
39 record of the debtor's jurisdiction of organization which shows the
40 debtor to have been organized;
- 41 (2) if the debtor is a decedent's estate, only if the financing
42 statement provides the name of the decedent and indicates that the
43 debtor is an estate;
- 44 (3) if the debtor is a trust or a trustee acting with respect to
45 property held in trust, only if the financing statement:

1 [(a)] (A) provides the name specified for the trust in its organic
2 documents or, if no name is specified, provides the name of the settlor
3 and additional information sufficient to distinguish the debtor from
4 other trusts having one or more of the same settlors; and

5 [(b)] (B) indicates, in the debtor's name or otherwise, that the
6 debtor is a trust or is a trustee acting with respect to property held in
7 trust; and

8 (4) in other cases:

9 [(a)] (A) if the debtor has a name, only if it provides the individual
10 or organizational name of the debtor; and

11 [(b)] (B) if the debtor does not have a name, only if it provides the
12 names of the partners, members, associates, or other persons
13 comprising the debtor.

14 [b.] (b) Additional debtor-related information. A financing
15 statement that provides the name of the debtor in accordance with
16 subsection [a. of this section] (a) is not rendered ineffective by the
17 absence of:

18 (1) a trade name or other name of the debtor; or

19 (2) unless required under [paragraph (4) (b) of] subsection [a. of
20 this section] (a) (4) (B), names of partners, members, associates, or
21 other persons comprising the debtor.

22 [c.] (c) Debtor's trade name insufficient. A financing statement
23 that provides only the debtor's trade name does not sufficiently provide
24 the name of the debtor.

25 [d.] (d) Representative capacity. Failure to indicate the
26 representative capacity of a secured party or representative of a
27 secured party does not affect the sufficiency of a financing statement.

28 [e.] (e) Multiple debtors and secured parties. A financing
29 statement may provide the name of more than one debtor and the name
30 of more than one secured party.

31 (cf: N.J.S.12A:9-503)

32

33 69. N.J.S.12A:9-504 is amended to read as follows:

34 12A:9-504. Indication of Collateral.

35 A financing statement sufficiently indicates the collateral that it
36 covers if the financing statement provides:

37 [a.] (1) a description of the collateral pursuant to 12A:9-108; or

38 [b.] (2) an indication that the financing statement covers all assets
39 or all personal property.

40 (cf: N.J.S.12A:9-504)

41

42 70. N.J.S.12A:9-505 is amended to read as follows:

43 12A:9-505. Filing and Compliance with Other Statutes and
44 Treaties for Consignments, Leases, Other Bailments, and Other
45 Transactions.

1 **[a.] (a)** Use of terms other than "debtor" and "secured party." A
2 consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
3 payment intangible or promissory note may file a financing statement,
4 or may comply with a statute or treaty described in 12A:9-311 **[a.]**
5 **(a)**, using the terms "consignor," "consignee," "lessor," "lessee,"
6 "bailor," "bailee," "licensor," "licensee," "owner," "registered owner,"
7 "buyer," "seller," or words of similar import, instead of the terms
8 "secured party" and "debtor".

9 **[b.] (b)** Effect of financing statement under subsection **[a.] (a)**
10 This part applies to the filing of a financing statement under subsection
11 **[a. of this section] (a)** and, as appropriate, to compliance that is
12 equivalent to filing a financing statement under 12A:9-311 **[b.] (b)**,
13 but the filing or compliance is not of itself a factor in determining
14 whether the collateral secures an obligation. If it is determined for
15 another reason that the collateral secures an obligation, a security
16 interest held by the consignor, lessor, bailor, licensor, owner, or buyer
17 which attaches to the collateral is perfected by the filing or
18 compliance.

19 (cf: N.J.S.12A:9-505)

20

21 71. N.J.S.12A:9-506 is amended to read as follows:

22 12A:9-506. Effect of Errors or Omissions.

23 **[a.] (a)** Minor errors and omissions. A financing statement
24 substantially satisfying the requirements of this part is effective, even
25 if it has minor errors or omissions, unless the errors or omissions make
26 the financing statement seriously misleading.

27 **[b.] (b)** Financing statement seriously misleading. Except as
28 otherwise provided in subsection **[c. of this section] (c)**, a financing
29 statement that fails sufficiently to provide the name of the debtor in
30 accordance with 12A:9-503 **[a.] (a)** is seriously misleading.

31 **[c.] (c)** Financing statement not seriously misleading. If a search
32 of the records of the filing office under the debtor's correct name,
33 using the filing office's standard search logic, if any, would disclose a
34 financing statement that fails sufficiently to provide the name of the
35 debtor in accordance with 12A:9-503 **[a.] (a)**, the name provided does
36 not make the financing statement seriously misleading.

37 **[d.] (d)** "Debtor's correct name." For purposes of 12A:9-508 **[b.]**
38 **(b)**, the "debtor's correct name" in subsection **[c. of this section] (c)**
39 means the correct name of the new debtor.

40 (cf: N.J.S.12A:9-506)

41

42 72. N.J.S.12A:9-507 is amended to read as follows:

43 12A:9-507. Effect of Certain Events on Effectiveness of Financing
44 Statement.

45 **[a.] (a)** Disposition. A filed financing statement remains effective

1 with respect to collateral that is sold, exchanged, leased, licensed, or
2 otherwise disposed of and in which a security interest or agricultural
3 lien continues, even if the secured party knows of or consents to the
4 disposition.

5 [b.] (b) Information becoming seriously misleading. Except as
6 otherwise provided in subsection [c. of this section] (c) and
7 12A:9-508, a financing statement is not rendered ineffective if, after
8 the financing statement is filed, the information provided in the
9 financing statement becomes seriously misleading under 12A:9-506.

10 [c.] (c) Change in debtor's name. If a debtor so changes its name
11 that a filed financing statement becomes seriously misleading under
12 12A:9-506:

13 (1) the financing statement is effective to perfect a security interest
14 in collateral acquired by the debtor before, or within four months after,
15 the change; and

16 (2) the financing statement is not effective to perfect a security
17 interest in collateral acquired by the debtor more than four months
18 after the change, unless an amendment to the financing statement
19 which renders the financing statement not seriously misleading is filed
20 within four months after the change.

21 (cf: N.J.S.12A:9-507)

22

23 73. N.J.S.12A:9-508 is amended to read as follows:

24 12A:9-508. Effectiveness of Financing Statement If New Debtor
25 Becomes Bound by Security Agreement.

26 [a.] (a) Financing statement naming original debtor. Except as
27 otherwise provided in this section, a filed financing statement naming
28 an original debtor is effective to perfect a security interest in collateral
29 in which a new debtor has or acquires rights to the extent that the
30 financing statement would have been effective had the original debtor
31 acquired rights in the collateral.

32 [b.] (b) Financing statement becoming seriously misleading. If the
33 difference between the name of the original debtor and that of the new
34 debtor causes a filed financing statement that is effective under
35 subsection [a. of this section] (a) to be seriously misleading under
36 12A:9-506:

37 (1) the financing statement is effective to perfect a security interest
38 in collateral acquired by the new debtor before, and within four
39 months after, the new debtor becomes bound under 12A:9-203 [d.]
40 (d); and

41 (2) the financing statement is not effective to perfect a security
42 interest in collateral acquired by the new debtor more than four
43 months after the new debtor becomes bound under 12A:9-203 [d.] (d)
44 unless an initial financing statement providing the name of the new
45 debtor is filed before the expiration of that time.

1 [c.] (c) When section not applicable. This section does not apply
2 to collateral as to which a filed financing statement remains effective
3 against the new debtor under 12A:9-507 [a.] (a).
4 (cf: N.J.S.12A:9-508)

5
6 74. N.J.S.12A:9-509 is amended to read as follows:

7 12A:9-509. Persons Entitled to File a Record.

8 [a.] (a) Person entitled to file record. A person may file an initial
9 financing statement, amendment that adds collateral covered by a
10 financing statement, or amendment that adds a debtor to a financing
11 statement only if:

12 (1) the debtor authorizes the filing in an authenticated record or
13 pursuant to subsection (b) or (c); or

14 (2) the person holds an agricultural lien that has become effective
15 at the time of filing and the financing statement covers only collateral
16 in which the person holds an agricultural lien.

17 [b.] (b) Security agreement as authorization. By authenticating or
18 becoming bound as debtor by a security agreement, a debtor or new
19 debtor authorizes the filing of an initial financing statement, and an
20 amendment, covering:

21 (1) the collateral described in the security agreement; and

22 (2) property that becomes collateral under 12A:9-315 [a.] (a) (2),
23 whether or not the security agreement expressly covers proceeds.

24 [c.] (c) Acquisition of collateral as authorization. By acquiring
25 collateral in which a security interest or agricultural lien continues
26 under 12A:9-315 [a.] (a) (1), a debtor authorizes the filing of an
27 initial financing statement, and an amendment, covering the collateral
28 and property that becomes collateral under 12A:9-315 [a.] (a) (2).

29 [d.] (d) Person entitled to file certain amendments. A person may
30 file an amendment other than an amendment that adds collateral
31 covered by a financing statement or an amendment that adds a debtor
32 to a financing statement only if:

33 (1) the secured party of record authorizes the filing; or

34 (2) the amendment is a termination statement for a financing
35 statement as to which the secured party of record has failed to file or
36 send a termination statement as required by 12A:9-513 [a. or c.] (a)
37 or (c), the debtor authorizes the filing, and the termination statement
38 indicates that the debtor authorized it to be filed.

39 [e.] (e) Multiple secured parties of record. If there is more than
40 one secured party of record for a financing statement, each secured
41 party of record may authorize the filing of an amendment under
42 subsection [d. of this section] (d).

43 (cf: N.J.S.12A:9-509)

44
45 75. N.J.S.12A:9-510 is amended to read as follows:

1 12A:9-510. Effectiveness of Filed Record.

2 [a.] (a) Filed record effective if authorized. A filed record is
3 effective only to the extent that it was filed by a person [who] that
4 may file it under 12A:9-509.

5 [b.] (b) Authorization by one secured party of record. A record
6 authorized by one secured party of record does not affect the financing
7 statement with respect to another secured party of record.

8 [c.] (c) Continuation statement not timely filed. A continuation
9 statement that is not filed within the six-month period prescribed by
10 12A:9-515 [d.] (d) is ineffective.

11 (cf: N.J.S.12A:9-510)

12

13 76. N.J.S.12A:9-511 is amended to read as follows:

14 12A:9-511. Secured Party of Record.

15 [a.] (a) Secured party of record. A secured party of record with
16 respect to a financing statement is a person whose name is provided as
17 the name of the secured party or a representative of the secured party
18 in an initial financing statement that has been filed. If an initial
19 financing statement is filed under 12A:9-514 [a.] (a), the assignee
20 named in the initial financing statement is the secured party of record
21 with respect to the financing statement.

22 [b.] (b) Amendment naming secured party of record. If an
23 amendment of a financing statement which provides the name of a
24 person as a secured party or a representative of a secured party is
25 filed, the person named in the amendment is a secured party of record.
26 If an amendment is filed under 12A:9-514 [b.] (b), the assignee named
27 in the amendment is a secured party of record.

28 [c.] (c) Amendment deleting secured party of record. A person
29 remains a secured party of record until the filing of an amendment of
30 the financing statement which deletes the person.

31 (cf: N.J.S.12A:9-511)

32

33 77. N.J.S.12A:9-512 is amended to read as follows:

34 12A:9-512. Amendment of Financing Statement.

35 [a.] (a) Amendment of information in financing statement. Subject
36 to 12A:9-509, a person may add or delete collateral covered by,
37 continue or terminate the effectiveness of, or, subject to subsection [e.
38 of this section] (e), otherwise amend the information provided in, a
39 financing statement by filing an amendment that:

40 (1) identifies, by its file number, the initial financing statement to
41 which the amendment relates; and

42 (2) if the amendment relates to an initial financing statement filed
43 in a filing office described in 12A:9-501 [a.] (a) (1), provides the
44 information specified in 12A:9-502 [b.] (b).

45 [b.] (b) Period of effectiveness not affected. Except as otherwise

1 provided in 12A:9-515, the filing of an amendment does not extend the
2 period of effectiveness of the financing statement.

3 [c.] (c) Effectiveness of amendment adding collateral. A financing
4 statement that is amended by an amendment that adds collateral is
5 effective as to the added collateral only from the date of the filing of
6 the amendment.

7 [d.] (d) Effectiveness of amendment adding debtor. A financing
8 statement that is amended by an amendment that adds a debtor is
9 effective as to the added debtor only from the date of the filing of the
10 amendment.

11 [e.] (e) Certain amendments ineffective. An amendment is
12 ineffective to the extent it:

13 (1) purports to delete all debtors and fails to provide the name of
14 a debtor to be covered by the financing statement; or

15 (2) purports to delete all secured parties of record and fails to
16 provide the name of a new secured party of record.

17 (cf: N.J.S.12A:9-512)

18

19 78. N.J.S.12A:9-513 is amended to read as follows:

20 12A:9-513. Termination Statement.

21 [a.] (a) Consumer goods. A secured party shall cause the secured
22 party of record for a financing statement to file a termination statement
23 for the financing statement if the financing statement covers consumer
24 goods and:

25 (1) there is no obligation secured by the collateral covered by the
26 financing statement and no commitment to make an advance, incur an
27 obligation, or otherwise give value; or

28 (2) the debtor did not authorize the filing of the initial financing
29 statement.

30 [b.] (b) Time for compliance with subsection [a.] (a). To comply
31 with subsection [a. of this section] (a), a secured party shall cause the
32 secured party of record to file the termination statement:

33 (1) within one month after there is no obligation secured by the
34 collateral covered by the financing statement and no commitment to
35 make an advance, incur an obligation, or otherwise give value; or

36 (2) if earlier, within 20 days after the secured party receives an
37 authenticated demand from a debtor.

38 [c.] (c) Other collateral. In cases not governed by subsection [a.
39 of this section] (a), within 20 days after a secured party receives an
40 authenticated demand from a debtor, the secured party shall cause the
41 secured party of record for a financing statement to send to the debtor
42 a termination statement for the financing statement or file the
43 termination statement in the filing office if:

44 (1) except in the case of a financing statement covering accounts
45 or chattel paper that has been sold or goods that are the subject of a
46 consignment, there is no obligation secured by the collateral covered

1 by the financing statement and no commitment to make an advance,
2 incur an obligation, or otherwise give value;

3 (2) the financing statement covers accounts or chattel paper that
4 **[have]** has been sold but as to which the account debtor or other
5 person obligated has discharged its obligation;

6 (3) the financing statement covers goods that were the subject of
7 a consignment to the debtor but are not in the debtor's possession; or

8 (4) the debtor did not authorize the filing of the initial financing
9 statement.

10 **[d.] (d)** Effect of filing termination statement. Except as
11 otherwise provided in 12A:9-510, upon the filing of a termination
12 statement with the filing office, the financing statement to which the
13 termination statement relates ceases to be effective. Except as
14 otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g),
15 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a
16 termination statement relating to a financing statement that indicates
17 that the debtor is a transmitting utility also causes the effectiveness of
18 the financing statement to lapse.

19 (cf: N.J.S.12A:9-513)

20

21 79. N.J.S.12A:9-514 is amended to read as follows:

22 12A:9-514. Assignment of Powers of Secured Party of Record.

23 **[a.] (a)** Assignment reflected on initial financing statement.
24 Except as otherwise provided in **[this chapter]** subsection (c), an
25 initial financing statement may reflect an assignment of all of the
26 secured party's power to authorize an amendment to the financing
27 statement by providing the name and mailing address of the assignee
28 as the name and address of the secured party.

29 **[b.] (b)** Assignment of filed financing statement. Except as
30 otherwise provided in **[this chapter]** subsection (c), a secured party of
31 record may assign of record all or part of its power to authorize an
32 amendment to a financing statement by filing in the filing office an
33 amendment of the financing statement which:

34 (1) identifies, by its file number, the initial financing statement to
35 which it relates;

36 (2) provides the name of the assignor; and

37 (3) provides the name and mailing address of the assignee.

38 **[c.] (c)** Assignment of record of mortgage. An assignment of
39 record of a security interest in a fixture covered by a record of a
40 mortgage which is effective as a filed financing statement filed as a
41 fixture filing under 12A:9-502 **[c.] (c)** may be made only by an
42 assignment of record of the mortgage in the manner provided by law
43 of this State other than the Uniform Commercial Code.

44 (cf: N.J.S.12A:9-514)

45

46 80. N.J.S.12A:9-515 is amended to read as follows:

1 12A:9-515. Duration and Effectiveness of Financing Statement;
2 Effect of Lapsed Financing Statement.

3 [a.] (a) Five-year effectiveness. Except as otherwise provided in
4 subsections [b., e., f. and g.] (b), (e), (f) and (g), a filed financing
5 statement is effective for a period of five years after the date of filing.

6 [b.] (b) Public-finance or manufactured-home transaction. Except
7 as otherwise provided in subsections [e., f. and g. of this section] (e),
8 (f) and (g), an initial financing statement filed in connection with a
9 public-finance transaction or manufactured-home transaction is
10 effective for a period of 30 years after the date of filing if it indicates
11 that it is filed in connection with a public-finance transaction or
12 manufactured-home transaction.

13 [c. Bondable transition property. If a filed financing statement
14 relates to a security interest in bondable transition property and the
15 financing statement so states, it is effective until a termination
16 statement is filed.

17 d.] (c) Lapse and continuation of financing statement. The
18 effectiveness of a filed financing statement lapses on the expiration of
19 the period of its effectiveness unless before the lapse a continuation
20 statement is filed pursuant to subsection [e. of this section] (d). Upon
21 lapse, a financing statement ceases to be effective and any security
22 interest or agricultural lien that was perfected by the financing
23 statement becomes unperfected, unless the security interest is
24 perfected otherwise. If the security interest or agricultural lien
25 becomes unperfected upon lapse, it is deemed never to have been
26 perfected as against a purchaser of the collateral for value.

27 [e.] (d) When continuation statement may be filed. A continuation
28 statement may be filed only within six months before the expiration of
29 the five-year period specified in subsection [a.] (a) or the 30-year
30 period specified in subsection [b. of this section] (b), whichever is
31 applicable.

32 [f.] (e) Effect of filing continuation statement. Except as
33 otherwise provided in 12A:9-510, upon timely filing of a continuation
34 statement, the effectiveness of the initial financing statement continues
35 for a period of five years commencing on the day on which the
36 financing statement would have become ineffective in the absence of
37 the filing. Upon the expiration of the five-year period, the financing
38 statement lapses in the same manner as provided in subsection [d.]
39 (c), unless, before the lapse, another continuation statement is filed
40 pursuant to subsection [e. of this section] (d). Succeeding
41 continuation statements may be filed in the same manner to continue
42 the effectiveness of the initial financing statement.

43 [g.] (f) Transmitting utility financing statement. If a debtor is a
44 transmitting utility and a filed financing statement so indicates, the
45 financing statement is effective until a termination statement is filed.

1 **[h.] (g)** Record of mortgage as financing statement. A record of
2 mortgage that is effective as a **[filed]** financing statement filed as a
3 fixture filing under 12A:9-502 **[c.] (c)** remains effective as a **[filed]**
4 financing statement filed as a fixture filing until the mortgage is
5 released or satisfied of record or its effectiveness otherwise terminates
6 as to the real property.

7 **(h) Bondable transition property. If a filed financing statement**
8 **relates to a security interest in bondable transition property and the**
9 **financing statement so states, it is effective until a termination**
10 **statement is filed.**

11 (cf: N.J.S.12A:9-515)

12

13 81. N.J.S.12A:9-516 is amended to read as follows:

14 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

15 **[a.] (a)** What constitutes filing. Except as otherwise provided in
16 subsection **[b. of this section] (b)**, communication of a record to a
17 filing office and tender of the filing fee or acceptance of the record by
18 the filing office constitutes filing.

19 **[b.] (b)** Refusal to accept record; filing does not occur. Filing
20 does not occur with respect to a record that a filing office refuses to
21 accept because:

22 (1) the record is not communicated by a method or medium of
23 communication authorized by the filing office;

24 (2) an amount equal to or greater than the applicable filing fee is
25 not tendered;

26 (3) the filing office is unable to index the record because:

27 **[(a)] (A)** in the case of an initial financing statement, the record
28 does not provide a name for the debtor;

29 **[(b)] (B)** in the case of an amendment or correction statement, the
30 record:

31 (i) does not identify the initial financing statement as required by
32 12A:9-512 or 12A:9-518, as applicable; or

33 (ii) identifies an initial financing statement whose effectiveness has
34 lapsed under 12A:9-515;

35 **[(c)] (C)** in the case of an initial financing statement that provides
36 the name of a debtor identified as an individual or an amendment that
37 provides a name of a debtor identified as an individual which was not
38 previously provided in the financing statement to which the record
39 relates, the record does not identify the debtor's last name; or

40 **[(d)] (D)** in the case of a record filed or recorded in the filing
41 office described in 12A:9-501 **(a) (1)**, the record does not provide a
42 sufficient description of the real property to which it relates;

43 (4) in the case of an initial financing statement or an amendment
44 that adds a secured party of record, the record does not provide a
45 name and mailing address for the secured party of record;

1 (5) in the case of an initial financing statement or an amendment
2 that provides a name of a debtor which was not previously provided
3 in the financing statement to which the amendment relates, the record
4 does not:

5 [(a)] (A) provide a mailing address for the debtor;

6 [(b)] (B) indicate whether the debtor is an individual or an
7 organization; or

8 [(c)] (C) if the financing statement indicates that the debtor is an
9 organization, provide:

10 (i) a type of organization for the debtor;

11 (ii) a jurisdiction of organization for the debtor; or

12 (iii) an organizational identification number for the debtor or
13 indicate that the debtor has none;

14 (6) in the case of an assignment reflected in an initial financing
15 statement under 12A:9-514 [a.] (a) or an amendment filed under
16 12A:9-514 [b.] (b), the record does not provide a name and mailing
17 address for the assignee; or

18 (7) in the case of a continuation statement, the record is not filed
19 within the six-month period prescribed by 12A:9-515 [e.] (d).

20 [c.] (c) Rules applicable to subsection [b.] (b). For purposes of
21 subsection [b. of this section] (b):

22 (1) a record does not provide information if the filing office is
23 unable to read or decipher the information; and

24 (2) a record that does not indicate that it is an amendment or
25 identify an initial financing statement to which it relates, as required by
26 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.

27 [d.] (d) Refusal to accept record; record effective as filed record.
28 A record that is communicated to the filing office with tender of the
29 filing fee, but which the filing office refuses to accept for a reason
30 other than one set forth in subsection [b. of this section] (b), is
31 effective as a filed record except as against a purchaser of the
32 collateral which gives value in reasonable reliance upon the absence of
33 the record from the files.

34 (cf: N.J.S.12A:9-516)

35
36 82. N.J.S.12A:9-518 is amended to read as follows:

37 12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed
38 Record.

39 [a.] (a) Correction statement. A person may file in the filing office
40 a correction statement with respect to a record indexed there under the
41 person's name if the person believes that the record is inaccurate or
42 was wrongfully filed.

43 [b.] (b) Sufficiency of correction statement. A correction
44 statement [shall] must:

45 (1) identify the record to which it relates by the file number

1 assigned to the initial financing statement to which the record relates;
2 (2) indicate that it is a correction statement; and
3 (3) provide the basis for the person's belief that the record is
4 inaccurate and indicate the manner in which the person believes the
5 record should be amended to cure any inaccuracy or provide the basis
6 for the person's belief that the record was wrongfully filed.

7 [c.] (c) Record not affected by correction statement. The filing of
8 a correction statement does not affect the effectiveness of an initial
9 financing statement or other filed record.

10 (cf: N.J.S.12A:9-518)

11

12 83. N.J.S.12A:9-519 is amended to read as follows:

13 12A:9-519. Numbering, Maintaining, and Indexing Records;
14 Communicating Information Provided in Records.

15 [a.] (a) Filing office duties. For each record filed in a filing office,
16 the filing office shall:

- 17 (1) assign a unique number to the filed record;
18 (2) create a record that bears the number assigned to the filed
19 record and the date and time of filing;
20 (3) maintain the filed record for public inspection; and
21 (4) index the filed record in accordance with subsections [c., d.,
22 and e. of this section] (c), (d) and (e).

23 [b.] (b) File number. A file number assigned after January 1,
24 2002, [shall] must include a digit that:

- 25 (1) is mathematically derived from or related to the other digits of
26 the file number; and
27 (2) aids the filing office in determining whether a number
28 communicated as the file number includes a single-digit or
29 transpositional error.

30 [c.] (c) Indexing: general. Except as otherwise provided in
31 subsections [d. and e. of this section] (d) and (e), the filing office
32 shall:

33 (1) index an initial financing statement according to the name of
34 the debtor and index all filed records relating to the initial financing
35 statement in a manner that associates with one another an initial
36 financing statement and all filed records relating to the initial financing
37 statement; and

38 (2) index a record that provides a name of a debtor which was not
39 previously provided in the financing statement to which the record
40 relates also according to the name that was not previously provided.

41 [d.] (d) Indexing: real-property-related financing statement. If a
42 financing statement is filed as a fixture filing or covers as-extracted
43 collateral or timber to be cut, the filing office shall index it:

44 (1) under the names of the debtor and of each owner of record
45 shown on the financing statement as if they were the mortgagors under

1 a mortgage of the real property described; and

2 (2) to the extent that the law of this State provides for indexing of
3 records or mortgages under the name of the mortgagees, under the
4 name of the secured party as if the secured party were the mortgagee
5 thereunder, or, if the indexing is by description, as if the financing
6 statement were a record of a mortgage of the real property described.

7 [e.] (e) Indexing: real-property-related assignment. If a financing
8 statement is filed as a fixture filing or covers as-extracted collateral or
9 timber to be cut, the filing office shall index an assignment filed under
10 12A:9-514 [a.] (a) or an amendment filed under 12A:9-514 [b.] (b):

11 (1) under the name of the assignor as grantor; and

12 (2) to the extent that the law of this State provides for indexing a
13 record of the assignment of a mortgage under the name of the
14 assignee, under the name of the assignee.

15 [f.] (f) Retrieval and association capability. The filing office shall
16 maintain a capability:

17 (1) to retrieve a record by the name of the debtor and by the file
18 number assigned to the initial financing statement to which the record
19 relates; and

20 (2) to associate and retrieve with one another an initial financing
21 statement and each filed record relating to the initial financing
22 statement.

23 [g.] (g) Removal of debtor's name. The filing office may not
24 remove a debtor's name from the index until one year after the
25 effectiveness of a financing statement naming the debtor lapses under
26 12A:9-515 with respect to all secured parties of record.

27 [h.] (h) Timeliness of filing office performance. The filing office
28 shall perform the acts required by subsections [a.] (a) through [e. of
29 this section] (e) at the time and in the manner prescribed by
30 filing-office rule, but not later than two business days after the filing
31 office receives the record in question.

32 [i.] (i) Inapplicability to real property related filing office.
33 Subsections [b. and h. of this section] (b) and (h) do not apply to a
34 filing office described in 12A:9-501 [a.] (a) (1).

35 (cf: N.J.S.12A:9-519)

36

37 84. N.J.S.12A:9-520 is amended to read as follows:

38 12A:9-520. Acceptance and Refusal to Accept Record.

39 [a.] (a) Mandatory refusal to accept record. A filing office shall
40 refuse to accept a record for filing for a reason set forth in 12A:9-516
41 [b.] (b) and may refuse to accept a record for filing only for a reason
42 set forth in 12A:9-516 [b.] (b).

43 [b.] (b) Communication concerning refusal. If a filing office
44 refuses to accept a record for filing, it shall communicate to the person
45 [who] that presented the record the fact of and reason for the refusal

1 and the date and time the record would have been filed had the filing
2 office accepted it. The communication [shall] must be made at the
3 time and in the manner prescribed by filing-office rule but, in the case
4 of a filing office described in 12A:9-501 (a) (2), in no event more than
5 two business days after the filing office receives the record.

6 [c.] (c) When filed financing statement effective. A filed financing
7 statement satisfying 12A:9-502 [a. and b.] (a) and (b) is effective,
8 even if the filing office is required to refuse to accept it for filing under
9 subsection [a. of this section] (a). However, 12A:9-338 applies to a
10 filed financing statement providing information described in 12A:9-516
11 [b.] (b) (5) which is incorrect at the time the financing statement is
12 filed.

13 [d.] (d) Separate application to multiple debtors. If a record
14 communicated to a filing office provides information that relates to
15 more than one debtor, this part applies as to each debtor separately.
16 (cf: N.J.S.12A:9-520)

17

18 85. N.J.S.12A:9-521 is amended to read as follows:

19 12A:9-521. Uniform Form of Written Financing Statement and
20 Amendment.

21 [a.] (a) Initial financing statement form. A filing office that
22 accepts written records may not refuse to accept a written initial
23 financing statement in the following form and format except for a
24 reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum If applicable. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) If applicable. ADDITIONAL FEE: optional All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID #, if any
			<input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.
 Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction — effective 30 years
 Filed in connection with a Public-Finance Transaction — effective 30 years

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84

1 **[b.] (b)** Amendment form. A filing office that accepts written
2 records may not refuse to accept a written record in the following
3 form and format except for a reason set forth in 12A:9-516 **[b.] (b)**:



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE
--------------------------	----------------------------------	--------------------------	----------------------------------	---

8. AMENDMENT (COLLATERAL CHANGE); check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 3 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 (cf: N.J.S.12A:9-521)

2

3 86. N.J.S.12A:9-522 is amended to read as follows:

4 12A:9-522. Maintenance and Destruction of Records.

5 [a.] (a) Post-lapse maintenance and retrieval of information.

6 The filing office shall maintain a record of the information provided
7 in a filed financing statement for at least one year after the
8 effectiveness of the financing statement has lapsed under 12A:9-515
9 with respect to all secured parties of record. The record shall be
10 retrievable by using the name of the debtor and [;

11 (1) if the record was filed in the filing office described in 12A:9-
12 501 a. (1),] by using the file number assigned to the initial financing
13 statement to which the record relates [and the date that record was
14 filed; or

15 (2) if the record was filed in the office described in 12A:9-501 a.
16 (2), by using the file number assigned to the initial financing
17 statement to which the record relates] .

18 [b.] (b) Destruction of written records. Except to the extent
19 that a statute governing disposition of public records provides
20 otherwise, the filing office immediately may destroy any written
21 record evidencing a financing statement. However, if the filing
22 office destroys a written record, it shall maintain another record of
23 the financing statement which complies with subsection [a. of this
24 section] (a).

25 (cf: N.J.S.12A:9-522)

26

27 87. N.J.S.12A:9-523 is amended to read as follows:

28 12A:9-523. Information from Filing Office; Sale or License of
29 Records.

30 [a.] (a) Acknowledgment of filing written record. If a person
31 [who] ~~that~~ files a written record requests an acknowledgment of the
32 filing, the filing office shall send to the person an image of the
33 record showing the number assigned to the record pursuant to
34 12A:9-519 [a.] (a) (1) and the date and time of the filing of the
35 record. However, if the person furnishes a copy of the record to the
36 filing office, the filing office may instead:

37 (1) note upon the copy the number assigned to the record
38 pursuant to 12A:9-519 [a.] (a) (1) and the date and time of the
39 filing of the record; and

40 (2) send the copy to the person.

41 [b.] (b) Acknowledgment of filing other record. If a person files
42 a record other than a written record, the filing office shall
43 communicate to the person an acknowledgment that provides:

44 (1) the information in the record;

45 (2) the number assigned to the record pursuant to 12A:9-519 [a.]

1 (a) (1); and

2 (3) the date and time of the filing of the record.

3 [c.] (c) Communication of requested information. The filing
4 office shall communicate or otherwise make available in a record the
5 following information to any person [who] that requests it:

6 (1) whether there is on file on a date and time specified by the
7 filing office, but not a date earlier than three business days before
8 the filing office receives the request, any financing statement that:

9 [(a)] (A) designates a particular debtor or, if the request so
10 states, designates a particular debtor at the address specified in the
11 request;

12 [(b)] (B) has not lapsed under 12A:9-515 with respect to all
13 secured parties of record; and

14 [(c)] (C) if the request so states, has lapsed under 12A:9-515
15 and a record of which is maintained by the filing office under
16 12A:9-522 [a.] (a);

17 (2) the date and time of filing of each financing statement; and

18 (3) the information provided in each financing statement.

19 [d.] (d) Medium for communicating information. In complying
20 with its duty under subsection [c. of this section] (c), the filing
21 office may communicate information in any medium. However, if
22 requested, the filing office shall communicate information by issuing
23 [its written certificate as] a record that can be admitted into
24 evidence in the courts of this State without extrinsic evidence of its
25 authenticity.

26 [e.] (e) Timeliness of filing office performance. The filing office
27 shall perform the acts required by subsections [a.] (a) through [d.
28 of this section] (d) at the time and in the manner prescribed by
29 filing-office rule, but not later than two business days after the filing
30 office receives the request.

31 [f.] (f) Public availability of records. At least weekly, the
32 Secretary of State shall offer to sell or license to the public on a
33 nonexclusive basis, in bulk, copies of all records filed in it under this
34 part, in every medium from time to time available to the filing office.
35 (cf: N.J.S.12A:9-523)

36

37 88. N.J.S.12A:9-524 is amended to read as follows:

38 12A:9-524. Delay by Filing Office.

39 Delay by the filing office beyond a time limit prescribed by this
40 part is excused if:

41 [a.] (1) the delay is caused by interruption of communication or
42 computer facilities, war, emergency conditions, failure of equipment,
43 or other circumstances beyond control of the filing office; and

44 [b.] (2) the filing office exercises reasonable diligence under the
45 circumstances.

1 (cf: N.J.S.12A:9-524)

2 89. N.J.S.12A:9-525 is amended to read as follows:

3 12A:9-525. Fees.

4 [a.] (a) Initial financing statement or other record: general rule.

5 [The] Except as otherwise provided in subsection (d), the fees for
6 filing and indexing records under this part are:

7 (1) \$25 for financing statement;

8 (2) \$25 for continuation statement;

9 (3) \$25 for amendment statement;

10 (4) \$25 for partial release;

11 (5) \$25 for assignment;

12 (6) \$25 termination statement; and

13 (7) \$1 for copy of any filed financing statement.

14 [b.] (b) Number of names. [The] Except as otherwise provided
15 in subsection (d), the number of names required to be indexed does
16 not affect the amount of the fee in subsection [a. of this section]
17 (a).

18 [c.] (c) Response to information request. The fee for
19 responding to a request for information from the filing office,
20 including for issuing a certificate of search showing whether there is
21 on file any financing statement naming a particular debtor, is \$25.

22 [d.] (d) Record of mortgage. This section does not require a fee
23 with respect to a record of mortgage which is effective as a
24 financing statement filed as a fixture filing or as a financing
25 statement covering as-extracted collateral or timber to be cut under
26 12A:9-502 [c.] (c). However, the recording and satisfaction fees
27 that otherwise would be applicable to the record of the mortgage
28 apply.

29 (cf: N.J.S.12A:9-525)

30

31 90. N.J.S.12A:9-526 is amended to read as follows:

32 12A:9-526. Filing-Office Rules.

33 [a.] (a) Adoption of filing-office rules. The Division of
34 Commercial Recording or other office designated by Executive
35 Order [may] shall adopt and publish rules to implement this chapter.

36 The filing-office rules [shall] must be:

37 (1) consistent with this chapter; and

38 (2) adopted and published in accordance with the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 [b.] (b) Harmonization of rules. To keep the filing-office rules
41 and practices of the filing office in harmony with the rules and
42 practices of filing offices in other jurisdictions that enact
43 substantially this part, and to keep the technology used by the filing
44 office compatible with the technology used by filing offices in other
45 jurisdictions that enact substantially this part, the Division of

1 Commercial Recording, so far as is consistent with the purposes,
2 policies, and provisions of this chapter, in adopting, amending, and
3 repealing filing-office rules, shall:

4 (1) consult with filing offices in other jurisdictions that enact
5 substantially this part; and

6 (2) consult the most recent version of the Model Rules
7 promulgated by the International Association of Corporate
8 Administrators or any successor organization; and

9 (3) take into consideration the rules and practices of, and the
10 technology used by, filing offices in other jurisdictions that enact
11 substantially this part.

12 (cf: N.J.S.12A:9-526)

13

14 91. N.J.S.12A:9-601 is amended to read as follows:

15 12A:9-601. Rights After Default; Judicial Enforcement;
16 Consignor or Buyer of Accounts, Chattel Paper, Payment
17 Intangibles, or Promissory Notes.

18 [a.] (a) Rights of secured party after default. After default, a
19 secured party has the rights provided in this part and, except as
20 otherwise provided in 12A:9-602, those provided by agreement of
21 the parties. A secured party:

22 (1) may reduce a claim to judgment, foreclose, or otherwise
23 enforce the claim, security interest, or agricultural lien by any
24 available judicial procedure; and

25 (2) if the collateral is documents, may proceed either as to the
26 documents or as to the goods they cover.

27 [b.] (b) Rights and duties of secured party in possession or
28 control. A secured party in possession of collateral or control of
29 collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107
30 has the rights and duties provided in [12A:9-208] 12A:9-207.

31 [c.] (c) Rights cumulative; simultaneous exercise. The rights
32 under subsections [a. and b. of this section] (a) and (b) are
33 cumulative and may be exercised simultaneously.

34 [d.] (d) Rights of debtor and obligor. Except as otherwise
35 provided in subsection [g. of this section] (g) and 12A:9-605, after
36 default, a debtor and an obligor have the rights provided in this part
37 and by agreement of the parties.

38 [e.] (e) Lien of levy after judgment. If a secured party has
39 reduced its claim to judgment, the lien of any levy that may be made
40 upon the collateral by virtue of an execution based upon the
41 judgment relates back to the earliest of:

42 (1) the date of perfection of the security interest or agricultural
43 lien in the collateral;

44 (2) the date of filing a financing statement covering the
45 collateral; or

46 (3) any date specified in a statute under which the agricultural

1 lien was created.

2 [f.] (f) Execution sale. A sale pursuant to an execution is a
3 foreclosure of the security interest or agricultural lien by judicial
4 procedure within the meaning of this section. A secured party may
5 purchase at the sale and thereafter hold the collateral free of any
6 other requirements of this chapter.

7 [g.] (g) Consignor or buyer of certain rights to payment.
8 Except as otherwise provided in 12A:9-607 [c.] (c), this part
9 imposes no duties upon a secured party that is a consignor or is a
10 buyer of accounts, chattel paper, payment intangibles, or promissory
11 notes.

12 (cf: N.J.S.12A:9-601)

13

14 92. N.J.S.12A:9-602 is amended to read as follows:

15 12A:9-602. Waiver and Variance of Rights and Duties.

16 Except as otherwise provided in 12A:9-624, to the extent that
17 they give rights to a debtor or obligor and impose duties on a
18 secured party, the debtor or obligor may not waive or vary the rules
19 stated in the following listed sections:

20 (1) [12A:9-208b.(4) (c)] 12A:9-207 (b) (4) (C), which deals
21 with use and operation of the collateral by the secured party;

22 (2) [12A:9-211] 12A:9-210, which deals with requests for an
23 accounting and requests concerning a list of collateral and statement
24 of account;

25 (3) 12A:9-607 [c.] (c), which deals with collection and
26 enforcement of collateral;

27 (4) 12A:9-608 [a.] (a), and 12A:9-615 [c.] (c) to the extent
28 that they deal with application or payment of noncash proceeds of
29 collection, enforcement, or disposition;

30 (5) 12A:9-608 [a.] (a) and 12A:9-615 [d.] (d) to the extent that
31 they require accounting for or payment of surplus proceeds of
32 collateral;

33 (6) 12A:9-609 to the extent that it imposes upon a secured party
34 that takes possession of collateral without judicial process the duty
35 to do so without breach of the peace;

36 (7) 12A:9-610 [b.] (b), 12A:9-611, 12A:9-613 and 12A:9-614,
37 which deal with disposition of collateral;

38 (8) 12A:9-615 [f.] (f), which deals with calculation of a
39 deficiency or surplus when a disposition is made to the secured
40 party, a person related to the secured party, or a secondary obligor;

41 (9) 12A:9-616, which deals with explanation of the calculation of
42 a surplus or deficiency;

43 (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with
44 acceptance of collateral in satisfaction of obligation;

45 (11) 12A:9-623, which deals with redemption of collateral;

1 (12) 12A:9-624, which deals with permissible waivers; and
2 (13) 12A:9-625 and 12A:9-626, which deal with the secured
3 party's liability for failure to comply with this chapter.
4 (cf: N.J.S.12A:9-602)

5

6 93. N.J.S.12A:9-603 is amended to read as follows:

7 12A:9-603. Agreement on Standards Concerning Rights and
8 Duties.

9 [a.] (a) Agreed standards. The parties may determine by
10 agreement the standards measuring the fulfillment of the rights of a
11 debtor or obligor and the duties of a secured party under a rule
12 stated in 12A:9-602 if the standards are not manifestly unreasonable.

13 [b.] (b) Agreed standards inapplicable to breach of peace.
14 Subsection [a. of this section] (a) does not apply to the duty under
15 12A:9-609 to refrain from breaching the peace.

16 (cf: N.J.S.12A:9-603)

17

18 94. N.J.S.12A:9-604 is amended to read as follows:

19 12A:9-604. Procedure If Security Agreement Covers Real
20 Property or Fixtures.

21 [a.] (a) Enforcement: personal and real property. If a security
22 agreement covers both personal and real property, a secured party
23 may proceed:

24 (1) under this part as to the personal property without
25 prejudicing any rights with respect to the real property; or

26 (2) as to both the personal property and the real property in
27 accordance with the rights with respect to the real property, in
28 which case the other provisions of this part do not apply.

29 [b.] (b) Enforcement: fixtures. Subject to subsection [c. of this
30 section] (c), if a security agreement covers goods that are or
31 become fixtures, a secured party may proceed:

32 (1) under this part; or

33 (2) in accordance with the rights with respect to real property, in
34 which case the other provisions of this part do not apply.

35 [c.] (c) Removal of fixtures. Subject to the other provisions of
36 this part, if a secured party holding a security interest in fixtures has
37 priority over all owners and encumbrancers of the real property, the
38 secured party, after default, may remove the collateral from the real
39 property.

40 [d.] (d) Injury caused by removal. A secured party that removes
41 collateral shall promptly reimburse any encumbrancer or owner of
42 the real property, other than the debtor, for the cost of repair of any
43 physical injury caused by the removal. The secured party need not
44 reimburse the encumbrancer or owner for any diminution in value of
45 the real property caused by the absence of the goods removed or by
46 any necessity of replacing them. A person entitled to reimbursement

1 may refuse permission to remove until the secured party gives
2 adequate assurance for the performance of the obligation to
3 reimburse.

4 (cf: N.J.S.12A:9-604)

5

6 95. N.J.S.12A:9-605 is amended to read as follows:

7 12A:9-605. Unknown Debtor or Secondary Obligor.

8 A secured party does not owe a duty based on its status as
9 secured party:

10 [a.] (1) to a person who is a debtor or obligor, unless the
11 secured party knows:

12 [(1)] (A) that the person is a debtor or obligor;

13 [(2)] (B) the identity of the person; and

14 [(3)] (C) how to communicate with the person; or

15 [b.] (2) to a secured party or lienholder that has filed a financing
16 statement against a person, unless the secured party knows:

17 [(1)] (A) that the person is a debtor; and

18 [(2)] (B) the identity of the person.

19 (cf: N.J.S.12A:9-605)

20

21 96. N.J.S.12A:9-607 is amended to read as follows:

22 12A:9-607. Collection and Enforcement by Secured Party.

23 [a.] (a) Collection and enforcement generally. If so agreed, and
24 in any event after default, a secured party:

25 (1) may notify an account debtor or other person obligated on
26 collateral to make payment or otherwise render performance to or
27 for the benefit of the secured party;

28 (2) may take any proceeds to which the secured party is entitled
29 under 12A:9-315;

30 (3) may enforce the obligations of an account debtor or other
31 person obligated on collateral and exercise the rights of the debtor
32 with respect to the obligation of the account debtor or other person
33 obligated on collateral to make payment or otherwise render
34 performance to the debtor, and with respect to any property that
35 secures the obligation of the account debtor or other person
36 obligated on the collateral;

37 (4) if it holds a security interest in a deposit account perfected by
38 control under 12A:9-104 [a.] (a) (1), may apply the balance of the
39 deposit account to the obligation secured by the deposit account;
40 and

41 (5) if it holds a security interest in a deposit account perfected by
42 control under 12A:9-104 [a.] (a) (2) or (3), may instruct the bank
43 to pay the balance of the deposit account to or for the benefit of the
44 secured party.

45 [b.] (b) Nonjudicial enforcement of mortgage. If necessary to

1 enable a secured party to exercise under subsection (a) (3) the right
2 of a debtor to enforce a mortgage nonjudicially [under paragraph
3 (3) of subsection a. of this section], the secured party may record in
4 the office in which a record of the mortgage is recorded:

5 (1) a copy of the security agreement that creates or provides for
6 a security interest in the obligation secured by the mortgage; and

7 (2) the secured party's sworn affidavit in recordable form stating
8 that:

9 [(a)] (A) a default has occurred; and

10 [(b)] (B) the secured party is entitled to enforce the mortgage
11 nonjudicially.

12 [(c)] (c) Commercially reasonable collection and enforcement. A
13 secured party shall proceed in a commercially reasonable manner if
14 the secured party:

15 (1) undertakes to collect from or enforce an obligation of an
16 account debtor or other person obligated on collateral; and

17 (2) is entitled to charge back uncollected collateral or otherwise
18 to full or limited recourse against the debtor or a secondary obligor.

19 [(d)] (d) Expenses of collection and enforcement. A secured
20 party may deduct from the collections made pursuant to subsection
21 [c. of this section] (c), reasonable expenses of collection and
22 enforcement, including reasonable attorney's fees and legal expenses
23 incurred by the secured party.

24 [(e)] (e) Duties to secured party not affected. This section does
25 not determine whether an account debtor, bank, or other person
26 obligated on collateral owes a duty to a secured party.

27 (cf: N.J.S.12A:9-607)

28
29 97. N.J.S.12A:9-608 is amended to read as follows:

30 12A:9-608. Application of Proceeds of Collection or
31 Enforcement; Liability for Deficiency and Right to Surplus.

32 [(a)] (a) Application of proceeds, surplus, and deficiency if
33 obligation secured. If a security interest or agricultural lien secures
34 payment or performance of an obligation, the following rules apply:

35 (1) A secured party shall apply or pay over for application the
36 cash proceeds of collection or enforcement under [this section]
37 12A:9-607 in the following order to:

38 [(a)] (A) the reasonable expenses of collection and enforcement
39 and, to the extent provided for by agreement and not prohibited by
40 law, reasonable attorney's fees and legal expenses incurred by the
41 secured party;

42 [(b)] (B) the satisfaction of obligations secured by the security
43 interest or agricultural lien under which the collection or
44 enforcement is made; and

45 [(c)] (C) the satisfaction of obligations secured by any

1 subordinate security interest in or other lien on the collateral subject
2 to the security interest or agricultural lien under which the collection
3 or enforcement is made if the secured party receives an
4 authenticated demand for proceeds before distribution of the
5 proceeds is completed.

6 (2) If requested by a secured party, a holder of a subordinate
7 security interest or other lien shall furnish reasonable proof of the
8 interest or lien within a reasonable time. Unless the holder complies,
9 the secured party need not comply with the holder's demand under
10 [subparagraph (c) of] paragraph (1) ~~(C)~~ [of this subsection].

11 (3) A secured party need not apply or pay over for application
12 noncash proceeds of collection and enforcement under [this section]
13 12A:9-607 unless the failure to do so would be commercially
14 unreasonable. A secured party that applies or pays over for
15 application noncash proceeds shall do so in a commercially
16 reasonable manner.

17 (4) A secured party shall account to and pay a debtor for any
18 surplus, and the obligor is liable for any deficiency.

19 [b.] (b) No surplus or deficiency in sales of certain rights to
20 payment. If the underlying transaction is a sale of accounts, chattel
21 paper, payment intangibles, or promissory notes, the debtor is not
22 entitled to any surplus, and the obligor is not liable for any
23 deficiency.

24 (cf: N.J.S.12A:9-608)

25

26 98. N.J.S.12A:9-609 is amended to read as follows:

27 12A:9-609. Secured Party's Right to Take Possession after
28 Default.

29 [a.] (a) Possession; rendering equipment unusable; disposition
30 on debtor's premises. After default, a secured party:

31 (1) may take possession of the collateral; and

32 (2) without removal, may render equipment unusable and dispose
33 of collateral on a debtor's premises under 12A:9-610.

34 [b.] (b) Judicial and nonjudicial process. A secured party may
35 proceed under subsection [a.] (a):

36 (1) pursuant to judicial process; or

37 (2) without judicial process, if it proceeds without breach of the
38 peace.

39 [c.] (c) Assembly of collateral. If so agreed, and in any event
40 after default, a secured party may require the debtor to assemble the
41 collateral and make it available to the secured party at a place to be
42 designated by the secured party which is reasonably convenient to
43 both parties.

44 (cf: N.J.S.12A:9-609)

45

46 99. N.J.S.12A:9-610 is amended to read as follows:

1 12A:9-610. Disposition of Collateral after Default.

2 [a.] (a) Disposition after default. After default, a secured party
3 may sell, lease, license, or otherwise dispose of any or all of the
4 collateral in its present condition or following any commercially
5 reasonable preparation or processing.

6 [b.] (b) Commercially reasonable disposition. Every aspect of a
7 disposition of collateral, including the method, manner, time, place,
8 and other terms, [shall] must be commercially reasonable. If
9 commercially reasonable, a secured party may dispose of collateral
10 by public or private proceedings, by one or more contracts, as a unit
11 or in parcels, and at any time and place and on any terms.

12 [c.] (c) Purchase by secured party. A secured party may
13 purchase collateral:

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that
16 is customarily sold on a recognized market or the subject of widely
17 distributed standard price quotations.

18 [d.] (d) Warranties on disposition. A contract for sale, lease,
19 license, or other disposition includes the warranties relating to title,
20 possession, quiet enjoyment, and the like which by operation of law
21 accompany a voluntary disposition of property of the kind subject to
22 the contract.

23 [e.] (e) Disclaimer of warranties. A secured party may disclaim
24 or modify warranties under subsection [d. of this section] (d):

25 (1) in a manner that would be effective to disclaim or modify the
26 warranties in a voluntary disposition of property of the kind subject
27 to the contract of disposition; or

28 (2) by communicating to the purchaser a record evidencing the
29 contract for disposition and including an express disclaimer or
30 modification of the warranties.

31 [f.] (f) Record sufficient to disclaim warranties. A record is
32 sufficient to disclaim warranties under subsection [e. of this section]
33 (e) if it indicates "There is no warranty relating to title, possession,
34 quiet enjoyment, or the like in this disposition" or uses words of
35 similar import.

36 (cf: N.J.S.12A:9-610)

37

38 100. N.J.S.12A:9-611 is amended to read as follows:

39 12A:9-611. Notification Before Disposition of Collateral.

40 [a.] (a) "Notification date." In this section, "notification date"
41 means the earlier of the date on which:

42 (1) a secured party sends to the debtor and any secondary
43 obligor an authenticated notification of disposition; or

44 (2) the debtor and any secondary obligor waive the right to
45 notification.

1 **[b.] (b)** Notification of disposition required. Except as
2 otherwise provided in subsection **[d. of this section] (d)**, a secured
3 party that disposes of collateral under 12A:9-610 shall send to the
4 persons specified in subsection **[c. of this section] (c)** a reasonable
5 authenticated notification of disposition.

6 **[c.] (c)** Persons to be notified. To comply with subsection **[b.**
7 **of this section] (b)**, the secured party shall send an authenticated
8 notification of disposition to:

- 9 (1) the debtor;
- 10 (2) any secondary obligor; and
- 11 (3) if the collateral is other than consumer goods:

12 **[(a)] (A)** any other person from which the secured party has
13 received, before the notification date, an authenticated notification
14 of a claim of an interest in the collateral;

15 **[(b)] (B)** any other secured party or lienholder that, 10 days
16 before the notification date, held a security interest in or other lien
17 on the collateral perfected by the filing of a financing statement that:

- 18 (i) identified the collateral;
- 19 (ii) was indexed under the debtor's name as of that date; and
- 20 (iii) was filed in the office in which to file a financing statement
21 against the debtor covering the collateral as of that date; and

22 **[(c)] (C)** any other secured party that, 10 days before the
23 notification date, held a security interest in the collateral perfected
24 by compliance with a statute, regulation, or treaty described in
25 12A:9-311 **[a.] (a)**.

26 **[d.] (d)** Subsection **[b.] (b)** inapplicable: perishable collateral;
27 recognized market. Subsection **[b. of this section] (b)** does not
28 apply if the collateral is perishable or threatens to decline speedily in
29 value or is of a type customarily sold on a recognized market.

30 **[e.] (e)** Compliance with subsection **[c. paragraph (3)**
31 **subparagraph (b)] (c) (3) (B)**. A secured party complies with the
32 requirement for notification prescribed by subsection **[c. paragraph**
33 **(3) subparagraph (b) of this section] (c) (3) (B)** if:

- 34 (1) not later than 20 days or earlier than 30 days before the
35 notification date, the secured party requests, in a commercially
36 reasonable manner, information concerning financing statements
37 indexed under the debtor's name in the office indicated in **[that]**
38 subsection **[c. paragraph (3) subparagraph (b)] (c) (3) (B)**; and

- 39 (2) before the notification date, the secured party:

40 **[(a)] (A)** did not receive a response to the request for
41 information; or

42 **[(b)] (B)** received a response to the request for information and
43 sent an authenticated notification of disposition to each secured
44 party or other lienholder named in that response whose financing
45 statement covered the collateral.

1 (cf: N.J.S.12A:9-611)

2

3 101. N.J.S.12A:9-612 is amended to read as follows:

4 12A:9-612. Timeliness of Notification Before Disposition of
5 Collateral.

6 [a.] (a) Reasonable time is question of fact. Except as otherwise
7 provided in subsection [b. of this section] (b), whether a
8 notification is sent within a reasonable time is a question of fact.

9 [b.] (b) 10-day period sufficient in non-consumer transaction.
10 In a transaction other than a consumer transaction, a notification of
11 disposition sent after default and 10 days or more before the earliest
12 time of disposition set forth in the notification is sent within a
13 reasonable time before the disposition.

14 (cf: N.J.S.12A:9-612)

15

16 102. N.J.S.12A:9-613 is amended to read as follows:

17 12A:9-613. Contents and Form of Notification Before
18 Disposition of Collateral: General.

19 Except in a consumer-goods transaction, the following rules
20 apply:

21 [a.] (1) The contents of a notification of disposition are
22 sufficient if the notification:

23 [(1)] (A) describes the debtor and the secured party;

24 [(2)] (B) describes the collateral that is the subject of the
25 intended disposition;

26 [(3)] (C) states the method of intended disposition;

27 [(4)] (D) states that the debtor is entitled to an accounting of
28 the unpaid indebtedness and states the charge, if any, for an
29 accounting; and

30 [(5)] (E) states the time and place of a public [sale] disposition
31 or the time after which any other disposition is to be made.

32 [b.] (2) Whether the contents of a notification that lacks any of
33 the information specified in [subsection a. of this section] paragraph
34 (1) are nevertheless sufficient is a question of fact.

35 [c.] (3) The contents of a notification providing substantially the
36 information specified in [subsection a.] paragraph (1) are sufficient,
37 even if the notification includes:

38 [(1)] (A) information not specified by that paragraph; or

39 [(2)] (B) minor errors that are not seriously misleading.

40 [d.] (4) A particular phrasing of the notification is not required.

41 [e.] (5) The following form of notification and the form
42 appearing in 12A:9-614 [c.] (3), when completed, each provides
43 sufficient information:

1 NOTIFICATION OF DISPOSITION OF COLLATERAL
2 To: (Name of debtor, obligor, or other person to which the
3 notification is sent)
4 From: (Name, address, and telephone number of secured party)
5 Name of Debtor(s): (Include only if debtor(s) are not an addressee)
6 (For a public disposition:)
7 We will sell or lease or license, as applicable the (describe collateral)
8 to the highest qualified bidder in public as follows:
9 Day and Date:
10 Time:
11 Place:
12 (For a private disposition:)
13 We will sell or lease or license, as applicable the (describe collateral)
14 privately sometime after (day and date).
15 You are entitled to an accounting of the unpaid indebtedness
16 secured by the property that we intend to sell (or lease or license, as
17 applicable) (for a charge of \$ _____). You may request
18 an accounting by calling us at (telephone number)
19 (End of Form)
20 (cf: N.J.S.12A:9-613)
21

22 103. N.J.S.12A:9-614 is amended to read as follows:
23 12A:9-614. Contents and Form of Notification Before
24 Disposition of Collateral: Consumer-goods Transaction.
25 In a consumer-goods transaction, the following rules apply:
26 [a.] (1) A notification of disposition [shall] must provide the
27 following information:
28 [(1)] (A) the information specified in 12A:9-613 [a.] (1);
29 [(2)] (B) a description of any liability for a deficiency of the
30 person to which the notification is sent;
31 [(3)] (C) a telephone number from which the amount that
32 [shall] must be paid to the secured party to redeem the collateral
33 under 12A:9-623 is available; and
34 [(4)] (D) a telephone number or mailing address from which
35 additional information concerning the disposition and the obligation
36 secured is available.
37 [b.] (2) A particular phrasing of the notification is not required.
38 [c.] (3) The following form of notification, when completed,
39 provides sufficient information:
40 (Name and address of secured party)
41 (Date)
42

43 NOTICE OF OUR PLAN TO SELL PROPERTY
44 (Name and address of any obligor who is also a debtor)
45 Subject: (Identification of Transaction)
46 We have your (describe collateral), because you broke promises in

1 our agreement.
2 (For a public disposition:)
3 We will sell (describe collateral) at public sale. A sale could include
4 a lease or license. The sale will be held as follows:
5 Date:
6 Time:
7 Place:
8 You may attend the sale and bring bidders if you want.
9 (For a private disposition:)
10 We will sell (describe collateral) at private sale sometime after
11 (date). A sale could include a lease or license.
12 The money that we get from the sale (after paying our costs) will
13 reduce the amount you owe. If we get less money than you owe,
14 you (will or will not, as applicable) still owe us the difference. If we
15 get more money than you owe, you will get the extra money, unless
16 we must pay it to someone else.
17 You can get the property back at any time before we sell it by
18 paying us the full amount you owe (not just the past due payments),
19 including our expenses. To learn the exact amount you must pay,
20 call us at (telephone number).
21 If you want us to explain to you in writing how we have figured the
22 amount that you owe us, you may call us at (telephone number) or
23 write us at (secured party's address) and request a written
24 explanation. We will charge you \$ for the explanation if
25 we sent you another written explanation of the amount you owe us
26 within the last six months.
27 If you need more information about the sale call us at (telephone
28 number) or write us at (secured party's address).
29 We are sending this notice to the following other people who have
30 an interest in (describe collateral) or who owe money under your
31 agreement:
32 (Names of all other debtors and obligors, if any.)
33 (End of Form)
34 [d.] (4) A notification in the form of [subsection c. of this
35 section] paragraph (3) is sufficient, even if additional information
36 appears at the end of the form.
37 [e.] (5) A notification in the form of [subsection c.] paragraph
38 (3) is sufficient, even if it includes errors in information not required
39 by [subsection a. of this section] paragraph (1), unless the error is
40 misleading with respect to rights arising under this chapter.
41 [f.] (6) If a notification under this section is not in the form of
42 [subsection c.] paragraph (3), law other than this chapter
43 determines the effect of including information not required by
44 [subsection a. of this section] paragraph (1).
45 (cf: N.J.S.12A:9-614)

1 104. N.J.S.12A:9-615 is amended to read as follows:
2 12A:9-615. Application of Proceeds of Disposition; Liability for
3 Deficiency and Right to Surplus.

4 [a.] (a) Application of proceeds. A secured party shall apply or
5 pay over for application the cash proceeds of disposition under
6 12A:9-610 in the following order:

7 (1) the reasonable expenses of retaking, holding, preparing for
8 disposition, processing, and disposing, and, to the extent provided
9 for by agreement and not prohibited by law, reasonable attorney's
10 fees and legal expenses incurred by the secured party;

11 (2) the satisfaction of obligations secured by the security interest
12 or agricultural lien under which the disposition is made;

13 (3) the satisfaction of obligations secured by any subordinate
14 security interest in or other subordinate lien on the collateral if:

15 [(a)] (A) the secured party receives from the holder of the
16 subordinate security interest or other lien an authenticated demand
17 for proceeds before distribution of the proceeds is completed; and

18 [(b)] (B) in a case in which a consignor has an interest in the
19 collateral, the subordinate security interest or other lien is senior to
20 the interest of the consignor; and

21 (4) a secured party that is a consignor of the collateral if the
22 secured party receives from the consignor an authenticated demand
23 for proceeds before distribution of the proceeds is completed.

24 [b.] (b) Proof of subordinate interest. If requested by a secured
25 party, a holder of a subordinate security interest or other lien shall
26 furnish reasonable proof of the interest or lien within a reasonable
27 time. Unless the holder does so, the secured party need not comply
28 with the holder's demand under [paragraph (3) of] subsection [a. of
29 this section] (a)(3).

30 [c.] (c) Application of noncash proceeds. A secured party need
31 not apply or pay over for application noncash proceeds of
32 disposition under [this section] 12A:9-610 unless the failure to do
33 so would be commercially unreasonable. A secured party that
34 applies or pays over for application noncash proceeds shall do so in
35 a commercially reasonable manner.

36 [d.] (d) Surplus or deficiency if obligation secured. If the
37 security interest under which a disposition is made secures payment
38 or performance of an obligation, after making the payments and
39 applications required by subsection [a.] (a) and permitted by
40 subsection [c. of this section] (c):

41 (1) unless [paragraph (4) of] subsection [a.] (a)(4) requires the
42 secured party to apply or pay over cash proceeds to a consignor, the
43 secured party shall account to and pay a debtor for any surplus; and

44 (2) the obligor is liable for any deficiency.

45 [e.] (e) No surplus or deficiency in sales of certain rights to

1 payment. If the underlying transaction is a sale of accounts, chattel
2 paper, payment intangibles, or promissory notes:

3 (1) the debtor is not entitled to any surplus; and

4 (2) the obligor is not liable for any deficiency.

5 **[f.] (f)** Calculation of surplus or deficiency in disposition to
6 person related to secured party. The surplus or deficiency following
7 a disposition is calculated based on the amount of proceeds that
8 would have been realized in a disposition complying with this part to
9 a transferee other than the secured party, a person related to the
10 secured party, or a secondary obligor if:

11 (1) the transferee in the disposition is the secured party, a person
12 related to the secured party, or a secondary obligor; and

13 (2) the amount of proceeds of the disposition is significantly
14 below the range of proceeds that a complying disposition to a person
15 other than the secured party, a person related to the secured party,
16 or a secondary obligor would have brought.

17 **[g.] (g)** Cash proceeds received by junior secured party. A
18 secured party that receives cash proceeds of a disposition in good
19 faith and without knowledge that the receipt violates the rights of
20 the holder of a security interest or other lien that is not subordinate
21 to the security interest or agricultural lien under which the
22 disposition is made:

23 (1) takes the cash proceeds free of the security interest or other
24 lien;

25 (2) is not obligated to apply the proceeds of the disposition to
26 the satisfaction of obligations secured by the security interest or
27 other lien; and

28 (3) is not obligated to account to or pay the holder of the
29 security interest or other lien for any surplus.

30 (cf: N.J.S.12A:9-615)

31

32 105. N.J.S.12A:9-616 is amended to read as follows:

33 12A:9-616. Explanation of Calculation of Surplus or Deficiency.

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

35 (1) "Explanation" means a writing that:

36 **[(a)] (A)** states the amount of the surplus or deficiency;

37 **[(b)] (B)** provides an explanation, in accordance with subsection
38 **[c. of this section] (c)** of how the secured party calculated the
39 surplus or deficiency;

40 **[(c)] (C)** states, if applicable, that future debits, credits, charges,
41 including additional credit service charges or interest, rebates, and
42 expenses may affect the amount of the surplus or deficiency; and

43 **[(d)] (D)** provides a telephone number or mailing address from
44 which additional information concerning the transaction is available.

45 (2) "Request" means a record:

- 1 [(a)] (A) authenticated by a debtor or consumer obligor;
- 2 [(b)] (B) requesting that the recipient provide an explanation;
- 3 and
- 4 [(c)] (C) sent after disposition of the collateral under
- 5 12A:9-610.
- 6 [b.] (b) Explanation of calculation. In a consumer-goods
- 7 transaction in which the debtor is entitled to a surplus or a consumer
- 8 obligor is liable for a deficiency under 12A:9-615, the secured party
- 9 shall:
- 10 (1) send an explanation to the debtor or consumer obligor, as
- 11 applicable, after the disposition and:
- 12 [(a)] (A) before or when the secured party accounts to the
- 13 debtor and pays any surplus or first makes written demand on the
- 14 consumer obligor after the disposition for payment of the deficiency;
- 15 and
- 16 [(b)] (B) within 14 days after receipt of a request; or
- 17 (2) in the case of a consumer obligor who is liable for a
- 18 deficiency, within 14 days after receipt of a request, send to the
- 19 consumer obligor a record waiving the secured party's right to a
- 20 deficiency.
- 21 [c.] (c) Required information. To comply with subsection [a.
- 22 paragraph (1) subparagraph (b)] (a) (1) (B), a writing [shall] must
- 23 provide the following information in the following order:
- 24 (1) the aggregate amount of obligations secured by the security
- 25 interest under which the disposition was made, and, if the amount
- 26 reflects a rebate of unearned interest or credit service charge, an
- 27 indication of that fact, calculated as of a specified date:
- 28 [(a)] (A) if the secured party takes or receives possession of the
- 29 collateral after default, not more than 35 days before the secured
- 30 party takes or receives possession; or
- 31 [(b)] (B) if the secured party takes or receives possession of the
- 32 collateral before default or does not take possession of the
- 33 collateral, not more than 35 days before the disposition;
- 34 (2) the amount of proceeds of the disposition;
- 35 (3) the aggregate amount of the obligations after deducting the
- 36 amount of proceeds;
- 37 (4) the amount, in the aggregate or by type, and types of
- 38 expenses, including expenses of retaking, holding, preparing for
- 39 disposition, processing, and disposing of the collateral, and
- 40 attorney's fees secured by the collateral which are known to the
- 41 secured party and relate to the current disposition;
- 42 (5) the amount, in the aggregate or by type, and types of credits,
- 43 including rebates of interest or credit service charges, to which the
- 44 obligor is known to be entitled and which are not reflected in the
- 45 amount in paragraph (1); and

1 (6) the amount of the surplus or deficiency.

2 [d.] (d) Substantial compliance. A particular phrasing of the
3 explanation is not required. An explanation complying substantially
4 with the requirements of subsection [a. of this section] (a) is
5 sufficient, even if it includes minor errors that are not seriously
6 misleading.

7 [e.] (e) Charges for responses. A debtor or consumer obligor is
8 entitled without charge to one response to a request under this
9 section during any six-month period in which the secured party did
10 not send to the debtor or consumer obligor an explanation pursuant
11 to [paragraph (1) of] subsection [b.] (b) (1). The secured party
12 may require payment of a charge not exceeding \$25 for each
13 additional response.

14 (cf: N.J.S.12A:9-616)

15

16 106. N.J.S.12A:9-617 is amended to read as follows:

17 12A:9-617. Rights of Transferee of Collateral.

18 [a.] (a) Effects of disposition. A secured party's disposition of
19 collateral after default:

20 (1) transfers to a transferee for value all of the debtor's rights in
21 the collateral;

22 (2) discharges the security interest under which the disposition is
23 made; and

24 (3) discharges any subordinate security interest or other
25 subordinate lien.

26 [b.] (b) Rights of good-faith transferee. A transferee that acts in
27 good faith takes free of the rights and interests described in
28 subsection [a. of this section] (a), even if the secured party fails to
29 comply with this chapter or the requirements of any judicial
30 proceeding.

31 [c.] (c) Rights of other transferee. If a transferee does not take
32 free of the rights and interests described in subsection [a. of this
33 section] (a), the transferee takes the collateral subject to:

34 (1) the debtor's rights in the collateral;

35 (2) the security interest or agricultural lien under which the
36 disposition is made; and

37 (3) any other security interest or other lien.

38 (cf: N.J.S.12A:9-617)

39

40 107. N.J.S.12A:9-618 is amended to read as follows:

41 12A:9-618. Rights and Duties of Certain Secondary Obligor.

42 [a.] (a) Rights and duties of secondary obligor. A secondary
43 obligor acquires the rights and becomes obligated to perform the
44 duties of the secured party after the secondary obligor:

45 (1) receives an assignment of a secured obligation from the

1 secured party;

2 (2) receives a transfer of collateral from the secured party and
3 agrees to accept the rights and assume the duties of the secured
4 party; or

5 (3) is subrogated to the rights of a secured party with respect to
6 collateral.

7 **[b.] (b)** Effect of assignment, transfer, or subrogation. An
8 assignment, transfer, or subrogation described in subsection **[a. of**
9 **this section] (a)**:

10 (1) is not a disposition of collateral under 12A:9-610; and

11 (2) relieves the secured party of further duties under this chapter.

12 (cf: N.J.S.12A:9-618)

13

14 108. N.J.S.12A:9-619 is amended to read as follows:

15 12A:9-619. Transfer of Record or Legal Title.

16 **[a.] (a)** "Transfer statement." In this section, "transfer
17 statement" means a record authenticated by a secured party stating:

18 (1) that the debtor has defaulted in connection with an obligation
19 secured by specified collateral;

20 (2) that the secured party has exercised its post-default remedies
21 with respect to the collateral;

22 (3) that, by reason of the exercise, a transferee has acquired the
23 rights of the debtor in the collateral; and

24 (4) the name and mailing address of the secured party, debtor,
25 and transferee.

26 **[b.] (b)** Effect of transfer statement. A transfer statement
27 entitles the transferee to the transfer of record of all rights of the
28 debtor in the collateral specified in the statement in any official
29 filing, recording, registration, or certificate-of-title system covering
30 the collateral. If a transfer statement is presented with the applicable
31 fee and request form to the official or office responsible for
32 maintaining the system, the official or office shall:

33 (1) accept the transfer statement;

34 (2) promptly amend its records to reflect the transfer; and

35 (3) if applicable, issue a new appropriate certificate of title in the
36 name of the transferee.

37 **[c.] (c)** Transfer not a disposition; no relief of secured party's
38 duties. A transfer of the record or legal title to collateral to a
39 secured party under subsection **[b. of this section] (b)** or otherwise
40 is not of itself a disposition of collateral under this chapter and does
41 not of itself relieve the secured party of its duties under this chapter.
42 (cf: N.J.S.12A:9-619)

43

44 109. N.J.S.12A:9-620 is amended to read as follows:

45 12A:9-620. Acceptance of Collateral in Full or Partial
46 Satisfaction of Obligation; Compulsory Disposition of Collateral.

1 **[a.] (a)** Conditions to acceptance in satisfaction. Except as
2 otherwise provided in subsection **[g. of this section] (g)**, a secured
3 party may accept collateral in full or partial satisfaction of the
4 obligation it secures only if:

5 (1) the debtor consents to the acceptance under subsection **[c. of**
6 **this section] (c)**;

7 (2) the secured party does not receive, within the time set forth
8 in subsection **[d. of this section] (d)**, a notification of objection to
9 the proposal authenticated by:

10 **[(a)] (A)** a person to which the secured party was required to
11 send a proposal under 12A:9-621; or

12 **[(b)] (B)** any other person, other than the debtor, holding an
13 interest in the collateral subordinate to the security interest that is
14 the subject of the proposal;

15 (3) if the collateral is consumer goods, the collateral is not in the
16 possession of the debtor when the debtor consents to the
17 acceptance; and

18 (4) subsection **[e. of this section] (e)** does not require the
19 secured party to dispose of the collateral or the debtor waives the
20 requirement pursuant to 12A:9-624.

21 **[b.] (b)** Purported acceptance ineffective. A purported or
22 apparent acceptance of collateral under this section is ineffective
23 unless:

24 (1) the secured party consents to the acceptance in an
25 authenticated record or sends a proposal to the debtor; and

26 (2) the conditions of subsection a. are met.

27 **[c.] (c)** Debtor's consent. For purposes of this section:

28 (1) a debtor consents to an acceptance of collateral in partial
29 satisfaction of the obligation it secures only if the debtor agrees to
30 the terms of the acceptance in a record authenticated after default;
31 and

32 (2) a debtor consents to an acceptance of collateral in full
33 satisfaction of the obligation it secures only if the debtor agrees to
34 the terms of the acceptance in a record authenticated after default or
35 the secured party:

36 **[(a)] (A)** sends to the debtor after default a proposal that is
37 unconditional or subject only to a condition that collateral not in the
38 possession of the secured party be preserved or maintained;

39 **[(b)] (B)** in the proposal, proposes to accept collateral in full
40 satisfaction of the obligation it secures; and

41 **[(c)] (C)** does not receive a notification of objection
42 authenticated by the debtor within 20 days after the proposal is sent.

43 **[d.] (d)** Effectiveness of notification. To be effective under
44 **[paragraph (2) of]** subsection **[a. of this section] (a) (2)**, a
45 notification of objection **[shall] must** be received by the secured

1 party:

2 (1) in the case of a person to which the proposal was sent
3 pursuant to 12A:9-621, within 20 days after notification was sent to
4 that person; and

5 (2) in other cases:

6 ~~[(a)] (A)~~ within 20 days after the last notification was sent
7 pursuant to 12A:9-621; or

8 ~~[(b)] (B)~~ if a notification was not sent, before the debtor
9 consents to the acceptance under subsection ~~[c. of this section] (c)~~.

10 ~~[e.] (e)~~ Mandatory disposition of consumer goods. A secured
11 party that has taken possession of collateral shall dispose of the
12 collateral pursuant to 12A:9-610 within the time specified in
13 subsection ~~[f. of this section] (f)~~ if:

14 (1) 60 percent of the cash price has been paid in the case of a
15 purchase-money security interest in consumer goods; or

16 (2) 60 percent of the principal amount of the obligation secured
17 has been paid in the case of a non-purchase-money security interest
18 in consumer goods.

19 ~~[f.] (f)~~ Compliance with mandatory disposition requirement. To
20 comply with subsection ~~[e. of this section] (e)~~, the secured party
21 shall dispose of the collateral:

22 (1) within 90 days after taking possession; or

23 (2) within any longer period to which the debtor and all
24 secondary obligors have agreed in an agreement to that effect
25 entered into and authenticated after default.

26 ~~[g.] (g)~~ No partial satisfaction in consumer transaction. In a
27 consumer transaction, a secured party may not accept collateral in
28 partial satisfaction of the obligation it secures.

29 (cf: N.J.S.12A:9-620)

30

31 110. N.J.S.12A:9-621 is amended to read as follows:

32 12A:9-621. Notification of Proposal to Accept Collateral.

33 ~~[a.] (a)~~ Persons to which proposal to be sent. A secured party
34 that desires to accept collateral in full or partial satisfaction of the
35 obligation it secures shall send its proposal to:

36 (1) any person from which the secured party has received, before
37 the debtor consented to the acceptance, an authenticated notification
38 of a claim of an interest in the collateral;

39 (2) any other secured party or lienholder that, 10 days before the
40 debtor consented to the acceptance, held a security interest in or
41 other lien on the collateral perfected by the filing of a financing
42 statement that:

43 ~~[(a)] (A)~~ identified the collateral;

44 ~~[(b)] (B)~~ was indexed under the debtor's name as of that date;
45 and

1 [(c)] (C) was filed in the office or offices in which to file a
2 financing statement against the debtor covering the collateral as of
3 that date; and

4 (3) any other secured party that, 10 days before the debtor
5 consented to the acceptance, held a security interest in the collateral
6 perfected by compliance with a statute, regulation, or treaty
7 described in 12A:9-311 [a.] (a).

8 [b.] (b) Proposal to be sent to secondary obligor in partial
9 satisfaction. A secured party that desires to accept collateral in
10 partial satisfaction of the obligation it secures shall send its proposal
11 to any secondary obligor in addition to the persons described in
12 subsection [a. of this section] (a).

13 (cf: N.J.S.12A:9-621)

14

15 111. N.J.S.12A:9-622 is amended to read as follows:

16 12A:9-622. Effect of Acceptance of Collateral.

17 [a.] (a) Effect of acceptance. A secured party's acceptance of
18 collateral in full or partial satisfaction of the obligation it secures:

19 (1) discharges the obligation to the extent consented to by the
20 debtor;

21 (2) transfers to the secured party all of a debtor's rights in the
22 collateral;

23 (3) discharges the security interest or agricultural lien that is the
24 subject of the debtor's consent and any subordinate security interest
25 or other subordinate lien; and

26 (4) terminates any other subordinate interest.

27 [b.] (b) Discharge of subordinate interest notwithstanding
28 noncompliance. A subordinate interest is discharged or terminated
29 under subsection [a. of this section] (a), even if the secured party
30 fails to comply with this chapter.

31 (cf: N.J.S.12A:9-622)

32

33 112. N.J.S.12A:9-623 is amended to read as follows:

34 12A:9-623. Right to Redeem Collateral.

35 [a.] (a) Persons that may redeem. A debtor, any secondary
36 obligor, or any other secured party or lienholder may redeem
37 collateral.

38 [b.] (b) Requirements for redemption. To redeem collateral, a
39 person shall tender:

40 (1) fulfillment of all obligations secured by the collateral; and

41 (2) the reasonable expenses and attorney's fees described in
42 12A:9-615 [a.] (a) (1).

43 [c.] (c) When redemption may occur. A redemption may occur
44 at any time before a secured party:

45 (1) has collected collateral under 12A:9-607;

1 (2) has disposed of collateral or entered into a contract for its
2 disposition under 12A:9-610; or

3 (3) has accepted collateral in full or partial satisfaction of the
4 obligation it secures under 12A:9-622.

5 (cf: N.J.S.12A:9-623)

6

7 113. N.J.S.12A:9-624 is amended to read as follows:

8 12A:9-624. Waiver.

9 [a.] (a) Waiver of disposition notification. A debtor or
10 secondary obligor may waive the right to notification of disposition
11 of collateral under 12A:9-611 only by an agreement to that effect
12 entered into and authenticated after default.

13 [b.] (b) Waiver of mandatory disposition. A debtor may waive
14 the right to require disposition of collateral under 12A:9-620 [e.]
15 (e) only by an agreement to that effect entered into and
16 authenticated after default.

17 [c.] (c) Waiver of redemption right. Except in a
18 consumer-goods transaction, a debtor or secondary obligor may
19 waive the right to redeem collateral under 12A:9-623 only by an
20 agreement to that effect entered into and authenticated after default.

21 (cf: N.J.S.12A:9-624)

22

23 114. N.J.S.12A:9-625 is amended to read as follows:

24 12A:9-625. Remedies for Secured Party's Failure to Comply with
25 Chapter.

26 [a.] (a) Judicial orders concerning noncompliance. If it is
27 established that a secured party is not proceeding in accordance with
28 this chapter, a court may order or restrain collection, enforcement,
29 or disposition of collateral on appropriate terms and conditions.

30 [b.] (b) Damages for noncompliance. Subject to subsections
31 [c., d. and f. of this section] (c), (d) and (f), a person is liable for
32 damages in the amount of any loss caused by a failure to comply
33 with this chapter. Loss caused by a failure to comply [with a request
34 under 12A:9-211] may include loss resulting from the debtor's
35 inability to obtain, or increased costs of, alternative financing.

36 [c.] (c) Persons entitled to recover damages; statutory damages
37 in consumer-goods transaction. Except as otherwise provided in
38 12A:9-628:

39 (1) a person [who] that, at the time of the failure, was a debtor,
40 was an obligor, or held a security interest in or other lien on the
41 collateral may recover damages under subsection [b. of this section]
42 (b) for its loss; and

43 (2) if the collateral is consumer goods, a person [who] that was
44 a debtor or a secondary obligor at the time a secured party failed to
45 comply with this part may recover for that failure in any event an

1 amount not less than the credit service charge plus 10 percent of the
2 principal amount of the obligation or the time-price differential plus
3 10 percent of the cash price.

4 **[d.] (d)** Recovery when deficiency eliminated or reduced. A
5 debtor whose deficiency is eliminated under 12A:9-626 may recover
6 damages for the loss of any surplus. However, a debtor or
7 secondary obligor whose deficiency is eliminated or reduced under
8 12A:9-626 may not otherwise recover under subsection **[b. of this**
9 **section] (b)** for noncompliance with the provisions of this part
10 relating to collection, enforcement, disposition, or acceptance.

11 **[e.] (e)** Statutory damages: noncompliance with specified
12 provisions. In addition to any damages recoverable under
13 subsection **[b. of this section] (b)**, the debtor, consumer obligor, or
14 person named as a debtor in a filed record, as applicable, may
15 recover \$500 in each case from a person **[who] that**:

16 (1) fails to comply with **[12A:9-208] 12A:9-207**;

17 (2) fails to comply with **[12A:9-209] 12A:9-208**;

18 (3) **[fails to comply with 12A:9-210**;

19 (4) **]** files a record that the person is not entitled to file under
20 12A:9-509 **[a.] (a)**;

21 **[(5)] (4)** fails to cause the secured party of record to file or send
22 a termination statement as required by 12A:9-513 **[a. or c.] (a) or**
23 **(c)**;

24 **[(6)] (5)** fails to comply with 12A:9-616 **[b.] (b)** (1) and whose
25 failure is part of a pattern, or consistent with a practice, of
26 noncompliance; or

27 **[(7)] (6)** fails to comply with 12A:9-616**[b.] (b)** (2).

28 **[f.] (f)** Statutory damages: noncompliance with **[12A:9-211]**
29 **12A:9-210**. A debtor or consumer obligor may recover damages
30 under subsection **[b. of this section] (b)** and, in addition, \$500 in
31 each case from a person **[who] that**, without reasonable cause, fails
32 to comply with a request under **[12A:9-211] 12A:9-210**. A
33 recipient of a request under **[12A:9-211] 12A:9-210** which never
34 claimed an interest in the collateral or obligations that are the subject
35 of a request under that section has a reasonable excuse for failure to
36 comply with the request within the meaning of this subsection.

37 **[g.] (g)** Limitation of security interest: noncompliance with
38 **[12A:9-211] 12A:9-210**. If a secured party fails to comply with a
39 request regarding a list of collateral or a statement of account under
40 **[12A:9-211] 12A:9-210**, the secured party may claim a security
41 interest only as shown in the list or statement included in the request
42 as against a person **[who] that** is reasonably misled by the failure.

43 (cf: N.J.S.12A:9-625)

1 115. N.J.S.12A:9-626 is amended to read as follows:

2 12A:9-626. Action in Which Deficiency or Surplus Is in Issue.

3 **[a.] (a)** Applicable rules if amount of deficiency or surplus in
4 issue. In an action arising from a transaction in which the amount of
5 a deficiency or surplus is in issue, the following rules apply:

6 (1) A secured party need not prove compliance with the
7 provisions of this part relating to collection, enforcement,
8 disposition, or acceptance unless the debtor or a secondary obligor
9 places the secured party's compliance in issue.

10 (2) If the secured party's compliance is placed in issue, the
11 secured party has the burden of establishing that the collection,
12 enforcement, disposition, or acceptance was conducted in
13 accordance with this part.

14 (3) Except as otherwise provided in 12A:9-628, if a secured
15 party fails to prove that the collection, enforcement, disposition, or
16 acceptance was conducted in accordance with the provisions of this
17 part relating to collection, enforcement, disposition, or acceptance,
18 the liability of a debtor or a secondary obligor for a deficiency is
19 limited to an amount by which the sum of the secured obligation,
20 expenses, and attorney's fees exceeds the greater of:

21 **[(a)] (A)** the proceeds of the collection, enforcement,
22 disposition, or acceptance; or

23 **[(b)] (B)** the amount of proceeds that would have been realized
24 had the noncomplying secured party proceeded in accordance with
25 the provisions of this part relating to collection, enforcement,
26 disposition, or acceptance.

27 (4) For purposes of **[subparagraph (b) of]** paragraph (3) **[of this**
28 **section] (B)**, the amount of proceeds that would have been realized
29 is equal to the sum of the secured obligation, expenses, and
30 attorney's fees unless the secured party proves that the amount is
31 less than that sum.

32 (5) If a deficiency or surplus is calculated under 12A:9-615 **[f.]**
33 **(f)**, the debtor or obligor has the burden of establishing that the
34 amount of proceeds of the disposition is significantly below the
35 range of prices that a complying disposition to a person other than
36 the secured party, a person related to the secured party, or a
37 secondary obligor would have brought.

38 (cf: N.J.S.12A:9-626)

39

40 116. N.J.S.12A:9-627 is amended to read as follows:

41 12A:9-627. Determination of Whether Conduct Was
42 Commercially Reasonable.

43 **[a.] (a)** Greater amount obtainable under other circumstances;
44 no preclusion of commercial reasonableness. The fact that a greater
45 amount could have been obtained by a collection, enforcement,
46 disposition, or acceptance at a different time or in a different method

1 from that selected by the secured party is not of itself sufficient to
2 preclude the secured party from establishing that the collection,
3 enforcement, disposition, or acceptance was made in a commercially
4 reasonable manner.

5 **[b.] (b)** Dispositions that are commercially reasonable. A
6 disposition of collateral is made in a commercially reasonable
7 manner if the disposition is made:

- 8 (1) in the usual manner on any recognized market;
- 9 (2) at the price current in any recognized market at the time of
10 the disposition; or
- 11 (3) otherwise in conformity with reasonable commercial practices
12 among dealers in the type of property that was the subject of the
13 disposition.

14 **[c.] (c)** Approval by court or on behalf of creditors. A
15 collection, enforcement, disposition, or acceptance is commercially
16 reasonable if it has been approved:

- 17 (1) in a judicial proceeding;
- 18 (2) by a bona fide creditors' committee;
- 19 (3) by a representative of creditors; or
- 20 (4) by an assignee for the benefit of creditors.

21 **[d.] (d)** Approval under subsection **[c.] (c)** not necessary;
22 absence of approval has no effect. Approval under subsection **[c. of**
23 **this section] (c)** need not be obtained, and lack of approval does not
24 mean that the collection, enforcement, disposition, or acceptance is
25 not commercially reasonable.

26 (cf: N.J.S.12A:9-627)

27

28 117. N.J.S.12A:9-628 is amended to read as follows:

29 12A:9-628. Nonliability and Limitation on Liability of Secured
30 Party; Liability of Secondary Obligor.

31 **[a.] (a)** Limitation of liability of secured party for
32 noncompliance with chapter. Unless a secured party knows that a
33 person is a debtor or obligor, knows the identity of the person, and
34 knows how to communicate with the person:

- 35 (1) the secured party is not liable to the person, or to a secured
36 party or lienholder that has filed a financing statement against the
37 person, for failure to comply with this chapter; and
- 38 (2) the secured party's failure to comply with this chapter does
39 not affect the liability of the person for a deficiency.

40 **[b.] (b)** Limitation of liability based on status as secured party.
41 A secured party is not liable because of its status as secured party:

- 42 (1) to a person who is a debtor or obligor, unless the secured
43 party knows:

44 **[(a)] (A)** that the person is a debtor or obligor;

45 **[(b)] (B)** the identity of the person; and

1 [(c)] (C) how to communicate with the person; or
2 (2) to a secured party or lienholder that has filed a financing
3 statement against a person, unless the secured party knows:

4 [(a)] (A) that the person is a debtor; and

5 [(b)] (B) the identity of the person.

6 [(c.)] (c) Limitation of liability if reasonable belief that transaction
7 not a consumer-goods transaction or consumer transaction. A
8 secured party is not liable to any person, and a person's liability for a
9 deficiency is not affected, because of any act or omission arising out
10 of the secured party's reasonable belief that a transaction is not a
11 consumer-goods transaction or a consumer transaction or that goods
12 are not consumer goods, if the secured party's belief is based on its
13 reasonable reliance on:

14 (1) a debtor's representation concerning the purpose for which
15 collateral was to be used, acquired, or held; or

16 (2) an obligor's representation concerning the purpose for which
17 a secured obligation was incurred.

18 [(d.)] (d) Limitation of liability for statutory damages. A secured
19 party is not liable to any person under 12A:9-625 [(c.)] (c) (2) for its
20 failure to comply with 12A:9-616.

21 [(e.)] (e) Limitation of multiple liability for statutory damages. A
22 secured party is not liable under 12A:9-625 [(c.)] (c) (2) more than
23 once with respect to any one secured obligation.

24 (cf: N.J.S.12A:9-628)

25

26 118. N.J.S.12A:9-701 is amended to read as follows:

27 12A:9-701. Effective Date.

28 This chapter shall take effect on July 1, 2001. References in this
29 part to "this chapter" are to Chapter 9 of the Uniform Commercial
30 Code as enacted by P.L.2001, c.117 and P.L. , c. (pending before
31 the Legislature as this bill). References in this part to "former
32 Chapter 9" are to Chapter 9 of the Uniform Commercial Code
33 (12A:9-101 et seq.) as in effect before July 1, 2001.

34 (cf: N.J.S.12A:9-701)

35

36 119. N.J.S.12A:9-702 is amended to read as follows:

37 12A:9-702. Savings Clause.

38 [(a.)] (a) Pre-effective-date transactions or liens. Except as
39 otherwise provided in this part, this chapter applies to a transaction
40 or lien within its scope, even if the transaction or lien was entered
41 into or created before this chapter takes effect.

42 [(b.)] (b) Continuing validity. Except as otherwise provided in
43 subsection [(c. of this section)] (c) and 12A:9-703 through
44 [12A:9-708] 12A:9-709:

45 (1) transactions and liens that were not governed by former

1 Chapter 9, were validly entered into or created before this chapter
2 takes effect, and would be subject to this chapter if they had been
3 entered into or created after this chapter takes effect, and the rights,
4 duties, and interests flowing from those transactions and liens remain
5 valid after this chapter takes effect; and

6 (2) the transactions and liens may be terminated, completed,
7 consummated, and enforced as required or permitted by this chapter
8 or by the law that otherwise would apply if this chapter had not
9 taken effect.

10 [c.] (c) Pre-effective-date proceedings. This chapter does not
11 affect an action, case, or proceeding commenced before this chapter
12 takes effect.

13 (cf: N.J.S.12A:9-702)

14

15 120. N.J.S.12A:9-703 is amended to read as follows:

16 12A:9-703. Security Interest Perfected Before Effective Date.

17 [a.] (a) Continuing priority over lien creditor: perfection
18 requirements satisfied. A security interest that is enforceable
19 immediately before this chapter takes effect and would have priority
20 over the rights of a person [who] that becomes a lien creditor at
21 that time is a perfected security interest under this chapter if, when
22 this chapter takes effect, the applicable requirements for
23 enforceability and perfection under this chapter are satisfied without
24 further action.

25 [b.] (b) Continuing priority over lien creditor: perfection
26 requirements not satisfied. Except as otherwise provided in
27 12A:9-705, if, immediately before this chapter takes effect, a
28 security interest is enforceable and would have priority over the
29 rights of a person [who] that becomes a lien creditor at that time,
30 but the applicable requirements for enforceability or perfection under
31 this chapter are not satisfied when this chapter takes effect, the
32 security interest:

33 (1) is a perfected security interest for one year after this chapter
34 takes effect;

35 (2) remains enforceable thereafter only if the security interest
36 becomes enforceable under 12A:9-203 before the year expires; and

37 (3) remains perfected thereafter only if the applicable
38 requirements for perfection under this chapter are satisfied before
39 the year expires.

40 (cf: N.J.S.12A:9-703)

41

42 121. N.J.S.12A:9-704 is amended to read as follows:

43 12A:9-704. Security Interest Unperfected Before Effective Date.

44 A security interest that is enforceable immediately before this
45 chapter takes effect but which would be subordinate to the rights of
46 a person [who] that becomes a lien creditor at that time:

1 [a.] (1) remains an enforceable security interest for one year
2 after this chapter takes effect;

3 [b.] (2) remains enforceable thereafter if the security interest
4 becomes enforceable under 12A:9-203 when this chapter takes effect
5 or within one year thereafter; and

6 [c.] (3) becomes perfected:

7 [(1)] (A) without further action, when this chapter takes effect if
8 the applicable requirements for perfection under this chapter are
9 satisfied before or at that time; or

10 [(2)] (B) when the applicable requirements for perfection are
11 satisfied if the requirements are satisfied after that time.

12 (cf: N.J.S.12A:9-704)

13

14 122. N.J.S.12A:9-705 is amended to read as follows:

15 12A:9-705. Effectiveness of Action Taken Before Effective
16 Date.

17 [a.] (a) Pre-effective-date action; one-year perfection period
18 unless reperfected. If action, other than the filing of a financing
19 statement, is taken before this chapter takes effect and the action
20 would have resulted in priority of a security interest over the rights
21 of a person [who] that becomes a lien creditor had the security
22 interest become enforceable before this chapter takes effect, the
23 action is effective to perfect a security interest that attaches under
24 this chapter within one year after this chapter takes effect. An
25 attached security interest becomes unperfected one year after this
26 chapter takes effect unless the security interest becomes a perfected
27 security interest under this chapter before the expiration of that
28 period.

29 [b.] (b) Pre-effective-date filing. The filing of a financing
30 statement before this chapter takes effect is effective to perfect a
31 security interest to the extent the filing would satisfy the applicable
32 requirements for perfection under this chapter.

33 [c.] (c) Pre-effective-date filing in jurisdiction formerly
34 governing perfection. This chapter does not render ineffective an
35 effective financing statement that, before this chapter takes effect, is
36 filed and satisfies the applicable requirements for perfection under
37 the law of the jurisdiction governing perfection as provided in
38 former 12A:9-103. However, except as otherwise provided in
39 subsections [d. and e. of this section] (d) and (e) and 12A:9-706,
40 the financing statement ceases to be effective at the earlier of:

41 (1) the time the financing statement would have ceased to be
42 effective under the law of the jurisdiction in which it is filed; or

43 (2) June 30, 2006.

44 [d.] (d) Continuation statement. The filing of a continuation
45 statement after this chapter takes effect does not continue the

1 effectiveness of the financing statement filed before this chapter
2 takes effect. However, upon the timely filing of a continuation
3 statement after this chapter takes effect and in accordance with the
4 law of the jurisdiction governing perfection as provided in Part 3,
5 the effectiveness of a financing statement filed in the same office in
6 that jurisdiction before this chapter takes effect continues for the
7 period provided by the law of that jurisdiction.

8 [e.] (e) Application of [of] subsection [c. paragraph] (c) (2) to
9 transmitting utility financing statement. Subsection [c. paragraph]
10 (c) (2) of this section applies to a financing statement that, before
11 this chapter takes effect, is filed against a transmitting utility and
12 satisfies the applicable requirements for perfection under the law of
13 the jurisdiction governing perfection as provided in former
14 12A:9-103 only to the extent that Part 3 provides that the law of a
15 jurisdiction other than the jurisdiction in which the financing
16 statement is filed governs perfection of a security interest in
17 collateral covered by the financing statement.

18 [f.] (f) Application of Part 5. A financing statement that
19 includes a financing statement filed before this chapter takes effect
20 and a continuation statement filed after this chapter takes effect is
21 effective only to the extent that it satisfies the requirements of Part 5
22 for an initial financing statement.

23 (cf: N.J.S.12A:9-705)

24

25 123. N.J.S.12A:9-706 is amended to read as follows:

26 12A:9-706. When Initial Financing Statement Suffices to
27 Continue Effectiveness of Financing Statement.

28 [a.] (a) Initial financing statement in lieu of continuation
29 statement. The filing of an initial financing statement in the office
30 specified in 12A:9-501 continues the effectiveness of a financing
31 statement filed before this chapter takes effect if:

32 (1) the filing of an initial financing statement in that office would
33 be effective to perfect a security interest under this chapter;

34 (2) the pre-effective-date financing statement was filed in an
35 office in another state or another office in this State; and

36 (3) the initial financing statement satisfies subsection [c. of this
37 section] (c).

38 [b.] (b) Period of continued effectiveness. The filing of an initial
39 financing statement under subsection [a. of this section] (a)
40 continues the effectiveness of the pre-effective-date financing
41 statement:

42 (1) if the initial financing statement is filed before this chapter
43 takes effect, for the period provided in former 12A:9-403 with
44 respect to a financing statement; and

45 (2) if the initial financing statement is filed after this chapter
46 takes effect, for the period provided in 12A:9-515 with respect to an

1 initial financing statement.

2 [c.] (c) Requirements for initial financing statement under
3 subsection [a.] (a). To be effective for purposes of subsection [a.
4 of this section] (a), an initial financing statement shall:

5 (1) satisfy the requirements of Part 5 for an initial financing
6 statement;

7 (2) identify the pre-effective-date financing statement by
8 indicating the office in which the financing statement was filed and
9 providing the dates of filing and file numbers, if any, of the financing
10 statement and of the most recent continuation statement filed with
11 respect to the financing statement; and

12 (3) indicate that the pre-effective-date financing statement
13 remains effective.

14 (cf: N.J.S.12A:9-706)

15

16 124. N.J.S.12A:9-707 is amended to read as follows:

17 [12A:9-707.] 12A:9-708. Persons Entitled to File Initial
18 Financing Statement or Continuation Statement.

19 A person may file an initial financing statement or a continuation
20 statement under this part if:

21 [a.] (1) the secured party of record authorizes the filing; and

22 [b.] (2) the filing is necessary under this part:

23 [(1)] (A) to continue the effectiveness of a financing statement
24 filed before this chapter takes effect; or

25 [(2)] (B) to perfect or continue the perfection of a security
26 interest.

27 (cf: N.J.S.12A:9-707)

28

29 125. (New section) Title 12A, chapter 9 is supplemented as
30 follows:

31 12A:9-707. Amendment of pre-effective-date financing
32 statement.

33 (a) "Pre-effective-date financing statement". In this section, "pre-
34 effective-date financing statement" means a financing statement filed
35 before this chapter takes effect.

36 (b) Applicable law. After this chapter takes effect, a person may
37 add or delete collateral covered by, continue or terminate the
38 effectiveness of, or otherwise amend the information provided in, a
39 pre-effective-date financing statement only in accordance with the
40 law of the jurisdiction governing perfection as provided in Part 3.
41 However, the effectiveness of a pre-effective-date financing
42 statement also may be terminated in accordance with the law of the
43 jurisdiction in which the financing statement is filed.

44 (c) Method of amending: general rule. Except as otherwise
45 provided in subsection (d), if the law of this State governs perfection
46 of a security interest, the information in a pre-effective-date

1 financing statement may be amended after this chapter takes effect
2 only if:

3 (1) the pre-effective-date financing statement and an amendment
4 are filed in the office specified in 12A:9-501;

5 (2) an amendment is filed in the office specified in 12A:9-501
6 concurrently with, or after the filing in that office of, an initial
7 financing statement that satisfies 12A:9-706(c); or

8 (3) an initial financing statement that provides the information as
9 amended and satisfies 12A:9-706(c) is filed in the office specified in
10 12A:9-501.

11 (d) Method of amending: continuation. If the law of this State
12 governs perfection of a security interest, the effectiveness of a pre-
13 effective-date financing statement may be continued only under
14 12A:9-705(d) and (f) or 12A:9-706.

15 (e) Method of amending: additional termination rule. Whether or
16 not the law of this State governs perfection of a security interest, the
17 effectiveness of a pre-effective-date financing statement filed in this
18 State may be terminated after this chapter takes effect by filing a
19 termination statement in the office in which the pre-effective-date
20 financing statement is filed, unless an initial financing statement that
21 satisfies 12A:9-706(c) has been filed in the office specified by the law
22 of the jurisdiction governing perfection as provided in Part 3 as the
23 office in which to file a financing statement. The preceding sentence
24 applies only to the office described in 12A:9-501(a)(2).

25

26 126. N.J.S.12A:9-708 is amended to read as follows:

27 [~~12A:9-708.~~] 12A:9-709 Priority.

28 [a.] (a) Law governing priority. This chapter determines the
29 priority of conflicting claims to collateral. However, if the relative
30 priorities of the claims were established before this chapter takes
31 effect, former Chapter 9 determines priority.

32 [b.] (b) Priority if security interest becomes enforceable under
33 12A:9-203. For purposes of 12A:9-322 [a.] (a), the priority of a
34 security interest that becomes enforceable under 12A:9-203 of this
35 chapter dates from the time this chapter takes effect if the security
36 interest is perfected under this chapter by the filing of a financing
37 statement before this chapter takes effect which would not have
38 been effective to perfect the security interest under former Chapter
39 9. This subsection does not apply to conflicting security interests
40 each of which is perfected by the filing of such a financing
41 statement.

42 (cf: N.J.S.12A:9-708)

43

44 127. (New section) Title 12A, chapter 9 is supplemented as
45 follows:

46 12A:9-710. Retroactivity Provision.

1 This act, P.L. , c. , amends and supplements P.L.2001, c.117
2 and shall take effect immediately and shall be applied retroactively to
3 July 1, 2001.

4 If, on or after July 1, 2001 and prior to the effective date of this
5 act, action required for the attachment, perfection or priority of a
6 security interest under Post-Amendment Chapter 9 was taken, but
7 was not heretofore effective, such action shall be effective when
8 taken.

9 If, on or after July 1, 2001 and prior to the effective date of this
10 act, action required for the attachment, perfection or priority of a
11 security interest under Pre-Amendment Chapter 9 was taken and
12 was heretofore effective, but is not effective under Post-Amendment
13 Chapter 9, such action shall be deemed effective when taken if,
14 within 60 days after the effective date of this act, any other action
15 required under Post-Amendment Chapter 9 for such attachment,
16 perfection or priority is taken, except to the extent that, after the
17 effective date of this act and before the time such other required
18 action is taken, a purchaser has given value in reasonable reliance
19 upon such other required action not having been taken.

20 As used in this section, "Pre-Amendment Chapter 9" means
21 Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117
22 (12A:9-101 through 12A:9-708) as constituted before giving effect
23 to this act, and "Post-Amendment Chapter 9" means Chapter 9 of
24 Title 12A of the New Jersey Statutes (12A:9-101 through
25 12A:9-709) as amended and supplemented by this act.

26

27 128. (New section) Title 12A, chapter 1 is supplemented as
28 follows:

29 12A:1-109. Section Captions.

30 Section captions are part of the Uniform Commercial Code. The
31 subsection headings in Chapter 9 on Secured Transactions (12A:9-
32 101 et seq.) are not part of that chapter or of the Uniform
33 Commercial Code.

34

35 129. N.J.S.12A:1-201 is amended to read as follows:

36 12A:1-201. General definitions.

37 Subject to additional definitions contained in the subsequent
38 chapters of [this act] the Uniform Commercial Code which are
39 applicable to specific chapters or subchapters thereof, and unless the
40 context otherwise requires, in [this act] the Uniform Commercial
41 Code:

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

45 (2) "Aggrieved party" means a party entitled to resort to a
46 remedy.

1 (3) "Agreement" means the bargain of the parties in fact as found
2 in their language or by implication from other circumstances
3 including course of dealing or usage of trade or course of
4 performance as provided in [this act] the Uniform Commercial
5 Code (12A:1-205 [and], 2-208 and 2A-207). Whether an
6 agreement has legal consequences is determined by the provisions in
7 [this act] the Uniform Commercial Code, if applicable; otherwise by
8 the law of contracts (12A:1-103). (Compare "Contract.")

9 (4) "Bank" means any person engaged in the business of banking.

10 (5) "Bearer" means the person in possession of an instrument,
11 document of title, or certificated security payable to bearer or
12 indorsed in blank.

13 (6) "Bill of lading" means a document evidencing the receipt of
14 goods for shipment issued by a person engaged in the business of
15 transporting or forwarding goods, and includes an airbill.

16 "Airbill" means a document serving for air transportation as a bill
17 of lading does for marine or rail transportation, and includes an air
18 consignment note or air waybill.

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

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

24 (9) "Buyer in ordinary course of business" means a person who
25 buys goods in good faith, without knowledge that the sale violates
26 the rights of another person in the goods, and in ordinary course
27 from a person, other than a pawnbroker, in the business of selling
28 goods of that kind. A person buys goods in ordinary course if the
29 sale to the person comports with the usual or customary practices in
30 the kind of business in which the seller is engaged or with the seller's
31 own usual or customary practices. A person who sells oil, gas or
32 other minerals at the wellhead or minehead is a person in the
33 business of selling goods of that kind. A buyer in ordinary course of
34 business may buy for cash, by exchange of other property or on
35 secured or unsecured credit, and may acquire goods or documents of
36 title under a pre-existing contract for sale. Only a buyer that takes
37 possession of the goods or has a right to recover the goods from the
38 seller under Chapter 2 may be a buyer in ordinary course of
39 business. A person who acquires goods in a transfer in bulk or as
40 security for or in total or partial satisfaction of a money debt is not a
41 buyer in ordinary course of business.

42 (10) "Conspicuous": A term or cause is conspicuous when it is
43 so written that a reasonable person against whom it is to operate
44 ought to have noticed it. A printed heading in capitals (as:
45 NON-NEGOTIABLE BILL OF LADING) is conspicuous.
46 Language in the body of a form is "conspicuous" if it is in larger or

1 other contrasting type or color. But in a telegram any stated term is
2 "conspicuous." Whether a term or clause is "conspicuous" or not is
3 for decision by the court.

4 (11) "Contract" means the total legal obligation which results
5 from the parties' agreement as affected by [this act] the Uniform
6 Commercial Code and any other applicable rules of law. (Compare
7 "Agreement.")

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

13 (13) "Defendant" includes a person in the position of defendant
14 in a cross-action or counterclaim.

15 (14) "Delivery" with respect to instruments, documents of title,
16 chattel paper, or certificated securities means voluntary transfer of
17 possession.

18 (15) "Document of title" includes bill of lading, dock warrant,
19 dock receipt, warehouse receipt, or order for the delivery of goods,
20 and also any other document which in the regular course of business
21 or financing is treated as adequately evidencing that the person in
22 possession of it is entitled to receive, hold and dispose of the
23 document and the goods it covers. To be a document of title a
24 document shall purport to be issued by or addressed to a bailee and
25 purport to cover goods in the bailee's possession which are either
26 identified or are fungible portions of an identified mass.

27 (16) "Fault" means wrongful act, omission or breach.

28 (17) "Fungible" with respect to goods or securities means goods
29 or securities of which any unit is, by nature or usage of trade, the
30 equivalent of any other like unit. Goods which are not fungible shall
31 be deemed fungible for the purposes of [this act] the Uniform
32 Commercial Code to the extent that under a particular agreement or
33 document unlike units are treated as equivalents.

34 (18) "Genuine" means free of forgery or counterfeiting.

35 (19) "Good faith" means honesty in fact in the conduct or
36 transaction concerned.

37 (20) "Holder," with respect to a negotiable instrument, means the
38 person in possession if the instrument is payable to bearer or, in the
39 case of an instrument payable to an identified person, if the identified
40 person is in possession. "Holder" with respect to a document of title
41 means the person in possession if the goods are deliverable to bearer
42 or to the order of the person in possession.

43 (21) To "honor" is to pay or accept and pay, where a credit so
44 engages to purchase or discount a draft complying with the terms of
45 the credit.

46 (22) "Insolvency proceedings" includes any assignment for the

1 benefit of creditors or other proceedings intended to liquidate or
2 rehabilitate the estate of the person involved.

3 (23) A person is "insolvent" who either has ceased to pay the
4 person's debts in the ordinary course of business or cannot pay the
5 person's debts as they become due or is insolvent within the meaning
6 of the federal bankruptcy law.

7 (24) "Money" means a medium of exchange authorized or
8 adopted by a domestic or foreign government and includes a
9 monetary unit of account established by an intergovernmental
10 organization or by agreement between two or more nations.

11 (25) A person has "notice" of a fact when:

12 (a) The person has actual knowledge of it; or

13 (b) The person has received a notice or notification of it; or

14 (c) From all the facts and circumstances known to the person at
15 the time in question the person has reason to know that it exists.

16 A person "knows" or has "knowledge" of a fact when the person
17 has actual knowledge of it. "Discover" or "learn" or a word or
18 phrase of similar import refers to knowledge rather than to reason to
19 know. The time and circumstances under which a notice or
20 notification may cease to be effective are not determined by [this
21 act] the Uniform Commercial Code.

22 (26) A person "notifies" or "gives" a notice or notification to
23 another by taking such steps as may be reasonably required to
24 inform the other in ordinary course whether or not the other actually
25 comes to know of it. A person "receives" a notice or notification
26 when:

27 (a) It comes to the person's attention; or

28 (b) It is duly delivered at the place of business through which the
29 contract was made or at any other place held out by the person as
30 the place for receipt of such communications.

31 (27) Notice, knowledge or a notice or notification received by an
32 organization is effective for a particular transaction from the time
33 when it is brought to the attention of the individual conducting that
34 transaction, and in any event from the time when it would have been
35 brought to the attention of the individual if the organization had
36 exercised due diligence. An organization exercises due diligence if it
37 maintains reasonable routines for communicating significant
38 information to the person conducting the transaction and there is
39 reasonable compliance with the routines. Due diligence does not
40 require an individual acting for the organization to communicate
41 information unless such communication is part of the individual's
42 regular duties or unless the individual has reason to know of the
43 transaction and that the transaction would be materially affected by
44 the information.

45 (28) "Organization" includes a corporation, government or
46 governmental subdivision or agency, business trust, estate, trust,

1 partnership or association, two or more persons having a joint or
2 common interest, or any other legal or commercial entity.

3 (29) "Party," as distinct from "third party," means a person who
4 has engaged in a transaction or made an agreement within [this act]
5 the Uniform Commercial Code.

6 (30) "Person" includes an individual or an organization (See
7 12A:1-102).

8 (31) "Presumption" or "presumed" means that the trier of fact
9 shall find the existence of the fact presumed unless and until
10 evidence is introduced which would support a finding of its
11 nonexistence.

12 (32) "Purchase" includes taking by sale, discount, negotiation,
13 mortgage, pledge, lien, security interest, issue or reissue, gift or any
14 other voluntary transaction creating an interest in property.

15 (33) "Purchaser" means a person who takes by purchase.

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

18 (35) "Representative" includes an agent, an officer of a
19 corporation or association, and a trustee, executor or administrator
20 of an estate, or any other person empowered to act for another.

21 (36) "Rights" includes remedies.

22 (37) "Security interest" means an interest in personal property or
23 fixtures which secures payment or performance of an obligation.
24 The term also includes any interest of a consignor and a buyer of
25 accounts, chattel paper, a payment intangible, or a promissory note
26 in a transaction that is subject to Chapter 9. The special property
27 interest of a buyer of goods on identification of those goods to a
28 contract for sale under 12A:2-401 is not a "security interest," but a
29 buyer may also acquire a "security interest" by complying with
30 Chapter 9. Except as otherwise provided in 12A:2-505, the right of
31 a seller or lessor of goods under Chapter 2 or 2A to retain or
32 acquire possession of the goods is not a "security interest," but a
33 seller or lessor may also acquire a "security interest" by complying
34 with Chapter 9. The retention or reservation of title by a seller of
35 goods notwithstanding shipment or delivery to the buyer
36 (12A:2-401) is limited in effect to a reservation of a "security
37 interest." Whether a lease is intended as security is to be determined
38 by the facts of each case; however, (a) the inclusion of an option to
39 purchase does not of itself make the lease one intended for security,
40 and (b) an agreement that upon compliance with the terms of the
41 lease the lessee shall become or has the option to become the owner
42 of the property for no additional consideration or for a nominal
43 consideration does make the lease one intended for security.

44 Whether a transaction creates a lease or security interest is
45 determined by the facts of each case; however, a transaction creates
46 a security interest if the consideration the lessee is to pay the lessor

1 for the right to possession and use of the goods is an obligation for
2 the term of the lease not subject to termination by the lessee, and

3 (a) the original term of the lease is equal to or greater than the
4 remaining economic life of the goods,

5 (b) the lessee is bound to renew the lease for the remaining
6 economic life of the goods or is bound to become the owner of the
7 goods,

8 (c) the lessee has an option to renew the lease for the remaining
9 economic life of the goods for no additional consideration or
10 nominal additional consideration upon compliance with the lease
11 agreement, or

12 (d) the lessee has an option to become the owner of the goods
13 for no additional consideration or nominal additional consideration
14 upon compliance with the lease agreement.

15 A transaction does not create a security interest merely because it
16 provides that

17 (a) the present value of the consideration the lessee is obligated
18 to pay the lessor for the right to possession and use of the goods is
19 substantially equal to or is greater than the fair market value of the
20 goods at the time the lease is entered into,

21 (b) the lessee assumes risk of loss of the goods, or agrees to pay
22 taxes, insurance, filing, recording, or registration fees, or service or
23 maintenance costs with respect to the goods,

24 (c) the lessee has an option to renew the lease or to become the
25 owner of the goods,

26 (d) the lessee has an option to renew the lease for a fixed rent
27 that is equal to or greater than the reasonably predictable fair market
28 rent for the use of the goods for the term of the renewal at the time
29 the option is to be performed, or

30 (e) the lessee has an option to become the owner of the goods
31 for a fixed price that is equal to or greater than the reasonably
32 predictable fair market value of the goods at the time the option is to
33 be performed.

34 For purposes of this subsection (37):

35 Additional consideration is not nominal if (i) when the option to
36 renew the lease is granted to the lessee the rent is stated to be the
37 fair market rent for the use of the goods for the term of the renewal
38 determined at the time the option is to be performed, or (ii) when
39 [the option to become the owner of the goods is granted to the
40 lessee] the option to become the owner of the goods is granted to
41 the lessee the price is stated to be the fair market value of the goods
42 determined at the time the option is to be performed. Additional
43 consideration is nominal if it is less than the lessee's reasonably
44 predictable cost of performing under the lease agreement if the
45 option is not exercised;

46 "Reasonably predictable" and "remaining economic life of the

1 goods" are to be determined with reference to the facts and
2 circumstances at the time the transaction is entered into; and

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

11 (38) "Send" in connection with any writing or notice means to
12 deposit in the mail or deliver for transmission by any other usual
13 means of communication with postage or cost of transmission
14 provided for and properly addressed and in the case of an instrument
15 to an address specified thereon or otherwise agreed, or if there be
16 none to any address reasonable under the circumstances. The receipt
17 of any writing or notice within the time at which it would have
18 arrived if properly sent has the effect of a proper sending.

19 (39) "Signed" includes any symbol executed or adopted by a
20 party with present intention to authenticate a writing.

21 (40) "Surety" includes guarantor.

22 (41) "Telegram" includes a message transmitted by radio,
23 teletype, cable, any mechanical method of transmission, or the like.

24 (42) "Term" means that portion of an agreement which relates to
25 a particular matter.

26 (43) "Unauthorized" signature or indorsement means one made
27 without actual, implied, or apparent authority and includes a forgery.

28 (44) "Value." Except as otherwise provided with respect to
29 negotiable instruments and bank collections (12A:3-303, 12A:4-210
30 and 12A:4-211), a person gives "value" for rights if the person
31 acquires them:

32 (a) In return for a binding commitment to extend credit or for the
33 extension of immediately available credit whether or not drawn upon
34 and whether or not a charge-back is provided for in the event of
35 difficulties in collection; or

36 (b) As security for or in total or partial satisfaction of a
37 pre-existing claim; or

38 (c) By accepting delivery pursuant to a pre-existing contract for
39 purchase; or

40 (d) Generally, in return for any consideration sufficient to
41 support a simple contract.

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

44 (46) "Written" or "writing" includes printing, typewriting, or any
45 other intentional reduction to tangible form.

46 (cf: P.L.2001, c.117, s.3)

1 130. N.J.S.12A:1-206 is amended to read as follows:
2 12A:1-206. Statute of Frauds for Kinds of Personal Property Not
3 Otherwise Covered.

4 (1) Except in the cases described in subsection (2) [of this
5 section] a contract for the sale of personal property is not
6 enforceable by way of action or defense beyond five thousand
7 dollars in amount or value of remedy unless there is some writing
8 which indicates that a contract for sale has been made between the
9 parties at a defined or stated price, reasonably identifies the subject
10 matter, and is signed by the party against whom enforcement is
11 sought or by his authorized agent.

12 (2) Subsection (1) [of this section] does not apply to contracts
13 for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor
14 to security agreements ([12A:9-201] 12A:9-203).

15 (cf: P.L.2001, c.117, s.4)

16

17 131. N.J.S.12A:2A-103 is amended to read as follows:

18 12A:2A-103. Definitions and index of definitions.

19 (1) In this chapter unless the context otherwise requires:

20 (a) "Buyer in ordinary course of business" means a person who in
21 good faith and without knowledge that the sale to the person is in
22 violation of the ownership rights or security interest or leasehold
23 interest of a third party in the goods buys in ordinary course from a
24 person in the business of selling goods of that kind but does not
25 include a pawnbroker. "Buying" may be for cash or by exchange of
26 other property or on secured or unsecured credit and includes
27 receiving goods or documents of title under a pre-existing contract
28 for sale but does not include a transfer in bulk or as security for or in
29 total or partial satisfaction of a money debt.

30 (b) "Cancellation" occurs when either party puts an end to the
31 lease contract for default by the other party.

32 (c) "Commercial unit" means such a unit of goods as by
33 commercial usage is a single whole for purposes of lease and
34 division of which materially impairs its character or value on the
35 market or in use. A commercial unit may be a single [chapter]
36 article, as a machine, or a set of [chapters] articles, as a suite of
37 furniture or a line of machinery, or a quantity, as a gross or carload,
38 or any other unit treated in use or in the relevant market as a single
39 whole.

40 (d) "Conforming" goods or performance under a lease contract
41 means goods or performance that are in accordance with the
42 obligations under the lease contract.

43 (e) "Consumer lease" means a lease that a lessor regularly
44 engaged in the business of leasing or selling makes to a lessee who is
45 a natural person and who takes under the lease primarily for a
46 personal, family, or household purpose.

- 1 (f) "Fault" means wrongful act, omission, breach, or default.
- 2 (g) "Finance lease" means a lease with respect to which:
- 3 (i) the lessor does not select, manufacture, or supply the goods;
- 4 (ii) the lessor acquires the goods or the right to possession and
- 5 use of the goods in connection with the lease; and
- 6 (iii) one of the following occurs:
- 7 (A) the lessee receives a copy of the contract by which the lessor
- 8 acquired the goods or the right to possession and use of the goods
- 9 before signing the lease contract;
- 10 (B) the lessee's approval of the contract by which the lessor
- 11 acquired the goods or the right to possession and use of the goods is
- 12 a condition to effectiveness of the lease contract;
- 13 (C) the lessee, before signing the lease contract, receives an
- 14 accurate and complete statement designating the promises and
- 15 warranties, and any disclaimers of warranties, limitations or
- 16 modifications of remedies, or liquidated damages, including those of
- 17 a third party, such as the manufacturer of the goods, provided to the
- 18 lessor by the person supplying the goods in connection with or as
- 19 part of the contract by which the lessor acquired the goods or the
- 20 right to possession and use of the goods; or
- 21 (D) if the lease is not a consumer lease, the lessor, before the
- 22 lessee signs the lease contract, informs the lessee in writing (a) of
- 23 the identity of the person supplying the goods to the lessor, unless
- 24 the lessee has selected that person and directed the lessor to acquire
- 25 the goods or the right to possession and use of the goods from that
- 26 person, (b) that the lessee is entitled under this chapter to the
- 27 promises and warranties, including those of any third party, provided
- 28 to the lessor by the person supplying the goods in connection with
- 29 or as part of the contract by which the lessor acquired the goods or
- 30 the right to possession and use of the goods, and (c) that the lessee
- 31 may communicate with the person supplying the goods to the lessor
- 32 and receive an accurate and complete statement of those promises
- 33 and warranties, including any disclaimers and limitations of them or
- 34 of remedies.
- 35 (h) "Goods" means all things that are movable at the time of
- 36 identification to the lease contract, or are fixtures (12A:2A-309), but
- 37 the term does not include money, documents, instruments, accounts,
- 38 chattel paper, general intangibles, or minerals or the like, including
- 39 oil and gas, before extraction. The term also includes the unborn
- 40 young of animals.
- 41 (i) "Installment lease contract" means a lease contract that
- 42 authorizes or requires the delivery of goods in separate lots to be
- 43 separately accepted, even though the lease contract contains a clause
- 44 "each delivery is a separate lease" or its equivalent.
- 45 (j) "Lease" means a transfer of the right to possession and use of
- 46 goods for a term in return for consideration, but a sale, including a

1 sale on approval or a sale or return, or retention or creation of a
2 security interest is not a lease. Unless the context clearly indicates
3 otherwise, the term includes a sublease.

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

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

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

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

19 (o) "Lessee in ordinary course of business" means a person who
20 in good faith and without knowledge that the lease to the person is
21 in violation of the ownership rights or security interest or leasehold
22 interest of a third party in the goods leases in ordinary course from a
23 person in the business of selling or leasing goods of that kind but
24 does not include a pawnbroker. "Leasing" may be for cash or by
25 exchange of other property or on secured or unsecured credit and
26 includes receiving goods or documents of title under a pre-existing
27 lease contract but does not include a transfer in bulk or as security
28 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

43 (u) "Present value" means the amount as of a date certain of one
44 or more sums payable in the future, discounted to the date certain.
45 The discount is determined by the interest rate specified by the
46 parties if the rate was not manifestly unreasonable at the time the

1 transaction was entered into; otherwise, the discount is determined
 2 by a commercially reasonable rate that takes into account the facts
 3 and circumstances of each case at the time the transaction was
 4 entered into.

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

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

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

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

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

18 (2) Other definitions applying to this chapter and the sections in
 19 which they appear are

- 20 "Accessions" 12A:2A-310(1).
- 21 "Construction mortgage" 12A:2A-309(1)(d).
- 22 "Encumbrance" 12A:2A-309(1)(e).
- 23 "Fixtures" 12A:2A-309(1)(a).
- 24 "Fixture filing" 12A:2A-309(1)(b).
- 25 "Purchase money lease" 12A:2A-309(1)(c).

26 (3) The following definitions in other Chapters apply to this
 27 Chapter:

- 28 "Account" 12A: 9-102(a)(2).
- 29 "Between merchants" 12A:2-104(3).
- 30 "Buyer" 12A:2-103(1)(a).
- 31 "Chattel paper" 12A:9-102(a)(12).
- 32 "Consumer goods" 12A:9-102(a)(24).
- 33 "Document" 12A:9-102(a)[(21)](31).
- 34 "Entrusting" 12A:2-403(3).
- 35 "General intangible" 12A:9-102(a)(42).
- 36 "Good faith" 12A:2-103(1)(b).
- 37 "Instrument" 12A:9-102(a)(47).
- 38 "Merchant" 12A:2-104(1).
- 39 "Mortgage" 12A:9-102(a)(55).
- 40 "Pursuant to commitment" 12A:9-102(a)(68).
- 41 "Receipt" 12A:2-103(1)(c).
- 42 "Sale" 12A:2-106(1).
- 43 "Sale on approval" 12A:2-326.
- 44 "Sale or return" 12A:2-326.
- 45 "Seller" 12A:2-103(1)(d).

46 (4) In addition chapter 1 contains general definitions and

1 principles of construction and interpretation applicable throughout
2 this chapter.

3 (cf: P.L. 2001, c.117, s.10)

4

5 132. N.J.S.12A:2A-307 is amended to read as follows:

6 12A:2A-307. Priority of liens arising by attachment or levy on,
7 security interests in, and other claims to goods.

8 (1) Except as otherwise provided in 12A:2A-306, a creditor of a
9 lessee takes subject to the lease contract.

10 (2) Except as otherwise provided in subsection (3) and in
11 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to
12 the lease contract unless [:

13 (a)] the creditor holds a lien that attached to the goods before
14 the lease contract became enforceable [;

15 (b) the creditor holds a security interest in the goods and the
16 lessee did not give value and receive delivery of the goods without
17 knowledge of the security interest; or

18 (c) the creditor holds a security interest in the goods which was
19 perfected (12A:9-303) before the lease contract became
20 enforceable].

21 (3) Except as otherwise provided in 12A:9-317, 12A:9-321 and
22 12A:9-323, a lessee takes a leasehold interest subject to a security
23 interest held by a creditor of the lessor.

24 (cf: P.L. 2001, c.117, s.12)

25

26 133. N.J.S.12A:8-103 is amended to read as follows:

27 12A:8-103. Rule for Determining whether Certain Obligations
28 and Interests are Securities or Financial Assets.

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

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

40 c. An interest in a partnership or limited liability company is not
41 a security unless it is dealt in or traded on securities exchanges or in
42 securities markets, its terms expressly provide that it is a security
43 governed by this chapter, or it is an investment company security.
44 However, an interest in a partnership or limited liability company is a
45 financial asset if it is held in a securities account.

46 d. A writing that is a security certificate is governed by this

1 chapter and not by chapter 3, even though it also meets the
2 requirements of that chapter. However, a negotiable instrument
3 governed by chapter 3 is a financial asset if it is held in a securities
4 account.

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

8 f. A commodity contract, as defined in [12A:9-102(a)(16)]
9 12A:9-102 (a) (15), is not a security or a financial asset.
10 (cf: P.L.2001, c.117, s.17)

11

12 134. N.J.S.12A:8-110 is amended to read as follows:

13 12A:8-110. Applicability; Choice of Law.

14 a. The local law of the issuer's jurisdiction, as specified in
15 subsection d. of this section, governs:

16 (1) the validity of a security;

17 (2) the rights and duties of the issuer with respect to registration
18 of transfer;

19 (3) the effectiveness of registration of transfer by the issuer;

20 (4) whether the issuer owes any duties to an adverse claimant to
21 a security; and

22 (5) whether an adverse claim can be asserted against a person to
23 whom transfer of a certificated or uncertificated security is
24 registered or a person who obtains control of an uncertificated
25 security.

26 b. The local law of the securities intermediary's jurisdiction, as
27 specified in subsection e. of this section, governs:

28 (1) acquisition of a security entitlement from the securities
29 intermediary;

30 (2) the rights and duties of the securities intermediary and
31 entitlement holder arising out of a security entitlement;

32 (3) whether the securities intermediary owes any duties to an
33 adverse claimant to a security entitlement; and

34 (4) whether an adverse claim can be asserted against a person
35 who acquires a security entitlement from the securities intermediary
36 or a person who purchases a security entitlement or interest therein
37 from an entitlement holder.

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

42 d. "Issuer's jurisdiction" means the jurisdiction under which the
43 issuer of the security is organized or, if permitted by the law of that
44 jurisdiction, the law of another jurisdiction specified by the issuer.
45 An issuer organized under the law of this State may specify the law
46 of another jurisdiction as the law governing the matters specified in

1 paragraphs (2) through (5) of subsection a. of this section.

2 e. The following rules determine a “securities intermediary’s
3 jurisdiction” for purposes of this section:

4 (1) If an agreement between the securities intermediary and its
5 entitlement holder governing the securities account expressly
6 provides that a particular jurisdiction is the securities intermediary’s
7 jurisdiction for purposes of this part, this chapter, or [this Act] the
8 Uniform Commercial Code, that jurisdiction is the securities
9 intermediary’s jurisdiction.

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

15 (3) If neither paragraph (1) nor paragraph (2) of this subsection
16 e. applies and an agreement between the securities intermediary and
17 its entitlement holder governing the securities account expressly
18 provides that the securities account is maintained at an office in a
19 particular jurisdiction, that jurisdiction is the securities
20 intermediary’s jurisdiction.

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

25 (5) If none of the preceding paragraphs applies, the securities
26 intermediary’s jurisdiction is the jurisdiction in which the chief
27 executive office of the securities intermediary is located.

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

34 (cf: P.L.2001, c.117, s.19)

35

36 135. N.J.S.12A:8-510 is amended to read as follows:

37 12A:8-510. Rights of Purchaser of Security Entitlement from
38 Entitlement Holder.

39 a. In a case not covered by the priority rules in Chapter 9 or the
40 rules stated in subsection c. of this section, an action based on an
41 adverse claim to a financial asset or security entitlement, whether
42 framed in conversion, replevin, constructive trust, equitable lien, or
43 other theory, may not be asserted against a person who purchases a
44 security entitlement, or an interest therein, from an entitlement
45 holder if the purchaser gives value, does not have notice of the
46 adverse claim, and obtains control.

1 b. If an adverse claim could not have been asserted against an
2 entitlement holder under 12A:8-502, the adverse claim cannot be
3 asserted against a person who purchases a security entitlement, or an
4 interest therein, from the entitlement holder.

5 c. In a case not covered by the priority rules in Chapter 9, a
6 purchaser for value of a security entitlement, or an interest therein,
7 who obtains control has priority over a purchaser of a security
8 entitlement, or an interest therein, who does not obtain control.
9 Except as otherwise provided in subsection d of this section,
10 purchasers who have control rank according to priority in time of:

11 (1) the purchaser's becoming the person for whom the securities
12 account, in which the security entitlement is carried, is maintained, if
13 the purchaser obtained control under 12A:8-106d.(1); [or]

14 (2) the securities intermediary's agreement to comply with the
15 purchaser's entitlement orders with respect to security entitlements
16 carried or to be carried in the securities account in which the
17 security entitlement is carried, if the purchaser obtained control
18 under 12A:8-106d.(2); or

19 (3) if the purchaser obtained control through another person
20 under 12A:8-106 d. (3), the time on which priority would be based
21 under this subsection if the other person were the secured party.

22 d. A securities intermediary as purchaser has priority over a
23 conflicting purchaser who has control unless otherwise agreed by the
24 securities intermediary.

25 (cf: P.L.2001, c.117, s.22)

26
27 136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to
28 read as follows:

29 27. a. For purposes of this act, and the Uniform Commercial
30 Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable
31 transition property, as defined in N.J.S. [12A:9-102a (9)] 12A:9-
32 102 (a) (8.1), shall constitute an account. For purposes of this act,
33 and the Uniform Commercial Code - Secured Transactions,
34 N.J.S.12A:9-101 et seq., bondable transition property shall be in
35 existence whether or not the revenues or proceeds in respect thereof
36 have accrued, in accordance with subsection c. of section 22 of this
37 act. The validity, perfection or priority of any security interest in
38 bondable transition property shall not be defeated or adversely
39 affected by changes to the bondable stranded costs rate order or to
40 the transition bond charges payable by any customer. Any
41 description of bondable transition property in a security agreement
42 or other agreement or a financing statement shall be sufficient if it
43 refers to the bondable stranded costs rate order establishing the
44 bondable transition property.

45 b. In addition to the other rights and remedies provided or
46 authorized by this act, and by the Uniform Commercial Code -

1 Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in
2 default under a security agreement and the collateral is bondable
3 transition property, then upon application by the secured party, the
4 board or any court of competent jurisdiction shall order the
5 sequestration and payment to the secured party of all collections and
6 other proceeds of such bondable transition property up to the value
7 of the property. In the event of any conflicts, priority among
8 pledgees, transferees or secured parties shall be determined under
9 N.J.S.12A:9-101 et seq.. The secured party shall account to the
10 debtor for any surplus and, unless otherwise agreed, the debtor shall
11 be liable for any deficiency.

12 (cf: P.L.2001, c.117, s.29)

13

14 137. N.J.S.2A:25-1 is amended to read as follows:

15 2A:25-1. All contracts for the sale and conveyance of real estate,
16 all judgments and decrees recovered in any of the courts of this
17 state or of the United States or in any of the courts of any other
18 state of the United States and all choses in action arising on
19 contract shall be assignable, and the assignee may sue thereon in his
20 own name. In such an action, the person sued shall be allowed, not
21 only all set-offs, discounts and defenses he has against the assignee,
22 but also all set-offs, discounts and defenses he had against the
23 assignor before notice of such assignment was given to him. The
24 assignment of a sealed instrument by writing not under seal shall be
25 as valid as if under seal.

26 The assignee for a valuable consideration of any chose in action
27 may, although the assignor is dead, sue for and recover the same in
28 his own name. The person sued in any such action shall be allowed
29 not only all set-offs, discounts and defenses he has against the
30 assignee, but also all set-offs, discounts and defenses he had against
31 the assignor or his representatives before notice of such assignment
32 was given to him.

33 Security interests in commercial tort claims may be created,
34 attached, perfected and enforced in accordance with Chapter 9 of
35 Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

36 (cf: N.J.S.2A:25-1)

37

38 138. This act shall take effect immediately, and shall have
39 retroactive effect in accordance with section 127 of this act.

40

41

42 STATEMENT

43

44 This bill insures that the New Jersey law governing secured
45 transactions is essentially uniform with the law in other states which
46 have enacted revised Article 9 to the Uniform Commercial Code.

1 Revised Article 9 has been enacted in all 50 states and became
2 effective in New Jersey on July 1, 2001.

3 The bill adds certain provisions jointly approved by the National
4 Conference of Commissioners on Uniform State Laws and The
5 American Law Institute, some transition-related, for inclusion in
6 revised Article 9, which was enacted in New Jersey as P.L.2001,
7 c.117. The bill also amends N.J.S.2A:25-1 to conform the
8 assignment provisions in the civil law with revised Article 9 which
9 allows granting a security interest in a commercial tort claim, and
10 makes certain technical corrections to P.L. 2001, c.117.

11 The bill is designed to be effective retroactively to July 1, 2001 so
12 that the provisions of law governing secured transactions in New
13 Jersey will be congruent with the law in other states as of July 1,
14 2001.

[First Reprint]

ASSEMBLY, No. 3917

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 8, 2001

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman WILFREDO CARABALLO

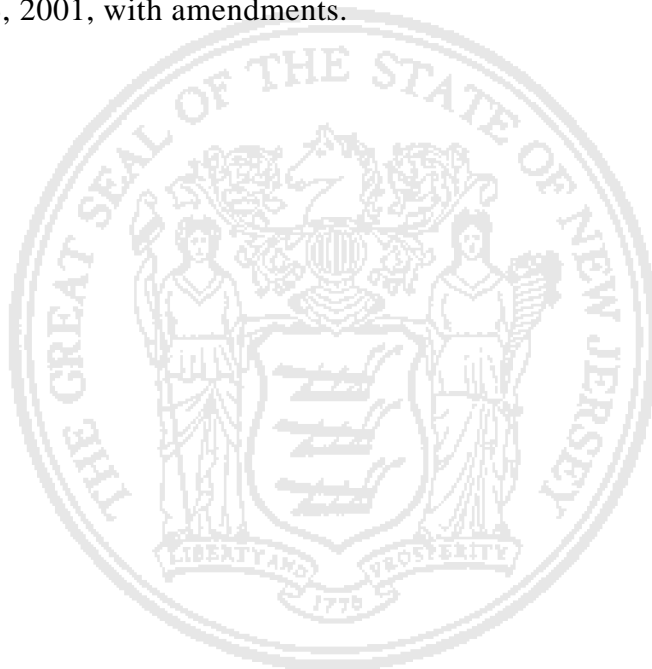
District 28 (Essex)

SYNOPSIS

Concerns chapter 9 of the Uniform Commercial Code.

CURRENT VERSION OF TEXT

As reported by the Assembly Banking and Insurance Committee on December 13, 2001, with amendments.



(Sponsorship Updated As Of: 1/4/2002)

1 AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.12A:9-102 is amended to read as follows:
8 12A:9-102. Definitions and Index of Definitions.

9 **[a.]** (a) Chapter 9 definitions. In this chapter:

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

13 (2) **["Account,"]** "Account", except as used in **[**"account for,"
14 (a) "account for", means a right to payment of a monetary obligation,
15 whether or not earned by performance, (i) for property that has been
16 or is to be sold, leased, licensed, assigned, or otherwise disposed of,
17 (ii) for services rendered or to be rendered, (iii) for a policy of
18 insurance issued or to be issued, (iv) for a secondary obligation
19 incurred or to be incurred, (v) for energy provided or to be provided,
20 (vi) for the use or hire of a vessel under a charter or other contract,
21 (vii) arising out of the use of a credit or charge card or information
22 contained on or for use with the card, or (viii) as winnings in a lottery
23 or other game of chance operated or sponsored by a State,
24 governmental unit of a State, or person licensed or authorized to
25 operate the game by a State or governmental unit of a State. The term
26 includes health-care-insurance receivables and bondable transition
27 property. **[(b)]** The term does not include (i) rights to payment
28 evidenced by chattel paper or an instrument, (ii) commercial tort
29 claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-
30 credit rights or letters of credit, or (vi) rights to payment for money or
31 funds advanced or sold, other than rights arising out of the use of a
32 credit or charge card or information contained on or for use with the
33 card.

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

38 (4) **[**"Accounting,"] "Accounting", except as used in **[**"accounting
39 for,"] "accounting for", means a record:

40 **[(a)]** (A) authenticated by a secured party;

41 **[(b)]** (B) indicating the aggregate unpaid secured obligations as of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABI committee amendments adopted December 13, 2001.

1 a date not more than 35 days earlier or 35 days later than the date of
2 the record; and

3 [(c)] (C) identifying the components of the obligations in
4 reasonable detail.

5 (5) “Agricultural lien” means an interest [, other than a security
6 interest,] in farm products:

7 [(a)] (A) which secures payment or performance of an obligation
8 for:

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

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

13 [(b)] (B) which is created by statute in favor of a person [who]
14 that:

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

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

19 [(c)] (C) whose effectiveness does not depend on the person’s
20 possession of the personal property.

21 (6) “As-extracted collateral” means:

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

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

26 (ii) attaches to the minerals as extracted; or

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

30 (7) “Authenticate” means:

31 [(a)] (A) to sign; or

32 [(b)] (B) to execute or otherwise adopt a symbol, or encrypt or
33 similarly process a record in whole or in part, with the present intent
34 of the authenticating person to identify the person and adopt or accept
35 a record.

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

39 [(9)] (8.1) “Bondable transition property” shall have the meaning
40 set forth in section 3 of P.L. [1990] 1999, c.23 (C.48:3-51).

41 [(10)] (9) “Cash proceeds” means proceeds that are money,
42 checks, deposit accounts, or the like.

43 [(11)] (10) “Certificate of title” means a certificate of title with
44 respect to which a statute provides for the security interest in question
45 to be indicated on the certificate as a condition or result of the security

1 interest's obtaining priority over the rights of a lien creditor with
2 respect to the collateral.

3 [(12)] (11) "Chattel paper" means a record or records that
4 evidence both a monetary obligation and a security interest in specific
5 goods, a security interest in specific goods and software used in the
6 goods, a security interest in specific goods and license of software
7 used in the goods, a lease of specific goods, or a lease of specific
8 goods and license of software used in the goods. In this paragraph,
9 "monetary obligation" means a monetary obligation secured by the
10 goods or owed under a lease of the goods and includes a monetary
11 obligation with respect to software used in the goods. The term does
12 not include (i) charters or other contracts involving the use or hire of
13 a vessel or (ii) records that evidence a right to payment arising out of
14 the use of a credit or charge card or information contained on or for
15 use with the card. If a transaction is evidenced by records that include
16 an instrument or series of instruments, the group of records taken
17 together constitutes chattel paper.

18 [(13)] (12) "Collateral" means the property subject to a security
19 interest or agricultural lien. The term includes:

20 [(a)] (A) proceeds to which a security interest attaches;

21 [(b)] (B) accounts, chattel paper, payment intangibles, and
22 promissory notes that have been sold; and

23 [(c)] (C) goods that are the subject of a consignment.

24 [(14)] (13) "Commercial tort claim" means a claim arising in tort
25 with respect to which:

26 [(a)] (A) the claimant is an organization; or

27 [(b)] (B) the claimant is an individual and the claim:

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

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

31 [(15)] (14) "Commodity account" means an account maintained
32 by a commodity intermediary in which a commodity contract is carried
33 for a commodity customer.

34 [(16)] (15) "Commodity contract" means a commodity futures
35 contract, an option on a commodity futures contract, a commodity
36 option, or another contract [or option] if the contract or option is:

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

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

43 [(17)] (16) "Commodity customer" means a person for which a
44 commodity intermediary carries a commodity contract on its books.

45 [(18)] (17) "Commodity intermediary" means a person [who]

1 that:

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

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

7 [(19)] (18) “Communicate” means:

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

9 [(b)] (B) to transmit a record by any means agreed upon by the
10 persons sending and receiving the record; or

11 [(c)] (C) in the case of transmission of a record to or by a filing
12 office, to transmit a record by any means prescribed by filing-office
13 rule.

14 [(20)] (19) “Consignee” means a merchant to which goods are
15 delivered in a consignment.

16 [(21)] (20) “Consignment” means a transaction, regardless of its
17 form, in which a person delivers goods to a merchant for the purpose
18 of sale and:

19 [(a)] (A) the merchant:

20 (i) deals in goods of that kind under a name other than the name of
21 the person making delivery;

22 (ii) is not an auctioneer; and

23 (iii) is not generally known by its creditors to be substantially
24 engaged in selling the goods of others;

25 [(b)] (B) with respect to each delivery, the aggregate value of the
26 goods is \$1,000 or more at the time of delivery;

27 [(c)] (C) the goods are not consumer goods immediately before
28 delivery; and

29 [(d)] (D) the transaction does not create a security interest that
30 secures an obligation.

31 [(22)] (21) “Consignor” means a person [who] that delivers
32 goods to a consignee in a consignment.

33 [(23)] (22) “Consumer debtor” means a debtor in a consumer
34 transaction.

35 [(24)] (23) “Consumer goods” means goods that are used or
36 bought for use primarily for personal, family, or household purposes.

37 [(25)] (24) “Consumer-goods transaction” means a consumer
38 transaction in which:

39 [(a)] (A) an individual incurs an obligation primarily for personal,
40 family, or household purposes; and

41 [(b)] (B) a security interest in consumer goods secures the
42 obligation.

43 [(26)] (25) “Consumer obligor” means an obligor who is an
44 individual and who incurred the obligation as part of a transaction
45 entered into primarily for personal, family, or household purposes.

1 [(27)] (26) “Consumer transaction” means a transaction in which
2 [(a)] (i) an individual incurs an obligation primarily for personal,
3 family, or household purposes, [(b)] (ii) a security interest secures
4 the obligation, and [(c)] (iii) the collateral is held or acquired
5 primarily for personal, family, or household purposes. The term
6 includes consumer-goods transactions.

7 [(28)] (27) “Continuation statement” means an amendment of a
8 financing statement which:

9 [(a)] (A) identifies, by its file number, the initial financing
10 statement to which it relates; and

11 [(b)] (B) indicates that it is a continuation statement for, or that it
12 is filed to continue the effectiveness of, the identified financing
13 statement.

14 [(29)] (28) “Debtor” means:

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

17 [(b)] (B) a seller of accounts, chattel paper, payment intangibles,
18 or promissory notes; or

19 [(c)] (C) a consignee.

20 [(30)] (29) “Deposit account” means a demand, time, savings,
21 passbook, or similar account maintained with a bank. The term does
22 not include investment property or accounts evidenced by an
23 instrument.

24 [(31)] (30) “Document” means a document of title or a receipt of
25 the type described in 12A:7-201(2).

26 [(32)] (31) “Electronic chattel paper” means chattel paper
27 evidenced by a record or records consisting of information stored in
28 an electronic medium.

29 [(33)] (32) “Encumbrance” means a right, other than an ownership
30 interest, in real property. The term includes mortgages and other liens
31 on real property.

32 [(34)] (33) “Equipment” means goods other than inventory, farm
33 products, or consumer goods.

34 [(35)] (34) “Farm products” means goods, other than standing
35 timber, with respect to which the debtor is engaged in a farming
36 operation and which are:

37 [(a)] (A) crops grown, growing, or to be grown, including:

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

39 (ii) aquatic goods produced in aquacultural operations;

40 [(b)] (B) livestock, born or unborn, including aquatic goods
41 produced in aquacultural operations;

42 [(c)] (C) supplies used or produced in a farming operation; or

43 [(d)] (D) products of crops or livestock in their unmanufactured
44 states.

45 [(36)] (35) “Farming operation” means raising, cultivating,

1 propagating, fattening, grazing, or any other farming, livestock, or
2 aquacultural operation.

3 [(37)] (36) “File number” means the number assigned to an initial
4 financing statement pursuant to 12A:9-519 [a.] (a).

5 [(38)] (37) “Filing office” means an office designated in
6 12A:9-501 as the place to file a financing statement.

7 [(39)] (38) “Filing-office rule” means a rule adopted pursuant to
8 12A:9-526.

9 [(40)] (39) “Financing statement” means a record or records
10 composed of an initial financing statement and any filed record relating
11 to the initial financing statement.

12 [(40.1)] (40) “Fixture filing” means the filing of a financing
13 statement covering goods that are or are to become fixtures and
14 satisfying 12A:9-502[a. and b.] (a) and (b). The term includes the
15 filing of a financing statement covering goods of a transmitting utility
16 which are or are to become fixtures.

17 (41) “Fixtures” means goods that have become so related to
18 particular real property that an interest in them arises under real
19 property law.

20 (42) “General intangible” means any personal property, including
21 things in action, other than accounts, chattel paper, commercial tort
22 claims, deposit accounts, documents, goods, instruments, investment
23 property, letter-of-credit rights, letters of credit, money, and oil, gas,
24 or other minerals before extraction. The term includes payment
25 intangibles and software.

26 (43) “Good faith” means honesty in fact and the observance of
27 reasonable commercial standards of fair dealing.

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

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

7 (46) “Health-care-insurance receivable” means an interest in or
8 claim under a policy of insurance which is a right to payment of a
9 monetary obligation for health-care goods or services provided or to
10 be provided.

11 (47) “Instrument” means a negotiable instrument or any other
12 writing that evidences a right to the payment of a monetary obligation,
13 is not itself a security agreement or lease, and is of a type that in
14 ordinary course of business is transferred by delivery with any
15 necessary indorsement or assignment. The term does not include [(a)]
16 (i) investment property, [(b)] (ii) letters of credit, or [(c)] (iii)
17 writings that evidence a right to payment arising out of the use of a
18 credit or charge card or information contained on or for use with the
19 card.

20 (48) “Inventory” means goods, other than farm products, which:

21 [(a)] (A) are leased by a person as lessor;

22 [(b)] (B) are held by a person for sale or lease or to be furnished
23 under a contract of service;

24 [(c)] (C) are furnished by a person under a contract of service; or

25 [(d)] (D) consist of raw materials, work in process, or materials
26 used or consumed in a business.

27 (49) “Investment property” means a security, whether certificated
28 or uncertificated, security entitlement, securities account, commodity
29 contract, or commodity account.

30 (50) “Jurisdiction of organization”, with respect to a registered
31 organization, means the jurisdiction under whose law the organization
32 is organized.

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

38 (52) “Lien creditor” means:

39 [(a)] (A) a creditor that has acquired a lien on the property
40 involved by attachment, levy, or the like;

41 [(b)] (B) an assignee for benefit of creditors from the time of
42 assignment;

43 [(c)] (C) a trustee in bankruptcy from the date of the filing of the
44 petition; or

45 [(d)] (D) a receiver in equity from the time of appointment.

1 (53) “Manufactured home” means a structure, transportable in one
2 or more sections, which, in the traveling mode, is eight body feet or
3 more in width or 40 body feet or more in length, or, when erected on
4 site, is 320 or more square feet, and which is built on a permanent
5 chassis and designed to be used as a dwelling with or without a
6 permanent foundation when connected to the required utilities, and
7 includes the plumbing, heating, air-conditioning, and electrical systems
8 contained therein. The term includes any structure that meets all of
9 the requirements of this paragraph except the size requirements and
10 with respect to which the manufacturer voluntarily files a certification
11 required by the United States Secretary of Housing and Urban
12 Development and complies with the standards established under Title
13 42 of the United States Code.

14 (54) “Manufactured-home transaction” means a secured
15 transaction:

16 [(a)] (A) that creates a purchase-money security interest in a
17 manufactured home, other than a manufactured home held as
18 inventory; or

19 [(b)] (B) in which a manufactured home, other than a
20 manufactured home held as inventory, is the primary collateral.

21 (55) “Mortgage” means a consensual interest in real property,
22 including fixtures, which secures payment or performance of an
23 obligation.

24 (56) “New debtor” means a person that becomes bound as debtor
25 under 12A:9-203 [d.] (d) by a security agreement previously entered
26 into by another person.

27 (57) “New value” means [(a)] (i) money, [(b)] (ii) money’s worth
28 in property, services, or new credit, or [(c)] (iii) release by a
29 transferee of an interest in property previously transferred to the
30 transferee. The term does not include an obligation substituted for
31 another obligation.

32 (58) “Noncash proceeds” means proceeds other than cash
33 proceeds.

34 (59) “Obligor” means a person [who] that, with respect to an
35 obligation secured by a security interest in or an agricultural lien on
36 the collateral, [(a)] (i) owes payment or other performance of the
37 obligation, [(b)] (ii) has provided property other than the collateral to
38 secure payment or other performance of the obligation, or [(c)] (iii)
39 is otherwise accountable in whole or in part for payment or other
40 performance of the obligation. The term does not include issuers or
41 nominated persons under a letter of credit.

42 (60) “Original debtor”, except as used in 12A:9-310(c), means a
43 person [who] that, as debtor, entered into a security agreement to
44 which a new debtor has become bound under 12A:9-203 [d.] (d).

45 (61) “Payment intangible” means a general intangible under which

1 the account debtor's principal obligation is a monetary obligation.

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

3 [(a)] (A) the spouse of the individual;

4 [(b)] (B) a brother, brother-in-law, sister, or sister-in-law of the
5 individual;

6 [(c)] (C) an ancestor or lineal descendant of the individual or the
7 individual's spouse; or

8 [(d)] (D) any other relative, by blood or marriage, of the individual
9 or the individual's spouse who shares the same home with the
10 individual.

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

12 [(a)] (A) a person directly or indirectly controlling, controlled by,
13 or under common control with the organization;

14 [(b)] (B) an officer or director of, or a person performing similar
15 functions with respect to, the organization;

16 [(c)] (C) an officer or director of, or a person performing similar
17 functions with respect to, a person described in subparagraph [(a)]
18 (A);

19 [(d)] (D) the spouse of an individual described in subparagraph
20 [(a), (b), or (c)] (A), (B) or (C); or

21 [(e)] (E) an individual who is related by blood or marriage to an
22 individual described in subparagraph [(a), (b), (c), or (d)] (A), (B) (C)
23 or (D) and shares the same home with the individual.

24 (64) "Proceeds", except as used in 12A:9-609(b), means the
25 following property:

26 [(a)] (A) whatever is acquired upon the sale, lease, license,
27 exchange, or other disposition of collateral;

28 [(b)] (B) whatever is collected on, or distributed on account of,
29 collateral;

30 [(c)] (C) rights arising out of collateral;

31 [(d)] (D) to the extent of the value of collateral, claims arising out
32 of the loss, nonconformity, or interference with the use of, defects or
33 infringement of rights in, or damage to, the collateral; or

34 [(e)] (E) to the extent of the value of collateral and to the extent
35 payable to the debtor or the secured party, insurance payable by reason
36 of the loss or nonconformity of, defects or infringement of rights in,
37 or damage to, the collateral.

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

42 (66) "Proposal" means a record authenticated by a secured party
43 which includes the terms on which the secured party is willing to
44 accept collateral in full or partial satisfaction of the obligation it
45 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

1 (67) “Public-finance transaction” means a secured transaction in
2 connection with which:

3 [(a)] (A) debt securities are issued;

4 [(b)] (B) all or a portion of the securities issued have an initial
5 stated maturity of at least 20 years; and

6 [(c)] (C) the debtor, obligor, secured party, account debtor or
7 other person obligated on collateral, assignor or assignee of a secured
8 obligation, or assignor or assignee of a security interest is a state or a
9 governmental unit of a state.

10 (68) “Pursuant to commitment”, with respect to an advance made
11 or other value given by a secured party, means pursuant to the secured
12 party’s obligation, whether or not a subsequent event of default or
13 other event not within the secured party’s control has relieved or may
14 relieve the secured party from its obligation.

15 (69) “Record”, except as used in “for record”, “of record”, “record
16 or legal title”, and “record owner”, means information that is inscribed
17 on a tangible medium or which is stored in an electronic or other
18 medium and is retrievable in perceivable form.

19 (70) “Registered organization” means an organization organized
20 solely under the law of a single state or the United States and as to
21 which the state or the United States must maintain a public record
22 showing the organization to have been organized.

23 (71) “Secondary obligor” means an obligor to the extent that:

24 [(a)] (A) the obligor’s obligation is secondary; or

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

28 (72) “Secured party” means:

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

32 [(b)] (B) a person that holds an agricultural lien;

33 [(c)] (C) a consignor;

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

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

39 [(f)] (F) a person that holds a security interest arising under
40 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), [or]
41 12A:4-210, or 12A:5-118.

42 (73) “Security agreement” means an agreement that creates or
43 provides for a security interest.

44 (74) “Send”, in connection with a record or notification, means:

45 [(a)] (A) to deposit in the mail, deliver for transmission, or

1 transmit by any other usual means of communication, with postage or
 2 cost of transmission provided for, addressed to any address reasonable
 3 under the circumstances; or

4 [(b)] (B) to cause the record or notification to be received within
 5 the time that it would have been received if properly sent under
 6 subparagraph [(a)] (A).

7 (75) “Software” means a computer program and any supporting
 8 information provided in connection with a transaction relating to the
 9 program. The term does not include a computer program that is
 10 included in the definition of goods.

11 (76) “State” means a state of the United States, the District of
 12 Columbia, Puerto Rico, the United States Virgin Islands, or any
 13 territory or insular possession subject to the jurisdiction of the United
 14 States.

15 (77) “Supporting obligation” means a letter-of-credit right or
 16 secondary obligation that supports the payment or performance of an
 17 account, chattel paper, a document, a general intangible, an
 18 instrument, or investment property.

19 (78) “Tangible chattel paper” means chattel paper evidenced by a
 20 record or records consisting of information that is inscribed on a
 21 tangible medium.

22 (79) “Termination statement” means an amendment of a financing
 23 statement which:

24 [(a)] (A) identifies, by its file number, the initial financing
 25 statement to which it relates; and

26 [(b)] (B) indicates either that it is a termination statement or that
 27 the identified financing statement is no longer effective.

28 (80) “Transmitting utility” means a person primarily engaged in the
 29 business of:

30 [(a)] (A) operating a railroad, subway, street railway, or trolley
 31 bus;

32 [(b)] (B) transmitting communications electrically,
 33 electromagnetically, or by light;

34 [(c)] (C) transmitting goods by pipeline or sewer; or

35 [(d)] (D) transmitting or producing and transmitting electricity,
 36 steam, gas, or water.

37 [b.] (b) Definitions in other chapters. The following definitions in
 38 other chapters apply to this chapter:

39 “Applicant” 12A:5-102.

40 “Beneficiary” 12A:5-102.

41 “Broker” 12A:8-102.

42 “Certificated security” 12A:8-102.

43 “Check” 12A:3-104.

44 “Clearing corporation” 12A:8-102.

45 “Contract for sale” 12A:2-106.

1	“Customer”	12A:4-104.
2	“Entitlement holder”	12A:8-102.
3	“Financial asset”	12A:8-102.
4	“Holder in due course”	12A:3-302.
5	“Issuer” (with respect to a letter of	
6	credit or letter-of-credit right)	12A:5-102.
7	“Issuer” (with respect to a security)	12A:8-201.
8	“Lease”	12A:2A-103.
9	“Lease agreement”	12A:2A-103.
10	“Lease contract”	12A:2A-103.
11	“Leasehold interest”	12A:2A-103.
12	“Lessee”	12A:2A-103.
13	“Lessee in ordinary course of business”	12A:2A-103.
14	“Lessor”	12A:2A-103.
15	“Lessor’s residual interest”	12A:2A-103.
16	“Letter of credit”	12A:5-102.
17	“Merchant”	12A:2-104.
18	“Negotiable instrument”	12A:3-104.
19	“Nominated person”	12A:5-102.
20	“Note”	12A:3-104.
21	“Proceeds of a letter of credit”	12A:5-114.
22	“Prove”	12A:3-103.
23	“Sale”	12A:2-106.
24	“Securities account”	12A:8-501.
25	“Securities intermediary”	12A:8-102.
26	“Security”	12A:8-102.
27	“Security certificate”	12A:8-102.
28	“Security entitlement”	12A:8-102.
29	“Uncertificated security”	12A:8-102.

30 **[c.] (c)** Chapter 1 definitions and principles. Chapter 1 contains
 31 general definitions and principles of construction and interpretation
 32 applicable throughout this chapter.
 33 (cf: N.J.S.12A:9-102)

34
 35 2. N.J.S.12A:9-103 is amended to read as follows:

36 12A:9-103. Purchase-Money Security Interest; Application of
 37 Payments; Burden of Establishing.

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

39 (1) “purchase-money collateral” means goods or software that
 40 **[secure] secures** a purchase-money obligation incurred with respect
 41 to that collateral; and

42 (2) “purchase-money obligation” means an obligation of an obligor
 43 incurred as all or part of the price of the collateral or for value given
 44 to enable the debtor to acquire rights in or the use of the collateral if
 45 the value is in fact so used.

46 **[b.] (b)** Purchase-money security interest in goods. A security

1 interest in goods is a purchase-money security interest:

2 (1) to the extent that the goods are purchase-money collateral with
3 respect to that security interest;

4 (2) if the security interest is in inventory that is or was purchase-
5 money collateral, also to the extent that the security interest secures
6 a purchase-money obligation incurred with respect to other inventory
7 in which the secured party holds or held a purchase-money security
8 interest; and

9 (3) also to the extent that the security interest secures a purchase-
10 money obligation incurred with respect to software in which the
11 secured party holds or held a purchase-money security interest.

12 **[c.] (c)** Purchase-money security interest in software. A security
13 interest in software is a purchase-money security interest to the extent
14 that the security interest also secures a purchase-money obligation
15 incurred with respect to goods in which the secured party holds or
16 held a purchase-money security interest if:

17 (1) the debtor acquired its interest in the software in an integrated
18 transaction in which it acquired an interest in the goods; and

19 (2) the debtor acquired its interest in the software for the principal
20 purpose of using the software in the goods.

21 **[d.] (d)** Consignor's inventory purchase-money security interest.
22 The security interest of a consignor in goods that are the subject of a
23 consignment is a purchase-money security interest in inventory.

24 **[e.] (e)** Application of payment in non-consumer-goods
25 transaction. In a transaction other than a consumer-goods transaction,
26 if the extent to which a security interest is a purchase-money security
27 interest depends on the application of a payment to a particular
28 obligation, the payment **[shall] must** be applied:

29 (1) in accordance with any reasonable method of application to
30 which the parties agree;

31 (2) in the absence of the parties' agreement to a reasonable method,
32 in accordance with any intention of the obligor manifested at or before
33 the time of payment; or

34 (3) in the absence of an agreement to a reasonable method and a
35 timely manifestation of the obligor's intention, in the following order:

36 **[(a)] (A)** to obligations that are not secured; and

37 **[(b)] (B)** if more than one obligation is secured, to obligations
38 secured by purchase-money security interests in the order in which
39 those obligations were incurred.

40 **[f.] (f)** No loss of status of purchase-money security interest in
41 non-consumer-goods transaction. In a transaction other than a
42 consumer-goods transaction, a purchase-money security interest does
43 not lose its status as such, even if:

44 (1) the purchase-money collateral also secures an obligation that is
45 not a purchase-money obligation;

46 (2) collateral that is not purchase-money collateral also secures the

1 purchase-money obligation; or

2 (3) the purchase-money obligation has been renewed, refinanced,
3 consolidated, or restructured.

4 [g.] (g) Burden of proof in non-consumer-goods transaction. In
5 a transaction other than a consumer-goods transaction, a secured party
6 claiming a purchase-money security interest has the burden of
7 establishing the extent to which the security interest is a purchase-
8 money security interest.

9 [h.] (h) Non-consumer-goods transactions; no inference. The
10 limitation of the rules in subsections [e., f., and g. of this section] (e),
11 (f) and (g) to transactions other than consumer-goods transactions is
12 intended to leave to the court the determination of the proper rules in
13 consumer-goods transactions. The court may not infer from that
14 limitation the nature of the proper rule in consumer-goods transactions
15 and may continue to apply established approaches.
16 (cf: N.J.S.12A:9-103)

17

18 3. N.J.S.12A:9-104 is amended to read as follows:

19 12A:9-104. Control of Deposit Account.

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

22 (1) the secured party is the bank with which the deposit account is
23 maintained;

24 (2) the debtor, secured party, and bank have agreed in an
25 authenticated record that the bank will comply with instructions
26 originated by the secured party directing disposition of the funds in the
27 deposit account without further consent by the debtor; or

28 (3) the secured party becomes the bank's customer with respect to
29 the deposit account.

30 [b.] (b) Debtor's right to direct disposition. A secured party that
31 has satisfied subsection [a.](a) has control, even if the debtor retains
32 the right to direct the disposition of funds from the deposit account.
33 (cf: N.J.S.12A:9-104)

34

35 4. N.J.S.12A:9-105 is amended to read as follows:

36 12A:9-105. Control of Electronic Chattel Paper.

37 A secured party has control of electronic chattel paper if the record
38 or records comprising the chattel paper are created, stored, and
39 assigned in such a manner that:

40 [a. A] (1) a single authoritative copy of the record or records
41 exists which is unique, identifiable and, except as otherwise provided
42 in paragraphs [d., e. and f.] (4), (5), and (6), unalterable;

43 [b. The] (2) the authoritative copy identifies the secured party as
44 the assignee of the record or records;

45 [c. The] (3) the authoritative copy is communicated to and

1 maintained by the secured party or its designated custodian;

2 [d. Copies] (4) copies or revisions that add or change an identified
3 assignee of the authoritative copy can be made only with the
4 participation of the secured party;

5 [e. Each] (5) each copy of the authoritative copy and any copy of
6 a copy is readily identifiable as a copy that is not the authoritative
7 copy; and

8 [f.] (6) any revision of the authoritative copy is readily identifiable
9 as an authorized or unauthorized revision.

10 (cf: N.J.S.12A:9-105)

11

12 5. N.J.S.12A:9-106 is amended to read as follows:

13 12A:9-106. Control of Investment Property.

14 [a.] (a) Control under 12A:8-106. A person has control of a
15 certificated security, uncertificated security, or security entitlement as
16 provided in 12A:8-106.

17 [b.] (b) Control of commodity contract. A secured party has
18 control of a commodity contract if:

19 (1) the secured party is the commodity intermediary with which the
20 commodity contract is carried; or

21 (2) the commodity customer, secured party, and commodity
22 intermediary have agreed that the commodity intermediary will apply
23 any value distributed on account of the commodity contract as directed
24 by the secured party without further consent by the commodity
25 customer.

26 [c.] (c) Effect of control of securities account or commodity
27 account. A secured party having control of all security entitlements or
28 commodity contracts carried in a securities account or commodity
29 account has control over the securities account or commodity account.

30 (cf: N.J.S.12A:9-106)

31

32 6. N.J.S.12A:9-108 is amended to read as follows:

33 12A:9-108. Sufficiency of Description.

34 [a.] (a) Sufficiency of description. Except as otherwise provided
35 in subsections [c., d., e. and f. of this section] (c), (d), (e) and (f), a
36 description of personal or real property is sufficient, whether or not it
37 is specific, if it reasonably identifies what is described.

38 [b.] (b) Examples of reasonable identification. Except as
39 otherwise provided in subsection [d. of this section] (d), a description
40 of collateral reasonably identifies the collateral if it identifies the
41 collateral by:

42 (1) specific listing;

43 (2) category;

44 (3) except as otherwise provided in subsection [e. of this section]

45 (e), a type of collateral defined in the Uniform Commercial Code;

1 (4) quantity;
2 (5) computational or allocational formula or procedure; or
3 (6) except as otherwise provided in subsection [c. of this section]
4 (c), any other method, if the identity of the collateral is objectively
5 determinable.

6 [c.] (c) Supergeneric description not sufficient. A description of
7 collateral as “all the debtor’s assets” or “all the debtor’s personal
8 property” or using words of similar import does not reasonably
9 identify the collateral.

10 [d.] (d) Investment property. Except as otherwise provided in
11 subsection [e. of this section] (e), a description of a security
12 entitlement, securities account, or commodity account is sufficient if
13 it describes:

- 14 (1) the collateral by those terms or as investment property; or
15 (2) the underlying financial asset or commodity contract.

16 [e.] (e) When description by type insufficient. A description only
17 by type of collateral defined in the Uniform Commercial Code is an
18 insufficient description of:

- 19 (1) a commercial tort claim; or
20 (2) in a consumer transaction, consumer goods, a security
21 entitlement, a securities account, or a commodity account

22 [f.] (f) Bondable transition property. A description of bondable
23 transition property is sufficient if it refers to the bondable stranded
24 costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51),
25 establishing the bondable transition property.

26 (cf: N.J.S.12A:9-108)

27

28 7. N.J.S.12A:9-109 is amended to read as follows:

29 12A:9-109. Scope.

30 [a.] (a) General scope of chapter. Except as otherwise provided
31 in subsections [c. and d. of this section] (c) and (d), this chapter
32 applies to:

- 33 (1) a transaction, regardless of its form, that creates a security
34 interest in personal property or fixtures by contract;
35 (2) an agricultural lien;
36 (3) a sale of accounts, chattel paper, payment intangibles, or
37 promissory notes;
38 (4) a consignment;
39 (5) a security interest arising under 12A:2-401, 12A:2-505,
40 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and
41 (6) a security interest arising under 12A:4-210 or 12A:5-118.

42 [b.] (b) Security interest in secured obligation. The application of
43 this chapter to a security interest in a secured obligation is not affected
44 by the fact that the obligation is itself secured by a transaction or
45 interest to which this chapter does not apply.

- 1 **[c.] (c)** Extent to which chapter does not apply. This chapter does
2 not apply to the extent that:
- 3 (1) a statute, regulation, or treaty of the United States preempts
4 this chapter; or
- 5 (2) ¹[another statute of this State expressly governs the creation,
6 perfection, priority, or enforcement of a security interest created by
7 this State or a governmental unit of this State;
- 8 (3) a statute of another state, a foreign country, or a governmental
9 unit of another state or a foreign country, other than a statute
10 generally applicable to security interests, expressly governs creation,
11 perfection, priority, or enforcement of a security interest created by
12 the state, country, or governmental unit; or
- 13 (4)]¹ the rights of a transferee beneficiary or nominated person
14 under a letter of credit are independent and superior under 12A:5-114.
- 15 **[d.] (d)** Inapplicability of chapter. This chapter does not apply to:
- 16 (1) a landlord's lien, other than an agricultural lien;
- 17 (2) a lien, other than an agricultural lien, given by statute or other
18 rule of law for services or materials, but 12A:9-333 applies with
19 respect to priority of the lien;
- 20 (3) an assignment of a claim for wages, salary, or other
21 compensation of an employee;
- 22 (4) a sale of accounts, chattel paper, payment intangibles, or
23 promissory notes as part of a sale of the business out of which they
24 arose;
- 25 (5) an assignment of accounts, chattel paper, payment intangibles,
26 or promissory notes which is for the purpose of collection only;
- 27 (6) an assignment of a right to payment under a contract to an
28 assignee that is also obligated to perform under the contract;
- 29 (7) an assignment of a single account, payment intangible, or
30 promissory note to an assignee in full or partial satisfaction of a
31 preexisting indebtedness;
- 32 (8) a transfer of an interest in or an assignment of a claim under
33 a policy of insurance, other than an assignment by or to a health-care
34 provider of a health-care-insurance receivable and any subsequent
35 assignment of the right to payment, but 12A:9-315 and 12A:9-322
36 apply with respect to proceeds and priorities in proceeds;
- 37 (9) an assignment of a right represented by a judgment, other than
38 a judgment taken on a right to payment that was collateral;
- 39 (10) a right of recoupment or set-off, but:
- 40 **[(a)] (A)** 12A:9-340 applies with respect to the effectiveness of
41 rights of recoupment or set-off against deposit accounts; and
- 42 **[(b)] (B)** 12A:9-404 applies with respect to defenses or claims of
43 an account debtor;
- 44 (11) the creation or transfer of an interest in or lien on real
45 property, including a lease or rents thereunder, except to the extent
46 that provision is made for:

- 1 [(a)] (A) liens on real property in 12A:9-203 and 12A:9-308;
2 [(b)] (B) fixtures in 12A:9-334; and
3 [(c)] (C) fixture filings in 12A:9-501, 12A:9-502, 12A:9-512
4 [and], 12A:9-516 and 12A:9-519; and
5 [(d)] (D) security agreements covering personal and real property
6 in 12A:9-604;
7 (12) an assignment of a claim arising in tort, other than a
8 commercial tort claim, but 12A:9-315 and 12A:9-322 apply with
9 respect to proceeds and priorities in proceeds;
10 (13) an assignment of a deposit account in a consumer transaction,
11 but 12A:9-315 and 12A:9-322 apply with respect to proceeds and
12 priorities in proceeds; or
13 (14) a transfer by a government or governmental unit.
14 (cf: N.J.S.12A:9-109)

15

16 8. N.J.S.12A:9-201 is amended to read as follows:

17 12A:9-201. General Effectiveness of Security Agreement.

18 [a.] (a) General effectiveness. Except as otherwise provided in the
19 Uniform Commercial Code, a security agreement is effective according
20 to its terms between the parties, against purchasers of the collateral,
21 and against creditors.

22 [b.] (b) Applicable consumer laws and other law. A transaction
23 subject to this chapter is subject to any applicable rule of law which
24 establishes a different rule for consumers and to (1) any other statute
25 or regulation of this State that regulates the rates, charges,
26 agreements, and practices for loans, credit sales, or other extensions
27 of credit and (2) any consumer protection statute or regulation of this
28 State.

29 [c.] (c) Other applicable law controls. In case of conflict between
30 this chapter and a rule of law, statute, or regulation described in
31 subsection [b. of this section] (b), the rule of law, statute, or
32 regulation controls. Failure to comply with a statute or regulation
33 described in subsection [b.] (b) has only the effect the statute or
34 regulation specifies.

35 [d.] (d) Further deference to other applicable law. This chapter
36 does not:

37 (1) validate any rate, charge, agreement, or practice that violates
38 a rule of law, statute, or regulation described in subsection [b. of this
39 section] (b); or

40 (2) extend the application of the rule of law, statute, or regulation
41 to a transaction not otherwise subject to it.

42 (cf: N.J.S.12A:9-201)

43

44 9. N.J.S.12A:9-203 is amended to read as follows:

45 12A:9-203. Attachment and Enforceability of Security Interest;

1 Proceeds; Supporting Obligations; Formal Requisites.

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

6 [b.] (b) Enforceability. Except as otherwise provided in
7 subsections [c.] (c) through [i. of this section] (i), a security interest
8 is enforceable against the debtor and third parties with respect to the
9 collateral only if :

10 (1) value has been given;

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

13 (3) one of the following conditions is met:

14 [(a)] (A) the debtor has authenticated a security agreement that
15 provides a description of the collateral and, if the security interest
16 covers timber to be cut, a description of the land concerned;

17 [(b)] (B) the collateral is not a certificated security and is in the
18 possession of the secured party under 12A:9-313 pursuant to the
19 debtor's security agreement;

20 [(c)] (C) the collateral is a certificated security in registered form
21 and the security certificate has been delivered to the secured party
22 under 12A:8-301 pursuant to the debtor's security agreement; or

23 [(d)] (D) the collateral is deposit accounts, electronic chattel
24 paper, investment property, or letter-of-credit rights, and the secured
25 party has control under 12A:9-104, 12A:9-105, 12A:9-106, or
26 12A:9-107 pursuant to the debtor's security agreement.

27 [c.] (c) Other Uniform Commercial Code provisions. Subsection
28 [b. of this section] (b) is subject to 12A:4-210 on the security interest
29 of a collecting bank, 12A:5-118 on the security interest of a letter-of-
30 credit issuer or nominated person, 12A:9-110 on a security interest
31 arising under Chapter 2 or 2A, and 12A:9-206 on security interests in
32 investment property.

33 [d.] (d) When person becomes bound by another person's security
34 agreement. A person becomes bound as debtor by a security
35 agreement entered into by another person if, by operation of law other
36 than this chapter or by contract:

37 (1) the security agreement becomes effective to create a security
38 interest in the person's property; or

39 (2) the person becomes generally obligated for the obligations of
40 the other person, including the obligation secured under the security
41 agreement, and acquires or succeeds to all or substantially all of the
42 assets of the other person.

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

1 (1) the agreement satisfies [paragraph (3) of] subsection [b. of
2 this section] (b)(3) with respect to existing or after-acquired property
3 of the new debtor to the extent the property is described in the
4 agreement; and

5 (2) another agreement is not necessary to make a security interest
6 in the property enforceable.

7 [f.] (f) Proceeds and supporting obligations. The attachment of
8 a security interest in collateral gives the secured party the rights to
9 proceeds provided by 12A:9-315 and is also attachment of a security
10 interest in a supporting obligation for the collateral.

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

16 [h.] (h) Security entitlement carried in securities account. The
17 attachment of a security interest in a securities account is also
18 attachment of a security interest in the security entitlements carried in
19 the securities account.

20 [i.] (i) Commodity contracts carried in commodity account. The
21 attachment of a security interest in a commodity account is also
22 attachment of a security interest in the commodity contracts carried in
23 the commodity account.

24 [j.] (j) Bondable transition property. Bondable transition property
25 is presently existing property for all purposes, including for purposes
26 of [paragraph (2) of] subsection [b. of this section] (b)(2) , whether
27 or not the revenues and proceeds arising under the property have
28 accrued and notwithstanding that the value of the property may
29 depend upon customer use of electricity or performance of service by
30 electric public utilities, or both.

31 (cf: N.J.S.12A:9-203)

32
33 10. N.J.S.12A:9-204 is amended to read as follows:

34 12A:9-204. After-acquired Property; Future Advances.

35 [a.] (a) After-acquired collateral. Except as otherwise provided
36 in subsection [b. of this section] (b), a security agreement may create
37 or provide for a security interest in after-acquired collateral.

38 [b.] (b) When after-acquired property clause not effective. A
39 security interest does not attach under a term constituting an
40 after-acquired property clause to:

41 (1) consumer goods, other than an accession when given as
42 additional security, unless the debtor acquires rights in them within 10
43 days after the secured party gives value; or

44 (2) a commercial tort claim.

45 [c.] (c) Future advances and other value. A security agreement

1 may provide that collateral secures, or that accounts, chattel paper,
2 payment intangibles, or promissory notes are sold in connection with,
3 future advances or other value, whether or not the advances or value
4 are given pursuant to commitment.

5 (cf: N.J.S.12A:9-204)

6

7 11. N.J.S.12A:9-205 is amended to read as follows:

8 12A:9-205. Use or Disposition of Collateral Permissible.

9 [a.] (a) When security interest not invalid or fraudulent. A
10 security interest is not invalid or fraudulent against creditors solely
11 because:

12 (1) the debtor has the right or ability to:

13 [(a)] (A) use, commingle, or dispose of all or part of the
14 collateral, including returned or repossessed goods;

15 [(b)] (B) collect, compromise, enforce, or otherwise deal with
16 collateral;

17 [(c)] (C) accept the return of collateral or make repossessions; or

18 [(d)] (D) use, commingle, or dispose of proceeds; or

19 (2) the secured party fails to require the debtor to account for
20 proceeds or replace collateral.

21 [b.] (b) Requirements of possession not relaxed. This section
22 does not relax the requirements of possession if attachment,
23 perfection, or enforcement of a security interest depends upon
24 possession of the collateral by the secured party.

25 (cf: N.J.S.12A:9-205)

26

27 12. N.J.S.12A:9-206 is amended to read as follows:

28 12A:9-206. Security Interest Arising in Purchase or Delivery of
29 Financial Asset.

30 [a.] (a) Security interest when person buys through securities
31 intermediary. A security interest in favor of a securities intermediary
32 attaches to a person's security entitlement if:

33 (1) the person buys a financial asset through the securities
34 intermediary in a transaction in which the person is obligated to pay
35 the purchase price to the securities intermediary at the time of the
36 purchase; and

37 (2) the securities intermediary credits the financial asset to the
38 buyer's securities account before the buyer pays the securities
39 intermediary.

40 [b.] (b) Security interest secures obligation to pay for financial
41 asset. The security interest described in subsection [a. of this section]
42 (a) secures the person's obligation to pay for the financial asset.

43 [c.] (c) Security interest in payment against delivery transaction.
44 A security interest in favor of a person [who] that delivers a
45 certificated security or other financial asset represented by a writing

1 attaches to the security or other financial asset if:

2 (1) the security or other financial asset:

3 [(a)] (A) in the ordinary course of business is transferred by
4 delivery with any necessary indorsement or assignment; and

5 [(b)] (B) is delivered under an agreement between persons in the
6 business of dealing with such securities or financial assets; and

7 (2) the agreement calls for delivery against payment.

8 [d.] (d) Security interest secures obligation to pay for delivery.

9 The security interest described in subsection [c. of this section] (c)
10 secures the obligation to make payment for the delivery.

11 (cf: N.J.S.12A:9-206)

12

13 13. N.J.S.12A:9-207 is amended to read as follows:

14 [12A:9-207. BLANK.]

15 (cf: N.J.S.12A:9-207)

16

17 14. N.J.S.12A:9-208 is amended to read as follows:

18 [12A:9-208.] ~~12A:9-207.~~ Rights and Duties of Secured Party
19 Having Possession or Control of Collateral.

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

26 [b.] (b) Expenses, risks, duties, and rights when secured party in
27 possession. Except as otherwise provided in subsection [d. of this
28 section] (d), if a secured party has possession of collateral:

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

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

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

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

38 [(a)] (A) for the purpose of preserving the collateral or its value;

39 [(b)] (B) as permitted by an order of a court having competent
40 jurisdiction; or

41 [(c)] (C) except in the case of consumer goods, in the manner and
42 to the extent agreed by the debtor.

43 [c.] (c) Duties and rights when secured party in possession or
44 control. Except as otherwise provided in subsection [d. of this
45 section] (d), a secured party having possession of collateral or control

1 of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

10 (1) subsection ¹**[a. of this section] (a)**¹ does not apply unless the
11 secured party is entitled under an agreement:

12 **[(a)] (A)** to charge back uncollected collateral; or

13 **[(b)] (B)** otherwise to full or limited recourse against the debtor
14 or a secondary obligor based on the nonpayment or other default of an
15 account debtor or other obligor on the collateral; and

16 (2) subsections **[b. and c. of this section] (b) and (c)** do not apply.
17 (cf: N.J.S.12A:9-208)

18

19 15. N.J.S.12A:9-209 is amended to read as follows:

20 **[12A:9-209.] 12A:9-208.** Additional Duties of Secured Party
21 Having Control of Collateral.

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

26 **[b.] (b)** Duties of secured party after receiving demand from
27 debtor. Within 10 days after receiving an authenticated demand by the
28 debtor:

29 (1) a secured party having control of a deposit account under
30 12A:9-104 **[a.] (a)** (2) shall send to the bank with which the deposit
31 account is maintained an authenticated statement that releases the bank
32 from any further obligation to comply with instructions originated by
33 the secured party;

34 (2) a secured party having control of a deposit account under
35 12A:9-104 **[a.] (a)** (3) shall:

36 **[(a)] (A)** pay the debtor the balance on deposit in the deposit
37 account; or

38 **[(b)] (B)** transfer the balance on deposit into a deposit account in
39 the debtor's name;

40 (3) a secured party, other than a buyer, having control of electronic
41 chattel paper under 12A:9-105 shall:

42 **[(a)] (A)** communicate the authoritative copy of the electronic
43 chattel paper to the debtor or its designated custodian;

44 **[(b)] (B)** if the debtor designates a custodian that is the designated
45 custodian with which the authoritative copy of the electronic chattel

1 paper is maintained for the secured party, communicate to the
2 custodian an authenticated record releasing the designated custodian
3 from any further obligation to comply with instructions originated by
4 the secured party and instructing the custodian to comply with
5 instructions originated by the debtor; and

6 ~~[(c)] (C)~~ take appropriate action to enable the debtor or its
7 designated custodian to make copies of or revisions to the
8 authoritative copy which add or change an identified assignee of the
9 authoritative copy without the consent of the secured party;

10 (4) a secured party having control of investment property under
11 12A:8-106 d. (2) or 12A:9-106 ~~[b.] (b)~~ shall send to the securities
12 intermediary or commodity intermediary with which the security
13 entitlement or commodity contract is maintained an authenticated
14 record that releases the securities intermediary or commodity
15 intermediary from any further obligation to comply with entitlement
16 orders or directions originated by the secured party; and

17 (5) a secured party having control of a letter-of-credit right under
18 12A:9-107 shall send to each person having an unfulfilled obligation
19 to pay or deliver proceeds of the letter of credit to the secured party
20 an authenticated release from any further obligation to pay or deliver
21 proceeds of the letter of credit to the secured party.

22 (cf: N.J.S.12A:9-209)

23

24 16. N.J.S.12A:9-210 is amended to read as follows:

25 ~~[12A:9-210.] 12A:9-209~~ Duties of Secured Party If Account
26 Debtor Has Been Notified of Assignment.

27 ~~[a.] (a)~~ Applicability of section. Except as otherwise provided in
28 subsection ~~[c.] (c)~~, this section applies if:

29 (1) there is no outstanding secured obligation; and

30 (2) the secured party is not committed to make advances, incur
31 obligations, or otherwise give value.

32 ~~[b.] (b)~~ Duties of secured party after receiving demand from
33 debtor. Within 10 days after receiving an authenticated demand by the
34 debtor, a secured party shall send to an account debtor that has
35 received notification of an assignment to the secured party as assignee
36 under 12A:9-406 ~~[a.] (a)~~ an authenticated record that releases the
37 account debtor from any further obligation to the secured party.

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

41 (cf: N.J.S.12A:9-210)

42

43 17. N.J.S.12A:9-211 is amended to read as follows:

44 ~~[12A:9-211.] 12A:9-210.~~ Request for Accounting; Request
45 Regarding List of Collateral or Statement of Account.

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

2 (1) "Request" means a record of a type described in paragraph (2),
3 (3), or (4) **[of this section]**.

4 (2) "Request for an accounting" means a record authenticated by
5 a debtor requesting that the recipient provide an accounting of the
6 unpaid obligations secured by collateral and reasonably identifying the
7 transaction or relationship that is the subject of the request.

8 (3) "Request regarding a list of collateral" means a record
9 authenticated by a debtor requesting that the recipient approve or
10 correct a list of what the debtor believes to be the collateral securing
11 an obligation and reasonably identifying the transaction or relationship
12 that is the subject of the request.

13 (4) "Request regarding a statement of account" means a record
14 authenticated by a debtor requesting that the recipient approve or
15 correct a statement indicating what the debtor believes to be the
16 aggregate amount of unpaid obligations secured by collateral as of a
17 specified date and reasonably identifying the transaction or relationship
18 that is the subject of the request.

19 **[b.] (b)** Duty to respond to requests. Subject to subsections **[c.,**
20 **d., e. and f. of this section]** **(c), (d), (e), and (f)**, a secured party, other
21 than a buyer of accounts, chattel paper, payment intangibles, or
22 promissory notes or a consignor, shall comply with a request within 14
23 days after receipt:

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

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

29 **[c.] (c)** Request regarding list of collateral; statement concerning
30 type of collateral. A secured party that claims a security interest in all
31 of a particular type of collateral owned by the debtor may comply with
32 a request regarding a list of collateral by sending to the debtor an
33 authenticated record including a statement to that effect within 14 days
34 after receipt.

35 **[d.] (d)** Request regarding list of collateral; no interest claimed.
36 A person **[who]** that receives a request regarding a list of collateral,
37 claims no interest in the collateral when it receives the request, and
38 claimed an interest in the collateral at an earlier time shall comply with
39 the request within 14 days after receipt by sending to the debtor an
40 authenticated record:

41 (1) disclaiming any interest in the collateral; and

42 (2) if known to the **[person]** recipient, providing the name and
43 mailing address of any assignee of or successor to the **[person's]**
44 recipient's interest in the collateral.

45 **[e.] (e)** Request for accounting or regarding statement of account;

1 no interest in obligation claimed. A person [who] that receives a
2 request for an accounting or a request regarding a statement of
3 account, claims no interest in the obligations when it receives the
4 request, and claimed an interest in the obligations at an earlier time
5 shall comply with the request within 14 days after receipt by sending
6 to the debtor an authenticated record:

7 (1) disclaiming any interest in the obligations; and

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

11 [f.] (f) Charges for responses. A debtor is entitled without charge
12 to one response to a request under this section during any six-month
13 period. The secured party may require payment of a charge not
14 exceeding \$25 for each additional response.

15 (cf: N.J.S.12A:9-211)

16

17 18. N.J.S.12A:9-301 is amended to read as follows:

18 12A:9-301. Law Governing Perfection and Priority of Security
19 Interests.

20 Except as otherwise provided in sections 12A:9-303 through
21 12A:9-306, the following rules determine the law governing
22 perfection, the effect of perfection or nonperfection, and the priority
23 of a security interest in collateral:

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

28 [b.] (2) While collateral is located in a jurisdiction, the local law
29 of that jurisdiction governs perfection, the effect of perfection or
30 nonperfection, and the priority of a possessory security interest in that
31 collateral.

32 [c.] (3) Except as otherwise provided in [subsection d. of this
33 section] paragraph (4), while negotiable documents, goods,
34 instruments, money, or tangible chattel paper [are] is located in a
35 jurisdiction, the local law of that jurisdiction governs:

36 [(1) the] (A) perfection of a security interest in the goods by filing
37 a fixture filing;

38 [(2) the] (B) perfection of a security interest in timber to be cut;
39 and

40 [(3)] (C) the effect of perfection or nonperfection and the priority
41 of a nonpossessory security interest in the collateral.

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

1 [e.] (5) Notwithstanding [subsection a. of this section] paragraph
2 (1), the local law of this State shall govern the perfection, the effect of
3 perfection or nonperfection, and the priority of a security interest in
4 bondable transition property.

5 (cf: N.J.S.12A:9-301)

6

7 19. N.J.S.12A:9-303 is amended to read as follows:

8 12A:9-303. Law Governing Perfection and Priority of Security
9 Interests in Goods Covered by a Certificate of Title.

10 [a.] (a) Applicability of section. This section applies to goods
11 covered by a certificate of title, even if there is no other relationship
12 between the jurisdiction under whose certificate of title the goods are
13 covered and the goods or the debtor.

14 [b.] (b) When goods covered by certificate of title. Goods
15 become covered by a certificate of title when a valid application for
16 the certificate of title and the applicable fee are delivered to the
17 appropriate authority. Goods cease to be covered by a certificate of
18 title at the earlier of the time the certificate of title ceases to be
19 effective under the law of the issuing jurisdiction [and] or the time the
20 goods become covered subsequently by a certificate of title issued by
21 another jurisdiction.

22 [c.] (c) Applicable law. The local law of the jurisdiction under
23 whose certificate of title the goods are covered governs perfection, the
24 effect of perfection or nonperfection, and the priority of a security
25 interest in goods covered by a certificate of title from the time the
26 goods become covered by the certificate of title until the goods cease
27 to be covered by the certificate of title.

28 (cf: N.J.S.12A:9-303)

29

30 20. N.J.S.12A:9-304 is amended to read as follows:

31 12A:9-304. Law Governing Perfection and Priority of Security
32 Interests in Deposit Accounts.

33 [a.] (a) Law of bank's jurisdiction governs. The local law of a
34 bank's jurisdiction governs perfection, the effect of perfection or
35 nonperfection, and the priority of a security interest in a deposit
36 account maintained with that bank.

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

39 (1) If an agreement between the bank and [the debtor] its
40 customer governing the deposit account expressly provides that a
41 particular jurisdiction is the bank's jurisdiction for purposes of this
42 part, this chapter, or the Uniform Commercial Code, that jurisdiction
43 is the bank's jurisdiction.

44 (2) If paragraph (1) [of this subsection] does not apply and an
45 agreement between the bank and its customer governing the deposit

1 account expressly provides that the agreement is governed by the law
2 of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

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

8 (4) If none of the preceding paragraphs [(1) through (3) of this
9 subsection] applies, the bank's jurisdiction is the jurisdiction in which
10 the office identified in an account statement as the office serving the
11 customer's account is located.

12 (5) If none of the preceding paragraphs [(1) through (4) of this
13 subsection] applies, the bank's jurisdiction is the jurisdiction in which
14 the chief executive office of the bank is located.

15 (cf: N.J.S.12A:9-304)

16

17 21. N.J.S.12A:9-305 is amended to read as follows:

18 12A:9-305. Law Governing Perfection and Priority of Security
19 Interests in Investment Property.

20 [a.] (a) Governing law: general rules. Except as otherwise
21 provided in subsection [c. of this section] (c), the following rules
22 apply:

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

27 (2) The local law of the issuer's jurisdiction as specified in [of]
28 12A:8-110 d. governs perfection, the effect of perfection or
29 nonperfection, and the priority of a security interest in an
30 uncertificated security.

31 (3) The local law of the securities intermediary's jurisdiction as
32 specified in 12A:8-110 e. governs perfection, the effect of perfection
33 or nonperfection, and the priority of a security interest in a security
34 entitlement or securities account.

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

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

42 (1) If an agreement between the commodity intermediary and
43 commodity customer governing the commodity account expressly
44 provides that a particular jurisdiction is the commodity intermediary's
45 jurisdiction for purposes of this part, this chapter, or the Uniform

1 Commercial Code, that jurisdiction is the commodity intermediary's
2 jurisdiction.

3 (2) If paragraph (1) [of this subsection] does not apply and an
4 agreement between the commodity intermediary and commodity
5 customer governing the commodity account expressly provides that
6 the agreement is governed by the law of a particular jurisdiction, that
7 jurisdiction is the commodity intermediary's jurisdiction.

8 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
9 applies and an agreement between the commodity intermediary and
10 commodity customer governing the commodity account expressly
11 provides that the commodity account is maintained at an office in a
12 particular jurisdiction, that jurisdiction is the commodity intermediary's
13 jurisdiction.

14 (4) If none of the preceding paragraphs [(1) through (3) of this
15 subsection] applies, the commodity intermediary's jurisdiction is the
16 jurisdiction in which the office identified in an account statement as the
17 office serving the commodity customer's account is located.

18 (5) If none of the preceding paragraphs [(1) through (4) of this
19 subsection] applies, the commodity intermediary's jurisdiction is the
20 jurisdiction in which the chief executive office of the commodity
21 intermediary is located.

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

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

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

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

30 (cf: N.J.S.12A:9-305)

31

32 22. N.J.S.12A:9-306 is amended to read as follows:

33 12A:9-306. Law Governing Perfection and Priority of Security
34 Interests in Letter-of-Credit Rights.

35 [a.] (a) Governing law: issuer's or nominated person's jurisdiction.
36 Subject to subsection [c. of this section] (c), the local law of the
37 issuer's jurisdiction or a nominated person's jurisdiction governs
38 perfection, the effect of perfection or nonperfection, and the priority
39 of a security interest in a letter-of-credit right if the issuer's jurisdiction
40 or nominated person's jurisdiction is a state.

41 [b.] (b) Issuer's or nominated person's jurisdiction. For purposes
42 of this part, an issuer's jurisdiction or nominated person's jurisdiction
43 is the jurisdiction whose law governs the liability of the issuer or
44 nominated person with respect to the letter-of-credit right as provided
45 in 12A:5-116.

46 [c.] (c) When section not applicable. This section does not apply

1 to a security interest that is perfected only under 12A:9-308 [d.] (d).
2 (cf: N.J.S.12A:9-306)

3

4 23. N.J.S.12A:9-307 is amended to read as follows:

5 12A:9-307. Location of Debtor.

6 [a.] (a) "Place of business." In this section, "place of business"
7 means a place where a debtor conducts its affairs.

8 [b.] (b) Debtor's location: general rules. Except as otherwise
9 provided in this section, the following rules determine a debtor's
10 location:

11 (1) A debtor who is an individual is located at the individual's
12 principal residence.

13 (2) A debtor that is an organization and has only one place of
14 business is located at its place of business.

15 (3) A debtor that is an organization and has more than one place
16 of business is located at its chief executive office.

17 [c.] (c) Limitation of applicability of subsection [b.] (b).
18 Subsection [b. of this section] (b) applies only if a debtor's residence,
19 place of business, or chief executive office, as applicable, is located in
20 a jurisdiction whose law generally requires information concerning the
21 existence of a nonpossessory security interest to be made generally
22 available in a filing, recording, or registration system as a condition or
23 result of the security interest's obtaining priority over the rights of a
24 lien creditor with respect to the collateral. If subsection [b.] (b) does
25 not apply, the debtor is located in the District of Columbia.

26 [d.] (d) Continuation of location: cessation of existence, etc. A
27 person [who] that ceases to exist, have a residence, or have a place
28 of business continues to be located in the jurisdiction specified by
29 subsections [b. and c of this section] (b) and (c).

30 [e.] (e) Location of registered organization organized under state
31 law. A registered organization that is organized under the law of a
32 state is located in that state.

33 [f.] (f) Location of registered organization organized under federal
34 law; bank branches and agencies. Except as otherwise provided in
35 subsection [i. of this section] (i), a registered organization that is
36 organized under the law of the United States and a branch or agency
37 of a bank that is not organized under the law of the United States or
38 a state are located:

39 (1) in the state that the law of the United States designates, if the
40 law designates a state of location;

41 (2) in the state that the registered organization, branch, or agency
42 designates, if the law of the United States authorizes the registered
43 organization, branch, or agency to designate its state of location; or

44 (3) in the District of Columbia, if neither paragraph (1) nor
45 paragraph (2) [of this subsection] applies.

46 [g.] (g) Continuation of location: change in status of registered

1 organization. A registered organization continues to be located in the
2 jurisdiction specified by subsection [e. or f. of this section] (e) or (f)
3 notwithstanding:

4 (1) the suspension, revocation, forfeiture, or lapse of the registered
5 organization's status as such in its jurisdiction of organization; or

6 (2) the dissolution, winding up, or cancellation of the existence of
7 the registered organization.

8 [h.] (h) Location of United States. The United States is located
9 in the District of Columbia.

10 [i.] (i) Location of foreign bank branch or agency if licensed in
11 only one state. A branch or agency of a bank that is not organized
12 under the law of the United States or a state is located in the state in
13 which the branch or agency is licensed, if all branches and agencies of
14 the bank are licensed in only one state.

15 [j.] (j) Location of foreign air carrier. A foreign air carrier
16 [covered] under the Federal Aviation Act of 1958, as amended (49
17 U.S.C. s.1301 et seq.), is located at the designated office of the agent
18 upon which service of process may be made on behalf of the carrier.

19 [k.] (k) Section applies only to this part. This section applies only
20 for purposes of this part.

21 (cf: N.J.S.12A:9-307)

22

23 24. N.J.S.12A:9-308 is amended to read as follows:

24 12A:9-308. When Security Interest or Agricultural Lien Is
25 Perfected; Continuity of Perfection.

26 [a.] (a) Perfection of security interest. Except as otherwise
27 provided in this section and 12A:9-309, a security interest is perfected
28 if it has attached and all of the applicable requirements for perfection
29 in 12A:9-310 through 12A:9-316 have been satisfied. A security
30 interest is perfected when it attaches if the applicable requirements are
31 satisfied before the security interest attaches.

32 [b.] (b) Perfection of agricultural lien. An agricultural lien is
33 perfected if it has become effective and all of the applicable
34 requirements for perfection in 12A:9-310 have been satisfied. An
35 agricultural lien is perfected when it becomes effective if the applicable
36 requirements are satisfied before the agricultural lien becomes
37 effective.

38 [c.] (c) Continuous perfection; perfection by different methods.
39 A security interest or agricultural lien is perfected continuously if it is
40 originally perfected by one method under this chapter and is later
41 perfected by another method under this chapter, without an
42 intermediate period when it was unperfected.

43 [d.] (d) Supporting obligation. Perfection of a security interest in
44 collateral also perfects a security interest in a supporting obligation for
45 the collateral.

46 [e.] (e) Lien securing right to payment. Perfection of a security

1 interest in a right to payment or performance also perfects a security
2 interest in a security interest, mortgage, or other lien on personal or
3 real property securing the right.

4 [f.] (f) Security entitlement carried in securities account.
5 Perfection of a security interest in a securities account also perfects a
6 security interest in the security entitlements carried in the securities
7 account.

8 [g.] (g) Commodity contract carried in commodity account.
9 Perfection of a security interest in a commodity account also perfects
10 a security interest in the commodity contracts carried in the
11 commodity account.

12 (cf: N.J.S.12A:9-308)

13

14 25. N.J.S.12A:9-309 is amended to read as follows:

15 12A:9-309. Security Interest Perfected upon Attachment.

16 The following security interests are perfected when they attach:

17 [a.] (1) a purchase-money security interest in consumer goods,
18 except as otherwise provided in 12A:9-311[b.] (b) with respect to
19 consumer goods that are subject to a statute or treaty described in
20 12A:9-311[a.] (a);

21 [b.] (2) an assignment of accounts or payment intangibles which
22 does not by itself or in conjunction with other assignments to the same
23 assignee transfer a significant part of the assignor's outstanding
24 accounts or payment intangibles;

25 [c.] (3) a sale of a payment intangible;

26 [d.] (4) a sale of a promissory note;

27 [e.] (5) a security interest created by the assignment of a
28 health-care-insurance receivable to the provider of the health-care
29 goods or services;

30 [f.] (6) a security interest arising under 12A:2-401, 12A:2-505,
31 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of
32 the collateral;

33 [g.] (7) security interest of a collecting bank arising under
34 12A:4-210;

35 [h.] (8) a security interest of an issuer or nominated person arising
36 under 12A:5-118;

37 (9) a security interest arising in the delivery of a financial asset
38 under 12A:9-206 [c.] (c);

39 [i.] (10) a security interest in investment property created by a
40 broker or securities intermediary;

41 [j.] (11) a security interest in a commodity contract or a
42 commodity account created by a commodity intermediary;

43 [k.] (12) An assignment for the benefit of all creditors of the
44 transferor and subsequent transfers by the assignee thereunder; and

45 [l.] (13) A security interest created by an assignment of a

1 beneficial interest in a decedent's estate.

2 (cf: N.J.S.12A:9-309)

3

4 26. N.J.S.12A:9-310 is amended to read as follows:

5 12A:9-310. When Filing Required to Perfect Security Interest or
6 Agricultural Lien; Security Interests and Agricultural Liens to Which
7 Filing Provisions Do Not Apply.

8 [a.] (a) General rule: perfection by filing. Except as otherwise
9 provided in subsection [b. of this section] (b) and 12A:9-312 [b.] (b),
10 a financing statement [shall] must be filed to perfect all security
11 interests and agricultural liens.

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

14 (1) that is perfected under [subsections d., e., f. or g. of]
15 12A:9-308 (d), (e), (f) or (g);

16 (2) that is perfected under 12A:9-309 when it attaches;

17 (3) in property subject to a statute, regulation, or treaty described
18 in of 12A:9-311 [a.] (a);

19 (4) in goods in possession of a bailee which is perfected under
20 12A:9-312 [d.] (d) (1) or (2);

21 (5) in certificated securities, documents, goods, or instruments
22 which is perfected without filing or possession under [subsection e.,
23 f. or g. of] 12A:9-312 (e), (f) or (g);

24 (6) in collateral in the secured party's possession under 12A:9-313;

25 (7) in a certificated security which is perfected by delivery of the
26 security certificate to the secured party under 12A:9-313;

27 (8) in deposit accounts, electronic chattel paper, investment
28 property, or letter-of-credit rights which is perfected by control under
29 12A:9-314;

30 (9) in proceeds which is perfected under 12A:9-315; or

31 (10) that is perfected under 12A:9-316.

32 [c.] (c) Assignment of perfected security interest. If a secured
33 party assigns a perfected security interest or agricultural lien, a filing
34 under this chapter is not required to continue the perfected status of
35 the security interest against creditors of and transferees from the
36 original debtor.

37 (cf: N.J.S.12A:9-310)

38

39 27. N.J.S.12A:9-311 is amended to read as follows:

40 12A:9-311. Perfection of Security Interests in Property Subject to
41 Certain Statutes, Regulations, and Treaties.

42 [a.] (a) Security interest subject to other law. Except as otherwise
43 provided in subsection [d. of this section] (d), the filing of a financing
44 statement is not necessary or effective to perfect a security interest in
45 property subject to:

1 (1) a statute, regulation, or treaty of the United States whose
2 requirements for a security interest's obtaining priority over the rights
3 of a lien creditor with respect to the property preempt 12A:9-310 [a.]
4 (a);

5 (2) the "motor vehicle certificate of ownership law," R.S.39:10-1
6 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152
7 (C.12:7A-1 et seq.) or successor statutes or law; or

8 (3) a certificate-of-title statute of another jurisdiction which
9 provides for a security interest to be indicated on the certificate as a
10 condition or result of the security interest's obtaining priority over the
11 rights of a lien creditor with respect to the property.

12 [b.] (b) Compliance with other law. Compliance with the
13 requirements of a statute, regulation, or treaty described in subsection
14 [a. of this section] (a) for obtaining priority over the rights of a lien
15 creditor is equivalent to the filing of a financing statement under this
16 chapter. Except as otherwise provided in subsection [d. of this
17 section] (d), 12A:9-313 and [subsections d. and e. of] 12A:9-316 (d)
18 and (e) for goods covered by a certificate of title, a security interest in
19 property subject to a statute, regulation, or treaty described in
20 subsection [a. of this section] (a) may be perfected only by
21 compliance with those requirements, and a security interest so
22 perfected remains perfected notwithstanding a change in the use or
23 transfer of possession of the collateral.

24 [c.] (c) Duration and renewal of perfection. Except as otherwise
25 provided in subsection [d. of this section] (d) and [subsections d. and
26 e. of] 12A:9-316 (d) and (e), duration and renewal of perfection of a
27 security interest perfected by compliance with the requirements
28 prescribed by a statute, regulation, or treaty described in subsection
29 [a.] (a) are governed by the statute, regulation, or treaty. In other
30 respects, the security interest is subject to this chapter.

31 [d.] (d) Inapplicability to certain inventory. During any period in
32 which collateral subject to a statute specified in subsection (a) (2) is
33 inventory held for sale or lease by a person or leased by that person as
34 lessor and that person is in the business of selling [or leasing] goods
35 of that kind, this section does not apply to a security interest in that
36 collateral created by that person [as debtor].

37 (cf: N.J.S.12A:9-311)

38
39 28. N.J.S.12A:9-312 is amended to read as follows:

40 12A:9-312. Perfection of Security Interests in Chattel Paper,
41 Deposit Accounts, Documents, Goods Covered by Documents,
42 Instruments, Investment Property, Letter-of-credit Rights, and Money;
43 Perfection by Permissive Filing; Temporary Perfection Without Filing
44 or Transfer of Possession.

45 [a.] (a) Perfection by filing permitted. A security interest in

1 chattel paper, negotiable documents, instruments, or investment
2 property may be perfected by filing.

3 [b.] (b) Control or possession of certain collateral. Except as
4 otherwise provided in [subsections c. and d. of] 12A:9-315 (c) and
5 (d) for proceeds:

6 (1) a security interest in a deposit account may be perfected only
7 by control under 12A:9-314;

8 (2) and except as otherwise provided in 12A:9-308 [d.] (d), a
9 security interest in a letter-of-credit right may be perfected only by
10 control under 12A:9-314; and

11 (3) a security interest in money may be perfected only by the
12 secured party's taking possession under 12A:9-313.

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

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

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

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

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

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

28 (3) filing as to the goods.

29 [e.] (e) Temporary perfection: new value. A security interest in
30 certificated securities, negotiable documents, or instruments is
31 perfected without filing or the taking of possession for a period of 20
32 days from the time it attaches to the extent that it arises for new value
33 given under an authenticated security agreement.

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

40 (1) ultimate sale or exchange; or

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

44 [g.] (g) Temporary perfection: delivery of security certificate or
45 instrument to debtor. A perfected security interest in a certificated
46 security or instrument remains perfected for 20 days without filing if

1 the secured party delivers the security certificate or instrument to the
2 debtor for the purpose of:

- 3 (1) ultimate sale or exchange; or
- 4 (2) presentation, collection, enforcement, renewal, or registration
5 of transfer.

6 **[h.]** (h) Expiration of temporary perfection. After the 20-day
7 period specified in subsection **[e., f. or g. of this section]** (e), (f) or
8 (g) expires, perfection depends upon compliance with this chapter.
9 (cf: N.J.S.12A:9-312)

10

11 29. N.J.S.12A:9-313 is amended to read as follows:

12 12A:9-313. When Possession by or Delivery to Secured Party
13 Perfects Security Interest Without Filing.

14 **[a.]** (a) Perfection by possession or delivery. Except as otherwise
15 provided in subsection **[b.]** (b), a secured party may perfect a security
16 interest in negotiable documents, goods, instruments, money, or
17 tangible chattel paper by taking possession of the collateral. A secured
18 party may perfect a security interest in certificated securities by taking
19 delivery of the certificated securities under 12A:8-301.

20 **[b.]** (b) Goods covered by certificate of title. With respect to
21 goods covered by a certificate of title issued by this State, a secured
22 party may perfect a security interest in the goods by taking possession
23 of the goods only in the circumstances described in 12A:9-316 **[d.]**
24 (d).

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

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

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

37 **[d.]** (d) Time of perfection by possession; continuation of
38 perfection. If perfection of a security interest depends upon
39 possession of the collateral by a secured party, perfection occurs no
40 earlier than the time the secured party takes possession and continues
41 only while the secured party retains possession.

42 **[e.]** (e) Time of perfection by delivery; continuation of perfection.
43 A security interest in a certificated security in registered form is
44 perfected by delivery when delivery of the certificated security occurs
45 under 12A:8-301 and remains perfected by delivery until the debtor

1 obtains possession of the security certificate.

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

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

8 (1) the acknowledgment is effective under subsection [c. of this
9 section] (c) or [subsection a. of] 12A:8-301 (a), even if the
10 acknowledgment violates the rights of a debtor; and

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

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

21 (1) to hold possession of the collateral for the secured party's
22 benefit; or
23 (2) to redeliver the collateral to the secured party.

24 [i.] (i) Effect of delivery under subsection [h.] (h); no duties or
25 confirmation. A secured party does not relinquish possession, even if
26 a delivery under subsection [h.] (h) ¹[of this section]¹ violates the
27 rights of a debtor. A person to which collateral is delivered under
28 subsection [h.] (h) does not owe any duty to the secured party and is
29 not required to confirm the delivery to another person unless the
30 person otherwise agrees or law other than this chapter otherwise
31 provides.

32 (cf: N.J.S.12A:9-313)

33

34 30. N.J.S.12A:9-314 is amended to read as follows:

35 12A:9-314. Perfection by Control.

36 [a.] (a) Perfection by control. A security interest in investment
37 property, deposit accounts, letter-of-credit rights, or electronic chattel
38 paper may be perfected by control of the collateral under 12A:9-104,
39 12A:9-105, 12A:9-106 or 12A:9-107.

40 [b.] (b) Specified collateral: time of perfection by control;
41 continuation of perfection. A security interest in deposit accounts,
42 electronic chattel paper, or letter-of-credit rights is perfected by
43 control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured
44 party obtains control and remains perfected by control only while the
45 secured party retains control.

1 **[c.] (c)** Investment property: time of perfection by control;
2 continuation of perfection. A security interest in investment property
3 is perfected by control under 12A:9-106 from the time the secured
4 party obtains control and remains perfected by control until:

- 5 (1) the secured party does not have control; and
6 (2) one of the following occurs:

7 **[(a)] (A)** if the collateral is a certificated security, the debtor has
8 or acquires possession of the security certificate;

9 **[(b)] (B)** if the collateral is an uncertificated security, the issuer
10 has registered or registers the debtor as the registered owner; or

11 **[(c)] (C)** if the collateral is a security entitlement, the debtor is or
12 becomes the entitlement holder.

13 (cf: N.J.S.12A:9-314)

14

15 31. N.J.S.12A:9-315 is amended to read as follows:

16 12A:9-315. Secured Party's Rights on Disposition of Collateral and
17 in Proceeds.

18 **[a.] (a)** Disposition of collateral: continuation of security interest
19 or agricultural lien; proceeds. Except as otherwise provided in this
20 chapter and in 12A:2-403(2):

21 (1) a security interest or agricultural lien continues in collateral
22 notwithstanding sale, lease, license, exchange, or other disposition
23 thereof unless the secured party authorized the disposition free of the
24 security interest or agricultural lien; and

25 (2) a security interest attaches to any identifiable proceeds of
26 collateral.

27 **[b.] (b)** When commingled proceeds identifiable. Proceeds that
28 are commingled with other property are identifiable proceeds:

29 (1) if the proceeds are goods, to the extent provided by 12A:9-336;
30 and

31 (2) if the proceeds are not goods, to the extent that the secured
32 party identifies the proceeds by a method of tracing, including
33 application of equitable principles, that is permitted under law other
34 than this chapter with respect to commingled property of the type
35 involved.

36 **[c.] (c)** Perfection of security interest in proceeds. A security
37 interest in proceeds is a perfected security interest if the security
38 interest in the original collateral was perfected.

39 **[d.] (d)** Continuation of perfection. A perfected security interest
40 in proceeds becomes unperfected on the 21st day after the security
41 interest attaches to the proceeds unless:

42 (1) the following conditions are satisfied:

43 **[(a)] (A)** a filed financing statement covers the original collateral;

44 **[(b)] (B)** the proceeds are collateral in which a security interest
45 may be perfected by filing in the office in which the financing

1 statement has been filed; and

2 ~~[(c)] (C)~~ the proceeds are not acquired with cash proceeds;

3 (2) the proceeds are identifiable cash proceeds; or

4 (3) the security interest in the proceeds is perfected other than
5 under subsection ~~[c. of this section]~~ ~~(c)~~ when the security interest
6 attaches to the proceeds or within 20 days thereafter.

7 ~~[e.] (e)~~ When perfected security interest in proceeds becomes
8 unperfected. If a filed financing statement covers the original
9 collateral, a security interest in proceeds which remains perfected
10 under ~~[paragraph (1) of]~~ subsection ~~[d. of this section]~~ ~~(d) (1)~~
11 becomes unperfected at the later of:

12 (1) when the effectiveness of the filed financing statement lapses
13 under 12A:9-515 or is terminated under 12A:9-513; or

14 (2) the 21st day after the security interest attaches to the proceeds.
15 (cf: N.J.S.12A:9-315)

16

17 32. N.J.S.12A:9-316 is amended to read as follows:

18 12A:9-316. Continued Perfection of Security Interest Following
19 Change in Governing Law.

20 ~~[a.] (a)~~ General rule: effect on perfection of change in governing
21 law. A security interest perfected pursuant to the law of the
22 jurisdiction designated in 12A:9-301 ~~[a.] (1)~~ or 12A:9-305 ~~[c.] (c)~~
23 remains perfected until the earliest of:

24 (1) the time perfection would have ceased under the law of that
25 jurisdiction;

26 (2) the expiration of four months after a change of the debtor's
27 location to another jurisdiction; or

28 (3) the expiration of one year after a transfer of collateral to a
29 person ~~[who]~~ ~~that~~ thereby becomes a debtor and is located in another
30 jurisdiction.

31 ~~[b.] (b)~~ Security interest perfected or unperfected under law of
32 new jurisdiction. If a security interest described in subsection ~~[a. of~~
33 ~~this section]~~ ~~(a)~~ becomes perfected under the law of the other
34 jurisdiction before the earliest time or event described in that
35 subsection, it remains perfected thereafter. If the security interest
36 does not become perfected under the law of the other jurisdiction
37 before the earliest time or event, it becomes unperfected and is deemed
38 never to have been perfected as against a purchaser of the collateral
39 for value.

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

44 (1) the collateral is located in one jurisdiction and subject to a
45 security interest perfected under the law of that jurisdiction;

1 (2) thereafter the collateral is brought into another jurisdiction; and
2 (3) upon entry into the other jurisdiction, the security interest is
3 perfected under the law of the other jurisdiction.

4 [d.] (d) Goods covered by certificate of title from this State.
5 Except as otherwise provided in subsection [e. of this section] (e), a
6 security interest in goods covered by a certificate of title which is
7 perfected by any method under the law of another jurisdiction when
8 the goods become covered by a certificate of title from this State
9 remains perfected until the security interest would have become
10 unperfected under the law of the other jurisdiction had the goods not
11 become so covered.

12 [e.] (e) When subsection [d.] (d) security interest becomes
13 unperfected against purchasers. A security interest described in
14 subsection [d. of this section] (d) becomes unperfected as against a
15 purchaser of the goods for value and is deemed never to have been
16 perfected as against a purchaser of the goods for value if the
17 applicable requirements for perfection under 12A:9-311 [b.] (b) or
18 12A:9-313 are not satisfied before the earlier of:

19 (1) the time the security interest would have become unperfected
20 under the law of the other jurisdiction had the goods not become
21 covered by a certificate of title from this State; or

22 (2) the expiration of four months after the goods had become so
23 covered.

24 [f.] (f) Change in jurisdiction of bank, issuer, nominated person,
25 securities intermediary, or commodity intermediary. A security
26 interest in deposit accounts, letter-of-credit rights, or investment
27 property which is perfected under the law of the bank's jurisdiction,
28 the issuer's jurisdiction, a nominated person's jurisdiction, the
29 securities intermediary's jurisdiction, or the commodity intermediary's
30 jurisdiction, as applicable, remains perfected until the earlier of:

31 (1) the time the security interest would have become unperfected
32 under the law of that jurisdiction; or

33 (2) the expiration of four months after a change of the applicable
34 jurisdiction to another jurisdiction.

35 [g.] (g) Subsection [f.] (f) security interest perfected or
36 unperfected under law of new jurisdiction. If a security interest
37 described in subsection [f. of this section] (f) becomes perfected
38 under the law of the other jurisdiction before the earlier of the time or
39 the end of the period described in that subsection, it remains perfected
40 thereafter. If the security interest does not become perfected under
41 the law of the other jurisdiction before the earlier of that time or the
42 end of that period, it becomes unperfected and is deemed never to
43 have been perfected as against a purchaser of the collateral for value.
44 (cf: N.J.S.12A:9-316)

45

46 33. N.J.S.12A:9-317 is amended to read as follows:

1 12A:9-317. Interests That Take Priority Over or Take Free of
2 Security Interest or Agricultural Lien.

3 [a.] (a) Conflicting security interests and rights of lien creditors.

4 A security interest or agricultural lien is subordinate to the rights of:

5 (1) a person entitled to priority under 12A:9-322; and

6 (2) except as otherwise provided in subsection [e. of this section]

7 (e), a person ¹[who] that¹ becomes a lien creditor before the earlier
8 of the time;

9 (A) the security interest or agricultural lien is perfected; or

10 (B) one of the conditions specified in 12A:9-203 (b)(3) is met and

11 a financing statement covering the collateral is filed.

12 [b.] (b) Buyers that receive delivery. Except as otherwise
13 provided in subsection [e. of this section] (e), a buyer, other than a
14 secured party, of tangible chattel paper, documents, goods,
15 instruments, or a security certificate takes free of a security interest or
16 agricultural lien if the buyer gives value and receives delivery of the
17 collateral without knowledge of the security interest or agricultural
18 lien and before it is perfected.

19 [c.] (c) Lessees that receive delivery. Except as otherwise
20 provided in subsection [e. of this section] (e), a lessee of goods takes
21 free of a security interest or agricultural lien if the lessee gives value
22 and receives delivery of the collateral without knowledge of the
23 security interest or agricultural lien and before it is perfected.

24 [d.] (d) Licensees and buyers of certain collateral. A licensee of
25 a general intangible or a buyer, other than a secured party, of
26 accounts, electronic chattel paper, general intangibles, or investment
27 property other than a certificated security takes free of a security
28 interest if the licensee or buyer gives value without knowledge of the
29 security interest and before it is perfected.

30 [e.] (e) Purchase-money security interest. Except as otherwise
31 provided in 12A:9-320 and 12A:9-321, if a person files a financing
32 statement with respect to a purchase-money security interest before or
33 within 20 days after the debtor receives delivery of the collateral, the
34 security interest takes priority over the rights of a buyer, lessee, or lien
35 creditor which arise between the time the security interest attaches and
36 the time of filing.

37 (cf: N.J.S.12A:9-317)

38

39 34. N.J.S.12A:9-318 is amended to read as follows:

40 12A:9-318. No Interest Retained in Right to Payment That Is Sold;
41 Rights and Title of Seller of Account or Chattel Paper with Respect to
42 Creditors and Purchasers.

43 [a.] (a) Seller retains no interest. A debtor that has sold an
44 account, chattel paper, payment intangible, or promissory note does
45 not retain a legal or equitable interest in the collateral sold.

1 **[b.] (b)** Deemed rights of debtor if buyer's security interest
2 unperfected. For purposes of determining the rights of creditors of,
3 and purchasers for value of an account or chattel paper from, a debtor
4 that has sold an account or chattel paper, while the buyer's security
5 interest is unperfected, the debtor is deemed to have rights and title to
6 the account or chattel paper identical to those the debtor sold.
7 (cf: N.J.S.12A:9-318)

8

9 35. N.J.S.12A:9-319 is amended to read as follows:

10 12A:9-319. Rights and Title of Consignee with Respect to
11 Creditors and Purchasers.

12 **[a.] (a)** Consignee has consignor's rights. Except as otherwise
13 provided in subsection **[b.] (b)**, for purposes of determining the rights
14 of creditors of, and purchasers for value of goods from, a consignee,
15 while the goods are in the possession of the consignee, the consignee
16 is deemed to have rights and title to the goods identical to those the
17 consignor had or had power to transfer.

18 **[b.] (b)** Applicability of other law. For purposes of determining
19 the rights of a creditor of a consignee, law other than this chapter
20 determines the rights and title of a consignee while goods are in the
21 consignee's possession if, under this part, a perfected security interest
22 held by the consignor would have priority over the rights of the
23 creditor.

24 (cf: N.J.S.12A:9-319)

25

26 36. N.J.S.12A:9-320 is amended to read as follows:

27 12A:9-320. Buyer of Goods.

28 **[a.] (a)** Buyer in ordinary course of business. Except as otherwise
29 provided in subsection **[e. of this section] (e)**, a buyer in ordinary
30 course of business, other than a person buying farm products from a
31 person engaged in farming operations, takes free of a security interest
32 created by the buyer's seller, even if the security interest is perfected
33 and the buyer knows of its existence.

34 **[b.] (b)** Buyer of consumer goods. Except as otherwise provided
35 in subsection **[e.] (e)**, a buyer of goods from a person who used or
36 bought the goods for use primarily for personal, family, or household
37 purposes takes free of a security interest, even if perfected, if the
38 buyer buys:

39 (1) without knowledge of the security interest;

40 (2) for value;

41 (3) primarily for the buyer's personal, family, or household
42 purposes; and

43 (4) before the filing of a financing statement covering the goods.

44 **[c.] (c)** Effectiveness of filing for subsection **[b.] (b)**. To the
45 extent that it affects the priority of a security interest over a buyer of

1 goods under subsection [b. of this section] (b), the period of
2 effectiveness of a filing made in the jurisdiction in which the seller is
3 located is governed by 12A:9-316 [a. and b.] (a) and (b).

4 [d.] (d) Buyer in ordinary course of business at wellhead or
5 minehead. A buyer in ordinary course of business buying oil, gas, or
6 other minerals at the wellhead or minehead or after extraction takes
7 free of an interest arising out of an encumbrance.

8 [e.] (e) Possessory security interest not affected. Subsections [a.
9 and b. of this section] (a) and (b) do not affect a security interest in
10 goods in the possession of the secured party under 12A:9-313.
11 (cf: N.J.S.12A:9-320)

12

13 37. N.J.S.12A:9-321 is amended to read as follows:

14 12A:9-321. Licensee of General Intangible and Lessee of Goods
15 in Ordinary Course of Business.

16 [a.] (a) "Licensee in ordinary course of business." In this section,
17 "licensee in ordinary course of business" means a person [who] that
18 becomes a licensee of a general intangible in good faith, without
19 knowledge that the license violates the rights of another person in the
20 general intangible, and in the ordinary course from a person in the
21 business of licensing general intangibles of that kind. A person
22 becomes a licensee in the ordinary course if the license to the person
23 comports with the usual or customary practices in the kind of business
24 in which the licensor is engaged or with the licensor's own usual or
25 customary practices.

26 [b.] (b) Rights of licensee in ordinary course of business. A
27 licensee in ordinary course of business takes its rights under a
28 nonexclusive license free of a security interest in the general intangible
29 created by the licensor, even if the security interest is perfected and the
30 licensee knows of its existence.

31 [c.] (c) Rights of lessee in ordinary course of business. A lessee in
32 ordinary course of business takes its leasehold interest free of a
33 security interest in the goods created by the lessor, even if the security
34 interest is perfected and the lessee knows of its existence.

35 (cf: N.J.S.12A:9-321)

36

37 38. N.J.S.12A:9-322 is amended to read as follows:

38 12A:9-322. Priorities Among Conflicting Security Interests in and
39 Agricultural Liens on Same Collateral.

40 [a.] (a) General priority rules. Except as otherwise provided in
41 this section, priority among conflicting security interests and
42 agricultural liens in the same collateral is determined according to the
43 following rules:

44 (1) Conflicting perfected security interests and agricultural liens
45 rank according to priority in time of filing or perfection. Priority dates

1 from the earlier of the time a filing covering the collateral is first made
2 or the security interest or agricultural lien is first perfected, if there is
3 no period thereafter when there is neither filing nor perfection.

4 (2) A perfected security interest or agricultural lien has priority
5 over a conflicting unperfected security interest or agricultural lien.

6 (3) The first security interest or agricultural lien to attach or
7 become effective has priority if conflicting security interests and
8 agricultural liens are unperfected.

9 [b.] (b) Time of perfection: proceeds and supporting obligations.
10 For the purposes of [paragraph (1) of] subsection [a. of this section]
11 (a) (1):

12 (1) the time of filing or perfection as to a security interest in
13 collateral is also the time of filing or perfection as to a security interest
14 in proceeds; and

15 (2) the time of filing or perfection as to a security interest in
16 collateral supported by a supporting obligation is also the time of filing
17 or perfection as to a security interest in the supporting obligation.

18 [c.] (c) Special priority rules: proceeds and supporting
19 obligations. Except as otherwise provided in subsection [f. of this
20 section] (f), a security interest in collateral which qualifies for priority
21 over a conflicting security interest under 12A:9-327, 12A:9-328,
22 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a
23 conflicting security interest in:

24 (1) any supporting obligation for the collateral; and

25 (2) proceeds of the collateral if:

26 [(a)] (A) the security interest in proceeds is perfected;

27 [(b)] (B) the proceeds are cash proceeds or of the same type as
28 the collateral; and

29 [(c)] (C) in the case of proceeds that are proceeds of proceeds, all
30 intervening proceeds are cash proceeds, proceeds of the same type as
31 the collateral, or an account relating to the collateral.

32 [d.] (d) First-to-file priority rule for certain collateral. Subject to
33 subsection [e.] (e) and except as otherwise provided in subsection [f.
34 of this section] (f), if a security interest in chattel paper, deposit
35 accounts, negotiable documents, instruments, investment property, or
36 letter-of-credit rights is perfected by a method other than filing,
37 conflicting perfected security interests in proceeds of the collateral
38 rank according to priority in time of filing.

39 [e.] (e) Applicability of subsection [d.] (d). Subsection [d. of this
40 section] (d) applies only if the proceeds of the collateral are not cash
41 proceeds, chattel paper, negotiable documents, instruments,
42 investment property, or letter-of-credit rights.

43 [f.] (f) Limitations on subsections [a.] (a) through [e.] (e).
44 Subsections [a.] (a) through [e. of this section] (e) are subject to:

45 (1) subsection [g.] (g) and the other provisions of this part;

1 (2) 12A:4-210 with respect to a security interest of a collecting
2 bank; [and]

3 (3) 12A:5-118 with respect to a security interest of an issuer or
4 nominated person; and

5 (4) 12A:9-110 with respect to a security interest arising under
6 Chapter 2 or 2A.

7 [g.] (g) Priority under agricultural lien statute. A perfected
8 agricultural lien on collateral has priority over a conflicting security
9 interest in or agricultural lien on the same collateral if the statute
10 creating the agricultural lien so provides.

11 (cf: N.J.S.12A:9-322)

12

13 39. N.J.S.12A:9-323 is amended to read as follows:

14 12A:9-323. Future Advances.

15 [a.] (a) When priority based on time of advance. Except as
16 otherwise provided in subsection [c. of this section] (c), for purposes
17 of determining the priority of a perfected security interest under
18 12A:9-322 [a.] (a) (1), perfection of the security interest dates from
19 the time an advance is made to the extent that the security interest
20 secures an advance that:

21 (1) is made while the security interest is perfected only:

22 ¹[(a)] (A)¹ under 12A:9-309 when it attaches; or

23 ¹[(b)] (B)¹ temporarily under 12A:9-312 [e., f., or g.] (e), (f) or
24 (g); and

25 (2) is not made pursuant to a commitment entered into before or
26 while the security interest is perfected by a method other than under
27 12A:9-309 or 12A:9-312 [e., f., or g] (e), (f) or (g).

28 [b.] (b) Lien creditor. Except as otherwise provided in subsection
29 [c. of this section] (c), a security interest is subordinate to the rights
30 of a person [who] that becomes a lien creditor to the extent that the
31 security interest secures an advance made more than 45 days after the
32 person becomes a lien creditor unless the advance is made:

33 (1) without knowledge of the lien; or

34 (2) pursuant to a commitment entered into without knowledge of
35 the lien.

36 [c.] (c) Buyer of receivables. Subsections [a. and b. of this
37 section] (a) and (b) do not apply to a security interest held by a
38 secured party that is a buyer of accounts, chattel paper, payment
39 intangibles, or promissory notes, or a consignor.

40 [d.] (d) Buyer of goods. Except as otherwise provided in
41 subsection [e. of this section] (e), a buyer of goods other than a buyer
42 in ordinary course of business takes free of a security interest to the
43 extent that it secures advances made after the earlier of:

44 (1) the time the secured party acquires knowledge of the buyer's
45 purchase; or

46 (2) 45 days after the purchase.

1 [e.] (e) Advances made pursuant to commitment: priority of
2 buyer of goods. Subsection [d. of this section] (d) does not apply if
3 the advance is made pursuant to a commitment entered into without
4 knowledge of the buyer's purchase and before the expiration of the
5 45-day period.

6 [f.] (f) Lessee of goods. Except as otherwise provided in
7 subsection [g. of this section] (g), a lessee of goods, other than a
8 lessee in ordinary course of business, takes the leasehold interest free
9 of a security interest to the extent that it secures advances made after
10 the earlier of:

11 (1) the time the secured party acquires knowledge of the lease; or

12 (2) 45 days after the lease contract becomes enforceable.

13 [g.] (g) Advances made pursuant to commitment: priority of
14 lessee of goods. Subsection [f. of this section] (f) does not apply if
15 the advance is made pursuant to a commitment entered into without
16 knowledge of the lease and before the expiration of the 45-day period.
17 (cf: N.J.S.12A:9-323)

18
19 40. N.J.S.12A:9-324 is amended to read as follows:

20 12A:9-324. Priority of Purchase-Money Security Interests.

21 [a.] (a) General rule: purchase-money priority. Except as
22 otherwise provided in subsection [g. of this section] (g), a perfected
23 purchase-money security interest in goods other than inventory or
24 livestock has priority over a conflicting security interest in the same
25 goods, and, except as otherwise provided in 12A:9-327, a perfected
26 security interest in its identifiable proceeds also has priority, if the
27 purchase-money security interest is perfected when the debtor receives
28 possession of the collateral or within 20 days thereafter.

29 [b.] (b) Inventory purchase-money priority. Subject to subsection
30 [c.] (c)¹ and except as otherwise provided in subsection [g. of this
31 section] (g), a perfected purchase-money security interest in inventory
32 has priority over a conflicting security interest in the same inventory,
33 has priority over a conflicting security interest in chattel paper or an
34 instrument constituting proceeds of the inventory and in proceeds of
35 the chattel paper, if so provided in 12A:9-330, and, except as
36 otherwise provided in 12A:9-327, also has priority in identifiable cash
37 proceeds of the inventory to the extent the identifiable cash proceeds
38 are received on or before the delivery of the inventory to a buyer, if:

39 (1) the purchase-money security interest is perfected when the
40 debtor receives possession of the inventory;

41 (2) the purchase-money secured party sends an authenticated
42 notification to the holder of the conflicting security interest;

43 (3) the holder of the conflicting security interest receives the
44 notification within five years before the debtor receives possession of
45 the inventory; and

46 (4) the notification states that the person sending the notification
47 has or expects to acquire a purchase-money security interest in

1 inventory of the debtor and describes the inventory.

2 [c.] (c) Holders of conflicting inventory security interests to be
3 notified. [Paragraphs 2 through 4 of subsection b. of this section]
4 Subsections (b) (2) through (4) apply only if the holder of the
5 conflicting security interest had filed a financing statement covering
6 the same types of inventory:

7 (1) if the purchase-money security interest is perfected by filing,
8 before the date of the filing; or

9 (2) if the purchase-money security interest is temporarily perfected
10 without filing or possession under 12A:9-312 [f.] (f), before the
11 beginning of the 20-day period thereunder.

12 [d.] (d) Livestock purchase-money priority. Subject to subsection
13 [e.] (e) and except as otherwise provided in subsection [g. of this
14 section] (g), a perfected purchase-money security interest in livestock
15 that are farm products has priority over a conflicting security interest
16 in the same livestock, and, except as otherwise provided in 12A:9-327,
17 a perfected security interest in their identifiable proceeds and
18 identifiable products in their unmanufactured states also has priority,
19 if:

20 (1) the purchase-money security interest is perfected when the
21 debtor receives possession of the livestock;

22 (2) the purchase-money secured party sends an authenticated
23 notification to the holder of the conflicting security interest;

24 (3) the holder of the conflicting security interest receives the
25 notification within six months before the debtor receives possession of
26 the livestock; and

27 (4) the notification states that the person sending the notification
28 has or expects to acquire a purchase-money security interest in
29 livestock of the debtor and describes the livestock.

30 [e.] (e) Holders of conflicting livestock security interests to be
31 notified. [Paragraphs 2 through 4 of subsection d. of this section]
32 Subsections (d) (2) through (4) apply only if the holder of the
33 conflicting security interest had filed a financing statement covering
34 the same types of livestock:

35 (1) if the purchase-money security interest is perfected by filing,
36 before the date of the filing; or

37 (2) if the purchase-money security interest is temporarily perfected
38 without filing or possession under 12A:9-312 [f.] (f), before the
39 beginning of the 20-day period thereunder.

40 [f.] (f) Software purchase-money priority. Except as otherwise
41 provided in subsection [g. of this section] (g), a perfected
42 purchase-money security interest in software has priority over a
43 conflicting security interest in the same collateral, and, except as
44 otherwise provided in 12A:9-327, a perfected security interest in its
45 identifiable proceeds also has priority, to the extent that the
46 purchase-money security interest in the goods in which the software
47 was acquired for use has priority in the goods and proceeds of the

1 goods under this section.

2 **[g.] (g)** Conflicting purchase-money security interests. If more
3 than one security interest qualifies for priority in the same collateral
4 under subsection **[a., b., d., or f. of this section] (a), (b), (d) or (f)**:

5 (1) a security interest securing an obligation incurred as all or part
6 of the price of the collateral has priority over a security interest
7 securing an obligation incurred for value given to enable the debtor to
8 acquire rights in or the use of collateral; and

9 (2) in all other cases, 12A:9-322 **[a.] (a)** applies to the qualifying
10 security interests.

11 (cf: N.J.S.12A:9-324)

12

13 41. N.J.S.12A:9-325 is amended to read as follows:

14 12A:9-325. Priority of Security Interests in Transferred Collateral.

15 **[a.] (a)** Subordination of security interest in transferred collateral.

16 Except as otherwise provided in subsection **[b. of this section] (b)**, a
17 security interest created by a debtor is subordinate to a security
18 interest in the same collateral created by another person if:

19 (1) the debtor acquired the collateral subject to the security interest
20 created by the other person;

21 (2) the security interest created by the other person was perfected
22 when the debtor acquired the collateral; and

23 (3) there is no period thereafter when the security interest is
24 unperfected.

25 **[b.] (b)** Limitation of subsection **[a.] (a)** subordination.

26 Subsection **[a. of this section] (a)** subordinates a security interest only
27 if the security interest:

28 (1) otherwise would have priority solely under 12A:9-322 **[a.] (a)**
29 or 12A:9-324; or

30 (2) arose solely under 12A:2-711(3) or ~~[2A-508(5)]12A:2A-~~
31 ~~508(5).~~

32 (cf: N.J.S.12A:9-325)

33

34 42. N.J.S.12A:9-326 is amended to read as follows:

35 12A:9-326. Priority of Security Interests Created by New Debtor.

36 **[a.] (a)** Subordination of security interest created by new debtor.

37 Subject to subsection **[b. of this section] (b)**, a security interest
38 created by a new debtor which is perfected by a filed financing
39 statement that is effective solely under 12A:9-508 in collateral in
40 which a new debtor has or acquires rights is subordinate to a security
41 interest in the same collateral which is perfected other than by a filed
42 financing statement that is effective solely under 12A:9-508.

43 **[b.] (b)** Priority under other provisions; multiple original debtors.

44 The other provisions of this part determine the priority among
45 conflicting security interests in the same collateral perfected by filed
46 financing statements that are effective solely under 12A:9-508.

47 However, if the security agreements to which a new debtor became

1 bound as debtor were not entered into by the same original debtor, the
2 conflicting security interests rank according to priority in time of the
3 new debtor's having become bound.

4 (cf: N.J.S.12A:9-326)

5

6 43. N.J.S.12A:9-327 is amended to read as follows:

7 12A:9-327. Priority of Security Interests in Deposit Account.

8 The following rules govern priority among conflicting security
9 interests in the same deposit account:

10 [a.] (1) A security interest held by a secured party having control
11 of the deposit account under 12A:9-104 has priority over a conflicting
12 security interest held by a secured party that does not have control.

13 [b.] (2) Except as otherwise provided in [subsections c. and d. of
14 this section] paragraphs (3) and (4), security interests perfected by
15 control under 12A:9-314 rank according to priority in time of
16 obtaining control.

17 [c.] (3) Except as otherwise provided in [subsection d. of this
18 section] paragraph (4), a security interest held by the bank with which
19 the deposit account is maintained has priority over a conflicting
20 security interest held by another secured party.

21 [d.] (4) A security interest perfected by control under 12A:9-104
22 [a.] (a) (3) has priority over a security interest held by the bank with
23 which the deposit account is maintained.

24 (cf: N.J.S.12A:9-327)

25

26 44. N.J.S.12A:9-328 is amended to read as follows:

27 12A:9-328. Priority of Security Interests in Investment Property.

28 The following rules govern priority among conflicting security
29 interests in the same investment property:

30 [a.] (1) A security interest held by a secured party having control
31 of investment property under 12A:9-106 has priority over a security
32 interest held by a secured party that does not have control of the
33 investment property.

34 [b.] (2) Except as otherwise provided in [sections c. and d. of this
35 section] paragraphs (3) and (4), conflicting security interests held by
36 secured parties each of which has control under 12A:9-106 rank
37 according to priority in time of:

38 [(1)] (A) if the collateral is a security, obtaining control;

39 [(2)] (B) if the collateral is a security entitlement carried in a
40 securities account and:

41 [(a)] (i) if the secured party obtained control under 12A:8-106
42 [d.] (d) (1), the secured party's becoming the person for which the
43 securities account is maintained;

44 [(b)] (ii) if the secured party obtained control under 12A:8-106
45 [d.] (d) (2), the securities intermediary's agreement to comply with
46 the secured party's entitlement orders with respect to security

1 entitlements carried or to be carried in the securities account; or

2 [(c)] (iii) if the secured party obtained control through another
3 person under 12A:8-106 [d.] (d) (3), the time on which priority would
4 be based under this paragraph if the other person were the secured
5 party; or

6 [(3)] (C) if the collateral is a commodity contract carried with a
7 commodity intermediary, the satisfaction of the requirement for
8 control specified in 12A:9-106 [b.] (b) (2) with respect to commodity
9 contracts carried or to be carried with the commodity intermediary.

10 [c.] (3) A security interest held by a securities intermediary in a
11 security entitlement or a securities account maintained with the
12 securities intermediary has priority over a conflicting security interest
13 held by another secured party.

14 [d.] (4) A security interest held by a commodity intermediary in a
15 commodity contract or a commodity account maintained with the
16 commodity intermediary has priority over a conflicting security interest
17 held by another secured party.

18 [e.] (5) A security interest in a certificated security in registered
19 form which is perfected by taking delivery under 12A:9-313 [a.] (a)
20 and not by control under 12A:9-314 has priority over a conflicting
21 security interest perfected by a method other than control.

22 [f.] (6) Conflicting security interests created by a broker,
23 securities intermediary, or commodity intermediary which are
24 perfected without control under 12A:9-106 rank equally.

25 [g.] (7) In all other cases, priority among conflicting security
26 interests in investment property is governed by 12A:9-322 and
27 12A:9-323.

28 (cf: N.J.S.12A:9-328)

29

30 45. N.J.S.12A:9-329 is amended to read as follows:

31 12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

32 The following rules govern priority among conflicting security
33 interests in the same letter-of-credit right:

34 [a.] (1) A security interest held by a secured party having control
35 of the letter-of-credit right under 12A:9-107 has priority to the extent
36 of its control over a conflicting security interest held by a secured
37 party that does not have control.

38 [b.] (2) Security interests perfected by control under 12A:9-314
39 rank according to priority in time of obtaining control.

40 (cf: N.J.S.12A:9-329)

41

42 46. N.J.S.12A:9-330 is amended to read as follows:

43 12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

44 [a.] (a) Purchaser's priority: security interest claimed merely as
45 proceeds. A purchaser of chattel paper has priority over a security
46 interest in the chattel paper which is claimed merely as proceeds of

1 inventory subject to a security interest if:

2 (1) in good faith and in the ordinary course of the purchaser's
3 business, the purchaser gives new value and takes possession of the
4 chattel paper or obtains control of the chattel paper under 12A:9-105;
5 and

6 (2) the chattel paper does not indicate that it has been assigned to
7 an identified assignee other than the purchaser.

8 [b.] (b) Purchaser's priority: other security interests. A purchaser
9 of chattel paper has priority over a security interest in the chattel paper
10 which is claimed other than merely as proceeds of inventory subject to
11 a security interest if the purchaser gives new value and takes
12 possession of the chattel paper or obtains control of the chattel paper
13 under 12A:9-105 in good faith, in the ordinary course of the
14 purchaser's business, and without knowledge that the purchase violates
15 the rights of the secured party.

16 [c.] (c) Chattel paper purchaser's priority in proceeds. Except as
17 otherwise provided in 12A:9-327, a purchaser having priority in
18 chattel paper under subsection [a. or b. of this section] (a) or (b) also
19 has priority in proceeds of the chattel paper to the extent that:

20 (1) 12A:9-322 provides for priority in the proceeds; or

21 (2) the proceeds consist of the specific goods covered by the
22 chattel paper or cash proceeds of the specific goods, even if the
23 purchaser's security interest in the proceeds is unperfected.

24 [d.] (d) Instrument purchaser's priority. Except as otherwise
25 provided in 12A:9-331 [subsection a.] (a), a purchaser of an
26 instrument has priority over a security interest in the instrument
27 perfected by a method other than possession if the purchaser gives
28 value and takes possession of the instrument in good faith and without
29 knowledge that the purchase violates the rights of the secured party.

30 [e.] (e) Holder of purchase-money security interest gives new
31 value. For purposes of subsections [a. and b. of this section] (a) and
32 (b), the holder of a purchase-money security interest in inventory gives
33 new value for chattel paper constituting proceeds of the inventory.

34 [f.] (f) Indication of assignment gives knowledge. For purposes
35 of subsections [b. and d. of this section] (b) and (d), if chattel paper
36 or an instrument indicates that it has been assigned to an identified
37 secured party other than the purchaser, a purchaser of the chattel
38 paper or instrument has knowledge that the purchase violates the
39 rights of the secured party.

40 (cf: N.J.S.12A:9-330)

41

42 47. N.J.S.12A:9-331 is amended to read as follows:

43 12A:9-331. Priority of Rights of Purchasers of Instruments,
44 Documents, and Securities Under Other Chapters; Priority of Interests
45 in Financial Assets and Security Entitlements Under Chapter 8.

46 [a.] (a) Rights under Chapters 3, 7, and 8 not limited. This
47 chapter does not limit the rights of a holder in due course of a

1 negotiable instrument, a holder to which a negotiable document of title
2 has been duly negotiated, or a protected purchaser of a security.
3 These holders or purchasers take priority over an earlier security
4 interest, even if perfected, to the extent provided in Chapters 3, 7, and
5 8.

6 **[b.] (b)** Protection under Chapter 8. This chapter does not limit
7 the rights of or impose liability on a person to the extent that the
8 person is protected against the assertion of a claim under Chapter 8.

9 **[c.] (c)** Filing not notice. Filing under this chapter does not
10 constitute notice of a claim or defense to the holders, or purchasers,
11 or persons described in subsections **[a. and b of this section] (a) and**
12 **(b).**

13 (cf: N.J.S.12A:9-331)

14

15 48. N.J.S.12A:9-332 is amended to read as follows:

16 12A:9-332. Transfer of Money; Transfer of Funds from Deposit
17 Account.

18 **[a.] (a)** Transferee of money. A transferee of money takes the
19 money free of a security interest unless the transferee acts in collusion
20 with the debtor in violating the rights of the secured party.

21 **[b.] (b)** Transferee of funds from deposit account. A transferee of
22 funds from a deposit account takes the funds free of a security interest
23 in the deposit account unless the transferee acts in collusion with the
24 debtor in violating the rights of the secured party.

25 (cf: N.J.S.12A:9-332)

26

27 49. N.J.S.12A:9-333 is amended to read as follows:

28 12A:9-333. Priority of Certain Liens Arising by Operation of Law.

29 **[a.] (a)** "Possessory lien." In this section, "possessory lien" means
30 an interest, other than a security interest or an agricultural lien:

31 (1) which secures payment or performance of an obligation for
32 services or materials furnished with respect to goods by a person in the
33 ordinary course of the person's business;

34 (2) which is created by statute or rule of law in favor of the person;
35 and

36 (3) whose effectiveness depends on the person's possession of the
37 goods.

38 **[b.] (b)** Priority of possessory lien. A possessory lien on goods
39 has priority over a security interest in the goods unless the lien is
40 created by a statute that expressly provides otherwise.

41 (cf: N.J.S.12A:9-333)

42

43 50. N.J.S.12A:9-334 is amended to read as follows:

44 12A:9-334. Priority of Security Interests in Fixtures and Crops.

45 **[a.] (a)** Security interest in fixtures under this chapter. A security
46 interest under this chapter may be created in goods that are fixtures or
47 may continue in goods that become fixtures. A security interest does

1 not exist under this chapter in ordinary building materials incorporated
2 into an improvement on land.

3 [b.] (b) Security interest in fixtures under real-property law. This
4 chapter does not prevent creation of an encumbrance upon fixtures
5 under real property law.

6 [c.] (c) General rule: subordination of security interest in fixtures.
7 In cases not governed by subsections [d.] (d) through [h. of this
8 section] (h), a security interest in fixtures is subordinate to a
9 conflicting interest of an encumbrancer or owner of the related real
10 property other than the debtor.

11 [d.] (d) Fixtures purchase-money priority. Except as otherwise
12 provided in subsection [h. of this section] (h), a perfected security
13 interest in fixtures has priority over a conflicting interest of an
14 encumbrancer or owner of the real property if the debtor has an
15 interest of record in or is in possession of the real property and:

- 16 (1) the security interest is a purchase-money security interest;
- 17 (2) the interest of the encumbrancer or owner arises before the
18 goods become fixtures; and
- 19 (3) the security interest is perfected by a fixture filing before the
20 goods become fixtures or within 20 days thereafter.

21 [e.] (e) Priority of security interest in fixtures over interests in real
22 property. A perfected security interest in fixtures has priority over a
23 conflicting interest of an encumbrancer or owner of the real property
24 [or a lien on real property obtained by legal or equitable proceedings]
25 if:

26 (1) the debtor has an interest of record in the real property or is in
27 possession of the real property and the security interest:

28 [(a)] (A) is perfected by a fixture filing before the interest of the
29 encumbrancer or the owner is of record; and

30 [(b)] (B) has priority over any conflicting interest of a predecessor
31 in title of the encumbrancer or owner;

32 (2) before the goods become fixtures, the security interest is
33 perfected by any method permitted by this chapter and the fixtures are
34 readily removable:

35 [(a)] (A) factory or office machines;

36 [(b)] (B) equipment that is not primarily used or leased for use in
37 the operation of the real property; or

38 [(c)] (C) replacements of domestic appliances that are consumer
39 goods;

40 (3) the conflicting interest is a lien on real property obtained by
41 legal or equitable proceedings after the security interest was perfected
42 by any method permitted by this chapter; or

43 (4) the security interest is:

44 [(a)] (A) created in a manufactured home in a manufactured-home
45 transaction; and

46 [(b)] (B) perfected pursuant to a statute described in 12A:9-311

1 [a.] (a) (2).

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

6 (1) the encumbrancer or owner has, in an authenticated record,
7 consented to the security interest or disclaimed an interest in the goods
8 as fixtures; or

9 (2) the debtor has a right to remove the goods as against the
10 encumbrancer or owner.

11 [g.] (g) Continuation of paragraph (f) (2) [of subsection f. of this
12 section] priority. The priority of the security interest under paragraph
13 (f) (2) [of subsection f. of this section] continues for a reasonable
14 time if the debtor's right to remove the goods as against the
15 encumbrancer or owner terminates.

16 [h.] (h) Priority of construction mortgage. A mortgage is a
17 construction mortgage to the extent that it secures an obligation
18 incurred for the construction of an improvement on land, including the
19 acquisition cost of the land, if a recorded record of the mortgage so
20 indicates. Except as otherwise provided in subsections [e. and f. of
21 this section] (e) and (f), a security interest in fixtures is subordinate to
22 a construction mortgage if a record of the mortgage is recorded before
23 the goods become fixtures and the goods become fixtures before the
24 completion of the construction. A mortgage has this priority to the
25 same extent as a construction mortgage to the extent that it is given to
26 refinance a construction mortgage.

27 [i.] (i) Priority of security interest in crops. A perfected security
28 interest in crops growing on real property has priority over a
29 conflicting interest of an encumbrancer or owner of the real property
30 if the debtor has an interest of record in or is in possession of the real
31 property.

32 [j.] (j) Subsection [i.] (i) prevails. Subsection [i. of this section]
33 (i) prevails over any inconsistent provisions of state law.

34 (cf: N.J.S.12A:9-334)

35

36 51. N.J.S.12A:9-335 is amended to read as follows:

37 12A:9-335. Accessions.

38 [a.] (a) Creation of security interest in accession. A security
39 interest may be created in an accession and continues in collateral that
40 becomes an accession.

41 [b.] (b) Perfection of security interest. If a security interest is
42 perfected when the collateral becomes an accession, the security
43 interest remains perfected in the collateral.

44 [c.] (c) Priority of security interest. Except as otherwise provided
45 in subsection [d. of this section] (d), the other provisions of this part
46 determine the priority of a security interest in an accession.

1 [d.] (d) Compliance with certificate-of-title statute. A security
2 interest in an accession is subordinate to a security interest in the
3 whole which is perfected by compliance with the requirements of a
4 certificate-of-title statute under 12A:9-311 [b.] (b).

5 [e.] (e) Removal of accession after default. After default, subject
6 to Part 6 [of this chapter], a secured party may remove an accession
7 from other goods if the security interest in the accession has priority
8 over the claims of every person having an interest in the whole.

9 [f.] (f) Reimbursement following removal. A secured party that
10 removes an accession from other goods under subsection [e. of this
11 section] (e) shall promptly reimburse any holder of a security interest
12 or other lien on, or owner of, the whole or of the other goods, other
13 than the debtor, for the cost of repair of any physical injury to the
14 whole or the other goods. The secured party need not reimburse the
15 holder or owner for any diminution in value of the whole or the other
16 goods caused by the absence of the accession removed or by any
17 necessity for replacing it. A person entitled to reimbursement may
18 refuse permission to remove until the secured party gives adequate
19 assurance for the performance of the obligation to reimburse.

20 (cf: N.J.S.12A:9-335)

21
22 52. N.J.S.12A:9-336 is amended to read as follows:

23 12A:9-336. Commingled Goods.

24 [a.] (a) "Commingled goods." In this section, "commingled
25 goods" means goods that are physically united with other goods in
26 such a manner that their identity is lost in a product or mass.

27 [b.] (b) No security interest in commingled goods as such. A
28 security interest does not exist in commingled goods as such.
29 However, a security interest may attach to a product or mass that
30 results when goods become commingled goods.

31 [c.] (c) Attachment of security interest to product or mass. If
32 collateral becomes commingled goods, a security interest attaches to
33 the product or mass.

34 [d.] (d) Perfection of security interest. If a security interest in
35 collateral is perfected before the collateral becomes commingled
36 goods, the security interest that attaches to the product or mass under
37 subsection [c. of this section] (c) is perfected.

38 [e.] (e) Priority of security interest. Except as otherwise provided
39 in subsection [f.] (f), the other provisions of this part determine the
40 priority of a security interest that attaches to the product or mass
41 under subsection [c. of this section] (c).

42 [f.] (f) Conflicting security interests in product or mass. If more
43 than one security interest attaches to the product or mass under
44 subsection [c. of this section] (c), the following rules determine
45 priority:

46 (1) A security interest that is perfected under subsection [d.] (d)

1 has priority over a security interest that is unperfected at the time the
2 collateral becomes commingled goods.

3 (2) If more than one security interest is perfected under subsection
4 [d.] (d), the security interests rank equally in proportion to the value
5 of the collateral at the time it became commingled goods.
6 (cf: N.J.S.12A:9-336)

7

8 53. N.J.S.12A:9-337 is amended to read as follows:

9 12A:9-337. Priority of Security Interests in Goods Covered by
10 Certificate of Title.

11 If, while a security interest in goods is perfected by any method
12 under the law of another jurisdiction, this State issues a certificate of
13 title that does not show that the goods are subject to the security
14 interest or contain a statement that they may be subject to security
15 interests not shown on the certificate:

16 [a.] (1) a buyer of the goods, other than a person in the business
17 of selling goods of that kind, takes free of the security interest if the
18 buyer gives value and receives delivery of the goods after issuance of
19 the certificate and without knowledge of the security interest; and

20 [b.] (2) the security interest is subordinate to a conflicting security
21 interest in the goods that attaches, and is perfected under 12A:9-311
22 [b.] (b), after issuance of the certificate and without the conflicting
23 secured party's knowledge of the security interest.

24 (cf: N.J.S.12A:9-337)

25

26 54. N.J.S.12A:9-338 is amended to read as follows:

27 12A:9-338. Priority of Security Interest or Agricultural Lien
28 Perfected by Filed Financing Statement Providing Certain Incorrect
29 Information.

30 If a security interest or agricultural lien is perfected by a filed
31 financing statement providing information described in 12A:9-516 [b.]
32 (b) (5) which is incorrect at the time the financing statement is filed:

33 [a.] (1) the security interest or agricultural lien is subordinate to
34 a conflicting perfected security interest in the collateral to the extent
35 that the holder of the conflicting security interest gives value in
36 reasonable reliance upon the incorrect information; and

37 [b.] (2) a purchaser, other than a secured party, of the collateral
38 takes free of the security interest or agricultural lien to the extent that,
39 in reasonable reliance upon the incorrect information, the purchaser
40 gives value and, in the case of chattel paper, documents, goods,
41 instruments, or a security certificate, receives delivery of the collateral.

42 (cf: N.J.S.12A:9-338)

43

44 55. N.J.S.12A:9-340 is amended to read as follows:

45 12A:9-340. Effectiveness of Right of Recoupment or Set-off
46 Against Deposit Account.

47 [a.] (a) Exercise of recoupment or set-off. Except as otherwise

1 provided in subsection [c. of this section] (c), a bank with which a
2 deposit account is maintained may exercise any right of recoupment or
3 set-off against a secured party that holds a security interest in the
4 deposit account.

5 [b.] (b) Recoupment or set-off not affected by security interest.
6 Except as otherwise provided in subsection [c. of this section] (c), the
7 application of this chapter to a security interest in a deposit account
8 does not affect a right of recoupment or set-off of the secured party
9 as to a deposit account maintained with the secured party.

10 [c.] (c) When set-off ineffective. The exercise by a bank of a
11 set-off against a deposit account is ineffective against a secured party
12 that holds a security interest in the deposit account which is perfected
13 by control under 12A:9-104 (a) (3), if the set-off is based on a claim
14 against the debtor.

15 (cf: N.J.S.12A:9-340)

16

17 56. N.J.S.12A:9-341 is amended to read as follows:

18 12A:9-341. Bank's Rights and Duties with Respect to Deposit
19 Account.

20 Except as otherwise provided in 12A:9-340 [c.] (c), and unless the
21 bank otherwise agrees in an authenticated record, a bank's rights and
22 duties with respect to a deposit account maintained with the bank are
23 not terminated, suspended, or modified by:

24 [a.] (1) the creation, attachment, or perfection of a security
25 interest in the deposit account;

26 [b.] (2) the bank's knowledge of the security interest; or

27 [c.] (3) the bank's receipt of instructions from the secured party.

28 (cf: N.J.S.12A:9-341)

29

30 57. N.J.S.12A:9-342 is amended to read as follows:

31 12A:9-342. Bank's Right to Refuse to Enter into or Disclose
32 Existence of Control Agreement.

33 This chapter does not require a bank to enter into an agreement of
34 the kind described in 12A:9-104 [a.] (a) (2), even if its customer so
35 requests or directs. A bank that has entered into such an agreement
36 is not required to confirm the existence of the agreement to another
37 person unless requested to do so by its customer.

38 (cf: N.J.S.12A:9-342)

39

40 58. N.J.S.12A:9-401 is amended to read as follows:

41 12A:9-401. Alienability of Debtor's Rights.

42 [a.] (a) Other law governs alienability; exceptions. Except as
43 otherwise provided in subsection [b. of this section] (b) and
44 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's
45 rights in collateral may be voluntarily or involuntarily transferred is
46 governed by law other than this chapter.

47 [b.] (b) Agreement does not prevent transfer. An agreement

1 between the debtor and secured party which prohibits a transfer of the
2 debtor's rights in collateral or makes the transfer a default does not
3 prevent the transfer from taking effect.

4 (cf: N.J.S.12A:9-401)

5

6 59. N.J.S.12A:9-403 is amended to read as follows:

7 12A:9-403. Agreement Not to Assert Defenses Against Assignee.

8 [a.] (a) "Value." In this section, "value" has the meaning provided
9 in 12A:3-303 a.

10 [b.] (b) Agreement not to assert claim or defense. Except as
11 otherwise provided in this section, an agreement between an account
12 debtor and an assignor not to assert against an assignee any claim or
13 defense that the account debtor may have against the assignor is
14 enforceable by an assignee that takes an assignment:

15 (1) for value;

16 (2) in good faith;

17 (3) without notice of a claim of a property or possessory right to
18 the property assigned; and

19 (4) without notice of a defense or claim in recoupment of the type
20 that may be asserted against a person entitled to enforce a negotiable
21 instrument under 12A:3-305 a.

22 [c.] (c) When subsection [b.] (b) not applicable. Subsection [b.
23 of this section] (b) does not apply to defenses of a type that may be
24 asserted against a holder in due course of a negotiable instrument
25 under 12A:3-305 b.

26 [d.] (d) Omission of required statement in consumer transaction.
27 In a consumer transaction, if a record evidences the account debtor's
28 obligation, law other than this chapter requires that the record include
29 a statement to the effect that the rights of an assignee are subject to
30 claims or defenses that the account debtor could assert against the
31 original obligee, and the record does not include such a statement:

32 (1) the record has the same effect as if the record included such a
33 statement; and

34 (2) the account debtor may assert against an assignee those claims
35 and defenses that would have been available if the record included
36 such a statement.

37 [e.] (e) Rule for individual under other law. This section is subject
38 to law other than this chapter which establishes a different rule for an
39 account debtor who is an individual and who incurred the obligation
40 primarily for personal, family, or household purposes.

41 [f.] (f) Other law not displaced. Except as otherwise provided in
42 subsection [d. of this section] (d), this section does not displace law
43 other than this chapter which gives effect to an agreement by an
44 account debtor not to assert a claim or defense against an assignee.

45 (cf: N.J.S.12A:9-403)

46

47 60. N.J.S.12A:9-404 is amended to read as follows:

1 12A:9-404. Rights Acquired by Assignee; Claims and Defenses
2 Against Assignee.

3 [a.] (a) Assignee's rights subject to terms, claims, and defenses;
4 exceptions. Unless an account debtor has made an enforceable
5 agreement not to assert defenses or claims, and subject to subsections
6 [b.] (b) through [e. of this section] (e), the rights of an assignee are
7 subject to:

8 (1) all terms of the agreement between the account debtor and
9 assignor and any defense or claim in recoupment arising from the
10 transaction that gave rise to the contract; and

11 (2) any other defense or claim of the account debtor against the
12 assignor which accrues before the account debtor receives a
13 notification of the assignment authenticated by the assignor or the
14 assignee.

15 [b.] (b) Account debtor's claim reduces amount owed to assignee.
16 Subject to subsection [c.] (c) and except as otherwise provided in
17 subsection [d. of this section] (d), the claim of an account debtor
18 against an assignor may be asserted against an assignee under
19 subsection [a.] (a) only to reduce the amount the account debtor
20 owes.

21 [c.] (c) Rule for individual under other law. This section is subject
22 to law other than this chapter which establishes a different rule for an
23 account debtor who is an individual and who incurred the obligation
24 primarily for personal, family, or household purposes.

25 [d.] (d) Omission of required statement in consumer transaction.
26 In a consumer transaction, if a record evidences the account debtor's
27 obligation, law other than this chapter requires that the record include
28 a statement to the effect that the account debtor's recovery against an
29 assignee with respect to claims and defenses against the assignor may
30 not exceed amounts paid by the account debtor under the record, and
31 the record does not include such a statement, the extent to which a
32 claim of an account debtor against the assignor may be asserted
33 against an assignee is determined as if the record included such a
34 statement.

35 [e.] (e) Inapplicability to health-care-insurance receivable. This
36 section does not apply to an assignment of a health-care-insurance
37 receivable.

38 (cf: N.J.S.12A:9-404)

39

40 61. N.J.S.12A:9-405 is amended to read as follows:

41 12A:9-405. Modification of Assigned Contract.

42 [a.] (a) Effect of modification on assignee. A modification of or
43 substitution for an assigned contract is effective against an assignee if
44 made in good faith. The assignee acquires corresponding rights under
45 the modified or substituted contract. The assignment may provide that
46 the modification or substitution is a breach of contract by the assignor.
47 This subsection is subject to subsections [b.] (b) through [d. of this

1 section] (d).

2 [b.] (b) Applicability of subsection [a.] (a). Subsection [a. of this
3 section] (a) applies to the extent that:

4 (1) the right to payment or a part thereof under an assigned
5 contract has not been fully earned by performance; or

6 (2) the right to payment or a part thereof has been fully earned by
7 performance and the account debtor has not received notification of
8 the assignment under 12A:9-406 [a.] (a).

9 [c.] (c) Rule for individual under other law. This section is subject
10 to law other than this chapter which establishes a different rule for an
11 account debtor who is an individual and who incurred the obligation
12 primarily for personal, family, or household purposes.

13 [d.] (d) Inapplicability to health-care-insurance receivable. This
14 section does not apply to an assignment of a health-care-insurance
15 receivable.

16 (cf: N.J.S.12A:9-405)

17

18 62. N.J.S.12A:9-406 is amended to read as follows:

19 12A:9-406. Discharge of Account Debtor; Notification of
20 Assignment; Identification and Proof of Assignment; Restrictions on
21 Assignment of Accounts, Chattel Paper, Payment Intangibles, and
22 Promissory Notes Ineffective.

23 [a.] (a) Discharge of account debtor; effect of notification.
24 Subject to subsections [b.] (b) through [i. of this section] (i), an
25 account debtor on an account, chattel paper, or a payment intangible
26 may discharge its obligation by paying the assignor until, but not after,
27 the account debtor receives a notification, authenticated by the
28 assignor or the assignee, that the amount due or to become due has
29 been assigned and that payment is to be made to the assignee. After
30 receipt of the notification, the account debtor may discharge its
31 obligation by paying the assignee and may not discharge the obligation
32 by paying the assignor.

33 [b.] (b) When notification ineffective. Subject to subsection [h.]
34 (h), notification is ineffective under subsection [a. of this section] (a):

35 (1) if it does not reasonably identify the rights assigned;

36 (2) to the extent that an agreement between an account debtor and
37 a seller of a payment intangible limits the account debtor's duty to pay
38 a person other than the seller and the limitation is effective under law
39 other than this chapter; or

40 (3) at the option of an account debtor, if the notification notifies
41 the account debtor to make less than the full amount of any installment
42 or other periodic payment to the assignee, even if:

43 [(a)] (A) only a portion of the account, chattel paper, or [general]
44 payment intangible has been assigned to that assignee;

45 [(b)] (B) a portion has been assigned to another assignee; or

46 [(c)] (C) the account debtor knows that the assignment to that

1 assignee is limited.

2 [c.] (c) Proof of assignment. Subject to subsection [h. of this
3 section] (h), if requested by the account debtor, an assignee shall
4 seasonably furnish reasonable proof that the assignment has been
5 made. Unless the assignee complies, the account debtor may discharge
6 its obligation by paying the assignor, even if the account debtor has
7 received a notification under subsection [a. of this section] (a).

8 [d.] (d) Term restricting assignment generally ineffective. Except
9 as otherwise provided in subsection [e. of this section] (e),
10 12A:2A-303 and 12A:9-407, and subject to subsection [h. of this
11 section] (h), a term in an agreement between an account debtor and
12 an assignor or in a promissory note is ineffective to the extent that it:

13 (1) prohibits, restricts, or requires the consent of the account
14 debtor or person obligated on the promissory note to the assignment
15 or transfer of, or the creation, attachment, perfection, or enforcement
16 of a security interest in, the account, chattel paper, payment intangible,
17 or promissory note; or

18 (2) provides that the assignment or transfer or the creation,
19 attachment, perfection, or enforcement of the security interest may
20 give rise to a default, breach, right of recoupment, claim, defense,
21 termination, right of termination, or remedy under the account, chattel
22 paper, payment intangible, or promissory note.

23 [e.] (e) Inapplicability of subsection [d.] (d) to certain sales.
24 Subsection [d. of this section] (d) does not apply to the sale of a
25 payment intangible or promissory note.

26 [f.] (f) Legal restrictions on assignment generally ineffective.
27 Except as otherwise provided in [subsection j. of this section]
28 12A:2A-303 and 12A:9-407 and subject to subsections [h. and i. of
29 this section] (h), (i) and (j), a rule of law, statute, or regulation that
30 prohibits, restricts, or requires the consent of a government,
31 governmental body or official, or account debtor to the assignment or
32 transfer of, or creation of a security interest in, an account or chattel
33 paper is ineffective to the extent that the rule of law, statute, or
34 regulation:

35 (1) prohibits, restricts, or requires the consent of the government,
36 governmental body or official, or account debtor to the assignment or
37 transfer of, or the creation, attachment, perfection, or enforcement of
38 a security interest in the account or chattel paper; or

39 (2) provides that the assignment or transfer or the creation,
40 attachment, perfection, or enforcement of the security interest may
41 give rise to a default, breach, right of recoupment, claim, defense,
42 termination, right of termination, or remedy under the account or
43 chattel paper.

44 [g.] (g) Subsection [b. paragraph] (b) (3) not waivable. Subject
45 to subsection [h.] (h), an account debtor may not waive or vary its
46 option under subsection [b.] (b) (3) [of this section].

1 [h.] (h) Rule for individual under other law. This section is
2 subject to law other than this chapter which establishes a different rule
3 for an account debtor who is an individual and who incurred the
4 obligation primarily for personal, family, or household purposes.

5 [i.] (i) Inapplicability [to health-care-insurance receivable]. This
6 section does not apply to an assignment of a health-care-insurance
7 receivable. Subsection (f) does not apply to an assignment or transfer
8 of, or the creation, attachment, perfection or enforcement of a security
9 interest in, a right the transfer of which is prohibited or restricted by
10 any of the following statutes to the extent that the statute is
11 inconsistent with subsection (f): R.S.34:15-29 (workers'
12 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
13 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
14 (structured settlement agreements).

15 [j.] (j) Section prevails over specified inconsistent law. [This]
16 Except to the extent otherwise provided in subsection (i), this section
17 prevails over any inconsistent [provisions] provision of an existing or
18 future statute, rule or regulation of this State [statutes, rules, and
19 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
20 (C.5:9-13)] , unless the provision is contained in a statute of this
21 State, refers expressly to this section and states that the provision
22 prevails over this section.

23 (cf: N.J.S.12A:9-406)

24

25 63. N.J.S.12A:9-407 is amended to read as follows:

26 12A:9-407. Restrictions on Creation or Enforcement of Security
27 Interest in Leasehold Interest or in Lessor's Residual Interest.

28 [a.] (a) Term restricting assignment generally ineffective. Except
29 as otherwise provided in subsection [b. of this section] (b), a term in
30 a lease agreement is ineffective to the extent that it:

31 (1) prohibits, restricts, or requires the consent of a party to the
32 lease to the assignment or transfer of, or the creation, attachment,
33 perfection, or enforcement of a security interest in, an interest of a
34 party under the lease contract or in the lessor's residual interest in the
35 goods; or

36 (2) provides that the assignment or transfer or the creation,
37 attachment, perfection, or enforcement of the security interest may
38 give rise to a default, breach, right of recoupment, claim, defense,
39 termination, right of termination, or remedy under the lease.

40 [b.] (b) Effectiveness of certain terms. Except as otherwise
41 provided in 12A:2A-303 [g.] (7), a term described in [paragraph (2)
42 of subsection a. of this section] subsection (a) (2) is effective to the
43 extent that there is:

44 (1) a transfer by the lessee of the lessee's right of possession or use
45 of the goods in violation of the term; or

46 (2) a delegation of a material performance of either party to the
47 lease contract in violation of the term.

1 **[c.] (c)** Security interest not material impairment. The creation,
2 attachment, perfection, or enforcement of a security interest in the
3 lessor's interest under the lease contract or the lessor's residual interest
4 in the goods is not a transfer that materially impairs the lessee's
5 prospect of obtaining return performance or materially changes the
6 duty of or materially increases the burden or risk imposed on the lessee
7 within the purview of 12A:2A-303 **[d.] (4)** unless, and then only to
8 the extent that, enforcement actually results in a delegation of material
9 performance of the lessor.

10 (cf: N.J.S.12A:9-407)

11
12 64. N.J.S.12A:9-408 is amended to read as follows:

13 12A:9-408. Restrictions on Assignment of Promissory Notes,
14 Health-care-insurance Receivables, and Certain General Intangibles
15 Ineffective.

16 **[a.] (a)** Term restricting assignment generally ineffective. Except
17 as otherwise provided in subsection **[b. of this section] (b)**, a term in
18 a promissory note or in an agreement between an account debtor and
19 a debtor which relates to a health-care-insurance receivable or a
20 general intangible, including a contract, permit, license, or franchise,
21 and which term prohibits, restricts, or requires the consent of the
22 person obligated on the promissory note or the account debtor to, the
23 assignment or transfer of, or creation, attachment, or perfection of a
24 security interest in, the promissory note, health-care-insurance
25 receivable, or general intangible, is ineffective to the extent that the
26 term:

27 (1) would impair the creation, attachment, or perfection of a
28 security interest; or

29 (2) provides that the assignment or transfer or the creation,
30 attachment, or perfection of the security interest may give rise to a
31 default, breach, right of recoupment, claim, defense, termination, right
32 of termination, or remedy under the promissory note,
33 health-care-insurance receivable, or general intangible.

34 **[b.] (b)** Applicability of subsection **[a.] (a)** to sales of certain
35 rights to payment. Subsection **[a. of this section] (a)** applies to a
36 security interest in a payment intangible or promissory note only if the
37 security interest arises out of a sale of the payment intangible or
38 promissory note.

39 **[c.] (c)** Legal restrictions on assignment generally ineffective.
40 Except as provided in subsection **[e. of this section] (e)**, a rule of law,
41 statute, or regulation that prohibits, restricts, or requires the consent
42 of a government, governmental body or official, person obligated on
43 a promissory note, or account debtor to the assignment or transfer of,
44 or creation of a security interest in, a promissory note,
45 health-care-insurance receivable, or general intangible, including a
46 contract, permit, license, or franchise between an account debtor and
47 a debtor, is ineffective to the extent that the rule of law, statute, or

1 regulation:

2 (1) would impair the creation, attachment, or perfection of a
3 security interest; or

4 (2) provides that the assignment or transfer or the creation,
5 attachment, or perfection of the security interest may give rise to a
6 default, breach, right of recoupment, claim, defense, termination, right
7 of termination, or remedy under the promissory note,
8 health-care-insurance receivable, or general intangible.

9 [d.] (d) Limitation on ineffectiveness under subsections [a. and
10 c.] (a) and (c). To the extent that a term in a promissory note or in an
11 agreement between an account debtor and a debtor which relates to a
12 health-care-insurance receivable or general intangible or a rule of law,
13 statute, or regulation described in subsection [c.] (c) would be
14 effective under law other than this chapter but is ineffective under
15 subsection [a. or c. of this section] (a) or (c), the creation,
16 attachment, or perfection of a security interest in the promissory note,
17 health-care-insurance receivable, or general intangible:

18 (1) is not enforceable against the person obligated on the
19 promissory note or the account debtor;

20 (2) does not impose a duty or obligation on the person obligated
21 on the promissory note or the account debtor;

22 (3) does not require the person obligated on the promissory note
23 or the account debtor to recognize the security interest, pay or render
24 performance to the secured party, or accept payment or performance
25 from the secured party;

26 (4) does not entitle the secured party to use or assign the debtor's
27 rights under the promissory note, health-care-insurance receivable, or
28 general intangible, including any related information or materials
29 furnished to the debtor in the transaction giving rise to the promissory
30 note, health-care-insurance receivable, or general intangible;

31 (5) does not entitle the secured party to use, assign, possess, or
32 have access to any trade secrets or confidential information of the
33 person obligated on the promissory note or the account debtor; and

34 (6) does not entitle the secured party to enforce the security
35 interest in the promissory note, health-care-insurance receivable, or
36 general intangible.

37 [e.] (e) Section prevails over specified inconsistent law. [This]
38 Except to the extent otherwise provided in subsection (f), this section
39 prevails over any inconsistent [provisions] provision of an existing or
40 future statute, rule or regulation of this State [statutes, rules, and
41 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
42 (C.5:9-13)], unless the provision is contained in a statute of this State,
43 refers expressly to this section and states that the provision prevails
44 over this section.

45 (f) Inapplicability. Subsection (c) does not apply to an assignment
46 or transfer of, or the creation, attachment, perfection or enforcement
47 of a security interest in, a right the transfer of which is prohibited or

1 restricted by any of the following statutes to the extent that the statute
2 is inconsistent with subsection (c): R.S.34:15-29 (workers'
3 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
4 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
5 (structured settlement agreements).
6 (cf: N.J.S.12A:9-408)

7

8 65. N.J.S.12A:9-409 is amended to read as follows:

9 12A:9-409. Restrictions on Assignment of Letter-of-credit Rights
10 Ineffective.

11 [a.] (a) Term or law restricting assignment generally ineffective.
12 A term in a letter of credit or a rule of law, statute, regulation, custom,
13 or practice applicable to the letter of credit which prohibits, restricts,
14 or requires the consent of an applicant, issuer, or nominated person to
15 a beneficiary's assignment of or creation of a security interest in a
16 letter-of-credit right is ineffective to the extent that the term or rule of
17 law, statute, regulation, custom, or practice:

18 (1) would impair the creation, attachment, or perfection of a
19 security interest in the letter-of-credit right; or

20 (2) provides that the assignment or the creation, attachment, or
21 perfection of the security interest may give rise to a default, breach,
22 right of recoupment, claim, defense, termination, right of termination,
23 or remedy under the letter-of-credit right.

24 [b.] (b) Limitation on ineffectiveness under subsection [a.] (a).
25 To the extent that a term in a letter of credit is ineffective under
26 subsection [a.] (a) but would be effective under law other than this
27 chapter or a custom or practice applicable to the letter of credit, to the
28 transfer of a right to draw or otherwise demand performance under the
29 letter of credit, or to the assignment of a right to proceeds of the letter
30 of credit, the creation, attachment, or perfection of a security interest
31 in the letter-of-credit right:

32 (1) is not enforceable against the applicant, issuer, nominated
33 person, or transferee beneficiary;

34 (2) imposes no duties or obligations on the applicant, issuer,
35 nominated person, or transferee beneficiary; and

36 (3) does not require the applicant, issuer, nominated person, or
37 transferee beneficiary to recognize the security interest, pay or render
38 performance to the secured party, or accept payment or other
39 performance from the secured party.

40 (cf: N.J.S.12A:9-409)

41

42 66. N.J.S.12A:9-501 is amended to read as follows:

43 12A:9-501. Filing Office.

44 Filing offices.

45 [a.] (a) Except as otherwise provided in subsection [b. of this
46 section] (b), if the local law of this State governs perfection of a
47 security interest or agricultural lien, the office in which to file a

1 financing statement to perfect the security interest or agricultural lien
2 is :

3 (1) the office designated for the filing or recording of a record of
4 a mortgage on the related real property, if:

5 [(a)] (A) the collateral is as-extracted collateral or timber to be
6 cut; or

7 [(b)] (B) the financing statement is filed as a fixture filing and the
8 collateral is goods that are or are to become fixtures; or

9 (2) the Division of Commercial Recording or other office
10 designated by Executive Order, in all other cases, including a case in
11 which the collateral is goods that are or are to become fixtures and the
12 financing statement is not filed as a fixture filing.

13 [b.] (b) Filing office for transmitting utilities. The office in which
14 to file a financing statement to perfect a security interest in collateral,
15 including fixtures, of a transmitting utility is the Division of
16 Commercial Recording or other office designated by Executive Order.
17 The financing statement also constitutes a fixture filing as to the
18 collateral indicated in the financing statement which is or is to become
19 fixtures.

20 (cf: N.J.S.12A:9-501)

21

22 67. N.J.S.12A:9-502 is amended to read as follows:

23 12A:9-502. Contents of Financing Statement; Record of Mortgage
24 as Financing Statement; Time of Filing Financing Statement.

25 [a.] (a) Sufficiency of financing statement. Subject to subsection
26 [b. of this section] (b), a financing statement is sufficient only if it:

27 (1) provides the name of the debtor;

28 (2) provides the name of the secured party or a representative of
29 the secured party; and

30 (3) indicates the collateral covered by the financing statement.

31 [b.] (b) Real-property-related financing statements. Except as
32 otherwise provided in 12A:9-501 [b.] (b), to be sufficient, a financing
33 statement that covers as-extracted collateral or timber to be cut, or
34 which is filed as a fixture filing and covers goods that are or are to
35 become fixtures, [shall] must satisfy subsection [a. of this section] (a)
36 and also:

37 (1) indicate that it covers this type of collateral;

38 (2) indicate that it is to be filed in the real property records;

39 (3) provide a description of the real property to which the collateral
40 is related sufficient to [identify] give constructive notice of a
41 mortgage under the law of this State if the description were contained
42 in a record of the mortgage of the real property; and

43 (4) if the debtor does not have an interest of record in the real
44 property, provide the name of a record owner.

45 [c.] (c) Record of mortgage as financing statement. A record of
46 a mortgage is effective, from the date of recording, as a [filed]
47 financing statement filed as a fixture filing or as a financing statement

1 covering as-extracted collateral or timber to be cut [or fixtures] only
2 if:

3 (1) the record indicates the goods or accounts that it covers;

4 (2) the goods are or are to become fixtures related to the real
5 property described in the record or the collateral is related to the real
6 property described in the record and is as-extracted collateral or
7 timber to be cut;

8 (3) the record satisfies the requirements for a financing statement
9 in this section other than an indication that it is to be filed in the real
10 property records; and

11 (4) the record is recorded.

12 [d.] (d) Filing before security agreement or attachment. A
13 financing statement may be filed before a security agreement is made
14 or a security interest otherwise attaches.

15 (cf: N.J.S.12A:9-502)

16

17 68. N.J.S.12A:9-503 is amended to read as follows:

18 12A:9-503. Name of Debtor and Secured Party.

19 [a.] (a) Sufficiency of debtor's name. A financing statement
20 sufficiently provides the name of the debtor:

21 (1) if the debtor is a registered organization, only if the financing
22 statement provides the name of the debtor indicated on the public
23 record of the debtor's jurisdiction of organization which shows the
24 debtor to have been organized;

25 (2) if the debtor is a decedent's estate, only if the financing
26 statement provides the name of the decedent and indicates that the
27 debtor is an estate;

28 (3) if the debtor is a trust or a trustee acting with respect to
29 property held in trust, only if the financing statement:

30 [(a)] (A) provides the name specified for the trust in its organic
31 documents or, if no name is specified, provides the name of the settlor
32 and additional information sufficient to distinguish the debtor from
33 other trusts having one or more of the same settlors; and

34 [(b)] (B) indicates, in the debtor's name or otherwise, that the
35 debtor is a trust or is a trustee acting with respect to property held in
36 trust; and

37 (4) in other cases:

38 [(a)] (A) if the debtor has a name, only if it provides the individual
39 or organizational name of the debtor; and

40 [(b)] (B) if the debtor does not have a name, only if it provides the
41 names of the partners, members, associates, or other persons
42 comprising the debtor.

43 [b.] (b) Additional debtor-related information. A financing
44 statement that provides the name of the debtor in accordance with
45 subsection [a. of this section] (a) is not rendered ineffective by the
46 absence of:

47 (1) a trade name or other name of the debtor; or

1 (2) unless required under [paragraph (4) (b) of] subsection [a. of
2 this section] (a) (4) (B), names of partners, members, associates, or
3 other persons comprising the debtor.

4 [c.] (c) Debtor's trade name insufficient. A financing statement
5 that provides only the debtor's trade name does not sufficiently provide
6 the name of the debtor.

7 [d.] (d) Representative capacity. Failure to indicate the
8 representative capacity of a secured party or representative of a
9 secured party does not affect the sufficiency of a financing statement.

10 [e.] (e) Multiple debtors and secured parties. A financing
11 statement may provide the name of more than one debtor and the name
12 of more than one secured party.

13 (cf: N.J.S.12A:9-503)

14

15 69. N.J.S.12A:9-504 is amended to read as follows:

16 12A:9-504. Indication of Collateral.

17 A financing statement sufficiently indicates the collateral that it
18 covers if the financing statement provides:

19 [a.] (1) a description of the collateral pursuant to 12A:9-108; or

20 [b.] (2) an indication that the financing statement covers all assets
21 or all personal property.

22 (cf: N.J.S.12A:9-504)

23

24 70. N.J.S.12A:9-505 is amended to read as follows:

25 12A:9-505. Filing and Compliance with Other Statutes and
26 Treaties for Consignments, Leases, Other Bailments, and Other
27 Transactions.

28 [a.] (a) Use of terms other than "debtor" and "secured party." A
29 consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
30 payment intangible or promissory note may file a financing statement,
31 or may comply with a statute or treaty described in 12A:9-311 [a.]
32 (a), using the terms "consignor," "consignee," "lessor," "lessee,"
33 "bailor," "bailee," "licensor," "licensee," "owner," "registered owner,"
34 "buyer," "seller," or words of similar import, instead of the terms
35 "secured party" and "debtor".

36 [b.] (b) Effect of financing statement under subsection [a.] (a)
37 This part applies to the filing of a financing statement under subsection
38 [a. of this section] (a) and, as appropriate, to compliance that is
39 equivalent to filing a financing statement under 12A:9-311 [b.] (b),
40 but the filing or compliance is not of itself a factor in determining
41 whether the collateral secures an obligation. If it is determined for
42 another reason that the collateral secures an obligation, a security
43 interest held by the consignor, lessor, bailor, licensor, owner, or buyer
44 which attaches to the collateral is perfected by the filing or
45 compliance.

46 (cf: N.J.S.12A:9-505)

1 71. N.J.S.12A:9-506 is amended to read as follows:

2 12A:9-506. Effect of Errors or Omissions.

3 [a.] (a) Minor errors and omissions. A financing statement
4 substantially satisfying the requirements of this part is effective, even
5 if it has minor errors or omissions, unless the errors or omissions make
6 the financing statement seriously misleading.

7 [b.] (b) Financing statement seriously misleading. Except as
8 otherwise provided in subsection [c. of this section] (c), a financing
9 statement that fails sufficiently to provide the name of the debtor in
10 accordance with 12A:9-503 [a.] (a) is seriously misleading.

11 [c.] (c) Financing statement not seriously misleading. If a search
12 of the records of the filing office under the debtor's correct name,
13 using the filing office's standard search logic, if any, would disclose a
14 financing statement that fails sufficiently to provide the name of the
15 debtor in accordance with 12A:9-503 [a.] (a), the name provided does
16 not make the financing statement seriously misleading.

17 [d.] (d) "Debtor's correct name." For purposes of 12A:9-508 [b.]
18 (b), the "debtor's correct name" in subsection [c. of this section] (c)
19 means the correct name of the new debtor.

20 (cf: N.J.S.12A:9-506)

21

22 72. N.J.S.12A:9-507 is amended to read as follows:

23 12A:9-507. Effect of Certain Events on Effectiveness of Financing
24 Statement.

25 [a.] (a) Disposition. A filed financing statement remains effective
26 with respect to collateral that is sold, exchanged, leased, licensed, or
27 otherwise disposed of and in which a security interest or agricultural
28 lien continues, even if the secured party knows of or consents to the
29 disposition.

30 [b.] (b) Information becoming seriously misleading. Except as
31 otherwise provided in subsection [c. of this section] (c) and
32 12A:9-508, a financing statement is not rendered ineffective if, after
33 the financing statement is filed, the information provided in the
34 financing statement becomes seriously misleading under 12A:9-506.

35 [c.] (c) Change in debtor's name. If a debtor so changes its name
36 that a filed financing statement becomes seriously misleading under
37 12A:9-506:

38 (1) the financing statement is effective to perfect a security interest
39 in collateral acquired by the debtor before, or within four months after,
40 the change; and

41 (2) the financing statement is not effective to perfect a security
42 interest in collateral acquired by the debtor more than four months
43 after the change, unless an amendment to the financing statement
44 which renders the financing statement not seriously misleading is filed
45 within four months after the change.

46 (cf: N.J.S.12A:9-507)

1 73. N.J.S.12A:9-508 is amended to read as follows:

2 12A:9-508. Effectiveness of Financing Statement If New Debtor
3 Becomes Bound by Security Agreement.

4 [a.] (a) Financing statement naming original debtor. Except as
5 otherwise provided in this section, a filed financing statement naming
6 an original debtor is effective to perfect a security interest in collateral
7 in which a new debtor has or acquires rights to the extent that the
8 financing statement would have been effective had the original debtor
9 acquired rights in the collateral.

10 [b.] (b) Financing statement becoming seriously misleading. If the
11 difference between the name of the original debtor and that of the new
12 debtor causes a filed financing statement that is effective under
13 subsection [a. of this section] (a) to be seriously misleading under
14 12A:9-506:

15 (1) the financing statement is effective to perfect a security interest
16 in collateral acquired by the new debtor before, and within four
17 months after, the new debtor becomes bound under 12A:9-203 [d.]
18 (d); and

19 (2) the financing statement is not effective to perfect a security
20 interest in collateral acquired by the new debtor more than four
21 months after the new debtor becomes bound under 12A:9-203 [d.] (d)
22 unless an initial financing statement providing the name of the new
23 debtor is filed before the expiration of that time.

24 [c.] (c) When section not applicable. This section does not apply
25 to collateral as to which a filed financing statement remains effective
26 against the new debtor under 12A:9-507 [a.] (a).
27 (cf: N.J.S.12A:9-508)

28

29 74. N.J.S.12A:9-509 is amended to read as follows:

30 12A:9-509. Persons Entitled to File a Record.

31 [a.] (a) Person entitled to file record. A person may file an initial
32 financing statement, amendment that adds collateral covered by a
33 financing statement, or amendment that adds a debtor to a financing
34 statement only if:

35 (1) the debtor authorizes the filing in an authenticated record or
36 pursuant to subsection (b) or (c); or

37 (2) the person holds an agricultural lien that has become effective
38 at the time of filing and the financing statement covers only collateral
39 in which the person holds an agricultural lien.

40 [b.] (b) Security agreement as authorization. By authenticating or
41 becoming bound as debtor by a security agreement, a debtor or new
42 debtor authorizes the filing of an initial financing statement, and an
43 amendment, covering:

44 (1) the collateral described in the security agreement; and

45 (2) property that becomes collateral under 12A:9-315 [a.] (a) (2),
46 whether or not the security agreement expressly covers proceeds.

47 [c.] (c) Acquisition of collateral as authorization. By acquiring

1 collateral in which a security interest or agricultural lien continues
2 under 12A:9-315 [a.] (a) (1), a debtor authorizes the filing of an
3 initial financing statement, and an amendment, covering the collateral
4 and property that becomes collateral under 12A:9-315 [a.] (a) (2).

5 [d.] (d) Person entitled to file certain amendments. A person may
6 file an amendment other than an amendment that adds collateral
7 covered by a financing statement or an amendment that adds a debtor
8 to a financing statement only if:

9 (1) the secured party of record authorizes the filing; or

10 (2) the amendment is a termination statement for a financing
11 statement as to which the secured party of record has failed to file or
12 send a termination statement as required by 12A:9-513 [a. or c.] (a)
13 or (c), the debtor authorizes the filing, and the termination statement
14 indicates that the debtor authorized it to be filed.

15 [e.] (e) Multiple secured parties of record. If there is more than
16 one secured party of record for a financing statement, each secured
17 party of record may authorize the filing of an amendment under
18 subsection [d. of this section] (d).

19 (cf: N.J.S.12A:9-509)

20
21 75. N.J.S.12A:9-510 is amended to read as follows:

22 12A:9-510. Effectiveness of Filed Record.

23 [a.] (a) Filed record effective if authorized. A filed record is
24 effective only to the extent that it was filed by a person [who] that
25 may file it under 12A:9-509.

26 [b.] (b) Authorization by one secured party of record. A record
27 authorized by one secured party of record does not affect the financing
28 statement with respect to another secured party of record.

29 [c.] (c) Continuation statement not timely filed. A continuation
30 statement that is not filed within the six-month period prescribed by
31 12A:9-515 [d.] (d) is ineffective.

32 (cf: N.J.S.12A:9-510)

33
34 76. N.J.S.12A:9-511 is amended to read as follows:

35 12A:9-511. Secured Party of Record.

36 [a.] (a) Secured party of record. A secured party of record with
37 respect to a financing statement is a person whose name is provided as
38 the name of the secured party or a representative of the secured party
39 in an initial financing statement that has been filed. If an initial
40 financing statement is filed under 12A:9-514 [a.] (a), the assignee
41 named in the initial financing statement is the secured party of record
42 with respect to the financing statement.

43 [b.] (b) Amendment naming secured party of record. If an
44 amendment of a financing statement which provides the name of a
45 person as a secured party or a representative of a secured party is
46 filed, the person named in the amendment is a secured party of record.

1 If an amendment is filed under 12A:9-514 [b.] (b), the assignee named
2 in the amendment is a secured party of record.

3 [c.] (c) Amendment deleting secured party of record. A person
4 remains a secured party of record until the filing of an amendment of
5 the financing statement which deletes the person.
6 (cf: N.J.S.12A:9-511)

7

8 77. N.J.S.12A:9-512 is amended to read as follows:

9 12A:9-512. Amendment of Financing Statement.

10 [a.] (a) Amendment of information in financing statement. Subject
11 to 12A:9-509, a person may add or delete collateral covered by,
12 continue or terminate the effectiveness of, or, subject to subsection [e.
13 of this section] (e), otherwise amend the information provided in, a
14 financing statement by filing an amendment that:

15 (1) identifies, by its file number, the initial financing statement to
16 which the amendment relates; and

17 (2) if the amendment relates to an initial financing statement filed
18 in a filing office described in 12A:9-501 [a.] (a) (1), provides the
19 information specified in 12A:9-502 [b.] (b).

20 [b.] (b) Period of effectiveness not affected. Except as otherwise
21 provided in 12A:9-515, the filing of an amendment does not extend the
22 period of effectiveness of the financing statement.

23 [c.] (c) Effectiveness of amendment adding collateral. A financing
24 statement that is amended by an amendment that adds collateral is
25 effective as to the added collateral only from the date of the filing of
26 the amendment.

27 [d.] (d) Effectiveness of amendment adding debtor. A financing
28 statement that is amended by an amendment that adds a debtor is
29 effective as to the added debtor only from the date of the filing of the
30 amendment.

31 [e.] (e) Certain amendments ineffective. An amendment is
32 ineffective to the extent it:

33 (1) purports to delete all debtors and fails to provide the name of
34 a debtor to be covered by the financing statement; or

35 (2) purports to delete all secured parties of record and fails to
36 provide the name of a new secured party of record.

37 (cf: N.J.S.12A:9-512)

38

39 78. N.J.S.12A:9-513 is amended to read as follows:

40 12A:9-513. Termination Statement.

41 [a.] (a) Consumer goods. A secured party shall cause the secured
42 party of record for a financing statement to file a termination statement
43 for the financing statement if the financing statement covers consumer
44 goods and:

45 (1) there is no obligation secured by the collateral covered by the
46 financing statement and no commitment to make an advance, incur an
47 obligation, or otherwise give value; or

1 (2) the debtor did not authorize the filing of the initial financing
2 statement.

3 [b.] (b) Time for compliance with subsection [a.] (a). To comply
4 with subsection [a. of this section] (a), a secured party shall cause the
5 secured party of record to file the termination statement:

6 (1) within one month after there is no obligation secured by the
7 collateral covered by the financing statement and no commitment to
8 make an advance, incur an obligation, or otherwise give value; or

9 (2) if earlier, within 20 days after the secured party receives an
10 authenticated demand from a debtor.

11 [c.] (c) Other collateral. In cases not governed by subsection [a.
12 of this section] (a), within 20 days after a secured party receives an
13 authenticated demand from a debtor, the secured party shall cause the
14 secured party of record for a financing statement to send to the debtor
15 a termination statement for the financing statement or file the
16 termination statement in the filing office if:

17 (1) except in the case of a financing statement covering accounts
18 or chattel paper that has been sold or goods that are the subject of a
19 consignment, there is no obligation secured by the collateral covered
20 by the financing statement and no commitment to make an advance,
21 incur an obligation, or otherwise give value;

22 (2) the financing statement covers accounts or chattel paper that
23 [have] has been sold but as to which the account debtor or other
24 person obligated has discharged its obligation;

25 (3) the financing statement covers goods that were the subject of
26 a consignment to the debtor but are not in the debtor's possession; or

27 (4) the debtor did not authorize the filing of the initial financing
28 statement.

29 [d.] (d) Effect of filing termination statement. Except as
30 otherwise provided in 12A:9-510, upon the filing of a termination
31 statement with the filing office, the financing statement to which the
32 termination statement relates ceases to be effective. Except as
33 otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g),
34 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a
35 termination statement relating to a financing statement that indicates
36 that the debtor is a transmitting utility also causes the effectiveness of
37 the financing statement to lapse.

38 (cf: N.J.S.12A:9-513)

39

40 79. N.J.S.12A:9-514 is amended to read as follows:

41 12A:9-514. Assignment of Powers of Secured Party of Record.

42 [a.] (a) Assignment reflected on initial financing statement.
43 Except as otherwise provided in [this chapter] subsection (c), an
44 initial financing statement may reflect an assignment of all of the
45 secured party's power to authorize an amendment to the financing
46 statement by providing the name and mailing address of the assignee
47 as the name and address of the secured party.

1 **[b.] (b)** Assignment of filed financing statement. Except as
2 otherwise provided in **[this chapter] subsection (c)**, a secured party of
3 record may assign of record all or part of its power to authorize an
4 amendment to a financing statement by filing in the filing office an
5 amendment of the financing statement which:

6 (1) identifies, by its file number, the initial financing statement to
7 which it relates;

8 (2) provides the name of the assignor; and

9 (3) provides the name and mailing address of the assignee.

10 **[c.] (c)** Assignment of record of mortgage. An assignment of
11 record of a security interest in a fixture covered by a record of a
12 mortgage which is effective as a ¹**[filed]**¹ financing statement filed as
13 a fixture filing under 12A:9-502 **[c.] (c)** may be made only by an
14 assignment of record of the mortgage in the manner provided by law
15 of this State other than the Uniform Commercial Code.

16 (cf: N.J.S.12A:9-514)

17

18 80. N.J.S.12A:9-515 is amended to read as follows:

19 12A:9-515. Duration and Effectiveness of Financing Statement;
20 Effect of Lapsed Financing Statement.

21 **[a.] (a)** Five-year effectiveness. Except as otherwise provided in
22 subsections **[b., e., f. and g.] (b), (e), (f) and (g)**, a filed financing
23 statement is effective for a period of five years after the date of filing.

24 **[b.] (b)** Public-finance or manufactured-home transaction. Except
25 as otherwise provided in subsections **[e., f. and g. of this section] (e),**
26 **(f) and (g)**, an initial financing statement filed in connection with a
27 public-finance transaction or manufactured-home transaction is
28 effective for a period of 30 years after the date of filing if it indicates
29 that it is filed in connection with a public-finance transaction or
30 manufactured-home transaction.

31 **[c.]** Bondable transition property. If a filed financing statement
32 relates to a security interest in bondable transition property and the
33 financing statement so states, it is effective until a termination
34 statement is filed.

35 **d.] (c)** Lapse and continuation of financing statement. The
36 effectiveness of a filed financing statement lapses on the expiration of
37 the period of its effectiveness unless before the lapse a continuation
38 statement is filed pursuant to subsection **[e. of this section] (d)**. Upon
39 lapse, a financing statement ceases to be effective and any security
40 interest or agricultural lien that was perfected by the financing
41 statement becomes unperfected, unless the security interest is
42 perfected otherwise. If the security interest or agricultural lien
43 becomes unperfected upon lapse, it is deemed never to have been
44 perfected as against a purchaser of the collateral for value.

45 **[e.] (d)** When continuation statement may be filed. A continuation
46 statement may be filed only within six months before the expiration of

1 the five-year period specified in subsection [a.] (a) or the 30-year
2 period specified in subsection [b. of this section] (b), whichever is
3 applicable.

4 [f.] (e) Effect of filing continuation statement. Except as
5 otherwise provided in 12A:9-510, upon timely filing of a continuation
6 statement, the effectiveness of the initial financing statement continues
7 for a period of five years commencing on the day on which the
8 financing statement would have become ineffective in the absence of
9 the filing. Upon the expiration of the five-year period, the financing
10 statement lapses in the same manner as provided in subsection [d.]
11 (c), unless, before the lapse, another continuation statement is filed
12 pursuant to subsection [e. of this section] (d). Succeeding
13 continuation statements may be filed in the same manner to continue
14 the effectiveness of the initial financing statement.

15 [g.] (f) Transmitting utility financing statement. If a debtor is a
16 transmitting utility and a filed financing statement so indicates, the
17 financing statement is effective until a termination statement is filed.

18 [h.] (g) Record of mortgage as financing statement. A record of
19 mortgage that is effective as a [filed] financing statement filed as a
20 fixture filing under 12A:9-502 [c.] (c) remains effective as a [filed]
21 financing statement filed as a fixture filing until the mortgage is
22 released or satisfied of record or its effectiveness otherwise terminates
23 as to the real property.

24 (h) Bondable transition property. If a filed financing statement
25 relates to a security interest in bondable transition property and the
26 financing statement so states, it is effective until a termination
27 statement is filed.

28 (cf: N.J.S.12A:9-515)

29

30 81. N.J.S.12A:9-516 is amended to read as follows:

31 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

32 [a.] (a) What constitutes filing. Except as otherwise provided in
33 subsection [b. of this section] (b), communication of a record to a
34 filing office and tender of the filing fee or acceptance of the record by
35 the filing office constitutes filing.

36 [b.] (b) Refusal to accept record; filing does not occur. Filing
37 does not occur with respect to a record that a filing office refuses to
38 accept because:

39 (1) the record is not communicated by a method or medium of
40 communication authorized by the filing office;

41 (2) an amount equal to or greater than the applicable filing fee is
42 not tendered;

43 (3) the filing office is unable to index the record because:

44 [(a)] (A) in the case of an initial financing statement, the record
45 does not provide a name for the debtor;

46 [(b)] (B) in the case of an amendment or correction statement, the

1 record:

2 (i) does not identify the initial financing statement as required by
3 12A:9-512 or 12A:9-518, as applicable; or

4 (ii) identifies an initial financing statement whose effectiveness has
5 lapsed under 12A:9-515;

6 ~~[(c)] (C)~~ in the case of an initial financing statement that provides
7 the name of a debtor identified as an individual or an amendment that
8 provides a name of a debtor identified as an individual which was not
9 previously provided in the financing statement to which the record
10 relates, the record does not identify the debtor's last name; or

11 ~~[(d)] (D)~~ in the case of a record filed or recorded in the filing
12 office described in 12A:9-501 ~~(a) (1)~~, the record does not provide a
13 sufficient description of the real property to which it relates;

14 (4) in the case of an initial financing statement or an amendment
15 that adds a secured party of record, the record does not provide a
16 name and mailing address for the secured party of record;

17 (5) in the case of an initial financing statement or an amendment
18 that provides a name of a debtor which was not previously provided
19 in the financing statement to which the amendment relates, the record
20 does not:

21 ~~[(a)] (A)~~ provide a mailing address for the debtor;

22 ~~[(b)] (B)~~ indicate whether the debtor is an individual or an
23 organization; or

24 ~~[(c)] (C)~~ if the financing statement indicates that the debtor is an
25 organization, provide:

26 (i) a type of organization for the debtor;

27 (ii) a jurisdiction of organization for the debtor; or

28 (iii) an organizational identification number for the debtor or
29 indicate that the debtor has none;

30 (6) in the case of an assignment reflected in an initial financing
31 statement under 12A:9-514 ~~[a.] (a)~~ or an amendment filed under
32 12A:9-514 ~~[b.] (b)~~, the record does not provide a name and mailing
33 address for the assignee; or

34 (7) in the case of a continuation statement, the record is not filed
35 within the six-month period prescribed by 12A:9-515 ~~[e.] (d)~~.

36 ~~[c.] (c)~~ Rules applicable to subsection ~~[b.] (b)~~. For purposes of
37 subsection ~~[b. of this section] (b)~~:

38 (1) a record does not provide information if the filing office is
39 unable to read or decipher the information; and

40 (2) a record that does not indicate that it is an amendment or
41 identify an initial financing statement to which it relates, as required by
42 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.

43 ~~[d.] (d)~~ Refusal to accept record; record effective as filed record.
44 A record that is communicated to the filing office with tender of the
45 filing fee, but which the filing office refuses to accept for a reason
46 other than one set forth in subsection ~~[b. of this section] (b)~~, is
47 effective as a filed record except as against a purchaser of the

1 collateral which gives value in reasonable reliance upon the absence of
2 the record from the files.

3 (cf: N.J.S.12A:9-516)

4

5 82. N.J.S.12A:9-518 is amended to read as follows:

6 12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed
7 Record.

8 [a.] (a) Correction statement. A person may file in the filing office
9 a correction statement with respect to a record indexed there under the
10 person's name if the person believes that the record is inaccurate or
11 was wrongfully filed.

12 [b.] (b) Sufficiency of correction statement. A correction
13 statement [shall] must:

14 (1) identify the record to which it relates by the file number
15 assigned to the initial financing statement to which the record relates;

16 (2) indicate that it is a correction statement; and

17 (3) provide the basis for the person's belief that the record is
18 inaccurate and indicate the manner in which the person believes the
19 record should be amended to cure any inaccuracy or provide the basis
20 for the person's belief that the record was wrongfully filed.

21 [c.] (c) Record not affected by correction statement. The filing of
22 a correction statement does not affect the effectiveness of an initial
23 financing statement or other filed record.

24 (cf: N.J.S.12A:9-518)

25

26 83. N.J.S.12A:9-519 is amended to read as follows:

27 12A:9-519. Numbering, Maintaining, and Indexing Records;
28 Communicating Information Provided in Records.

29 [a.] (a) Filing office duties. For each record filed in a filing office,
30 the filing office shall:

31 (1) assign a unique number to the filed record;

32 (2) create a record that bears the number assigned to the filed
33 record and the date and time of filing;

34 (3) maintain the filed record for public inspection; and

35 (4) index the filed record in accordance with subsections [c., d.,
36 and e. of this section] (c), (d) and (e).

37 [b.] (b) File number. A file number assigned after January 1,
38 2002, [shall] must include a digit that:

39 (1) is mathematically derived from or related to the other digits of
40 the file number; and

41 (2) aids the filing office in determining whether a number
42 communicated as the file number includes a single-digit or
43 transpositional error.

44 [c.] (c) Indexing: general. Except as otherwise provided in
45 subsections [d. and e. of this section] (d) and (e), the filing office
46 shall:

47 (1) index an initial financing statement according to the name of

1 the debtor and index all filed records relating to the initial financing
2 statement in a manner that associates with one another an initial
3 financing statement and all filed records relating to the initial financing
4 statement; and

5 (2) index a record that provides a name of a debtor which was not
6 previously provided in the financing statement to which the record
7 relates also according to the name that was not previously provided.

8 **[d.] (d)** Indexing: real-property-related financing statement. If a
9 financing statement is filed as a fixture filing or covers as-extracted
10 collateral or timber to be cut, the filing office shall index it:

11 (1) under the names of the debtor and of each owner of record
12 shown on the financing statement as if they were the mortgagors under
13 a mortgage of the real property described; and

14 (2) to the extent that the law of this State provides for indexing of
15 records or mortgages under the name of the mortgagees, under the
16 name of the secured party as if the secured party were the mortgagee
17 thereunder, or, if the indexing is by description, as if the financing
18 statement were a record of a mortgage of the real property described.

19 **[e.] (e)** Indexing: real-property-related assignment. If a financing
20 statement is filed as a fixture filing or covers as-extracted collateral or
21 timber to be cut, the filing office shall index an assignment filed under
22 12A:9-514 **[a.] (a)** or an amendment filed under 12A:9-514 **[b.] (b)**:

23 (1) under the name of the assignor as grantor; and

24 (2) to the extent that the law of this State provides for indexing a
25 record of the assignment of a mortgage under the name of the
26 assignee, under the name of the assignee.

27 **[f.] (f)** Retrieval and association capability. The filing office shall
28 maintain a capability:

29 (1) to retrieve a record by the name of the debtor and by the file
30 number assigned to the initial financing statement to which the record
31 relates; and

32 (2) to associate and retrieve with one another an initial financing
33 statement and each filed record relating to the initial financing
34 statement.

35 **[g.] (g)** Removal of debtor's name. The filing office may not
36 remove a debtor's name from the index until one year after the
37 effectiveness of a financing statement naming the debtor lapses under
38 12A:9-515 with respect to all secured parties of record.

39 **[h.] (h)** Timeliness of filing office performance. The filing office
40 shall perform the acts required by subsections **[a.] (a)** through **[e. of
41 this section] (e)** at the time and in the manner prescribed by
42 filing-office rule, but not later than two business days after the filing
43 office receives the record in question.

44 **[i.] (i)** Inapplicability to real property related filing office.
45 Subsections **[b. and h. of this section] (b) and (h)** do not apply to a
46 filing office described in 12A:9-501 **[a.] (a)** (1).

47 (cf: N.J.S.12A:9-519)

1 84. N.J.S.12A:9-520 is amended to read as follows:

2 12A:9-520. Acceptance and Refusal to Accept Record.

3 [a.] (a) Mandatory refusal to accept record. A filing office shall
4 refuse to accept a record for filing for a reason set forth in 12A:9-516

5 [b.] (b) and may refuse to accept a record for filing only for a reason
6 set forth in 12A:9-516 [b.] (b).

7 [b.] (b) Communication concerning refusal. If a filing office
8 refuses to accept a record for filing, it shall communicate to the person
9 [who] that presented the record the fact of and reason for the refusal
10 and the date and time the record would have been filed had the filing
11 office accepted it. The communication [shall] must be made at the
12 time and in the manner prescribed by filing-office rule but, in the case
13 of a filing office described in 12A:9-501 (a) (2), in no event more than
14 two business days after the filing office receives the record.

15 [c.] (c) When filed financing statement effective. A filed financing
16 statement satisfying 12A:9-502 [a. and b.] (a) and (b) is effective,
17 even if the filing office is required to refuse to accept it for filing under
18 subsection [a. of this section] (a). However, 12A:9-338 applies to a
19 filed financing statement providing information described in 12A:9-516
20 [b.] (b) (5) which is incorrect at the time the financing statement is
21 filed.

22 [d.] (d) Separate application to multiple debtors. If a record
23 communicated to a filing office provides information that relates to
24 more than one debtor, this part applies as to each debtor separately.
25 (cf: N.J.S.12A:9-520)

26

27 85. N.J.S.12A:9-521 is amended to read as follows:

28 12A:9-521. Uniform Form of Written Financing Statement and
29 Amendment.

30 [a.] (a) Initial financing statement form. A filing office that
31 accepts written records may not refuse to accept a written initial
32 financing statement in the following form and format except for a
33 reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADD'L INFO RE 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any

ORGANIZATION DEBTOR NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any

ORGANIZATION DEBTOR NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum 7. Check to REQUIRES SEARCH REPORT(S) on Debtor(s) (if applicable) ADDITIONAL FEE? optional All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only org name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only org name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

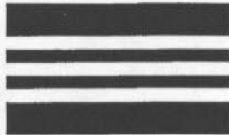
15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check *only* if applicable and check *only* one box.
Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check *only* if applicable and check *only* one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction — effective 30 years
 Filed in connection with a Public-Finance Transaction — effective 30 years

1 [b.] (b) Amendment form. A filing office that accepts written
2 records may not refuse to accept a written record in the following
3 form and format except for a reason set forth in 12A:9-516 [b.] (b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, if applicable.

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE
--------------------------	----------------------------------	--------------------------	----------------------------------	---

8. AMENDMENT (COLLATERAL CHANGE); check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
----------------------------	------------	-------------	--------

10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 3 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 (cf: N.J.S.12A:9-521)

2

3 86. N.J.S.12A:9-522 is amended to read as follows:

4 12A:9-522. Maintenance and Destruction of Records.

5 [a.] (a) Post-lapse maintenance and retrieval of information.

6 The filing office shall maintain a record of the information provided
7 in a filed financing statement for at least one year after the
8 effectiveness of the financing statement has lapsed under 12A:9-515
9 with respect to all secured parties of record. The record ¹[shall]
10 must¹ be retrievable by using the name of the debtor and [;

11 (1) if the record was filed in the filing office described in 12A:9-
12 501 a. (1),] by using the file number assigned to the initial financing
13 statement to which the record relates [and the date that record was
14 filed; or

15 (2) if the record was filed in the office described in 12A:9-501 a.
16 (2), by using the file number assigned to the initial financing
17 statement to which the record relates] .

18 [b.] (b) Destruction of written records. Except to the extent
19 that a statute governing disposition of public records provides
20 otherwise, the filing office immediately may destroy any written
21 record evidencing a financing statement. However, if the filing
22 office destroys a written record, it shall maintain another record of
23 the financing statement which complies with subsection [a. of this
24 section] (a).

25 (cf: N.J.S.12A:9-522)

26

27 87. N.J.S.12A:9-523 is amended to read as follows:

28 12A:9-523. Information from Filing Office; Sale or License of
29 Records.

30 [a.] (a) Acknowledgment of filing written record. If a person
31 [who] that files a written record requests an acknowledgment of the
32 filing, the filing office shall send to the person an image of the
33 record showing the number assigned to the record pursuant to
34 12A:9-519 [a.] (a) (1) and the date and time of the filing of the
35 record. However, if the person furnishes a copy of the record to the
36 filing office, the filing office may instead:

37 (1) note upon the copy the number assigned to the record
38 pursuant to 12A:9-519 [a.] (a) (1) and the date and time of the
39 filing of the record; and

40 (2) send the copy to the person.

41 [b.] (b) Acknowledgment of filing other record. If a person files
42 a record other than a written record, the filing office shall
43 communicate to the person an acknowledgment that provides:

44 (1) the information in the record;

45 (2) the number assigned to the record pursuant to 12A:9-519 [a.]

1 (a) (1); and

2 (3) the date and time of the filing of the record.

3 **[c.]** (c) Communication of requested information. The filing
4 office shall communicate or otherwise make available in a record the
5 following information to any person **[who]** that requests it:

6 (1) whether there is on file on a date and time specified by the
7 filing office, but not a date earlier than three business days before
8 the filing office receives the request, any financing statement that:

9 **[(a)]** (A) designates a particular debtor or, if the request so
10 states, designates a particular debtor at the address specified in the
11 request;

12 **[(b)]** (B) has not lapsed under 12A:9-515 with respect to all
13 secured parties of record; and

14 **[(c)]** (C) if the request so states, has lapsed under 12A:9-515
15 and a record of which is maintained by the filing office under
16 12A:9-522 **[a.]** (a);

17 (2) the date and time of filing of each financing statement; and

18 (3) the information provided in each financing statement.

19 **[d.]** (d) Medium for communicating information. In complying
20 with its duty under subsection **[c. of this section]** (c), the filing
21 office may communicate information in any medium. However, if
22 requested, the filing office shall communicate information by issuing
23 **[its written certificate as]** a record that can be admitted into
24 evidence in the courts of this State without extrinsic evidence of its
25 authenticity.

26 **[e.]** (e) Timeliness of filing office performance. The filing office
27 shall perform the acts required by subsections **[a.]** (a) through **[d.**
28 **of this section]** (d) at the time and in the manner prescribed by
29 filing-office rule, but not later than two business days after the filing
30 office receives the request.

31 **[f.]** (f) Public availability of records. At least weekly, the
32 Secretary of State shall offer to sell or license to the public on a
33 nonexclusive basis, in bulk, copies of all records filed in it under this
34 part, in every medium from time to time available to the filing office.
35 (cf: N.J.S.12A:9-523)

36

37 88. N.J.S.12A:9-524 is amended to read as follows:

38 12A:9-524. Delay by Filing Office.

39 Delay by the filing office beyond a time limit prescribed by this
40 part is excused if:

41 **[a.]** (1) the delay is caused by interruption of communication or
42 computer facilities, war, emergency conditions, failure of equipment,
43 or other circumstances beyond control of the filing office; and

44 **[b.]** (2) the filing office exercises reasonable diligence under the
45 circumstances.

1 (cf: N.J.S.12A:9-524)

2 89. N.J.S.12A:9-525 is amended to read as follows:

3 12A:9-525. Fees.

4 [a.] (a) Initial financing statement or other record: general rule.

5 [The] Except as otherwise provided in subsection (d), the fees for
6 filing and indexing records under this part are:

7 (1) \$25 for financing statement;

8 (2) \$25 for continuation statement;

9 (3) \$25 for amendment statement;

10 (4) \$25 for partial release;

11 (5) \$25 for assignment;

12 (6) \$25 termination statement; and

13 (7) \$1 for copy of any filed financing statement.

14 [b.] (b) Number of names. [The] Except as otherwise provided
15 in subsection (d), the number of names required to be indexed does
16 not affect the amount of the fee in subsection [a. of this section]
17 (a).

18 [c.] (c) Response to information request. The fee for
19 responding to a request for information from the filing office,
20 including for issuing a certificate of search showing whether there is
21 on file any financing statement naming a particular debtor, is \$25.

22 [d.] (d) Record of mortgage. This section does not require a fee
23 with respect to a record of mortgage which is effective as a
24 financing statement filed as a fixture filing or as a financing
25 statement covering as-extracted collateral or timber to be cut under
26 12A:9-502 [c.] (c). However, the recording and satisfaction fees
27 that otherwise would be applicable to the record of the mortgage
28 apply.

29 (cf: N.J.S.12A:9-525)

30

31 90. N.J.S.12A:9-526 is amended to read as follows:

32 12A:9-526. Filing-Office Rules.

33 [a.] (a) Adoption of filing-office rules. The Division of
34 Commercial Recording or other office designated by Executive
35 Order [may] shall adopt and publish rules to implement this chapter.

36 The filing-office rules [shall] must be:

37 (1) consistent with this chapter; and

38 (2) adopted and published in accordance with the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 [b.] (b) Harmonization of rules. To keep the filing-office rules
41 and practices of the filing office in harmony with the rules and
42 practices of filing offices in other jurisdictions that enact
43 substantially this part, and to keep the technology used by the filing
44 office compatible with the technology used by filing offices in other
45 jurisdictions that enact substantially this part, the Division of

1 Commercial Recording, so far as is consistent with the purposes,
2 policies, and provisions of this chapter, in adopting, amending, and
3 repealing filing-office rules, shall:

4 (1) consult with filing offices in other jurisdictions that enact
5 substantially this part; and

6 (2) consult the most recent version of the Model Rules
7 promulgated by the International Association of Corporate
8 Administrators or any successor organization; and

9 (3) take into consideration the rules and practices of, and the
10 technology used by, filing offices in other jurisdictions that enact
11 substantially this part.

12 (cf: N.J.S.12A:9-526)

13

14 91. N.J.S.12A:9-601 is amended to read as follows:

15 12A:9-601. Rights After Default; Judicial Enforcement;
16 Consignor or Buyer of Accounts, Chattel Paper, Payment
17 Intangibles, or Promissory Notes.

18 [a.] (a) Rights of secured party after default. After default, a
19 secured party has the rights provided in this part and, except as
20 otherwise provided in 12A:9-602, those provided by agreement of
21 the parties. A secured party:

22 (1) may reduce a claim to judgment, foreclose, or otherwise
23 enforce the claim, security interest, or agricultural lien by any
24 available judicial procedure; and

25 (2) if the collateral is documents, may proceed either as to the
26 documents or as to the goods they cover.

27 [b.] (b) Rights and duties of secured party in possession or
28 control. A secured party in possession of collateral or control of
29 collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107
30 has the rights and duties provided in [12A:9-208] 12A:9-207.

31 [c.] (c) Rights cumulative; simultaneous exercise. The rights
32 under subsections [a. and b. of this section] (a) and (b) are
33 cumulative and may be exercised simultaneously.

34 [d.] (d) Rights of debtor and obligor. Except as otherwise
35 provided in subsection [g. of this section] (g) and 12A:9-605, after
36 default, a debtor and an obligor have the rights provided in this part
37 and by agreement of the parties.

38 [e.] (e) Lien of levy after judgment. If a secured party has
39 reduced its claim to judgment, the lien of any levy that may be made
40 upon the collateral by virtue of an execution based upon the
41 judgment relates back to the earliest of:

42 (1) the date of perfection of the security interest or agricultural
43 lien in the collateral;

44 (2) the date of filing a financing statement covering the
45 collateral; or

46 (3) any date specified in a statute under which the agricultural

1 lien was created.

2 [f.] (f) Execution sale. A sale pursuant to an execution is a
3 foreclosure of the security interest or agricultural lien by judicial
4 procedure within the meaning of this section. A secured party may
5 purchase at the sale and thereafter hold the collateral free of any
6 other requirements of this chapter.

7 [g.] (g) Consignor or buyer of certain rights to payment.
8 Except as otherwise provided in 12A:9-607 [c.] (c), this part
9 imposes no duties upon a secured party that is a consignor or is a
10 buyer of accounts, chattel paper, payment intangibles, or promissory
11 notes.

12 (cf: N.J.S.12A:9-601)

13

14 92. N.J.S.12A:9-602 is amended to read as follows:

15 12A:9-602. Waiver and Variance of Rights and Duties.

16 Except as otherwise provided in 12A:9-624, to the extent that
17 they give rights to a debtor or obligor and impose duties on a
18 secured party, the debtor or obligor may not waive or vary the rules
19 stated in the following listed sections:

20 (1) [12A:9-208b.(4) (c)] 12A:9-207 (b) (4) (C), which deals
21 with use and operation of the collateral by the secured party;

22 (2) [12A:9-211] 12A:9-210, which deals with requests for an
23 accounting and requests concerning a list of collateral and statement
24 of account;

25 (3) 12A:9-607 [c.] (c), which deals with collection and
26 enforcement of collateral;

27 (4) 12A:9-608 [a.] (a), and 12A:9-615 [c.] (c) to the extent
28 that they deal with application or payment of noncash proceeds of
29 collection, enforcement, or disposition;

30 (5) 12A:9-608 [a.] (a) and 12A:9-615 [d.] (d) to the extent that
31 they require accounting for or payment of surplus proceeds of
32 collateral;

33 (6) 12A:9-609 to the extent that it imposes upon a secured party
34 that takes possession of collateral without judicial process the duty
35 to do so without breach of the peace;

36 (7) 12A:9-610 [b.] (b), 12A:9-611, 12A:9-613 and 12A:9-614,
37 which deal with disposition of collateral;

38 (8) 12A:9-615 [f.] (f), which deals with calculation of a
39 deficiency or surplus when a disposition is made to the secured
40 party, a person related to the secured party, or a secondary obligor;

41 (9) 12A:9-616, which deals with explanation of the calculation of
42 a surplus or deficiency;

43 (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with
44 acceptance of collateral in satisfaction of obligation;

45 (11) 12A:9-623, which deals with redemption of collateral;

1 (12) 12A:9-624, which deals with permissible waivers; and
2 (13) 12A:9-625 and 12A:9-626, which deal with the secured
3 party's liability for failure to comply with this chapter.
4 (cf: N.J.S.12A:9-602)

5
6 93. N.J.S.12A:9-603 is amended to read as follows:
7 12A:9-603. Agreement on Standards Concerning Rights and
8 Duties.

9 [a.] (a) Agreed standards. The parties may determine by
10 agreement the standards measuring the fulfillment of the rights of a
11 debtor or obligor and the duties of a secured party under a rule
12 stated in 12A:9-602 if the standards are not manifestly unreasonable.

13 [b.] (b) Agreed standards inapplicable to breach of peace.
14 Subsection [a. of this section] (a) does not apply to the duty under
15 12A:9-609 to refrain from breaching the peace.
16 (cf: N.J.S.12A:9-603)

17
18 94. N.J.S.12A:9-604 is amended to read as follows:
19 12A:9-604. Procedure If Security Agreement Covers Real
20 Property or Fixtures.

21 [a.] (a) Enforcement: personal and real property. If a security
22 agreement covers both personal and real property, a secured party
23 may proceed:

24 (1) under this part as to the personal property without
25 prejudicing any rights with respect to the real property; or

26 (2) as to both the personal property and the real property in
27 accordance with the rights with respect to the real property, in
28 which case the other provisions of this part do not apply.

29 [b.] (b) Enforcement: fixtures. Subject to subsection [c. of this
30 section] (c), if a security agreement covers goods that are or
31 become fixtures, a secured party may proceed:

32 (1) under this part; or

33 (2) in accordance with the rights with respect to real property, in
34 which case the other provisions of this part do not apply.

35 [c.] (c) Removal of fixtures. Subject to the other provisions of
36 this part, if a secured party holding a security interest in fixtures has
37 priority over all owners and encumbrancers of the real property, the
38 secured party, after default, may remove the collateral from the real
39 property.

40 [d.] (d) Injury caused by removal. A secured party that removes
41 collateral shall promptly reimburse any encumbrancer or owner of
42 the real property, other than the debtor, for the cost of repair of any
43 physical injury caused by the removal. The secured party need not
44 reimburse the encumbrancer or owner for any diminution in value of
45 the real property caused by the absence of the goods removed or by
46 any necessity of replacing them. A person entitled to reimbursement

1 may refuse permission to remove until the secured party gives
2 adequate assurance for the performance of the obligation to
3 reimburse.

4 (cf: N.J.S.12A:9-604)

5

6 95. N.J.S.12A:9-605 is amended to read as follows:

7 12A:9-605. Unknown Debtor or Secondary Obligor.

8 A secured party does not owe a duty based on its status as
9 secured party:

10 [a.] (1) to a person who is a debtor or obligor, unless the
11 secured party knows:

12 [(1)] (A) that the person is a debtor or obligor;

13 [(2)] (B) the identity of the person; and

14 [(3)] (C) how to communicate with the person; or

15 [b.] (2) to a secured party or lienholder that has filed a financing
16 statement against a person, unless the secured party knows:

17 [(1)] (A) that the person is a debtor; and

18 [(2)] (B) the identity of the person.

19 (cf: N.J.S.12A:9-605)

20

21 96. N.J.S.12A:9-607 is amended to read as follows:

22 12A:9-607. Collection and Enforcement by Secured Party.

23 [a.] (a) Collection and enforcement generally. If so agreed, and
24 in any event after default, a secured party:

25 (1) may notify an account debtor or other person obligated on
26 collateral to make payment or otherwise render performance to or
27 for the benefit of the secured party;

28 (2) may take any proceeds to which the secured party is entitled
29 under 12A:9-315;

30 (3) may enforce the obligations of an account debtor or other
31 person obligated on collateral and exercise the rights of the debtor
32 with respect to the obligation of the account debtor or other person
33 obligated on collateral to make payment or otherwise render
34 performance to the debtor, and with respect to any property that
35 secures the obligation of the account debtor or other person
36 obligated on the collateral;

37 (4) if it holds a security interest in a deposit account perfected by
38 control under 12A:9-104 [a.] (a) (1), may apply the balance of the
39 deposit account to the obligation secured by the deposit account;
40 and

41 (5) if it holds a security interest in a deposit account perfected by
42 control under 12A:9-104 [a.] (a) (2) or (3), may instruct the bank
43 to pay the balance of the deposit account to or for the benefit of the
44 secured party.

45 [b.] (b) Nonjudicial enforcement of mortgage. If necessary to

1 enable a secured party to exercise under subsection (a) (3) the right
2 of a debtor to enforce a mortgage nonjudicially [under paragraph
3 (3) of subsection a. of this section], the secured party may record in
4 the office in which a record of the mortgage is recorded:

5 (1) a copy of the security agreement that creates or provides for
6 a security interest in the obligation secured by the mortgage; and

7 (2) the secured party's sworn affidavit in recordable form stating
8 that:

9 [(a)] (A) a default has occurred; and

10 [(b)] (B) the secured party is entitled to enforce the mortgage
11 nonjudicially.

12 [(c)] (c) Commercially reasonable collection and enforcement. A
13 secured party shall proceed in a commercially reasonable manner if
14 the secured party:

15 (1) undertakes to collect from or enforce an obligation of an
16 account debtor or other person obligated on collateral; and

17 (2) is entitled to charge back uncollected collateral or otherwise
18 to full or limited recourse against the debtor or a secondary obligor.

19 [(d)] (d) Expenses of collection and enforcement. A secured
20 party may deduct from the collections made pursuant to subsection
21 [c. of this section] (c), reasonable expenses of collection and
22 enforcement, including reasonable attorney's fees and legal expenses
23 incurred by the secured party.

24 [(e)] (e) Duties to secured party not affected. This section does
25 not determine whether an account debtor, bank, or other person
26 obligated on collateral owes a duty to a secured party.

27 (cf: N.J.S.12A:9-607)

28
29 97. N.J.S.12A:9-608 is amended to read as follows:

30 12A:9-608. Application of Proceeds of Collection or
31 Enforcement; Liability for Deficiency and Right to Surplus.

32 [(a)] (a) Application of proceeds, surplus, and deficiency if
33 obligation secured. If a security interest or agricultural lien secures
34 payment or performance of an obligation, the following rules apply:

35 (1) A secured party shall apply or pay over for application the
36 cash proceeds of collection or enforcement under [this section]
37 12A:9-607 in the following order to:

38 [(a)] (A) the reasonable expenses of collection and enforcement
39 and, to the extent provided for by agreement and not prohibited by
40 law, reasonable attorney's fees and legal expenses incurred by the
41 secured party;

42 [(b)] (B) the satisfaction of obligations secured by the security
43 interest or agricultural lien under which the collection or
44 enforcement is made; and

45 [(c)] (C) the satisfaction of obligations secured by any

1 subordinate security interest in or other lien on the collateral subject
2 to the security interest or agricultural lien under which the collection
3 or enforcement is made if the secured party receives an
4 authenticated demand for proceeds before distribution of the
5 proceeds is completed.

6 (2) If requested by a secured party, a holder of a subordinate
7 security interest or other lien shall furnish reasonable proof of the
8 interest or lien within a reasonable time. Unless the holder complies,
9 the secured party need not comply with the holder's demand under
10 [subparagraph (c) of] paragraph (1) ~~(C)~~ [of this subsection].

11 (3) A secured party need not apply or pay over for application
12 noncash proceeds of collection and enforcement under [this section]
13 12A:9-607 unless the failure to do so would be commercially
14 unreasonable. A secured party that applies or pays over for
15 application noncash proceeds shall do so in a commercially
16 reasonable manner.

17 (4) A secured party shall account to and pay a debtor for any
18 surplus, and the obligor is liable for any deficiency.

19 [b.] (b) No surplus or deficiency in sales of certain rights to
20 payment. If the underlying transaction is a sale of accounts, chattel
21 paper, payment intangibles, or promissory notes, the debtor is not
22 entitled to any surplus, and the obligor is not liable for any
23 deficiency.

24 (cf: N.J.S.12A:9-608)

25

26 98. N.J.S.12A:9-609 is amended to read as follows:

27 12A:9-609. Secured Party's Right to Take Possession after
28 Default.

29 [a.] (a) Possession; rendering equipment unusable; disposition
30 on debtor's premises. After default, a secured party:

31 (1) may take possession of the collateral; and

32 (2) without removal, may render equipment unusable and dispose
33 of collateral on a debtor's premises under 12A:9-610.

34 [b.] (b) Judicial and nonjudicial process. A secured party may
35 proceed under subsection [a.] (a):

36 (1) pursuant to judicial process; or

37 (2) without judicial process, if it proceeds without breach of the
38 peace.

39 [c.] (c) Assembly of collateral. If so agreed, and in any event
40 after default, a secured party may require the debtor to assemble the
41 collateral and make it available to the secured party at a place to be
42 designated by the secured party which is reasonably convenient to
43 both parties.

44 (cf: N.J.S.12A:9-609)

45

46 99. N.J.S.12A:9-610 is amended to read as follows:

1 12A:9-610. Disposition of Collateral after Default.

2 [a.] (a) Disposition after default. After default, a secured party
3 may sell, lease, license, or otherwise dispose of any or all of the
4 collateral in its present condition or following any commercially
5 reasonable preparation or processing.

6 [b.] (b) Commercially reasonable disposition. Every aspect of a
7 disposition of collateral, including the method, manner, time, place,
8 and other terms, [shall] must be commercially reasonable. If
9 commercially reasonable, a secured party may dispose of collateral
10 by public or private proceedings, by one or more contracts, as a unit
11 or in parcels, and at any time and place and on any terms.

12 [c.] (c) Purchase by secured party. A secured party may
13 purchase collateral:

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that
16 is customarily sold on a recognized market or the subject of widely
17 distributed standard price quotations.

18 [d.] (d) Warranties on disposition. A contract for sale, lease,
19 license, or other disposition includes the warranties relating to title,
20 possession, quiet enjoyment, and the like which by operation of law
21 accompany a voluntary disposition of property of the kind subject to
22 the contract.

23 [e.] (e) Disclaimer of warranties. A secured party may disclaim
24 or modify warranties under subsection [d. of this section] (d):

25 (1) in a manner that would be effective to disclaim or modify the
26 warranties in a voluntary disposition of property of the kind subject
27 to the contract of disposition; or

28 (2) by communicating to the purchaser a record evidencing the
29 contract for disposition and including an express disclaimer or
30 modification of the warranties.

31 [f.] (f) Record sufficient to disclaim warranties. A record is
32 sufficient to disclaim warranties under subsection [e. of this section]
33 (e) if it indicates "There is no warranty relating to title, possession,
34 quiet enjoyment, or the like in this disposition" or uses words of
35 similar import.

36 (cf: N.J.S.12A:9-610)

37

38 100. N.J.S.12A:9-611 is amended to read as follows:

39 12A:9-611. Notification Before Disposition of Collateral.

40 [a.] (a) "Notification date." In this section, "notification date"
41 means the earlier of the date on which:

42 (1) a secured party sends to the debtor and any secondary
43 obligor an authenticated notification of disposition; or

44 (2) the debtor and any secondary obligor waive the right to
45 notification.

1 **[b.] (b)** Notification of disposition required. Except as
2 otherwise provided in subsection **[d. of this section] (d)**, a secured
3 party that disposes of collateral under 12A:9-610 shall send to the
4 persons specified in subsection **[c. of this section] (c)** a reasonable
5 authenticated notification of disposition.

6 **[c.] (c)** Persons to be notified. To comply with subsection **[b.**
7 **of this section] (b)**, the secured party shall send an authenticated
8 notification of disposition to:

- 9 (1) the debtor;
- 10 (2) any secondary obligor; and
- 11 (3) if the collateral is other than consumer goods:

12 **[(a)] (A)** any other person from which the secured party has
13 received, before the notification date, an authenticated notification
14 of a claim of an interest in the collateral;

15 **[(b)] (B)** any other secured party or lienholder that, 10 days
16 before the notification date, held a security interest in or other lien
17 on the collateral perfected by the filing of a financing statement that:

- 18 (i) identified the collateral;
- 19 (ii) was indexed under the debtor's name as of that date; and
- 20 (iii) was filed in the office in which to file a financing statement
21 against the debtor covering the collateral as of that date; and

22 **[(c)] (C)** any other secured party that, 10 days before the
23 notification date, held a security interest in the collateral perfected
24 by compliance with a statute, regulation, or treaty described in
25 12A:9-311 **[a.] (a)**.

26 **[d.] (d)** Subsection **[b.] (b)** inapplicable: perishable collateral;
27 recognized market. Subsection **[b. of this section] (b)** does not
28 apply if the collateral is perishable or threatens to decline speedily in
29 value or is of a type customarily sold on a recognized market.

30 **[e.] (e)** Compliance with subsection **[c. paragraph (3)**
31 **subparagraph (b)] (c) (3) (B)**. A secured party complies with the
32 requirement for notification prescribed by subsection **[c. paragraph**
33 **(3) subparagraph (b) of this section] (c) (3) (B)** if:

- 34 (1) not later than 20 days or earlier than 30 days before the
35 notification date, the secured party requests, in a commercially
36 reasonable manner, information concerning financing statements
37 indexed under the debtor's name in the office indicated in **[that]**
38 subsection **[c. paragraph (3) subparagraph (b)] (c) (3) (B)**; and

- 39 (2) before the notification date, the secured party:

40 **[(a)] (A)** did not receive a response to the request for
41 information; or

42 **[(b)] (B)** received a response to the request for information and
43 sent an authenticated notification of disposition to each secured
44 party or other lienholder named in that response whose financing
45 statement covered the collateral.

1 (cf: N.J.S.12A:9-611)

2

3 101. N.J.S.12A:9-612 is amended to read as follows:

4 12A:9-612. Timeliness of Notification Before Disposition of
5 Collateral.

6 [a.] (a) Reasonable time is question of fact. Except as otherwise
7 provided in subsection [b. of this section] (b), whether a
8 notification is sent within a reasonable time is a question of fact.

9 [b.] (b) 10-day period sufficient in non-consumer transaction.
10 In a transaction other than a consumer transaction, a notification of
11 disposition sent after default and 10 days or more before the earliest
12 time of disposition set forth in the notification is sent within a
13 reasonable time before the disposition.

14 (cf: N.J.S.12A:9-612)

15

16 102. N.J.S.12A:9-613 is amended to read as follows:

17 12A:9-613. Contents and Form of Notification Before
18 Disposition of Collateral: General.

19 Except in a consumer-goods transaction, the following rules
20 apply:

21 [a.] (1) The contents of a notification of disposition are
22 sufficient if the notification:

23 [(1)] (A) describes the debtor and the secured party;

24 [(2)] (B) describes the collateral that is the subject of the
25 intended disposition;

26 [(3)] (C) states the method of intended disposition;

27 [(4)] (D) states that the debtor is entitled to an accounting of
28 the unpaid indebtedness and states the charge, if any, for an
29 accounting; and

30 [(5)] (E) states the time and place of a public [sale] disposition
31 or the time after which any other disposition is to be made.

32 [b.] (2) Whether the contents of a notification that lacks any of
33 the information specified in [subsection a. of this section] paragraph
34 (1) are nevertheless sufficient is a question of fact.

35 [c.] (3) The contents of a notification providing substantially the
36 information specified in [subsection a.] paragraph (1) are sufficient,
37 even if the notification includes:

38 [(1)] (A) information not specified by that paragraph; or

39 [(2)] (B) minor errors that are not seriously misleading.

40 [d.] (4) A particular phrasing of the notification is not required.

41 [e.] (5) The following form of notification and the form
42 appearing in 12A:9-614 [c.] (3), when completed, each provides
43 sufficient information:

1 NOTIFICATION OF DISPOSITION OF COLLATERAL
2 To: (Name of debtor, obligor, or other person to which the
3 notification is sent)
4 From: (Name, address, and telephone number of secured party)
5 Name of Debtor(s): (Include only if debtor(s) are not an addressee)
6 (For a public disposition:)
7 We will sell or lease or license, as applicable the (describe collateral)
8 to the highest qualified bidder in public as follows:
9 Day and Date:
10 Time:
11 Place:
12 (For a private disposition:)
13 We will sell or lease or license, as applicable the (describe collateral)
14 privately sometime after (day and date).
15 You are entitled to an accounting of the unpaid indebtedness
16 secured by the property that we intend to sell (or lease or license, as
17 applicable) (for a charge of \$ _____). You may request
18 an accounting by calling us at (telephone number)
19 (End of Form)
20 (cf: N.J.S.12A:9-613)
21

22 103. N.J.S.12A:9-614 is amended to read as follows:
23 12A:9-614. Contents and Form of Notification Before
24 Disposition of Collateral: Consumer-goods Transaction.
25 In a consumer-goods transaction, the following rules apply:
26 [a.] (1) A notification of disposition [shall] must provide the
27 following information:
28 [(1)] (A) the information specified in 12A:9-613 [a.] (1);
29 [(2)] (B) a description of any liability for a deficiency of the
30 person to which the notification is sent;
31 [(3)] (C) a telephone number from which the amount that
32 [shall] must be paid to the secured party to redeem the collateral
33 under 12A:9-623 is available; and
34 [(4)] (D) a telephone number or mailing address from which
35 additional information concerning the disposition and the obligation
36 secured is available.
37 [b.] (2) A particular phrasing of the notification is not required.
38 [c.] (3) The following form of notification, when completed,
39 provides sufficient information:
40 (Name and address of secured party)
41 (Date)
42

43 NOTICE OF OUR PLAN TO SELL PROPERTY
44 (Name and address of any obligor who is also a debtor)
45 Subject: (Identification of Transaction)
46 We have your (describe collateral), because you broke promises in

1 our agreement.
2 (For a public disposition:)
3 We will sell (describe collateral) at public sale. A sale could include
4 a lease or license. The sale will be held as follows:
5 Date:
6 Time:
7 Place:
8 You may attend the sale and bring bidders if you want.
9 (For a private disposition:)
10 We will sell (describe collateral) at private sale sometime after
11 (date). A sale could include a lease or license.
12 The money that we get from the sale (after paying our costs) will
13 reduce the amount you owe. If we get less money than you owe,
14 you (will or will not, as applicable) still owe us the difference. If we
15 get more money than you owe, you will get the extra money, unless
16 we must pay it to someone else.
17 You can get the property back at any time before we sell it by
18 paying us the full amount you owe (not just the past due payments),
19 including our expenses. To learn the exact amount you must pay,
20 call us at (telephone number).
21 If you want us to explain to you in writing how we have figured the
22 amount that you owe us, you may call us at (telephone number) or
23 write us at (secured party's address) and request a written
24 explanation. We will charge you \$ for the explanation if
25 we sent you another written explanation of the amount you owe us
26 within the last six months.
27 If you need more information about the sale call us at (telephone
28 number) or write us at (secured party's address).
29 We are sending this notice to the following other people who have
30 an interest in (describe collateral) or who owe money under your
31 agreement:
32 (Names of all other debtors and obligors, if any.)
33 (End of Form)
34 [d.] (4) A notification in the form of [subsection c. of this
35 section] paragraph (3) is sufficient, even if additional information
36 appears at the end of the form.
37 [e.] (5) A notification in the form of [subsection c.] paragraph
38 (3) is sufficient, even if it includes errors in information not required
39 by [subsection a. of this section] paragraph (1), unless the error is
40 misleading with respect to rights arising under this chapter.
41 [f.] (6) If a notification under this section is not in the form of
42 [subsection c.] paragraph (3), law other than this chapter
43 determines the effect of including information not required by
44 [subsection a. of this section] paragraph (1).
45 (cf: N.J.S.12A:9-614)

1 104. N.J.S.12A:9-615 is amended to read as follows:
2 12A:9-615. Application of Proceeds of Disposition; Liability for
3 Deficiency and Right to Surplus.

4 [a.] (a) Application of proceeds. A secured party shall apply or
5 pay over for application the cash proceeds of disposition under
6 12A:9-610 in the following order:

7 (1) the reasonable expenses of retaking, holding, preparing for
8 disposition, processing, and disposing, and, to the extent provided
9 for by agreement and not prohibited by law, reasonable attorney's
10 fees and legal expenses incurred by the secured party;

11 (2) the satisfaction of obligations secured by the security interest
12 or agricultural lien under which the disposition is made;

13 (3) the satisfaction of obligations secured by any subordinate
14 security interest in or other subordinate lien on the collateral if:

15 [(a)] (A) the secured party receives from the holder of the
16 subordinate security interest or other lien an authenticated demand
17 for proceeds before distribution of the proceeds is completed; and

18 [(b)] (B) in a case in which a consignor has an interest in the
19 collateral, the subordinate security interest or other lien is senior to
20 the interest of the consignor; and

21 (4) a secured party that is a consignor of the collateral if the
22 secured party receives from the consignor an authenticated demand
23 for proceeds before distribution of the proceeds is completed.

24 [b.] (b) Proof of subordinate interest. If requested by a secured
25 party, a holder of a subordinate security interest or other lien shall
26 furnish reasonable proof of the interest or lien within a reasonable
27 time. Unless the holder does so, the secured party need not comply
28 with the holder's demand under [paragraph (3) of] subsection [a. of
29 this section] (a)(3).

30 [c.] (c) Application of noncash proceeds. A secured party need
31 not apply or pay over for application noncash proceeds of
32 disposition under [this section] 12A:9-610 unless the failure to do
33 so would be commercially unreasonable. A secured party that
34 applies or pays over for application noncash proceeds shall do so in
35 a commercially reasonable manner.

36 [d.] (d) Surplus or deficiency if obligation secured. If the
37 security interest under which a disposition is made secures payment
38 or performance of an obligation, after making the payments and
39 applications required by subsection [a.] (a) and permitted by
40 subsection [c. of this section] (c):

41 (1) unless [paragraph (4) of] subsection [a.] (a)(4) requires the
42 secured party to apply or pay over cash proceeds to a consignor, the
43 secured party shall account to and pay a debtor for any surplus; and

44 (2) the obligor is liable for any deficiency.

45 [e.] (e) No surplus or deficiency in sales of certain rights to

1 payment. If the underlying transaction is a sale of accounts, chattel
2 paper, payment intangibles, or promissory notes:

3 (1) the debtor is not entitled to any surplus; and

4 (2) the obligor is not liable for any deficiency.

5 **[f.] (f)** Calculation of surplus or deficiency in disposition to
6 person related to secured party. The surplus or deficiency following
7 a disposition is calculated based on the amount of proceeds that
8 would have been realized in a disposition complying with this part to
9 a transferee other than the secured party, a person related to the
10 secured party, or a secondary obligor if:

11 (1) the transferee in the disposition is the secured party, a person
12 related to the secured party, or a secondary obligor; and

13 (2) the amount of proceeds of the disposition is significantly
14 below the range of proceeds that a complying disposition to a person
15 other than the secured party, a person related to the secured party,
16 or a secondary obligor would have brought.

17 **[g.] (g)** Cash proceeds received by junior secured party. A
18 secured party that receives cash proceeds of a disposition in good
19 faith and without knowledge that the receipt violates the rights of
20 the holder of a security interest or other lien that is not subordinate
21 to the security interest or agricultural lien under which the
22 disposition is made:

23 (1) takes the cash proceeds free of the security interest or other
24 lien;

25 (2) is not obligated to apply the proceeds of the disposition to
26 the satisfaction of obligations secured by the security interest or
27 other lien; and

28 (3) is not obligated to account to or pay the holder of the
29 security interest or other lien for any surplus.

30 (cf: N.J.S.12A:9-615)

31

32 105. N.J.S.12A:9-616 is amended to read as follows:

33 12A:9-616. Explanation of Calculation of Surplus or Deficiency.

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

35 (1) "Explanation" means a writing that:

36 **[(a)] (A)** states the amount of the surplus or deficiency;

37 **[(b)] (B)** provides an explanation, in accordance with subsection
38 **[c. of this section] (c)** of how the secured party calculated the
39 surplus or deficiency;

40 **[(c)] (C)** states, if applicable, that future debits, credits, charges,
41 including additional credit service charges or interest, rebates, and
42 expenses may affect the amount of the surplus or deficiency; and

43 **[(d)] (D)** provides a telephone number or mailing address from
44 which additional information concerning the transaction is available.

45 (2) "Request" means a record:

- 1 [(a)] (A) authenticated by a debtor or consumer obligor;
- 2 [(b)] (B) requesting that the recipient provide an explanation;
- 3 and
- 4 [(c)] (C) sent after disposition of the collateral under
- 5 12A:9-610.
- 6 [b.] (b) Explanation of calculation. In a consumer-goods
- 7 transaction in which the debtor is entitled to a surplus or a consumer
- 8 obligor is liable for a deficiency under 12A:9-615, the secured party
- 9 shall:
- 10 (1) send an explanation to the debtor or consumer obligor, as
- 11 applicable, after the disposition and:
- 12 [(a)] (A) before or when the secured party accounts to the
- 13 debtor and pays any surplus or first makes written demand on the
- 14 consumer obligor after the disposition for payment of the deficiency;
- 15 and
- 16 [(b)] (B) within 14 days after receipt of a request; or
- 17 (2) in the case of a consumer obligor who is liable for a
- 18 deficiency, within 14 days after receipt of a request, send to the
- 19 consumer obligor a record waiving the secured party's right to a
- 20 deficiency.
- 21 [c.] (c) Required information. To comply with subsection [a.
- 22 paragraph (1) subparagraph (b)] (a) (1) (B), a writing [shall] must
- 23 provide the following information in the following order:
- 24 (1) the aggregate amount of obligations secured by the security
- 25 interest under which the disposition was made, and, if the amount
- 26 reflects a rebate of unearned interest or credit service charge, an
- 27 indication of that fact, calculated as of a specified date:
- 28 [(a)] (A) if the secured party takes or receives possession of the
- 29 collateral after default, not more than 35 days before the secured
- 30 party takes or receives possession; or
- 31 [(b)] (B) if the secured party takes or receives possession of the
- 32 collateral before default or does not take possession of the
- 33 collateral, not more than 35 days before the disposition;
- 34 (2) the amount of proceeds of the disposition;
- 35 (3) the aggregate amount of the obligations after deducting the
- 36 amount of proceeds;
- 37 (4) the amount, in the aggregate or by type, and types of
- 38 expenses, including expenses of retaking, holding, preparing for
- 39 disposition, processing, and disposing of the collateral, and
- 40 attorney's fees secured by the collateral which are known to the
- 41 secured party and relate to the current disposition;
- 42 (5) the amount, in the aggregate or by type, and types of credits,
- 43 including rebates of interest or credit service charges, to which the
- 44 obligor is known to be entitled and which are not reflected in the
- 45 amount in paragraph (1); and

1 (6) the amount of the surplus or deficiency.

2 [d.] (d) Substantial compliance. A particular phrasing of the
3 explanation is not required. An explanation complying substantially
4 with the requirements of subsection [a. of this section] (a) is
5 sufficient, even if it includes minor errors that are not seriously
6 misleading.

7 [e.] (e) Charges for responses. A debtor or consumer obligor is
8 entitled without charge to one response to a request under this
9 section during any six-month period in which the secured party did
10 not send to the debtor or consumer obligor an explanation pursuant
11 to [paragraph (1) of] subsection [b.] (b) (1). The secured party
12 may require payment of a charge not exceeding \$25 for each
13 additional response.

14 (cf: N.J.S.12A:9-616)

15

16 106. N.J.S.12A:9-617 is amended to read as follows:

17 12A:9-617. Rights of Transferee of Collateral.

18 [a.] (a) Effects of disposition. A secured party's disposition of
19 collateral after default:

20 (1) transfers to a transferee for value all of the debtor's rights in
21 the collateral;

22 (2) discharges the security interest under which the disposition is
23 made; and

24 (3) discharges any subordinate security interest or other
25 subordinate lien.

26 [b.] (b) Rights of good-faith transferee. A transferee that acts in
27 good faith takes free of the rights and interests described in
28 subsection [a. of this section] (a), even if the secured party fails to
29 comply with this chapter or the requirements of any judicial
30 proceeding.

31 [c.] (c) Rights of other transferee. If a transferee does not take
32 free of the rights and interests described in subsection [a. of this
33 section] (a), the transferee takes the collateral subject to:

34 (1) the debtor's rights in the collateral;

35 (2) the security interest or agricultural lien under which the
36 disposition is made; and

37 (3) any other security interest or other lien.

38 (cf: N.J.S.12A:9-617)

39

40 107. N.J.S.12A:9-618 is amended to read as follows:

41 12A:9-618. Rights and Duties of Certain Secondary Obligor.

42 [a.] (a) Rights and duties of secondary obligor. A secondary
43 obligor acquires the rights and becomes obligated to perform the
44 duties of the secured party after the secondary obligor:

45 (1) receives an assignment of a secured obligation from the

1 secured party;

2 (2) receives a transfer of collateral from the secured party and
3 agrees to accept the rights and assume the duties of the secured
4 party; or

5 (3) is subrogated to the rights of a secured party with respect to
6 collateral.

7 **[b.] (b)** Effect of assignment, transfer, or subrogation. An
8 assignment, transfer, or subrogation described in subsection **[a. of**
9 **this section] (a)**:

10 (1) is not a disposition of collateral under 12A:9-610; and

11 (2) relieves the secured party of further duties under this chapter.

12 (cf: N.J.S.12A:9-618)

13

14 108. N.J.S.12A:9-619 is amended to read as follows:

15 12A:9-619. Transfer of Record or Legal Title.

16 **[a.] (a)** "Transfer statement." In this section, "transfer
17 statement" means a record authenticated by a secured party stating:

18 (1) that the debtor has defaulted in connection with an obligation
19 secured by specified collateral;

20 (2) that the secured party has exercised its post-default remedies
21 with respect to the collateral;

22 (3) that, by reason of the exercise, a transferee has acquired the
23 rights of the debtor in the collateral; and

24 (4) the name and mailing address of the secured party, debtor,
25 and transferee.

26 **[b.] (b)** Effect of transfer statement. A transfer statement
27 entitles the transferee to the transfer of record of all rights of the
28 debtor in the collateral specified in the statement in any official
29 filing, recording, registration, or certificate-of-title system covering
30 the collateral. If a transfer statement is presented with the applicable
31 fee and request form to the official or office responsible for
32 maintaining the system, the official or office shall:

33 (1) accept the transfer statement;

34 (2) promptly amend its records to reflect the transfer; and

35 (3) if applicable, issue a new appropriate certificate of title in the
36 name of the transferee.

37 **[c.] (c)** Transfer not a disposition; no relief of secured party's
38 duties. A transfer of the record or legal title to collateral to a
39 secured party under subsection **[b. of this section] (b)** or otherwise
40 is not of itself a disposition of collateral under this chapter and does
41 not of itself relieve the secured party of its duties under this chapter.
42 (cf: N.J.S.12A:9-619)

43

44 109. N.J.S.12A:9-620 is amended to read as follows:

45 12A:9-620. Acceptance of Collateral in Full or Partial
46 Satisfaction of Obligation; Compulsory Disposition of Collateral.

1 **[a.] (a)** Conditions to acceptance in satisfaction. Except as
2 otherwise provided in subsection **[g. of this section] (g)**, a secured
3 party may accept collateral in full or partial satisfaction of the
4 obligation it secures only if:

5 (1) the debtor consents to the acceptance under subsection **[c. of**
6 **this section] (c)**;

7 (2) the secured party does not receive, within the time set forth
8 in subsection **[d. of this section] (d)**, a notification of objection to
9 the proposal authenticated by:

10 **[(a)] (A)** a person to which the secured party was required to
11 send a proposal under 12A:9-621; or

12 **[(b)] (B)** any other person, other than the debtor, holding an
13 interest in the collateral subordinate to the security interest that is
14 the subject of the proposal;

15 (3) if the collateral is consumer goods, the collateral is not in the
16 possession of the debtor when the debtor consents to the
17 acceptance; and

18 (4) subsection **[e. of this section] (e)** does not require the
19 secured party to dispose of the collateral or the debtor waives the
20 requirement pursuant to 12A:9-624.

21 **[b.] (b)** Purported acceptance ineffective. A purported or
22 apparent acceptance of collateral under this section is ineffective
23 unless:

24 (1) the secured party consents to the acceptance in an
25 authenticated record or sends a proposal to the debtor; and

26 (2) the conditions of subsection ¹**[a.] (a)**¹ are met.

27 **[c.] (c)** Debtor's consent. For purposes of this section:

28 (1) a debtor consents to an acceptance of collateral in partial
29 satisfaction of the obligation it secures only if the debtor agrees to
30 the terms of the acceptance in a record authenticated after default;
31 and

32 (2) a debtor consents to an acceptance of collateral in full
33 satisfaction of the obligation it secures only if the debtor agrees to
34 the terms of the acceptance in a record authenticated after default or
35 the secured party:

36 **[(a)] (A)** sends to the debtor after default a proposal that is
37 unconditional or subject only to a condition that collateral not in the
38 possession of the secured party be preserved or maintained;

39 **[(b)] (B)** in the proposal, proposes to accept collateral in full
40 satisfaction of the obligation it secures; and

41 **[(c)] (C)** does not receive a notification of objection
42 authenticated by the debtor within 20 days after the proposal is sent.

43 **[d.] (d)** Effectiveness of notification. To be effective under
44 **[paragraph (2) of] subsection [a. of this section] (a) (2)**, a
45 notification of objection **[shall] must** be received by the secured

1 party:

2 (1) in the case of a person to which the proposal was sent
3 pursuant to 12A:9-621, within 20 days after notification was sent to
4 that person; and

5 (2) in other cases:

6 ~~[(a)] (A)~~ within 20 days after the last notification was sent
7 pursuant to 12A:9-621; or

8 ~~[(b)] (B)~~ if a notification was not sent, before the debtor
9 consents to the acceptance under subsection ~~[c. of this section] (c)~~.

10 ~~[e.] (e)~~ Mandatory disposition of consumer goods. A secured
11 party that has taken possession of collateral shall dispose of the
12 collateral pursuant to 12A:9-610 within the time specified in
13 subsection ~~[f. of this section] (f)~~ if:

14 (1) 60 percent of the cash price has been paid in the case of a
15 purchase-money security interest in consumer goods; or

16 (2) 60 percent of the principal amount of the obligation secured
17 has been paid in the case of a non-purchase-money security interest
18 in consumer goods.

19 ~~[f.] (f)~~ Compliance with mandatory disposition requirement. To
20 comply with subsection ~~[e. of this section] (e)~~, the secured party
21 shall dispose of the collateral:

22 (1) within 90 days after taking possession; or

23 (2) within any longer period to which the debtor and all
24 secondary obligors have agreed in an agreement to that effect
25 entered into and authenticated after default.

26 ~~[g.] (g)~~ No partial satisfaction in consumer transaction. In a
27 consumer transaction, a secured party may not accept collateral in
28 partial satisfaction of the obligation it secures.

29 (cf: N.J.S.12A:9-620)

30

31 110. N.J.S.12A:9-621 is amended to read as follows:

32 12A:9-621. Notification of Proposal to Accept Collateral.

33 ~~[a.] (a)~~ Persons to which proposal to be sent. A secured party
34 that desires to accept collateral in full or partial satisfaction of the
35 obligation it secures shall send its proposal to:

36 (1) any person from which the secured party has received, before
37 the debtor consented to the acceptance, an authenticated notification
38 of a claim of an interest in the collateral;

39 (2) any other secured party or lienholder that, 10 days before the
40 debtor consented to the acceptance, held a security interest in or
41 other lien on the collateral perfected by the filing of a financing
42 statement that:

43 ~~[(a)] (A)~~ identified the collateral;

44 ~~[(b)] (B)~~ was indexed under the debtor's name as of that date;

45 and

1 [(c)] (C) was filed in the office or offices in which to file a
2 financing statement against the debtor covering the collateral as of
3 that date; and

4 (3) any other secured party that, 10 days before the debtor
5 consented to the acceptance, held a security interest in the collateral
6 perfected by compliance with a statute, regulation, or treaty
7 described in 12A:9-311 [a.] (a).

8 [b.] (b) Proposal to be sent to secondary obligor in partial
9 satisfaction. A secured party that desires to accept collateral in
10 partial satisfaction of the obligation it secures shall send its proposal
11 to any secondary obligor in addition to the persons described in
12 subsection [a. of this section] (a).

13 (cf: N.J.S.12A:9-621)

14

15 111. N.J.S.12A:9-622 is amended to read as follows:

16 12A:9-622. Effect of Acceptance of Collateral.

17 [a.] (a) Effect of acceptance. A secured party's acceptance of
18 collateral in full or partial satisfaction of the obligation it secures:

19 (1) discharges the obligation to the extent consented to by the
20 debtor;

21 (2) transfers to the secured party all of a debtor's rights in the
22 collateral;

23 (3) discharges the security interest or agricultural lien that is the
24 subject of the debtor's consent and any subordinate security interest
25 or other subordinate lien; and

26 (4) terminates any other subordinate interest.

27 [b.] (b) Discharge of subordinate interest notwithstanding
28 noncompliance. A subordinate interest is discharged or terminated
29 under subsection [a. of this section] (a), even if the secured party
30 fails to comply with this chapter.

31 (cf: N.J.S.12A:9-622)

32

33 112. N.J.S.12A:9-623 is amended to read as follows:

34 12A:9-623. Right to Redeem Collateral.

35 [a.] (a) Persons that may redeem. A debtor, any secondary
36 obligor, or any other secured party or lienholder may redeem
37 collateral.

38 [b.] (b) Requirements for redemption. To redeem collateral, a
39 person shall tender:

40 (1) fulfillment of all obligations secured by the collateral; and

41 (2) the reasonable expenses and attorney's fees described in
42 12A:9-615 [a.] (a) (1).

43 [c.] (c) When redemption may occur. A redemption may occur
44 at any time before a secured party:

45 (1) has collected collateral under 12A:9-607;

1 (2) has disposed of collateral or entered into a contract for its
2 disposition under 12A:9-610; or

3 (3) has accepted collateral in full or partial satisfaction of the
4 obligation it secures under 12A:9-622.

5 (cf: N.J.S.12A:9-623)

6

7 113. N.J.S.12A:9-624 is amended to read as follows:

8 12A:9-624. Waiver.

9 [a.] (a) Waiver of disposition notification. A debtor or
10 secondary obligor may waive the right to notification of disposition
11 of collateral under 12A:9-611 only by an agreement to that effect
12 entered into and authenticated after default.

13 [b.] (b) Waiver of mandatory disposition. A debtor may waive
14 the right to require disposition of collateral under 12A:9-620 [e.]
15 (e) only by an agreement to that effect entered into and
16 authenticated after default.

17 [c.] (c) Waiver of redemption right. Except in a
18 consumer-goods transaction, a debtor or secondary obligor may
19 waive the right to redeem collateral under 12A:9-623 only by an
20 agreement to that effect entered into and authenticated after default.

21 (cf: N.J.S.12A:9-624)

22

23 114. N.J.S.12A:9-625 is amended to read as follows:

24 12A:9-625. Remedies for Secured Party's Failure to Comply with
25 Chapter.

26 [a.] (a) Judicial orders concerning noncompliance. If it is
27 established that a secured party is not proceeding in accordance with
28 this chapter, a court may order or restrain collection, enforcement,
29 or disposition of collateral on appropriate terms and conditions.

30 [b.] (b) Damages for noncompliance. Subject to subsections
31 [c., d. and f. of this section] (c), (d) and (f), a person is liable for
32 damages in the amount of any loss caused by a failure to comply
33 with this chapter. Loss caused by a failure to comply [with a request
34 under 12A:9-211] may include loss resulting from the debtor's
35 inability to obtain, or increased costs of, alternative financing.

36 [c.] (c) Persons entitled to recover damages; statutory damages
37 in consumer-goods transaction. Except as otherwise provided in
38 12A:9-628:

39 (1) a person [who] that, at the time of the failure, was a debtor,
40 was an obligor, or held a security interest in or other lien on the
41 collateral may recover damages under subsection [b. of this section]
42 (b) for its loss; and

43 (2) if the collateral is consumer goods, a person [who] that was
44 a debtor or a secondary obligor at the time a secured party failed to
45 comply with this part may recover for that failure in any event an

1 amount not less than the credit service charge plus 10 percent of the
2 principal amount of the obligation or the time-price differential plus
3 10 percent of the cash price.

4 [d.] (d) Recovery when deficiency eliminated or reduced. A
5 debtor whose deficiency is eliminated under 12A:9-626 may recover
6 damages for the loss of any surplus. However, a debtor or
7 secondary obligor whose deficiency is eliminated or reduced under
8 12A:9-626 may not otherwise recover under subsection [b. of this
9 section] (b) for noncompliance with the provisions of this part
10 relating to collection, enforcement, disposition, or acceptance.

11 [e.] (e) Statutory damages: noncompliance with specified
12 provisions. In addition to any damages recoverable under
13 subsection [b. of this section] (b), the debtor, consumer obligor, or
14 person named as a debtor in a filed record, as applicable, may
15 recover \$500 in each case from a person [who] that:

16 (1) fails to comply with [12A:9-208] 12A:9-207;

17 (2) fails to comply with [12A:9-209] 12A:9-208;

18 (3) [fails to comply with 12A:9-210];

19 (4) files a record that the person is not entitled to file under
20 12A:9-509 [a.] (a);

21 [(5)] (4) fails to cause the secured party of record to file or send
22 a termination statement as required by 12A:9-513 [a. or c.] (a) or
23 (c);

24 [(6)] (5) fails to comply with 12A:9-616 [b.] (b) (1) and whose
25 failure is part of a pattern, or consistent with a practice, of
26 noncompliance; or

27 [(7)] (6) fails to comply with 12A:9-616[b.] (b) (2).

28 [f.] (f) Statutory damages: noncompliance with [12A:9-211]
29 12A:9-210. A debtor or consumer obligor may recover damages
30 under subsection [b. of this section] (b) and, in addition, \$500 in
31 each case from a person [who] that, without reasonable cause, fails
32 to comply with a request under [12A:9-211] 12A:9-210. A
33 recipient of a request under [12A:9-211] 12A:9-210 which never
34 claimed an interest in the collateral or obligations that are the subject
35 of a request under that section has a reasonable excuse for failure to
36 comply with the request within the meaning of this subsection.

37 [g.] (g) Limitation of security interest: noncompliance with
38 [12A:9-211] 12A:9-210. If a secured party fails to comply with a
39 request regarding a list of collateral or a statement of account under
40 [12A:9-211] 12A:9-210, the secured party may claim a security
41 interest only as shown in the list or statement included in the request
42 as against a person [who] that is reasonably misled by the failure.

43 (cf: N.J.S.12A:9-625)

1 115. N.J.S.12A:9-626 is amended to read as follows:
2 12A:9-626. Action in Which Deficiency or Surplus Is in Issue.
3 **[a.] (a)** Applicable rules if amount of deficiency or surplus in
4 issue. In an action arising from a transaction in which the amount of
5 a deficiency or surplus is in issue, the following rules apply:
6 (1) A secured party need not prove compliance with the
7 provisions of this part relating to collection, enforcement,
8 disposition, or acceptance unless the debtor or a secondary obligor
9 places the secured party's compliance in issue.
10 (2) If the secured party's compliance is placed in issue, the
11 secured party has the burden of establishing that the collection,
12 enforcement, disposition, or acceptance was conducted in
13 accordance with this part.
14 (3) Except as otherwise provided in 12A:9-628, if a secured
15 party fails to prove that the collection, enforcement, disposition, or
16 acceptance was conducted in accordance with the provisions of this
17 part relating to collection, enforcement, disposition, or acceptance,
18 the liability of a debtor or a secondary obligor for a deficiency is
19 limited to an amount by which the sum of the secured obligation,
20 expenses, and attorney's fees exceeds the greater of:
21 **[(a)] (A)** the proceeds of the collection, enforcement,
22 disposition, or acceptance; or
23 **[(b)] (B)** the amount of proceeds that would have been realized
24 had the noncomplying secured party proceeded in accordance with
25 the provisions of this part relating to collection, enforcement,
26 disposition, or acceptance.
27 (4) For purposes of **[subparagraph (b) of]** paragraph (3) **[of this**
28 **section] (B)**, the amount of proceeds that would have been realized
29 is equal to the sum of the secured obligation, expenses, and
30 attorney's fees unless the secured party proves that the amount is
31 less than that sum.
32 (5) If a deficiency or surplus is calculated under 12A:9-615 **[f.]**
33 **(f)**, the debtor or obligor has the burden of establishing that the
34 amount of proceeds of the disposition is significantly below the
35 range of prices that a complying disposition to a person other than
36 the secured party, a person related to the secured party, or a
37 secondary obligor would have brought.
38 (cf: N.J.S.12A:9-626)

39

40 116. N.J.S.12A:9-627 is amended to read as follows:
41 12A:9-627. Determination of Whether Conduct Was
42 Commercially Reasonable.

43 **[a.] (a)** Greater amount obtainable under other circumstances;
44 no preclusion of commercial reasonableness. The fact that a greater
45 amount could have been obtained by a collection, enforcement,
46 disposition, or acceptance at a different time or in a different method

1 from that selected by the secured party is not of itself sufficient to
2 preclude the secured party from establishing that the collection,
3 enforcement, disposition, or acceptance was made in a commercially
4 reasonable manner.

5 **[b.] (b)** Dispositions that are commercially reasonable. A
6 disposition of collateral is made in a commercially reasonable
7 manner if the disposition is made:

- 8 (1) in the usual manner on any recognized market;
- 9 (2) at the price current in any recognized market at the time of
10 the disposition; or
- 11 (3) otherwise in conformity with reasonable commercial practices
12 among dealers in the type of property that was the subject of the
13 disposition.

14 **[c.] (c)** Approval by court or on behalf of creditors. A
15 collection, enforcement, disposition, or acceptance is commercially
16 reasonable if it has been approved:

- 17 (1) in a judicial proceeding;
- 18 (2) by a bona fide creditors' committee;
- 19 (3) by a representative of creditors; or
- 20 (4) by an assignee for the benefit of creditors.

21 **[d.] (d)** Approval under subsection **[c.] (c)** not necessary;
22 absence of approval has no effect. Approval under subsection **[c. of**
23 **this section] (c)** need not be obtained, and lack of approval does not
24 mean that the collection, enforcement, disposition, or acceptance is
25 not commercially reasonable.

26 (cf: N.J.S.12A:9-627)

27

28 117. N.J.S.12A:9-628 is amended to read as follows:

29 12A:9-628. Nonliability and Limitation on Liability of Secured
30 Party; Liability of Secondary Obligor.

31 **[a.] (a)** Limitation of liability of secured party for
32 noncompliance with chapter. Unless a secured party knows that a
33 person is a debtor or obligor, knows the identity of the person, and
34 knows how to communicate with the person:

- 35 (1) the secured party is not liable to the person, or to a secured
36 party or lienholder that has filed a financing statement against the
37 person, for failure to comply with this chapter; and
- 38 (2) the secured party's failure to comply with this chapter does
39 not affect the liability of the person for a deficiency.

40 **[b.] (b)** Limitation of liability based on status as secured party.
41 A secured party is not liable because of its status as secured party:

- 42 (1) to a person who is a debtor or obligor, unless the secured
43 party knows:

44 **[(a)] (A)** that the person is a debtor or obligor;

45 **[(b)] (B)** the identity of the person; and

1 [(c)] (C) how to communicate with the person; or
2 (2) to a secured party or lienholder that has filed a financing
3 statement against a person, unless the secured party knows:

4 [(a)] (A) that the person is a debtor; and

5 [(b)] (B) the identity of the person.

6 [(c.)] (c) Limitation of liability if reasonable belief that transaction
7 not a consumer-goods transaction or consumer transaction. A
8 secured party is not liable to any person, and a person's liability for a
9 deficiency is not affected, because of any act or omission arising out
10 of the secured party's reasonable belief that a transaction is not a
11 consumer-goods transaction or a consumer transaction or that goods
12 are not consumer goods, if the secured party's belief is based on its
13 reasonable reliance on:

14 (1) a debtor's representation concerning the purpose for which
15 collateral was to be used, acquired, or held; or

16 (2) an obligor's representation concerning the purpose for which
17 a secured obligation was incurred.

18 [(d.)] (d) Limitation of liability for statutory damages. A secured
19 party is not liable to any person under 12A:9-625 [(c.)] (c) (2) for its
20 failure to comply with 12A:9-616.

21 [(e.)] (e) Limitation of multiple liability for statutory damages. A
22 secured party is not liable under 12A:9-625 [(c.)] (c) (2) more than
23 once with respect to any one secured obligation.

24 (cf: N.J.S.12A:9-628)

25

26 118. N.J.S.12A:9-701 is amended to read as follows:

27 12A:9-701. Effective Date.

28 This chapter shall take effect on July 1, 2001. References in this
29 part to "this chapter" are to Chapter 9 of the Uniform Commercial
30 Code as enacted by P.L.2001, c.117 and P.L. , c. (pending before
31 the Legislature as this bill). References in this part to "former
32 Chapter 9" are to Chapter 9 of the Uniform Commercial Code
33 (12A:9-101 et seq.) as in effect before July 1, 2001.

34 (cf: N.J.S.12A:9-701)

35

36 119. N.J.S.12A:9-702 is amended to read as follows:

37 12A:9-702. Savings Clause.

38 [(a.)] (a) Pre-effective-date transactions or liens. Except as
39 otherwise provided in this part, this chapter applies to a transaction
40 or lien within its scope, even if the transaction or lien was entered
41 into or created before this chapter takes effect.

42 [(b.)] (b) Continuing validity. Except as otherwise provided in
43 subsection [(c. of this section)] (c) and 12A:9-703 through
44 [12A:9-708] 12A:9-709:

45 (1) transactions and liens that were not governed by former

1 Chapter 9, were validly entered into or created before this chapter
2 takes effect, and would be subject to this chapter if they had been
3 entered into or created after this chapter takes effect, and the rights,
4 duties, and interests flowing from those transactions and liens remain
5 valid after this chapter takes effect; and

6 (2) the transactions and liens may be terminated, completed,
7 consummated, and enforced as required or permitted by this chapter
8 or by the law that otherwise would apply if this chapter had not
9 taken effect.

10 [c.] (c) Pre-effective-date proceedings. This chapter does not
11 affect an action, case, or proceeding commenced before this chapter
12 takes effect.

13 (cf: N.J.S.12A:9-702)

14

15 120. N.J.S.12A:9-703 is amended to read as follows:

16 12A:9-703. Security Interest Perfected Before Effective Date.

17 [a.] (a) Continuing priority over lien creditor: perfection
18 requirements satisfied. A security interest that is enforceable
19 immediately before this chapter takes effect and would have priority
20 over the rights of a person [who] that becomes a lien creditor at
21 that time is a perfected security interest under this chapter if, when
22 this chapter takes effect, the applicable requirements for
23 enforceability and perfection under this chapter are satisfied without
24 further action.

25 [b.] (b) Continuing priority over lien creditor: perfection
26 requirements not satisfied. Except as otherwise provided in
27 12A:9-705, if, immediately before this chapter takes effect, a
28 security interest is enforceable and would have priority over the
29 rights of a person [who] that becomes a lien creditor at that time,
30 but the applicable requirements for enforceability or perfection under
31 this chapter are not satisfied when this chapter takes effect, the
32 security interest:

33 (1) is a perfected security interest for one year after this chapter
34 takes effect;

35 (2) remains enforceable thereafter only if the security interest
36 becomes enforceable under 12A:9-203 before the year expires; and

37 (3) remains perfected thereafter only if the applicable
38 requirements for perfection under this chapter are satisfied before
39 the year expires.

40 (cf: N.J.S.12A:9-703)

41

42 121. N.J.S.12A:9-704 is amended to read as follows:

43 12A:9-704. Security Interest Unperfected Before Effective Date.

44 A security interest that is enforceable immediately before this
45 chapter takes effect but which would be subordinate to the rights of
46 a person [who] that becomes a lien creditor at that time:

1 [a.] (1) remains an enforceable security interest for one year
2 after this chapter takes effect;

3 [b.] (2) remains enforceable thereafter if the security interest
4 becomes enforceable under 12A:9-203 when this chapter takes effect
5 or within one year thereafter; and

6 [c.] (3) becomes perfected:

7 [(1)] (A) without further action, when this chapter takes effect if
8 the applicable requirements for perfection under this chapter are
9 satisfied before or at that time; or

10 [(2)] (B) when the applicable requirements for perfection are
11 satisfied if the requirements are satisfied after that time.

12 (cf: N.J.S.12A:9-704)

13

14 122. N.J.S.12A:9-705 is amended to read as follows:

15 12A:9-705. Effectiveness of Action Taken Before Effective
16 Date.

17 [a.] (a) Pre-effective-date action; one-year perfection period
18 unless reperfected. If action, other than the filing of a financing
19 statement, is taken before this chapter takes effect and the action
20 would have resulted in priority of a security interest over the rights
21 of a person [who] that becomes a lien creditor had the security
22 interest become enforceable before this chapter takes effect, the
23 action is effective to perfect a security interest that attaches under
24 this chapter within one year after this chapter takes effect. An
25 attached security interest becomes unperfected one year after this
26 chapter takes effect unless the security interest becomes a perfected
27 security interest under this chapter before the expiration of that
28 period.

29 [b.] (b) Pre-effective-date filing. The filing of a financing
30 statement before this chapter takes effect is effective to perfect a
31 security interest to the extent the filing would satisfy the applicable
32 requirements for perfection under this chapter.

33 [c.] (c) Pre-effective-date filing in jurisdiction formerly
34 governing perfection. This chapter does not render ineffective an
35 effective financing statement that, before this chapter takes effect, is
36 filed and satisfies the applicable requirements for perfection under
37 the law of the jurisdiction governing perfection as provided in
38 former 12A:9-103. However, except as otherwise provided in
39 subsections [d. and e. of this section] (d) and (e) and 12A:9-706,
40 the financing statement ceases to be effective at the earlier of:

41 (1) the time the financing statement would have ceased to be
42 effective under the law of the jurisdiction in which it is filed; or

43 (2) June 30, 2006.

44 [d.] (d) Continuation statement. The filing of a continuation
45 statement after this chapter takes effect does not continue the

1 effectiveness of the financing statement filed before this chapter
2 takes effect. However, upon the timely filing of a continuation
3 statement after this chapter takes effect and in accordance with the
4 law of the jurisdiction governing perfection as provided in Part 3,
5 the effectiveness of a financing statement filed in the same office in
6 that jurisdiction before this chapter takes effect continues for the
7 period provided by the law of that jurisdiction.

8 [e.] (e) Application of [of] subsection [c. paragraph] (c) (2) to
9 transmitting utility financing statement. Subsection [c. paragraph]
10 (c) (2) of this section applies to a financing statement that, before
11 this chapter takes effect, is filed against a transmitting utility and
12 satisfies the applicable requirements for perfection under the law of
13 the jurisdiction governing perfection as provided in former
14 12A:9-103 only to the extent that Part 3 provides that the law of a
15 jurisdiction other than the jurisdiction in which the financing
16 statement is filed governs perfection of a security interest in
17 collateral covered by the financing statement.

18 [f.] (f) Application of Part 5. A financing statement that
19 includes a financing statement filed before this chapter takes effect
20 and a continuation statement filed after this chapter takes effect is
21 effective only to the extent that it satisfies the requirements of Part 5
22 for an initial financing statement.

23 (cf: N.J.S.12A:9-705)

24

25 123. N.J.S.12A:9-706 is amended to read as follows:

26 12A:9-706. When Initial Financing Statement Suffices to
27 Continue Effectiveness of Financing Statement.

28 [a.] (a) Initial financing statement in lieu of continuation
29 statement. The filing of an initial financing statement in the office
30 specified in 12A:9-501 continues the effectiveness of a financing
31 statement filed before this chapter takes effect if:

32 (1) the filing of an initial financing statement in that office would
33 be effective to perfect a security interest under this chapter;

34 (2) the pre-effective-date financing statement was filed in an
35 office in another state or another office in this State; and

36 (3) the initial financing statement satisfies subsection [c. of this
37 section] (c).

38 [b.] (b) Period of continued effectiveness. The filing of an initial
39 financing statement under subsection [a. of this section] (a)
40 continues the effectiveness of the pre-effective-date financing
41 statement:

42 (1) if the initial financing statement is filed before this chapter
43 takes effect, for the period provided in former 12A:9-403 with
44 respect to a financing statement; and

45 (2) if the initial financing statement is filed after this chapter
46 takes effect, for the period provided in 12A:9-515 with respect to an

1 initial financing statement.

2 [c.] (c) Requirements for initial financing statement under
3 subsection [a.] (a). To be effective for purposes of subsection [a.
4 of this section] (a), an initial financing statement shall:

5 (1) satisfy the requirements of Part 5 for an initial financing
6 statement;

7 (2) identify the pre-effective-date financing statement by
8 indicating the office in which the financing statement was filed and
9 providing the dates of filing and file numbers, if any, of the financing
10 statement and of the most recent continuation statement filed with
11 respect to the financing statement; and

12 (3) indicate that the pre-effective-date financing statement
13 remains effective.

14 (cf: N.J.S.12A:9-706)

15

16 124. N.J.S.12A:9-707 is amended to read as follows:

17 [12A:9-707.] 12A:9-708. Persons Entitled to File Initial
18 Financing Statement or Continuation Statement.

19 A person may file an initial financing statement or a continuation
20 statement under this part if:

21 [a.] (1) the secured party of record authorizes the filing; and

22 [b.] (2) the filing is necessary under this part:

23 [(1)] (A) to continue the effectiveness of a financing statement
24 filed before this chapter takes effect; or

25 [(2)] (B) to perfect or continue the perfection of a security
26 interest.

27 (cf: N.J.S.12A:9-707)

28

29 125. (New section) Title 12A, chapter 9 is supplemented as
30 follows:

31 12A:9-707. Amendment of ¹[pre-effective-date financing
32 statement] Pre-effective-date Financing Statement¹.

33 (a) ?Pre-effective-date financing statement". In this section, "pre-
34 effective-date financing statement" means a financing statement filed
35 before this chapter takes effect.

36 (b) Applicable law. After this chapter takes effect, a person may
37 add or delete collateral covered by, continue or terminate the
38 effectiveness of, or otherwise amend the information provided in, a
39 pre-effective-date financing statement only in accordance with the
40 law of the jurisdiction governing perfection as provided in Part 3.
41 However, the effectiveness of a pre-effective-date financing
42 statement also may be terminated in accordance with the law of the
43 jurisdiction in which the financing statement is filed.

44 (c) Method of amending: general rule. Except as otherwise
45 provided in subsection (d), if the law of this State governs perfection

1 of a security interest, the information in a pre-effective-date
2 financing statement may be amended after this chapter takes effect
3 only if:

4 (1) the pre-effective-date financing statement and an amendment
5 are filed in the office specified in 12A:9-501;

6 (2) an amendment is filed in the office specified in 12A:9-501
7 concurrently with, or after the filing in that office of, an initial
8 financing statement that satisfies 12A:9-706(c); or

9 (3) an initial financing statement that provides the information as
10 amended and satisfies 12A:9-706(c) is filed in the office specified in
11 12A:9-501.

12 (d) Method of amending: continuation. If the law of this State
13 governs perfection of a security interest, the effectiveness of a pre-
14 effective-date financing statement may be continued only under
15 12A:9-705(d) and (f) or 12A:9-706.

16 (e) Method of amending: additional termination rule. Whether or
17 not the law of this State governs perfection of a security interest, the
18 effectiveness of a pre-effective-date financing statement filed in this
19 State may be terminated after this chapter takes effect by filing a
20 termination statement in the office in which the pre-effective-date
21 financing statement is filed, unless an initial financing statement that
22 satisfies 12A:9-706(c) has been filed in the office specified by the
23 law of the jurisdiction governing perfection as provided in Part 3 as
24 the office in which to file a financing statement. The preceding
25 sentence applies only to the office described in 12A:9-501(a)(2).

26

27 126. N.J.S.12A:9-708 is amended to read as follows:

28 [~~12A:9-708.~~] 12A:9-709 Priority.

29 [a.] (a) Law governing priority. This chapter determines the
30 priority of conflicting claims to collateral. However, if the relative
31 priorities of the claims were established before this chapter takes
32 effect, former Chapter 9 determines priority.

33 [b.] (b) Priority if security interest becomes enforceable under
34 12A:9-203. For purposes of 12A:9-322 [a.] (a), the priority of a
35 security interest that becomes enforceable under 12A:9-203 of this
36 chapter dates from the time this chapter takes effect if the security
37 interest is perfected under this chapter by the filing of a financing
38 statement before this chapter takes effect which would not have
39 been effective to perfect the security interest under former Chapter
40 9. This subsection does not apply to conflicting security interests
41 each of which is perfected by the filing of such a financing
42 statement.

43 (cf: N.J.S.12A:9-708)

44

45 127. (New section) Title 12A, chapter 9 is supplemented as
46 follows:

1 12A:9-710. Retroactivity Provision.

2 This act, P.L. , c. , amends and supplements P.L.2001, c.117
3 and shall take effect immediately and shall be applied retroactively to
4 July 1, 2001.

5 If, on or after July 1, 2001 and prior to the effective date of this
6 act, action required for the attachment, perfection or priority of a
7 security interest under Post-Amendment Chapter 9 was taken, but
8 was not heretofore effective, such action shall be effective when
9 taken.

10 If, on or after July 1, 2001 and prior to the effective date of this
11 act, action required for the attachment, perfection or priority of a
12 security interest under Pre-Amendment Chapter 9 was taken and
13 was heretofore effective, but is not effective under Post-Amendment
14 Chapter 9, such action shall be deemed effective when taken if,
15 within 60 days after the effective date of this act, any other action
16 required under Post-Amendment Chapter 9 for such attachment,
17 perfection or priority is taken, except to the extent that, after the
18 effective date of this act and before the time such other required
19 action is taken, a purchaser has given value in reasonable reliance
20 upon such other required action not having been taken.

21 As used in this section, "Pre-Amendment Chapter 9" means
22 Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117
23 (12A:9-101 through 12A:9-708) as constituted before giving effect
24 to this act, and "Post-Amendment Chapter 9" means Chapter 9 of
25 Title 12A of the New Jersey Statutes (12A:9-101 through
26 12A:9-709) as amended and supplemented by this act.

27

28 128. (New section) Title 12A, chapter 1 is supplemented as
29 follows:

30 12A:1-109. Section Captions.

31 Section captions are part of the Uniform Commercial Code. The
32 subsection headings in Chapter 9 on Secured Transactions (12A:9-
33 101 et seq.) are not ¹[part] parts¹ of that chapter or of the Uniform
34 Commercial Code.

35

36 129. N.J.S.12A:1-201 is amended to read as follows:

37 12A:1-201. General definitions.

38 Subject to additional definitions contained in the subsequent
39 chapters of **[this act]** the Uniform Commercial Code which are
40 applicable to specific chapters or subchapters thereof, and unless the
41 context otherwise requires, in **[this act]** the Uniform Commercial
42 Code:

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

46 (2) "Aggrieved party" means a party entitled to resort to a

1 remedy.

2 (3) "Agreement" means the bargain of the parties in fact as found
3 in their language or by implication from other circumstances
4 including course of dealing or usage of trade or course of
5 performance as provided in [this act] the Uniform Commercial
6 Code (12A:1-205 [and], 2-208 and 2A-207). Whether an
7 agreement has legal consequences is determined by the provisions in
8 [this act] the Uniform Commercial Code, if applicable; otherwise by
9 the law of contracts (12A:1-103). (Compare "Contract.")

10 (4) "Bank" means any person engaged in the business of banking.

11 (5) "Bearer" means the person in possession of an instrument,
12 document of title, or certificated security payable to bearer or
13 indorsed in blank.

14 (6) "Bill of lading" means a document evidencing the receipt of
15 goods for shipment issued by a person engaged in the business of
16 transporting or forwarding goods, and includes an airbill.

17 "Airbill" means a document serving for air transportation as a bill
18 of lading does for marine or rail transportation, and includes an air
19 consignment note or air waybill.

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

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

25 (9) "Buyer in ordinary course of business" means a person
26 ¹[who] that¹ buys goods in good faith, without knowledge that the
27 sale violates the rights of another person in the goods, and in
28 ordinary course from a person, other than a pawnbroker, in the
29 business of selling goods of that kind. A person buys goods in
30 ordinary course if the sale to the person comports with the usual or
31 customary practices in the kind of business in which the seller is
32 engaged or with the seller's own usual or customary practices. A
33 person ¹[who] that¹ sells oil, gas or other minerals at the wellhead
34 or minehead is a person in the business of selling goods of that kind.
35 A buyer in ordinary course of business may buy for cash, by
36 exchange of other property or on secured or unsecured credit, and
37 may acquire goods or documents of title under a pre-existing
38 contract for sale. Only a buyer that takes possession of the goods or
39 has a right to recover the goods from the seller under Chapter 2 may
40 be a buyer in ordinary course of business. A person ¹[who] that¹
41 acquires goods in a transfer in bulk or as security for or in total or
42 partial satisfaction of a money debt is not a buyer in ordinary course
43 of business.

44 (10) "Conspicuous": A term or cause is conspicuous when it is
45 so written that a reasonable person against whom it is to operate
46 ought to have noticed it. A printed heading in capitals (as:

1 NON-NEGOTIABLE BILL OF LADING) is conspicuous.
2 Language in the body of a form is "conspicuous" if it is in larger or
3 other contrasting type or color. But in a telegram any stated term is
4 "conspicuous." Whether a term or clause is "conspicuous" or not is
5 for decision by the court.

6 (11) "Contract" means the total legal obligation which results
7 from the parties' agreement as affected by [this act] the Uniform
8 Commercial Code and any other applicable rules of law. (Compare
9 "Agreement.")

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

15 (13) "Defendant" includes a person in the position of defendant
16 in a cross-action or counterclaim.

17 (14) "Delivery" with respect to instruments, documents of title,
18 chattel paper, or certificated securities means voluntary transfer of
19 possession.

20 (15) "Document of title" includes bill of lading, dock warrant,
21 dock receipt, warehouse receipt, or order for the delivery of goods,
22 and also any other document which in the regular course of business
23 or financing is treated as adequately evidencing that the person in
24 possession of it is entitled to receive, hold and dispose of the
25 document and the goods it covers. To be a document of title a
26 document shall purport to be issued by or addressed to a bailee and
27 purport to cover goods in the bailee's possession which are either
28 identified or are fungible portions of an identified mass.

29 (16) "Fault" means wrongful act, omission or breach.

30 (17) "Fungible" with respect to goods or securities means goods
31 or securities of which any unit is, by nature or usage of trade, the
32 equivalent of any other like unit. Goods which are not fungible shall
33 be deemed fungible for the purposes of [this act] the Uniform
34 Commercial Code to the extent that under a particular agreement or
35 document unlike units are treated as equivalents.

36 (18) "Genuine" means free of forgery or counterfeiting.

37 (19) "Good faith" means honesty in fact in the conduct or
38 transaction concerned.

39 (20) "Holder," with respect to a negotiable instrument, means the
40 person in possession if the instrument is payable to bearer or, in the
41 case of an instrument payable to an identified person, if the identified
42 person is in possession. "Holder" with respect to a document of title
43 means the person in possession if the goods are deliverable to bearer
44 or to the order of the person in possession.

45 (21) To "honor" is to pay or accept and pay, where a credit so
46 engages to purchase or discount a draft complying with the terms of

1 the credit.

2 (22) "Insolvency proceedings" includes any assignment for the
3 benefit of creditors or other proceedings intended to liquidate or
4 rehabilitate the estate of the person involved.

5 (23) A person is "insolvent" who either has ceased to pay the
6 person's debts in the ordinary course of business or cannot pay the
7 person's debts as they become due or is insolvent within the meaning
8 of the federal bankruptcy law.

9 (24) "Money" means a medium of exchange authorized or
10 adopted by a domestic or foreign government and includes a
11 monetary unit of account established by an intergovernmental
12 organization or by agreement between two or more nations.

13 (25) A person has "notice" of a fact when:

14 (a) The person has actual knowledge of it; or

15 (b) The person has received a notice or notification of it; or

16 (c) From all the facts and circumstances known to the person at
17 the time in question the person has reason to know that it exists.

18 A person "knows" or has "knowledge" of a fact when the person
19 has actual knowledge of it. "Discover" or "learn" or a word or
20 phrase of similar import refers to knowledge rather than to reason to
21 know. The time and circumstances under which a notice or
22 notification may cease to be effective are not determined by [this
23 act] the Uniform Commercial Code.

24 (26) A person "notifies" or "gives" a notice or notification to
25 another by taking such steps as may be reasonably required to
26 inform the other in ordinary course whether or not the other actually
27 comes to know of it. A person "receives" a notice or notification
28 when:

29 (a) It comes to the person's attention; or

30 (b) It is duly delivered at the place of business through which the
31 contract was made or at any other place held out by the person as
32 the place for receipt of such communications.

33 (27) Notice, knowledge or a notice or notification received by an
34 organization is effective for a particular transaction from the time
35 when it is brought to the attention of the individual conducting that
36 transaction, and in any event from the time when it would have been
37 brought to the attention of the individual if the organization had
38 exercised due diligence. An organization exercises due diligence if it
39 maintains reasonable routines for communicating significant
40 information to the person conducting the transaction and there is
41 reasonable compliance with the routines. Due diligence does not
42 require an individual acting for the organization to communicate
43 information unless such communication is part of the individual's
44 regular duties or unless the individual has reason to know of the
45 transaction and that the transaction would be materially affected by
46 the information.

1 (28) "Organization" includes a corporation, government or
2 governmental subdivision or agency, business trust, estate, trust,
3 partnership or association, two or more persons having a joint or
4 common interest, or any other legal or commercial entity.

5 (29) "Party," as distinct from "third party," means a person who
6 has engaged in a transaction or made an agreement within [this act]
7 the Uniform Commercial Code.

8 (30) "Person" includes an individual or an organization (See
9 12A:1-102).

10 (31) "Presumption" or "presumed" means that the trier of fact
11 shall find the existence of the fact presumed unless and until
12 evidence is introduced which would support a finding of its
13 nonexistence.

14 (32) "Purchase" includes taking by sale, discount, negotiation,
15 mortgage, pledge, lien, security interest, issue or reissue, gift or any
16 other voluntary transaction creating an interest in property.

17 (33) "Purchaser" means a person who takes by purchase.

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

20 (35) "Representative" includes an agent, an officer of a
21 corporation or association, and a trustee, executor or administrator
22 of an estate, or any other person empowered to act for another.

23 (36) "Rights" includes remedies.

24 (37) "Security interest" means an interest in personal property or
25 fixtures which secures payment or performance of an obligation.
26 The term also includes any interest of a consignor and a buyer of
27 accounts, chattel paper, a payment intangible, or a promissory note
28 in a transaction that is subject to Chapter 9. The special property
29 interest of a buyer of goods on identification of those goods to a
30 contract for sale under 12A:2-401 is not a "security interest," but a
31 buyer may also acquire a "security interest" by complying with
32 Chapter 9. Except as otherwise provided in 12A:2-505, the right of
33 a seller or lessor of goods under Chapter 2 or 2A to retain or
34 acquire possession of the goods is not a "security interest," but a
35 seller or lessor may also acquire a "security interest" by complying
36 with Chapter 9. The retention or reservation of title by a seller of
37 goods notwithstanding shipment or delivery to the buyer
38 (12A:2-401) is limited in effect to a reservation of a "security
39 interest." Whether a lease is intended as security is to be determined
40 by the facts of each case; however, (a) the inclusion of an option to
41 purchase does not of itself make the lease one intended for security,
42 and (b) an agreement that upon compliance with the terms of the
43 lease the lessee shall become or has the option to become the owner
44 of the property for no additional consideration or for a nominal
45 consideration does make the lease one intended for security.

46 Whether a transaction creates a lease or security interest is

1 determined by the facts of each case; however, a transaction creates
2 a security interest if the consideration the lessee is to pay the lessor
3 for the right to possession and use of the goods is an obligation for
4 the term of the lease not subject to termination by the lessee, and

5 (a) the original term of the lease is equal to or greater than the
6 remaining economic life of the goods,

7 (b) the lessee is bound to renew the lease for the remaining
8 economic life of the goods or is bound to become the owner of the
9 goods,

10 (c) the lessee has an option to renew the lease for the remaining
11 economic life of the goods for no additional consideration or
12 nominal additional consideration upon compliance with the lease
13 agreement, or

14 (d) the lessee has an option to become the owner of the goods
15 for no additional consideration or nominal additional consideration
16 upon compliance with the lease agreement.

17 A transaction does not create a security interest merely because it
18 provides that

19 (a) the present value of the consideration the lessee is obligated
20 to pay the lessor for the right to possession and use of the goods is
21 substantially equal to or is greater than the fair market value of the
22 goods at the time the lease is entered into,

23 (b) the lessee assumes risk of loss of the goods, or agrees to pay
24 taxes, insurance, filing, recording, or registration fees, or service or
25 maintenance costs with respect to the goods,

26 (c) the lessee has an option to renew the lease or to become the
27 owner of the goods,

28 (d) the lessee has an option to renew the lease for a fixed rent
29 that is equal to or greater than the reasonably predictable fair market
30 rent for the use of the goods for the term of the renewal at the time
31 the option is to be performed, or

32 (e) the lessee has an option to become the owner of the goods
33 for a fixed price that is equal to or greater than the reasonably
34 predictable fair market value of the goods at the time the option is to
35 be performed.

36 For purposes of this subsection (37):

37 Additional consideration is not nominal if (i) when the option to
38 renew the lease is granted to the lessee the rent is stated to be the
39 fair market rent for the use of the goods for the term of the renewal
40 determined at the time the option is to be performed, or (ii) when
41 [the option to become the owner of the goods is granted to the
42 lessee] the option to become the owner of the goods is granted to
43 the lessee the price is stated to be the fair market value of the goods
44 determined at the time the option is to be performed. Additional
45 consideration is nominal if it is less than the lessee's reasonably
46 predictable cost of performing under the lease agreement if the

1 option is not exercised;

2 "Reasonably predictable" and "remaining economic life of the
3 goods" are to be determined with reference to the facts and
4 circumstances at the time the transaction is entered into; and

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

13 (38) "Send" in connection with any writing or notice means to
14 deposit in the mail or deliver for transmission by any other usual
15 means of communication with postage or cost of transmission
16 provided for and properly addressed and in the case of an instrument
17 to an address specified thereon or otherwise agreed, or if there be
18 none to any address reasonable under the circumstances. The receipt
19 of any writing or notice within the time at which it would have
20 arrived if properly sent has the effect of a proper sending.

21 (39) "Signed" includes any symbol executed or adopted by a
22 party with present intention to authenticate a writing.

23 (40) "Surety" includes guarantor.

24 (41) "Telegram" includes a message transmitted by radio,
25 teletype, cable, any mechanical method of transmission, or the like.

26 (42) "Term" means that portion of an agreement which relates to
27 a particular matter.

28 (43) "Unauthorized" signature or indorsement means one made
29 without actual, implied, or apparent authority and includes a forgery.

30 (44) "Value." Except as otherwise provided with respect to
31 negotiable instruments and bank collections (12A:3-303, 12A:4-210
32 and 12A:4-211), a person gives "value" for rights if the person
33 acquires them:

34 (a) In return for a binding commitment to extend credit or for the
35 extension of immediately available credit whether or not drawn upon
36 and whether or not a charge-back is provided for in the event of
37 difficulties in collection; or

38 (b) As security for or in total or partial satisfaction of a
39 pre-existing claim; or

40 (c) By accepting delivery pursuant to a pre-existing contract for
41 purchase; or

42 (d) Generally, in return for any consideration sufficient to
43 support a simple contract.

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

46 (46) "Written" or "writing" includes printing, typewriting, or any

1 other intentional reduction to tangible form.

2 (cf: P.L.2001, c.117, s.3)

3

4 130. N.J.S.12A:1-206 is amended to read as follows:

5 12A:1-206. Statute of Frauds for Kinds of Personal Property Not
6 Otherwise Covered.

7 (1) Except in the cases described in subsection (2) [of this
8 section] a contract for the sale of personal property is not
9 enforceable by way of action or defense beyond five thousand
10 dollars in amount or value of remedy unless there is some writing
11 which indicates that a contract for sale has been made between the
12 parties at a defined or stated price, reasonably identifies the subject
13 matter, and is signed by the party against whom enforcement is
14 sought or by his authorized agent.

15 (2) Subsection (1) [of this section] does not apply to contracts
16 for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor
17 to security agreements ([12A:9-201] 12A:9-203).

18 (cf: P.L.2001, c.117, s.4)

19

20 131. N.J.S.12A:2A-103 is amended to read as follows:

21 12A:2A-103. Definitions and index of definitions.

22 (1) In this chapter unless the context otherwise requires:

23 (a) "Buyer in ordinary course of business" means a person who in
24 good faith and without knowledge that the sale to the person is in
25 violation of the ownership rights or security interest or leasehold
26 interest of a third party in the goods buys in ordinary course from a
27 person in the business of selling goods of that kind but does not
28 include a pawnbroker. "Buying" may be for cash or by exchange of
29 other property or on secured or unsecured credit and includes
30 receiving goods or documents of title under a pre-existing contract
31 for sale but does not include a transfer in bulk or as security for or in
32 total or partial satisfaction of a money debt.

33 (b) "Cancellation" occurs when either party puts an end to the
34 lease contract for default by the other party.

35 (c) "Commercial unit" means such a unit of goods as by
36 commercial usage is a single whole for purposes of lease and
37 division of which materially impairs its character or value on the
38 market or in use. A commercial unit may be a single [chapter]
39 article, as a machine, or a set of [chapters] articles, as a suite of
40 furniture or a line of machinery, or a quantity, as a gross or carload,
41 or any other unit treated in use or in the relevant market as a single
42 whole.

43 (d) "Conforming" goods or performance under a lease contract
44 means goods or performance that are in accordance with the
45 obligations under the lease contract.

46 (e) "Consumer lease" means a lease that a lessor regularly

1 engaged in the business of leasing or selling makes to a lessee who is
2 a natural person and who takes under the lease primarily for a
3 personal, family, or household purpose.

4 (f) "Fault" means wrongful act, omission, breach, or default.

5 (g) "Finance lease" means a lease with respect to which:

6 (i) the lessor does not select, manufacture, or supply the goods;

7 (ii) the lessor acquires the goods or the right to possession and
8 use of the goods in connection with the lease; and

9 (iii) one of the following occurs:

10 (A) the lessee receives a copy of the contract by which the lessor
11 acquired the goods or the right to possession and use of the goods
12 before signing the lease contract;

13 (B) the lessee's approval of the contract by which the lessor
14 acquired the goods or the right to possession and use of the goods is
15 a condition to effectiveness of the lease contract;

16 (C) the lessee, before signing the lease contract, receives an
17 accurate and complete statement designating the promises and
18 warranties, and any disclaimers of warranties, limitations or
19 modifications of remedies, or liquidated damages, including those of
20 a third party, such as the manufacturer of the goods, provided to the
21 lessor by the person supplying the goods in connection with or as
22 part of the contract by which the lessor acquired the goods or the
23 right to possession and use of the goods; or

24 (D) if the lease is not a consumer lease, the lessor, before the
25 lessee signs the lease contract, informs the lessee in writing (a) of
26 the identity of the person supplying the goods to the lessor, unless
27 the lessee has selected that person and directed the lessor to acquire
28 the goods or the right to possession and use of the goods from that
29 person, (b) that the lessee is entitled under this chapter to the
30 promises and warranties, including those of any third party, provided
31 to the lessor by the person supplying the goods in connection with
32 or as part of the contract by which the lessor acquired the goods or
33 the right to possession and use of the goods, and (c) that the lessee
34 may communicate with the person supplying the goods to the lessor
35 and receive an accurate and complete statement of those promises
36 and warranties, including any disclaimers and limitations of them or
37 of remedies.

38 (h) "Goods" means all things that are movable at the time of
39 identification to the lease contract, or are fixtures (12A:2A-309), but
40 the term does not include money, documents, instruments, accounts,
41 chattel paper, general intangibles, or minerals or the like, including
42 oil and gas, before extraction. The term also includes the unborn
43 young of animals.

44 (i) "Installment lease contract" means a lease contract that
45 authorizes or requires the delivery of goods in separate lots to be
46 separately accepted, even though the lease contract contains a clause

1 "each delivery is a separate lease" or its equivalent.

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

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

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

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

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

22 (o) "Lessee in ordinary course of business" means a person who
23 in good faith and without knowledge that the lease to the person is
24 in violation of the ownership rights or security interest or leasehold
25 interest of a third party in the goods leases in ordinary course from a
26 person in the business of selling or leasing goods of that kind but
27 does not include a pawnbroker. "Leasing" may be for cash or by
28 exchange of other property or on secured or unsecured credit and
29 includes receiving goods or documents of title under a pre-existing
30 lease contract but does not include a transfer in bulk or as security
31 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

46 (u) "Present value" means the amount as of a date certain of one

1 or more sums payable in the future, discounted to the date certain.
 2 The discount is determined by the interest rate specified by the
 3 parties if the rate was not manifestly unreasonable at the time the
 4 transaction was entered into; otherwise, the discount is determined
 5 by a commercially reasonable rate that takes into account the facts
 6 and circumstances of each case at the time the transaction was
 7 entered into.

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

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

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

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

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

21 (2) Other definitions applying to this chapter and the sections in
 22 which they appear are

- 23 "Accessions"12A:2A-310(1).
- 24 "Construction mortgage"12A:2A-309(1)(d).
- 25 "Encumbrance"12A:2A-309(1)(e).
- 26 "Fixtures"12A:2A-309(1)(a).
- 27 "Fixture filing"12A:2A-309(1)(b).
- 28 "Purchase money lease"12A:2A-309(1)(c).

29 (3) The following definitions in other Chapters apply to this
 30 Chapter:

- 31 "Account"12A: 9-102(a)(2).
- 32 "Between merchants"12A:2-104(3).
- 33 "Buyer"12A:2-103(1)(a).
- 34 "Chattel paper"12A:9-102(a)(12).
- 35 "Consumer goods"12A:9-102(a)(24).
- 36 "Document"12A:9-102(a)[(21)](31).
- 37 "Entrusting"12A:2-403(3).
- 38 "General intangible"12A:9-102(a)(42).
- 39 "Good faith"12A:2-103(1)(b).
- 40 "Instrument"12A:9-102(a)(47).
- 41 "Merchant"12A:2-104(1).
- 42 "Mortgage"12A:9-102(a)(55).
- 43 "Pursuant to commitment"12A:9-102(a)(68).
- 44 "Receipt"12A:2-103(1)(c).
- 45 "Sale"12A:2-106(1).
- 46 "Sale on approval"12A:2-326.

1 "Sale or return".....12A:2-326.

2 "Seller".....12A:2-103(1)(d).

3 (4) In addition chapter 1 contains general definitions and
4 principles of construction and interpretation applicable throughout
5 this chapter.

6 (cf: P.L. 2001, c.117, s.10)

7

8 132. N.J.S.12A:2A-307 is amended to read as follows:

9 12A:2A-307. Priority of liens arising by attachment or levy on,
10 security interests in, and other claims to goods.

11 (1) Except as otherwise provided in 12A:2A-306, a creditor of a
12 lessee takes subject to the lease contract.

13 (2) Except as otherwise provided in subsection (3) and in
14 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to
15 the lease contract unless [:

16 (a)] the creditor holds a lien that attached to the goods before
17 the lease contract became enforceable [;

18 (b) the creditor holds a security interest in the goods and the
19 lessee did not give value and receive delivery of the goods without
20 knowledge of the security interest; or

21 (c) the creditor holds a security interest in the goods which was
22 perfected (12A:9-303) before the lease contract became
23 enforceable].

24 (3) Except as otherwise provided in 12A:9-317, 12A:9-321 and
25 12A:9-323, a lessee takes a leasehold interest subject to a security
26 interest held by a creditor of the lessor.

27 (cf: P.L. 2001, c.117, s.12)

28

29 133. N.J.S.12A:8-103 is amended to read as follows:

30 12A:8-103. Rule for Determining whether Certain Obligations
31 and Interests are Securities or Financial Assets.

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

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

43 c. An interest in a partnership or limited liability company is not
44 a security unless it is dealt in or traded on securities exchanges or in
45 securities markets, its terms expressly provide that it is a security
46 governed by this chapter, or it is an investment company security.

1 However, an interest in a partnership or limited liability company is a
2 financial asset if it is held in a securities account.

3 d. A writing that is a security certificate is governed by this
4 chapter and not by chapter 3, even though it also meets the
5 requirements of that chapter. However, a negotiable instrument
6 governed by chapter 3 is a financial asset if it is held in a securities
7 account.

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

11 f. A commodity contract, as defined in [12A:9-102(a)(16)]
12 12A:9-102 (a) (15), is not a security or a financial asset.
13 (cf: P.L.2001, c.117, s.17)

14

15 134. N.J.S.12A:8-110 is amended to read as follows:

16 12A:8-110. Applicability; Choice of Law.

17 a. The local law of the issuer's jurisdiction, as specified in
18 subsection d. of this section, governs:

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

29 b. The local law of the securities intermediary's jurisdiction, as
30 specified in subsection e. of this section, governs:

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

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

45 d. "Issuer's jurisdiction" means the jurisdiction under which the
46 issuer of the security is organized or, if permitted by the law of that

1 jurisdiction, the law of another jurisdiction specified by the issuer.
2 An issuer organized under the law of this State may specify the law
3 of another jurisdiction as the law governing the matters specified in
4 paragraphs (2) through (5) of subsection a. of this section.

5 e. The following rules determine a “securities intermediary’s
6 jurisdiction” for purposes of this section:

7 (1) If an agreement between the securities intermediary and its
8 entitlement holder governing the securities account expressly
9 provides that a particular jurisdiction is the securities intermediary’s
10 jurisdiction for purposes of this part, this chapter, or [this Act] the
11 Uniform Commercial Code, that jurisdiction is the securities
12 intermediary’s jurisdiction.

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

18 (3) If neither paragraph (1) nor paragraph (2) of this subsection
19 e. applies and an agreement between the securities intermediary and
20 its entitlement holder governing the securities account expressly
21 provides that the securities account is maintained at an office in a
22 particular jurisdiction, that jurisdiction is the securities
23 intermediary’s jurisdiction.

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

28 (5) If none of the preceding paragraphs applies, the securities
29 intermediary’s jurisdiction is the jurisdiction in which the chief
30 executive office of the securities intermediary is located.

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

37 (cf: P.L.2001, c.117, s.19)

38

39 135. N.J.S.12A:8-510 is amended to read as follows:

40 12A:8-510. Rights of Purchaser of Security Entitlement from
41 Entitlement Holder.

42 a. In a case not covered by the priority rules in Chapter 9 or the
43 rules stated in subsection c. of this section, an action based on an
44 adverse claim to a financial asset or security entitlement, whether
45 framed in conversion, replevin, constructive trust, equitable lien, or
46 other theory, may not be asserted against a person who purchases a

1 security entitlement, or an interest therein, from an entitlement
2 holder if the purchaser gives value, does not have notice of the
3 adverse claim, and obtains control.

4 b. If an adverse claim could not have been asserted against an
5 entitlement holder under 12A:8-502, the adverse claim cannot be
6 asserted against a person who purchases a security entitlement, or an
7 interest therein, from the entitlement holder.

8 c. In a case not covered by the priority rules in Chapter 9, a
9 purchaser for value of a security entitlement, or an interest therein,
10 who obtains control has priority over a purchaser of a security
11 entitlement, or an interest therein, who does not obtain control.
12 Except as otherwise provided in subsection d of this section,
13 purchasers who have control rank according to priority in time of:

14 (1) the purchaser's becoming the person for whom the securities
15 account, in which the security entitlement is carried, is maintained, if
16 the purchaser obtained control under 12A:8-106d.(1); [or]

17 (2) the securities intermediary's agreement to comply with the
18 purchaser's entitlement orders with respect to security entitlements
19 carried or to be carried in the securities account in which the
20 security entitlement is carried, if the purchaser obtained control
21 under 12A:8-106d.(2); or

22 (3) if the purchaser obtained control through another person
23 under 12A:8-106 d. (3), the time on which priority would be based
24 under this subsection if the other person were the secured party.

25 d. A securities intermediary as purchaser has priority over a
26 conflicting purchaser who has control unless otherwise agreed by the
27 securities intermediary.

28 (cf: P.L.2001, c.117, s.22)

29

30 136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to
31 read as follows:

32 27. a. For purposes of this act, and the Uniform Commercial
33 Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable
34 transition property, as defined in N.J.S. [12A:9-102a (9)] 12A:9-
35 102 (a) (8.1), shall constitute an account. For purposes of this act,
36 and the Uniform Commercial Code - Secured Transactions,
37 N.J.S.12A:9-101 et seq., bondable transition property shall be in
38 existence whether or not the revenues or proceeds in respect thereof
39 have accrued, in accordance with subsection c. of section 22 of this
40 act. The validity, perfection or priority of any security interest in
41 bondable transition property shall not be defeated or adversely
42 affected by changes to the bondable stranded costs rate order or to
43 the transition bond charges payable by any customer. Any
44 description of bondable transition property in a security agreement
45 or other agreement or a financing statement shall be sufficient if it
46 refers to the bondable stranded costs rate order establishing the

1 bondable transition property.

2 b. In addition to the other rights and remedies provided or
3 authorized by this act, and by the Uniform Commercial Code -
4 Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in
5 default under a security agreement and the collateral is bondable
6 transition property, then upon application by the secured party, the
7 board or any court of competent jurisdiction shall order the
8 sequestration and payment to the secured party of all collections and
9 other proceeds of such bondable transition property up to the value
10 of the property. In the event of any conflicts, priority among
11 pledgees, transferees or secured parties shall be determined under
12 N.J.S.12A:9-101 et seq.. The secured party shall account to the
13 debtor for any surplus and, unless otherwise agreed, the debtor shall
14 be liable for any deficiency.

15 (cf: P.L.2001, c.117, s.29)

16

17 137. N.J.S.2A:25-1 is amended to read as follows:

18 2A:25-1. All contracts for the sale and conveyance of real estate,
19 all judgments and decrees recovered in any of the courts of this
20 state or of the United States or in any of the courts of any other
21 state of the United States and all choses in action arising on
22 contract shall be assignable, and the assignee may sue thereon in his
23 own name. In such an action, the person sued shall be allowed, not
24 only all set-offs, discounts and defenses he has against the assignee,
25 but also all set-offs, discounts and defenses he had against the
26 assignor before notice of such assignment was given to him. The
27 assignment of a sealed instrument by writing not under seal shall be
28 as valid as if under seal.

29 The assignee for a valuable consideration of any chose in action
30 may, although the assignor is dead, sue for and recover the same in
31 his own name. The person sued in any such action shall be allowed
32 not only all set-offs, discounts and defenses he has against the
33 assignee, but also all set-offs, discounts and defenses he had against
34 the assignor or his representatives before notice of such assignment
35 was given to him.

36 Security interests in commercial tort claims may be created,
37 attached, perfected and enforced in accordance with Chapter 9 of
38 Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

39 (cf: N.J.S.2A:25-1)

40

41 138. This act shall take effect immediately, and shall have
42 retroactive effect in accordance with section 127 of this act.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3917

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Assembly Banking and Insurance Committee reports favorably and with committee amendments, Assembly Bill No. 3917.

This bill, as amended by the committee, insures that the New Jersey law governing secured transactions is essentially uniform with the law in other states that have enacted the Revised Article 9 to the Uniform Commercial Code. Revised Article 9 has been enacted in all 50 states and became effective in New Jersey on July 1, 2001 pursuant to P.L.2001, c.117.

The bill adds certain provisions jointly approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute for inclusion in the Revised Article 9. The bill also amends N.J.S.2A:25-1 to conform the assignment provisions in the civil law with the Revised Article 9 which allows the grant of a security interest in a commercial tort claim, and makes certain technical corrections to P.L. 2001, c.117.

The primary substantive change in this bill from the prior UCC Chapter 9 revision is in the area of transition. Specifically, the bill adds a provision that concerns the case in which a person has filed a financing statement prior to July 1, 2001 under the previous UCC Chapter 9, and then seeks to amend that financing statement after July 1, 2001 under the Revised Chapter 9. Those provisions are found in section 125 of the bill (12A:9-707).

The bill is designed to be effective retroactively to July 1, 2001 so that the provisions of law governing secured transactions in New Jersey will be congruent with the law in other states as of July 1, 2001.

The committee made certain technical amendments to the bill. As released by the committee, this bill is identical to Senate Bill No. 2690(1R).

§125 -
N.J.S.12A:9-707
§127 -
N.J.S.12A:9-710
§128 -
N.J.S.12A:1-109
§138 - Note

P.L. 2001, CHAPTER 386, *approved January 8, 2002*
Senate, No. 2690 (*First Reprint*)

1 **AN ACT** concerning chapter 9 of Title 12A of the New Jersey Statutes
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.12A:9-102 is amended to read as follows:
8 12A:9-102. Definitions and Index of Definitions.

9 **[a.]** (a) Chapter 9 definitions. In this chapter:

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

13 (2) **["Account,"]** "Account", except as used in **[**"account for,"
14 (a) "account for", means a right to payment of a monetary obligation,
15 whether or not earned by performance, (i) for property that has been
16 or is to be sold, leased, licensed, assigned, or otherwise disposed of,
17 (ii) for services rendered or to be rendered, (iii) for a policy of
18 insurance issued or to be issued, (iv) for a secondary obligation
19 incurred or to be incurred, (v) for energy provided or to be provided,
20 (vi) for the use or hire of a vessel under a charter or other contract,
21 (vii) arising out of the use of a credit or charge card or information
22 contained on or for use with the card, or (viii) as winnings in a lottery
23 or other game of chance operated or sponsored by a State,
24 governmental unit of a State, or person licensed or authorized to
25 operate the game by a State or governmental unit of a State. The term
26 includes health-care-insurance receivables and bondable transition
27 property. **[(b)]** The term does not include (i) rights to payment
28 evidenced by chattel paper or an instrument, (ii) commercial tort
29 claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-
30 credit rights or letters of credit, or (vi) rights to payment for money or
31 funds advanced or sold, other than rights arising out of the use of a
32 credit or charge card or information contained on or for use with the
33 card.

34 (3) "Account debtor" means a person obligated on an account,
35 chattel paper, or general intangible. The term does not include

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 19, 2001.

1 persons obligated to pay a negotiable instrument, even if the
2 instrument constitutes part of chattel paper.

3 (4) [~~“Accounting,”~~] ~~“Accounting”~~, except as used in [~~“accounting~~
4 ~~for,”~~] ~~“accounting for”~~, means a record:

5 [(a)] (A) authenticated by a secured party;

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

9 [(c)] (C) identifying the components of the obligations in
10 reasonable detail.

11 (5) “Agricultural lien” means an interest [, other than a security
12 interest,] in farm products:

13 [(a)] (A) which secures payment or performance of an obligation
14 for:

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

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

19 [(b)] (B) which is created by statute in favor of a person [who]
20 that:

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

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

25 [(c)] (C) whose effectiveness does not depend on the person’s
26 possession of the personal property.

27 (6) “As-extracted collateral” means:

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

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

32 (ii) attaches to the minerals as extracted; or

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

36 (7) “Authenticate” means:

37 [(a)] (A) to sign; or

38 [(b)] (B) to execute or otherwise adopt a symbol, or encrypt or
39 similarly process a record in whole or in part, with the present intent
40 of the authenticating person to identify the person and adopt or accept
41 a record.

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

45 [(9)] (8.1) “Bondable transition property” shall have the meaning

1 set forth in section 3 of P.L. [1990] 1999, c.23 (C.48:3-51).

2 [(10)] (9) “Cash proceeds” means proceeds that are money,
3 checks, deposit accounts, or the like.

4 [(11)] (10) “Certificate of title” means a certificate of title with
5 respect to which a statute provides for the security interest in question
6 to be indicated on the certificate as a condition or result of the security
7 interest’s obtaining priority over the rights of a lien creditor with
8 respect to the collateral.

9 [(12)] (11) “Chattel paper” means a record or records that
10 evidence both a monetary obligation and a security interest in specific
11 goods, a security interest in specific goods and software used in the
12 goods, a security interest in specific goods and license of software
13 used in the goods, a lease of specific goods, or a lease of specific
14 goods and license of software used in the goods. In this paragraph,
15 “monetary obligation” means a monetary obligation secured by the
16 goods or owed under a lease of the goods and includes a monetary
17 obligation with respect to software used in the goods. The term does
18 not include (i) charters or other contracts involving the use or hire of
19 a vessel or (ii) records that evidence a right to payment arising out of
20 the use of a credit or charge card or information contained on or for
21 use with the card. If a transaction is evidenced by records that include
22 an instrument or series of instruments, the group of records taken
23 together constitutes chattel paper.

24 [(13)] (12) “Collateral” means the property subject to a security
25 interest or agricultural lien. The term includes:

26 [(a)] (A) proceeds to which a security interest attaches;

27 [(b)] (B) accounts, chattel paper, payment intangibles, and
28 promissory notes that have been sold; and

29 [(c)] (C) goods that are the subject of a consignment.

30 [(14)] (13) “Commercial tort claim” means a claim arising in tort
31 with respect to which:

32 [(a)] (A) the claimant is an organization; or

33 [(b)] (B) the claimant is an individual and the claim:

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

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

37 [(15)] (14) “Commodity account” means an account maintained
38 by a commodity intermediary in which a commodity contract is carried
39 for a commodity customer.

40 [(16)] (15) “Commodity contract” means a commodity futures
41 contract, an option on a commodity futures contract, a commodity
42 option, or another contract [or option] if the contract or option is:

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

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

4 [(17)] (16) “Commodity customer” means a person for which a
5 commodity intermediary carries a commodity contract on its books.

6 [(18)] (17) “Commodity intermediary” means a person [who]
7 that:

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

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

13 [(19)] (18) “Communicate” means:

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

15 [(b)] (B) to transmit a record by any means agreed upon by the
16 persons sending and receiving the record; or

17 [(c)] (C) in the case of transmission of a record to or by a filing
18 office, to transmit a record by any means prescribed by filing-office
19 rule.

20 [(20)] (19) “Consignee” means a merchant to which goods are
21 delivered in a consignment.

22 [(21)] (20) “Consignment” means a transaction, regardless of its
23 form, in which a person delivers goods to a merchant for the purpose
24 of sale and:

25 [(a)] (A) the merchant:

26 (i) deals in goods of that kind under a name other than the name of
27 the person making delivery;

28 (ii) is not an auctioneer; and

29 (iii) is not generally known by its creditors to be substantially
30 engaged in selling the goods of others;

31 [(b)] (B) with respect to each delivery, the aggregate value of the
32 goods is \$1,000 or more at the time of delivery;

33 [(c)] (C) the goods are not consumer goods immediately before
34 delivery; and

35 [(d)] (D) the transaction does not create a security interest that
36 secures an obligation.

37 [(22)] (21) “Consignor” means a person [who] that delivers
38 goods to a consignee in a consignment.

39 [(23)] (22) “Consumer debtor” means a debtor in a consumer
40 transaction.

41 [(24)] (23) “Consumer goods” means goods that are used or
42 bought for use primarily for personal, family, or household purposes.

43 [(25)] (24) “Consumer-goods transaction” means a consumer
44 transaction in which:

45 [(a)] (A) an individual incurs an obligation primarily for personal,

1 family, or household purposes; and

2 [(b)] (B) a security interest in consumer goods secures the
3 obligation.

4 [(26)] (25) “Consumer obligor” means an obligor who is an
5 individual and who incurred the obligation as part of a transaction
6 entered into primarily for personal, family, or household purposes.

7 [(27)] (26) “Consumer transaction” means a transaction in which
8 [(a)] (i) an individual incurs an obligation primarily for personal,
9 family, or household purposes, [(b)] (ii) a security interest secures
10 the obligation, and [(c)] (iii) the collateral is held or acquired
11 primarily for personal, family, or household purposes. The term
12 includes consumer-goods transactions.

13 [(28)] (27) “Continuation statement” means an amendment of a
14 financing statement which:

15 [(a)] (A) identifies, by its file number, the initial financing
16 statement to which it relates; and

17 [(b)] (B) indicates that it is a continuation statement for, or that it
18 is filed to continue the effectiveness of, the identified financing
19 statement.

20 [(29)] (28) “Debtor” means:

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

23 [(b)] (B) a seller of accounts, chattel paper, payment intangibles,
24 or promissory notes; or

25 [(c)] (C) a consignee.

26 [(30)] (29) “Deposit account” means a demand, time, savings,
27 passbook, or similar account maintained with a bank. The term does
28 not include investment property or accounts evidenced by an
29 instrument.

30 [(31)] (30) “Document” means a document of title or a receipt of
31 the type described in 12A:7-201(2).

32 [(32)] (31) “Electronic chattel paper” means chattel paper
33 evidenced by a record or records consisting of information stored in
34 an electronic medium.

35 [(33)] (32) “Encumbrance” means a right, other than an ownership
36 interest, in real property. The term includes mortgages and other liens
37 on real property.

38 [(34)] (33) “Equipment” means goods other than inventory, farm
39 products, or consumer goods.

40 [(35)] (34) “Farm products” means goods, other than standing
41 timber, with respect to which the debtor is engaged in a farming
42 operation and which are:

43 [(a)] (A) crops grown, growing, or to be grown, including:

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

45 (ii) aquatic goods produced in aquacultural operations;

- 1 **[(b)] (B)** livestock, born or unborn, including aquatic goods
2 produced in aquacultural operations;
- 3 **[(c)] (C)** supplies used or produced in a farming operation; or
- 4 **[(d)] (D)** products of crops or livestock in their unmanufactured
5 states.
- 6 **[(36)] (35)** “Farming operation” means raising, cultivating,
7 propagating, fattening, grazing, or any other farming, livestock, or
8 aquacultural operation.
- 9 **[(37)] (36)** “File number” means the number assigned to an initial
10 financing statement pursuant to 12A:9-519 **[a.] (a)**.
- 11 **[(38)] (37)** “Filing office” means an office designated in
12 12A:9-501 as the place to file a financing statement.
- 13 **[(39)] (38)** “Filing-office rule” means a rule adopted pursuant to
14 12A:9-526.
- 15 **[(40)] (39)** “Financing statement” means a record or records
16 composed of an initial financing statement and any filed record relating
17 to the initial financing statement.
- 18 **[(40.1)] (40)** “Fixture filing” means the filing of a financing
19 statement covering goods that are or are to become fixtures and
20 satisfying 12A:9-502 **[a. and b.] (a) and (b)**. The term includes the
21 filing of a financing statement covering goods of a transmitting utility
22 which are or are to become fixtures.
- 23 (41) “Fixtures” means goods that have become so related to
24 particular real property that an interest in them arises under real
25 property law.
- 26 (42) “General intangible” means any personal property, including
27 things in action, other than accounts, chattel paper, commercial tort
28 claims, deposit accounts, documents, goods, instruments, investment
29 property, letter-of-credit rights, letters of credit, money, and oil, gas,
30 or other minerals before extraction. The term includes payment
31 intangibles and software.
- 32 (43) “Good faith” means honesty in fact and the observance of
33 reasonable commercial standards of fair dealing.
- 34 (44) “Goods” means all things that are movable when a security
35 interest attaches. **[(a)]** The term includes (i) fixtures, (ii) standing
36 timber that is to be cut and removed under a conveyance or contract
37 for sale, (iii) the unborn young of animals, (iv) crops grown, growing,
38 or to be grown, even if the crops are produced on trees, vines, or
39 bushes, and (v) manufactured homes. **[(b)]** The term also includes a
40 computer program embedded in goods and any supporting information
41 provided in connection with a transaction relating to the program if (i)
42 the program is associated with the goods in such a manner that it
43 customarily is considered part of the goods, or (ii) by becoming the
44 owner of the goods, a person acquires a right to use the program in
45 connection with the goods. The term does not include a computer

1 program embedded in goods that consist solely of the medium in which
2 the program is embedded. The term also does not include accounts,
3 chattel paper, commercial tort claims, deposit accounts, documents,
4 general intangibles, instruments, investment property, letter-of-credit
5 rights, letters of credit, money, or oil, gas, or other minerals before
6 extraction.

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

13 (46) “Health-care-insurance receivable” means an interest in or
14 claim under a policy of insurance which is a right to payment of a
15 monetary obligation for health-care goods or services provided or to
16 be provided.

17 (47) “Instrument” means a negotiable instrument or any other
18 writing that evidences a right to the payment of a monetary obligation,
19 is not itself a security agreement or lease, and is of a type that in
20 ordinary course of business is transferred by delivery with any
21 necessary indorsement or assignment. The term does not include [(a)]
22 (i) investment property, [(b)] (ii) letters of credit, or [(c)] (iii)
23 writings that evidence a right to payment arising out of the use of a
24 credit or charge card or information contained on or for use with the
25 card.

26 (48) “Inventory” means goods, other than farm products, which:
27 [(a)] (A) are leased by a person as lessor;
28 [(b)] (B) are held by a person for sale or lease or to be furnished
29 under a contract of service;
30 [(c)] (C) are furnished by a person under a contract of service; or
31 [(d)] (D) consist of raw materials, work in process, or materials
32 used or consumed in a business.

33 (49) “Investment property” means a security, whether certificated
34 or uncertificated, security entitlement, securities account, commodity
35 contract, or commodity account.

36 (50) “Jurisdiction of organization”, with respect to a registered
37 organization, means the jurisdiction under whose law the organization
38 is organized.

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

44 (52) “Lien creditor” means:
45 [(a)] (A) a creditor that has acquired a lien on the property
46 involved by attachment, levy, or the like;

1 [(b)] (B) an assignee for benefit of creditors from the time of
2 assignment;

3 [(c)] (C) a trustee in bankruptcy from the date of the filing of the
4 petition; or

5 [(d)] (D) a receiver in equity from the time of appointment.

6 (53) “Manufactured home” means a structure, transportable in one
7 or more sections, which, in the traveling mode, is eight body feet or
8 more in width or 40 body feet or more in length, or, when erected on
9 site, is 320 or more square feet, and which is built on a permanent
10 chassis and designed to be used as a dwelling with or without a
11 permanent foundation when connected to the required utilities, and
12 includes the plumbing, heating, air-conditioning, and electrical systems
13 contained therein. The term includes any structure that meets all of
14 the requirements of this paragraph except the size requirements and
15 with respect to which the manufacturer voluntarily files a certification
16 required by the United States Secretary of Housing and Urban
17 Development and complies with the standards established under Title
18 42 of the United States Code.

19 (54) “Manufactured-home transaction” means a secured
20 transaction:

21 [(a)] (A) that creates a purchase-money security interest in a
22 manufactured home, other than a manufactured home held as
23 inventory; or

24 [(b)] (B) in which a manufactured home, other than a
25 manufactured home held as inventory, is the primary collateral.

26 (55) “Mortgage” means a consensual interest in real property,
27 including fixtures, which secures payment or performance of an
28 obligation.

29 (56) “New debtor” means a person that becomes bound as debtor
30 under 12A:9-203 [(d)] (d) by a security agreement previously entered
31 into by another person.

32 (57) “New value” means [(a)] (i) money, [(b)] (ii) money’s worth
33 in property, services, or new credit, or [(c)] (iii) release by a
34 transferee of an interest in property previously transferred to the
35 transferee. The term does not include an obligation substituted for
36 another obligation.

37 (58) “Noncash proceeds” means proceeds other than cash
38 proceeds.

39 (59) “Obligor” means a person [who] that, with respect to an
40 obligation secured by a security interest in or an agricultural lien on
41 the collateral, [(a)] (i) owes payment or other performance of the
42 obligation, [(b)] (ii) has provided property other than the collateral to
43 secure payment or other performance of the obligation, or [(c)] (iii)
44 is otherwise accountable in whole or in part for payment or other
45 performance of the obligation. The term does not include issuers or

1 nominated persons under a letter of credit.

2 (60) “Original debtor”, except as used in 12A:9-310(c), means a
3 person ~~[who]~~ that, as debtor, entered into a security agreement to
4 which a new debtor has become bound under 12A:9-203 ~~[d.]~~ (d).

5 (61) “Payment intangible” means a general intangible under which
6 the account debtor’s principal obligation is a monetary obligation.

7 (62) “Person related to”, with respect to an individual, means:

8 ~~[(a)]~~ (A) the spouse of the individual;

9 ~~[(b)]~~ (B) a brother, brother-in-law, sister, or sister-in-law of the
10 individual;

11 ~~[(c)]~~ (C) an ancestor or lineal descendant of the individual or the
12 individual’s spouse; or

13 ~~[(d)]~~ (D) any other relative, by blood or marriage, of the individual
14 or the individual’s spouse who shares the same home with the
15 individual.

16 (63) “Person related to”, with respect to an organization, means:

17 ~~[(a)]~~ (A) a person directly or indirectly controlling, controlled by,
18 or under common control with the organization;

19 ~~[(b)]~~ (B) an officer or director of, or a person performing similar
20 functions with respect to, the organization;

21 ~~[(c)]~~ (C) an officer or director of, or a person performing similar
22 functions with respect to, a person described in subparagraph ~~[(a)]~~
23 (A);

24 ~~[(d)]~~ (D) the spouse of an individual described in subparagraph
25 ~~[(a), (b), or (c)]~~ (A), (B) or (C); or

26 ~~[(e)]~~ (E) an individual who is related by blood or marriage to an
27 individual described in subparagraph ~~[(a), (b), (c), or (d)]~~ (A), (B) (C)
28 or (D) and shares the same home with the individual.

29 (64) “Proceeds”, except as used in 12A:9-609(b), means the
30 following property:

31 ~~[(a)]~~ (A) whatever is acquired upon the sale, lease, license,
32 exchange, or other disposition of collateral;

33 ~~[(b)]~~ (B) whatever is collected on, or distributed on account of,
34 collateral;

35 ~~[(c)]~~ (C) rights arising out of collateral;

36 ~~[(d)]~~ (D) to the extent of the value of collateral, claims arising out
37 of the loss, nonconformity, or interference with the use of, defects or
38 infringement of rights in, or damage to, the collateral; or

39 ~~[(e)]~~ (E) to the extent of the value of collateral and to the extent
40 payable to the debtor or the secured party, insurance payable by reason
41 of the loss or nonconformity of, defects or infringement of rights in,
42 or damage to, the collateral.

43 (65) “Promissory note” means an instrument that evidences a
44 promise to pay a monetary obligation, does not evidence an order to
45 pay, and does not contain an acknowledgment by a bank that the bank

1 has received for deposit a sum of money or funds.

2 (66) “Proposal” means a record authenticated by a secured party
3 which includes the terms on which the secured party is willing to
4 accept collateral in full or partial satisfaction of the obligation it
5 secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

6 (67) “Public-finance transaction” means a secured transaction in
7 connection with which:

8 [(a)] (A) debt securities are issued;

9 [(b)] (B) all or a portion of the securities issued have an initial
10 stated maturity of at least 20 years; and

11 [(c)] (C) the debtor, obligor, secured party, account debtor or
12 other person obligated on collateral, assignor or assignee of a secured
13 obligation, or assignor or assignee of a security interest is a state or a
14 governmental unit of a state.

15 (68) “Pursuant to commitment”, with respect to an advance made
16 or other value given by a secured party, means pursuant to the secured
17 party’s obligation, whether or not a subsequent event of default or
18 other event not within the secured party’s control has relieved or may
19 relieve the secured party from its obligation.

20 (69) “Record”, except as used in “for record”, “of record”, “record
21 or legal title”, and “record owner”, means information that is inscribed
22 on a tangible medium or which is stored in an electronic or other
23 medium and is retrievable in perceivable form.

24 (70) “Registered organization” means an organization organized
25 solely under the law of a single state or the United States and as to
26 which the state or the United States must maintain a public record
27 showing the organization to have been organized.

28 (71) “Secondary obligor” means an obligor to the extent that:

29 [(a)] (A) the obligor’s obligation is secondary; or

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

33 (72) “Secured party” means:

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

37 [(b)] (B) a person that holds an agricultural lien;

38 [(c)] (C) a consignor;

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

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

44 [(f)] (F) a person that holds a security interest arising under
45 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), [or]

1 12A:4-210, or 12A:5-118.

2 (73) “Security agreement” means an agreement that creates or
3 provides for a security interest.

4 (74) “Send”, in connection with a record or notification, means:

5 [(a)] (A) to deposit in the mail, deliver for transmission, or
6 transmit by any other usual means of communication, with postage or
7 cost of transmission provided for, addressed to any address reasonable
8 under the circumstances; or

9 [(b)] (B) to cause the record or notification to be received within
10 the time that it would have been received if properly sent under
11 subparagraph [(a)] (A).

12 (75) “Software” means a computer program and any supporting
13 information provided in connection with a transaction relating to the
14 program. The term does not include a computer program that is
15 included in the definition of goods.

16 (76) “State” means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the United
19 States.

20 (77) “Supporting obligation” means a letter-of-credit right or
21 secondary obligation that supports the payment or performance of an
22 account, chattel paper, a document, a general intangible, an
23 instrument, or investment property.

24 (78) “Tangible chattel paper” means chattel paper evidenced by a
25 record or records consisting of information that is inscribed on a
26 tangible medium.

27 (79) “Termination statement” means an amendment of a financing
28 statement which:

29 [(a)] (A) identifies, by its file number, the initial financing
30 statement to which it relates; and

31 [(b)] (B) indicates either that it is a termination statement or that
32 the identified financing statement is no longer effective.

33 (80) “Transmitting utility” means a person primarily engaged in the
34 business of:

35 [(a)] (A) operating a railroad, subway, street railway, or trolley
36 bus;

37 [(b)] (B) transmitting communications electrically,
38 electromagnetically, or by light;

39 [(c)] (C) transmitting goods by pipeline or sewer; or

40 [(d)] (D) transmitting or producing and transmitting electricity,
41 steam, gas, or water.

42 [b.] (b) Definitions in other chapters. The following definitions in
43 other chapters apply to this chapter:

44 “Applicant” 12A:5-102.

45 “Beneficiary” 12A:5-102.

1	“Broker”	12A:8-102.
2	“Certificated security”	12A:8-102.
3	“Check”	12A:3-104.
4	“Clearing corporation”	12A:8-102.
5	“Contract for sale”	12A:2-106.
6	“Customer”	12A:4-104.
7	“Entitlement holder”	12A:8-102.
8	“Financial asset”	12A:8-102.
9	“Holder in due course”	12A:3-302.
10	“Issuer” (with respect to a letter of	
11	credit or letter-of-credit right)	12A:5-102.
12	“Issuer” (with respect to a security)	12A:8-201.
13	“Lease”	12A:2A-103.
14	“Lease agreement”	12A:2A-103.
15	“Lease contract”	12A:2A-103.
16	“Leasehold interest”	12A:2A-103.
17	“Lessee”	12A:2A-103.
18	“Lessee in ordinary course of business”	12A:2A-103.
19	“Lessor”	12A:2A-103.
20	“Lessor’s residual interest”	12A:2A-103.
21	“Letter of credit”	12A:5-102.
22	“Merchant”	12A:2-104.
23	“Negotiable instrument”	12A:3-104.
24	“Nominated person”	12A:5-102.
25	“Note”	12A:3-104.
26	“Proceeds of a letter of credit”	12A:5-114.
27	“Prove”	12A:3-103.
28	“Sale”	12A:2-106.
29	“Securities account”	12A:8-501.
30	“Securities intermediary”	12A:8-102.
31	“Security”	12A:8-102.
32	“Security certificate”	12A:8-102.
33	“Security entitlement”	12A:8-102.
34	“Uncertificated security”	12A:8-102.

35 **[c.] (c)** Chapter 1 definitions and principles. Chapter 1 contains
36 general definitions and principles of construction and interpretation
37 applicable throughout this chapter.
38 (cf: N.J.S.12A:9-102)

39

40 2. N.J.S.12A:9-103 is amended to read as follows:

41 12A:9-103. Purchase-Money Security Interest; Application of
42 Payments; Burden of Establishing.

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

44 (1) “purchase-money collateral” means goods or software that
45 **[secure] secures** a purchase-money obligation incurred with respect
46 to that collateral; and

1 (2) “purchase-money obligation” means an obligation of an obligor
2 incurred as all or part of the price of the collateral or for value given
3 to enable the debtor to acquire rights in or the use of the collateral if
4 the value is in fact so used.

5 **[b.] (b)** Purchase-money security interest in goods. A security
6 interest in goods is a purchase-money security interest:

7 (1) to the extent that the goods are purchase-money collateral with
8 respect to that security interest;

9 (2) if the security interest is in inventory that is or was purchase-
10 money collateral, also to the extent that the security interest secures
11 a purchase-money obligation incurred with respect to other inventory
12 in which the secured party holds or held a purchase-money security
13 interest; and

14 (3) also to the extent that the security interest secures a purchase-
15 money obligation incurred with respect to software in which the
16 secured party holds or held a purchase-money security interest.

17 **[c.] (c)** Purchase-money security interest in software. A security
18 interest in software is a purchase-money security interest to the extent
19 that the security interest also secures a purchase-money obligation
20 incurred with respect to goods in which the secured party holds or
21 held a purchase-money security interest if:

22 (1) the debtor acquired its interest in the software in an integrated
23 transaction in which it acquired an interest in the goods; and

24 (2) the debtor acquired its interest in the software for the principal
25 purpose of using the software in the goods.

26 **[d.] (d)** Consignor’s inventory purchase-money security interest.
27 The security interest of a consignor in goods that are the subject of a
28 consignment is a purchase-money security interest in inventory.

29 **[e.] (e)** Application of payment in non-consumer-goods
30 transaction. In a transaction other than a consumer-goods transaction,
31 if the extent to which a security interest is a purchase-money security
32 interest depends on the application of a payment to a particular
33 obligation, the payment **[shall] must** be applied:

34 (1) in accordance with any reasonable method of application to
35 which the parties agree;

36 (2) in the absence of the parties’ agreement to a reasonable method,
37 in accordance with any intention of the obligor manifested at or before
38 the time of payment; or

39 (3) in the absence of an agreement to a reasonable method and a
40 timely manifestation of the obligor’s intention, in the following order:

41 **[(a)] (A)** to obligations that are not secured; and

42 **[(b)] (B)** if more than one obligation is secured, to obligations
43 secured by purchase-money security interests in the order in which
44 those obligations were incurred.

45 **[f.] (f)** No loss of status of purchase-money security interest in
46 non-consumer-goods transaction. In a transaction other than a

1 consumer-goods transaction, a purchase-money security interest does
2 not lose its status as such, even if:

3 (1) the purchase-money collateral also secures an obligation that is
4 not a purchase-money obligation;

5 (2) collateral that is not purchase-money collateral also secures the
6 purchase-money obligation; or

7 (3) the purchase-money obligation has been renewed, refinanced,
8 consolidated, or restructured.

9 **[g.] (g)** Burden of proof in non-consumer-goods transaction. In
10 a transaction other than a consumer-goods transaction, a secured party
11 claiming a purchase-money security interest has the burden of
12 establishing the extent to which the security interest is a purchase-
13 money security interest.

14 **[h.] (h)** Non-consumer-goods transactions; no inference. The
15 limitation of the rules in subsections [e., f., and g. of this section] (e),
16 (f) and (g) to transactions other than consumer-goods transactions is
17 intended to leave to the court the determination of the proper rules in
18 consumer-goods transactions. The court may not infer from that
19 limitation the nature of the proper rule in consumer-goods transactions
20 and may continue to apply established approaches.

21 (cf: N.J.S.12A:9-103)

22

23 3. N.J.S.12A:9-104 is amended to read as follows:

24 12A:9-104. Control of Deposit Account.

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

27 (1) the secured party is the bank with which the deposit account is
28 maintained;

29 (2) the debtor, secured party, and bank have agreed in an
30 authenticated record that the bank will comply with instructions
31 originated by the secured party directing disposition of the funds in the
32 deposit account without further consent by the debtor; or

33 (3) the secured party becomes the bank's customer with respect to
34 the deposit account.

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

38 (cf: N.J.S.12A:9-104)

39

40 4. N.J.S.12A:9-105 is amended to read as follows:

41 12A:9-105. Control of Electronic Chattel Paper.

42 A secured party has control of electronic chattel paper if the record
43 or records comprising the chattel paper are created, stored, and
44 assigned in such a manner that:

45 **[a. A] (1)** a single authoritative copy of the record or records
46 exists which is unique, identifiable and, except as otherwise provided

1 in paragraphs [d., e. and f.] (4), (5), and (6), unalterable;

2 [b. The] (2) the authoritative copy identifies the secured party as
3 the assignee of the record or records;

4 [c. The] (3) the authoritative copy is communicated to and
5 maintained by the secured party or its designated custodian;

6 [d. Copies] (4) copies or revisions that add or change an identified
7 assignee of the authoritative copy can be made only with the
8 participation of the secured party;

9 [e. Each] (5) each copy of the authoritative copy and any copy of
10 a copy is readily identifiable as a copy that is not the authoritative
11 copy; and

12 [f.] (6) any revision of the authoritative copy is readily identifiable
13 as an authorized or unauthorized revision.

14 (cf: N.J.S.12A:9-105)

15

16 5. N.J.S.12A:9-106 is amended to read as follows:

17 12A:9-106. Control of Investment Property.

18 [a.] (a) Control under 12A:8-106. A person has control of a
19 certificated security, uncertificated security, or security entitlement as
20 provided in 12A:8-106.

21 [b.] (b) Control of commodity contract. A secured party has
22 control of a commodity contract if:

23 (1) the secured party is the commodity intermediary with which the
24 commodity contract is carried; or

25 (2) the commodity customer, secured party, and commodity
26 intermediary have agreed that the commodity intermediary will apply
27 any value distributed on account of the commodity contract as directed
28 by the secured party without further consent by the commodity
29 customer.

30 [c.] (c) Effect of control of securities account or commodity
31 account. A secured party having control of all security entitlements or
32 commodity contracts carried in a securities account or commodity
33 account has control over the securities account or commodity account.

34 (cf: N.J.S.12A:9-106)

35

36 6. N.J.S.12A:9-108 is amended to read as follows:

37 12A:9-108. Sufficiency of Description.

38 [a.] (a) Sufficiency of description. Except as otherwise provided
39 in subsections [c., d., e. and f. of this section] (c), (d), (e) and (f), a
40 description of personal or real property is sufficient, whether or not it
41 is specific, if it reasonably identifies what is described.

42 [b.] (b) Examples of reasonable identification. Except as
43 otherwise provided in subsection [d. of this section] (d), a description
44 of collateral reasonably identifies the collateral if it identifies the
45 collateral by:

- 1 (1) specific listing;
- 2 (2) category;
- 3 (3) except as otherwise provided in subsection [e. of this section]
- 4 (e), a type of collateral defined in the Uniform Commercial Code;
- 5 (4) quantity;
- 6 (5) computational or allocational formula or procedure; or
- 7 (6) except as otherwise provided in subsection [c. of this section]
- 8 (c), any other method, if the identity of the collateral is objectively
- 9 determinable.

10 [c.] (c) Supergeneric description not sufficient. A description of
11 collateral as “all the debtor’s assets” or “all the debtor’s personal
12 property” or using words of similar import does not reasonably
13 identify the collateral.

14 [d.] (d) Investment property. Except as otherwise provided in
15 subsection [e. of this section] (e), a description of a security
16 entitlement, securities account, or commodity account is sufficient if
17 it describes:

- 18 (1) the collateral by those terms or as investment property; or
- 19 (2) the underlying financial asset or commodity contract.

20 [e.] (e) When description by type insufficient. A description only
21 by type of collateral defined in the Uniform Commercial Code is an
22 insufficient description of:

- 23 (1) a commercial tort claim; or
- 24 (2) in a consumer transaction, consumer goods, a security
25 entitlement, a securities account, or a commodity account

26 [f.] (f) Bondable transition property. A description of bondable
27 transition property is sufficient if it refers to the bondable stranded
28 costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51),
29 establishing the bondable transition property.

30 (cf: N.J.S.12A:9-108)

31

32 7. N.J.S.12A:9-109 is amended to read as follows:

33 12A:9-109. Scope.

34 [a.] (a) General scope of chapter. Except as otherwise provided
35 in subsections [c. and d. of this section] (c) and (d), this chapter
36 applies to:

- 37 (1) a transaction, regardless of its form, that creates a security
38 interest in personal property or fixtures by contract;
- 39 (2) an agricultural lien;
- 40 (3) a sale of accounts, chattel paper, payment intangibles, or
41 promissory notes;
- 42 (4) a consignment;
- 43 (5) a security interest arising under 12A:2-401, 12A:2-505,
44 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and
- 45 (6) a security interest arising under 12A:4-210 or 12A:5-118.

1 **[b.] (b)** Security interest in secured obligation. The application of
2 this chapter to a security interest in a secured obligation is not affected
3 by the fact that the obligation is itself secured by a transaction or
4 interest to which this chapter does not apply.

5 **[c.] (c)** Extent to which chapter does not apply. This chapter does
6 not apply to the extent that:

7 (1) a statute, regulation, or treaty of the United States preempts
8 this chapter; or

9 (2) ¹[another statute of this State expressly governs the creation,
10 perfection, priority, or enforcement of a security interest created by
11 this State or a governmental unit of this State;

12 (3) a statute of another state, a foreign country, or a governmental
13 unit of another state or a foreign country, other than a statute
14 generally applicable to security interests, expressly governs creation,
15 perfection, priority, or enforcement of a security interest created by
16 the state, country, or governmental unit; or

17 (4)¹ the rights of a transferee beneficiary or nominated person
18 under a letter of credit are independent and superior under 12A:5-114.

19 **[d.] (d)** Inapplicability of chapter. This chapter does not apply to:

20 (1) a landlord's lien, other than an agricultural lien;

21 (2) a lien, other than an agricultural lien, given by statute or other
22 rule of law for services or materials, but 12A:9-333 applies with
23 respect to priority of the lien;

24 (3) an assignment of a claim for wages, salary, or other
25 compensation of an employee;

26 (4) a sale of accounts, chattel paper, payment intangibles, or
27 promissory notes as part of a sale of the business out of which they
28 arose;

29 (5) an assignment of accounts, chattel paper, payment intangibles,
30 or promissory notes which is for the purpose of collection only;

31 (6) an assignment of a right to payment under a contract to an
32 assignee that is also obligated to perform under the contract;

33 (7) an assignment of a single account, payment intangible, or
34 promissory note to an assignee in full or partial satisfaction of a
35 preexisting indebtedness;

36 (8) a transfer of an interest in or an assignment of a claim under
37 a policy of insurance, other than an assignment by or to a health-care
38 provider of a health-care-insurance receivable and any subsequent
39 assignment of the right to payment, but 12A:9-315 and 12A:9-322
40 apply with respect to proceeds and priorities in proceeds;

41 (9) an assignment of a right represented by a judgment, other than
42 a judgment taken on a right to payment that was collateral;

43 (10) a right of recoupment or set-off, but:

44 **[(a)] (A)** 12A:9-340 applies with respect to the effectiveness of
45 rights of recoupment or set-off against deposit accounts; and

46 **[(b)] (B)** 12A:9-404 applies with respect to defenses or claims of

1 an account debtor;

2 (11) the creation or transfer of an interest in or lien on real
3 property, including a lease or rents thereunder, except to the extent
4 that provision is made for:

5 [(a)] (A) liens on real property in 12A:9-203 and 12A:9-308;

6 [(b)] (B) fixtures in 12A:9-334; and

7 [(c)] (C) fixture filings in 12A:9-501, 12A:9-502, 12A:9-512
8 [and], 12A:9-516 and 12A:9-519; and

9 [(d)] (D) security agreements covering personal and real property
10 in 12A:9-604;

11 (12) an assignment of a claim arising in tort, other than a
12 commercial tort claim, but 12A:9-315 and 12A:9-322 apply with
13 respect to proceeds and priorities in proceeds;

14 (13) an assignment of a deposit account in a consumer transaction,
15 but 12A:9-315 and 12A:9-322 apply with respect to proceeds and
16 priorities in proceeds; or

17 (14) a transfer by a government or governmental unit.

18 (cf: N.J.S.12A:9-109)

19

20 8. N.J.S.12A:9-201 is amended to read as follows:

21 12A:9-201. General Effectiveness of Security Agreement.

22 [a.] (a) General effectiveness. Except as otherwise provided in the
23 Uniform Commercial Code, a security agreement is effective according
24 to its terms between the parties, against purchasers of the collateral,
25 and against creditors.

26 [b.] (b) Applicable consumer laws and other law. A transaction
27 subject to this chapter is subject to any applicable rule of law which
28 establishes a different rule for consumers and to (1) any other statute
29 or regulation of this State that regulates the rates, charges,
30 agreements, and practices for loans, credit sales, or other extensions
31 of credit and (2) any consumer protection statute or regulation of this
32 State.

33 [c.] (c) Other applicable law controls. In case of conflict between
34 this chapter and a rule of law, statute, or regulation described in
35 subsection [b. of this section] (b), the rule of law, statute, or
36 regulation controls. Failure to comply with a statute or regulation
37 described in subsection [b.] (b) has only the effect the statute or
38 regulation specifies.

39 [d.] (d) Further deference to other applicable law. This chapter
40 does not:

41 (1) validate any rate, charge, agreement, or practice that violates
42 a rule of law, statute, or regulation described in subsection [b. of this
43 section] (b); or

44 (2) extend the application of the rule of law, statute, or regulation
45 to a transaction not otherwise subject to it.

46 (cf: N.J.S.12A:9-201)

1 9. N.J.S.12A:9-203 is amended to read as follows:

2 12A:9-203. Attachment and Enforceability of Security Interest;
3 Proceeds; Supporting Obligations; Formal Requisites.

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

8 [b.] (b) Enforceability. Except as otherwise provided in
9 subsections [c.] (c) through [i. of this section] (i), a security interest
10 is enforceable against the debtor and third parties with respect to the
11 collateral only if :

12 (1) value has been given;

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

15 (3) one of the following conditions is met:

16 [(a)] (A) the debtor has authenticated a security agreement that
17 provides a description of the collateral and, if the security interest
18 covers timber to be cut, a description of the land concerned;

19 [(b)] (B) the collateral is not a certificated security and is in the
20 possession of the secured party under 12A:9-313 pursuant to the
21 debtor's security agreement;

22 [(c)] (C) the collateral is a certificated security in registered form
23 and the security certificate has been delivered to the secured party
24 under 12A:8-301 pursuant to the debtor's security agreement; or

25 [(d)] (D) the collateral is deposit accounts, electronic chattel
26 paper, investment property, or letter-of-credit rights, and the secured
27 party has control under 12A:9-104, 12A:9-105, 12A:9-106, or
28 12A:9-107 pursuant to the debtor's security agreement.

29 [c.] (c) Other Uniform Commercial Code provisions. Subsection
30 [b. of this section] (b) is subject to 12A:4-210 on the security interest
31 of a collecting bank, 12A:5-118 on the security interest of a letter-of-
32 credit issuer or nominated person, 12A:9-110 on a security interest
33 arising under Chapter 2 or 2A, and 12A:9-206 on security interests in
34 investment property.

35 [d.] (d) When person becomes bound by another person's security
36 agreement. A person becomes bound as debtor by a security
37 agreement entered into by another person if, by operation of law other
38 than this chapter or by contract:

39 (1) the security agreement becomes effective to create a security
40 interest in the person's property; or

41 (2) the person becomes generally obligated for the obligations of
42 the other person, including the obligation secured under the security
43 agreement, and acquires or succeeds to all or substantially all of the
44 assets of the other person.

45 [e.] (e) Effect of new debtor becoming bound. If a new debtor

1 becomes bound as debtor by a security agreement entered into by
2 another person:

3 (1) the agreement satisfies [paragraph (3) of] subsection [b. of
4 this section] (b) (3) with respect to existing or after-acquired
5 property of the new debtor to the extent the property is described in
6 the agreement; and

7 (2) another agreement is not necessary to make a security interest
8 in the property enforceable.

9 [f.] (f) Proceeds and supporting obligations. The attachment of
10 a security interest in collateral gives the secured party the rights to
11 proceeds provided by 12A:9-315 and is also attachment of a security
12 interest in a supporting obligation for the collateral.

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

18 [h.] (h) Security entitlement carried in securities account. The
19 attachment of a security interest in a securities account is also
20 attachment of a security interest in the security entitlements carried in
21 the securities account.

22 [i.] (i) Commodity contracts carried in commodity account. The
23 attachment of a security interest in a commodity account is also
24 attachment of a security interest in the commodity contracts carried in
25 the commodity account.

26 [j.] (j) Bondable transition property. Bondable transition property
27 is presently existing property for all purposes, including for purposes
28 of [paragraph (2) of] subsection [b. of this section] (b) (2), whether
29 or not the revenues and proceeds arising under the property have
30 accrued and notwithstanding that the value of the property may
31 depend upon customer use of electricity or performance of service by
32 electric public utilities, or both.

33 (cf: N.J.S.12A:9-203)

34

35 10. N.J.S.12A:9-204 is amended to read as follows:

36 12A:9-204. After-acquired Property; Future Advances.

37 [a.] (a) After-acquired collateral. Except as otherwise provided
38 in subsection [b. of this section] (b), a security agreement may create
39 or provide for a security interest in after-acquired collateral.

40 [b.] (b) When after-acquired property clause not effective. A
41 security interest does not attach under a term constituting an
42 after-acquired property clause to:

43 (1) consumer goods, other than an accession when given as
44 additional security, unless the debtor acquires rights in them within 10
45 days after the secured party gives value; or

1 (2) a commercial tort claim.

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

7 (cf: N.J.S.12A:9-204)

8

9 11. N.J.S.12A:9-205 is amended to read as follows:

10 12A:9-205. Use or Disposition of Collateral Permissible.

11 **[a.] (a)** When security interest not invalid or fraudulent. A
12 security interest is not invalid or fraudulent against creditors solely
13 because:

14 (1) the debtor has the right or ability to:

15 **[(a)] (A)** use, commingle, or dispose of all or part of the
16 collateral, including returned or repossessed goods;

17 **[(b)] (B)** collect, compromise, enforce, or otherwise deal with
18 collateral;

19 **[(c)] (C)** accept the return of collateral or make repossessions; or

20 **[(d)] (D)** use, commingle, or dispose of proceeds; or

21 (2) the secured party fails to require the debtor to account for
22 proceeds or replace collateral.

23 **[b.] (b)** Requirements of possession not relaxed. This section
24 does not relax the requirements of possession if attachment,
25 perfection, or enforcement of a security interest depends upon
26 possession of the collateral by the secured party.

27 (cf: N.J.S.12A:9-205)

28

29 12. N.J.S.12A:9-206 is amended to read as follows:

30 12A:9-206. Security Interest Arising in Purchase or Delivery of
31 Financial Asset.

32 **[a.] (a)** Security interest when person buys through securities
33 intermediary. A security interest in favor of a securities intermediary
34 attaches to a person's security entitlement if:

35 (1) the person buys a financial asset through the securities
36 intermediary in a transaction in which the person is obligated to pay
37 the purchase price to the securities intermediary at the time of the
38 purchase; and

39 (2) the securities intermediary credits the financial asset to the
40 buyer's securities account before the buyer pays the securities
41 intermediary.

42 **[b.] (b)** Security interest secures obligation to pay for financial
43 asset. The security interest described in subsection **[a. of this section]**
44 **(a)** secures the person's obligation to pay for the financial asset.

45 **[c.] (c)** Security interest in payment against delivery transaction.

1 A security interest in favor of a person **[who]** that delivers a
2 certificated security or other financial asset represented by a writing
3 attaches to the security or other financial asset if:

4 (1) the security or other financial asset:
5 **[(a)] (A)** in the ordinary course of business is transferred by
6 delivery with any necessary indorsement or assignment; and

7 **[(b)] (B)** is delivered under an agreement between persons in the
8 business of dealing with such securities or financial assets; and

9 (2) the agreement calls for delivery against payment.

10 **[d.] (d)** Security interest secures obligation to pay for delivery.
11 The security interest described in subsection **[c. of this section]** **(c)**
12 secures the obligation to make payment for the delivery.
13 (cf: N.J.S.12A:9-206)

14

15 13. N.J.S.12A:9-207 is amended to read as follows:

16 **[12A:9-207. BLANK.]**

17 (cf: N.J.S.12A:9-207)

18

19 14. N.J.S.12A:9-208 is amended to read as follows:

20 **[12A:9-208.] 12A:9-207. Rights and Duties of Secured Party**
21 **Having Possession or Control of Collateral.**

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

28 **[b.] (b)** Expenses, risks, duties, and rights when secured party in
29 possession. Except as otherwise provided in subsection **[d. of this**
30 **section]** **(d)**, if a secured party has possession of collateral:

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

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

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

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

40 **[(a)] (A)** for the purpose of preserving the collateral or its value;

41 **[(b)] (B)** as permitted by an order of a court having competent
42 jurisdiction; or

43 **[(c)] (C)** except in the case of consumer goods, in the manner and
44 to the extent agreed by the debtor.

45 **[c.] (c)** Duties and rights when secured party in possession or

1 control. Except as otherwise provided in subsection [d. of this
2 section] (d), a secured party having possession of collateral or control
3 of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

12 (1) subsection ¹[a. of this section] (a)¹ does not apply unless the
13 secured party is entitled under an agreement:

14 [(a)] (A) to charge back uncollected collateral; or

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

18 (2) subsections [b. and c. of this section] (b) and (c) do not apply.
19 (cf: N.J.S.12A:9-208)

20

21 15. N.J.S.12A:9-209 is amended to read as follows:

22 [12A:9-209.] 12A:9-208. Additional Duties of Secured Party
23 Having Control of Collateral.

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

28 [b.] (b) Duties of secured party after receiving demand from
29 debtor. Within 10 days after receiving an authenticated demand by the
30 debtor:

31 (1) a secured party having control of a deposit account under
32 12A:9-104 [a.] (a) (2) shall send to the bank with which the deposit
33 account is maintained an authenticated statement that releases the bank
34 from any further obligation to comply with instructions originated by
35 the secured party;

36 (2) a secured party having control of a deposit account under
37 12A:9-104 [a.] (a) (3) shall:

38 [(a)] (A) pay the debtor the balance on deposit in the deposit
39 account; or

40 [(b)] (B) transfer the balance on deposit into a deposit account in
41 the debtor's name;

42 (3) a secured party, other than a buyer, having control of electronic
43 chattel paper under 12A:9-105 shall:

44 [(a)] (A) communicate the authoritative copy of the electronic
45 chattel paper to the debtor or its designated custodian;

1 **[(b)] (B)** if the debtor designates a custodian that is the designated
2 custodian with which the authoritative copy of the electronic chattel
3 paper is maintained for the secured party, communicate to the
4 custodian an authenticated record releasing the designated custodian
5 from any further obligation to comply with instructions originated by
6 the secured party and instructing the custodian to comply with
7 instructions originated by the debtor; and

8 **[(c)] (C)** take appropriate action to enable the debtor or its
9 designated custodian to make copies of or revisions to the
10 authoritative copy which add or change an identified assignee of the
11 authoritative copy without the consent of the secured party;

12 (4) a secured party having control of investment property under
13 12A:8-106 d. (2) or 12A:9-106 **[b.] (b)** shall send to the securities
14 intermediary or commodity intermediary with which the security
15 entitlement or commodity contract is maintained an authenticated
16 record that releases the securities intermediary or commodity
17 intermediary from any further obligation to comply with entitlement
18 orders or directions originated by the secured party; and

19 (5) a secured party having control of a letter-of-credit right under
20 12A:9-107 shall send to each person having an unfulfilled obligation
21 to pay or deliver proceeds of the letter of credit to the secured party
22 an authenticated release from any further obligation to pay or deliver
23 proceeds of the letter of credit to the secured party.

24 (cf: N.J.S.12A:9-209)

25

26 16. N.J.S.12A:9-210 is amended to read as follows:

27 **[12A:9-210.] 12A:9-209** Duties of Secured Party If Account
28 Debtor Has Been Notified of Assignment.

29 **[a.] (a)** Applicability of section. Except as otherwise provided in
30 subsection **[c.] (c)**, this section applies if:

31 (1) there is no outstanding secured obligation; and

32 (2) the secured party is not committed to make advances, incur
33 obligations, or otherwise give value.

34 **[b.] (b)** Duties of secured party after receiving demand from
35 debtor. Within 10 days after receiving an authenticated demand by the
36 debtor, a secured party shall send to an account debtor that has
37 received notification of an assignment to the secured party as assignee
38 under 12A:9-406 **[a.] (a)** an authenticated record that releases the
39 account debtor from any further obligation to the secured party.

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

43 (cf: N.J.S.12A:9-210)

1 17. N.J.S.12A:9-211 is amended to read as follows:

2 [12A:9-211.] 12A:9-210. Request for Accounting; Request
3 Regarding List of Collateral or Statement of Account.

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

5 (1) "Request" means a record of a type described in paragraph (2),
6 (3), or (4) [of this section].

7 (2) "Request for an accounting" means a record authenticated by
8 a debtor requesting that the recipient provide an accounting of the
9 unpaid obligations secured by collateral and reasonably identifying the
10 transaction or relationship that is the subject of the request.

11 (3) "Request regarding a list of collateral" means a record
12 authenticated by a debtor requesting that the recipient approve or
13 correct a list of what the debtor believes to be the collateral securing
14 an obligation and reasonably identifying the transaction or relationship
15 that is the subject of the request.

16 (4) "Request regarding a statement of account" means a record
17 authenticated by a debtor requesting that the recipient approve or
18 correct a statement indicating what the debtor believes to be the
19 aggregate amount of unpaid obligations secured by collateral as of a
20 specified date and reasonably identifying the transaction or relationship
21 that is the subject of the request.

22 [b.] (b) Duty to respond to requests. Subject to subsections [c.,
23 d., e. and f. of this section] ~~(c), (d), (e), and (f)~~, a secured party, other
24 than a buyer of accounts, chattel paper, payment intangibles, or
25 promissory notes or a consignor, shall comply with a request within 14
26 days after receipt:

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

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

32 [c.] (c) Request regarding list of collateral; statement concerning
33 type of collateral. A secured party that claims a security interest in all
34 of a particular type of collateral owned by the debtor may comply with
35 a request regarding a list of collateral by sending to the debtor an
36 authenticated record including a statement to that effect within 14 days
37 after receipt.

38 [d.] (d) Request regarding list of collateral; no interest claimed.
39 A person [who] that receives a request regarding a list of collateral,
40 claims no interest in the collateral when it receives the request, and
41 claimed an interest in the collateral at an earlier time shall comply with
42 the request within 14 days after receipt by sending to the debtor an
43 authenticated record:

44 (1) disclaiming any interest in the collateral; and

45 (2) if known to the [person] recipient, providing the name and

1 mailing address of any assignee of or successor to the [person's]
2 recipient's interest in the collateral.

3 [e.] (e) Request for accounting or regarding statement of account;
4 no interest in obligation claimed. A person [who] that receives a
5 request for an accounting or a request regarding a statement of
6 account, claims no interest in the obligations when it receives the
7 request, and claimed an interest in the obligations at an earlier time
8 shall comply with the request within 14 days after receipt by sending
9 to the debtor an authenticated record:

10 (1) disclaiming any interest in the obligations; and

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

14 [f.] (f) Charges for responses. A debtor is entitled without charge
15 to one response to a request under this section during any six-month
16 period. The secured party may require payment of a charge not
17 exceeding \$25 for each additional response.

18 (cf: N.J.S. 12A:9-211)

19

20 18. N.J.S.12A:9-301 is amended to read as follows:

21 12A:9-301. Law Governing Perfection and Priority of Security
22 Interests.

23 Except as otherwise provided in sections 12A:9-303 through
24 12A:9-306, the following rules determine the law governing
25 perfection, the effect of perfection or nonperfection, and the priority
26 of a security interest in collateral:

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

31 [b.] (2) While collateral is located in a jurisdiction, the local law
32 of that jurisdiction governs perfection, the effect of perfection or
33 nonperfection, and the priority of a possessory security interest in that
34 collateral.

35 [c.] (3) Except as otherwise provided in [subsection d. of this
36 section] paragraph (4), while negotiable documents, goods,
37 instruments, money, or tangible chattel paper [are] is located in a
38 jurisdiction, the local law of that jurisdiction governs:

39 [(1) the] (A) perfection of a security interest in the goods by filing
40 a fixture filing;

41 [(2) the] (B) perfection of a security interest in timber to be cut;
42 and

43 [(3)] (C) the effect of perfection or nonperfection and the priority
44 of a nonpossessory security interest in the collateral.

45 [d.] (4) The local law of the jurisdiction in which the wellhead or

1 minehead is located governs perfection, the effect of perfection or
2 nonperfection, and the priority of a security interest in as-extracted
3 collateral.

4 [e.] (5) Notwithstanding [subsection a. of this section] paragraph
5 (1), the local law of this State shall govern the perfection, the effect of
6 perfection or nonperfection, and the priority of a security interest in
7 bondable transition property.

8 (cf: N.J.S.12A:9-301)

9

10 19. N.J.S.12A:9-303 is amended to read as follows:

11 12A:9-303. Law Governing Perfection and Priority of Security
12 Interests in Goods Covered by a Certificate of Title.

13 [a.] (a) Applicability of section. This section applies to goods
14 covered by a certificate of title, even if there is no other relationship
15 between the jurisdiction under whose certificate of title the goods are
16 covered and the goods or the debtor.

17 [b.] (b) When goods covered by certificate of title. Goods
18 become covered by a certificate of title when a valid application for
19 the certificate of title and the applicable fee are delivered to the
20 appropriate authority. Goods cease to be covered by a certificate of
21 title at the earlier of the time the certificate of title ceases to be
22 effective under the law of the issuing jurisdiction [and] or the time the
23 goods become covered subsequently by a certificate of title issued by
24 another jurisdiction.

25 [c.] (c) Applicable law. The local law of the jurisdiction under
26 whose certificate of title the goods are covered governs perfection, the
27 effect of perfection or nonperfection, and the priority of a security
28 interest in goods covered by a certificate of title from the time the
29 goods become covered by the certificate of title until the goods cease
30 to be covered by the certificate of title.

31 (cf: N.J.S.12A:9-303)

32

33 20. N.J.S.12A:9-304 is amended to read as follows:

34 12A:9-304. Law Governing Perfection and Priority of Security
35 Interests in Deposit Accounts.

36 [a.] (a) Law of bank's jurisdiction governs. The local law of a
37 bank's jurisdiction governs perfection, the effect of perfection or
38 nonperfection, and the priority of a security interest in a deposit
39 account maintained with that bank.

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

42 (1) If an agreement between the bank and [the debtor] its
43 customer governing the deposit account expressly provides that a
44 particular jurisdiction is the bank's jurisdiction for purposes of this
45 part, this chapter, or the Uniform Commercial Code, that jurisdiction
46 is the bank's jurisdiction.

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

5 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
6 applies and an agreement between the bank and its customer governing
7 the deposit account expressly provides that the deposit account is
8 maintained at an office in a particular jurisdiction, that jurisdiction is
9 the bank's jurisdiction.

10 (4) If none of the preceding paragraphs [(1) through (3) of this
11 subsection] applies, the bank's jurisdiction is the jurisdiction in which
12 the office identified in an account statement as the office serving the
13 customer's account is located.

14 (5) If none of the preceding paragraphs [(1) through (4) of this
15 subsection] applies, the bank's jurisdiction is the jurisdiction in which
16 the chief executive office of the bank is located.

17 (cf: N.J.S.12A:9-304)

18
19 21. N.J.S.12A:9-305 is amended to read as follows:

20 12A:9-305. Law Governing Perfection and Priority of Security
21 Interests in Investment Property.

22 [a.] (a) Governing law: general rules. Except as otherwise
23 provided in subsection [c. of this section] (c), the following rules
24 apply:

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

29 (2) The local law of the issuer's jurisdiction as specified in [of]
30 12A:8-110 d. governs perfection, the effect of perfection or
31 nonperfection, and the priority of a security interest in an
32 uncertificated security.

33 (3) The local law of the securities intermediary's jurisdiction as
34 specified in 12A:8-110 e. governs perfection, the effect of perfection
35 or nonperfection, and the priority of a security interest in a security
36 entitlement or securities account.

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

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

44 (1) If an agreement between the commodity intermediary and
45 commodity customer governing the commodity account expressly

1 provides that a particular jurisdiction is the commodity intermediary's
2 jurisdiction for purposes of this part, this chapter, or the Uniform
3 Commercial Code, that jurisdiction is the commodity intermediary's
4 jurisdiction.

5 (2) If paragraph (1) [of this subsection] does not apply and an
6 agreement between the commodity intermediary and commodity
7 customer governing the commodity account expressly provides that
8 the agreement is governed by the law of a particular jurisdiction, that
9 jurisdiction is the commodity intermediary's jurisdiction.

10 (3) If neither paragraph (1) nor paragraph (2) [of this subsection]
11 applies and an agreement between the commodity intermediary and
12 commodity customer governing the commodity account expressly
13 provides that the commodity account is maintained at an office in a
14 particular jurisdiction, that jurisdiction is the commodity intermediary's
15 jurisdiction.

16 (4) If none of the preceding paragraphs [(1) through (3) of this
17 subsection] applies, the commodity intermediary's jurisdiction is the
18 jurisdiction in which the office identified in an account statement as the
19 office serving the commodity customer's account is located.

20 (5) If none of the preceding paragraphs [(1) through (4) of this
21 subsection] applies, the commodity intermediary's jurisdiction is the
22 jurisdiction in which the chief executive office of the commodity
23 intermediary is located.

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

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

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

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

32 (cf: N.J.S.12A:9-305)

33

34 22. N.J.S.12A:9-306 is amended to read as follows:

35 12A:9-306. Law Governing Perfection and Priority of Security
36 Interests in Letter-of-Credit Rights.

37 [a.] (a) Governing law: issuer's or nominated person's jurisdiction.
38 Subject to subsection [c. of this section] (c), the local law of the
39 issuer's jurisdiction or a nominated person's jurisdiction governs
40 perfection, the effect of perfection or nonperfection, and the priority
41 of a security interest in a letter-of-credit right if the issuer's jurisdiction
42 or nominated person's jurisdiction is a state.

43 [b.] (b) Issuer's or nominated person's jurisdiction. For purposes
44 of this part, an issuer's jurisdiction or nominated person's jurisdiction
45 is the jurisdiction whose law governs the liability of the issuer or
46 nominated person with respect to the letter-of-credit right as provided

1 in 12A:5-116.

2 [c.] (c) When section not applicable. This section does not apply
3 to a security interest that is perfected only under 12A:9-308 [d.] (d).
4 (cf: N.J.S.12A:9-306)

5

6 23. N.J.S.12A:9-307 is amended to read as follows:

7 12A:9-307. Location of Debtor.

8 [a.] (a) "Place of business." In this section, "place of business"
9 means a place where a debtor conducts its affairs.

10 [b.] (b) Debtor's location: general rules. Except as otherwise
11 provided in this section, the following rules determine a debtor's
12 location:

13 (1) A debtor who is an individual is located at the individual's
14 principal residence.

15 (2) A debtor that is an organization and has only one place of
16 business is located at its place of business.

17 (3) A debtor that is an organization and has more than one place
18 of business is located at its chief executive office.

19 [c.] (c) Limitation of applicability of subsection [b.] (b).
20 Subsection [b. of this section] (b) applies only if a debtor's residence,
21 place of business, or chief executive office, as applicable, is located in
22 a jurisdiction whose law generally requires information concerning the
23 existence of a nonpossessory security interest to be made generally
24 available in a filing, recording, or registration system as a condition or
25 result of the security interest's obtaining priority over the rights of a
26 lien creditor with respect to the collateral. If subsection [b.] (b) does
27 not apply, the debtor is located in the District of Columbia.

28 [d.] (d) Continuation of location: cessation of existence, etc. A
29 person [who] that ceases to exist, have a residence, or have a place
30 of business continues to be located in the jurisdiction specified by
31 subsections [b. and c of this section] (b) and (c).

32 [e.] (e) Location of registered organization organized under state
33 law. A registered organization that is organized under the law of a
34 state is located in that state.

35 [f.] (f) Location of registered organization organized under federal
36 law; bank branches and agencies. Except as otherwise provided in
37 subsection [i. of this section] (i), a registered organization that is
38 organized under the law of the United States and a branch or agency
39 of a bank that is not organized under the law of the United States or
40 a state are located:

41 (1) in the state that the law of the United States designates, if the
42 law designates a state of location;

43 (2) in the state that the registered organization, branch, or agency
44 designates, if the law of the United States authorizes the registered
45 organization, branch, or agency to designate its state of location; or

1 (3) in the District of Columbia, if neither paragraph (1) nor
2 paragraph (2) [of this subsection] applies.

3 [g.] (g) Continuation of location: change in status of registered
4 organization. A registered organization continues to be located in the
5 jurisdiction specified by subsection [e. or f. of this section] (e) or (f)
6 notwithstanding:

7 (1) the suspension, revocation, forfeiture, or lapse of the registered
8 organization's status as such in its jurisdiction of organization; or

9 (2) the dissolution, winding up, or cancellation of the existence of
10 the registered organization.

11 [h.] (h) Location of United States. The United States is located
12 in the District of Columbia.

13 [i.] (i) Location of foreign bank branch or agency if licensed in
14 only one state. A branch or agency of a bank that is not organized
15 under the law of the United States or a state is located in the state in
16 which the branch or agency is licensed, if all branches and agencies of
17 the bank are licensed in only one state.

18 [j.] (j) Location of foreign air carrier. A foreign air carrier
19 [covered] under the Federal Aviation Act of 1958, as amended (49
20 U.S.C. s.1301 et seq.), is located at the designated office of the agent
21 upon which service of process may be made on behalf of the carrier.

22 [k.] (k) Section applies only to this part. This section applies only
23 for purposes of this part.

24 (cf: N.J.S.12A:9-307)

25

26 24. N.J.S.12A:9-308 is amended to read as follows:

27 12A:9-308. When Security Interest or Agricultural Lien Is
28 Perfected; Continuity of Perfection.

29 [a.] (a) Perfection of security interest. Except as otherwise
30 provided in this section and 12A:9-309, a security interest is perfected
31 if it has attached and all of the applicable requirements for perfection
32 in 12A:9-310 through 12A:9-316 have been satisfied. A security
33 interest is perfected when it attaches if the applicable requirements are
34 satisfied before the security interest attaches.

35 [b.] (b) Perfection of agricultural lien. An agricultural lien is
36 perfected if it has become effective and all of the applicable
37 requirements for perfection in 12A:9-310 have been satisfied. An
38 agricultural lien is perfected when it becomes effective if the applicable
39 requirements are satisfied before the agricultural lien becomes
40 effective.

41 [c.] (c) Continuous perfection; perfection by different methods.
42 A security interest or agricultural lien is perfected continuously if it is
43 originally perfected by one method under this chapter and is later
44 perfected by another method under this chapter, without an
45 intermediate period when it was unperfected.

1 [d.] (d) Supporting obligation. Perfection of a security interest in
2 collateral also perfects a security interest in a supporting obligation for
3 the collateral.

4 [e.] (e) Lien securing right to payment. Perfection of a security
5 interest in a right to payment or performance also perfects a security
6 interest in a security interest, mortgage, or other lien on personal or
7 real property securing the right.

8 [f.] (f) Security entitlement carried in securities account.
9 Perfection of a security interest in a securities account also perfects a
10 security interest in the security entitlements carried in the securities
11 account.

12 [g.] (g) Commodity contract carried in commodity account.
13 Perfection of a security interest in a commodity account also perfects
14 a security interest in the commodity contracts carried in the
15 commodity account.

16 (cf: N.J.S.12A:9-308)

17
18 25. N.J.S.12A:9-309 is amended to read as follows:

19 12A:9-309. Security Interest Perfected upon Attachment.

20 The following security interests are perfected when they attach:

21 [a.] (1) a purchase-money security interest in consumer goods,
22 except as otherwise provided in 12A:9-311 [b.] (b) with respect to
23 consumer goods that are subject to a statute or treaty described in
24 12A:9-311 [a.] (a);

25 [b.] (2) an assignment of accounts or payment intangibles which
26 does not by itself or in conjunction with other assignments to the same
27 assignee transfer a significant part of the assignor's outstanding
28 accounts or payment intangibles;

29 [c.] (3) a sale of a payment intangible;

30 [d.] (4) a sale of a promissory note;

31 [e.] (5) a security interest created by the assignment of a
32 health-care-insurance receivable to the provider of the health-care
33 goods or services;

34 [f.] (6) a security interest arising under 12A:2-401, 12A:2-505,
35 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of
36 the collateral;

37 [g.] (7) security interest of a collecting bank arising under
38 12A:4-210;

39 [h.] (8) a security interest of an issuer or nominated person arising
40 under 12A:5-118;

41 (9) a security interest arising in the delivery of a financial asset
42 under 12A:9-206 [c.] (c);

43 [i.] (10) a security interest in investment property created by a
44 broker or securities intermediary;

45 [j.] (11) a security interest in a commodity contract or a
46 commodity account created by a commodity intermediary;

1 **[k.] (12)** An assignment for the benefit of all creditors of the
2 transferor and subsequent transfers by the assignee thereunder; and

3 **[l.] (13)** A security interest created by an assignment of a
4 beneficial interest in a decedent's estate.

5 (cf: N.J.S.12A:9-309)

6

7 26. N.J.S.12A:9-310 is amended to read as follows:

8 12A:9-310. When Filing Required to Perfect Security Interest or
9 Agricultural Lien; Security Interests and Agricultural Liens to Which
10 Filing Provisions Do Not Apply.

11 **[a.] (a)** General rule: perfection by filing. Except as otherwise
12 provided in subsection **[b. of this section] (b)** and 12A:9-312 **[b.] (b)**,
13 a financing statement **[shall] must** be filed to perfect all security
14 interests and agricultural liens.

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

17 (1) that is perfected under **[subsections d., e., f. or g. of]**
18 12A:9-308 **(d), (e), (f) or (g)**;

19 (2) that is perfected under 12A:9-309 when it attaches;

20 (3) in property subject to a statute, regulation, or treaty described
21 in of 12A:9-311 **[a.] (a)**;

22 (4) in goods in possession of a bailee which is perfected under
23 12A:9-312 **[d.] (d)** (1) or (2);

24 (5) in certificated securities, documents, goods, or instruments
25 which is perfected without filing or possession under **[subsection e.,**
26 **f. or g. of]** 12A:9-312 **(e), (f) or (g)**;

27 (6) in collateral in the secured party's possession under 12A:9-313;

28 (7) in a certificated security which is perfected by delivery of the
29 security certificate to the secured party under 12A:9-313;

30 (8) in deposit accounts, electronic chattel paper, investment
31 property, or letter-of-credit rights which is perfected by control under
32 12A:9-314;

33 (9) in proceeds which is perfected under 12A:9-315; or

34 (10) that is perfected under 12A:9-316.

35 **[c.] (c)** Assignment of perfected security interest. If a secured
36 party assigns a perfected security interest or agricultural lien, a filing
37 under this chapter is not required to continue the perfected status of
38 the security interest against creditors of and transferees from the
39 original debtor.

40 (cf: N.J.S.12A:9-310)

41

42 27. N.J.S.12A:9-311 is amended to read as follows:

43 12A:9-311. Perfection of Security Interests in Property Subject to
44 Certain Statutes, Regulations, and Treaties.

45 **[a.] (a)** Security interest subject to other law. Except as otherwise

1 provided in subsection [d. of this section] (d), the filing of a financing
2 statement is not necessary or effective to perfect a security interest in
3 property subject to:

4 (1) a statute, regulation, or treaty of the United States whose
5 requirements for a security interest's obtaining priority over the rights
6 of a lien creditor with respect to the property preempt 12A:9-310 [a.]
7 (a);

8 (2) the "motor vehicle certificate of ownership law," R.S.39:10-1
9 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152
10 (C.12:7A-1 et seq.) or successor statutes or law; or

11 (3) a certificate-of-title statute of another jurisdiction which
12 provides for a security interest to be indicated on the certificate as a
13 condition or result of the security interest's obtaining priority over the
14 rights of a lien creditor with respect to the property.

15 [b.] (b) Compliance with other law. Compliance with the
16 requirements of a statute, regulation, or treaty described in subsection
17 [a. of this section] (a) for obtaining priority over the rights of a lien
18 creditor is equivalent to the filing of a financing statement under this
19 chapter. Except as otherwise provided in subsection [d. of this
20 section] (d), 12A:9-313 and [subsections d. and e. of] 12A:9-316 (d)
21 and (e) for goods covered by a certificate of title, a security interest in
22 property subject to a statute, regulation, or treaty described in
23 subsection [a. of this section] (a) may be perfected only by
24 compliance with those requirements, and a security interest so
25 perfected remains perfected notwithstanding a change in the use or
26 transfer of possession of the collateral.

27 [c.] (c) Duration and renewal of perfection. Except as otherwise
28 provided in subsection [d. of this section] (d) and [subsections d. and
29 e. of] 12A:9-316 (d) and (e), duration and renewal of perfection of a
30 security interest perfected by compliance with the requirements
31 prescribed by a statute, regulation, or treaty described in subsection
32 [a.] (a) are governed by the statute, regulation, or treaty. In other
33 respects, the security interest is subject to this chapter.

34 [d.] (d) Inapplicability to certain inventory. During any period in
35 which collateral subject to a statute specified in subsection (a) (2) is
36 inventory held for sale or lease by a person or leased by that person as
37 lessor and that person is in the business of selling [or leasing] goods
38 of that kind, this section does not apply to a security interest in that
39 collateral created by that person [as debtor].

40 (cf: N.J.S.12A:9-311)

41

42 28. N.J.S.12A:9-312 is amended to read as follows:

43 12A:9-312. Perfection of Security Interests in Chattel Paper,
44 Deposit Accounts, Documents, Goods Covered by Documents,
45 Instruments, Investment Property, Letter-of-credit Rights, and Money;

1 Perfection by Permissive Filing; Temporary Perfection Without Filing
2 or Transfer of Possession.

3 [a.] (a) Perfection by filing permitted. A security interest in
4 chattel paper, negotiable documents, instruments, or investment
5 property may be perfected by filing.

6 [b.] (b) Control or possession of certain collateral. Except as
7 otherwise provided in [subsections c. and d. of] 12A:9-315 (c) and
8 (d) for proceeds:

9 (1) a security interest in a deposit account may be perfected only
10 by control under 12A:9-314;

11 (2) and except as otherwise provided in 12A:9-308 [d.] (d), a
12 security interest in a letter-of-credit right may be perfected only by
13 control under 12A:9-314; and

14 (3) a security interest in money may be perfected only by the
15 secured party's taking possession under 12A:9-313.

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

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

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

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

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

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

31 (3) filing as to the goods.

32 [e.] (e) Temporary perfection: new value. A security interest in
33 certificated securities, negotiable documents, or instruments is
34 perfected without filing or the taking of possession for a period of 20
35 days from the time it attaches to the extent that it arises for new value
36 given under an authenticated security agreement.

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

43 (1) ultimate sale or exchange; or

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

1 **[g.]** (g) Temporary perfection: delivery of security certificate or
2 instrument to debtor. A perfected security interest in a certificated
3 security or instrument remains perfected for 20 days without filing if
4 the secured party delivers the security certificate or instrument to the
5 debtor for the purpose of:

6 (1) ultimate sale or exchange; or

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

9 **[h.]** (h) Expiration of temporary perfection. After the 20-day
10 period specified in subsection **[e., f. or g. of this section]** (e), (f) or
11 (g) expires, perfection depends upon compliance with this chapter.

12 (cf: N.J.S.12A:9-312)

13

14 29. N.J.S.12A:9-313 is amended to read as follows:

15 12A:9-313. When Possession by or Delivery to Secured Party
16 Perfects Security Interest Without Filing.

17 **[a.]** (a) Perfection by possession or delivery. Except as otherwise
18 provided in subsection **[b.]** (b), a secured party may perfect a security
19 interest in negotiable documents, goods, instruments, money, or
20 tangible chattel paper by taking possession of the collateral. A secured
21 party may perfect a security interest in certificated securities by taking
22 delivery of the certificated securities under 12A:8-301.

23 **[b.]** (b) Goods covered by certificate of title. With respect to
24 goods covered by a certificate of title issued by this State, a secured
25 party may perfect a security interest in the goods by taking possession
26 of the goods only in the circumstances described in 12A:9-316 **[d.]**
27 (d).

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

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

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

40 **[d.]** (d) Time of perfection by possession; continuation of
41 perfection. If perfection of a security interest depends upon
42 possession of the collateral by a secured party, perfection occurs no
43 earlier than the time the secured party takes possession and continues
44 only while the secured party retains possession.

45 **[e.]** (e) Time of perfection by delivery; continuation of perfection.

1 A security interest in a certificated security in registered form is
2 perfected by delivery when delivery of the certificated security occurs
3 under 12A:8-301 and remains perfected by delivery until the debtor
4 obtains possession of the security certificate.

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

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

11 (1) the acknowledgment is effective under subsection [c. of this
12 section] (c) or [subsection a. of] 12A:8-301 (a), even if the
13 acknowledgment violates the rights of a debtor; and

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

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

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

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

27 [i.] (i) Effect of delivery under subsection [h.] (h); no duties or
28 confirmation. A secured party does not relinquish possession, even if
29 a delivery under subsection [h.] (h) ¹[of this section] ¹violates the
30 rights of a debtor. A person to which collateral is delivered under
31 subsection [h.] (h) does not owe any duty to the secured party and is
32 not required to confirm the delivery to another person unless the
33 person otherwise agrees or law other than this chapter otherwise
34 provides.

35 (cf: N.J.S.12A:9-313)

36

37 30. N.J.S.12A:9-314 is amended to read as follows:

38 12A:9-314. Perfection by Control.

39 [a.] (a) Perfection by control. A security interest in investment
40 property, deposit accounts, letter-of-credit rights, or electronic chattel
41 paper may be perfected by control of the collateral under 12A:9-104,
42 12A:9-105, 12A:9-106 or 12A:9-107.

43 [b.] (b) Specified collateral: time of perfection by control;
44 continuation of perfection. A security interest in deposit accounts,
45 electronic chattel paper, or letter-of-credit rights is perfected by

1 control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured
2 party obtains control and remains perfected by control only while the
3 secured party retains control.

4 [c.] (c) Investment property: time of perfection by control;
5 continuation of perfection. A security interest in investment property
6 is perfected by control under 12A:9-106 from the time the secured
7 party obtains control and remains perfected by control until:

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

9 (2) one of the following occurs:

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

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

14 [(c)] (C) if the collateral is a security entitlement, the debtor is or
15 becomes the entitlement holder.

16 (cf: N.J.S.12A:9-314)

17

18 31. N.J.S.12A:9-315 is amended to read as follows:

19 12A:9-315. Secured Party's Rights on Disposition of Collateral and
20 in Proceeds.

21 [a.] (a) Disposition of collateral: continuation of security interest
22 or agricultural lien; proceeds. Except as otherwise provided in this
23 chapter and in 12A:2-403(2):

24 (1) a security interest or agricultural lien continues in collateral
25 notwithstanding sale, lease, license, exchange, or other disposition
26 thereof unless the secured party authorized the disposition free of the
27 security interest or agricultural lien; and

28 (2) a security interest attaches to any identifiable proceeds of
29 collateral.

30 [b.] (b) When commingled proceeds identifiable. Proceeds that
31 are commingled with other property are identifiable proceeds:

32 (1) if the proceeds are goods, to the extent provided by 12A:9-336;
33 and

34 (2) if the proceeds are not goods, to the extent that the secured
35 party identifies the proceeds by a method of tracing, including
36 application of equitable principles, that is permitted under law other
37 than this chapter with respect to commingled property of the type
38 involved.

39 [c.] (c) Perfection of security interest in proceeds. A security
40 interest in proceeds is a perfected security interest if the security
41 interest in the original collateral was perfected.

42 [d.] (d) Continuation of perfection. A perfected security interest
43 in proceeds becomes unperfected on the 21st day after the security
44 interest attaches to the proceeds unless:

45 (1) the following conditions are satisfied:

1 [(a)] (A) a filed financing statement covers the original collateral;

2 [(b)] (B) the proceeds are collateral in which a security interest
3 may be perfected by filing in the office in which the financing
4 statement has been filed; and

5 [(c)] (C) the proceeds are not acquired with cash proceeds;

6 (2) the proceeds are identifiable cash proceeds; or

7 (3) the security interest in the proceeds is perfected other than
8 under subsection [c. of this section] (c) when the security interest
9 attaches to the proceeds or within 20 days thereafter.

10 [e.] (e) When perfected security interest in proceeds becomes
11 unperfected. If a filed financing statement covers the original
12 collateral, a security interest in proceeds which remains perfected
13 under [paragraph (1) of] subsection [d. of this section] (d) (1)
14 becomes unperfected at the later of:

15 (1) when the effectiveness of the filed financing statement lapses
16 under 12A:9-515 or is terminated under 12A:9-513; or

17 (2) the 21st day after the security interest attaches to the proceeds.
18 (cf: N.J.S.12A:9-315)

19

20 32. N.J.S.12A:9-316 is amended to read as follows:

21 12A:9-316. Continued Perfection of Security Interest Following
22 Change in Governing Law.

23 [a.] (a) General rule: effect on perfection of change in governing
24 law. A security interest perfected pursuant to the law of the
25 jurisdiction designated in 12A:9-301 [a.] (1) or 12A:9-305 [c.] (c)
26 remains perfected until the earliest of:

27 (1) the time perfection would have ceased under the law of that
28 jurisdiction;

29 (2) the expiration of four months after a change of the debtor's
30 location to another jurisdiction; or

31 (3) the expiration of one year after a transfer of collateral to a
32 person [who] that thereby becomes a debtor and is located in another
33 jurisdiction.

34 [b.] (b) Security interest perfected or unperfected under law of
35 new jurisdiction. If a security interest described in subsection [a. of
36 this section] (a) becomes perfected under the law of the other
37 jurisdiction before the earliest time or event described in that
38 subsection, it remains perfected thereafter. If the security interest
39 does not become perfected under the law of the other jurisdiction
40 before the earliest time or event, it becomes unperfected and is deemed
41 never to have been perfected as against a purchaser of the collateral
42 for value.

43 [c.] (c) Possessory security interest in collateral moved to new
44 jurisdiction. A possessory security interest in collateral, other than
45 goods covered by a certificate of title and as-extracted collateral

1 consisting of goods, remains continuously perfected if:

2 (1) the collateral is located in one jurisdiction and subject to a
3 security interest perfected under the law of that jurisdiction;

4 (2) thereafter the collateral is brought into another jurisdiction; and

5 (3) upon entry into the other jurisdiction, the security interest is
6 perfected under the law of the other jurisdiction.

7 **[d.] (d)** Goods covered by certificate of title from this State.
8 Except as otherwise provided in subsection **[e. of this section] (e)**, a
9 security interest in goods covered by a certificate of title which is
10 perfected by any method under the law of another jurisdiction when
11 the goods become covered by a certificate of title from this State
12 remains perfected until the security interest would have become
13 unperfected under the law of the other jurisdiction had the goods not
14 become so covered.

15 **[e.] (e)** When subsection **[d.] (d)** security interest becomes
16 unperfected against purchasers. A security interest described in
17 subsection **[d. of this section] (d)** becomes unperfected as against a
18 purchaser of the goods for value and is deemed never to have been
19 perfected as against a purchaser of the goods for value if the
20 applicable requirements for perfection under 12A:9-311 **[b.] (b)** or
21 12A:9-313 are not satisfied before the earlier of:

22 (1) the time the security interest would have become unperfected
23 under the law of the other jurisdiction had the goods not become
24 covered by a certificate of title from this State; or

25 (2) the expiration of four months after the goods had become so
26 covered.

27 **[f.] (f)** Change in jurisdiction of bank, issuer, nominated person,
28 securities intermediary, or commodity intermediary. A security
29 interest in deposit accounts, letter-of-credit rights, or investment
30 property which is perfected under the law of the bank's jurisdiction,
31 the issuer's jurisdiction, a nominated person's jurisdiction, the
32 securities intermediary's jurisdiction, or the commodity intermediary's
33 jurisdiction, as applicable, remains perfected until the earlier of:

34 (1) the time the security interest would have become unperfected
35 under the law of that jurisdiction; or

36 (2) the expiration of four months after a change of the applicable
37 jurisdiction to another jurisdiction.

38 **[g.] (g)** Subsection **[f.] (f)** security interest perfected or
39 unperfected under law of new jurisdiction. If a security interest
40 described in subsection **[f. of this section] (f)** becomes perfected
41 under the law of the other jurisdiction before the earlier of the time or
42 the end of the period described in that subsection, it remains perfected
43 thereafter. If the security interest does not become perfected under
44 the law of the other jurisdiction before the earlier of that time or the
45 end of that period, it becomes unperfected and is deemed never to
46 have been perfected as against a purchaser of the collateral for value.

1 (cf: N.J.S.12A:9-316)

2 33. N.J.S.12A:9-317 is amended to read as follows:

3 12A:9-317. Interests That Take Priority Over or Take Free of
4 Security Interest or Agricultural Lien.

5 **[a.] (a)** Conflicting security interests and rights of lien creditors.

6 A security interest or agricultural lien is subordinate to the rights of:

7 (1) a person entitled to priority under 12A:9-322; and

8 (2) except as otherwise provided in subsection **[e. of this section]**

9 **(e)**, a person ¹**[who] that¹** becomes a lien creditor before the earlier
10 of the time;

11 **(A)** the security interest or agricultural lien is perfected; or

12 **(B) one of the conditions specified in 12A:9-203 (b)(3) is met and**

13 a financing statement covering the collateral is filed.

14 **[b.] (b)** Buyers that receive delivery. Except as otherwise

15 provided in subsection **[e. of this section] (e)**, a buyer, other than a

16 secured party, of tangible chattel paper, documents, goods,

17 instruments, or a security certificate takes free of a security interest or

18 agricultural lien if the buyer gives value and receives delivery of the

19 collateral without knowledge of the security interest or agricultural

20 lien and before it is perfected.

21 **[c.] (c)** Lessees that receive delivery. Except as otherwise

22 provided in subsection **[e. of this section] (e)**, a lessee of goods takes

23 free of a security interest or agricultural lien if the lessee gives value

24 and receives delivery of the collateral without knowledge of the

25 security interest or agricultural lien and before it is perfected.

26 **[d.] (d)** Licensees and buyers of certain collateral. A licensee of

27 a general intangible or a buyer, other than a secured party, of

28 accounts, electronic chattel paper, general intangibles, or investment

29 property other than a certificated security takes free of a security

30 interest if the licensee or buyer gives value without knowledge of the

31 security interest and before it is perfected.

32 **[e.] (e)** Purchase-money security interest. Except as otherwise

33 provided in 12A:9-320 and 12A:9-321, if a person files a financing

34 statement with respect to a purchase-money security interest before or

35 within 20 days after the debtor receives delivery of the collateral, the

36 security interest takes priority over the rights of a buyer, lessee, or lien

37 creditor which arise between the time the security interest attaches and

38 the time of filing.

39 (cf: N.J.S.12A:9-317)

40

41 34. N.J.S.12A:9-318 is amended to read as follows:

42 12A:9-318. No Interest Retained in Right to Payment That Is Sold;

43 Rights and Title of Seller of Account or Chattel Paper with Respect to

44 Creditors and Purchasers.

45 **[a.] (a)** Seller retains no interest. A debtor that has sold an

1 account, chattel paper, payment intangible, or promissory note does
2 not retain a legal or equitable interest in the collateral sold.

3 **[b.] (b)** Deemed rights of debtor if buyer's security interest
4 unperfected. For purposes of determining the rights of creditors of,
5 and purchasers for value of an account or chattel paper from, a debtor
6 that has sold an account or chattel paper, while the buyer's security
7 interest is unperfected, the debtor is deemed to have rights and title to
8 the account or chattel paper identical to those the debtor sold.
9 (cf: N.J.S.12A:9-318)

10

11 35. N.J.S.12A:9-319 is amended to read as follows:

12 12A:9-319. Rights and Title of Consignee with Respect to
13 Creditors and Purchasers.

14 **[a.] (a)** Consignee has consignor's rights. Except as otherwise
15 provided in subsection **[b.] (b)**, for purposes of determining the rights
16 of creditors of, and purchasers for value of goods from, a consignee,
17 while the goods are in the possession of the consignee, the consignee
18 is deemed to have rights and title to the goods identical to those the
19 consignor had or had power to transfer.

20 **[b.] (b)** Applicability of other law. For purposes of determining
21 the rights of a creditor of a consignee, law other than this chapter
22 determines the rights and title of a consignee while goods are in the
23 consignee's possession if, under this part, a perfected security interest
24 held by the consignor would have priority over the rights of the
25 creditor.

26 (cf: N.J.S.12A:9-319)

27

28 36. N.J.S.12A:9-320 is amended to read as follows:

29 12A:9-320. Buyer of Goods.

30 **[a.] (a)** Buyer in ordinary course of business. Except as otherwise
31 provided in subsection **[e. of this section] (e)**, a buyer in ordinary
32 course of business, other than a person buying farm products from a
33 person engaged in farming operations, takes free of a security interest
34 created by the buyer's seller, even if the security interest is perfected
35 and the buyer knows of its existence.

36 **[b.] (b)** Buyer of consumer goods. Except as otherwise provided
37 in subsection **[e.] (e)**, a buyer of goods from a person who used or
38 bought the goods for use primarily for personal, family, or household
39 purposes takes free of a security interest, even if perfected, if the
40 buyer buys:

41 (1) without knowledge of the security interest;

42 (2) for value;

43 (3) primarily for the buyer's personal, family, or household
44 purposes; and

45 (4) before the filing of a financing statement covering the goods.

1 **[c.] (c)** Effectiveness of filing for subsection **[b.] (b)**. To the
2 extent that it affects the priority of a security interest over a buyer of
3 goods under subsection **[b. of this section] (b)**, the period of
4 effectiveness of a filing made in the jurisdiction in which the seller is
5 located is governed by 12A:9-316 **[a. and b.] (a) and (b)**.

6 **[d.] (d)** Buyer in ordinary course of business at wellhead or
7 minehead. A buyer in ordinary course of business buying oil, gas, or
8 other minerals at the wellhead or minehead or after extraction takes
9 free of an interest arising out of an encumbrance.

10 **[e.] (e)** Possessory security interest not affected. Subsections **[a.**
11 **and b. of this section] (a) and (b)** do not affect a security interest in
12 goods in the possession of the secured party under 12A:9-313.
13 (cf: N.J.S.12A:9-320)

14
15 37. N.J.S.12A:9-321 is amended to read as follows:

16 12A:9-321. Licensee of General Intangible and Lessee of Goods
17 in Ordinary Course of Business.

18 **[a.] (a)** "Licensee in ordinary course of business." In this section,
19 "licensee in ordinary course of business" means a person **[who] that**
20 becomes a licensee of a general intangible in good faith, without
21 knowledge that the license violates the rights of another person in the
22 general intangible, and in the ordinary course from a person in the
23 business of licensing general intangibles of that kind. A person
24 becomes a licensee in the ordinary course if the license to the person
25 comports with the usual or customary practices in the kind of business
26 in which the licensor is engaged or with the licensor's own usual or
27 customary practices.

28 **[b.] (b)** Rights of licensee in ordinary course of business. A
29 licensee in ordinary course of business takes its rights under a
30 nonexclusive license free of a security interest in the general intangible
31 created by the licensor, even if the security interest is perfected and the
32 licensee knows of its existence.

33 **[c.] (c)** Rights of lessee in ordinary course of business. A lessee in
34 ordinary course of business takes its leasehold interest free of a
35 security interest in the goods created by the lessor, even if the security
36 interest is perfected and the lessee knows of its existence.

37 (cf: N.J.S.12A:9-321)

38
39 38. N.J.S.12A:9-322 is amended to read as follows:

40 12A:9-322. Priorities Among Conflicting Security Interests in and
41 Agricultural Liens on Same Collateral.

42 **[a.] (a)** General priority rules. Except as otherwise provided in
43 this section, priority among conflicting security interests and
44 agricultural liens in the same collateral is determined according to the
45 following rules:

1 (1) Conflicting perfected security interests and agricultural liens
2 rank according to priority in time of filing or perfection. Priority dates
3 from the earlier of the time a filing covering the collateral is first made
4 or the security interest or agricultural lien is first perfected, if there is
5 no period thereafter when there is neither filing nor perfection.

6 (2) A perfected security interest or agricultural lien has priority
7 over a conflicting unperfected security interest or agricultural lien.

8 (3) The first security interest or agricultural lien to attach or
9 become effective has priority if conflicting security interests and
10 agricultural liens are unperfected.

11 **[b.] (b)** Time of perfection: proceeds and supporting obligations.
12 For the purposes of **[paragraph (1) of]** subsection **[a. of this section]**
13 **(a) (1)**:

14 (1) the time of filing or perfection as to a security interest in
15 collateral is also the time of filing or perfection as to a security interest
16 in proceeds; and

17 (2) the time of filing or perfection as to a security interest in
18 collateral supported by a supporting obligation is also the time of filing
19 or perfection as to a security interest in the supporting obligation.

20 **[c.] (c)** Special priority rules: proceeds and supporting
21 obligations. Except as otherwise provided in subsection **[f. of this**
22 **section] (f)**, a security interest in collateral which qualifies for priority
23 over a conflicting security interest under 12A:9-327, 12A:9-328,
24 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a
25 conflicting security interest in:

26 (1) any supporting obligation for the collateral; and

27 (2) proceeds of the collateral if:

28 **[(a)] (A)** the security interest in proceeds is perfected;

29 **[(b)] (B)** the proceeds are cash proceeds or of the same type as
30 the collateral; and

31 **[(c)] (C)** in the case of proceeds that are proceeds of proceeds, all
32 intervening proceeds are cash proceeds, proceeds of the same type as
33 the collateral, or an account relating to the collateral.

34 **[d.] (d)** First-to-file priority rule for certain collateral. Subject to
35 subsection **[e.] (e)** and except as otherwise provided in subsection **[f.**
36 **of this section] (f)**, if a security interest in chattel paper, deposit
37 accounts, negotiable documents, instruments, investment property, or
38 letter-of-credit rights is perfected by a method other than filing,
39 conflicting perfected security interests in proceeds of the collateral
40 rank according to priority in time of filing.

41 **[e.] (e)** Applicability of subsection **[d.] (d)**. Subsection **[d. of this**
42 **section] (d)** applies only if the proceeds of the collateral are not cash
43 proceeds, chattel paper, negotiable documents, instruments,
44 investment property, or letter-of-credit rights.

45 **[f.] (f)** Limitations on subsections **[a.] (a)** through **[e.] (e)**.

1 Subsections [a.] (a) through [e. of this section] (e) are subject to:

2 (1) subsection [g.] (g) and the other provisions of this part;

3 (2) 12A:4-210 with respect to a security interest of a collecting
4 bank; [and]

5 (3) 12A:5-118 with respect to a security interest of an issuer or
6 nominated person; and

7 (4) 12A:9-110 with respect to a security interest arising under
8 Chapter 2 or 2A.

9 [g.] (g) Priority under agricultural lien statute. A perfected
10 agricultural lien on collateral has priority over a conflicting security
11 interest in or agricultural lien on the same collateral if the statute
12 creating the agricultural lien so provides.

13 (cf: N.J.S.12A:9-322)

14

15 39. N.J.S.12A:9-323 is amended to read as follows:

16 12A:9-323. Future Advances.

17 [a.] (a) When priority based on time of advance. Except as
18 otherwise provided in subsection [c. of this section] (c), for purposes
19 of determining the priority of a perfected security interest under
20 12A:9-322 [a.] (a) (1), perfection of the security interest dates from
21 the time an advance is made to the extent that the security interest
22 secures an advance that:

23 (1) is made while the security interest is perfected only:

24 ¹[a.] (A)¹ under 12A:9-309 when it attaches; or

25 ¹[b.] (B)¹ temporarily under 12A:9-312 [e., f., or g.] (e), (f) or
26 (g); and

27 (2) is not made pursuant to a commitment entered into before or
28 while the security interest is perfected by a method other than under
29 12A:9-309 or 12A:9-312 [e., f., or g] (e), (f) or (g).

30 [b.] (b) Lien creditor. Except as otherwise provided in subsection
31 [c. of this section] (c), a security interest is subordinate to the rights
32 of a person [who] that becomes a lien creditor to the extent that the
33 security interest secures an advance made more than 45 days after the
34 person becomes a lien creditor unless the advance is made:

35 (1) without knowledge of the lien; or

36 (2) pursuant to a commitment entered into without knowledge of
37 the lien.

38 [c.] (c) Buyer of receivables. Subsections [a. and b. of this
39 section] (a) and (b) do not apply to a security interest held by a
40 secured party that is a buyer of accounts, chattel paper, payment
41 intangibles, or promissory notes, or a consignor.

42 [d.] (d) Buyer of goods. Except as otherwise provided in
43 subsection [e. of this section] (e), a buyer of goods other than a buyer
44 in ordinary course of business takes free of a security interest to the
45 extent that it secures advances made after the earlier of:

1 (1) the time the secured party acquires knowledge of the buyer's
2 purchase; or

3 (2) 45 days after the purchase.

4 [e.] (e) Advances made pursuant to commitment: priority of
5 buyer of goods. Subsection [d. of this section] (d) does not apply if
6 the advance is made pursuant to a commitment entered into without
7 knowledge of the buyer's purchase and before the expiration of the
8 45-day period.

9 [f.] (f) Lessee of goods. Except as otherwise provided in
10 subsection [g. of this section] (g), a lessee of goods, other than a
11 lessee in ordinary course of business, takes the leasehold interest free
12 of a security interest to the extent that it secures advances made after
13 the earlier of:

14 (1) the time the secured party acquires knowledge of the lease; or

15 (2) 45 days after the lease contract becomes enforceable.

16 [g.] (g) Advances made pursuant to commitment: priority of
17 lessee of goods. Subsection [f. of this section] (f) does not apply if
18 the advance is made pursuant to a commitment entered into without
19 knowledge of the lease and before the expiration of the 45-day period.
20 (cf: N.J.S.12A:9-323)

21

22 40. N.J.S.12A:9-324 is amended to read as follows:

23 12A:9-324. Priority of Purchase-Money Security Interests.

24 [a.] (a) General rule: purchase-money priority. Except as
25 otherwise provided in subsection [g. of this section] (g), a perfected
26 purchase-money security interest in goods other than inventory or
27 livestock has priority over a conflicting security interest in the same
28 goods, and, except as otherwise provided in 12A:9-327, a perfected
29 security interest in its identifiable proceeds also has priority, if the
30 purchase-money security interest is perfected when the debtor receives
31 possession of the collateral or within 20 days thereafter.

32 [b.] (b) Inventory purchase-money priority. Subject to subsection
33 ¹[c.] (c)¹ and except as otherwise provided in subsection [g. of this
34 section] (g), a perfected purchase-money security interest in inventory
35 has priority over a conflicting security interest in the same inventory,
36 has priority over a conflicting security interest in chattel paper or an
37 instrument constituting proceeds of the inventory and in proceeds of
38 the chattel paper, if so provided in 12A:9-330, and, except as
39 otherwise provided in 12A:9-327, also has priority in identifiable cash
40 proceeds of the inventory to the extent the identifiable cash proceeds
41 are received on or before the delivery of the inventory to a buyer, if:

42 (1) the purchase-money security interest is perfected when the
43 debtor receives possession of the inventory;

44 (2) the purchase-money secured party sends an authenticated
45 notification to the holder of the conflicting security interest;

46 (3) the holder of the conflicting security interest receives the

1 notification within five years before the debtor receives possession of
2 the inventory; and

3 (4) the notification states that the person sending the notification
4 has or expects to acquire a purchase-money security interest in
5 inventory of the debtor and describes the inventory.

6 **[c.] (c)** Holders of conflicting inventory security interests to be
7 notified. **[Paragraphs 2 through 4 of subsection b. of this section]**
8 **Subsections (b) (2) through (4)** apply only if the holder of the
9 conflicting security interest had filed a financing statement covering
10 the same types of inventory:

11 (1) if the purchase-money security interest is perfected by filing,
12 before the date of the filing; or

13 (2) if the purchase-money security interest is temporarily perfected
14 without filing or possession under 12A:9-312 **[f.] (f)**, before the
15 beginning of the 20-day period thereunder.

16 **[d.] (d)** Livestock purchase-money priority. Subject to subsection
17 **[e.] (e)** and except as otherwise provided in subsection **[g. of this**
18 **section] (g)**, a perfected purchase-money security interest in livestock
19 that are farm products has priority over a conflicting security interest
20 in the same livestock, and, except as otherwise provided in 12A:9-327,
21 a perfected security interest in their identifiable proceeds and
22 identifiable products in their unmanufactured states also has priority,
23 if:

24 (1) the purchase-money security interest is perfected when the
25 debtor receives possession of the livestock;

26 (2) the purchase-money secured party sends an authenticated
27 notification to the holder of the conflicting security interest;

28 (3) the holder of the conflicting security interest receives the
29 notification within six months before the debtor receives possession of
30 the livestock; and

31 (4) the notification states that the person sending the notification
32 has or expects to acquire a purchase-money security interest in
33 livestock of the debtor and describes the livestock.

34 **[e.] (e)** Holders of conflicting livestock security interests to be
35 notified. **[Paragraphs 2 through 4 of subsection d. of this section]**
36 **Subsections (d) (2) through (4)** apply only if the holder of the
37 conflicting security interest had filed a financing statement covering
38 the same types of livestock:

39 (1) if the purchase-money security interest is perfected by filing,
40 before the date of the filing; or

41 (2) if the purchase-money security interest is temporarily perfected
42 without filing or possession under 12A:9-312 **[f.] (f)**, before the
43 beginning of the 20-day period thereunder.

44 **[f.] (f)** Software purchase-money priority. Except as otherwise
45 provided in subsection **[g. of this section] (g)**, a perfected
46 purchase-money security interest in software has priority over a

1 conflicting security interest in the same collateral, and, except as
2 otherwise provided in 12A:9-327, a perfected security interest in its
3 identifiable proceeds also has priority, to the extent that the
4 purchase-money security interest in the goods in which the software
5 was acquired for use has priority in the goods and proceeds of the
6 goods under this section.

7 **[g.] (g)** Conflicting purchase-money security interests. If more
8 than one security interest qualifies for priority in the same collateral
9 under subsection **[a., b., d., or f. of this section]** **(a), (b), (d) or (f)**:

10 (1) a security interest securing an obligation incurred as all or part
11 of the price of the collateral has priority over a security interest
12 securing an obligation incurred for value given to enable the debtor to
13 acquire rights in or the use of collateral; and

14 (2) in all other cases, 12A:9-322 **[a.] (a)** applies to the qualifying
15 security interests.

16 (cf: N.J.S.12A:9-324)

17

18 41. N.J.S.12A:9-325 is amended to read as follows:

19 12A:9-325. Priority of Security Interests in Transferred Collateral.

20 **[a.] (a)** Subordination of security interest in transferred collateral.

21 Except as otherwise provided in subsection **[b. of this section]** **(b)**, a
22 security interest created by a debtor is subordinate to a security
23 interest in the same collateral created by another person if:

24 (1) the debtor acquired the collateral subject to the security interest
25 created by the other person;

26 (2) the security interest created by the other person was perfected
27 when the debtor acquired the collateral; and

28 (3) there is no period thereafter when the security interest is
29 unperfected.

30 **[b.] (b)** Limitation of subsection **[a.] (a)** subordination.

31 Subsection **[a. of this section]** **(a)** subordinates a security interest only
32 if the security interest:

33 (1) otherwise would have priority solely under 12A:9-322 **[a.] (a)**
34 or 12A:9-324; or

35 (2) arose solely under 12A:2-711(3) or **[2A-508(5)]12A:2A-**
36 **508(5)**.

37 (cf: N.J.S.12A:9-325)

38

39 42. N.J.S.12A:9-326 is amended to read as follows:

40 12A:9-326. Priority of Security Interests Created by New Debtor.

41 **[a.] (a)** Subordination of security interest created by new debtor.

42 Subject to subsection **[b. of this section]** **(b)**, a security interest
43 created by a new debtor which is perfected by a filed financing
44 statement that is effective solely under 12A:9-508 in collateral in
45 which a new debtor has or acquires rights is subordinate to a security
46 interest in the same collateral which is perfected other than by a filed

1 financing statement that is effective solely under 12A:9-508.

2 [b.] (b) Priority under other provisions; multiple original debtors.
3 The other provisions of this part determine the priority among
4 conflicting security interests in the same collateral perfected by filed
5 financing statements that are effective solely under 12A:9-508.
6 However, if the security agreements to which a new debtor became
7 bound as debtor were not entered into by the same original debtor, the
8 conflicting security interests rank according to priority in time of the
9 new debtor's having become bound.

10 (cf: N.J.S.12A:9-326)

11

12 43. N.J.S.12A:9-327 is amended to read as follows:

13 12A:9-327. Priority of Security Interests in Deposit Account.

14 The following rules govern priority among conflicting security
15 interests in the same deposit account:

16 [a.] (1) A security interest held by a secured party having control
17 of the deposit account under 12A:9-104 has priority over a conflicting
18 security interest held by a secured party that does not have control.

19 [b.] (2) Except as otherwise provided in [subsections c. and d. of
20 this section] paragraphs (3) and (4), security interests perfected by
21 control under 12A:9-314 rank according to priority in time of
22 obtaining control.

23 [c.] (3) Except as otherwise provided in [subsection d. of this
24 section] paragraph (4), a security interest held by the bank with which
25 the deposit account is maintained has priority over a conflicting
26 security interest held by another secured party.

27 [d.] (4) A security interest perfected by control under 12A:9-104
28 [a.] (a) (3) has priority over a security interest held by the bank with
29 which the deposit account is maintained.

30 (cf: N.J.S.12A:9-327)

31

32 44. N.J.S.12A:9-328 is amended to read as follows:

33 12A:9-328. Priority of Security Interests in Investment Property.

34 The following rules govern priority among conflicting security
35 interests in the same investment property:

36 [a.] (1) A security interest held by a secured party having control
37 of investment property under 12A:9-106 has priority over a security
38 interest held by a secured party that does not have control of the
39 investment property.

40 [b.] (2) Except as otherwise provided in [sections c. and d. of this
41 section] paragraphs (3) and (4), conflicting security interests held by
42 secured parties each of which has control under 12A:9-106 rank
43 according to priority in time of:

44 [(1)] (A) if the collateral is a security, obtaining control;

45 [(2)] (B) if the collateral is a security entitlement carried in a
46 securities account and:

1 [(a)] (i) if the secured party obtained control under 12A:8-106
2 [d.] (d) (1), the secured party's becoming the person for which the
3 securities account is maintained;

4 [(b)] (ii) if the secured party obtained control under 12A:8-106
5 [d.] (d) (2), the securities intermediary's agreement to comply with
6 the secured party's entitlement orders with respect to security
7 entitlements carried or to be carried in the securities account; or

8 [(c)] (iii) if the secured party obtained control through another
9 person under 12A:8-106 [d.] (d) (3), the time on which priority would
10 be based under this paragraph if the other person were the secured
11 party; or

12 [(3)] (C) if the collateral is a commodity contract carried with a
13 commodity intermediary, the satisfaction of the requirement for
14 control specified in 12A:9-106 [b.] (b) (2) with respect to commodity
15 contracts carried or to be carried with the commodity intermediary.

16 [c.] (3) A security interest held by a securities intermediary in a
17 security entitlement or a securities account maintained with the
18 securities intermediary has priority over a conflicting security interest
19 held by another secured party.

20 [d.] (4) A security interest held by a commodity intermediary in a
21 commodity contract or a commodity account maintained with the
22 commodity intermediary has priority over a conflicting security interest
23 held by another secured party.

24 [e.] (5) A security interest in a certificated security in registered
25 form which is perfected by taking delivery under 12A:9-313 [a.] (a)
26 and not by control under 12A:9-314 has priority over a conflicting
27 security interest perfected by a method other than control.

28 [f.] (6) Conflicting security interests created by a broker,
29 securities intermediary, or commodity intermediary which are
30 perfected without control under 12A:9-106 rank equally.

31 [g.] (7) In all other cases, priority among conflicting security
32 interests in investment property is governed by 12A:9-322 and
33 12A:9-323.

34 (cf: N.J.S.12A:9-328)

35

36 45. N.J.S.12A:9-329 is amended to read as follows:

37 12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

38 The following rules govern priority among conflicting security
39 interests in the same letter-of-credit right:

40 [a.] (1) A security interest held by a secured party having control
41 of the letter-of-credit right under 12A:9-107 has priority to the extent
42 of its control over a conflicting security interest held by a secured
43 party that does not have control.

44 [b.] (2) Security interests perfected by control under 12A:9-314
45 rank according to priority in time of obtaining control.

46 (cf: N.J.S.12A:9-329)

1 46. N.J.S.12A:9-330 is amended to read as follows:

2 12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

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

7 (1) in good faith and in the ordinary course of the purchaser's
8 business, the purchaser gives new value and takes possession of the
9 chattel paper or obtains control of the chattel paper under 12A:9-105;
10 and

11 (2) the chattel paper does not indicate that it has been assigned to
12 an identified assignee other than the purchaser.

13 **[b.] (b)** Purchaser's priority: other security interests. A purchaser
14 of chattel paper has priority over a security interest in the chattel paper
15 which is claimed other than merely as proceeds of inventory subject to
16 a security interest if the purchaser gives new value and takes
17 possession of the chattel paper or obtains control of the chattel paper
18 under 12A:9-105 in good faith, in the ordinary course of the
19 purchaser's business, and without knowledge that the purchase violates
20 the rights of the secured party.

21 **[c.] (c)** Chattel paper purchaser's priority in proceeds. Except as
22 otherwise provided in 12A:9-327, a purchaser having priority in
23 chattel paper under subsection **[a. or b. of this section] (a) or (b)** also
24 has priority in proceeds of the chattel paper to the extent that:

25 (1) 12A:9-322 provides for priority in the proceeds; or

26 (2) the proceeds consist of the specific goods covered by the
27 chattel paper or cash proceeds of the specific goods, even if the
28 purchaser's security interest in the proceeds is unperfected.

29 **[d.] (d)** Instrument purchaser's priority. Except as otherwise
30 provided in 12A:9-331 **[subsection a.] (a)**, a purchaser of an
31 instrument has priority over a security interest in the instrument
32 perfected by a method other than possession if the purchaser gives
33 value and takes possession of the instrument in good faith and without
34 knowledge that the purchase violates the rights of the secured party.

35 **[e.] (e)** Holder of purchase-money security interest gives new
36 value. For purposes of subsections **[a. and b. of this section] (a) and**
37 **(b)**, the holder of a purchase-money security interest in inventory gives
38 new value for chattel paper constituting proceeds of the inventory.

39 **[f.] (f)** Indication of assignment gives knowledge. For purposes
40 of subsections **[b. and d. of this section] (b) and (d)**, if chattel paper
41 or an instrument indicates that it has been assigned to an identified
42 secured party other than the purchaser, a purchaser of the chattel
43 paper or instrument has knowledge that the purchase violates the
44 rights of the secured party.

45 (cf: N.J.S.12A:9-330)

1 47. N.J.S.12A:9-331 is amended to read as follows:

2 12A:9-331. Priority of Rights of Purchasers of Instruments,
3 Documents, and Securities Under Other Chapters; Priority of Interests
4 in Financial Assets and Security Entitlements Under Chapter 8.

5 [a.] (a) Rights under Chapters 3, 7, and 8 not limited. This
6 chapter does not limit the rights of a holder in due course of a
7 negotiable instrument, a holder to which a negotiable document of title
8 has been duly negotiated, or a protected purchaser of a security.
9 These holders or purchasers take priority over an earlier security
10 interest, even if perfected, to the extent provided in Chapters 3, 7, and
11 8.

12 [b.] (b) Protection under Chapter 8. This chapter does not limit
13 the rights of or impose liability on a person to the extent that the
14 person is protected against the assertion of a claim under Chapter 8.

15 [c.] (c) Filing not notice. Filing under this chapter does not
16 constitute notice of a claim or defense to the holders, or purchasers,
17 or persons described in subsections [a. and b of this section] (a) and
18 (b).

19 (cf: N.J.S.12A:9-331)

20

21 48. N.J.S.12A:9-332 is amended to read as follows:

22 12A:9-332. Transfer of Money; Transfer of Funds from Deposit
23 Account.

24 [a.] (a) Transferee of money. A transferee of money takes the
25 money free of a security interest unless the transferee acts in collusion
26 with the debtor in violating the rights of the secured party.

27 [b.] (b) Transferee of funds from deposit account. A transferee of
28 funds from a deposit account takes the funds free of a security interest
29 in the deposit account unless the transferee acts in collusion with the
30 debtor in violating the rights of the secured party.

31 (cf: N.J.S.12A:9-332)

32

33 49. N.J.S.12A:9-333 is amended to read as follows:

34 12A:9-333. Priority of Certain Liens Arising by Operation of Law.

35 [a.] (a) "Possessory lien." In this section, "possessory lien" means
36 an interest, other than a security interest or an agricultural lien:

37 (1) which secures payment or performance of an obligation for
38 services or materials furnished with respect to goods by a person in the
39 ordinary course of the person's business;

40 (2) which is created by statute or rule of law in favor of the person;
41 and

42 (3) whose effectiveness depends on the person's possession of the
43 goods.

44 [b.] (b) Priority of possessory lien. A possessory lien on goods
45 has priority over a security interest in the goods unless the lien is

1 created by a statute that expressly provides otherwise.
2 (cf: N.J.S.12A:9-333)

3

4 50. N.J.S.12A:9-334 is amended to read as follows:

5 12A:9-334. Priority of Security Interests in Fixtures and Crops.

6 **[a.] (a)** Security interest in fixtures under this chapter. A security
7 interest under this chapter may be created in goods that are fixtures or
8 may continue in goods that become fixtures. A security interest does
9 not exist under this chapter in ordinary building materials incorporated
10 into an improvement on land.

11 **[b.] (b)** Security interest in fixtures under real-property law. This
12 chapter does not prevent creation of an encumbrance upon fixtures
13 under real property law.

14 **[c.] (c)** General rule: subordination of security interest in fixtures.
15 In cases not governed by subsections **[d.] (d)** through **[h. of this**
16 **section] (h)**, a security interest in fixtures is subordinate to a
17 conflicting interest of an encumbrancer or owner of the related real
18 property other than the debtor.

19 **[d.] (d)** Fixtures purchase-money priority. Except as otherwise
20 provided in subsection **[h. of this section] (h)**, a perfected security
21 interest in fixtures has priority over a conflicting interest of an
22 encumbrancer or owner of the real property if the debtor has an
23 interest of record in or is in possession of the real property and:

24 (1) the security interest is a purchase-money security interest;

25 (2) the interest of the encumbrancer or owner arises before the
26 goods become fixtures; and

27 (3) the security interest is perfected by a fixture filing before the
28 goods become fixtures or within 20 days thereafter.

29 **[e.] (e)** Priority of security interest in fixtures over interests in real
30 property. A perfected security interest in fixtures has priority over a
31 conflicting interest of an encumbrancer or owner of the real property
32 **[or a lien on real property obtained by legal or equitable proceedings]**
33 if:

34 (1) the debtor has an interest of record in the real property or is in
35 possession of the real property and the security interest:

36 **[(a)] (A)** is perfected by a fixture filing before the interest of the
37 encumbrancer or the owner is of record; and

38 **[(b)] (B)** has priority over any conflicting interest of a predecessor
39 in title of the encumbrancer or owner;

40 (2) before the goods become fixtures, the security interest is
41 perfected by any method permitted by this chapter and the fixtures are
42 readily removable:

43 **[(a)] (A)** factory or office machines;

44 **[(b)] (B)** equipment that is not primarily used or leased for use in
45 the operation of the real property; or

1 ~~[(c)] (C)~~ replacements of domestic appliances that are consumer
2 goods;

3 (3) the conflicting interest is a lien on real property obtained by
4 legal or equitable proceedings after the security interest was perfected
5 by any method permitted by this chapter; or

6 ~~(4)~~ the security interest is:

7 ~~[(a)] (A)~~ created in a manufactured home in a manufactured-home
8 transaction; and

9 ~~[(b)] (B)~~ perfected pursuant to a statute described in 12A:9-311
10 ~~[a.] (a)~~ (2).

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

15 (1) the encumbrancer or owner has, in an authenticated record,
16 consented to the security interest or disclaimed an interest in the goods
17 as fixtures; or

18 (2) the debtor has a right to remove the goods as against the
19 encumbrancer or owner.

20 ~~[(g.) (g)]~~ Continuation of paragraph ~~(f)~~ (2) ~~[of subsection f. of this~~
21 ~~section]~~ priority. The priority of the security interest under paragraph
22 ~~(f)~~ (2) ~~[of subsection f. of this section]~~ continues for a reasonable
23 time if the debtor's right to remove the goods as against the
24 encumbrancer or owner terminates.

25 ~~[(h.) (h)]~~ Priority of construction mortgage. A mortgage is a
26 construction mortgage to the extent that it secures an obligation
27 incurred for the construction of an improvement on land, including the
28 acquisition cost of the land, if a recorded record of the mortgage so
29 indicates. Except as otherwise provided in subsections ~~[e. and f. of~~
30 ~~this section]~~ ~~(e) and (f)~~, a security interest in fixtures is subordinate to
31 a construction mortgage if a record of the mortgage is recorded before
32 the goods become fixtures and the goods become fixtures before the
33 completion of the construction. A mortgage has this priority to the
34 same extent as a construction mortgage to the extent that it is given to
35 refinance a construction mortgage.

36 ~~[(i.) (i)]~~ Priority of security interest in crops. A perfected security
37 interest in crops growing on real property has priority over a
38 conflicting interest of an encumbrancer or owner of the real property
39 if the debtor has an interest of record in or is in possession of the real
40 property.

41 ~~[(j.) (j)]~~ Subsection ~~[i.] (i)~~ prevails. Subsection ~~[i. of this section]~~
42 ~~(i)~~ prevails over any inconsistent provisions of state law.

43 (cf: N.J.S.12A:9-334)

1 51. N.J.S.12A:9-335 is amended to read as follows:

2 12A:9-335. Accessions.

3 [a.] (a) Creation of security interest in accession. A security
4 interest may be created in an accession and continues in collateral that
5 becomes an accession.

6 [b.] (b) Perfection of security interest. If a security interest is
7 perfected when the collateral becomes an accession, the security
8 interest remains perfected in the collateral.

9 [c.] (c) Priority of security interest. Except as otherwise provided
10 in subsection [d. of this section] (d), the other provisions of this part
11 determine the priority of a security interest in an accession.

12 [d.] (d) Compliance with certificate-of-title statute. A security
13 interest in an accession is subordinate to a security interest in the
14 whole which is perfected by compliance with the requirements of a
15 certificate-of-title statute under 12A:9-311 [b.] (b).

16 [e.] (e) Removal of accession after default. After default, subject
17 to Part 6 [of this chapter], a secured party may remove an accession
18 from other goods if the security interest in the accession has priority
19 over the claims of every person having an interest in the whole.

20 [f.] (f) Reimbursement following removal. A secured party that
21 removes an accession from other goods under subsection [e. of this
22 section] (e) shall promptly reimburse any holder of a security interest
23 or other lien on, or owner of, the whole or of the other goods, other
24 than the debtor, for the cost of repair of any physical injury to the
25 whole or the other goods. The secured party need not reimburse the
26 holder or owner for any diminution in value of the whole or the other
27 goods caused by the absence of the accession removed or by any
28 necessity for replacing it. A person entitled to reimbursement may
29 refuse permission to remove until the secured party gives adequate
30 assurance for the performance of the obligation to reimburse.

31 (cf: N.J.S.12A:9-335)

32

33 52. N.J.S.12A:9-336 is amended to read as follows:

34 12A:9-336. Commingled Goods.

35 [a.] (a) "Commingled goods." In this section, "commingled
36 goods" means goods that are physically united with other goods in
37 such a manner that their identity is lost in a product or mass.

38 [b.] (b) No security interest in commingled goods as such. A
39 security interest does not exist in commingled goods as such.
40 However, a security interest may attach to a product or mass that
41 results when goods become commingled goods.

42 [c.] (c) Attachment of security interest to product or mass. If
43 collateral becomes commingled goods, a security interest attaches to
44 the product or mass.

45 [d.] (d) Perfection of security interest. If a security interest in

1 collateral is perfected before the collateral becomes commingled
2 goods, the security interest that attaches to the product or mass under
3 subsection [c. of this section] (c) is perfected.

4 [e.] (e) Priority of security interest. Except as otherwise provided
5 in subsection [f.] (f), the other provisions of this part determine the
6 priority of a security interest that attaches to the product or mass
7 under subsection [c. of this section] (c).

8 [f.] (f) Conflicting security interests in product or mass. If more
9 than one security interest attaches to the product or mass under
10 subsection [c. of this section] (c), the following rules determine
11 priority:

12 (1) A security interest that is perfected under subsection [d.] (d)
13 has priority over a security interest that is unperfected at the time the
14 collateral becomes commingled goods.

15 (2) If more than one security interest is perfected under subsection
16 [d.] (d), the security interests rank equally in proportion to the value
17 of the collateral at the time it became commingled goods.

18 (cf: N.J.S.12A:9-336)

19

20 53. N.J.S.12A:9-337 is amended to read as follows:

21 12A:9-337. Priority of Security Interests in Goods Covered by
22 Certificate of Title.

23 If, while a security interest in goods is perfected by any method
24 under the law of another jurisdiction, this State issues a certificate of
25 title that does not show that the goods are subject to the security
26 interest or contain a statement that they may be subject to security
27 interests not shown on the certificate:

28 [a.] (1) a buyer of the goods, other than a person in the business
29 of selling goods of that kind, takes free of the security interest if the
30 buyer gives value and receives delivery of the goods after issuance of
31 the certificate and without knowledge of the security interest; and

32 [b.] (2) the security interest is subordinate to a conflicting security
33 interest in the goods that attaches, and is perfected under 12A:9-311
34 [b.] (b), after issuance of the certificate and without the conflicting
35 secured party's knowledge of the security interest.

36 (cf: N.J.S.12A:9-337)

37

38 54. N.J.S.12A:9-338 is amended to read as follows:

39 12A:9-338. Priority of Security Interest or Agricultural Lien
40 Perfected by Filed Financing Statement Providing Certain Incorrect
41 Information.

42 If a security interest or agricultural lien is perfected by a filed
43 financing statement providing information described in 12A:9-516 [b.]
44 (b) (5) which is incorrect at the time the financing statement is filed:

45 [a.] (1) the security interest or agricultural lien is subordinate to

1 a conflicting perfected security interest in the collateral to the extent
2 that the holder of the conflicting security interest gives value in
3 reasonable reliance upon the incorrect information; and

4 [b.] (2) a purchaser, other than a secured party, of the collateral
5 takes free of the security interest or agricultural lien to the extent that,
6 in reasonable reliance upon the incorrect information, the purchaser
7 gives value and, in the case of chattel paper, documents, goods,
8 instruments, or a security certificate, receives delivery of the collateral.
9 (cf: N.J.S.12A:9-338)

10

11 55. N.J.S.12A:9-340 is amended to read as follows:

12 12A:9-340. Effectiveness of Right of Recoupment or Set-off
13 Against Deposit Account.

14 [a.] (a) Exercise of recoupment or set-off. Except as otherwise
15 provided in subsection [c. of this section] (c), a bank with which a
16 deposit account is maintained may exercise any right of recoupment or
17 set-off against a secured party that holds a security interest in the
18 deposit account.

19 [b.] (b) Recoupment or set-off not affected by security interest.
20 Except as otherwise provided in subsection [c. of this section] (c), the
21 application of this chapter to a security interest in a deposit account
22 does not affect a right of recoupment or set-off of the secured party
23 as to a deposit account maintained with the secured party.

24 [c.] (c) When set-off ineffective. The exercise by a bank of a
25 set-off against a deposit account is ineffective against a secured party
26 that holds a security interest in the deposit account which is perfected
27 by control under 12A:9-104 (a) (3), if the set-off is based on a claim
28 against the debtor.

29 (cf: N.J.S.12A:9-340)

30

31 56. N.J.S.12A:9-341 is amended to read as follows:

32 12A:9-341. Bank's Rights and Duties with Respect to Deposit
33 Account.

34 Except as otherwise provided in 12A:9-340 [c.] (c), and unless the
35 bank otherwise agrees in an authenticated record, a bank's rights and
36 duties with respect to a deposit account maintained with the bank are
37 not terminated, suspended, or modified by:

38 [a.] (1) the creation, attachment, or perfection of a security
39 interest in the deposit account;

40 [b.] (2) the bank's knowledge of the security interest; or

41 [c.] (3) the bank's receipt of instructions from the secured party.

42 (cf: N.J.S.12A:9-341)

43

44 57. N.J.S.12A:9-342 is amended to read as follows:

45 12A:9-342. Bank's Right to Refuse to Enter into or Disclose

1 Existence of Control Agreement.

2 This chapter does not require a bank to enter into an agreement of
3 the kind described in 12A:9-104 [a.] (a) (2), even if its customer so
4 requests or directs. A bank that has entered into such an agreement
5 is not required to confirm the existence of the agreement to another
6 person unless requested to do so by its customer.

7 (cf: N.J.S.12A:9-342)

8

9 58. N.J.S.12A:9-401 is amended to read as follows:

10 12A:9-401. Alienability of Debtor's Rights.

11 [a.] (a) Other law governs alienability; exceptions. Except as
12 otherwise provided in subsection [b. of this section] (b) and
13 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's
14 rights in collateral may be voluntarily or involuntarily transferred is
15 governed by law other than this chapter.

16 [b.] (b) Agreement does not prevent transfer. An agreement
17 between the debtor and secured party which prohibits a transfer of the
18 debtor's rights in collateral or makes the transfer a default does not
19 prevent the transfer from taking effect.

20 (cf: N.J.S.12A:9-401)

21

22 59. N.J.S.12A:9-403 is amended to read as follows:

23 12A:9-403. Agreement Not to Assert Defenses Against Assignee.

24 [a.] (a) "Value." In this section, "value" has the meaning provided
25 in 12A:3-303 a.

26 [b.] (b) Agreement not to assert claim or defense. Except as
27 otherwise provided in this section, an agreement between an account
28 debtor and an assignor not to assert against an assignee any claim or
29 defense that the account debtor may have against the assignor is
30 enforceable by an assignee that takes an assignment:

31 (1) for value;

32 (2) in good faith;

33 (3) without notice of a claim of a property or possessory right to
34 the property assigned; and

35 (4) without notice of a defense or claim in recoupment of the type
36 that may be asserted against a person entitled to enforce a negotiable
37 instrument under 12A:3-305 a.

38 [c.] (c) When subsection [b.] (b) not applicable. Subsection [b.
39 of this section] (b) does not apply to defenses of a type that may be
40 asserted against a holder in due course of a negotiable instrument
41 under 12A:3-305 b.

42 [d.] (d) Omission of required statement in consumer transaction.

43 In a consumer transaction, if a record evidences the account debtor's
44 obligation, law other than this chapter requires that the record include
45 a statement to the effect that the rights of an assignee are subject to

1 claims or defenses that the account debtor could assert against the
2 original obligee, and the record does not include such a statement:

3 (1) the record has the same effect as if the record included such a
4 statement; and

5 (2) the account debtor may assert against an assignee those claims
6 and defenses that would have been available if the record included
7 such a statement.

8 **[e.] (e)** Rule for individual under other law. This section is subject
9 to law other than this chapter which establishes a different rule for an
10 account debtor who is an individual and who incurred the obligation
11 primarily for personal, family, or household purposes.

12 **[f.] (f)** Other law not displaced. Except as otherwise provided in
13 subsection **[d. of this section] (d)**, this section does not displace law
14 other than this chapter which gives effect to an agreement by an
15 account debtor not to assert a claim or defense against an assignee.
16 (cf: N.J.S.12A:9-403)

17

18 60. N.J.S.12A:9-404 is amended to read as follows:

19 12A:9-404. Rights Acquired by Assignee; Claims and Defenses
20 Against Assignee.

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

26 (1) all terms of the agreement between the account debtor and
27 assignor and any defense or claim in recoupment arising from the
28 transaction that gave rise to the contract; and

29 (2) any other defense or claim of the account debtor against the
30 assignor which accrues before the account debtor receives a
31 notification of the assignment authenticated by the assignor or the
32 assignee.

33 **[b.] (b)** Account debtor's claim reduces amount owed to assignee.
34 Subject to subsection **[c.] (c)** and except as otherwise provided in
35 subsection **[d. of this section] (d)**, the claim of an account debtor
36 against an assignor may be asserted against an assignee under
37 subsection **[a.] (a)** only to reduce the amount the account debtor
38 owes.

39 **[c.] (c)** Rule for individual under other law. This section is subject
40 to law other than this chapter which establishes a different rule for an
41 account debtor who is an individual and who incurred the obligation
42 primarily for personal, family, or household purposes.

43 **[d.] (d)** Omission of required statement in consumer transaction.
44 In a consumer transaction, if a record evidences the account debtor's
45 obligation, law other than this chapter requires that the record include

1 a statement to the effect that the account debtor's recovery against an
2 assignee with respect to claims and defenses against the assignor may
3 not exceed amounts paid by the account debtor under the record, and
4 the record does not include such a statement, the extent to which a
5 claim of an account debtor against the assignor may be asserted
6 against an assignee is determined as if the record included such a
7 statement.

8 [e.] (e) Inapplicability to health-care-insurance receivable. This
9 section does not apply to an assignment of a health-care-insurance
10 receivable.

11 (cf: N.J.S.12A:9-404)

12

13 61. N.J.S.12A:9-405 is amended to read as follows:

14 12A:9-405. Modification of Assigned Contract.

15 [a.] (a) Effect of modification on assignee. A modification of or
16 substitution for an assigned contract is effective against an assignee if
17 made in good faith. The assignee acquires corresponding rights under
18 the modified or substituted contract. The assignment may provide that
19 the modification or substitution is a breach of contract by the assignor.
20 This subsection is subject to subsections [b.] (b) through [d. of this
21 section] (d).

22 [b.] (b) Applicability of subsection [a.] (a). Subsection [a. of this
23 section] (a) applies to the extent that:

24 (1) the right to payment or a part thereof under an assigned
25 contract has not been fully earned by performance; or

26 (2) the right to payment or a part thereof has been fully earned by
27 performance and the account debtor has not received notification of
28 the assignment under 12A:9-406 [a.] (a).

29 [c.] (c) Rule for individual under other law. This section is subject
30 to law other than this chapter which establishes a different rule for an
31 account debtor who is an individual and who incurred the obligation
32 primarily for personal, family, or household purposes.

33 [d.] (d) Inapplicability to health-care-insurance receivable. This
34 section does not apply to an assignment of a health-care-insurance
35 receivable.

36 (cf: N.J.S.12A:9-405)

37

38 62. N.J.S.12A:9-406 is amended to read as follows:

39 12A:9-406. Discharge of Account Debtor; Notification of
40 Assignment; Identification and Proof of Assignment; Restrictions on
41 Assignment of Accounts, Chattel Paper, Payment Intangibles, and
42 Promissory Notes Ineffective.

43 [a.] (a) Discharge of account debtor; effect of notification.
44 Subject to subsections [b.] (b) through [i. of this section] (i), an
45 account debtor on an account, chattel paper, or a payment intangible

1 may discharge its obligation by paying the assignor until, but not after,
2 the account debtor receives a notification, authenticated by the
3 assignor or the assignee, that the amount due or to become due has
4 been assigned and that payment is to be made to the assignee. After
5 receipt of the notification, the account debtor may discharge its
6 obligation by paying the assignee and may not discharge the obligation
7 by paying the assignor.

8 **[b.] (b)** When notification ineffective. Subject to subsection **[h.]**
9 **(h)**, notification is ineffective under subsection **[a. of this section] (a)**:

10 (1) if it does not reasonably identify the rights assigned;

11 (2) to the extent that an agreement between an account debtor and
12 a seller of a payment intangible limits the account debtor's duty to pay
13 a person other than the seller and the limitation is effective under law
14 other than this chapter; or

15 (3) at the option of an account debtor, if the notification notifies
16 the account debtor to make less than the full amount of any installment
17 or other periodic payment to the assignee, even if:

18 **[(a)] (A)** only a portion of the account, chattel paper, or **[general]**
19 **payment** intangible has been assigned to that assignee;

20 **[(b)] (B)** a portion has been assigned to another assignee; or

21 **[(c)] (C)** the account debtor knows that the assignment to that
22 assignee is limited.

23 **[c.] (c)** Proof of assignment. Subject to subsection **[h. of this]**
24 **section] (h)**, if requested by the account debtor, an assignee shall
25 seasonably furnish reasonable proof that the assignment has been
26 made. Unless the assignee complies, the account debtor may discharge
27 its obligation by paying the assignor, even if the account debtor has
28 received a notification under subsection **[a. of this section] (a)**.

29 **[d.] (d)** Term restricting assignment generally ineffective. Except
30 as otherwise provided in subsection **[e. of this section] (e)**,
31 12A:2A-303 and 12A:9-407, and subject to subsection **[h. of this]**
32 **section] (h)**, a term in an agreement between an account debtor and
33 an assignor or in a promissory note is ineffective to the extent that it:

34 (1) prohibits, restricts, or requires the consent of the account
35 debtor or person obligated on the promissory note to the assignment
36 or transfer of, or the creation, attachment, perfection, or enforcement
37 of a security interest in, the account, chattel paper, payment intangible,
38 or promissory note; or

39 (2) provides that the assignment or transfer or the creation,
40 attachment, perfection, or enforcement of the security interest may
41 give rise to a default, breach, right of recoupment, claim, defense,
42 termination, right of termination, or remedy under the account, chattel
43 paper, payment intangible, or promissory note.

44 **[e.] (e)** Inapplicability of subsection **[d.] (d)** to certain sales.
45 Subsection **[d. of this section] (d)** does not apply to the sale of a

1 payment intangible or promissory note.

2 [f.] (f) Legal restrictions on assignment generally ineffective.
3 Except as otherwise provided in [subsection j. of this section]
4 12A:2A-303 and 12A:9-407 and subject to subsections [h. and i. of
5 this section] (h), (i) and (j), a rule of law, statute, or regulation that
6 prohibits, restricts, or requires the consent of a government,
7 governmental body or official, or account debtor to the assignment or
8 transfer of, or creation of a security interest in, an account or chattel
9 paper is ineffective to the extent that the rule of law, statute, or
10 regulation:

11 (1) prohibits, restricts, or requires the consent of the government,
12 governmental body or official, or account debtor to the assignment or
13 transfer of, or the creation, attachment, perfection, or enforcement of
14 a security interest in the account or chattel paper; or

15 (2) provides that the assignment or transfer or the creation,
16 attachment, perfection, or enforcement of the security interest may
17 give rise to a default, breach, right of recoupment, claim, defense,
18 termination, right of termination, or remedy under the account or
19 chattel paper.

20 [g.] (g) Subsection [b. paragraph] (b) (3) not waivable. Subject
21 to subsection [h.] (h), an account debtor may not waive or vary its
22 option under subsection [b.] (b) (3) [of this section].

23 [h.] (h) Rule for individual under other law. This section is
24 subject to law other than this chapter which establishes a different rule
25 for an account debtor who is an individual and who incurred the
26 obligation primarily for personal, family, or household purposes.

27 [i.] (i) Inapplicability [to health-care-insurance receivable]. This
28 section does not apply to an assignment of a health-care-insurance
29 receivable. Subsection (f) does not apply to an assignment or transfer
30 of, or the creation, attachment, perfection or enforcement of a security
31 interest in, a right the transfer of which is prohibited or restricted by
32 any of the following statutes to the extent that the statute is
33 inconsistent with subsection (f): R.S.34:15-29 (workers'
34 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
35 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
36 (structured settlement agreements).

37 [j.] (j) Section prevails over specified inconsistent law. [This]
38 Except to the extent otherwise provided in subsection (i), this section
39 prevails over any inconsistent [provisions] provision of an existing or
40 future statute, rule or regulation of this State [statutes, rules, and
41 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
42 (C.5:9-13)], unless the provision is contained in a statute of this State,
43 refers expressly to this section and states that the provision prevails
44 over this section.

45 (cf: N.J.S.12A:9-406)

1 63. N.J.S.12A:9-407 is amended to read as follows:

2 12A:9-407. Restrictions on Creation or Enforcement of Security
3 Interest in Leasehold Interest or in Lessor's Residual Interest.

4 **[a.] (a)** Term restricting assignment generally ineffective. Except
5 as otherwise provided in subsection **[b. of this section] (b)**, a term in
6 a lease agreement is ineffective to the extent that it:

7 (1) prohibits, restricts, or requires the consent of a party to the
8 lease to the assignment or transfer of, or the creation, attachment,
9 perfection, or enforcement of a security interest in, an interest of a
10 party under the lease contract or in the lessor's residual interest in the
11 goods; or

12 (2) provides that the assignment or transfer or the creation,
13 attachment, perfection, or enforcement of the security interest may
14 give rise to a default, breach, right of recoupment, claim, defense,
15 termination, right of termination, or remedy under the lease.

16 **[b.] (b)** Effectiveness of certain terms. Except as otherwise
17 provided in 12A:2A-303 **[g.] (7)**, a term described in **[paragraph (2)**
18 **of subsection a. of this section] subsection (a) (2)** is effective to the
19 extent that there is:

20 (1) a transfer by the lessee of the lessee's right of possession or use
21 of the goods in violation of the term; or

22 (2) a delegation of a material performance of either party to the
23 lease contract in violation of the term.

24 **[c.] (c)** Security interest not material impairment. The creation,
25 attachment, perfection, or enforcement of a security interest in the
26 lessor's interest under the lease contract or the lessor's residual interest
27 in the goods is not a transfer that materially impairs the lessee's
28 prospect of obtaining return performance or materially changes the
29 duty of or materially increases the burden or risk imposed on the lessee
30 within the purview of 12A:2A-303 **[d.] (4)** unless, and then only to
31 the extent that, enforcement actually results in a delegation of material
32 performance of the lessor.

33 (cf: N.J.S.12A:9-407)

34

35 64. N.J.S.12A:9-408 is amended to read as follows:

36 12A:9-408. Restrictions on Assignment of Promissory Notes,
37 Health-care-insurance Receivables, and Certain General Intangibles
38 Ineffective.

39 **[a.] (a)** Term restricting assignment generally ineffective. Except
40 as otherwise provided in subsection **[b. of this section] (b)**, a term in
41 a promissory note or in an agreement between an account debtor and
42 a debtor which relates to a health-care-insurance receivable or a
43 general intangible, including a contract, permit, license, or franchise,
44 and which term prohibits, restricts, or requires the consent of the
45 person obligated on the promissory note or the account debtor to, the

1 assignment or transfer of, or creation, attachment, or perfection of a
2 security interest in, the promissory note, health-care-insurance
3 receivable, or general intangible, is ineffective to the extent that the
4 term:

5 (1) would impair the creation, attachment, or perfection of a
6 security interest; or

7 (2) provides that the assignment or transfer or the creation,
8 attachment, or perfection of the security interest may give rise to a
9 default, breach, right of recoupment, claim, defense, termination, right
10 of termination, or remedy under the promissory note,
11 health-care-insurance receivable, or general intangible.

12 **[b.] (b)** Applicability of subsection **[a.] (a)** to sales of certain
13 rights to payment. Subsection **[a. of this section] (a)** applies to a
14 security interest in a payment intangible or promissory note only if the
15 security interest arises out of a sale of the payment intangible or
16 promissory note.

17 **[c.] (c)** Legal restrictions on assignment generally ineffective.
18 Except as provided in subsection **[e. of this section] (e)**, a rule of law,
19 statute, or regulation that prohibits, restricts, or requires the consent
20 of a government, governmental body or official, person obligated on
21 a promissory note, or account debtor to the assignment or transfer of,
22 or creation of a security interest in, a promissory note,
23 health-care-insurance receivable, or general intangible, including a
24 contract, permit, license, or franchise between an account debtor and
25 a debtor, is ineffective to the extent that the rule of law, statute, or
26 regulation:

27 (1) would impair the creation, attachment, or perfection of a
28 security interest; or

29 (2) provides that the assignment or transfer or the creation,
30 attachment, or perfection of the security interest may give rise to a
31 default, breach, right of recoupment, claim, defense, termination, right
32 of termination, or remedy under the promissory note,
33 health-care-insurance receivable, or general intangible.

34 **[d.] (d)** Limitation on ineffectiveness under subsections **[a. and**
35 **c.] (a) and (c)**. To the extent that a term in a promissory note or in an
36 agreement between an account debtor and a debtor which relates to a
37 health-care-insurance receivable or general intangible or a rule of law,
38 statute, or regulation described in subsection **[c.] (c)** would be
39 effective under law other than this chapter but is ineffective under
40 subsection **[a. or c. of this section] (a) or (c)**, the creation,
41 attachment, or perfection of a security interest in the promissory note,
42 health-care-insurance receivable, or general intangible:

43 (1) is not enforceable against the person obligated on the
44 promissory note or the account debtor;

45 (2) does not impose a duty or obligation on the person obligated
46 on the promissory note or the account debtor;

1 (3) does not require the person obligated on the promissory note
2 or the account debtor to recognize the security interest, pay or render
3 performance to the secured party, or accept payment or performance
4 from the secured party;

5 (4) does not entitle the secured party to use or assign the debtor's
6 rights under the promissory note, health-care-insurance receivable, or
7 general intangible, including any related information or materials
8 furnished to the debtor in the transaction giving rise to the promissory
9 note, health-care-insurance receivable, or general intangible;

10 (5) does not entitle the secured party to use, assign, possess, or
11 have access to any trade secrets or confidential information of the
12 person obligated on the promissory note or the account debtor; and

13 (6) does not entitle the secured party to enforce the security
14 interest in the promissory note, health-care-insurance receivable, or
15 general intangible.

16 [e.] (e) Section prevails over specified inconsistent law. [This]
17 Except to the extent otherwise provided in subsection (f), this section
18 prevails over any inconsistent [provisions] provision of an existing or
19 future statute, rule or regulation of this State [statutes, rules, and
20 regulations, other than R.S.34:15-29 and section 13 of P.L.1970, c.13
21 (C.5:9-13) , unless the provision is contained in a statute of this State,
22 refers expressly to this section and states that the provision prevails
23 over this section.

24 (f) Inapplicability. Subsection (c) does not apply to an assignment
25 or transfer of, or the creation, attachment, perfection or enforcement
26 of a security interest in, a right the transfer of which is prohibited or
27 restricted by any of the following statutes to the extent that the statute
28 is inconsistent with subsection (c): R.S.34:15-29 (workers'
29 compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State
30 lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.)
31 (structured settlement agreements).

32 (cf: N.J.S.12A:9-408)

33
34 65. N.J.S.12A:9-409 is amended to read as follows:

35 12A:9-409. Restrictions on Assignment of Letter-of-credit Rights
36 Ineffective.

37 [a.] (a) Term or law restricting assignment generally ineffective.
38 A term in a letter of credit or a rule of law, statute, regulation, custom,
39 or practice applicable to the letter of credit which prohibits, restricts,
40 or requires the consent of an applicant, issuer, or nominated person to
41 a beneficiary's assignment of or creation of a security interest in a
42 letter-of-credit right is ineffective to the extent that the term or rule of
43 law, statute, regulation, custom, or practice:

44 (1) would impair the creation, attachment, or perfection of a
45 security interest in the letter-of-credit right; or

46 (2) provides that the assignment or the creation, attachment, or

1 perfection of the security interest may give rise to a default, breach,
2 right of recoupment, claim, defense, termination, right of termination,
3 or remedy under the letter-of-credit right.

4 **[b.] (b)** Limitation on ineffectiveness under subsection **[a.] (a)**.
5 To the extent that a term in a letter of credit is ineffective under
6 subsection **[a.] (a)** but would be effective under law other than this
7 chapter or a custom or practice applicable to the letter of credit, to the
8 transfer of a right to draw or otherwise demand performance under the
9 letter of credit, or to the assignment of a right to proceeds of the letter
10 of credit, the creation, attachment, or perfection of a security interest
11 in the letter-of-credit right:

12 (1) is not enforceable against the applicant, issuer, nominated
13 person, or transferee beneficiary;

14 (2) imposes no duties or obligations on the applicant, issuer,
15 nominated person, or transferee beneficiary; and

16 (3) does not require the applicant, issuer, nominated person, or
17 transferee beneficiary to recognize the security interest, pay or render
18 performance to the secured party, or accept payment or other
19 performance from the secured party.

20 (cf: N.J.S.12A:9-409)

21

22 66. N.J.S.12A:9-501 is amended to read as follows:

23 12A:9-501. Filing Office.

24 Filing offices.

25 **[a.] (a)** Except as otherwise provided in subsection **[b. of this**
26 **section] (b)**, if the local law of this State governs perfection of a
27 security interest or agricultural lien, the office in which to file a
28 financing statement to perfect the security interest or agricultural lien
29 is :

30 (1) the office designated for the filing or recording of a record of
31 a mortgage on the related real property, if:

32 **[(a)] (A)** the collateral is as-extracted collateral or timber to be
33 cut; or

34 **[(b)] (B)** the financing statement is filed as a fixture filing and the
35 collateral is goods that are or are to become fixtures; or

36 (2) the Division of Commercial Recording or other office
37 designated by Executive Order, in all other cases, including a case in
38 which the collateral is goods that are or are to become fixtures and the
39 financing statement is not filed as a fixture filing.

40 **[b.] (b)** Filing office for transmitting utilities. The office in which
41 to file a financing statement to perfect a security interest in collateral,
42 including fixtures, of a transmitting utility is the Division of
43 Commercial Recording or other office designated by Executive Order.
44 The financing statement also constitutes a fixture filing as to the
45 collateral indicated in the financing statement which is or is to become

1 fixtures.

2 (cf: N.J.S.12A:9-501)

3

4 67. N.J.S.12A:9-502 is amended to read as follows:

5 12A:9-502. Contents of Financing Statement; Record of Mortgage
6 as Financing Statement; Time of Filing Financing Statement.

7 **[a.] (a)** Sufficiency of financing statement. Subject to subsection
8 **[b. of this section] (b)**, a financing statement is sufficient only if it:

9 (1) provides the name of the debtor;

10 (2) provides the name of the secured party or a representative of
11 the secured party; and

12 (3) indicates the collateral covered by the financing statement.

13 **[b.] (b)** Real-property-related financing statements. Except as
14 otherwise provided in 12A:9-501 **[b.] (b)**, to be sufficient, a financing
15 statement that covers as-extracted collateral or timber to be cut, or
16 which is filed as a fixture filing and covers goods that are or are to
17 become fixtures, **[shall] must** satisfy subsection **[a. of this section] (a)**
18 and also:

19 (1) indicate that it covers this type of collateral;

20 (2) indicate that it is to be filed in the real property records;

21 (3) provide a description of the real property to which the collateral
22 is related sufficient to **[identify] give constructive notice of a**
23 **mortgage under the law of this State if the description were contained**
24 **in a record of the mortgage of** the real property; and

25 (4) if the debtor does not have an interest of record in the real
26 property, provide the name of a record owner.

27 **[c.] (c)** Record of mortgage as financing statement. A record of
28 a mortgage is effective, from the date of recording, as a **[filed]**
29 financing statement filed as a fixture filing or as a financing statement
30 covering as-extracted collateral or timber to be cut **[or fixtures]** only
31 if:

32 (1) the record indicates the goods or accounts that it covers;

33 (2) the goods are or are to become fixtures related to the real
34 property described in the record or the collateral is related to the real
35 property described in the record and is as-extracted collateral or
36 timber to be cut;

37 (3) the record satisfies the requirements for a financing statement
38 in this section other than an indication that it is to be filed in the real
39 property records; and

40 (4) the record is recorded.

41 **[d.] (d)** Filing before security agreement or attachment. A
42 financing statement may be filed before a security agreement is made
43 or a security interest otherwise attaches.

44 (cf: N.J.S.12A:9-502)

1 68. N.J.S.12A:9-503 is amended to read as follows:

2 12A:9-503. Name of Debtor and Secured Party.

3 **[a.] (a)** Sufficiency of debtor's name. A financing statement
4 sufficiently provides the name of the debtor:

5 (1) if the debtor is a registered organization, only if the financing
6 statement provides the name of the debtor indicated on the public
7 record of the debtor's jurisdiction of organization which shows the
8 debtor to have been organized;

9 (2) if the debtor is a decedent's estate, only if the financing
10 statement provides the name of the decedent and indicates that the
11 debtor is an estate;

12 (3) if the debtor is a trust or a trustee acting with respect to
13 property held in trust, only if the financing statement:

14 **[(a)] (A)** provides the name specified for the trust in its organic
15 documents or, if no name is specified, provides the name of the settlor
16 and additional information sufficient to distinguish the debtor from
17 other trusts having one or more of the same settlors; and

18 **[(b)] (B)** indicates, in the debtor's name or otherwise, that the
19 debtor is a trust or is a trustee acting with respect to property held in
20 trust; and

21 (4) in other cases:

22 **[(a)] (A)** if the debtor has a name, only if it provides the individual
23 or organizational name of the debtor; and

24 **[(b)] (B)** if the debtor does not have a name, only if it provides the
25 names of the partners, members, associates, or other persons
26 comprising the debtor.

27 **[b.] (b)** Additional debtor-related information. A financing
28 statement that provides the name of the debtor in accordance with
29 subsection **[a. of this section] (a)** is not rendered ineffective by the
30 absence of:

31 (1) a trade name or other name of the debtor; or

32 (2) unless required under **[paragraph (4) (b) of] subsection [a. of**
33 **this section] (a) (4) (B)**, names of partners, members, associates, or
34 other persons comprising the debtor.

35 **[c.] (c)** Debtor's trade name insufficient. A financing statement
36 that provides only the debtor's trade name does not sufficiently provide
37 the name of the debtor.

38 **[d.] (d)** Representative capacity. Failure to indicate the
39 representative capacity of a secured party or representative of a
40 secured party does not affect the sufficiency of a financing statement.

41 **[e.] (e)** Multiple debtors and secured parties. A financing
42 statement may provide the name of more than one debtor and the name
43 of more than one secured party.

44 (cf: N.J.S.12A:9-503)

1 69. N.J.S.12A:9-504 is amended to read as follows:

2 12A:9-504. Indication of Collateral.

3 A financing statement sufficiently indicates the collateral that it
4 covers if the financing statement provides:

5 [a.] (1) a description of the collateral pursuant to 12A:9-108; or

6 [b.] (2) an indication that the financing statement covers all assets
7 or all personal property.

8 (cf: N.J.S.12A:9-504)

9

10 70. N.J.S.12A:9-505 is amended to read as follows:

11 12A:9-505. Filing and Compliance with Other Statutes and
12 Treaties for Consignments, Leases, Other Bailments, and Other
13 Transactions.

14 [a.] (a) Use of terms other than "debtor" and "secured party." A
15 consignor, lessor, or other bailor of goods, a licensor, or a buyer of a
16 payment intangible or promissory note may file a financing statement,
17 or may comply with a statute or treaty described in 12A:9-311 [a.]
18 (a), using the terms "consignor," "consignee," "lessor," "lessee,"
19 "bailor," "bailee," "licensor," "licensee," "owner," "registered owner,"
20 "buyer," "seller," or words of similar import, instead of the terms
21 "secured party" and "debtor".

22 [b.] (b) Effect of financing statement under subsection [a.] (a)
23 This part applies to the filing of a financing statement under subsection
24 [a. of this section] (a) and, as appropriate, to compliance that is
25 equivalent to filing a financing statement under 12A:9-311 [b.] (b),
26 but the filing or compliance is not of itself a factor in determining
27 whether the collateral secures an obligation. If it is determined for
28 another reason that the collateral secures an obligation, a security
29 interest held by the consignor, lessor, bailor, licensor, owner, or buyer
30 which attaches to the collateral is perfected by the filing or
31 compliance.

32 (cf: N.J.S.12A:9-505)

33

34 71. N.J.S.12A:9-506 is amended to read as follows:

35 12A:9-506. Effect of Errors or Omissions.

36 [a.] (a) Minor errors and omissions. A financing statement
37 substantially satisfying the requirements of this part is effective, even
38 if it has minor errors or omissions, unless the errors or omissions make
39 the financing statement seriously misleading.

40 [b.] (b) Financing statement seriously misleading. Except as
41 otherwise provided in subsection [c. of this section] (c), a financing
42 statement that fails sufficiently to provide the name of the debtor in
43 accordance with 12A:9-503 [a.] (a) is seriously misleading.

44 [c.] (c) Financing statement not seriously misleading. If a search
45 of the records of the filing office under the debtor's correct name,

1 using the filing office's standard search logic, if any, would disclose a
2 financing statement that fails sufficiently to provide the name of the
3 debtor in accordance with 12A:9-503 [a.] (a), the name provided does
4 not make the financing statement seriously misleading.

5 [d.] (d) "Debtor's correct name." For purposes of 12A:9-508 [b.]
6 (b), the "debtor's correct name" in subsection [c. of this section] (c)
7 means the correct name of the new debtor.

8 (cf: N.J.S.12A:9-506)

9

10 72. N.J.S.12A:9-507 is amended to read as follows:

11 12A:9-507. Effect of Certain Events on Effectiveness of Financing
12 Statement.

13 [a.] (a) Disposition. A filed financing statement remains effective
14 with respect to collateral that is sold, exchanged, leased, licensed, or
15 otherwise disposed of and in which a security interest or agricultural
16 lien continues, even if the secured party knows of or consents to the
17 disposition.

18 [b.] (b) Information becoming seriously misleading. Except as
19 otherwise provided in subsection [c. of this section] (c) and
20 12A:9-508, a financing statement is not rendered ineffective if, after
21 the financing statement is filed, the information provided in the
22 financing statement becomes seriously misleading under 12A:9-506.

23 [c.] (c) Change in debtor's name. If a debtor so changes its name
24 that a filed financing statement becomes seriously misleading under
25 12A:9-506:

26 (1) the financing statement is effective to perfect a security interest
27 in collateral acquired by the debtor before, or within four months after,
28 the change; and

29 (2) the financing statement is not effective to perfect a security
30 interest in collateral acquired by the debtor more than four months
31 after the change, unless an amendment to the financing statement
32 which renders the financing statement not seriously misleading is filed
33 within four months after the change.

34 (cf: N.J.S.12A:9-507)

35

36 73. N.J.S.12A:9-508 is amended to read as follows:

37 12A:9-508. Effectiveness of Financing Statement If New Debtor
38 Becomes Bound by Security Agreement.

39 [a.] (a) Financing statement naming original debtor. Except as
40 otherwise provided in this section, a filed financing statement naming
41 an original debtor is effective to perfect a security interest in collateral
42 in which a new debtor has or acquires rights to the extent that the
43 financing statement would have been effective had the original debtor
44 acquired rights in the collateral.

45 [b.] (b) Financing statement becoming seriously misleading. If the

1 difference between the name of the original debtor and that of the new
2 debtor causes a filed financing statement that is effective under
3 subsection [a. of this section] (a) to be seriously misleading under
4 12A:9-506:

5 (1) the financing statement is effective to perfect a security interest
6 in collateral acquired by the new debtor before, and within four
7 months after, the new debtor becomes bound under 12A:9-203 [d.]
8 (d); and

9 (2) the financing statement is not effective to perfect a security
10 interest in collateral acquired by the new debtor more than four
11 months after the new debtor becomes bound under 12A:9-203 [d.] (d)
12 unless an initial financing statement providing the name of the new
13 debtor is filed before the expiration of that time.

14 [c.] (c) When section not applicable. This section does not apply
15 to collateral as to which a filed financing statement remains effective
16 against the new debtor under 12A:9-507 [a.] (a).
17 (cf: N.J.S.12A:9-508)

18

19 74. N.J.S.12A:9-509 is amended to read as follows:

20 12A:9-509. Persons Entitled to File a Record.

21 [a.] (a) Person entitled to file record. A person may file an initial
22 financing statement, amendment that adds collateral covered by a
23 financing statement, or amendment that adds a debtor to a financing
24 statement only if:

25 (1) the debtor authorizes the filing in an authenticated record or
26 pursuant to subsection (b) or (c); or

27 (2) the person holds an agricultural lien that has become effective
28 at the time of filing and the financing statement covers only collateral
29 in which the person holds an agricultural lien.

30 [b.] (b) Security agreement as authorization. By authenticating or
31 becoming bound as debtor by a security agreement, a debtor or new
32 debtor authorizes the filing of an initial financing statement, and an
33 amendment, covering:

34 (1) the collateral described in the security agreement; and

35 (2) property that becomes collateral under 12A:9-315 [a.] (a) (2),
36 whether or not the security agreement expressly covers proceeds.

37 [c.] (c) Acquisition of collateral as authorization. By acquiring
38 collateral in which a security interest or agricultural lien continues
39 under 12A:9-315 [a.] (a) (1), a debtor authorizes the filing of an
40 initial financing statement, and an amendment, covering the collateral
41 and property that becomes collateral under 12A:9-315 [a.] (a) (2).

42 [d.] (d) Person entitled to file certain amendments. A person may
43 file an amendment other than an amendment that adds collateral
44 covered by a financing statement or an amendment that adds a debtor
45 to a financing statement only if:

1 (1) the secured party of record authorizes the filing; or

2 (2) the amendment is a termination statement for a financing
3 statement as to which the secured party of record has failed to file or
4 send a termination statement as required by 12A:9-513 [a. or c.] (a)
5 or (c), the debtor authorizes the filing, and the termination statement
6 indicates that the debtor authorized it to be filed.

7 [e.] (e) Multiple secured parties of record. If there is more than
8 one secured party of record for a financing statement, each secured
9 party of record may authorize the filing of an amendment under
10 subsection [d. of this section] (d).

11 (cf: N.J.S.12A:9-509)

12

13 75. N.J.S.12A:9-510 is amended to read as follows:

14 12A:9-510. Effectiveness of Filed Record.

15 [a.] (a) Filed record effective if authorized. A filed record is
16 effective only to the extent that it was filed by a person [who] that
17 may file it under 12A:9-509.

18 [b.] (b) Authorization by one secured party of record. A record
19 authorized by one secured party of record does not affect the financing
20 statement with respect to another secured party of record.

21 [c.] (c) Continuation statement not timely filed. A continuation
22 statement that is not filed within the six-month period prescribed by
23 12A:9-515 [d.] (d) is ineffective.

24 (cf: N.J.S.12A:9-510)

25

26 76. N.J.S.12A:9-511 is amended to read as follows:

27 12A:9-511. Secured Party of Record.

28 [a.] (a) Secured party of record. A secured party of record with
29 respect to a financing statement is a person whose name is provided as
30 the name of the secured party or a representative of the secured party
31 in an initial financing statement that has been filed. If an initial
32 financing statement is filed under 12A:9-514 [a.] (a), the assignee
33 named in the initial financing statement is the secured party of record
34 with respect to the financing statement.

35 [b.] (b) Amendment naming secured party of record. If an
36 amendment of a financing statement which provides the name of a
37 person as a secured party or a representative of a secured party is
38 filed, the person named in the amendment is a secured party of record.
39 If an amendment is filed under 12A:9-514 [b.] (b), the assignee named
40 in the amendment is a secured party of record.

41 [c.] (c) Amendment deleting secured party of record. A person
42 remains a secured party of record until the filing of an amendment of
43 the financing statement which deletes the person.

44 (cf: N.J.S.12A:9-511)

1 77. N.J.S.12A:9-512 is amended to read as follows:

2 12A:9-512. Amendment of Financing Statement.

3 **[a.] (a)** Amendment of information in financing statement. Subject
4 to 12A:9-509, a person may add or delete collateral covered by,
5 continue or terminate the effectiveness of, or, subject to subsection **[e.**
6 **of this section] (e)**, otherwise amend the information provided in, a
7 financing statement by filing an amendment that:

8 (1) identifies, by its file number, the initial financing statement to
9 which the amendment relates; and

10 (2) if the amendment relates to an initial financing statement filed
11 in a filing office described in 12A:9-501 **[a.] (a)** (1), provides the
12 information specified in 12A:9-502 **[b.] (b)**.

13 **[b.] (b)** Period of effectiveness not affected. Except as otherwise
14 provided in 12A:9-515, the filing of an amendment does not extend the
15 period of effectiveness of the financing statement.

16 **[c.] (c)** Effectiveness of amendment adding collateral. A financing
17 statement that is amended by an amendment that adds collateral is
18 effective as to the added collateral only from the date of the filing of
19 the amendment.

20 **[d.] (d)** Effectiveness of amendment adding debtor. A financing
21 statement that is amended by an amendment that adds a debtor is
22 effective as to the added debtor only from the date of the filing of the
23 amendment.

24 **[e.] (e)** Certain amendments ineffective. An amendment is
25 ineffective to the extent it:

26 (1) purports to delete all debtors and fails to provide the name of
27 a debtor to be covered by the financing statement; or

28 (2) purports to delete all secured parties of record and fails to
29 provide the name of a new secured party of record.

30 (cf: N.J.S.12A:9-512)

31

32 78. N.J.S.12A:9-513 is amended to read as follows:

33 12A:9-513. Termination Statement.

34 **[a.] (a)** Consumer goods. A secured party shall cause the secured
35 party of record for a financing statement to file a termination statement
36 for the financing statement if the financing statement covers consumer
37 goods and:

38 (1) there is no obligation secured by the collateral covered by the
39 financing statement and no commitment to make an advance, incur an
40 obligation, or otherwise give value; or

41 (2) the debtor did not authorize the filing of the initial financing
42 statement.

43 **[b.] (b)** Time for compliance with subsection **[a.] (a)**. To comply
44 with subsection **[a. of this section] (a)**, a secured party shall cause the
45 secured party of record to file the termination statement:

1 (1) within one month after there is no obligation secured by the
2 collateral covered by the financing statement and no commitment to
3 make an advance, incur an obligation, or otherwise give value; or

4 (2) if earlier, within 20 days after the secured party receives an
5 authenticated demand from a debtor.

6 [c.] (c) Other collateral. In cases not governed by subsection [a.
7 of this section] (a), within 20 days after a secured party receives an
8 authenticated demand from a debtor, the secured party shall cause the
9 secured party of record for a financing statement to send to the debtor
10 a termination statement for the financing statement or file the
11 termination statement in the filing office if:

12 (1) except in the case of a financing statement covering accounts
13 or chattel paper that has been sold or goods that are the subject of a
14 consignment, there is no obligation secured by the collateral covered
15 by the financing statement and no commitment to make an advance,
16 incur an obligation, or otherwise give value;

17 (2) the financing statement covers accounts or chattel paper that
18 [have] has been sold but as to which the account debtor or other
19 person obligated has discharged its obligation;

20 (3) the financing statement covers goods that were the subject of
21 a consignment to the debtor but are not in the debtor's possession; or

22 (4) the debtor did not authorize the filing of the initial financing
23 statement.

24 [d.] (d) Effect of filing termination statement. Except as
25 otherwise provided in 12A:9-510, upon the filing of a termination
26 statement with the filing office, the financing statement to which the
27 termination statement relates ceases to be effective. Except as
28 otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g),
29 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a
30 termination statement relating to a financing statement that indicates
31 that the debtor is a transmitting utility also causes the effectiveness of
32 the financing statement to lapse.

33 (cf: N.J.S.12A:9-513)

34
35 79. N.J.S.12A:9-514 is amended to read as follows:

36 12A:9-514. Assignment of Powers of Secured Party of Record.

37 [a.] (a) Assignment reflected on initial financing statement.
38 Except as otherwise provided in [this chapter] subsection (c), an
39 initial financing statement may reflect an assignment of all of the
40 secured party's power to authorize an amendment to the financing
41 statement by providing the name and mailing address of the assignee
42 as the name and address of the secured party.

43 [b.] (b) Assignment of filed financing statement. Except as
44 otherwise provided in [this chapter] subsection (c), a secured party of
45 record may assign of record all or part of its power to authorize an
46 amendment to a financing statement by filing in the filing office an

1 amendment of the financing statement which:

2 (1) identifies, by its file number, the initial financing statement to
3 which it relates;

4 (2) provides the name of the assignor; and

5 (3) provides the name and mailing address of the assignee.

6 **[c.] (c)** Assignment of record of mortgage. An assignment of
7 record of a security interest in a fixture covered by a record of a
8 mortgage which is effective as a ¹**[filed]**¹ financing statement filed as
9 a fixture filing under 12A:9-502 **[c.] (c)** may be made only by an
10 assignment of record of the mortgage in the manner provided by law
11 of this State other than the Uniform Commercial Code.

12 (cf: N.J.S.12A:9-514)

13

14 80. N.J.S.12A:9-515 is amended to read as follows:

15 12A:9-515. Duration and Effectiveness of Financing Statement;
16 Effect of Lapsed Financing Statement.

17 **[a.] (a)** Five-year effectiveness. Except as otherwise provided in
18 subsections **[b., e., f. and g.] (b), (e), (f) and (g)**, a filed financing
19 statement is effective for a period of five years after the date of filing.

20 **[b.] (b)** Public-finance or manufactured-home transaction. Except
21 as otherwise provided in subsections **[e., f. and g. of this section] (e),**
22 **(f) and (g)**, an initial financing statement filed in connection with a
23 public-finance transaction or manufactured-home transaction is
24 effective for a period of 30 years after the date of filing if it indicates
25 that it is filed in connection with a public-finance transaction or
26 manufactured-home transaction.

27 **[c.]** Bondable transition property. If a filed financing statement
28 relates to a security interest in bondable transition property and the
29 financing statement so states, it is effective until a termination
30 statement is filed.

31 **d.] (c)** Lapse and continuation of financing statement. The
32 effectiveness of a filed financing statement lapses on the expiration of
33 the period of its effectiveness unless before the lapse a continuation
34 statement is filed pursuant to subsection **[e. of this section] (d)**. Upon
35 lapse, a financing statement ceases to be effective and any security
36 interest or agricultural lien that was perfected by the financing
37 statement becomes unperfected, unless the security interest is
38 perfected otherwise. If the security interest or agricultural lien
39 becomes unperfected upon lapse, it is deemed never to have been
40 perfected as against a purchaser of the collateral for value.

41 **[e.] (d)** When continuation statement may be filed. A continuation
42 statement may be filed only within six months before the expiration of
43 the five-year period specified in subsection **[a.] (a)** or the 30-year
44 period specified in subsection **[b. of this section] (b)**, whichever is
45 applicable.

1 [f.] (e) Effect of filing continuation statement. Except as
2 otherwise provided in 12A:9-510, upon timely filing of a continuation
3 statement, the effectiveness of the initial financing statement continues
4 for a period of five years commencing on the day on which the
5 financing statement would have become ineffective in the absence of
6 the filing. Upon the expiration of the five-year period, the financing
7 statement lapses in the same manner as provided in subsection [d.]
8 (c), unless, before the lapse, another continuation statement is filed
9 pursuant to subsection [e. of this section] (d). Succeeding
10 continuation statements may be filed in the same manner to continue
11 the effectiveness of the initial financing statement.

12 [g.] (f) Transmitting utility financing statement. If a debtor is a
13 transmitting utility and a filed financing statement so indicates, the
14 financing statement is effective until a termination statement is filed.

15 [h.] (g) Record of mortgage as financing statement. A record of
16 mortgage that is effective as a [filed] financing statement filed as a
17 fixture filing under 12A:9-502 [c.] (c) remains effective as a [filed]
18 financing statement filed as a fixture filing until the mortgage is
19 released or satisfied of record or its effectiveness otherwise terminates
20 as to the real property.

21 (h) Bondable transition property. If a filed financing statement
22 relates to a security interest in bondable transition property and the
23 financing statement so states, it is effective until a termination
24 statement is filed.

25 (cf: N.J.S.12A:9-515)

26

27 81. N.J.S.12A:9-516 is amended to read as follows:

28 12A:9-516. What Constitutes Filing; Effectiveness of Filing.

29 [a.] (a) What constitutes filing. Except as otherwise provided in
30 subsection [b. of this section] (b), communication of a record to a
31 filing office and tender of the filing fee or acceptance of the record by
32 the filing office constitutes filing.

33 [b.] (b) Refusal to accept record; filing does not occur. Filing
34 does not occur with respect to a record that a filing office refuses to
35 accept because:

36 (1) the record is not communicated by a method or medium of
37 communication authorized by the filing office;

38 (2) an amount equal to or greater than the applicable filing fee is
39 not tendered;

40 (3) the filing office is unable to index the record because:

41 [(a)] (A) in the case of an initial financing statement, the record
42 does not provide a name for the debtor;

43 [(b)] (B) in the case of an amendment or correction statement, the
44 record:

45 (i) does not identify the initial financing statement as required by

1 12A:9-512 or 12A:9-518, as applicable; or
2 (ii) identifies an initial financing statement whose effectiveness has
3 lapsed under 12A:9-515;

4 **[(c)] (C)** in the case of an initial financing statement that provides
5 the name of a debtor identified as an individual or an amendment that
6 provides a name of a debtor identified as an individual which was not
7 previously provided in the financing statement to which the record
8 relates, the record does not identify the debtor's last name; or

9 **[(d)] (D)** in the case of a record filed or recorded in the filing
10 office described in 12A:9-501 **(a) (1)**, the record does not provide a
11 sufficient description of the real property to which it relates;

12 (4) in the case of an initial financing statement or an amendment
13 that adds a secured party of record, the record does not provide a
14 name and mailing address for the secured party of record;

15 (5) in the case of an initial financing statement or an amendment
16 that provides a name of a debtor which was not previously provided
17 in the financing statement to which the amendment relates, the record
18 does not:

19 **[(a)] (A)** provide a mailing address for the debtor;

20 **[(b)] (B)** indicate whether the debtor is an individual or an
21 organization; or

22 **[(c)] (C)** if the financing statement indicates that the debtor is an
23 organization, provide:

24 (i) a type of organization for the debtor;

25 (ii) a jurisdiction of organization for the debtor; or

26 (iii) an organizational identification number for the debtor or
27 indicate that the debtor has none;

28 (6) in the case of an assignment reflected in an initial financing
29 statement under 12A:9-514 **[a.] (a)** or an amendment filed under
30 12A:9-514 **[b.] (b)**, the record does not provide a name and mailing
31 address for the assignee; or

32 (7) in the case of a continuation statement, the record is not filed
33 within the six-month period prescribed by 12A:9-515 **[e.] (d)**.

34 **[c.] (c)** Rules applicable to subsection **[b.] (b)**. For purposes of
35 subsection **[b. of this section] (b)**:

36 (1) a record does not provide information if the filing office is
37 unable to read or decipher the information; and

38 (2) a record that does not indicate that it is an amendment or
39 identify an initial financing statement to which it relates, as required by
40 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.

41 **[d.] (d)** Refusal to accept record; record effective as filed record.
42 A record that is communicated to the filing office with tender of the
43 filing fee, but which the filing office refuses to accept for a reason
44 other than one set forth in subsection **[b. of this section] (b)**, is
45 effective as a filed record except as against a purchaser of the

1 collateral which gives value in reasonable reliance upon the absence of
2 the record from the files.

3 (cf: N.J.S.12A:9-516)

4

5 82. N.J.S.12A:9-518 is amended to read as follows:

6 12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed
7 Record.

8 [a.] (a) Correction statement. A person may file in the filing office
9 a correction statement with respect to a record indexed there under the
10 person's name if the person believes that the record is inaccurate or
11 was wrongfully filed.

12 [b.] (b) Sufficiency of correction statement. A correction
13 statement [shall] must:

14 (1) identify the record to which it relates by the file number
15 assigned to the initial financing statement to which the record relates;

16 (2) indicate that it is a correction statement; and

17 (3) provide the basis for the person's belief that the record is
18 inaccurate and indicate the manner in which the person believes the
19 record should be amended to cure any inaccuracy or provide the basis
20 for the person's belief that the record was wrongfully filed.

21 [c.] (c) Record not affected by correction statement. The filing of
22 a correction statement does not affect the effectiveness of an initial
23 financing statement or other filed record.

24 (cf: N.J.S.12A:9-518)

25

26 83. N.J.S.12A:9-519 is amended to read as follows:

27 12A:9-519. Numbering, Maintaining, and Indexing Records;
28 Communicating Information Provided in Records.

29 [a.] (a) Filing office duties. For each record filed in a filing office,
30 the filing office shall:

31 (1) assign a unique number to the filed record;

32 (2) create a record that bears the number assigned to the filed
33 record and the date and time of filing;

34 (3) maintain the filed record for public inspection; and

35 (4) index the filed record in accordance with subsections [c., d.,
36 and e. of this section] (c), (d) and (e).

37 [b.] (b) File number. A file number assigned after January 1,
38 2002, [shall] must include a digit that:

39 (1) is mathematically derived from or related to the other digits of
40 the file number; and

41 (2) aids the filing office in determining whether a number
42 communicated as the file number includes a single-digit or
43 transpositional error.

44 [c.] (c) Indexing: general. Except as otherwise provided in
45 subsections [d. and e. of this section] (d) and (e), the filing office

1 shall:

2 (1) index an initial financing statement according to the name of
3 the debtor and index all filed records relating to the initial financing
4 statement in a manner that associates with one another an initial
5 financing statement and all filed records relating to the initial financing
6 statement; and

7 (2) index a record that provides a name of a debtor which was not
8 previously provided in the financing statement to which the record
9 relates also according to the name that was not previously provided.

10 **[d.] (d)** Indexing: real-property-related financing statement. If a
11 financing statement is filed as a fixture filing or covers as-extracted
12 collateral or timber to be cut, the filing office shall index it:

13 (1) under the names of the debtor and of each owner of record
14 shown on the financing statement as if they were the mortgagors under
15 a mortgage of the real property described; and

16 (2) to the extent that the law of this State provides for indexing of
17 records or mortgages under the name of the mortgagees, under the
18 name of the secured party as if the secured party were the mortgagee
19 thereunder, or, if the indexing is by description, as if the financing
20 statement were a record of a mortgage of the real property described.

21 **[e.] (e)** Indexing: real-property-related assignment. If a financing
22 statement is filed as a fixture filing or covers as-extracted collateral or
23 timber to be cut, the filing office shall index an assignment filed under
24 12A:9-514 **[a.] (a)** or an amendment filed under 12A:9-514 **[b.] (b)**:

25 (1) under the name of the assignor as grantor; and

26 (2) to the extent that the law of this State provides for indexing a
27 record of the assignment of a mortgage under the name of the
28 assignee, under the name of the assignee.

29 **[f.] (f)** Retrieval and association capability. The filing office shall
30 maintain a capability:

31 (1) to retrieve a record by the name of the debtor and by the file
32 number assigned to the initial financing statement to which the record
33 relates; and

34 (2) to associate and retrieve with one another an initial financing
35 statement and each filed record relating to the initial financing
36 statement.

37 **[g.] (g)** Removal of debtor's name. The filing office may not
38 remove a debtor's name from the index until one year after the
39 effectiveness of a financing statement naming the debtor lapses under
40 12A:9-515 with respect to all secured parties of record.

41 **[h.] (h)** Timeliness of filing office performance. The filing office
42 shall perform the acts required by subsections **[a.] (a)** through **[e.] (e)** of
43 this section **[e.] (e)** at the time and in the manner prescribed by
44 filing-office rule, but not later than two business days after the filing
45 office receives the record in question.

1 **[i.] (i)** Inapplicability to real property related filing office.
2 Subsections **[b. and h. of this section]** ~~(b) and (h)~~ do not apply to a
3 filing office described in 12A:9-501 **[a.] (a)** (1).
4 (cf: N.J.S.12A:9-519)

5

6 84. N.J.S.12A:9-520 is amended to read as follows:

7 12A:9-520. Acceptance and Refusal to Accept Record.

8 **[a.] (a)** Mandatory refusal to accept record. A filing office shall
9 refuse to accept a record for filing for a reason set forth in 12A:9-516
10 **[b.] (b)** and may refuse to accept a record for filing only for a reason
11 set forth in 12A:9-516 **[b.] (b)**.

12 **[b.] (b)** Communication concerning refusal. If a filing office
13 refuses to accept a record for filing, it shall communicate to the person
14 **[who]** ~~that~~ presented the record the fact of and reason for the refusal
15 and the date and time the record would have been filed had the filing
16 office accepted it. The communication **[shall]** must be made at the
17 time and in the manner prescribed by filing-office rule but, in the case
18 of a filing office described in 12A:9-501 (a) (2), in no event more than
19 two business days after the filing office receives the record.

20 **[c.] (c)** When filed financing statement effective. A filed financing
21 statement satisfying 12A:9-502 **[a. and b.] (a) and (b)** is effective,
22 even if the filing office is required to refuse to accept it for filing under
23 subsection **[a. of this section]** **(a)**. However, 12A:9-338 applies to a
24 filed financing statement providing information described in 12A:9-516
25 **[b.] (b)** (5) which is incorrect at the time the financing statement is
26 filed.

27 **[d.] (d)** Separate application to multiple debtors. If a record
28 communicated to a filing office provides information that relates to
29 more than one debtor, this part applies as to each debtor separately.
30 (cf: N.J.S.12A:9-520)

31

32 85. N.J.S.12A:9-521 is amended to read as follows:

33 12A:9-521. Uniform Form of Written Financing Statement and
34 Amendment.

35 **[a.] (a)** Initial financing statement form. A filing office that
36 accepts written records may not refuse to accept a written initial
37 financing statement in the following form and format except for a
38 reason set forth in 12A:9-516 **[b.] (b)**:



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable. 7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) if applicable. ADDITIONAL FEE: optional. All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only org name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only org name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

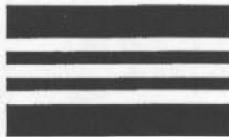
16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check *only* if applicable and check *only* one box.
 Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check *only* if applicable and check *only* one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction — effective 30 years
 Filed in connection with a Public-Finance Transaction — effective 30 years

1 **[b.]** (b) Amendment form. A filing office that accepts written
2 records may not refuse to accept a written record in the following
3 form and format except for a reason set forth in 12A:9-516 **[b.]** (b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #	1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.
--	--

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, if applicable.

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDITIONAL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE
--------------------------	--	--------------------------	----------------------------------	---------------------------------	-------------------------------

8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 (cf: N.J.S.12A:9-521)

2

3 86. N.J.S.12A:9-522 is amended to read as follows:

4 12A:9-522. Maintenance and Destruction of Records.

5 [a.] (a) Post-lapse maintenance and retrieval of information.

6 The filing office shall maintain a record of the information provided
7 in a filed financing statement for at least one year after the
8 effectiveness of the financing statement has lapsed under 12A:9-515
9 with respect to all secured parties of record. The record ¹[shall]
10 must¹ be retrievable by using the name of the debtor and [;

11 (1) if the record was filed in the filing office described in 12A:9-
12 501 a. (1),] by using the file number assigned to the initial financing
13 statement to which the record relates [and the date that record was
14 filed; or

15 (2) if the record was filed in the office described in 12A:9-501 a.
16 (2), by using the file number assigned to the initial financing
17 statement to which the record relates] .

18 [b.] (b) Destruction of written records. Except to the extent
19 that a statute governing disposition of public records provides
20 otherwise, the filing office immediately may destroy any written
21 record evidencing a financing statement. However, if the filing
22 office destroys a written record, it shall maintain another record of
23 the financing statement which complies with subsection [a. of this
24 section] (a).

25 (cf: N.J.S.12A:9-522)

26

27 87. N.J.S.12A:9-523 is amended to read as follows:

28 12A:9-523. Information from Filing Office; Sale or License of
29 Records.

30 [a.] (a) Acknowledgment of filing written record. If a person
31 [who] that files a written record requests an acknowledgment of the
32 filing, the filing office shall send to the person an image of the
33 record showing the number assigned to the record pursuant to
34 12A:9-519 [a.] (a) (1) and the date and time of the filing of the
35 record. However, if the person furnishes a copy of the record to the
36 filing office, the filing office may instead:

37 (1) note upon the copy the number assigned to the record
38 pursuant to 12A:9-519 [a.] (a) (1) and the date and time of the
39 filing of the record; and

40 (2) send the copy to the person.

41 [b.] (b) Acknowledgment of filing other record. If a person files
42 a record other than a written record, the filing office shall
43 communicate to the person an acknowledgment that provides:

44 (1) the information in the record;

1 (2) the number assigned to the record pursuant to 12A:9-519 [a.]
2 (a) (1); and

3 (3) the date and time of the filing of the record.

4 [c.] (c) Communication of requested information. The filing
5 office shall communicate or otherwise make available in a record the
6 following information to any person [who] that requests it:

7 (1) whether there is on file on a date and time specified by the
8 filing office, but not a date earlier than three business days before
9 the filing office receives the request, any financing statement that:

10 [(a)] (A) designates a particular debtor or, if the request so
11 states, designates a particular debtor at the address specified in the
12 request;

13 [(b)] (B) has not lapsed under 12A:9-515 with respect to all
14 secured parties of record; and

15 [(c)] (C) if the request so states, has lapsed under 12A:9-515
16 and a record of which is maintained by the filing office under
17 12A:9-522 [a.] (a);

18 (2) the date and time of filing of each financing statement; and

19 (3) the information provided in each financing statement.

20 [d.] (d) Medium for communicating information. In complying
21 with its duty under subsection [c. of this section] (c), the filing
22 office may communicate information in any medium. However, if
23 requested, the filing office shall communicate information by issuing
24 [its written certificate as] a record that can be admitted into
25 evidence in the courts of this State without extrinsic evidence of its
26 authenticity.

27 [e.] (e) Timeliness of filing office performance. The filing office
28 shall perform the acts required by subsections [a.] (a) through [d.
29 of this section] (d) at the time and in the manner prescribed by
30 filing-office rule, but not later than two business days after the filing
31 office receives the request.

32 [f.] (f) Public availability of records. At least weekly, the
33 Secretary of State shall offer to sell or license to the public on a
34 nonexclusive basis, in bulk, copies of all records filed in it under this
35 part, in every medium from time to time available to the filing office.
36 (cf: N.J.S.12A:9-523)

37

38 88. N.J.S.12A:9-524 is amended to read as follows:

39 12A:9-524. Delay by Filing Office.

40 Delay by the filing office beyond a time limit prescribed by this
41 part is excused if:

42 [a.] (1) the delay is caused by interruption of communication or
43 computer facilities, war, emergency conditions, failure of equipment,
44 or other circumstances beyond control of the filing office; and

45 [b.] (2) the filing office exercises reasonable diligence under the

1 circumstances.
2 (cf: N.J.S.12A:9-524)

3
4 89. N.J.S.12A:9-525 is amended to read as follows:
5 12A:9-525. Fees.

6 **[a.] (a)** Initial financing statement or other record: general rule.
7 **[The]** Except as otherwise provided in subsection (d), the fees for
8 filing and indexing records under this part are:

- 9 (1) \$25 for financing statement;
- 10 (2) \$25 for continuation statement;
- 11 (3) \$25 for amendment statement;
- 12 (4) \$25 for partial release;
- 13 (5) \$25 for assignment;
- 14 (6) \$25 termination statement; and
- 15 (7) \$1 for copy of any filed financing statement.

16 **[b.] (b)** Number of names. **[The]** Except as otherwise provided
17 in subsection (d), the number of names required to be indexed does
18 not affect the amount of the fee in subsection **[a. of this section]**
19 (a).

20 **[c.] (c)** Response to information request. The fee for
21 responding to a request for information from the filing office,
22 including for issuing a certificate of search showing whether there is
23 on file any financing statement naming a particular debtor, is \$25.

24 **[d.] (d)** Record of mortgage. This section does not require a fee
25 with respect to a record of mortgage which is effective as a
26 financing statement filed as a fixture filing or as a financing
27 statement covering as-extracted collateral or timber to be cut under
28 12A:9-502 **[c.] (c)**. However, the recording and satisfaction fees
29 that otherwise would be applicable to the record of the mortgage
30 apply.

31 (cf: N.J.S.12A:9-525)

32
33 90. N.J.S.12A:9-526 is amended to read as follows:
34 12A:9-526. Filing-Office Rules.

35 **[a.] (a)** Adoption of filing-office rules. The Division of
36 Commercial Recording or other office designated by Executive
37 Order **[may]** shall adopt and publish rules to implement this chapter.
38 The filing-office rules **[shall]** must be:

- 39 (1) consistent with this chapter; and
- 40 (2) adopted and published in accordance with the "Administrative
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

42 **[b.] (b)** Harmonization of rules. To keep the filing-office rules
43 and practices of the filing office in harmony with the rules and
44 practices of filing offices in other jurisdictions that enact
45 substantially this part, and to keep the technology used by the filing

1 office compatible with the technology used by filing offices in other
2 jurisdictions that enact substantially this part, the Division of
3 Commercial Recording, so far as is consistent with the purposes,
4 policies, and provisions of this chapter, in adopting, amending, and
5 repealing filing-office rules, shall:

6 (1) consult with filing offices in other jurisdictions that enact
7 substantially this part; and

8 (2) consult the most recent version of the Model Rules
9 promulgated by the International Association of Corporate
10 Administrators or any successor organization; and

11 (3) take into consideration the rules and practices of, and the
12 technology used by, filing offices in other jurisdictions that enact
13 substantially this part.

14 (cf: N.J.S.12A:9-526)

15

16 91. N.J.S.12A:9-601 is amended to read as follows:

17 12A:9-601. Rights After Default; Judicial Enforcement;
18 Consignor or Buyer of Accounts, Chattel Paper, Payment
19 Intangibles, or Promissory Notes.

20 [a.] (a) Rights of secured party after default. After default, a
21 secured party has the rights provided in this part and, except as
22 otherwise provided in 12A:9-602, those provided by agreement of
23 the parties. A secured party:

24 (1) may reduce a claim to judgment, foreclose, or otherwise
25 enforce the claim, security interest, or agricultural lien by any
26 available judicial procedure; and

27 (2) if the collateral is documents, may proceed either as to the
28 documents or as to the goods they cover.

29 [b.] (b) Rights and duties of secured party in possession or
30 control. A secured party in possession of collateral or control of
31 collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107
32 has the rights and duties provided in [12A:9-208] 12A:9-207.

33 [c.] (c) Rights cumulative; simultaneous exercise. The rights
34 under subsections [a. and b. of this section] (a) and (b) are
35 cumulative and may be exercised simultaneously.

36 [d.] (d) Rights of debtor and obligor. Except as otherwise
37 provided in subsection [g. of this section] (g) and 12A:9-605, after
38 default, a debtor and an obligor have the rights provided in this part
39 and by agreement of the parties.

40 [e.] (e) Lien of levy after judgment. If a secured party has
41 reduced its claim to judgment, the lien of any levy that may be made
42 upon the collateral by virtue of an execution based upon the
43 judgment relates back to the earliest of:

44 (1) the date of perfection of the security interest or agricultural
45 lien in the collateral;

46 (2) the date of filing a financing statement covering the

1 collateral; or

2 (3) any date specified in a statute under which the agricultural
3 lien was created.

4 [f.] (f) Execution sale. A sale pursuant to an execution is a
5 foreclosure of the security interest or agricultural lien by judicial
6 procedure within the meaning of this section. A secured party may
7 purchase at the sale and thereafter hold the collateral free of any
8 other requirements of this chapter.

9 [g.] (g) Consignor or buyer of certain rights to payment.
10 Except as otherwise provided in 12A:9-607 [c.] (c), this part
11 imposes no duties upon a secured party that is a consignor or is a
12 buyer of accounts, chattel paper, payment intangibles, or promissory
13 notes.

14 (cf: N.J.S.12A:9-601)

15

16 92. N.J.S.12A:9-602 is amended to read as follows:

17 12A:9-602. Waiver and Variance of Rights and Duties.

18 Except as otherwise provided in 12A:9-624, to the extent that
19 they give rights to a debtor or obligor and impose duties on a
20 secured party, the debtor or obligor may not waive or vary the rules
21 stated in the following listed sections:

22 (1) [12A:9-208b.(4)(c)] 12A:9-207 (b) (4) (C), which deals with
23 use and operation of the collateral by the secured party;

24 (2) [12A:9-211] 12A:9-210, which deals with requests for an
25 accounting and requests concerning a list of collateral and statement
26 of account;

27 (3) 12A:9-607 [c.] (c), which deals with collection and
28 enforcement of collateral;

29 (4) 12A:9-608 [a.] (a), and 12A:9-615 [c.] (c) to the extent
30 that they deal with application or payment of noncash proceeds of
31 collection, enforcement, or disposition;

32 (5) 12A:9-608 [a.] (a) and 12A:9-615 [d.] (d) to the extent that
33 they require accounting for or payment of surplus proceeds of
34 collateral;

35 (6) 12A:9-609 to the extent that it imposes upon a secured party
36 that takes possession of collateral without judicial process the duty
37 to do so without breach of the peace;

38 (7) 12A:9-610 [b.] (b), 12A:9-611, 12A:9-613 and 12A:9-614,
39 which deal with disposition of collateral;

40 (8) 12A:9-615 [f.] (f), which deals with calculation of a
41 deficiency or surplus when a disposition is made to the secured
42 party, a person related to the secured party, or a secondary obligor;

43 (9) 12A:9-616, which deals with explanation of the calculation of
44 a surplus or deficiency;

45 (10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with

1 acceptance of collateral in satisfaction of obligation;
2 (11) 12A:9-623, which deals with redemption of collateral;
3 (12) 12A:9-624, which deals with permissible waivers; and
4 (13) 12A:9-625 and 12A:9-626, which deal with the secured
5 party's liability for failure to comply with this chapter.
6 (cf: N.J.S.12A:9-602)

7

8 93. N.J.S.12A:9-603 is amended to read as follows:
9 12A:9-603. Agreement on Standards Concerning Rights and
10 Duties.

11 [a.] (a) Agreed standards. The parties may determine by
12 agreement the standards measuring the fulfillment of the rights of a
13 debtor or obligor and the duties of a secured party under a rule
14 stated in 12A:9-602 if the standards are not manifestly unreasonable.

15 [b.] (b) Agreed standards inapplicable to breach of peace.
16 Subsection [a. of this section] (a) does not apply to the duty under
17 12A:9-609 to refrain from breaching the peace.
18 (cf: N.J.S.12A:9-603)

19

20 94. N.J.S.12A:9-604 is amended to read as follows:
21 12A:9-604. Procedure If Security Agreement Covers Real
22 Property or Fixtures.

23 [a.] (a) Enforcement: personal and real property. If a security
24 agreement covers both personal and real property, a secured party
25 may proceed:

26 (1) under this part as to the personal property without
27 prejudicing any rights with respect to the real property; or

28 (2) as to both the personal property and the real property in
29 accordance with the rights with respect to the real property, in
30 which case the other provisions of this part do not apply.

31 [b.] (b) Enforcement: fixtures. Subject to subsection [c. of this
32 section] (c), if a security agreement covers goods that are or
33 become fixtures, a secured party may proceed:

34 (1) under this part; or

35 (2) in accordance with the rights with respect to real property, in
36 which case the other provisions of this part do not apply.

37 [c.] (c) Removal of fixtures. Subject to the other provisions of
38 this part, if a secured party holding a security interest in fixtures has
39 priority over all owners and encumbrancers of the real property, the
40 secured party, after default, may remove the collateral from the real
41 property.

42 [d.] (d) Injury caused by removal. A secured party that removes
43 collateral shall promptly reimburse any encumbrancer or owner of
44 the real property, other than the debtor, for the cost of repair of any
45 physical injury caused by the removal. The secured party need not
46 reimburse the encumbrancer or owner for any diminution in value of

1 the real property caused by the absence of the goods removed or by
2 any necessity of replacing them. A person entitled to reimbursement
3 may refuse permission to remove until the secured party gives
4 adequate assurance for the performance of the obligation to
5 reimburse.

6 (cf: N.J.S.12A:9-604)

7

8 95. N.J.S.12A:9-605 is amended to read as follows:

9 12A:9-605. Unknown Debtor or Secondary Obligor.

10 A secured party does not owe a duty based on its status as
11 secured party:

12 [a.] (1) to a person who is a debtor or obligor, unless the
13 secured party knows:

14 [(1)] (A) that the person is a debtor or obligor;

15 [(2)] (B) the identity of the person; and

16 [(3)] (C) how to communicate with the person; or

17 [b.] (2) to a secured party or lienholder that has filed a financing
18 statement against a person, unless the secured party knows:

19 [(1)] (A) that the person is a debtor; and

20 [(2)] (B) the identity of the person.

21 (cf: N.J.S.12A:9-605)

22

23 96. N.J.S.12A:9-607 is amended to read as follows:

24 12A:9-607. Collection and Enforcement by Secured Party.

25 [a.] (a) Collection and enforcement generally. If so agreed, and
26 in any event after default, a secured party:

27 (1) may notify an account debtor or other person obligated on
28 collateral to make payment or otherwise render performance to or
29 for the benefit of the secured party;

30 (2) may take any proceeds to which the secured party is entitled
31 under 12A:9-315;

32 (3) may enforce the obligations of an account debtor or other
33 person obligated on collateral and exercise the rights of the debtor
34 with respect to the obligation of the account debtor or other person
35 obligated on collateral to make payment or otherwise render
36 performance to the debtor, and with respect to any property that
37 secures the obligation of the account debtor or other person
38 obligated on the collateral;

39 (4) if it holds a security interest in a deposit account perfected by
40 control under 12A:9-104 [a.] (a) (1), may apply the balance of the
41 deposit account to the obligation secured by the deposit account;
42 and

43 (5) if it holds a security interest in a deposit account perfected by
44 control under 12A:9-104 [a.] (a) (2) or (3), may instruct the bank
45 to pay the balance of the deposit account to or for the benefit of the

1 secured party.

2 **[b.] (b)** Nonjudicial enforcement of mortgage. If necessary to
3 enable a secured party to exercise under subsection (a) (3) the right
4 of a debtor to enforce a mortgage nonjudicially **[under paragraph**
5 **(3) of subsection a. of this section]**, the secured party may record in
6 the office in which a record of the mortgage is recorded:

7 (1) a copy of the security agreement that creates or provides for
8 a security interest in the obligation secured by the mortgage; and

9 (2) the secured party's sworn affidavit in recordable form stating
10 that:

11 **[(a)] (A)** a default has occurred; and

12 **[(b)] (B)** the secured party is entitled to enforce the mortgage
13 nonjudicially.

14 **[c.] (c)** Commercially reasonable collection and enforcement. A
15 secured party shall proceed in a commercially reasonable manner if
16 the secured party:

17 (1) undertakes to collect from or enforce an obligation of an
18 account debtor or other person obligated on collateral; and

19 (2) is entitled to charge back uncollected collateral or otherwise
20 to full or limited recourse against the debtor or a secondary obligor.

21 **[d.] (d)** Expenses of collection and enforcement. A secured
22 party may deduct from the collections made pursuant to subsection
23 **[c. of this section] (c)**, reasonable expenses of collection and
24 enforcement, including reasonable attorney's fees and legal expenses
25 incurred by the secured party.

26 **[e.] (e)** Duties to secured party not affected. This section does
27 not determine whether an account debtor, bank, or other person
28 obligated on collateral owes a duty to a secured party.

29 (cf: N.J.S.12A:9-607)

30

31 97. N.J.S.12A:9-608 is amended to read as follows:

32 12A:9-608. Application of Proceeds of Collection or
33 Enforcement; Liability for Deficiency and Right to Surplus.

34 **[a.] (a)** Application of proceeds, surplus, and deficiency if
35 obligation secured. If a security interest or agricultural lien secures
36 payment or performance of an obligation, the following rules apply:

37 (1) A secured party shall apply or pay over for application the
38 cash proceeds of collection or enforcement under **[this section]**
39 12A:9-607 in the following order to:

40 **[(a)] (A)** the reasonable expenses of collection and enforcement
41 and, to the extent provided for by agreement and not prohibited by
42 law, reasonable attorney's fees and legal expenses incurred by the
43 secured party;

44 **[(b)] (B)** the satisfaction of obligations secured by the security
45 interest or agricultural lien under which the collection or

1 enforcement is made; and

2 ~~[(c)] (C)~~ the satisfaction of obligations secured by any
3 subordinate security interest in or other lien on the collateral subject
4 to the security interest or agricultural lien under which the collection
5 or enforcement is made if the secured party receives an
6 authenticated demand for proceeds before distribution of the
7 proceeds is completed.

8 (2) If requested by a secured party, a holder of a subordinate
9 security interest or other lien shall furnish reasonable proof of the
10 interest or lien within a reasonable time. Unless the holder complies,
11 the secured party need not comply with the holder's demand under
12 ~~[subparagraph (c) of] paragraph (1) (C) [of this subsection].~~

13 (3) A secured party need not apply or pay over for application
14 noncash proceeds of collection and enforcement under ~~[this section]~~
15 12A:9-607 unless the failure to do so would be commercially
16 unreasonable. A secured party that applies or pays over for
17 application noncash proceeds shall do so in a commercially
18 reasonable manner.

19 (4) A secured party shall account to and pay a debtor for any
20 surplus, and the obligor is liable for any deficiency.

21 ~~[b.] (b)~~ No surplus or deficiency in sales of certain rights to
22 payment. If the underlying transaction is a sale of accounts, chattel
23 paper, payment intangibles, or promissory notes, the debtor is not
24 entitled to any surplus, and the obligor is not liable for any
25 deficiency.

26 (cf: N.J.S.12A:9-608)

27

28 98. N.J.S.12A:9-609 is amended to read as follows:

29 12A:9-609. Secured Party's Right to Take Possession after
30 Default.

31 ~~[a.] (a)~~ Possession; rendering equipment unusable; disposition
32 on debtor's premises. After default, a secured party:

33 (1) may take possession of the collateral; and

34 (2) without removal, may render equipment unusable and dispose
35 of collateral on a debtor's premises under 12A:9-610.

36 ~~[b.] (b)~~ Judicial and nonjudicial process. A secured party may
37 proceed under subsection ~~[a.] (a)~~:

38 (1) pursuant to judicial process; or

39 (2) without judicial process, if it proceeds without breach of the
40 peace.

41 ~~[c.] (c)~~ Assembly of collateral. If so agreed, and in any event
42 after default, a secured party may require the debtor to assemble the
43 collateral and make it available to the secured party at a place to be
44 designated by the secured party which is reasonably convenient to
45 both parties.

46 (cf: N.J.S.12A:9-609)

1 99. N.J.S.12A:9-610 is amended to read as follows:

2 12A:9-610. Disposition of Collateral after Default.

3 [a.] (a) Disposition after default. After default, a secured party
4 may sell, lease, license, or otherwise dispose of any or all of the
5 collateral in its present condition or following any commercially
6 reasonable preparation or processing.

7 [b.] (b) Commercially reasonable disposition. Every aspect of a
8 disposition of collateral, including the method, manner, time, place,
9 and other terms, [shall] must be commercially reasonable. If
10 commercially reasonable, a secured party may dispose of collateral
11 by public or private proceedings, by one or more contracts, as a unit
12 or in parcels, and at any time and place and on any terms.

13 [c.] (c) Purchase by secured party. A secured party may
14 purchase collateral:

15 (1) at a public disposition; or

16 (2) at a private disposition only if the collateral is of a kind that
17 is customarily sold on a recognized market or the subject of widely
18 distributed standard price quotations.

19 [d.] (d) Warranties on disposition. A contract for sale, lease,
20 license, or other disposition includes the warranties relating to title,
21 possession, quiet enjoyment, and the like which by operation of law
22 accompany a voluntary disposition of property of the kind subject to
23 the contract.

24 [e.] (e) Disclaimer of warranties. A secured party may disclaim
25 or modify warranties under subsection [d. of this section] (d):

26 (1) in a manner that would be effective to disclaim or modify the
27 warranties in a voluntary disposition of property of the kind subject
28 to the contract of disposition; or

29 (2) by communicating to the purchaser a record evidencing the
30 contract for disposition and including an express disclaimer or
31 modification of the warranties.

32 [f.] (f) Record sufficient to disclaim warranties. A record is
33 sufficient to disclaim warranties under subsection [e. of this section]
34 (e) if it indicates "There is no warranty relating to title, possession,
35 quiet enjoyment, or the like in this disposition" or uses words of
36 similar import.

37 (cf: N.J.S.12A:9-610)

38

39 100. N.J.S.12A:9-611 is amended to read as follows:

40 12A:9-611. Notification Before Disposition of Collateral.

41 [a.] (a) "Notification date." In this section, "notification date"
42 means the earlier of the date on which:

43 (1) a secured party sends to the debtor and any secondary
44 obligor an authenticated notification of disposition; or

45 (2) the debtor and any secondary obligor waive the right to

1 notification.

2 **[b.] (b)** Notification of disposition required. Except as
3 otherwise provided in subsection **[d. of this section] (d)**, a secured
4 party that disposes of collateral under 12A:9-610 shall send to the
5 persons specified in subsection **[c. of this section] (c)** a reasonable
6 authenticated notification of disposition.

7 **[c.] (c)** Persons to be notified. To comply with subsection **[b.**
8 **of this section] (b)**, the secured party shall send an authenticated
9 notification of disposition to:

10 (1) the debtor;

11 (2) any secondary obligor; and

12 (3) if the collateral is other than consumer goods:

13 **[(a)] (A)** any other person from which the secured party has
14 received, before the notification date, an authenticated notification
15 of a claim of an interest in the collateral;

16 **[(b)] (B)** any other secured party or lienholder that, 10 days
17 before the notification date, held a security interest in or other lien
18 on the collateral perfected by the filing of a financing statement that:

19 (i) identified the collateral;

20 (ii) was indexed under the debtor's name as of that date; and

21 (iii) was filed in the office in which to file a financing statement
22 against the debtor covering the collateral as of that date; and

23 **[(c)] (C)** any other secured party that, 10 days before the
24 notification date, held a security interest in the collateral perfected
25 by compliance with a statute, regulation, or treaty described in
26 12A:9-311 **[a.] (a)**.

27 **[d.] (d)** Subsection **[b.] (b)** inapplicable: perishable collateral;
28 recognized market. Subsection **[b. of this section] (b)** does not
29 apply if the collateral is perishable or threatens to decline speedily in
30 value or is of a type customarily sold on a recognized market.

31 **[e.] (e)** Compliance with subsection **[c. paragraph (3)**
32 **subparagraph (b)] (c) (3) (B)**. A secured party complies with the
33 requirement for notification prescribed by subsection **[c. paragraph**
34 **(3) subparagraph (b) of this section] (c) (3) (B)** if:

35 (1) not later than 20 days or earlier than 30 days before the
36 notification date, the secured party requests, in a commercially
37 reasonable manner, information concerning financing statements
38 indexed under the debtor's name in the office indicated in **[that]**
39 subsection **[c. paragraph (3) subparagraph (b)] (c) (3) (B)**; and

40 (2) before the notification date, the secured party:

41 **[(a)] (A)** did not receive a response to the request for
42 information; or

43 **[(b)] (B)** received a response to the request for information and
44 sent an authenticated notification of disposition to each secured
45 party or other lienholder named in that response whose financing

1 statement covered the collateral.

2 (cf: N.J.S.12A:9-611)

3

4 101. N.J.S.12A:9-612 is amended to read as follows:

5 12A:9-612. Timeliness of Notification Before Disposition of
6 Collateral.

7 **[a.] (a)** Reasonable time is question of fact. Except as otherwise
8 provided in subsection **[b. of this section]** **(b)**, whether a
9 notification is sent within a reasonable time is a question of fact.

10 **[b.] (b)** 10-day period sufficient in non-consumer transaction.
11 In a transaction other than a consumer transaction, a notification of
12 disposition sent after default and 10 days or more before the earliest
13 time of disposition set forth in the notification is sent within a
14 reasonable time before the disposition.

15 (cf: N.J.S.12A:9-612)

16

17 102. N.J.S.12A:9-613 is amended to read as follows:

18 12A:9-613. Contents and Form of Notification Before
19 Disposition of Collateral: General.

20 Except in a consumer-goods transaction, the following rules
21 apply:

22 **[a.] (1)** The contents of a notification of disposition are
23 sufficient if the notification:

24 **[(1)] (A)** describes the debtor and the secured party;

25 **[(2)] (B)** describes the collateral that is the subject of the
26 intended disposition;

27 **[(3)] (C)** states the method of intended disposition;

28 **[(4)] (D)** states that the debtor is entitled to an accounting of
29 the unpaid indebtedness and states the charge, if any, for an
30 accounting; and

31 **[(5)] (E)** states the time and place of a public **[sale] disposition**
32 or the time after which any other disposition is to be made.

33 **[b.] (2)** Whether the contents of a notification that lacks any of
34 the information specified in **[subsection a. of this section] paragraph**
35 **(1)** are nevertheless sufficient is a question of fact.

36 **[c.] (3)** The contents of a notification providing substantially the
37 information specified in **[subsection a.] paragraph (1)** are sufficient,
38 even if the notification includes:

39 **[(1)] (A)** information not specified by that paragraph; or

40 **[(2)] (B)** minor errors that are not seriously misleading.

41 **[d.] (4)** A particular phrasing of the notification is not required.

42 **[e.] (5)** The following form of notification and the form
43 appearing in 12A:9-614 **[c.] (3)**, when completed, each provides
44 sufficient information:NOTIFICATION OF DISPOSITION OF
45 COLLATERAL

1 To: (Name of debtor, obligor, or other person to which the
 2 notification is sent)
 3 From: (Name, address, and telephone number of secured party)
 4 Name of Debtor(s): (Include only if debtor(s) are not an addressee)
 5 (For a public disposition:)
 6 We will sell or lease or license, as applicable the (describe collateral)
 7 to the highest qualified bidder in public as follows:
 8 Day and Date:
 9 Time:
 10 Place:
 11 (For a private disposition:)
 12 We will sell or lease or license, as applicable the (describe collateral)
 13 privately sometime after (day and date).
 14 You are entitled to an accounting of the unpaid indebtedness
 15 secured by the property that we intend to sell (or lease or license, as
 16 applicable) (for a charge of \$ _____). You may request
 17 an accounting by calling us at (telephone number)
 18 (End of Form)
 19 (cf: N.J.S.12A:9-613)

20

21 103. N.J.S.12A:9-614 is amended to read as follows:
 22 12A:9-614. Contents and Form of Notification Before
 23 Disposition of Collateral: Consumer-goods Transaction.

24 In a consumer-goods transaction, the following rules apply:

25 [a.] (1) A notification of disposition [shall] must provide the
 26 following information:

27 [(1)] (A) the information specified in 12A:9-613 [a.] (1);

28 [(2)] (B) a description of any liability for a deficiency of the
 29 person to which the notification is sent;

30 [(3)] (C) a telephone number from which the amount that
 31 [shall] must be paid to the secured party to redeem the collateral
 32 under 12A:9-623 is available; and

33 [(4)] (D) a telephone number or mailing address from which
 34 additional information concerning the disposition and the obligation
 35 secured is available.

36 [b.] (2) A particular phrasing of the notification is not required.

37 [c.] (3) The following form of notification, when completed,
 38 provides sufficient information:

39 (Name and address of secured party)

40 (Date)

41

42 NOTICE OF OUR PLAN TO SELL PROPERTY

43 (Name and address of any obligor who is also a debtor)

44 Subject: (Identification of Transaction)

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

1 (For a public disposition:)

2 We will sell (describe collateral) at public sale. A sale could include
3 a lease or license. The sale will be held as follows:

4 Date:

5 Time:

6 Place:

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

8 (For a private disposition:)

9 We will sell (describe collateral) at private sale sometime after
10 (date). A sale could include a lease or license.

11 The money that we get from the sale (after paying our costs) will
12 reduce the amount you owe. If we get less money than you owe,
13 you (will or will not, as applicable) still owe us the difference. If we
14 get more money than you owe, you will get the extra money, unless
15 we must pay it to someone else.

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

20 If you want us to explain to you in writing how we have figured the
21 amount that you owe us, you may call us at (telephone number) or
22 write us at (secured party's address) and request a written
23 explanation. We will charge you \$ for the explanation if
24 we sent you another written explanation of the amount you owe us
25 within the last six months.

26 If you need more information about the sale call us at (telephone
27 number) or write us at (secured party's address).

28 We are sending this notice to the following other people who have
29 an interest in (describe collateral) or who owe money under your
30 agreement:

31 (Names of all other debtors and obligors, if any.)

32 (End of Form)

33 [d.] (4) A notification in the form of [subsection c. of this
34 section] paragraph (3) is sufficient, even if additional information
35 appears at the end of the form.

36 [e.] (5) A notification in the form of [subsection c.] paragraph
37 (3) is sufficient, even if it includes errors in information not required
38 by [subsection a. of this section] paragraph (1), unless the error is
39 misleading with respect to rights arising under this chapter.

40 [f.] (6) If a notification under this section is not in the form of
41 [subsection c.] paragraph (3), law other than this chapter
42 determines the effect of including information not required by
43 [subsection a. of this section] paragraph (1).

44 (cf: N.J.S.12A:9-614)

45

46 104. N.J.S.12A:9-615 is amended to read as follows:

1 12A:9-615. Application of Proceeds of Disposition; Liability for
2 Deficiency and Right to Surplus.

3 [a.] (a) Application of proceeds. A secured party shall apply or
4 pay over for application the cash proceeds of disposition under
5 12A:9-610 in the following order:

6 (1) the reasonable expenses of retaking, holding, preparing for
7 disposition, processing, and disposing, and, to the extent provided
8 for by agreement and not prohibited by law, reasonable attorney's
9 fees and legal expenses incurred by the secured party;

10 (2) the satisfaction of obligations secured by the security interest
11 or agricultural lien under which the disposition is made;

12 (3) the satisfaction of obligations secured by any subordinate
13 security interest in or other subordinate lien on the collateral if:

14 [(a)] (A) the secured party receives from the holder of the
15 subordinate security interest or other lien an authenticated demand
16 for proceeds before distribution of the proceeds is completed; and

17 [(b)] (B) in a case in which a consignor has an interest in the
18 collateral, the subordinate security interest or other lien is senior to
19 the interest of the consignor; and

20 (4) a secured party that is a consignor of the collateral if the
21 secured party receives from the consignor an authenticated demand
22 for proceeds before distribution of the proceeds is completed.

23 [b.] (b) Proof of subordinate interest. If requested by a secured
24 party, a holder of a subordinate security interest or other lien shall
25 furnish reasonable proof of the interest or lien within a reasonable
26 time. Unless the holder does so, the secured party need not comply
27 with the holder's demand under [paragraph (3) of] subsection [a. of
28 this section] (a)(3).

29 [c.] (c) Application of noncash proceeds. A secured party need
30 not apply or pay over for application noncash proceeds of
31 disposition under [this section] 12A:9-610 unless the failure to do
32 so would be commercially unreasonable. A secured party that
33 applies or pays over for application noncash proceeds shall do so in
34 a commercially reasonable manner.

35 [d.] (d) Surplus or deficiency if obligation secured. If the
36 security interest under which a disposition is made secures payment
37 or performance of an obligation, after making the payments and
38 applications required by subsection [a.] (a) and permitted by
39 subsection [c. of this section] (c):

40 (1) unless [paragraph (4) of] subsection [a.] (a)(4) requires the
41 secured party to apply or pay over cash proceeds to a consignor, the
42 secured party shall account to and pay a debtor for any surplus; and

43 (2) the obligor is liable for any deficiency.

44 [e.] (e) No surplus or deficiency in sales of certain rights to
45 payment. If the underlying transaction is a sale of accounts, chattel

1 paper, payment intangibles, or promissory notes:

2 (1) the debtor is not entitled to any surplus; and

3 (2) the obligor is not liable for any deficiency.

4 **[f.] (f)** Calculation of surplus or deficiency in disposition to
5 person related to secured party. The surplus or deficiency following
6 a disposition is calculated based on the amount of proceeds that
7 would have been realized in a disposition complying with this part to
8 a transferee other than the secured party, a person related to the
9 secured party, or a secondary obligor if:

10 (1) the transferee in the disposition is the secured party, a person
11 related to the secured party, or a secondary obligor; and

12 (2) the amount of proceeds of the disposition is significantly
13 below the range of proceeds that a complying disposition to a person
14 other than the secured party, a person related to the secured party,
15 or a secondary obligor would have brought.

16 **[g.] (g)** Cash proceeds received by junior secured party. A
17 secured party that receives cash proceeds of a disposition in good
18 faith and without knowledge that the receipt violates the rights of
19 the holder of a security interest or other lien that is not subordinate
20 to the security interest or agricultural lien under which the
21 disposition is made:

22 (1) takes the cash proceeds free of the security interest or other
23 lien;

24 (2) is not obligated to apply the proceeds of the disposition to
25 the satisfaction of obligations secured by the security interest or
26 other lien; and

27 (3) is not obligated to account to or pay the holder of the
28 security interest or other lien for any surplus.

29 (cf: N.J.S.12A:9-615)

30

31 105. N.J.S.12A:9-616 is amended to read as follows:

32 12A:9-616. Explanation of Calculation of Surplus or Deficiency.

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

34 (1) "Explanation" means a writing that:

35 **[(a)] (A)** states the amount of the surplus or deficiency;

36 **[(b)] (B)** provides an explanation, in accordance with subsection
37 **[c. of this section] (c)** of how the secured party calculated the
38 surplus or deficiency;

39 **[(c)] (C)** states, if applicable, that future debits, credits, charges,
40 including additional credit service charges or interest, rebates, and
41 expenses may affect the amount of the surplus or deficiency; and

42 **[(d)] (D)** provides a telephone number or mailing address from
43 which additional information concerning the transaction is available.

44 (2) "Request" means a record:

45 **[(a)] (A)** authenticated by a debtor or consumer obligor;

1 ~~[(b)] (B)~~ requesting that the recipient provide an explanation;
2 and

3 ~~[(c)] (C)~~ sent after disposition of the collateral under
4 12A:9-610.

5 ~~[b.] (b)~~ Explanation of calculation. In a consumer-goods
6 transaction in which the debtor is entitled to a surplus or a consumer
7 obligor is liable for a deficiency under 12A:9-615, the secured party
8 shall:

9 (1) send an explanation to the debtor or consumer obligor, as
10 applicable, after the disposition and:

11 ~~[(a)] (A)~~ before or when the secured party accounts to the
12 debtor and pays any surplus or first makes written demand on the
13 consumer obligor after the disposition for payment of the deficiency;
14 and

15 ~~[(b)] (B)~~ within 14 days after receipt of a request; or

16 (2) in the case of a consumer obligor who is liable for a
17 deficiency, within 14 days after receipt of a request, send to the
18 consumer obligor a record waiving the secured party's right to a
19 deficiency.

20 ~~[c.] (c)~~ Required information. To comply with subsection [a.
21 paragraph (1) subparagraph (b)] ~~(a) (1) (B)~~, a writing ~~[shall] must~~
22 provide the following information in the following order:

23 (1) the aggregate amount of obligations secured by the security
24 interest under which the disposition was made, and, if the amount
25 reflects a rebate of unearned interest or credit service charge, an
26 indication of that fact, calculated as of a specified date:

27 ~~[(a)] (A)~~ if the secured party takes or receives possession of the
28 collateral after default, not more than 35 days before the secured
29 party takes or receives possession; or

30 ~~[(b)] (B)~~ if the secured party takes or receives possession of the
31 collateral before default or does not take possession of the
32 collateral, not more than 35 days before the disposition;

33 (2) the amount of proceeds of the disposition;

34 (3) the aggregate amount of the obligations after deducting the
35 amount of proceeds;

36 (4) the amount, in the aggregate or by type, and types of
37 expenses, including expenses of retaking, holding, preparing for
38 disposition, processing, and disposing of the collateral, and
39 attorney's fees secured by the collateral which are known to the
40 secured party and relate to the current disposition;

41 (5) the amount, in the aggregate or by type, and types of credits,
42 including rebates of interest or credit service charges, to which the
43 obligor is known to be entitled and which are not reflected in the
44 amount in paragraph (1); and

45 (6) the amount of the surplus or deficiency.

1 **[d.] (d)** Substantial compliance. A particular phrasing of the
2 explanation is not required. An explanation complying substantially
3 with the requirements of subsection **[a. of this section] (a)** is
4 sufficient, even if it includes minor errors that are not seriously
5 misleading.

6 **[e.] (e)** Charges for responses. A debtor or consumer obligor is
7 entitled without charge to one response to a request under this
8 section during any six-month period in which the secured party did
9 not send to the debtor or consumer obligor an explanation pursuant
10 to **[paragraph (1) of] subsection [b.] (b) (1)**. The secured party
11 may require payment of a charge not exceeding \$25 for each
12 additional response.

13 (cf: N.J.S.12A:9-616)

14

15 106. N.J.S.12A:9-617 is amended to read as follows:

16 12A:9-617. Rights of Transferee of Collateral.

17 **[a.] (a)** Effects of disposition. A secured party's disposition of
18 collateral after default:

19 (1) transfers to a transferee for value all of the debtor's rights in
20 the collateral;

21 (2) discharges the security interest under which the disposition is
22 made; and

23 (3) discharges any subordinate security interest or other
24 subordinate lien.

25 **[b.] (b)** Rights of good-faith transferee. A transferee that acts in
26 good faith takes free of the rights and interests described in
27 subsection **[a. of this section] (a)**, even if the secured party fails to
28 comply with this chapter or the requirements of any judicial
29 proceeding.

30 **[c.] (c)** Rights of other transferee. If a transferee does not take
31 free of the rights and interests described in subsection **[a. of this
32 section] (a)**, the transferee takes the collateral subject to:

33 (1) the debtor's rights in the collateral;

34 (2) the security interest or agricultural lien under which the
35 disposition is made; and

36 (3) any other security interest or other lien.

37 (cf: N.J.S.12A:9-617)

38

39 107. N.J.S.12A:9-618 is amended to read as follows:

40 12A:9-618. Rights and Duties of Certain Secondary Obligors.

41 **[a.] (a)** Rights and duties of secondary obligor. A secondary
42 obligor acquires the rights and becomes obligated to perform the
43 duties of the secured party after the secondary obligor:

44 (1) receives an assignment of a secured obligation from the
45 secured party;

1 (2) receives a transfer of collateral from the secured party and
2 agrees to accept the rights and assume the duties of the secured
3 party; or

4 (3) is subrogated to the rights of a secured party with respect to
5 collateral.

6 **[b.] (b)** Effect of assignment, transfer, or subrogation. An
7 assignment, transfer, or subrogation described in subsection **[a. of**
8 **this section] (a)**:

9 (1) is not a disposition of collateral under 12A:9-610; and

10 (2) relieves the secured party of further duties under this chapter.
11 (cf: N.J.S.12A:9-618)

12

13 108. N.J.S.12A:9-619 is amended to read as follows:

14 12A:9-619. Transfer of Record or Legal Title.

15 **[a.] (a)** "Transfer statement." In this section, "transfer
16 statement" means a record authenticated by a secured party stating:

17 (1) that the debtor has defaulted in connection with an obligation
18 secured by specified collateral;

19 (2) that the secured party has exercised its post-default remedies
20 with respect to the collateral;

21 (3) that, by reason of the exercise, a transferee has acquired the
22 rights of the debtor in the collateral; and

23 (4) the name and mailing address of the secured party, debtor,
24 and transferee.

25 **[b.] (b)** Effect of transfer statement. A transfer statement
26 entitles the transferee to the transfer of record of all rights of the
27 debtor in the collateral specified in the statement in any official
28 filing, recording, registration, or certificate-of-title system covering
29 the collateral. If a transfer statement is presented with the applicable
30 fee and request form to the official or office responsible for
31 maintaining the system, the official or office shall:

32 (1) accept the transfer statement;

33 (2) promptly amend its records to reflect the transfer; and

34 (3) if applicable, issue a new appropriate certificate of title in the
35 name of the transferee.

36 **[c.] (c)** Transfer not a disposition; no relief of secured party's
37 duties. A transfer of the record or legal title to collateral to a
38 secured party under subsection **[b. of this section] (b)** or otherwise
39 is not of itself a disposition of collateral under this chapter and does
40 not of itself relieve the secured party of its duties under this chapter.
41 (cf: N.J.S.12A:9-619)

42

43 109. N.J.S.12A:9-620 is amended to read as follows:

44 12A:9-620. Acceptance of Collateral in Full or Partial
45 Satisfaction of Obligation; Compulsory Disposition of Collateral.

46 **[a.] (a)** Conditions to acceptance in satisfaction. Except as

1 otherwise provided in subsection [g. of this section] (g), a secured
2 party may accept collateral in full or partial satisfaction of the
3 obligation it secures only if:

4 (1) the debtor consents to the acceptance under subsection [c. of
5 this section] (c);

6 (2) the secured party does not receive, within the time set forth
7 in subsection [d. of this section] (d), a notification of objection to
8 the proposal authenticated by:

9 [(a)] (A) a person to which the secured party was required to
10 send a proposal under 12A:9-621; or

11 [(b)] (B) any other person, other than the debtor, holding an
12 interest in the collateral subordinate to the security interest that is
13 the subject of the proposal;

14 (3) if the collateral is consumer goods, the collateral is not in the
15 possession of the debtor when the debtor consents to the
16 acceptance; and

17 (4) subsection [e. of this section] (e) does not require the
18 secured party to dispose of the collateral or the debtor waives the
19 requirement pursuant to 12A:9-624.

20 [(b.)] (b) Purported acceptance ineffective. A purported or
21 apparent acceptance of collateral under this section is ineffective
22 unless:

23 (1) the secured party consents to the acceptance in an
24 authenticated record or sends a proposal to the debtor; and

25 (2) the conditions of subsection ¹[a.] (a)¹ are met.

26 [(c.)] (c) Debtor's consent. For purposes of this section:

27 (1) a debtor consents to an acceptance of collateral in partial
28 satisfaction of the obligation it secures only if the debtor agrees to
29 the terms of the acceptance in a record authenticated after default;
30 and

31 (2) a debtor consents to an acceptance of collateral in full
32 satisfaction of the obligation it secures only if the debtor agrees to
33 the terms of the acceptance in a record authenticated after default or
34 the secured party:

35 [(a)] (A) sends to the debtor after default a proposal that is
36 unconditional or subject only to a condition that collateral not in the
37 possession of the secured party be preserved or maintained;

38 [(b)] (B) in the proposal, proposes to accept collateral in full
39 satisfaction of the obligation it secures; and

40 [(c)] (C) does not receive a notification of objection
41 authenticated by the debtor within 20 days after the proposal is sent.

42 [(d.)] (d) Effectiveness of notification. To be effective under
43 [paragraph (2) of] subsection [a. of this section] (a) (2), a
44 notification of objection [shall] must be received by the secured
45 party:

1 (1) in the case of a person to which the proposal was sent
2 pursuant to 12A:9-621, within 20 days after notification was sent to
3 that person; and

4 (2) in other cases:

5 [(a)] (A) within 20 days after the last notification was sent
6 pursuant to 12A:9-621; or

7 [(b)] (B) if a notification was not sent, before the debtor
8 consents to the acceptance under subsection [c. of this section] (c).

9 [(e.)] (e) Mandatory disposition of consumer goods. A secured
10 party that has taken possession of collateral shall dispose of the
11 collateral pursuant to 12A:9-610 within the time specified in
12 subsection [f. of this section] (f) if:

13 (1) 60 percent of the cash price has been paid in the case of a
14 purchase-money security interest in consumer goods; or

15 (2) 60 percent of the principal amount of the obligation secured
16 has been paid in the case of a non-purchase-money security interest
17 in consumer goods.

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

21 (1) within 90 days after taking possession; or

22 (2) within any longer period to which the debtor and all
23 secondary obligors have agreed in an agreement to that effect
24 entered into and authenticated after default.

25 [(g.)] (g) No partial satisfaction in consumer transaction. In a
26 consumer transaction, a secured party may not accept collateral in
27 partial satisfaction of the obligation it secures.

28 (cf: N.J.S.12A:9-620)

29

30 110. N.J.S.12A:9-621 is amended to read as follows:

31 12A:9-621. Notification of Proposal to Accept Collateral.

32 [(a.)] (a) Persons to which proposal to be sent. A secured party
33 that desires to accept collateral in full or partial satisfaction of the
34 obligation it secures shall send its proposal to:

35 (1) any person from which the secured party has received, before
36 the debtor consented to the acceptance, an authenticated notification
37 of a claim of an interest in the collateral;

38 (2) any other secured party or lienholder that, 10 days before the
39 debtor consented to the acceptance, held a security interest in or
40 other lien on the collateral perfected by the filing of a financing
41 statement that:

42 [(a)] (A) identified the collateral;

43 [(b)] (B) was indexed under the debtor's name as of that date;
44 and

45 [(c)] (C) was filed in the office or offices in which to file a

1 financing statement against the debtor covering the collateral as of
2 that date; and

3 (3) any other secured party that, 10 days before the debtor
4 consented to the acceptance, held a security interest in the collateral
5 perfected by compliance with a statute, regulation, or treaty
6 described in 12A:9-311 [a.] (a).

7 [b.] (b) Proposal to be sent to secondary obligor in partial
8 satisfaction. A secured party that desires to accept collateral in
9 partial satisfaction of the obligation it secures shall send its proposal
10 to any secondary obligor in addition to the persons described in
11 subsection [a. of this section] (a).

12 (cf: N.J.S.12A:9-621)

13

14 111. N.J.S.12A:9-622 is amended to read as follows:

15 12A:9-622. Effect of Acceptance of Collateral.

16 [a.] (a) Effect of acceptance. A secured party's acceptance of
17 collateral in full or partial satisfaction of the obligation it secures:

18 (1) discharges the obligation to the extent consented to by the
19 debtor;

20 (2) transfers to the secured party all of a debtor's rights in the
21 collateral;

22 (3) discharges the security interest or agricultural lien that is the
23 subject of the debtor's consent and any subordinate security interest
24 or other subordinate lien; and

25 (4) terminates any other subordinate interest.

26 [b.] (b) Discharge of subordinate interest notwithstanding
27 noncompliance. A subordinate interest is discharged or terminated
28 under subsection [a. of this section] (a), even if the secured party
29 fails to comply with this chapter.

30 (cf: N.J.S.12A:9-622)

31

32 112. N.J.S.12A:9-623 is amended to read as follows:

33 12A:9-623. Right to Redeem Collateral.

34 [a.] (a) Persons that may redeem. A debtor, any secondary
35 obligor, or any other secured party or lienholder may redeem
36 collateral.

37 [b.] (b) Requirements for redemption. To redeem collateral, a
38 person shall tender:

39 (1) fulfillment of all obligations secured by the collateral; and

40 (2) the reasonable expenses and attorney's fees described in
41 12A:9-615 [a.] (a) (1).

42 [c.] (c) When redemption may occur. A redemption may occur
43 at any time before a secured party:

44 (1) has collected collateral under 12A:9-607;

45 (2) has disposed of collateral or entered into a contract for its

1 disposition under 12A:9-610; or

2 (3) has accepted collateral in full or partial satisfaction of the
3 obligation it secures under 12A:9-622.

4 (cf: N.J.S.12A:9-623)

5

6 113. N.J.S.12A:9-624 is amended to read as follows:

7 12A:9-624. Waiver.

8 **[a.] (a)** Waiver of disposition notification. A debtor or
9 secondary obligor may waive the right to notification of disposition
10 of collateral under 12A:9-611 only by an agreement to that effect
11 entered into and authenticated after default.

12 **[b.] (b)** Waiver of mandatory disposition. A debtor may waive
13 the right to require disposition of collateral under 12A:9-620 **[e.]**
14 **(e)** only by an agreement to that effect entered into and
15 authenticated after default.

16 **[c.] (c)** Waiver of redemption right. Except in a
17 consumer-goods transaction, a debtor or secondary obligor may
18 waive the right to redeem collateral under 12A:9-623 only by an
19 agreement to that effect entered into and authenticated after default.
20 (cf: N.J.S.12A:9-624)

21

22 114. N.J.S.12A:9-625 is amended to read as follows:

23 12A:9-625. Remedies for Secured Party's Failure to Comply with
24 Chapter.

25 **[a.] (a)** Judicial orders concerning noncompliance. If it is
26 established that a secured party is not proceeding in accordance with
27 this chapter, a court may order or restrain collection, enforcement,
28 or disposition of collateral on appropriate terms and conditions.

29 **[b.] (b)** Damages for noncompliance. Subject to subsections
30 **[c., d. and f. of this section] (c), (d) and (f)**, a person is liable for
31 damages in the amount of any loss caused by a failure to comply
32 with this chapter. Loss caused by a failure to comply **[with a request**
33 **under 12A:9-211]** may include loss resulting from the debtor's
34 inability to obtain, or increased costs of, alternative financing.

35 **[c.] (c)** Persons entitled to recover damages; statutory damages
36 in consumer-goods transaction. Except as otherwise provided in
37 12A:9-628:

38 (1) a person **[who] that**, at the time of the failure, was a debtor,
39 was an obligor, or held a security interest in or other lien on the
40 collateral may recover damages under subsection **[b. of this section]**
41 **(b)** for its loss; and

42 (2) if the collateral is consumer goods, a person **[who] that** was
43 a debtor or a secondary obligor at the time a secured party failed to
44 comply with this part may recover for that failure in any event an
45 amount not less than the credit service charge plus 10 percent of the

1 principal amount of the obligation or the time-price differential plus
2 10 percent of the cash price.

3 ~~[d.] (d)~~ Recovery when deficiency eliminated or reduced. A
4 debtor whose deficiency is eliminated under 12A:9-626 may recover
5 damages for the loss of any surplus. However, a debtor or
6 secondary obligor whose deficiency is eliminated or reduced under
7 12A:9-626 may not otherwise recover under subsection ~~[b. of this~~
8 ~~section] (b)~~ for noncompliance with the provisions of this part
9 relating to collection, enforcement, disposition, or acceptance.

10 ~~[e.] (e)~~ Statutory damages: noncompliance with specified
11 provisions. In addition to any damages recoverable under
12 subsection ~~[b. of this section] (b)~~, the debtor, consumer obligor, or
13 person named as a debtor in a filed record, as applicable, may
14 recover \$500 in each case from a person ~~[who] that~~:

15 (1) fails to comply with ~~[12A:9-208] 12A:9-207~~;

16 (2) fails to comply with ~~[12A:9-209] 12A:9-208~~;

17 (3) ~~[fails to comply with 12A:9-210~~;

18 (4) ~~] files a record that the person is not entitled to file under~~
19 12A:9-509 ~~[a.] (a)~~;

20 ~~[(5)] (4)~~ fails to cause the secured party of record to file or send
21 a termination statement as required by 12A:9-513 ~~[a. or c.] (a) or~~
22 ~~(c)~~;

23 ~~[(6)] (5)~~ fails to comply with 12A:9-616 ~~[b.] (b)~~ (1) and whose
24 failure is part of a pattern, or consistent with a practice, of
25 noncompliance; or

26 ~~[(7)] (6)~~ fails to comply with 12A:9-616 ~~[b.] (b)~~ (2).

27 ~~[f.] (f)~~ Statutory damages: noncompliance with ~~[12A:9-211]~~
28 ~~12A:9-210~~. A debtor or consumer obligor may recover damages
29 under subsection ~~[b. of this section] (b)~~ and, in addition, \$500 in
30 each case from a person ~~[who] that~~, without reasonable cause, fails
31 to comply with a request under ~~[12A:9-211] 12A:9-210~~. A
32 recipient of a request under ~~[12A:9-211] 12A:9-210~~ which never
33 claimed an interest in the collateral or obligations that are the subject
34 of a request under that section has a reasonable excuse for failure to
35 comply with the request within the meaning of this subsection.

36 ~~[g.] (g)~~ Limitation of security interest: noncompliance with
37 ~~[12A:9-211] 12A:9-210~~. If a secured party fails to comply with a
38 request regarding a list of collateral or a statement of account under
39 ~~[12A:9-211] 12A:9-210~~, the secured party may claim a security
40 interest only as shown in the list or statement included in the request
41 as against a person ~~[who] that~~ is reasonably misled by the failure.
42 (cf: N.J.S.12A:9-625)

43

44 115. N.J.S.12A:9-626 is amended to read as follows:

1 12A:9-626. Action in Which Deficiency or Surplus Is in Issue.

2 **[a.] (a)** Applicable rules if amount of deficiency or surplus in
3 issue. In an action arising from a transaction in which the amount of
4 a deficiency or surplus is in issue, the following rules apply:

5 (1) A secured party need not prove compliance with the
6 provisions of this part relating to collection, enforcement,
7 disposition, or acceptance unless the debtor or a secondary obligor
8 places the secured party's compliance in issue.

9 (2) If the secured party's compliance is placed in issue, the
10 secured party has the burden of establishing that the collection,
11 enforcement, disposition, or acceptance was conducted in
12 accordance with this part.

13 (3) Except as otherwise provided in 12A:9-628, if a secured
14 party fails to prove that the collection, enforcement, disposition, or
15 acceptance was conducted in accordance with the provisions of this
16 part relating to collection, enforcement, disposition, or acceptance,
17 the liability of a debtor or a secondary obligor for a deficiency is
18 limited to an amount by which the sum of the secured obligation,
19 expenses, and attorney's fees exceeds the greater of:

20 **[(a)] (A)** the proceeds of the collection, enforcement,
21 disposition, or acceptance; or

22 **[(b)] (B)** the amount of proceeds that would have been realized
23 had the noncomplying secured party proceeded in accordance with
24 the provisions of this part relating to collection, enforcement,
25 disposition, or acceptance.

26 (4) For purposes of **[subparagraph (b) of]** paragraph (3) **[of this**
27 **section] (B)**, the amount of proceeds that would have been realized
28 is equal to the sum of the secured obligation, expenses, and
29 attorney's fees unless the secured party proves that the amount is
30 less than that sum.

31 (5) If a deficiency or surplus is calculated under 12A:9-615 **[f.]**
32 **(f)**, the debtor or obligor has the burden of establishing that the
33 amount of proceeds of the disposition is significantly below the
34 range of prices that a complying disposition to a person other than
35 the secured party, a person related to the secured party, or a
36 secondary obligor would have brought.

37 (cf: N.J.S.12A:9-626)

38

39 116. N.J.S.12A:9-627 is amended to read as follows:

40 12A:9-627. Determination of Whether Conduct Was
41 Commercially Reasonable.

42 **[a.] (a)** Greater amount obtainable under other circumstances;
43 no preclusion of commercial reasonableness. The fact that a greater
44 amount could have been obtained by a collection, enforcement,
45 disposition, or acceptance at a different time or in a different method
46 from that selected by the secured party is not of itself sufficient to

1 preclude the secured party from establishing that the collection,
2 enforcement, disposition, or acceptance was made in a commercially
3 reasonable manner.

4 **[b.] (b)** Dispositions that are commercially reasonable. A
5 disposition of collateral is made in a commercially reasonable
6 manner if the disposition is made:

7 (1) in the usual manner on any recognized market;

8 (2) at the price current in any recognized market at the time of
9 the disposition; or

10 (3) otherwise in conformity with reasonable commercial practices
11 among dealers in the type of property that was the subject of the
12 disposition.

13 **[c.] (c)** Approval by court or on behalf of creditors. A
14 collection, enforcement, disposition, or acceptance is commercially
15 reasonable if it has been approved:

16 (1) in a judicial proceeding;

17 (2) by a bona fide creditors' committee;

18 (3) by a representative of creditors; or

19 (4) by an assignee for the benefit of creditors.

20 **[d.] (d)** Approval under subsection **[c.] (c)** not necessary;
21 absence of approval has no effect. Approval under subsection **[c. of**
22 **this section] (c)** need not be obtained, and lack of approval does not
23 mean that the collection, enforcement, disposition, or acceptance is
24 not commercially reasonable.

25 (cf: N.J.S.12A:9-627)

26

27 117. N.J.S.12A:9-628 is amended to read as follows:

28 12A:9-628. Nonliability and Limitation on Liability of Secured
29 Party; Liability of Secondary Obligor.

30 **[a.] (a)** Limitation of liability of secured party for
31 noncompliance with chapter. Unless a secured party knows that a
32 person is a debtor or obligor, knows the identity of the person, and
33 knows how to communicate with the person:

34 (1) the secured party is not liable to the person, or to a secured
35 party or lienholder that has filed a financing statement against the
36 person, for failure to comply with this chapter; and

37 (2) the secured party's failure to comply with this chapter does
38 not affect the liability of the person for a deficiency.

39 **[b.] (b)** Limitation of liability based on status as secured party.
40 A secured party is not liable because of its status as secured party:

41 (1) to a person who is a debtor or obligor, unless the secured
42 party knows:

43 **[(a)] (A)** that the person is a debtor or obligor;

44 **[(b)] (B)** the identity of the person; and

45 **[(c)] (C)** how to communicate with the person; or

1 (2) to a secured party or lienholder that has filed a financing
2 statement against a person, unless the secured party knows:

3 [(a)] (A) that the person is a debtor; and

4 [(b)] (B) the identity of the person.

5 [(c)] (c) Limitation of liability if reasonable belief that transaction
6 not a consumer-goods transaction or consumer transaction. A
7 secured party is not liable to any person, and a person's liability for a
8 deficiency is not affected, because of any act or omission arising out
9 of the secured party's reasonable belief that a transaction is not a
10 consumer-goods transaction or a consumer transaction or that goods
11 are not consumer goods, if the secured party's belief is based on its
12 reasonable reliance on:

13 (1) a debtor's representation concerning the purpose for which
14 collateral was to be used, acquired, or held; or

15 (2) an obligor's representation concerning the purpose for which
16 a secured obligation was incurred.

17 [(d)] (d) Limitation of liability for statutory damages. A secured
18 party is not liable to any person under 12A:9-625 [(c)] (c) (2) for its
19 failure to comply with 12A:9-616.

20 [(e)] (e) Limitation of multiple liability for statutory damages. A
21 secured party is not liable under 12A:9-625 [(c)] (c) (2) more than
22 once with respect to any one secured obligation.

23 (cf: N.J.S.12A:9-628)

24

25 118. N.J.S.12A:9-701 is amended to read as follows:

26 12A:9-701. Effective Date.

27 This chapter shall take effect on July 1, 2001. References in this
28 part to "this chapter" are to Chapter 9 of the Uniform Commercial
29 Code as enacted by P.L.2001, c.117 and P.L. , c. (pending before
30 the Legislature as this bill). References in this part to "former
31 Chapter 9" are to Chapter 9 of the Uniform Commercial Code
32 (12A:9-101 et seq.) as in effect before July 1, 2001.

33 (cf: N.J.S.12A:9-701)

34

35 119. N.J.S.12A:9-702 is amended to read as follows:

36 12A:9-702. Savings Clause.

37 [(a)] (a) Pre-effective-date transactions or liens. Except as
38 otherwise provided in this part, this chapter applies to a transaction
39 or lien within its scope, even if the transaction or lien was entered
40 into or created before this chapter takes effect.

41 [(b)] (b) Continuing validity. Except as otherwise provided in
42 subsection [(c. of this section)] (c) and 12A:9-703 through
43 [12A:9-708] 12A:9-709:

44 (1) transactions and liens that were not governed by former
45 Chapter 9, were validly entered into or created before this chapter

1 takes effect, and would be subject to this chapter if they had been
2 entered into or created after this chapter takes effect, and the rights,
3 duties, and interests flowing from those transactions and liens remain
4 valid after this chapter takes effect; and

5 (2) the transactions and liens may be terminated, completed,
6 consummated, and enforced as required or permitted by this chapter
7 or by the law that otherwise would apply if this chapter had not
8 taken effect.

9 [c.] ~~(c)~~ Pre-effective-date proceedings. This chapter does not
10 affect an action, case, or proceeding commenced before this chapter
11 takes effect.

12 (cf: N.J.S.12A:9-702)

13

14 120. N.J.S.12A:9-703 is amended to read as follows:

15 12A:9-703. Security Interest Perfected Before Effective Date.

16 [a.] ~~(a)~~ Continuing priority over lien creditor: perfection
17 requirements satisfied. A security interest that is enforceable
18 immediately before this chapter takes effect and would have priority
19 over the rights of a person [who] ~~that~~ becomes a lien creditor at
20 that time is a perfected security interest under this chapter if, when
21 this chapter takes effect, the applicable requirements for
22 enforceability and perfection under this chapter are satisfied without
23 further action.

24 [b.] ~~(b)~~ Continuing priority over lien creditor: perfection
25 requirements not satisfied. Except as otherwise provided in
26 12A:9-705, if, immediately before this chapter takes effect, a
27 security interest is enforceable and would have priority over the
28 rights of a person [who] ~~that~~ becomes a lien creditor at that time,
29 but the applicable requirements for enforceability or perfection under
30 this chapter are not satisfied when this chapter takes effect, the
31 security interest:

32 (1) is a perfected security interest for one year after this chapter
33 takes effect;

34 (2) remains enforceable thereafter only if the security interest
35 becomes enforceable under 12A:9-203 before the year expires; and

36 (3) remains perfected thereafter only if the applicable
37 requirements for perfection under this chapter are satisfied before
38 the year expires.

39 (cf: N.J.S.12A:9-703)

40

41 121. N.J.S.12A:9-704 is amended to read as follows:

42 12A:9-704. Security Interest Unperfected Before Effective Date.

43 A security interest that is enforceable immediately before this
44 chapter takes effect but which would be subordinate to the rights of
45 a person [who] ~~that~~ becomes a lien creditor at that time:

46 [a.] ~~(1)~~ remains an enforceable security interest for one year

1 after this chapter takes effect;

2 **[b.] (2)** remains enforceable thereafter if the security interest
3 becomes enforceable under 12A:9-203 when this chapter takes effect
4 or within one year thereafter; and

5 **[c.] (3)** becomes perfected:

6 **[(1)] (A)** without further action, when this chapter takes effect if
7 the applicable requirements for perfection under this chapter are
8 satisfied before or at that time; or

9 **[(2)] (B)** when the applicable requirements for perfection are
10 satisfied if the requirements are satisfied after that time.

11 (cf: N.J.S.12A:9-704)

12

13 122. N.J.S.12A:9-705 is amended to read as follows:

14 12A:9-705. Effectiveness of Action Taken Before Effective
15 Date.

16 **[a.] (a)** Pre-effective-date action; one-year perfection period
17 unless reperfected. If action, other than the filing of a financing
18 statement, is taken before this chapter takes effect and the action
19 would have resulted in priority of a security interest over the rights
20 of a person **[who] that** becomes a lien creditor had the security
21 interest become enforceable before this chapter takes effect, the
22 action is effective to perfect a security interest that attaches under
23 this chapter within one year after this chapter takes effect. An
24 attached security interest becomes unperfected one year after this
25 chapter takes effect unless the security interest becomes a perfected
26 security interest under this chapter before the expiration of that
27 period.

28 **[b.] (b)** Pre-effective-date filing. The filing of a financing
29 statement before this chapter takes effect is effective to perfect a
30 security interest to the extent the filing would satisfy the applicable
31 requirements for perfection under this chapter.

32 **[c.] (c)** Pre-effective-date filing in jurisdiction formerly
33 governing perfection. This chapter does not render ineffective an
34 effective financing statement that, before this chapter takes effect, is
35 filed and satisfies the applicable requirements for perfection under
36 the law of the jurisdiction governing perfection as provided in
37 former 12A:9-103. However, except as otherwise provided in
38 subsections **[d. and e. of this section] (d) and (e)** and 12A:9-706,
39 the financing statement ceases to be effective at the earlier of:

40 (1) the time the financing statement would have ceased to be
41 effective under the law of the jurisdiction in which it is filed; or

42 (2) June 30, 2006.

43 **[d.] (d)** Continuation statement. The filing of a continuation
44 statement after this chapter takes effect does not continue the
45 effectiveness of the financing statement filed before this chapter

1 takes effect. However, upon the timely filing of a continuation
2 statement after this chapter takes effect and in accordance with the
3 law of the jurisdiction governing perfection as provided in Part 3,
4 the effectiveness of a financing statement filed in the same office in
5 that jurisdiction before this chapter takes effect continues for the
6 period provided by the law of that jurisdiction.

7 **[e.] (e)** Application of **[of]** subsection **[c. paragraph] (c)** (2) to
8 transmitting utility financing statement. Subsection **[c. paragraph]**
9 **(c)** (2) of this section applies to a financing statement that, before
10 this chapter takes effect, is filed against a transmitting utility and
11 satisfies the applicable requirements for perfection under the law of
12 the jurisdiction governing perfection as provided in former
13 12A:9-103 only to the extent that Part 3 provides that the law of a
14 jurisdiction other than the jurisdiction in which the financing
15 statement is filed governs perfection of a security interest in
16 collateral covered by the financing statement.

17 **[f.] (f)** Application of Part 5. A financing statement that
18 includes a financing statement filed before this chapter takes effect
19 and a continuation statement filed after this chapter takes effect is
20 effective only to the extent that it satisfies the requirements of Part 5
21 for an initial financing statement.

22 (cf: N.J.S.12A:9-705)

23

24 123. N.J.S.12A:9-706 is amended to read as follows:

25 12A:9-706. When Initial Financing Statement Suffices to
26 Continue Effectiveness of Financing Statement.

27 **[a.] (a)** Initial financing statement in lieu of continuation
28 statement. The filing of an initial financing statement in the office
29 specified in 12A:9-501 continues the effectiveness of a financing
30 statement filed before this chapter takes effect if:

31 (1) the filing of an initial financing statement in that office would
32 be effective to perfect a security interest under this chapter;

33 (2) the pre-effective-date financing statement was filed in an
34 office in another state or another office in this State; and

35 (3) the initial financing statement satisfies subsection **[c. of this**
36 **section] (c)**.

37 **[b.] (b)** Period of continued effectiveness. The filing of an initial
38 financing statement under subsection **[a. of this section] (a)**
39 continues the effectiveness of the pre-effective-date financing
40 statement:

41 (1) if the initial financing statement is filed before this chapter
42 takes effect, for the period provided in former 12A:9-403 with
43 respect to a financing statement; and

44 (2) if the initial financing statement is filed after this chapter
45 takes effect, for the period provided in 12A:9-515 with respect to an
46 initial financing statement.

1 [c.] (c) Requirements for initial financing statement under
2 subsection [a.] (a). To be effective for purposes of subsection [a.
3 of this section] (a), an initial financing statement shall:

4 (1) satisfy the requirements of Part 5 for an initial financing
5 statement;

6 (2) identify the pre-effective-date financing statement by
7 indicating the office in which the financing statement was filed and
8 providing the dates of filing and file numbers, if any, of the financing
9 statement and of the most recent continuation statement filed with
10 respect to the financing statement; and

11 (3) indicate that the pre-effective-date financing statement
12 remains effective.

13 (cf: N.J.S.12A:9-706)

14

15 124. N.J.S.12A:9-707 is amended to read as follows:

16 [12A:9-707.] 12A:9-708. Persons Entitled to File Initial
17 Financing Statement or Continuation Statement.

18 A person may file an initial financing statement or a continuation
19 statement under this part if:

20 [a.] (1) the secured party of record authorizes the filing; and

21 [b.] (2) the filing is necessary under this part:

22 [(1)] (A) to continue the effectiveness of a financing statement
23 filed before this chapter takes effect; or

24 [(2)] (B) to perfect or continue the perfection of a security
25 interest.

26 (cf: N.J.S.12A:9-707)

27

28 125. (New section) Title 12A, chapter 9 is supplemented as
29 follows:

30 12A:9-707. Amendment of ¹[pre-effective-date financing
31 statement] Pre-effective-date Financing Statement¹.

32 (a) "Pre-effective-date financing statement". In this section, "pre-
33 effective-date financing statement" means a financing statement filed
34 before this chapter takes effect.

35 (b) Applicable law. After this chapter takes effect, a person may
36 add or delete collateral covered by, continue or terminate the
37 effectiveness of, or otherwise amend the information provided in, a
38 pre-effective-date financing statement only in accordance with the
39 law of the jurisdiction governing perfection as provided in Part 3.
40 However, the effectiveness of a pre-effective-date financing
41 statement also may be terminated in accordance with the law of the
42 jurisdiction in which the financing statement is filed.

43 (c) Method of amending: general rule. Except as otherwise
44 provided in subsection (d), if the law of this State governs perfection
45 of a security interest, the information in a pre-effective-date

1 financing statement may be amended after this chapter takes effect
2 only if:

3 (1) the pre-effective-date financing statement and an amendment
4 are filed in the office specified in 12A:9-501;

5 (2) an amendment is filed in the office specified in 12A:9-501
6 concurrently with, or after the filing in that office of, an initial
7 financing statement that satisfies 12A:9-706(c); or

8 (3) an initial financing statement that provides the information as
9 amended and satisfies 12A:9-706(c) is filed in the office specified in
10 12A:9-501.

11 (d) Method of amending: continuation. If the law of this State
12 governs perfection of a security interest, the effectiveness of a pre-
13 effective-date financing statement may be continued only under
14 12A:9-705(d) and (f) or 12A:9-706.

15 (e) Method of amending: additional termination rule. Whether or
16 not the law of this State governs perfection of a security interest, the
17 effectiveness of a pre-effective-date financing statement filed in this
18 State may be terminated after this chapter takes effect by filing a
19 termination statement in the office in which the pre-effective-date
20 financing statement is filed, unless an initial financing statement that
21 satisfies 12A:9-706(c) has been filed in the office specified by the
22 law of the jurisdiction governing perfection as provided in Part 3 as
23 the office in which to file a financing statement. The preceding
24 sentence applies only to the office described in 12A:9-501(a)(2).
25

26 126. N.J.S.12A:9-708 is amended to read as follows:

27 [~~12A:9-708.~~] 12A:9-709 Priority.

28 [a.] (a) Law governing priority. This chapter determines the
29 priority of conflicting claims to collateral. However, if the relative
30 priorities of the claims were established before this chapter takes
31 effect, former Chapter 9 determines priority.

32 [b.] (b) Priority if security interest becomes enforceable under
33 12A:9-203. For purposes of 12A:9-322 [a.] (a), the priority of a
34 security interest that becomes enforceable under 12A:9-203 of this
35 chapter dates from the time this chapter takes effect if the security
36 interest is perfected under this chapter by the filing of a financing
37 statement before this chapter takes effect which would not have
38 been effective to perfect the security interest under former Chapter
39 9. This subsection does not apply to conflicting security interests
40 each of which is perfected by the filing of such a financing
41 statement.

42 (cf: N.J.S.12A:9-708)

43

44 127. (New section) Title 12A, chapter 9 is supplemented as
45 follows:

46 12A:9-710. Retroactivity Provision.

1 This act, P.L. , c. , amends and supplements P.L.2001, c.117
2 and shall take effect immediately and shall be applied retroactively to
3 July 1, 2001.

4 If, on or after July 1, 2001 and prior to the effective date of this
5 act, action required for the attachment, perfection or priority of a
6 security interest under Post-Amendment Chapter 9 was taken, but
7 was not heretofore effective, such action shall be effective when
8 taken.

9 If, on or after July 1, 2001 and prior to the effective date of this
10 act, action required for the attachment, perfection or priority of a
11 security interest under Pre-Amendment Chapter 9 was taken and
12 was heretofore effective, but is not effective under Post-Amendment
13 Chapter 9, such action shall be deemed effective when taken if,
14 within 60 days after the effective date of this act, any other action
15 required under Post-Amendment Chapter 9 for such attachment,
16 perfection or priority is taken, except to the extent that, after the
17 effective date of this act and before the time such other required
18 action is taken, a purchaser has given value in reasonable reliance
19 upon such other required action not having been taken.

20 As used in this section, "Pre-Amendment Chapter 9" means
21 Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117
22 (12A:9-101 through 12A:9-708) as constituted before giving effect
23 to this act, and "Post-Amendment Chapter 9" means Chapter 9 of
24 Title 12A of the New Jersey Statutes (12A:9-101 through
25 12A:9-709) as amended and supplemented by this act.

26

27 128. (New section) Title 12A, chapter 1 is supplemented as
28 follows:

29 12A:1-109. Section Captions.

30 Section captions are part of the Uniform Commercial Code. The
31 subsection headings in Chapter 9 on Secured Transactions (12A:9-
32 101 et seq.) are not ¹[part] parts¹ of that chapter or of the Uniform
33 Commercial Code.

34

35 129. N.J.S.12A:1-201 is amended to read as follows:

36 12A:1-201. General definitions.

37 Subject to additional definitions contained in the subsequent
38 chapters of [this act] the Uniform Commercial Code which are
39 applicable to specific chapters or subchapters thereof, and unless the
40 context otherwise requires, in [this act] the Uniform Commercial
41 Code:

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

45 (2) "Aggrieved party" means a party entitled to resort to a
46 remedy.

1 (3) "Agreement" means the bargain of the parties in fact as found
2 in their language or by implication from other circumstances
3 including course of dealing or usage of trade or course of
4 performance as provided in [this act] the Uniform Commercial
5 Code (12A:1-205 [and], 2-208 and 2A-207). Whether an
6 agreement has legal consequences is determined by the provisions in
7 [this act] the Uniform Commercial Code, if applicable; otherwise by
8 the law of contracts (12A:1-103). (Compare "Contract.")

9 (4) "Bank" means any person engaged in the business of banking.

10 (5) "Bearer" means the person in possession of an instrument,
11 document of title, or certificated security payable to bearer or
12 indorsed in blank.

13 (6) "Bill of lading" means a document evidencing the receipt of
14 goods for shipment issued by a person engaged in the business of
15 transporting or forwarding goods, and includes an airbill.

16 "Airbill" means a document serving for air transportation as a bill
17 of lading does for marine or rail transportation, and includes an air
18 consignment note or air waybill.

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

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

24 (9) "Buyer in ordinary course of business" means a person
25 ¹[who] that¹ buys goods in good faith, without knowledge that the
26 sale violates the rights of another person in the goods, and in
27 ordinary course from a person, other than a pawnbroker, in the
28 business of selling goods of that kind. A person buys goods in
29 ordinary course if the sale to the person comports with the usual or
30 customary practices in the kind of business in which the seller is
31 engaged or with the seller's own usual or customary practices. A
32 person ¹[who] that¹ sells oil, gas or other minerals at the wellhead
33 or minehead is a person in the business of selling goods of that kind.
34 A buyer in ordinary course of business may buy for cash, by
35 exchange of other property or on secured or unsecured credit, and
36 may acquire goods or documents of title under a pre-existing
37 contract for sale. Only a buyer that takes possession of the goods or
38 has a right to recover the goods from the seller under Chapter 2 may
39 be a buyer in ordinary course of business. A person ¹[who] that¹
40 acquires goods in a transfer in bulk or as security for or in total or
41 partial satisfaction of a money debt is not a buyer in ordinary course
42 of business.

43 (10) "Conspicuous": A term or cause is conspicuous when it is
44 so written that a reasonable person against whom it is to operate
45 ought to have noticed it. A printed heading in capitals (as:
46 NON-NEGOTIABLE BILL OF LADING) is conspicuous.

1 Language in the body of a form is "conspicuous" if it is in larger or
2 other contrasting type or color. But in a telegram any stated term is
3 "conspicuous." Whether a term or clause is "conspicuous" or not is
4 for decision by the court.

5 (11) "Contract" means the total legal obligation which results
6 from the parties' agreement as affected by [this act] the Uniform
7 Commercial Code and any other applicable rules of law. (Compare
8 "Agreement.")

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

14 (13) "Defendant" includes a person in the position of defendant
15 in a cross-action or counterclaim.

16 (14) "Delivery" with respect to instruments, documents of title,
17 chattel paper, or certificated securities means voluntary transfer of
18 possession.

19 (15) "Document of title" includes bill of lading, dock warrant,
20 dock receipt, warehouse receipt, or order for the delivery of goods,
21 and also any other document which in the regular course of business
22 or financing is treated as adequately evidencing that the person in
23 possession of it is entitled to receive, hold and dispose of the
24 document and the goods it covers. To be a document of title a
25 document shall purport to be issued by or addressed to a bailee and
26 purport to cover goods in the bailee's possession which are either
27 identified or are fungible portions of an identified mass.

28 (16) "Fault" means wrongful act, omission or breach.

29 (17) "Fungible" with respect to goods or securities means goods
30 or securities of which any unit is, by nature or usage of trade, the
31 equivalent of any other like unit. Goods which are not fungible shall
32 be deemed fungible for the purposes of [this act] the Uniform
33 Commercial Code to the extent that under a particular agreement or
34 document unlike units are treated as equivalents.

35 (18) "Genuine" means free of forgery or counterfeiting.

36 (19) "Good faith" means honesty in fact in the conduct or
37 transaction concerned.

38 (20) "Holder," with respect to a negotiable instrument, means the
39 person in possession if the instrument is payable to bearer or, in the
40 case of an instrument payable to an identified person, if the identified
41 person is in possession. "Holder" with respect to a document of title
42 means the person in possession if the goods are deliverable to bearer
43 or to the order of the person in possession.

44 (21) To "honor" is to pay or accept and pay, where a credit so
45 engages to purchase or discount a draft complying with the terms of
46 the credit.

1 (22) "Insolvency proceedings" includes any assignment for the
2 benefit of creditors or other proceedings intended to liquidate or
3 rehabilitate the estate of the person involved.

4 (23) A person is "insolvent" who either has ceased to pay the
5 person's debts in the ordinary course of business or cannot pay the
6 person's debts as they become due or is insolvent within the meaning
7 of the federal bankruptcy law.

8 (24) "Money" means a medium of exchange authorized or
9 adopted by a domestic or foreign government and includes a
10 monetary unit of account established by an intergovernmental
11 organization or by agreement between two or more nations.

12 (25) A person has "notice" of a fact when:

13 (a) The person has actual knowledge of it; or

14 (b) The person has received a notice or notification of it; or

15 (c) From all the facts and circumstances known to the person at
16 the time in question the person has reason to know that it exists.

17 A person "knows" or has "knowledge" of a fact when the person
18 has actual knowledge of it. "Discover" or "learn" or a word or
19 phrase of similar import refers to knowledge rather than to reason to
20 know. The time and circumstances under which a notice or
21 notification may cease to be effective are not determined by [this
22 act] the Uniform Commercial Code.

23 (26) A person "notifies" or "gives" a notice or notification to
24 another by taking such steps as may be reasonably required to
25 inform the other in ordinary course whether or not the other actually
26 comes to know of it. A person "receives" a notice or notification
27 when:

28 (a) It comes to the person's attention; or

29 (b) It is duly delivered at the place of business through which the
30 contract was made or at any other place held out by the person as
31 the place for receipt of such communications.

32 (27) Notice, knowledge or a notice or notification received by an
33 organization is effective for a particular transaction from the time
34 when it is brought to the attention of the individual conducting that
35 transaction, and in any event from the time when it would have been
36 brought to the attention of the individual if the organization had
37 exercised due diligence. An organization exercises due diligence if it
38 maintains reasonable routines for communicating significant
39 information to the person conducting the transaction and there is
40 reasonable compliance with the routines. Due diligence does not
41 require an individual acting for the organization to communicate
42 information unless such communication is part of the individual's
43 regular duties or unless the individual has reason to know of the
44 transaction and that the transaction would be materially affected by
45 the information.

46 (28) "Organization" includes a corporation, government or

1 governmental subdivision or agency, business trust, estate, trust,
2 partnership or association, two or more persons having a joint or
3 common interest, or any other legal or commercial entity.

4 (29) "Party," as distinct from "third party," means a person who
5 has engaged in a transaction or made an agreement within **[this act]**
6 the Uniform Commercial Code.

7 (30) "Person" includes an individual or an organization (See
8 12A:1-102).

9 (31) "Presumption" or "presumed" means that the trier of fact
10 shall find the existence of the fact presumed unless and until
11 evidence is introduced which would support a finding of its
12 nonexistence.

13 (32) "Purchase" includes taking by sale, discount, negotiation,
14 mortgage, pledge, lien, security interest, issue or reissue, gift or any
15 other voluntary transaction creating an interest in property.

16 (33) "Purchaser" means a person who takes by purchase.

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

19 (35) "Representative" includes an agent, an officer of a
20 corporation or association, and a trustee, executor or administrator
21 of an estate, or any other person empowered to act for another.

22 (36) "Rights" includes remedies.

23 (37) "Security interest" means an interest in personal property or
24 fixtures which secures payment or performance of an obligation.
25 The term also includes any interest of a consignor and a buyer of
26 accounts, chattel paper, a payment intangible, or a promissory note
27 in a transaction that is subject to Chapter 9. The special property
28 interest of a buyer of goods on identification of those goods to a
29 contract for sale under 12A:2-401 is not a "security interest," but a
30 buyer may also acquire a "security interest" by complying with
31 Chapter 9. Except as otherwise provided in 12A:2-505, the right of
32 a seller or lessor of goods under Chapter 2 or 2A to retain or
33 acquire possession of the goods is not a "security interest," but a
34 seller or lessor may also acquire a "security interest" by complying
35 with Chapter 9. The retention or reservation of title by a seller of
36 goods notwithstanding shipment or delivery to the buyer
37 (12A:2-401) is limited in effect to a reservation of a "security
38 interest." Whether a lease is intended as security is to be determined
39 by the facts of each case; however, (a) the inclusion of an option to
40 purchase does not of itself make the lease one intended for security,
41 and (b) an agreement that upon compliance with the terms of the
42 lease the lessee shall become or has the option to become the owner
43 of the property for no additional consideration or for a nominal
44 consideration does make the lease one intended for security.

45 Whether a transaction creates a lease or security interest is
46 determined by the facts of each case; however, a transaction creates

1 a security interest if the consideration the lessee is to pay the lessor
2 for the right to possession and use of the goods is an obligation for
3 the term of the lease not subject to termination by the lessee, and

4 (a) the original term of the lease is equal to or greater than the
5 remaining economic life of the goods,

6 (b) the lessee is bound to renew the lease for the remaining
7 economic life of the goods or is bound to become the owner of the
8 goods,

9 (c) the lessee has an option to renew the lease for the remaining
10 economic life of the goods for no additional consideration or
11 nominal additional consideration upon compliance with the lease
12 agreement, or

13 (d) the lessee has an option to become the owner of the goods
14 for no additional consideration or nominal additional consideration
15 upon compliance with the lease agreement.

16 A transaction does not create a security interest merely because it
17 provides that

18 (a) the present value of the consideration the lessee is obligated
19 to pay the lessor for the right to possession and use of the goods is
20 substantially equal to or is greater than the fair market value of the
21 goods at the time the lease is entered into,

22 (b) the lessee assumes risk of loss of the goods, or agrees to pay
23 taxes, insurance, filing, recording, or registration fees, or service or
24 maintenance costs with respect to the goods,

25 (c) the lessee has an option to renew the lease or to become the
26 owner of the goods,

27 (d) the lessee has an option to renew the lease for a fixed rent
28 that is equal to or greater than the reasonably predictable fair market
29 rent for the use of the goods for the term of the renewal at the time
30 the option is to be performed, or

31 (e) the lessee has an option to become the owner of the goods
32 for a fixed price that is equal to or greater than the reasonably
33 predictable fair market value of the goods at the time the option is to
34 be performed.

35 For purposes of this subsection (37):

36 Additional consideration is not nominal if (i) when the option to
37 renew the lease is granted to the lessee the rent is stated to be the
38 fair market rent for the use of the goods for the term of the renewal
39 determined at the time the option is to be performed, or (ii) when
40 [the option to become the owner of the goods is granted to the
41 lessee] the option to become the owner of the goods is granted to
42 the lessee the price is stated to be the fair market value of the goods
43 determined at the time the option is to be performed. Additional
44 consideration is nominal if it is less than the lessee's reasonably
45 predictable cost of performing under the lease agreement if the
46 option is not exercised;

1 "Reasonably predictable" and "remaining economic life of the
2 goods" are to be determined with reference to the facts and
3 circumstances at the time the transaction is entered into; and

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

12 (38) "Send" in connection with any writing or notice means to
13 deposit in the mail or deliver for transmission by any other usual
14 means of communication with postage or cost of transmission
15 provided for and properly addressed and in the case of an instrument
16 to an address specified thereon or otherwise agreed, or if there be
17 none to any address reasonable under the circumstances. The receipt
18 of any writing or notice within the time at which it would have
19 arrived if properly sent has the effect of a proper sending.

20 (39) "Signed" includes any symbol executed or adopted by a
21 party with present intention to authenticate a writing.

22 (40) "Surety" includes guarantor.

23 (41) "Telegram" includes a message transmitted by radio,
24 teletype, cable, any mechanical method of transmission, or the like.

25 (42) "Term" means that portion of an agreement which relates to
26 a particular matter.

27 (43) "Unauthorized" signature or indorsement means one made
28 without actual, implied, or apparent authority and includes a forgery.

29 (44) "Value." Except as otherwise provided with respect to
30 negotiable instruments and bank collections (12A:3-303, 12A:4-210
31 and 12A:4-211), a person gives "value" for rights if the person
32 acquires them:

33 (a) In return for a binding commitment to extend credit or for the
34 extension of immediately available credit whether or not drawn upon
35 and whether or not a charge-back is provided for in the event of
36 difficulties in collection; or

37 (b) As security for or in total or partial satisfaction of a
38 pre-existing claim; or

39 (c) By accepting delivery pursuant to a pre-existing contract for
40 purchase; or

41 (d) Generally, in return for any consideration sufficient to
42 support a simple contract.

43 (45) "Warehouse receipt" means a receipt issued by a person
44 engaged in the business of storing goods for hire.

45 (46) "Written" or "writing" includes printing, typewriting, or any

1 other intentional reduction to tangible form.

2 (cf: P.L.2001, c.117, s.3)

3

4 130. N.J.S.12A:1-206 is amended to read as follows:

5 12A:1-206. Statute of Frauds for Kinds of Personal Property Not
6 Otherwise Covered.

7 (1) Except in the cases described in subsection (2) [of this
8 section] a contract for the sale of personal property is not
9 enforceable by way of action or defense beyond five thousand
10 dollars in amount or value of remedy unless there is some writing
11 which indicates that a contract for sale has been made between the
12 parties at a defined or stated price, reasonably identifies the subject
13 matter, and is signed by the party against whom enforcement is
14 sought or by his authorized agent.

15 (2) Subsection (1) [of this section] does not apply to contracts
16 for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor
17 to security agreements ([12A:9-201] 12A:9-203).

18 (cf: P.L.2001, c.117, s.4)

19

20 131. N.J.S.12A:2A-103 is amended to read as follows:

21 12A:2A-103. Definitions and index of definitions.

22 (1) In this chapter unless the context otherwise requires:

23 (a) "Buyer in ordinary course of business" means a person who in
24 good faith and without knowledge that the sale to the person is in
25 violation of the ownership rights or security interest or leasehold
26 interest of a third party in the goods buys in ordinary course from a
27 person in the business of selling goods of that kind but does not
28 include a pawnbroker. "Buying" may be for cash or by exchange of
29 other property or on secured or unsecured credit and includes
30 receiving goods or documents of title under a pre-existing contract
31 for sale but does not include a transfer in bulk or as security for or in
32 total or partial satisfaction of a money debt.

33 (b) "Cancellation" occurs when either party puts an end to the
34 lease contract for default by the other party.

35 (c) "Commercial unit" means such a unit of goods as by
36 commercial usage is a single whole for purposes of lease and
37 division of which materially impairs its character or value on the
38 market or in use. A commercial unit may be a single [chapter]
39 article, as a machine, or a set of [chapters] articles, as a suite of
40 furniture or a line of machinery, or a quantity, as a gross or carload,
41 or any other unit treated in use or in the relevant market as a single
42 whole.

43 (d) "Conforming" goods or performance under a lease contract
44 means goods or performance that are in accordance with the
45 obligations under the lease contract.

46 (e) "Consumer lease" means a lease that a lessor regularly

1 engaged in the business of leasing or selling makes to a lessee who is
2 a natural person and who takes under the lease primarily for a
3 personal, family, or household purpose.

4 (f) "Fault" means wrongful act, omission, breach, or default.

5 (g) "Finance lease" means a lease with respect to which:

6 (i) the lessor does not select, manufacture, or supply the goods;

7 (ii) the lessor acquires the goods or the right to possession and
8 use of the goods in connection with the lease; and

9 (iii) one of the following occurs:

10 (A) the lessee receives a copy of the contract by which the lessor
11 acquired the goods or the right to possession and use of the goods
12 before signing the lease contract;

13 (B) the lessee's approval of the contract by which the lessor
14 acquired the goods or the right to possession and use of the goods is
15 a condition to effectiveness of the lease contract;

16 (C) the lessee, before signing the lease contract, receives an
17 accurate and complete statement designating the promises and
18 warranties, and any disclaimers of warranties, limitations or
19 modifications of remedies, or liquidated damages, including those of
20 a third party, such as the manufacturer of the goods, provided to the
21 lessor by the person supplying the goods in connection with or as
22 part of the contract by which the lessor acquired the goods or the
23 right to possession and use of the goods; or

24 (D) if the lease is not a consumer lease, the lessor, before the
25 lessee signs the lease contract, informs the lessee in writing (a) of
26 the identity of the person supplying the goods to the lessor, unless
27 the lessee has selected that person and directed the lessor to acquire
28 the goods or the right to possession and use of the goods from that
29 person, (b) that the lessee is entitled under this chapter to the
30 promises and warranties, including those of any third party, provided
31 to the lessor by the person supplying the goods in connection with
32 or as part of the contract by which the lessor acquired the goods or
33 the right to possession and use of the goods, and (c) that the lessee
34 may communicate with the person supplying the goods to the lessor
35 and receive an accurate and complete statement of those promises
36 and warranties, including any disclaimers and limitations of them or
37 of remedies.

38 (h) "Goods" means all things that are movable at the time of
39 identification to the lease contract, or are fixtures (12A:2A-309), but
40 the term does not include money, documents, instruments, accounts,
41 chattel paper, general intangibles, or minerals or the like, including
42 oil and gas, before extraction. The term also includes the unborn
43 young of animals.

44 (i) "Installment lease contract" means a lease contract that
45 authorizes or requires the delivery of goods in separate lots to be
46 separately accepted, even though the lease contract contains a clause

1 "each delivery is a separate lease" or its equivalent.

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

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

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

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

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

22 (o) "Lessee in ordinary course of business" means a person who
23 in good faith and without knowledge that the lease to the person is
24 in violation of the ownership rights or security interest or leasehold
25 interest of a third party in the goods leases in ordinary course from a
26 person in the business of selling or leasing goods of that kind but
27 does not include a pawnbroker. "Leasing" may be for cash or by
28 exchange of other property or on secured or unsecured credit and
29 includes receiving goods or documents of title under a pre-existing
30 lease contract but does not include a transfer in bulk or as security
31 for or in total or partial satisfaction of a money debt.

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

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

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

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

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

46 (u) "Present value" means the amount as of a date certain of one

1 or more sums payable in the future, discounted to the date certain.
 2 The discount is determined by the interest rate specified by the
 3 parties if the rate was not manifestly unreasonable at the time the
 4 transaction was entered into; otherwise, the discount is determined
 5 by a commercially reasonable rate that takes into account the facts
 6 and circumstances of each case at the time the transaction was
 7 entered into.

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

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

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

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

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

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

23 "Accessions"12A:2A-310(1).
 24 "Construction mortgage"12A:2A-309(1)(d).
 25 "Encumbrance"12A:2A-309(1)(e).
 26 "Fixtures"12A:2A-309(1)(a).
 27 "Fixture filing"12A:2A-309(1)(b).
 28 "Purchase money lease"12A:2A-309(1)(c).

29 (3) The following definitions in other Chapters apply to this
 30 Chapter:

31 "Account"12A: 9-102(a)(2).
 32 "Between merchants"12A:2-104(3).
 33 "Buyer"12A:2-103(1)(a).
 34 "Chattel paper"12A:9-102(a)(12).
 35 "Consumer goods"12A:9-102(a)(24).
 36 "Document"12A:9-102(a)**[(21)](31)**.
 37 "Entrusting"12A:2-403(3).
 38 "General intangible"12A:9-102(a)(42).
 39 "Good faith"2A:2-103(1)(b).
 40 "Instrument"12A:9-102(a)(47).
 41 "Merchant"12A:2-104(1).
 42 "Mortgage"12A:9-102(a)(55).
 43 "Pursuant to commitment"12A:9-102(a)(68).
 44 "Receipt"12A:2-103(1)(c).
 45 "Sale"12A:2-106(1).
 46 "Sale on approval"12A:2-326.

1 "Sale or return".....12A:2-326.

2 "Seller".....12A:2-103(1)(d).

3 (4) In addition chapter 1 contains general definitions and
4 principles of construction and interpretation applicable throughout
5 this chapter.

6 (cf: P.L. 2001, c.117, s.10)

7

8 132. N.J.S.12A:2A-307 is amended to read as follows:

9 12A:2A-307. Priority of liens arising by attachment or levy on,
10 security interests in, and other claims to goods.

11 (1) Except as otherwise provided in 12A:2A-306, a creditor of a
12 lessee takes subject to the lease contract.

13 (2) Except as otherwise provided in subsection (3) and in
14 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to
15 the lease contract unless [:

16 (a)] the creditor holds a lien that attached to the goods before
17 the lease contract became enforceable [;

18 (b) the creditor holds a security interest in the goods and the
19 lessee did not give value and receive delivery of the goods without
20 knowledge of the security interest; or

21 (c) the creditor holds a security interest in the goods which was
22 perfected (12A:9-303) before the lease contract became
23 enforceable].

24 (3) Except as otherwise provided in 12A:9-317, 12A:9-321 and
25 12A:9-323, a lessee takes a leasehold interest subject to a security
26 interest held by a creditor of the lessor.

27 (cf: P.L.2001, c.117, s.12)

28

29 133. N.J.S.12A:8-103 is amended to read as follows:

30 12A:8-103. Rule for Determining whether Certain Obligations
31 and Interests are Securities or Financial Assets.

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

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

43 c. An interest in a partnership or limited liability company is not
44 a security unless it is dealt in or traded on securities exchanges or in
45 securities markets, its terms expressly provide that it is a security
46 governed by this chapter, or it is an investment company security.

1 However, an interest in a partnership or limited liability company is a
2 financial asset if it is held in a securities account.

3 d. A writing that is a security certificate is governed by this
4 chapter and not by chapter 3, even though it also meets the
5 requirements of that chapter. However, a negotiable instrument
6 governed by chapter 3 is a financial asset if it is held in a securities
7 account.

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

11 f. A commodity contract, as defined in **[12A:9-102 (a) (16)]**
12 12A:9-102 (a) (15), is not a security or a financial asset.
13 (cf: P.L.2001, c.117, s.17)

14

15 134. N.J.S.12A:8-110 is amended to read as follows:

16 12A:8-110. Applicability; Choice of Law.

17 a. The local law of the issuer's jurisdiction, as specified in
18 subsection d. of this section, governs:

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

29 b. The local law of the securities intermediary's jurisdiction, as
30 specified in subsection e. of this section, governs:

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

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

45 d. "Issuer's jurisdiction" means the jurisdiction under which the
46 issuer of the security is organized or, if permitted by the law of that

1 jurisdiction, the law of another jurisdiction specified by the issuer.
2 An issuer organized under the law of this State may specify the law
3 of another jurisdiction as the law governing the matters specified in
4 paragraphs (2) through (5) of subsection a. of this section.

5 e. The following rules determine a “securities intermediary’s
6 jurisdiction” for purposes of this section:

7 (1) If an agreement between the securities intermediary and its
8 entitlement holder governing the securities account expressly
9 provides that a particular jurisdiction is the securities intermediary’s
10 jurisdiction for purposes of this part, this chapter, or [this Act] the
11 Uniform Commercial Code, that jurisdiction is the securities
12 intermediary’s jurisdiction.

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

18 (3) If neither paragraph (1) nor paragraph (2) of this subsection
19 e. applies and an agreement between the securities intermediary and
20 its entitlement holder governing the securities account expressly
21 provides that the securities account is maintained at an office in a
22 particular jurisdiction, that jurisdiction is the securities
23 intermediary’s jurisdiction.

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

28 (5) If none of the preceding paragraphs applies, the securities
29 intermediary’s jurisdiction is the jurisdiction in which the chief
30 executive office of the securities intermediary is located.

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

37 (cf: P.L.2001, c.117, s.19)

38

39 135. N.J.S.12A:8-510 is amended to read as follows:

40 12A:8-510. Rights of Purchaser of Security Entitlement from
41 Entitlement Holder.

42 a. In a case not covered by the priority rules in Chapter 9 or the
43 rules stated in subsection c. of this section, an action based on an
44 adverse claim to a financial asset or security entitlement, whether
45 framed in conversion, replevin, constructive trust, equitable lien, or
46 other theory, may not be asserted against a person who purchases a

1 security entitlement, or an interest therein, from an entitlement
2 holder if the purchaser gives value, does not have notice of the
3 adverse claim, and obtains control.

4 b. If an adverse claim could not have been asserted against an
5 entitlement holder under 12A:8-502, the adverse claim cannot be
6 asserted against a person who purchases a security entitlement, or an
7 interest therein, from the entitlement holder.

8 c. In a case not covered by the priority rules in Chapter 9, a
9 purchaser for value of a security entitlement, or an interest therein,
10 who obtains control has priority over a purchaser of a security
11 entitlement, or an interest therein, who does not obtain control.
12 Except as otherwise provided in subsection d of this section,
13 purchasers who have control rank according to priority in time of:

14 (1) the purchaser's becoming the person for whom the securities
15 account, in which the security entitlement is carried, is maintained, if
16 the purchaser obtained control under 12A:8-106d. (1); [or]

17 (2) the securities intermediary's agreement to comply with the
18 purchaser's entitlement orders with respect to security entitlements
19 carried or to be carried in the securities account in which the
20 security entitlement is carried, if the purchaser obtained control
21 under 12A:8-106d. (2); or

22 (3) if the purchaser obtained control through another person
23 under 12A:8-106 d. (3), the time on which priority would be based
24 under this subsection if the other person were the secured party.

25 d. A securities intermediary as purchaser has priority over a
26 conflicting purchaser who has control unless otherwise agreed by the
27 securities intermediary.

28 (cf: P.L.2001, c.117, s.22)

29

30 136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to
31 read as follows:

32 27. a. For purposes of this act, and the Uniform Commercial
33 Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable
34 transition property, as defined in N.J.S. [12A:9-102a (9)] 12A:9-
35 102 (a) (8.1), shall constitute an account. For purposes of this act,
36 and the Uniform Commercial Code - Secured Transactions,
37 N.J.S.12A:9-101 et seq., bondable transition property shall be in
38 existence whether or not the revenues or proceeds in respect thereof
39 have accrued, in accordance with subsection c. of section 22 of this
40 act. The validity, perfection or priority of any security interest in
41 bondable transition property shall not be defeated or adversely
42 affected by changes to the bondable stranded costs rate order or to
43 the transition bond charges payable by any customer. Any
44 description of bondable transition property in a security agreement
45 or other agreement or a financing statement shall be sufficient if it
46 refers to the bondable stranded costs rate order establishing the

1 bondable transition property.

2 b. In addition to the other rights and remedies provided or
3 authorized by this act, and by the Uniform Commercial Code -
4 Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in
5 default under a security agreement and the collateral is bondable
6 transition property, then upon application by the secured party, the
7 board or any court of competent jurisdiction shall order the
8 sequestration and payment to the secured party of all collections and
9 other proceeds of such bondable transition property up to the value
10 of the property. In the event of any conflicts, priority among
11 pledgees, transferees or secured parties shall be determined under
12 N.J.S.12A:9-101 et seq.. The secured party shall account to the
13 debtor for any surplus and, unless otherwise agreed, the debtor shall
14 be liable for any deficiency.

15 (cf: P.L.2001, c.117, s.29)

16

17 137. N.J.S.2A:25-1 is amended to read as follows:

18 2A:25-1. All contracts for the sale and conveyance of real estate,
19 all judgments and decrees recovered in any of the courts of this
20 state or of the United States or in any of the courts of any other
21 state of the United States and all choses in action arising on
22 contract shall be assignable, and the assignee may sue thereon in his
23 own name. In such an action, the person sued shall be allowed, not
24 only all set-offs, discounts and defenses he has against the assignee,
25 but also all set-offs, discounts and defenses he had against the
26 assignor before notice of such assignment was given to him. The
27 assignment of a sealed instrument by writing not under seal shall be
28 as valid as if under seal.

29 The assignee for a valuable consideration of any chose in action
30 may, although the assignor is dead, sue for and recover the same in
31 his own name. The person sued in any such action shall be allowed
32 not only all set-offs, discounts and defenses he has against the
33 assignee, but also all set-offs, discounts and defenses he had against
34 the assignor or his representatives before notice of such assignment
35 was given to him.

36 Security interests in commercial tort claims may be created,
37 attached, perfected and enforced in accordance with Chapter 9 of
38 Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

39 (cf: N.J.S.2A:25-1)

40

41 138. This act shall take effect immediately, and shall have
42 retroactive effect in accordance with section 127 of this act.

- 1 _____
- 2
- 3 Concerns chapter 9 of the Uniform Commercial Code.

CHAPTER 386

AN ACT concerning chapter 9 of Title 12A of the New Jersey Statutes and revising various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.12A:9-102 is amended to read as follows:

Definitions and index of definitions.

12A:9-102. Definitions and Index of Definitions.

(a) Chapter 9 definitions. In this chapter:

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

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

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

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

(A) authenticated by a secured party;

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

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

(5) "Agricultural lien" means an interest in farm products:

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

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

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

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

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

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

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

(6) "As-extracted collateral" means:

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

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

(ii) attaches to the minerals as extracted; or

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

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

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

(8.1) "Bondable transition property" shall have the meaning set forth in section 3 of P.L.1999,

c.23 (C.48:3-51).

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

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

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

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

(A) proceeds to which a security interest attaches;

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

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

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

(A) the claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

(18) "Communicate" means:

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

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

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

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

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

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

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

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

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

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

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

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

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

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

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

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

(28) "Debtor" means:

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

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

(C) a consignee.

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

(30) "Document" means a document of title or a receipt of the type described in 12A:7-201(2).

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

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

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

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

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

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

(ii) aquatic goods produced in aquacultural operations;

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

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

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

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

(36) "File number" means the number assigned to an initial financing statement pursuant to 12A:9-519 (a).

(37) "Filing office" means an office designated in 12A:9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to 12A:9-526.

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

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying 12A:9-502 (a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

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

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

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

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

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

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

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

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

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

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

(52) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the

like;

- (B) an assignee for benefit of creditors from the time of assignment;
- (C) a trustee in bankruptcy from the date of the filing of the petition; or
- (D) a receiver in equity from the time of appointment.

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

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

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under 12A:9-203 (d) by a security agreement previously entered into by another person.

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

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

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

(60) "Original debtor", except as used in 12A:9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 12A:9-203 (d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

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

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B) or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B) (C) or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in 12A:9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of

collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

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

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 12A:9-620, 12A:9-621, and 12A:9-622.

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

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

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

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

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

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

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

(72) "Secured party" means:

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

(B) a person that holds an agricultural lien;

(C) a consignor;

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

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

(F) a person that holds a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), 12A:4-210, or 12A:5-118.

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

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

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

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

(75) "Software" means a computer program and any supporting information provided in

connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

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

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

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

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

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

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

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

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

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

(C) transmitting goods by pipeline or sewer; or

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

(b) Definitions in other chapters. The following definitions in other chapters apply to this chapter:

"Applicant"	12A:5-102.
"Beneficiary"	12A:5-102.
"Broker"	12A:8-102.
"Certificated security"	12A:8-102.
"Check"	12A:3-104.
"Clearing corporation"	12A:8-102.
"Contract for sale"	12A:2-106.
"Customer"	12A:4-104.
"Entitlement holder"	12A:8-102.
"Financial asset"	12A:8-102.
"Holder in due course"	12A:3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	12A:5-102.
"Issuer" (with respect to a security)	12A:8-201.
"Lease"	12A:2A-103.
"Lease agreement"	12A:2A-103.
"Lease contract"	12A:2A-103.
"Leasehold interest"	12A:2A-103.
"Lessee"	12A:2A-103.
"Lessee in ordinary course of business"	12A:2A-103.
"Lessor"	12A:2A-103.
"Lessor's residual interest"	12A:2A-103.
"Letter of credit"	12A:5-102.
"Merchant"	12A:2-104.
"Negotiable instrument"	12A:3-104.
"Nominated person"	12A:5-102.
"Note"	12A:3-104.
"Proceeds of a letter of credit"	12A:5-114.
"Prove"	12A:3-103.
"Sale"	12A:2-106.
"Securities account"	12A:8-501.
"Securities intermediary"	12A:8-102.
"Security"	12A:8-102.
"Security certificate"	12A:8-102.

“Security entitlement” 12A:8-102.

“Uncertificated security” 12A:8-102.

(c) Chapter 1 definitions and principles. Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

2. N.J.S.12A:9-103 is amended to read as follows:

Purchase-money security interest; application of payments; burden of establishing.

12A:9-103. Purchase-Money Security Interest; Application of Payments; Burden of Establishing.

(a) Definitions. In this section:

(1) “purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) “purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor’s inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties’ agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor’s intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. The limitation of the rules in subsections (e), (f) and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

3. N.J.S.12A:9-104 is amended to read as follows:

Control of deposit account.

12A:9-104. Control of Deposit Account.

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

- (1) the secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- (3) the secured party becomes the bank's customer with respect to the deposit account.

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

4. N.J.S.12A:9-105 is amended to read as follows:

Control of electronic chattel paper.

12A:9-105. Control of Electronic Chattel Paper.

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

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

5. N.J.S.12A:9-106 is amended to read as follows:

Control of investment property.

12A:9-106. Control of Investment Property.

(a) Control under 12A:8-106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in 12A:8-106.

(b) Control of commodity contract. A secured party has control of a commodity contract if:

- (1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

6. N.J.S.12A:9-108 is amended to read as follows:

Sufficiency of description.

12A:9-108. Sufficiency of Description.

(a) Sufficiency of description. Except as otherwise provided in subsections (c), (d), (e) and (f), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(d) Investment property. Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract.

(e) When description by type insufficient. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account

(f) Bondable transition property. A description of bondable transition property is sufficient if it refers to the bondable stranded costs rate order, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), establishing the bondable transition property.

7. N.J.S.12A:9-109 is amended to read as follows:

Scope.

12A:9-109. Scope.

(a) General scope of chapter. Except as otherwise provided in subsections (c) and (d), this chapter applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), or 12A:2A-508(5), as provided in 12A:9-110; and

(6) a security interest arising under 12A:4-210 or 12A:5-118.

(b) Security interest in secured obligation. The application of this chapter to a security

interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

- (c) Extent to which chapter does not apply. This chapter does not apply to the extent that:
 - (1) a statute, regulation, or treaty of the United States preempts this chapter; or
 - (2) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 12A:5-114.
- (d) Inapplicability of chapter. This chapter does not apply to:
 - (1) a landlord's lien, other than an agricultural lien;
 - (2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 12A:9-333 applies with respect to priority of the lien;
 - (3) an assignment of a claim for wages, salary, or other compensation of an employee;
 - (4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
 - (5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
 - (6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
 - (7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
 - (8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds;
 - (9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
 - (10) a right of recoupment or set-off, but:
 - (A) 12A:9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (B) 12A:9-404 applies with respect to defenses or claims of an account debtor;
 - (11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) liens on real property in 12A:9-203 and 12A:9-308;
 - (B) fixtures in 12A:9-334; and
 - (C) fixture filings in 12A:9-501, 12A:9-502, 12A:9-512, 12A:9-516 and 12A:9-519; and
 - (D) security agreements covering personal and real property in 12A:9-604;
 - (12) an assignment of a claim arising in tort, other than a commercial tort claim, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds;
 - (13) an assignment of a deposit account in a consumer transaction, but 12A:9-315 and 12A:9-322 apply with respect to proceeds and priorities in proceeds; or
 - (14) a transfer by a government or governmental unit.

8. N.J.S.12A:9-201 is amended to read as follows:

General effectiveness of security agreement.

12A:9-201. General Effectiveness of Security Agreement.

- (a) General effectiveness. Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.
- (b) Applicable consumer laws and other law. A transaction subject to this chapter is subject to any applicable rule of law which establishes a different rule for consumers and to (1) any other statute or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (2) any consumer protection statute or regulation of this State.
- (c) Other applicable law controls. In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls.

Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. This chapter does not:

(1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

9. N.J.S.12A:9-203 is amended to read as follows:

Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

12A:9-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.

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

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

(1) value has been given;

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

(3) one of the following conditions is met:

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

(B) the collateral is not a certificated security and is in the possession of the secured party under 12A:9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 12A:8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107 pursuant to the debtor's security agreement.

(c) Other Uniform Commercial Code provisions. Subsection (b) is subject to 12A:4-210 on the security interest of a collecting bank, 12A:5-118 on the security interest of a letter-of-credit issuer or nominated person, 12A:9-110 on a security interest arising under Chapter 2 or 2A, and 12A:9-206 on security interests in investment property.

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

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

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

(1) the agreement satisfies subsection (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 12A:9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

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

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

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

(j) Bondable transition property. Bondable transition property is presently existing property for all purposes, including for purposes of subsection (b) (2), whether or not the revenues and proceeds arising under the property have accrued and notwithstanding that the value of the property may depend upon customer use of electricity or performance of service by electric public utilities, or both.

10. N.J.S.12A:9-204 is amended to read as follows:

After-acquired property, future advances.

12A:9-204. After-acquired Property; Future Advances.

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

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

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

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

11. N.J.S.12A:9-205 is amended to read as follows:

Use of disposition of collateral permissible.

12A:9-205. Use or Disposition of Collateral Permissible.

(a) When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:

(1) the debtor has the right or ability to:

(A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce, or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle, or dispose of proceeds; or

(2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

12. N.J.S.12A:9-206 is amended to read as follows:

Security interest arising in purchase or delivery of financial asset.

12A:9-206. Security Interest Arising in Purchase or Delivery of Financial Asset.

(a) Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in

which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. The security interest described in subsection (c) secures the obligation to make payment for the delivery.

13. N.J.S.12A:9-207 is amended to read as follows:

14. N.J.S.12A:9-208 is amended to read as follows:

Rights and duties of secured party having possession or control of collateral.

12A:9-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.

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

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

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

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

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

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

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

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

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

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under 12A:9-104, 12A:9-105, 12A:9-106, or 12A:9-107:

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

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

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

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

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

(A) to charge back uncollected collateral; or

- (B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
- (2) subsections (b) and (c) do not apply.

15. N.J.S.12A:9-209 is amended to read as follows:

Additional duties of secured party having control of collateral.

12A:9-208. Additional Duties of Secured Party Having Control of Collateral.

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

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

(1) a secured party having control of a deposit account under 12A:9-104 (a) (2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under 12A:9-104 (a) (3) shall:

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

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

(3) a secured party, other than a buyer, having control of electronic chattel paper under 12A:9-105 shall:

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

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

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

(4) a secured party having control of investment property under 12A:8-106 d. (2) or 12A:9-106 (b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) a secured party having control of a letter-of-credit right under 12A:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

16. N.J.S.12A:9-210 is amended to read as follows:

Duties of secured party if account debtor has been notified of assignment.

12A:9-209. Duties of Secured Party If Account Debtor Has Been Notified of Assignment.

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

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under 12A:9-406 (a) an authenticated record that releases the account debtor from any further obligation to the secured party.

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

17. N.J.S.12A:9-211 is amended to read as follows:

Request for accounting; request regarding list of collateral or statement of account.

12A:9-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

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

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

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

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

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

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

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

18. N.J.S.12A:9-301 is amended to read as follows:

Law governing perfection and priority of security interests.

12A:9-301. Law Governing Perfection and Priority of Security Interests.

Except as otherwise provided in sections 12A:9-303 through 12A:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

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

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

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

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

(5) Notwithstanding paragraph (1), the local law of this State shall govern the perfection, the effect of perfection or nonperfection, and the priority of a security interest in bondable transition property.

19. N.J.S.12A:9-303 is amended to read as follows:

Law governing perfection and priority of security interests in goods covered by a certificate of title.

12A:9-303. Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

20. N.J.S.12A:9-304 is amended to read as follows:

Law governing perfection and priority of security interests in deposit accounts.

12A:9-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts.

(a) Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

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

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part,

this chapter, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

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

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

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

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

21. N.J.S.12A:9-305 is amended to read as follows:

Law governing perfection and priority of security interests in investment property.

12A:9-305. Law Governing Perfection and Priority of Security Interests in Investment Property.

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

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

(2) The local law of the issuer's jurisdiction as specified in 12A:8-110 d. governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in 12A:8-110 e. governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

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

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

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

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

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

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

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

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

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

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

securities intermediary; and

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

22. N.J.S.12A:9-306 is amended to read as follows:

Law governing perfection and priority of security interests in letter-of-credit rights.

12A:9-306. Law Governing Perfection and Priority of Security Interests in Letter-of-Credit Rights.

(a) Governing law: issuer's or nominated person's jurisdiction. Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 12A:5-116.

(c) When section not applicable. This section does not apply to a security interest that is perfected only under 12A:9-308 (d).

23. N.J.S.12A:9-307 is amended to read as follows:

Location of debtor.

12A:9-307. Location of Debtor.

(a) "Place of business." In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, 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 with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) Location of registered organization organized under state law. A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) Continuation of location: change in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. A foreign air carrier under the Federal Aviation Act of 1958, as amended (49 U.S.C. s.1301 et seq.), is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this part. This section applies only for purposes of this part.

24. N.J.S.12A:9-308 is amended to read as follows:

When security interest or agricultural lien is perfected; continuity of perfection.

12A:9-308. When Security Interest or Agricultural Lien Is Perfected; Continuity of Perfection.

(a) Perfection of security interest. Except as otherwise provided in this section and 12A:9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in 12A:9-310 through 12A:9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in 12A:9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

(d) Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

25. N.J.S.12A:9-309 is amended to read as follows:

Security interest perfected upon attachment.

12A:9-309. Security Interest Perfected upon Attachment.

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in 12A:9-311 (b) with respect to consumer goods that are subject to a statute or treaty described in 12A:9-311 (a);

- (2) an assignment of accounts or payment intangibles which 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;
- (3) a sale of a payment intangible;
- (4) a sale of a promissory note;
- (5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) a security interest arising under 12A:2-401, 12A:2-505, 12A:2-711(3), 12A:2A-508(5), until the debtor obtains possession of the collateral;
- (7) security interest of a collecting bank arising under 12A:4-210;
- (8) a security interest of an issuer or nominated person arising under 12A:5-118;
- (9) a security interest arising in the delivery of a financial asset under 12A:9-206 (c);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

26. N.J.S.12A:9-310 is amended to read as follows:

When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

12A:9-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.

(a) General rule: perfection by filing. Except as otherwise provided in subsection (b) and 12A:9-312 (b), a financing statement must be filed to perfect all security interests and agricultural liens.

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

- (1) that is perfected under 12A:9-308 (d), (e), (f) or (g);
- (2) that is perfected under 12A:9-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in of 12A:9-311 (a);
- (4) in goods in possession of a bailee which is perfected under 12A:9-312 (d) (1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under 12A:9-312 (e), (f) or (g);
- (6) in collateral in the secured party's possession under 12A:9-313;
- (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under 12A:9-313;
- (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under 12A:9-314;
- (9) in proceeds which is perfected under 12A:9-315; or
- (10) that is perfected under 12A:9-316.

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

27. N.J.S.12A:9-311 is amended to read as follows:

Perfection of security interests in property subject to certain statutes, regulations, and treaties.

12A:9-311. Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties.

(a) Security interest subject to other law. Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in

property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 12A:9-310 (a);

(2) the "motor vehicle certificate of ownership law," R.S.39:10-1 et seq. and the "Boat Ownership Certificate Act," P.L.1984, c.152 (C.12:7A-1 et seq.) or successor statutes or law; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d), 12A:9-313 and 12A:9-316 (d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. Except as otherwise provided in subsection (d) and 12A:9-316 (d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) Inapplicability to certain inventory. During any period in which collateral subject to a statute specified in subsection (a) (2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

28. N.J.S.12A:9-312 is amended to read as follows:

Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

12A:9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in 12A:9-315 (c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under 12A:9-314;

(2) and except as otherwise provided in 12A:9-308 (d), a security interest in a letter-of-credit right may be perfected only by control under 12A:9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under 12A:9-313.

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

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

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

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

may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

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

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

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

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

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

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

29. N.J.S.12A:9-313 is amended to read as follows:

When possession by or delivery to secured party perfects security interest without filing.

12A:9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 12A:8-301.

(b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 12A:9-316 (d).

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

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

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

(d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 12A:8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. A person in possession of collateral is not required to

acknowledge that it holds possession for a secured party's benefit.

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

(1) the acknowledgment is effective under subsection (c) or 12A:8-301 (a), even if the acknowledgment violates the rights of a debtor; and

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

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

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

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

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

30. N.J.S.12A:9-314 is amended to read as follows:

Perfection by control.

12A:9-314. Perfection by Control.

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under 12A:9-104, 12A:9-105 or 12A:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under 12A:9-106 from the time the secured party obtains control and remains perfected by control until:

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

(2) one of the following occurs:

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

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

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

31. N.J.S.12A:9-315 is amended to read as follows:

Secured party's rights on disposition of collateral and in proceeds.

12A:9-315. Secured Party's Rights on Disposition of Collateral and in Proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this chapter and in 12A:2-403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

- (1) if the proceeds are goods, to the extent provided by 12A:9-336; and
- (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.
- (c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
- (d) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:
 - (1) the following conditions are satisfied:
 - (A) a filed financing statement covers the original collateral;
 - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (C) the proceeds are not acquired with cash proceeds;
 - (2) the proceeds are identifiable cash proceeds; or
 - (3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.
- (e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d) (1) becomes unperfected at the later of:
 - (1) when the effectiveness of the filed financing statement lapses under 12A:9-515 or is terminated under 12A:9-513; or
 - (2) the 21st day after the security interest attaches to the proceeds.

32. N.J.S.12A:9-316 is amended to read as follows:

Continued perfection of security interest following change in governing law.

12A:9-316. Continued Perfection of Security Interest Following Change in Governing Law.

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in 12A:9-301 (1) or 12A:9-305 (c) remains perfected until the earliest of:

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

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

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

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

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

(e) When subsection (d) security interest becomes unperfected against purchasers. A security

interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under 12A:9-311 (b) or 12A:9-313 are not satisfied before the earlier of:

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

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

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

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

33. N.J.S.12A:9-317 is amended to read as follows:

Interests that take priority over or take free of security interest or agricultural lien.

12A:9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under 12A:9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one of the conditions specified in 12A:9-203 (b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in 12A:9-320 and 12A:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the

time the security interest attaches and the time of filing.

34. N.J.S.12A:9-318 is amended to read as follows:

No Interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

12A:9-318. No Interest Retained in Right to Payment That Is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers.

(a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

35. N.J.S.12A:9-319 is amended to read as follows:

Rights and title of consignee with respect to creditors and purchasers.

12A:9-319. Rights and Title of Consignee with Respect to Creditors and Purchasers.

(a) Consignee has consignor's rights. Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

36. N.J.S.12A:9-320 is amended to read as follows:

Buyer of goods.

12A:9-320. Buyer of Goods.

(a) Buyer in ordinary course of business. Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by 12A:9-316 (a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under 12A:9-313.

37. N.J.S.12A:9-321 is amended to read as follows:

Licensee of general intangible and lessee of goods in ordinary course of business.

12A:9-321. Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business.

(a) "Licensee in ordinary course of business." In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

38. N.J.S.12A:9-322 is amended to read as follows:

Priorities among conflicting security interests in and agricultural liens on same collateral.

12A:9-322. Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral.

(a) General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a) (1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under 12A:9-327, 12A:9-328, 12A:9-329, 12A:9-330, or 12A:9-331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral

rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e) are subject to:

- (1) subsection (g) and the other provisions of this part;
- (2) 12A:4-210 with respect to a security interest of a collecting bank;
- (3) 12A:5-118 with respect to a security interest of an issuer or nominated person; and
- (4) 12A:9-110 with respect to a security interest arising under Chapter 2 or 2A.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

39. N.J.S.12A:9-323 is amended to read as follows:

Future advances.

12A:9-323. Future Advances.

(a) When priority based on time of advance. Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under 12A:9-322 (a) (1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

- (A) under 12A:9-309 when it attaches; or
- (B) temporarily under 12A:9-312 (e), (f) or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 12A:9-309 or 12A:9-312 (e), (f) or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

- (1) without knowledge of the lien; or
- (2) pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes, or a consignor.

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

- (1) the time the secured party acquires knowledge of the buyer's purchase; or
- (2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

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

- (1) the time the secured party acquires knowledge of the lease; or
- (2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

40. N.J.S.12A:9-324 is amended to read as follows:

Priority of purchase-money security interests.

12A:9-324. Priority of Purchase-Money Security Interests.

(a) General rule: purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in 12A:9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in 12A:9-330, and, except as otherwise provided in 12A:9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

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

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. Subsections (b) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 12A:9-312 (f), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority. Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in 12A:9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

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

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. Subsections (d) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under 12A:9-312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in 12A:9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies

for priority in the same collateral under subsection (a), (b), (d) or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, 12A:9-322 (a) applies to the qualifying security interests.

41. N.J.S.12A:9-325 is amended to read as follows:

Priority of security interests in transferred collateral.

12A:9-325. Priority of Security Interests in Transferred Collateral.

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under 12A:9-322 (a) or 12A:9-324; or

(2) arose solely under 12A:2-711(3) or 12A:2A-508(5).

42. N.J.S.12A:9-326 is amended to read as follows:

Priority of security interests created by new debtor.

12A:9-326. Priority of Security Interests Created by New Debtor.

(a) Subordination of security interest created by new debtor. Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under 12A:9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under 12A:9-508.

(b) Priority under other provisions; multiple original debtors. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under 12A:9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

43. N.J.S.12A:9-327 is amended to read as follows:

Priority of security interests in deposit account.

12A:9-327. Priority of Security Interests in Deposit Account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under 12A:9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under 12A:9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under 12A:9-104 (a) (3) has priority over a security interest held by the bank with which the deposit account is maintained.

44. N.J.S.12A:9-328 is amended to read as follows:

Priority of security interests in investment property.

12A:9-328. Priority of Security Interests in Investment Property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under 12A:9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under 12A:9-106 rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under 12A:8-106 (d) (1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 12A:8-106 (d) (2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 12A:8-106 (d) (3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in 12A:9-106 (b) (2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under 12A:9-313 (a) and not by control under 12A:9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under 12A:9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by 12A:9-322 and 12A:9-323.

45. N.J.S.12A:9-329 is amended to read as follows:

Priority of security interests in letter-of-credit right.

12A:9-329. Priority of Security Interests in Letter-of-Credit Right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under 12A:9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under 12A:9-314 rank according to priority in time of obtaining control.

46. N.J.S.12A:9-330 is amended to read as follows:

Priority of purchaser of chattel paper or instrument.

12A:9-330. Priority of Purchaser of Chattel Paper or Instrument.

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

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 12A:9-105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under 12A:9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in 12A:9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) 12A:9-322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in 12A:9-331 (a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

47. N.J.S.12A:9-331 is amended to read as follows:

Priority of rights of purchasers of instruments, documents, and securities under other chapters; priority of interests in financial assets and security entitlements under chapter 8.

12A:9-331. Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Chapters; Priority of Interests in Financial Assets and Security Entitlements Under Chapter 8.

(a) Rights under Chapters 3, 7, and 8 not limited. This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.

(b) Protection under Chapter 8. This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8.

(c) Filing not notice. Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

48. N.J.S.12A:9-332 is amended to read as follows:

Transfer of money; transfer of funds from deposit account.

12A:9-332. Transfer of Money; Transfer of Funds from Deposit Account.

(a) Transferee of money. A transferee of money takes the money free of a security interest

unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

49. N.J.S.12A:9-333 is amended to read as follows:

Priority of certain liens arising by operation of law.

12A:9-333. Priority of Certain Liens Arising by Operation of Law.

(a) "Possessory lien." In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

50. N.J.S.12A:9-334 is amended to read as follows:

Priority of security interests in fixtures and crops.

12A:9-334. Priority of Security Interests in Fixtures and Crops.

(a) Security interest in fixtures under this chapter. A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or the owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on real property obtained by legal or equitable

proceedings after the security interest was perfected by any method permitted by this chapter; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in 12A:9-311 (a) (2).

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

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

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of paragraph (f) (2) priority. The priority of the security interest under paragraph (f) (2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) prevails over any inconsistent provisions of State law.

51. N.J.S.12A:9-335 is amended to read as follows:

Accessions.

12A:9-335. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under 12A:9-311 (b).

(e) Removal of accession after default. After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

52. N.J.S.12A:9-336 is amended to read as follows:

Commingled goods.

12A:9-336. Commingled Goods.

(a) "Commingled goods." In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

53. N.J.S.12A:9-337 is amended to read as follows:

Priority of security interests in goods covered by certificate of title.

12A:9-337. Priority of Security Interests in Goods Covered by Certificate of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under 12A:9-311 (b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

54. N.J.S.12A:9-338 is amended to read as follows:

Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

12A:9-338. Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 12A:9-516 (b) (5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

55. N.J.S.12A:9-340 is amended to read as follows:

Effectiveness of right of recoupment or set-off against deposit account.

12A:9-340. Effectiveness of Right of Recoupment or Set-off Against Deposit Account.

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under 12A:9-104 (a) (3), if the set-off is based on a claim against the debtor.

56. N.J.S.12A:9-341 is amended to read as follows:

Bank's Rights and Duties with Respect to Deposit Account.

12A:9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in 12A:9-340 (c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

57. N.J.S.12A:9-342 is amended to read as follows:

Bank's right to refuse to enter into or disclose existence of control agreement.

12A:9-342. Bank's Right to Refuse to Enter into or Disclose Existence of Control Agreement.

This chapter does not require a bank to enter into an agreement of the kind described in 12A:9-104 (a) (2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

58. N.J.S.12A:9-401 is amended to read as follows:

Alienability of debtor's rights.

12A:9-401. Alienability of Debtor's Rights.

(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) and 12A:9-406, 12A:9-407, 12A:9-408 and 12A:9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.

(b) Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

59. N.J.S.12A:9-403 is amended to read as follows:

Agreement not to assert defenses against assignee.

12A:9-403. Agreement Not to Assert Defenses Against Assignee.

(a) "Value." In this section, "value" has the meaning provided in 12A:3-303 a.

(b) Agreement not to assert claim or defense. Except as otherwise provided in this section,

an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith;
- (3) without notice of a claim of a property or possessory right to the property assigned; and
- (4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 12A:3-305 a.

(c) When subsection (b) not applicable. Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 12A:3-305 b.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) the record has the same effect as if the record included such a statement; and
- (2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. Except as otherwise provided in subsection (d), this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

60. N.J.S.12A:9-404 is amended to read as follows:

Rights acquired by assignee; claims and defenses against assignee.

12A:9-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.

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

- (1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

61. N.J.S.12A:9-405 is amended to read as follows:

Modification of assigned contract.

12A:9-405. Modification of Assigned Contract.

(a) Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Applicability of subsection (a). Subsection (a) applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under 12A:9-406 (a).

(c) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

62. N.J.S.12A:9-406 is amended to read as follows:

Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

12A:9-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.

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

(b) When notification ineffective. Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e), 12A:2A-303 and 12A:9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in 12A:2A-303 and 12A:9-407 and subject to subsections (h), (i) and (j), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subsection (b) (3) not waivable. Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b) (3).

(h) Rule for individual under other law. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f): R.S.34:15-29 (workers' compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.) (structured settlement agreements).

(j) Section prevails over specified inconsistent law. Except to the extent otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State, unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

63. N.J.S.12A:9-407 is amended to read as follows:

Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

12A:9-407. Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor's Residual Interest.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. Except as otherwise provided in 12A:2A-303 (7), a term described in subsection (a) (2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of 12A:2A-303 (4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

64. N.J.S.12A:9-408 is amended to read as follows:

Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

12A:9-408. Restrictions on Assignment of Promissory Notes, Health-care-insurance Receivables, and Certain General Intangibles Ineffective.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. Except as provided in subsection (e), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to

recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over specified inconsistent law. Except to the extent otherwise provided in subsection (f), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this State, unless the provision is contained in a statute of this State, refers expressly to this section and states that the provision prevails over this section.

(f) Inapplicability. Subsection (c) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c): R.S.34:15-29 (workers' compensation claims); section 13 of P.L.1970, c.13 (C.5:9-13) (State lottery winnings); and P.L.2001, c.139 (C.2A:16-63 et seq.) (structured settlement agreements).

65. N.J.S.12A:9-409 is amended to read as follows:

Restrictions on assignment of letter-of-credit rights ineffective.

12A:9-409. Restrictions on Assignment of Letter-of-credit Rights Ineffective.

(a) Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

66. N.J.S.12A:9-501 is amended to read as follows:

Filing office.

12A:9-501. Filing Office.

Filing offices.

(a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is :

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the Division of Commercial Recording or other office designated by Executive Order, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Division of Commercial Recording or other office designated by Executive Order. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

67. N.J.S.12A:9-502 is amended to read as follows:

Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

12A:9-502. Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement.

(a) Sufficiency of financing statement. Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. Except as otherwise provided in 12A:9-501 (b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) the record is recorded.

(d) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

68. N.J.S.12A:9-503 is amended to read as follows:

12A:9-503. Name of Debtor and Secured Party.

(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides 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) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a) (4) (B), names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. A financing statement may provide the name of more than one debtor and the name of more than one secured party.

69. N.J.S.12A:9-504 is amended to read as follows:

Indication of collateral.

12A:9-504. Indication of Collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to 12A:9-108; or

(2) an indication that the financing statement covers all assets or all personal property.

70. N.J.S.12A:9-505 is amended to read as follows:

Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

12A:9-505. Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions.

(a) Use of terms other than "debtor" and "secured party." A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in 12A:9-311 (a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor".

(b) Effect of financing statement under subsection (a). This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under 12A:9-311 (b), but the filing or compliance is not of itself

a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

71. N.J.S.12A:9-506 is amended to read as follows:

Effect of errors or omissions.

12A:9-506. Effect of Errors or Omissions.

(a) Minor errors and omissions. 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.

(b) Financing statement seriously misleading. Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 12A:9-503 (a) is seriously misleading.

(c) Financing statement not seriously misleading. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 12A:9-503 (a), the name provided does not make the financing statement seriously misleading.

(d) "Debtor's correct name." For purposes of 12A:9-508 (b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

72. N.J.S.12A:9-507 is amended to read as follows:

Effect of certain events on effectiveness of financing statement.

12A:9-507. Effect of Certain Events on Effectiveness of Financing Statement.

(a) Disposition. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. Except as otherwise provided in subsection (c) and 12A:9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under 12A:9-506.

(c) Change in debtor's name. If a debtor so changes its name that a filed financing statement becomes seriously misleading under 12A:9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

73. N.J.S.12A:9-508 is amended to read as follows:

Effectiveness of financing statement if new debtor becomes bound by security agreement.

12A:9-508. Effectiveness of Financing Statement If New Debtor Becomes Bound by Security Agreement.

(a) Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under 12A:9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under 12A:9-203 (d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under 12A:9-203 (d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under 12A:9-507 (a).

74. N.J.S.12A:9-509 is amended to read as follows:

Persons entitled to file record.

12A:9-509. Persons Entitled to File a Record.

(a) Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under 12A:9-315 (a) (2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under 12A:9-315 (a) (1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under 12A:9-315 (a) (2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 12A:9-513 (a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

75. N.J.S.12A:9-510 is amended to read as follows:

Effectiveness of filed record.

12A:9-510. Effectiveness of Filed Record.

(a) Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under 12A:9-509.

(b) Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. A continuation statement that is not filed within the six-month period prescribed by 12A:9-515 (d) is ineffective.

76. N.J.S.12A:9-511 is amended to read as follows:

Secured party of record.

12A:9-511. Secured Party of Record.

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 12A:9-514 (a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 12A:9-514 (b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

77. N.J.S.12A:9-512 is amended to read as follows:

Amendment of financing statement.

12A:9-512. Amendment of Financing Statement.

(a) Amendment of information in financing statement. Subject to 12A:9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

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

(2) if the amendment relates to an initial financing statement filed in a filing office described in 12A:9-501 (a) (1), provides the information specified in 12A:9-502 (b).

(b) Period of effectiveness not affected. Except as otherwise provided in 12A:9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

78. N.J.S.12A:9-513 is amended to read as follows:

Termination statement.

12A:9-513. Termination Statement.

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from

a debtor.

(c) Other collateral. In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in 12A:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in 12A:9-510, for purposes of 12A:9-519 (g), 12A:9-522 (a) and 12A:9-523 (c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

79. N.J.S.12A:9-514 is amended to read as follows:

Assignment of powers of secured party of record.

12A:9-514. Assignment of Powers of Secured Party of Record.

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

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

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under 12A:9-502 (c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the Uniform Commercial Code.

80. N.J.S.12A:9-515 is amended to read as follows:

Duration and effectiveness of financing statement; effect of lapsed financing statement.

12A:9-515. Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement.

(a) Five-year effectiveness. Except as otherwise provided in subsections (b), (e), (f) and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. Except as otherwise provided in subsections (e), (f) and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement

ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) Effect of filing continuation statement. Except as otherwise provided in 12A:9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. A record of mortgage that is effective as a financing statement filed as a fixture filing under 12A:9-502 (c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

(h) Bondable transition property. If a filed financing statement relates to a security interest in bondable transition property and the financing statement so states, it is effective until a termination statement is filed.

81. N.J.S.12A:9-516 is amended to read as follows:

What constitutes filing; effectiveness of filing.

12A:9-516. What Constitutes Filing; Effectiveness of Filing.

(a) What constitutes filing. Except as otherwise provided in subsection (b), 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.

(b) Refusal to accept record; filing does not occur. Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by 12A:9-512 or 12A:9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under 12A:9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed or recorded in the filing office described in 12A:9-501 (a) (1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment

relates, the record does not:

- (A) provide a mailing address for the debtor;
- (B) indicate whether the debtor is an individual or an organization; or
- (C) if the financing statement indicates that the debtor is an organization, provide:
 - (i) a type of organization for the debtor;
 - (ii) a jurisdiction of organization for the debtor; or
 - (iii) an organizational identification number for the debtor or indicate that the debtor has none;
- (6) in the case of an assignment reflected in an initial financing statement under 12A:9-514 (a) or an amendment filed under 12A:9-514 (b), the record does not provide a name and mailing address for the assignee; or
- (7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by 12A:9-515 (d).
- (c) Rules applicable to subsection (b). For purposes of subsection (b):
 - (1) a record does not provide information if the filing office is unable to read or decipher the information; and
 - (2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement.
- (d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

82. N.J.S.12A:9-518 is amended to read as follows:

Claim concerning inaccurate or wrongfully filed record.

12A:9-518. Claim Concerning Inaccurate or Wrongfully Filed Record.

- (a) Correction statement. A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.
- (b) Sufficiency of correction statement. A correction statement must:
 - (1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
 - (2) indicate that it is a correction statement; and
 - (3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
- (c) Record not affected by correction statement. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

83. N.J.S.12A:9-519 is amended to read as follows:

Numbering, maintaining, and indexing records; communicating information provided in records.

12A:9-519. Numbering, Maintaining, and Indexing Records; Communicating Information Provided in Records.

- (a) Filing office duties. For each record filed in a filing office, the filing office shall:
 - (1) assign a unique number to the filed record;
 - (2) create a record that bears the number assigned to the filed record and the date and time of filing;
 - (3) maintain the filed record for public inspection; and
 - (4) index the filed record in accordance with subsections (c), (d) and (e).
- (b) File number. A file number assigned after January 1, 2002, must include a digit that:
 - (1) is mathematically derived from or related to the other digits of the file number; and
 - (2) aids the filing office in determining whether a number communicated as the file number

includes a single-digit or transpositional error.

(c) Indexing: general. Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing: real-property-related financing statement. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this State provides for indexing of records or mortgages under the name of the mortgagees, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if the indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under 12A:9-514 (a) or an amendment filed under 12A:9-514 (b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under 12A:9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Inapplicability to real property related filing office. Subsections (b) and (h) do not apply to a filing office described in 12A:9-501 (a) (1).

84. N.J.S.12A:9-520 is amended to read as follows:

Acceptance and refusal to accept record.

12A:9-520. Acceptance and Refusal to Accept Record.

(a) Mandatory refusal to accept record. A filing office shall refuse to accept a record for filing for a reason set forth in 12A:9-516 (b) and may refuse to accept a record for filing only for a reason set forth in 12A:9-516 (b).

(b) Communication concerning refusal. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in 12A:9-501 (a) (2), in no event more than two business days after the filing office receives the record.

(c) When filed financing statement effective. A filed financing statement satisfying 12A:9-502 (a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, 12A:9-338 applies to a filed financing statement providing information described in 12A:9-516 (b) (5) which is incorrect at the time the financing statement is filed.

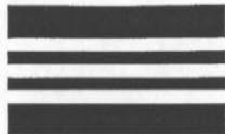
(d) Separate application to multiple debtors. If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

85. N.J.S.12A:9-521 is amended to read as follows:

Uniform form of written financing statement and amendment.

12A:9-521. Uniform Form of Written Financing Statement and Amendment.

(a) Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in 12A:9-516 (b):



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names					
1a. ORGANIZATION'S NAME					
OR					
1b. INDIVIDUAL'S LAST NAME		1c. FIRST NAME	1d. MIDDLE NAME	1e. SUFFIX	
1f. MAILING ADDRESS			1g. CITY	1h. STATE	1i. POSTAL CODE
					1j. COUNTRY
1k. TAX ID #: SSN OR EIN	1l. ADD'L INFO RE ORGANIZATION DEBTOR	1m. TYPE OF ORGANIZATION	1n. JURISDICTION OF ORGANIZATION	1o. ORGANIZATIONAL ID #, if any	
				<input type="checkbox"/> NONE	
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names					
2a. ORGANIZATION'S NAME					
OR					
2b. INDIVIDUAL'S LAST NAME		2c. FIRST NAME	2d. MIDDLE NAME	2e. SUFFIX	
2f. MAILING ADDRESS			2g. CITY	2h. STATE	2i. POSTAL CODE
					2j. COUNTRY
2k. TAX ID #: SSN OR EIN	2l. ADD'L INFO RE ORGANIZATION DEBTOR	2m. TYPE OF ORGANIZATION	2n. JURISDICTION OF ORGANIZATION	2o. ORGANIZATIONAL ID #, if any	
				<input type="checkbox"/> NONE	
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)					
3a. ORGANIZATION'S NAME					
OR					
3b. INDIVIDUAL'S LAST NAME		3c. FIRST NAME	3d. MIDDLE NAME	3e. SUFFIX	
3f. MAILING ADDRESS			3g. CITY	3h. STATE	3i. POSTAL CODE
					3j. COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> JAG. LIEN	<input type="checkbox"/> NON-UCC FILING	
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable.	7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) if applicable.		ADDITIONAL FEE: <input type="checkbox"/> optional		<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA							

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADDL. INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR			
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

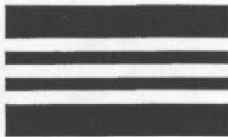
16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.
Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.
 Debtor is a TRANSMITTING UTILITY
 Filed in connection with a Manufactured-Home Transaction -- effective 30 years
 Filed in connection with a Public-Finance Transaction -- effective 30 years

(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in 12A:9-516 (b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY	

1a. INITIAL FINANCING STATEMENT FILE #	1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.
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2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g, (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME				
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
<input type="checkbox"/> NONE				

8. AMENDMENT (COLLATERAL CHANGE): check only one box.
Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME				
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME		
OR		
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

86. N.J.S.12A:9-522 is amended to read as follows:

Maintenance and destruction of records.

12A:9-522. Maintenance and Destruction of Records.

(a) Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under 12A:9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

87. N.J.S.12A:9-523 is amended to read as follows:

Information from filing office; sale or license of records.

12A:9-523. Information from Filing Office; Sale or License of Records.

(a) Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to 12A:9-519 (a) (1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to 12A:9-519 (a) (1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) Acknowledgment of filing other record. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to 12A:9-519 (a) (1); and

(3) the date and time of the filing of the record.

(c) Communication of requested information. The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) has not lapsed under 12A:9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under 12A:9-515 and a record of which is maintained by the filing office under 12A:9-522 (a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) Medium for communicating information. In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) Public availability of records. At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

88. N.J.S.12A:9-524 is amended to read as follows:

Delay by filing office.

12A:9-524. Delay by Filing Office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

- (1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and
- (2) the filing office exercises reasonable diligence under the circumstances.

89. N.J.S.12A:9-525 is amended to read as follows:

Fees.

12A:9-525. Fees.

(a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (d), the fees for filing and indexing records under this part are:

- (1) \$25 for financing statement;
- (2) \$25 for continuation statement;
- (3) \$25 for amendment statement;
- (4) \$25 for partial release;
- (5) \$25 for assignment;
- (6) \$25 termination statement; and
- (7) \$1 for copy of any filed financing statement.

(b) Number of names. Except as otherwise provided in subsection (d), the number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) Response to information request. The fee for responding to a request for information from the filing office, including for issuing a certificate of search showing whether there is on file any financing statement naming a particular debtor, is \$25.

(d) Record of mortgage. This section does not require a fee with respect to a record of mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 12A:9-502 (c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

90. N.J.S.12A:9-526 is amended to read as follows:

Filing-office rules.

12A:9-526. Filing-Office Rules.

(a) Adoption of filing-office rules. The Division of Commercial Recording or other office designated by Executive Order shall adopt and publish rules to implement this chapter. The filing-office rules must be:

- (1) consistent with this chapter; and
- (2) adopted and published in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(b) Harmonization of rules. To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the Division of Commercial Recording, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules, shall:

- (1) consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- (3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

91. N.J.S.12A:9-601 is amended to read as follows:

Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

12A:9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in 12A:9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under 12A:9-104, 12A:9-105, 12A:9-106 or 12A:9-107 has the rights and duties provided in 12A:9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) and 12A:9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in 12A:9-607 (c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

92. N.J.S.12A:9-602 is amended to read as follows:

Waiver and variance of rights and duties.

12A:9-602. Waiver and Variance of Rights and Duties.

Except as otherwise provided in 12A:9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) 12A:9-207 (b) (4) (C), which deals with use and operation of the collateral by the secured party;

(2) 12A:9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) 12A:9-607 (c), which deals with collection and enforcement of collateral;

(4) 12A:9-608 (a), and 12A:9-615 (c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) 12A:9-608 (a) and 12A:9-615 (d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) 12A:9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) 12A:9-610 (b), 12A:9-611, 12A:9-613 and 12A:9-614, which deal with disposition of collateral;

(8) 12A:9-615 (f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) 12A:9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) 12A:9-620, 12A:9-621 and 12A:9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) 12A:9-623, which deals with redemption of collateral;

(12) 12A:9-624, which deals with permissible waivers; and

(13) 12A:9-625 and 12A:9-626, which deal with the secured party's liability for failure to comply with this chapter.

93. N.J.S.12A:9-603 is amended to read as follows:

Agreement on standards concerning rights and duties.

12A:9-603. Agreement on Standards Concerning Rights and Duties.

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in 12A:9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. Subsection (a) does not apply to the duty under 12A:9-609 to refrain from breaching the peace.

94. N.J.S.12A:9-604 is amended to read as follows:

Procedure if security agreement covers real property or fixtures.

12A:9-604. Procedure If Security Agreement Covers Real Property or Fixtures.

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

95. N.J.S.12A:9-605 is amended to read as follows:

Unknown debtor or secondary obligor.

12A:9-605. Unknown Debtor or Secondary Obligor.

A secured party does not owe a duty based on its status as secured party:

(1) to a person who is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) that the person is a debtor; and
- (B) the identity of the person.

96. N.J.S.12A:9-607 is amended to read as follows:

Collection and enforcement by secured party.

12A:9-607. Collection and Enforcement by Secured Party.

(a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under 12A:9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligation of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under 12A:9-104

(a) (1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under 12A:9-104

(a) (2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. If necessary to enable a secured party to exercise under subsection (a) (3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection (c), reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

97. N.J.S.12A:9-608 is amended to read as follows:

Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

12A:9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.

(a) Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under 12A:9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1) (C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under 12A:9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

98. N.J.S.12A:9-609 is amended to read as follows:

Secured party's right to take possession after default.

12A:9-609. Secured Party's Right to Take Possession after Default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under 12A:9-610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

99. N.J.S.12A:9-610 is amended to read as follows:

Disposition of collateral after default.

12A:9-610. Disposition of Collateral after Default.

(a) Disposition after default. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

100. N.J.S.12A:9-611 is amended to read as follows:

Notification before disposition of collateral.

12A:9-611. Notification Before Disposition of Collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d), a secured party that disposes of collateral under 12A:9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 12A:9-311 (a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

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

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c) (3) (B); and

(2) before the notification date, the secured party:
(A) did not receive a response to the request for information; or
(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

101. N.J.S.12A:9-612 is amended to read as follows:

Timeliness of notification before disposition of collateral.

12A:9-612. Timeliness of Notification Before Disposition of Collateral.

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) 10-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

102. N.J.S.12A:9-613 is amended to read as follows:

Contents and form of notification before disposition of collateral: general.

12A:9-613. Contents and Form of Notification Before Disposition of Collateral: General.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

[(1)] (A) information not specified by that paragraph; or

[(2)] (B) minor errors that are not seriously misleading.

[d.] (4) A particular phrasing of the notification is not required.

[e.] (5) The following form of notification and the form appearing in 12A:9-614 [c.] (3), when completed, each provides sufficient information: NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) are not an addressee)

(For a public disposition:)

We will sell or lease or license, as applicable the (describe collateral) to the highest qualified bidder in public as follows:

Day and Date:

Time:

Place:

(For a private disposition:)

We will sell or lease or license, as applicable the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$) . You may request an accounting by calling us at (telephone number)

(End of Form)

103. N.J.S.12A:9-614 is amended to read as follows:

Contents and form of notification before disposition of collateral: consumer-goods transaction.

12A:9-614. Contents and Form of Notification Before Disposition of Collateral: Consumer-goods Transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in 12A:9-613 (1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under 12A:9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identification of Transaction)

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

(For a public disposition:)

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

Date:

Time:

Place:

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

(For a private disposition:)

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

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

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

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) or write us at (secured party's address) and request a written explanation. We will charge you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

If you need more information about the sale call us at (telephone number) or write us at (secured party's address).

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any.)

(End of Form)

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in

information not required by paragraph (1), unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of paragraph (3), law other than this chapter determines the effect of including information not required by paragraph (1).

104. N.J.S.12A:9-615 is amended to read as follows:

Application of proceeds of disposition; liability for deficiency and right to surplus.

12A:9-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under 12A:9-610 in the following order:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a) (3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under 12A:9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a) (4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. A secured party that receives cash

proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

- (1) takes the cash proceeds free of the security interest or other lien;
- (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

105. N.J.S.12A:9-616 is amended to read as follows:

Explanation of calculation of surplus or deficiency.

12A:9-616. Explanation of Calculation of Surplus or Deficiency.

(a) Definitions. In this section:

- (1) "Explanation" means a writing that:
 - (A) states the amount of the surplus or deficiency;
 - (B) provides an explanation, in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
 - (C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

- (A) authenticated by a debtor or consumer obligor;
 - (B) requesting that the recipient provide an explanation; and
 - (C) sent after disposition of the collateral under 12A:9-610.
- (b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under 12A:9-615, the secured party shall:

- (1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
 - (A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
 - (B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. To comply with subsection (a) (1) (B), a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

- (2) the amount of proceeds of the disposition;
- (3) the aggregate amount of the obligations after deducting the amount of proceeds;
- (4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of

interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

(d) Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b) (1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

106. N.J.S.12A:9-617 is amended to read as follows:

Rights of transferee of collateral.

12A:9-617. Rights of Transferee of Collateral.

(a) Effects of disposition. A secured party's disposition of collateral after default:

- (1) transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) discharges the security interest under which the disposition is made; and
- (3) discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest or agricultural lien under which the disposition is made; and
- (3) any other security interest or other lien.

107. N.J.S.12A:9-618 is amended to read as follows:

Rights and duties of certain secondary obligors.

12A:9-618. Rights and Duties of Certain Secondary Obligors.

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. An assignment, transfer, or subrogation described in subsection (a):

- (1) is not a disposition of collateral under 12A:9-610; and
- (2) relieves the secured party of further duties under this chapter.

108. N.J.S.12A:9-619 is amended to read as follows:

Transfer of record or legal title.

12A:9-619. Transfer of Record or Legal Title.

(a) "Transfer statement." In this section, "transfer statement" means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the

collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

109. N.J.S.12A:9-620 is amended to read as follows:

Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

12A:9-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) the debtor consents to the acceptance under subsection (c);

(2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under 12A:9-621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to 12A:9-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) Debtor's consent. For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) Effectiveness of notification. To be effective under subsection (a) (2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to 12A:9-621, within 20 days after notification was sent to that person; and

(2) in other cases:

(A) within 20 days after the last notification was sent pursuant to 12A:9-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 12A:9-610 within the time specified in subsection (f) if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

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

(1) within 90 days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

110. N.J.S.12A:9-621 is amended to read as follows:

Notification of proposal to accept collateral.

12A:9-621. Notification of Proposal to Accept Collateral.

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 12A:9-311 (a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

111. N.J.S.12A:9-622 is amended to read as follows:

Effect of acceptance of collateral.

12A:9-622. Effect of Acceptance of Collateral.

(a) Effect of acceptance. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. A subordinate

interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this chapter.

112. N.J.S.12A:9-623 is amended to read as follows:

Right to redeem collateral.

12A:9-623. Right to Redeem Collateral.

(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in 12A:9-615 (a) (1).

(c) When redemption may occur. A redemption may occur at any time before a secured party:

(1) has collected collateral under 12A:9-607;

(2) has disposed of collateral or entered into a contract for its disposition under 12A:9-610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under 12A:9-622.

113. N.J.S.12A:9-624 is amended to read as follows:

Waiver.

12A:9-624. Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under 12A:9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under 12A:9-620 (e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 12A:9-623 only by an agreement to that effect entered into and authenticated after default.

114. N.J.S.12A:9-625 is amended to read as follows:

Remedies for secured party's failure to comply with chapter.

12A:9-625. Remedies for Secured Party's Failure to Comply with Chapter.

(a) Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. Subject to subsections (c), (d) and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. Except as otherwise provided in 12A:9-628:

(1) a person [who] that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection [b. of this section] (b) for its loss; and

(2) if the collateral is consumer goods, a person [who] that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

[d.] (d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is

eliminated under 12A:9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 12A:9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) fails to comply with 12A:9-207;

(2) fails to comply with 12A:9-208;

(3) files a record that the person is not entitled to file under 12A:9-509 (a);

(4) fails to cause the secured party of record to file or send a termination statement as required by 12A:9-513 (a) or (c);

(5) fails to comply with 12A:9-616 (b) (1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with 12A:9-616 (b) (2).

(f) Statutory damages: noncompliance with 12A:9-210. A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under 12A:9-210. A recipient of a request under 12A:9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with 12A:9-210. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 12A:9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

115. N.J.S.12A:9-626 is amended to read as follows:

Action in which deficiency or surplus is in issue.

12A:9-626. Action in Which Deficiency or Surplus Is in Issue.

(a) Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in 12A:9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3) (B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under 12A:9-615 (f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

116. N.J.S.12A:9-627 is amended to read as follows:

Determination of whether conduct was commercially reasonable.

12A:9-627. Determination of Whether Conduct Was Commercially Reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
- (2) at the price current in any recognized market at the time of the disposition; or
- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
- (2) by a bona fide creditors' committee;
- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence of approval has no effect. Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

117. N.J.S.12A:9-628 is amended to read as follows:

Nonliability and limitation on liability of secured party; liability of secondary obligor.

12A:9-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.

(a) Limitation of liability of secured party for noncompliance with chapter. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and
- (2) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:

- (1) to a person who is a debtor or obligor, unless the secured party knows:
 - (A) that the person is a debtor or obligor;
 - (B) the identity of the person; and
 - (C) how to communicate with the person; or
- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) that the person is a debtor; and
- (B) the identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used,

acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under 12A:9-625 (c) (2) for its failure to comply with 12A:9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under 12A:9-625 (c) (2) more than once with respect to any one secured obligation.

118. N.J.S.12A:9-701 is amended to read as follows:

12A:9-701. Effective Date.

Effective date.

This chapter shall take effect on July 1, 2001. References in this part to "this chapter" are to Chapter 9 of the Uniform Commercial Code as enacted by P.L.2001, c.117 and P.L.2001, c.386. References in this part to "former Chapter 9" are to Chapter 9 of the Uniform Commercial Code (12A:9-101 et seq.) as in effect before July 1, 2001.

119. N.J.S.12A:9-702 is amended to read as follows:

Savings clause.

12A:9-702. Savings Clause.

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this chapter applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this chapter takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) and 12A:9-703 through 12A:9-709:

(1) transactions and liens that were not governed by former Chapter 9, were validly entered into or created before this chapter takes effect, and would be subject to this chapter if they had been entered into or created after this chapter takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this chapter takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this chapter or by the law that otherwise would apply if this chapter had not taken effect.

(c) Pre-effective-date proceedings. This chapter does not affect an action, case, or proceeding commenced before this chapter takes effect.

120. N.J.S.12A:9-703 is amended to read as follows:

Security interest perfected before effective date.

12A:9-703. Security Interest Perfected Before Effective Date.

(a) Continuing priority over lien creditor: perfection requirements satisfied. A security interest that is enforceable immediately before this chapter takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this chapter if, when this chapter takes effect, the applicable requirements for enforceability and perfection under this chapter are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. Except as otherwise provided in 12A:9-705, if, immediately before this chapter takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this chapter are not satisfied when this chapter takes effect, the security interest:

(1) is a perfected security interest for one year after this chapter takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under

12A:9-203 before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this chapter are satisfied before the year expires.

121. N.J.S.12A:9-704 is amended to read as follows:

Security interest unperfected before effective date.

12A:9-704. Security Interest Unperfected Before Effective Date. A security interest that is enforceable immediately before this chapter takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest for one year after this chapter takes effect;

(2) remains enforceable thereafter if the security interest becomes enforceable under 12A:9-203 when this chapter takes effect or within one year thereafter; and

(3) becomes perfected:

(A) without further action, when this chapter takes effect if the applicable requirements for perfection under this chapter are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

122. N.J.S.12A:9-705 is amended to read as follows:

Effectiveness of action taken before effective date.

12A:9-705. Effectiveness of Action Taken Before Effective Date.

(a) Pre-effective-date action; one-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this chapter takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this chapter takes effect, the action is effective to perfect a security interest that attaches under this chapter within one year after this chapter takes effect. An attached security interest becomes unperfected one year after this chapter takes effect unless the security interest becomes a perfected security interest under this chapter before the expiration of that period.

(b) Pre-effective-date filing. The filing of a financing statement before this chapter takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. This chapter does not render ineffective an effective financing statement that, before this chapter takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 12A:9-103. However, except as otherwise provided in subsections (d) and (e) and 12A:9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Continuation statement. The filing of a continuation statement after this chapter takes effect does not continue the effectiveness of the financing statement filed before this chapter takes effect. However, upon the timely filing of a continuation statement after this chapter takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this chapter takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c) (2) to transmitting utility financing statement. Subsection (c) (2) of this section applies to a financing statement that, before this chapter takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 12A:9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the

jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. A financing statement that includes a financing statement filed before this chapter takes effect and a continuation statement filed after this chapter takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

123. N.J.S.12A:9-706 is amended to read as follows:

When initial financing statement suffices to continue effectiveness of financing statement.

12A:9-706. When Initial Financing Statement Suffices to Continue Effectiveness of Financing Statement.

(a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in 12A:9-501 continues the effectiveness of a financing statement filed before this chapter takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter;

(2) the pre-effective-date financing statement was filed in an office in another state or another office in this State; and

(3) the initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness. The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before this chapter takes effect, for the period provided in former 12A:9-403 with respect to a financing statement; and

(2) if the initial financing statement is filed after this chapter takes effect, for the period provided in 12A:9-515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a), an initial financing statement shall:

(1) satisfy the requirements of Part 5 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

124. N.J.S.12A:9-707 is amended to read as follows:

Persons entitled to file initial financing statement or continuation statement.

12A:9-708. Persons Entitled to File Initial Financing Statement or Continuation Statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this chapter takes effect; or

(B) to perfect or continue the perfection of a security interest.

125. Title 12A, chapter 9 is supplemented as follows:

Amendment of pre-effective-date financing statement.

12A:9-707. Amendment of Pre-effective-date Financing Statement.

(a) "Pre-effective-date financing statement". In this section, "pre-effective-date financing statement" means a financing statement filed before this chapter takes effect.

(b) Applicable law. After this chapter takes effect, a person may add or delete collateral

covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this chapter takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in 12A:9-501;

(2) an amendment is filed in the office specified in 12A:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies 12A:9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies 12A:9-706(c) is filed in the office specified in 12A:9-501.

(d) Method of amending: continuation. If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under 12A:9-705(d) and (f) or 12A:9-706.

(e) Method of amending: additional termination rule. Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this chapter takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies 12A:9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement. The preceding sentence applies only to the office described in 12A:9-501(a)(2).

126. N.J.S.12A:9-708 is amended to read as follows:

Priority.

12A:9-709 Priority.

(a) Law governing priority. This chapter determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this chapter takes effect, former Chapter 9 determines priority.

(b) Priority if security interest becomes enforceable under 12A:9-203. For purposes of 12A:9-322 (a), the priority of a security interest that becomes enforceable under 12A:9-203 of this chapter dates from the time this chapter takes effect if the security interest is perfected under this chapter by the filing of a financing statement before this chapter takes effect which would not have been effective to perfect the security interest under former Chapter 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

127. Title 12A, chapter 9 is supplemented as follows:

Retroactivity provision.

12A:9-710. Retroactivity Provision.

This act, P.L.2001, c.386, amends and supplements P.L.2001, c.117 and shall take effect immediately and shall be applied retroactively to July 1, 2001.

If, on or after July 1, 2001 and prior to the effective date of this act, action required for the attachment, perfection or priority of a security interest under Post-Amendment Chapter 9 was taken, but was not heretofore effective, such action shall be effective when taken.

If, on or after July 1, 2001 and prior to the effective date of this act, action required for the attachment, perfection or priority of a security interest under Pre-Amendment Chapter 9 was taken and was heretofore effective, but is not effective under Post-Amendment Chapter 9, such action shall be deemed effective when taken if, within 60 days after the effective date of this act, any other action required under Post-Amendment Chapter 9 for such attachment, perfection or priority is taken, except to the extent that, after the effective date of this act and

before the time such other required action is taken, a purchaser has given value in reasonable reliance upon such other required action not having been taken.

As used in this section, "Pre-Amendment Chapter 9" means Chapter 9 of Title 12A of the New Jersey Statutes, P.L.2001, c.117 (12A:9-101 through 12A:9-708) as constituted before giving effect to this act, and "Post-Amendment Chapter 9" means Chapter 9 of Title 12A of the New Jersey Statutes (12A:9-101 through 12A:9-709) as amended and supplemented by this act.

128. Title 12A, chapter 1 is supplemented as follows:

Section captions.

12A:1-109. Section Captions.

Section captions are part of the Uniform Commercial Code. The subsection headings in Chapter 9 on Secured Transactions (12A:9-101 et seq.) are not parts of that chapter or of the Uniform Commercial Code.

129. N.J.S.12A:1-201 is amended to read as follows:

General definitions.

12A:1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters of the Uniform Commercial Code which are applicable to specific chapters or subchapters thereof, and unless the context otherwise requires, in the Uniform Commercial Code:

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

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

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in the Uniform Commercial Code (12A:1-205, 2-208 and 2A-207). Whether an agreement has legal consequences is determined by the provisions in the Uniform Commercial Code, if applicable; otherwise by the law of contracts (12A:1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

"Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person [who] that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial

satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or cause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by the Uniform Commercial Code and any other applicable rules of law. (Compare "Agreement.")

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

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document shall purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of the Uniform Commercial Code to the extent that under a particular agreement or document unlike units are treated as equivalents.

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

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

(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or accept and pay, where a credit so engages to purchase or discount a draft complying with the terms of the credit.

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

(23) A person is "insolvent" who either has ceased to pay the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when:

(a) The person has actual knowledge of it; or

(b) The person has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may

cease to be effective are not determined by the Uniform Commercial Code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to the person's attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by the person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to the attention of the individual if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within [this act] the Uniform Commercial Code.

(30) "Person" includes an individual or an organization (See 12A:1-102).

(31) "Presumption" or "presumed" means that the trier of fact shall find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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

(33) "Purchaser" means a person who takes by purchase.

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

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 12A:2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Chapter 9. Except as otherwise provided in 12A:2-505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (12A:2-401) is limited in effect to a reservation of a "security interest." Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the

lease not subject to termination by the lessee, and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

"Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

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

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

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

(43) "Unauthorized" signature or indorsement means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (12A:3-303, 12A:4-210 and 12A:4-211), a person gives "value" for rights if the person acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a pre-existing claim; or

(c) By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

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

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

130. N.J.S.12A:1-206 is amended to read as follows:

Statute of frauds for kinds of personal property not otherwise covered.

12A:1-206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

(1) Except in the cases described in subsection (2) a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) does not apply to contracts for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor to security agreements (12A:9-203).

131. N.J.S.12A:2A-103 is amended to read as follows:

Definitions and index of definitions.

12A:2A-103. Definitions and index of definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and who takes under the lease primarily for a personal, family, or household purpose.

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

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (12A:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

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

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

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

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or

performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions"12A:2A-310(1).

"Construction mortgage"12A:2A-309(1)(d).

"Encumbrance"12A:2A-309(1)(e).

"Fixtures"12A:2A-309(1)(a).

"Fixture filing"12A:2A-309(1)(b).

"Purchase money lease"12A:2A-309(1)(c).

(3) The following definitions in other Chapters apply to this Chapter:

"Account"12A: 9-102(a)(2).

"Between merchants"12A:2-104(3).

"Buyer"12A:2-103(1)(a).

"Chattel paper"12A:9-102(a)(12).

"Consumer goods"12A:9-102(a)(24).

"Document"12A:9-102(a)(31).

"Entrusting"12A:2-403(3).

"General intangible"12A:9-102(a)(42).

"Good faith"2A:2-103(1)(b).

"Instrument"12A:9-102(a)(47).

"Merchant"12A:2-104(1).

"Mortgage"12A:9-102(a)(55).

"Pursuant to commitment"12A:9-102(a)(68).

"Receipt"12A:2-103(1)(c).

"Sale"12A:2-106(1).

"Sale on approval"12A:2-326.

"Sale or return"12A:2-326.

"Seller"12A:2-103(1)(d).

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

132. N.J.S.12A:2A-307 is amended to read as follows:

Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

12A:2A-307. Priority of liens arising by attachment or levy on, security interests in, and

other claims to goods.

(1) Except as otherwise provided in 12A:2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) and in 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in 12A:9-317, 12A:9-321 and 12A:9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

133. N.J.S.12A:8-103 is amended to read as follows:

Rule for determining whether certain obligations and interests are securities or financial assets.

12A:8-103. Rule for Determining whether Certain Obligations and Interests are Securities or Financial Assets.

a. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

b. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

c. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

d. A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

e. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

f. A commodity contract, as defined in 12A:9-102 (a) (15), is not a security or a financial asset.

134. N.J.S.12A:8-110 is amended to read as follows:

Applicability; choice of law.

12A:8-110. Applicability; Choice of Law.

a. The local law of the issuer's jurisdiction, as specified in subsection d. of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

b. The local law of the securities intermediary's jurisdiction, as specified in subsection e. of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a

security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

c. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

d. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection a. of this section.

e. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection e. applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

f. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

135. N.J.S.12A:8-510 is amended to read as follows:

12A:8-510. Rights of purchaser of security entitlement from entitlement holder.

12A:8-510. Rights of Purchaser of Security Entitlement from Entitlement Holder.

a. In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection c. of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

b. If an adverse claim could not have been asserted against an entitlement holder under 12A:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

c. In a case not covered by the priority rules in Chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection d of this section, purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under 12A:8-106d. (1);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under 12A:8-106d. (2); or

(3) if the purchaser obtained control through another person under 12A:8-106 d. (3), the time on which priority would be based under this subsection if the other person were the secured party.

d. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

136. Section 27 of P.L.1999, c.23 (C.48:3-76) is amended to read as follows:

Bondable transition property constitutes an account.

27. a. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property, as defined in N.J.S.12A:9-102 (a) (8.1), shall constitute an account. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property shall be in existence whether or not the revenues or proceeds in respect thereof have accrued, in accordance with subsection c. of section 22 of this act. The validity, perfection or priority of any security interest in bondable transition property shall not be defeated or adversely affected by changes to the bondable stranded costs rate order or to the transition bond charges payable by any customer. Any description of bondable transition property in a security agreement or other agreement or a financing statement shall be sufficient if it refers to the bondable stranded costs rate order establishing the bondable transition property.

b. In addition to the other rights and remedies provided or authorized by this act, and by the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in default under a security agreement and the collateral is bondable transition property, then upon application by the secured party, the board or any court of competent jurisdiction shall order the sequestration and payment to the secured party of all collections and other proceeds of such bondable transition property up to the value of the property. In the event of any conflicts, priority among pledgees, transferees or secured parties shall be determined under N.J.S.12A:9-101 et seq. The secured party shall account to the debtor for any surplus and, unless otherwise agreed, the debtor shall be liable for any deficiency.

137. N.J.S.2A:25-1 is amended to read as follows:

Contracts and judgments assignable; action by assignee; defenses.

2A:25-1. All contracts for the sale and conveyance of real estate, all judgments and decrees recovered in any of the courts of this State or of the United States or in any of the courts of any other state of the United States and all choses in action arising on contract shall be assignable, and the assignee may sue thereon in his own name. In such an action, the person sued shall be allowed, not only all set-offs, discounts and defenses he has against the assignee, but also all set-offs, discounts and defenses he had against the assignor before notice of such assignment was given to him. The assignment of a sealed instrument by writing not under seal shall be as valid as if under seal.

The assignee for a valuable consideration of any chose in action may, although the assignor is dead, sue for and recover the same in his own name. The person sued in any such action shall be allowed not only all set-offs, discounts and defenses he has against the assignee, but also all set-offs, discounts and defenses he had against the assignor or his representatives before notice of such assignment was given to him.

Security interests in commercial tort claims may be created, attached, perfected and

enforced in accordance with Chapter 9 of Title 12A of the New Jersey Statutes (12A:9-101 et seq.).

138. This act shall take effect immediately, and shall have retroactive effect in accordance with section 127 of this act.

Approved January 8, 2002.