

Number 9

§ 9-102. DEFINITIONS AND INDEX OF DEFINITIONS

(a) *[Article 9 definitions.]*

Financing Statement - (39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

General Intangible - (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.

§ 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS

Except as otherwise provided in Sections 9-303 through 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.

**§ 9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL
AND IN PROCEEDS**

(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 Section 9-515 or is terminated under Section 9-513; or

(2) the 21st day after the security interest attaches to the proceeds.

§ 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 Section 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".

§ 9-315, SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS (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."

In applying the above statute to Covenant #20 of a standard uniform security instrument, it is clear to see that a selling of a interest identified is a general intangible (payment intangible) and per above statute the chain of perfection must extend from the original security interest (security instrument) to the intangible's security to be perfected.

Also it is clear from reading the UCC, that UCC Article 9 as it states itself does not provide statutory law for perfecting a tangible security but does provide governance for perfecting an intangible. In short, state laws govern perfection of tangible(s) and UCC Article 9 can govern intangible(s).

To postulate that an intangible security interest can attach and remain perfected to a tangible obligation's Security Instrument where such tangible obligation does not exist follows the principles of Nemo Dat (You can't have more than what is legally available.) When the tangible instrument ceases to exist, if there was a security securing, such security would cease to exist the moment the tangible obligation ceased to exist. Where an intangible security interest claims a right to sell real property, be reminded, such right

of sale only exists if a secured tangible obligation exists. To achieve a perfected intangible security requires a chain of perfected rights that begin with tangible note that is secured by a properly perfected security instrument (Deed of Trust, Mortgage or Security Deed). There is no issue with then creating an intangible payment stream (general intangible) whereas the intangible's security is that of personal property of the now account debtor, issuer of the intangible obligation. Where a debtor has a discharged obligation towards the account debtor, this discharge does not absolve the account debtor of his intangible obligation. Where the issuer of the intangible obligation claims to be the transferee of the tangible obligation (instrument), such account debt has committed fraud affecting the instrument precluding the account debtor from being a subsequent purchaser of the instrument to obtain rights as Holder In Due Course. Secondly, the account debtor in creating the intangible obligation reduced the value of the instrument in accordance with 3203 (d), the instrument cannot be negotiated for less than full value, this in addition prevents the account debtor from obtaining rights to enforce the instrument. The account debtor can stand and hold the instrument as personal property and wave to the world the account debtor is a Holder In Due Course, but in following statutory law, the account debtor has mere mechanical possession and without legal rights to enforce the instrument.

For a court to rule that an instrument could be negotiated for less than full value would put commercial paper including checks at risk for no party would have knowledge at purchase/negotiation whether the purchase price paid was for full value or a decreased value.