



**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 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:

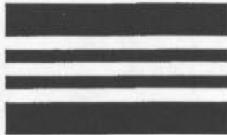
17. Check only if applicable and check only one box.  
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

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

**S2690 MARTIN**

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

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 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) <b>[(21)](31)</b> .
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:**

<sup>1</sup> 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) <sup>1</sup>[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)]<sup>1</sup> 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 <sup>1</sup>**[a. of this section] (a)**<sup>1</sup> 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)**<sup>1</sup> **[of this section]**<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>**[(a)]** (A)<sup>1</sup> under 12A:9-309 when it attaches; or24 <sup>1</sup>**[(b)]** (B)<sup>1</sup> temporarily under 12A:9-312 **[e., f., or g.]** (e), (f) or  
25 (g); and26 (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 <sup>1</sup>[c.] (c)<sup>1</sup> 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 <sup>1</sup>[filed]<sup>1</sup> 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 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

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

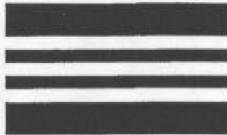
18. Check only if applicable and check only one box.

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 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

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 <sup>1</sup>[shall]  
10 must<sup>1</sup> 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 <sup>1</sup>**[a.] (a)**<sup>1</sup> 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 <sup>1</sup>[pre-effective-date financing  
32 statement] **Pre-effective-date Financing Statement<sup>1</sup>**.

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 <sup>1</sup>[part] parts<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup>  
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 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:

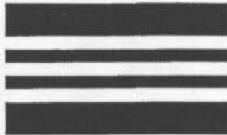
17. Check only if applicable and check only one box.  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

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

**A3917 BATEMAN**

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 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 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**

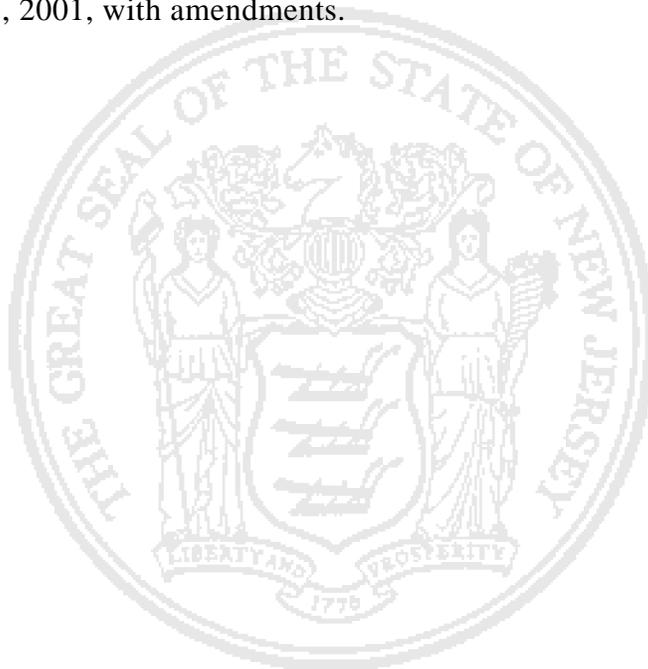
**District 28 (Essex)**

**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:**

<sup>1</sup> 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) <sup>1</sup>[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)]<sup>1</sup> 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 <sup>1</sup>**[a. of this section] (a)**<sup>1</sup> 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) <sup>1</sup>[of this section]<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[(a)] (A)<sup>1</sup> under 12A:9-309 when it attaches; or

23 <sup>1</sup>[(b)] (B)<sup>1</sup> 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)<sup>1</sup> 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 <sup>1</sup>**[filed]**<sup>1</sup> 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.

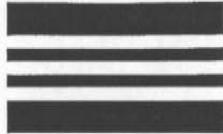
22 [d.] (d) Separate application to multiple debtors. If a record  
23 communicated to a filing office provides information that relates to  
24 more than one debtor, this part applies as to each debtor separately.  
25 (cf: N.J.S.12A:9-520)

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 (for record) (or recorded) in the REAL ESTATE RECORDS.    Attach Addendum    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

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 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

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 <sup>1</sup>[shall]  
10 must<sup>1</sup> 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 <sup>1</sup>**[a.] (a)**<sup>1</sup> 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 <sup>1</sup>[pre-effective-date financing  
32 statement] Pre-effective-date Financing Statement<sup>1</sup>.

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 <sup>1</sup>[part] parts<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup>  
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:**

**<sup>1</sup> 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) <sup>1</sup>[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)<sup>1</sup> 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 <sup>1</sup>[a. of this section] (a)<sup>1</sup> 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) <sup>1</sup>[of this section] <sup>1</sup>violates 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[a.] (A)<sup>1</sup> under 12A:9-309 when it attaches; or

25 <sup>1</sup>[b.] (B)<sup>1</sup> 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 <sup>1</sup>[c.] (c)<sup>1</sup> 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 <sup>1</sup>**[filed]**<sup>1</sup> 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.

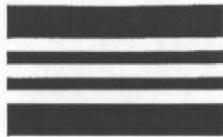
20       **[c.] (c)** When filed financing statement effective. A filed financing  
21 statement satisfying 12A:9-502 **[a. and b.] (a) and (b)** is effective,  
22 even if the filing office is required to refuse to accept it for filing under  
23 subsection **[a. of this section]** **(a)**. However, 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 <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
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)

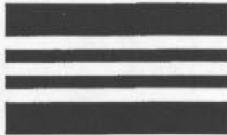
3a. ORGANIZATION'S NAME			
OR			
3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE COUNTRY

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) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	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						



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

**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 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 <sup>1</sup>**[shall]**  
10 **must**<sup>1</sup> 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 <sup>1</sup>[a.] (a)<sup>1</sup> 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 <sup>1</sup>[pre-effective-date financing  
31 statement] Pre-effective-date Financing Statement<sup>1</sup>.

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 <sup>1</sup>[part] parts<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup> 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 <sup>1</sup>[who] that<sup>1</sup>  
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 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:

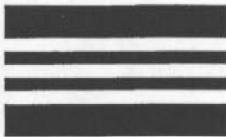
15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

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

(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. <input type="checkbox"/>
--	---

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
---------------------	------	-------	-------------	---------

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.