

1 H.206

2 An act relating to the Uniform Commercial Code

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. 9A V.S.A. article 1 is amended to read:

5 ARTICLE 1. GENERAL PROVISIONS

6 * * *

7 § 1—201. GENERAL DEFINITIONS

8 * * *

9 (b) Subject to definitions contained in other articles of this title that apply
10 to particular articles or parts thereof:

11 * * *

12 (10) “Conspicuous,” with reference to a term, means so written,
13 displayed, or presented that, based on the totality of the circumstances, a
14 reasonable person against which it is to operate ought to have noticed it.
15 Whether a term is “conspicuous” or not is a decision for the court.

16 ~~Conspicuous terms include the following:~~

17 ~~(A) a heading in capitals equal to or greater in size than the~~
18 ~~surrounding text, or in contrasting type, font, or color to the surrounding text of~~
19 ~~the same or lesser size; and~~

20 ~~(B) language in the body of a record or display in larger type than the~~
21 ~~surrounding text, or in contrasting type, font, or color to the surrounding text of~~

1 ~~the same size, or set off from surrounding text of the same size by symbols or~~
2 ~~other marks that call attention to the language.~~

3 * * *

4 (15) “Delivery,” with respect to an electronic document of title means
5 voluntary transfer of control and with respect to an instrument, a tangible
6 document of title, or an authoritative tangible copy of a record evidencing
7 chattel paper, means voluntary transfer of possession.

8 (16) “Document of title” means a record (i) that in the regular course of
9 business or financing is treated as adequately evidencing that the person in
10 possession or control of the record is entitled to receive, control, hold, and
11 dispose of the record and the goods the record covers; and (ii) that purports to
12 be issued by or addressed to a bailee and to cover goods in the bailee’s
13 possession which are either identified or are fungible portions of an identified
14 mass. The term includes a bill of lading, transport document, dock warrant,
15 dock receipt, warehouse receipt, and order for delivery of goods. An electronic
16 document of title means a document of title evidenced by a record consisting
17 of information stored in an electronic medium. A tangible document of title
18 means a document of title evidenced by a record consisting of information that
19 is inscribed on a tangible medium.

20 (16A) “Electronic” means relating to technology having electrical,
21 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

* * *

(21) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, other than pursuant to subsection 7-106(g) of this title, of a negotiable electronic document of title.

* * *

(24) “Money” means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

* * *

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture,

1 government, governmental subdivision, agency, or instrumentality, ~~public~~
2 ~~corporation~~, or any other legal or commercial entity. The term includes a
3 protected series, however denominated, of an entity if the protected series is
4 established under law other than provided in this title that limits, or limits if
5 conditions specified under the law are satisfied, the ability of a creditor of the
6 entity or of any other protected series of the entity to satisfy a claim from
7 assets of the protected series.

8 * * *

9 (36) ~~“Send”~~ “Send,” in connection with a ~~writing, record, or notice~~
10 notification, means:

11 (A) to deposit in the mail ~~or~~, deliver for transmission, or transmit by
12 any other usual means of communication, with postage or cost of transmission
13 provided for ~~and properly addressed and, in the case of an instrument, to an~~
14 ~~address specified thereon or otherwise agreed, or if there be none,~~ addressed to
15 any address reasonable under the circumstances; or

16 (B) ~~in any other way to cause to be received any record or notice~~
17 ~~within the time it would have arrived if properly sent~~ to cause the record or
18 notification to be received within the time it would have been received if
19 properly sent under subdivision (A) of this subdivision (b)(36).

(37) ~~“Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.~~ “Sign,” “signed,” “signing,” and “signature” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

* * *

§ 1—204. VALUE

Except as otherwise provided in Articles 3, 4, ~~and 5, 6, and 12~~ of this title, a person gives value for rights if the person acquires them:

* * *

§ 1—301. TERRITORIAL APPLICABILITY; PARTIES’ POWER TO
CHOOSE APPLICABLE LAW

* * *

(c) If one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

* * *

(7) Sections 9—301 through 9—307. Law Governing Perfection, the Effect of Perfection or Nonperfection, and the Priority of Security Interests;

* * *

* * *

* * *

VT LEG #383188 v.1

1 subsection (b) of this section.

2 (b) In a hybrid transaction:

3 (1) If the sale-of-goods aspects do not predominate, only the provisions
4 of this article which relate primarily to the sale-of-goods aspects of the
5 transaction apply, and the provisions that relate primarily to the transaction as a
6 whole do not apply.

7 (2) If the sale-of-goods aspects predominate, this article applies to the
8 transaction but does not preclude application in appropriate circumstances of
9 other law to aspects of the transaction which do not relate to the sale of goods.

10 (c) This article does not:

11 (1) apply to a transaction that, even though in the form of an
12 unconditional contract to sell or present sale, operates only to create a security
13 interest; or

14 (2) impair or repeal a statute regulating sales to consumers, farmers, or
15 other specified classes of buyers.

16 * * *

17 § 2—106. DEFINITIONS: “CONTRACT”; “AGREEMENT”; “CONTRACT
18 FOR SALE”; “SALE”; “PRESENT SALE”; “CONFORMING”
19 TO CONTRACT; “TERMINATION”; “CANCELLATION”;
20 “HYBRID TRANSACTION”

21 * * *

1 (5) “Hybrid transaction” means a single transaction involving a sale of
2 goods and:

3 (A) the provision of services;

4 (B) a lease of other goods; or

5 (C) a sale, lease, or license of property other than goods.

6 * * *

7 § 2—201. FORMAL REQUIREMENTS; STATUTE OF FRAUDS

8 (1) Except as otherwise provided in this section a contract for the sale of
9 goods for the price of \$500 or more is not enforceable by way of action or
10 defense unless there is ~~some writing~~ a record sufficient to indicate that a
11 contract for sale has been made between the parties and signed by the party
12 against whom enforcement is sought or by ~~his~~ the party's authorized agent or
13 broker. A ~~writing~~ record is not insufficient because it omits or incorrectly
14 states a term agreed upon but the contract is not enforceable under this
15 ~~paragraph~~ subsection beyond the quantity of goods shown in ~~such writing~~
16 record.

17 (2) Between merchants if within a reasonable time a ~~writing~~ record in
18 confirmation of the contract and sufficient against the sender is received and
19 the party receiving it has reason to know its contents, it satisfies the
20 requirements of subsection (1) against ~~such~~ the party unless ~~written~~ notice in a
21 record of objection to its contents is given within ten days after it is received.

* * *

§ 2—202. FINAL ~~WRITTEN~~ EXPRESSION: PAROL OR EXTRINSIC
EVIDENCE

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (§ 1—303); and

(b) by evidence of consistent additional terms unless the court finds the ~~writing~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.

§ 2—203. SEALS INOPERATIVE

The affixing of a seal to a ~~writing~~ record evidencing a contract for sale or an offer to buy or sell goods does not constitute the ~~writing~~ record a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

* * *

§ 2—205. FIRM OFFERS

An offer by a merchant to buy or sell goods in a signed ~~writing~~ record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

* * *

§ 2—209. MODIFICATION, RESCISSION, AND WAIVER

(1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

* * *

Sec. 3. 9A V.S.A. article 2A is amended to read:

ARTICLE 2A. LEASES

* * *

§ 2A—102. SCOPE

(1) This article applies to any transaction, regardless of form, that creates a lease, and, in the case of a hybrid lease, it applies to the extent provided in subdivision (2) of this section.

(2) In a hybrid lease:

A) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this article which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(ii) section 2A—209 of this title applies if the lease is a finance lease; and

(iii) section 2A—407 of this title applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(B) if the lease-of-goods aspects predominate, this article applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

§ 2A—103. DEFINITIONS AND INDEX OF DEFINITIONS

(1) In this article unless the context otherwise requires:

* * *

1 (h) “Goods” means all things that are movable at the time of
2 identification to the lease contract, or are fixtures (§ 2A—309), but the term
3 does not include money, documents, instruments, accounts, chattel paper,
4 general intangibles, or minerals or the like, including oil and gas, before
5 extraction. The term also includes the unborn young of animals.

6 (h.1) “Hybrid lease” means a single transaction involving a lease of
7 goods and:

8 (i) the provision of services;

9 (ii) a sale of other goods; or

10 (iii) a sale, lease, or license of property other than goods.

11 * * *

12 § 2A—107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT

13 AFTER DEFAULT

14 Any claim or right arising out of an alleged default or breach of warranty
15 may be discharged in whole or in part without consideration by a ~~written~~
16 waiver or renunciation in a signed and record delivered by the aggrieved party.

17 * * *

18 § 2A—201. STATUTE OF FRAUDS

19 (1) A lease contract is not enforceable by way of action or defense unless:

20 * * *

(3) A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the ~~writing~~ record.

* * *

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) if there is a ~~writing~~ record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

* * *

1 § 2A—202. FINAL ~~WRITTEN~~ EXPRESSION; PAROL OR EXTRINSIC
2 EVIDENCE

3 Terms with respect to which the confirmatory memoranda of the parties
4 agree or which are otherwise set forth in a ~~writing~~ record intended by the
5 parties as a final expression of their agreement with respect to such terms as
6 are included therein may not be contradicted by evidence of any prior
7 agreement or of a contemporaneous oral agreement but may be explained or
8 supplemented:

9 (a) by course of dealing or usage of trade or by course of performance;
10 and

11 (b) by evidence of consistent additional terms unless the court finds the
12 ~~writing~~ record to have been intended also as a complete and exclusive
13 statement of the terms of the agreement.

14 § 2A—203. SEALS INOPERATIVE

15 The affixing of a seal to a ~~writing~~ record evidencing a lease contract or an
16 offer to enter into a lease contract does not render the ~~writing~~ record a sealed
17 instrument and the law with respect to sealed instruments does not apply to the
18 lease contract or offer.

19 * * *

§ 2A—205. FIRM OFFERS

An offer by a merchant to lease goods to or from another person in a signed ~~writing~~ record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

* * *

§ 2A—208. MODIFICATION, RESCISSION AND WAIVER

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed ~~writing~~ record may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

* * *

Sec. 4. 9A V.S.A. article 3 is amended to read:

ARTICLE 3. COMMERCIAL PAPER

* * *

§ 3—104. NEGOTIABLE INSTRUMENT

(a) Except as provided in subsections (c) and (d) of this section, “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

* * *

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

* * *

§ 3—105. ISSUE OF INSTRUMENT

(a) “Issue” means:

(1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or

* * *

~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

* * *

VT LEG #383188 v.1

1 striking out of the party's signature, or the addition of words to the instrument
2 indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing
3 rights against the party by a signed ~~writing~~ record. The obligation of a party to
4 pay a check is not discharged solely by destruction of the check in connection
5 with a process in which information is extracted from the check and an image
6 of the check is made and, subsequently, the information and image are
7 transmitted for payment.

8 * * *

9 Sec. 5. 9A V.S.A. article 4A is amended to read:

10 ARTICLE 4A. FUNDS TRANSFERS

11 * * *

12 § 4A—103. PAYMENT ORDER—DEFINITIONS

13 (a) In this article:

14 (1) "Payment order" means an instruction of a sender to a receiving
15 bank, transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or
16 to cause another bank to pay, a fixed or determinable amount of money to a
17 beneficiary if:

18 (i) the instruction does not state a condition to payment to the
19 beneficiary other than time of payment;

20 (ii) the receiving bank is to be reimbursed by debiting an account of,
21 or otherwise receiving payment from, the sender; and

1 (iii) the instruction is transmitted by the sender directly to the
2 receiving bank or to an agent, funds-transfer system, or communication system
3 for transmittal to the receiving bank.

4 * * *

5 § 4A—201. SECURITY PROCEDURE

6 “Security procedure” means a procedure established by agreement of a
7 customer and a receiving bank for the purpose of (i) verifying that a payment
8 order or communication amending or cancelling a payment order is that of the
9 customer, or (ii) detecting error in the transmission or the content of the
10 payment order or communication. A security procedure may impose an
11 obligation on the receiving bank or the customer and may require the use of
12 algorithms or other codes, identifying words ~~or~~, numbers, symbols, sounds,
13 biometrics, encryption, callback procedures, or similar security devices.
14 Comparison of a signature on a payment order or communication with an
15 authorized specimen signature of the customer or requiring a payment order to
16 be sent from a known email address, IP address, or telephone number is not by
17 itself a security procedure.

18 § 4A—202. AUTHORIZED AND VERIFIED PAYMENT ORDERS

19 * * *

20 (b) If a bank and its customer have agreed that the authenticity of payment
21 orders issued to the bank in the name of the customer as sender will be verified

1 pursuant to a security procedure, a payment order received by the receiving
2 bank is effective as the order of the customer, whether or not authorized, if (i)
3 the security procedure is a commercially reasonable method of providing
4 security against unauthorized payment orders, and (ii) the bank proves that it
5 accepted the payment order in good faith and in compliance with the bank's
6 obligations under the security procedure and any ~~written~~ agreement or
7 instruction of the customer, evidenced by a record, restricting acceptance of
8 payment orders issued in the name of the customer. The bank is not required
9 to follow an instruction that violates a ~~written~~ an agreement with the customer,
10 evidenced by a record, or notice of which is not received at a time and in a
11 manner affording the bank a reasonable opportunity to act on it before the
12 payment order is accepted.

13 (c) Commercial reasonableness of a security procedure is a question of law
14 to be determined by considering the wishes of the customer expressed to the
15 bank, the circumstances of the customer known to the bank, including the size,
16 type, and frequency of payment orders normally issued by the customer to the
17 bank, alternative security procedures offered to the customer, and security
18 procedures in general use by customers and receiving banks similarly situated.
19 A security procedure is deemed to be commercially reasonable if (i) the
20 security procedure was chosen by the customer after the bank offered, and the
21 customer refused, a security procedure that was commercially reasonable for

1 that customer, and (ii) the customer expressly agreed in ~~writing~~ a record to be
2 bound by any payment order, whether or not authorized, issued in its name and
3 accepted by the bank in compliance with the bank's obligations under the
4 security procedure chosen by the customer.

5 * * *

6 § 4A—203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT
7 ORDERS

8 (a) If an accepted payment order is not, under subsection 4A—202(a) of
9 this title, an authorized order of a customer identified as sender, but is effective
10 as an order of the customer pursuant to subsection 4A—202(b) of this title, the
11 following rules apply:

12 (1) By express ~~written~~ agreement evidenced by a record, the receiving
13 bank may limit the extent to which it is entitled to enforce or retain payment of
14 the payment order.

15 * * *

16 § 4A—207. MISDESCRIPTION OF BENEFICIARY

17 * * *

18 (c) If (i) a payment order described in subsection (b) of this section is
19 accepted, (ii) the originator's payment order described the beneficiary
20 inconsistently by name and number, and (iii) the beneficiary's bank pays the

1 person identified by number as permitted by subdivision (b)(1) of this section,
2 the following rules apply:

3 (1) If the originator is a bank, the originator is obliged to pay its order.

4 (2) If the originator is not a bank and proves that the person identified
5 by number was not entitled to receive payment from the originator, the
6 originator is not obliged to pay its order unless the originator's bank proves
7 that the originator, before acceptance of the originator's order, had notice that
8 payment of a payment order issued by the originator might be made by the
9 beneficiary's bank on the basis of an identifying or bank account number even
10 if it identifies a person different from the named beneficiary. Proof of notice
11 may be made by any admissible evidence. The originator's bank satisfies the
12 burden of proof if it proves that the originator, before the payment order was
13 accepted, signed a ~~writing~~ record stating the information to which the notice
14 relates.

15 * * *

16 § 4A—208. MISDESCRIPTION OF INTERMEDIARY BANK OR
17 BENEFICIARY'S BANK

18 * * *

19 (b) This subsection applies to a payment order identifying an intermediary
20 bank or the beneficiary's bank both by name and an identifying number if the
21 name and number identify different persons.

* * *

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subdivision (1) of this subsection, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a ~~writing~~ record stating the information to which the notice relates.

* * *

§ 4A—210. REJECTION OF PAYMENT ORDER

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in ~~writing~~ a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the

1 means to be used to reject a payment order, (i) any means complying with the
2 agreement is reasonable and (ii) any means not complying is not reasonable
3 unless no significant delay in receipt of the notice resulted from the use of the
4 noncomplying means.

5 * * *

6 § 4A—211. CANCELLATION AND AMENDMENT OF PAYMENT
7 ORDER

8 (a) A communication of the sender of a payment order cancelling or
9 amending the order may be transmitted to the receiving bank orally;
10 ~~electronically~~, or in ~~writing~~ a record. If a security procedure is in effect
11 between the sender and the receiving bank, the communication is not effective
12 to cancel or amend the order unless the communication is verified pursuant to
13 the security procedure or the bank agrees to the cancellation or amendment.

14 * * *

15 § 4A—305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR
16 FAILURE TO EXECUTE PAYMENT ORDER

17 * * *

18 (c) In addition to the amounts payable under subsections (a) and (b) of this
19 section, damages, including consequential damages, are recoverable to the
20 extent provided in an express ~~written~~ agreement of the receiving bank,
21 evidenced by a record.

1 (d) If a receiving bank fails to execute a payment order it was obliged by
2 express agreement to execute, the receiving bank is liable to the sender for its
3 expenses in the transaction and for incidental expenses and interest losses
4 resulting from the failure to execute. Additional damages, including
5 consequential damages, are recoverable to the extent provided in an express
6 ~~written~~ agreement of the receiving bank, evidenced by a record, but are not
7 otherwise recoverable.

8 * * *

9 Sec. 6. 9A V.S.A. article 5 is amended to read:

10 ARTICLE 5. LETTERS OF CREDIT

11 * * *

12 § 5—104. FORMAL REQUIREMENTS

13 A letter of credit, confirmation, advice, transfer, amendment, or cancellation
14 may be issued in any form that is a signed record ~~and is authenticated (i) by a~~
15 ~~signature or (ii) in accordance with the agreement of the parties or the standard~~
16 ~~practice referred to in subsection 5—108(e) of this title.~~

17 * * *

18 § 5—116. CHOICE OF LAW AND FORUM

19 (a) The liability of an issuer, nominated person, or adviser for action or
20 omission is governed by the law of the jurisdiction chosen by an agreement in
21 the form of a record signed ~~or otherwise authenticated~~ by the affected parties in

1 ~~the manner provided in section 5—104 of this title~~ or by a provision in the
2 person's letter of credit, confirmation, or other undertaking. The jurisdiction
3 whose law is chosen need not bear any relation to the transaction.

4 (b) Unless subsection (a) of this section applies, the liability of an issuer,
5 nominated person, or adviser for action or omission is governed by the law of
6 the jurisdiction in which the person is located. The person is considered to be
7 located at the address indicated in the person's undertaking. If more than one
8 address is indicated, the person is considered to be located at the address from
9 which the person's undertaking was issued.

10 (c) For the purpose of jurisdiction, choice of law, and recognition of
11 interbranch letters of credit, but not enforcement of a judgment, all branches of
12 a bank are considered separate juridical entities and a bank is considered to be
13 located at the place where its relevant branch is considered to be located under
14 ~~this~~ subsection (d) of this section.

15 (d) A branch of a bank is considered to be located at the address indicated
16 in the branch's undertaking. If more than one address is indicated, the branch
17 is considered to be located at the address from which the undertaking was
18 issued.

19 ~~(e)~~(e) Except as otherwise provided in this subsection, the liability of an
20 issuer, nominated person, or adviser is governed by any rules of custom or
21 practice, such as the Uniform Customs and Practice for Documentary Credits,

1 to which the letter of credit, confirmation, or other undertaking is expressly
2 made subject. If (i) this article would govern the liability of an issuer,
3 nominated person, or adviser under subsection (a) or (b) of this section, (ii) the
4 relevant undertaking incorporates rules of custom or practice, and (iii) there is
5 conflict between this article and those rules as applied to that undertaking,
6 those rules govern except to the extent of any conflict with the nonvariable
7 provisions specified in subsection 5—103(c) of this title.

8 ~~(d)~~(f) If there is conflict between this article and Article 3, 4, 4A, or 9 of
9 this title, this article governs.

10 ~~(e)~~(g) The forum for settling disputes arising out of an undertaking within
11 this article may be chosen in the manner and with the binding effect that
12 governing law may be chosen in accordance with subsection (a) of this section.

13 * * *

14 Sec. 7. 9A V.S.A. article 7 is amended to read:

15 ARTICLE 7. DOCUMENTS OF TITLE

16 * * *

17 § 7—102. DEFINITIONS AND INDEX OF DEFINITIONS

18 (a) In this article, unless the context otherwise requires:

19 * * *

20 (9) “Sign” means, with present intent to authenticate or adopt a record:

21 ~~(A) to execute or adopt a tangible symbol; or~~

* * *

* * *

* * *

* * *

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the

1 person to which each authoritative electronic copy was issued or transferred;

2 and

3 (3) gives the person exclusive power, subject to subsection (d) of this
4 section, to:

5 (A) prevent others from adding or changing the person to which each
6 authoritative electronic copy has been issued or transferred; and

7 (B) transfer control of each authoritative electronic copy.

8 (d) Subject to subsection (e) of this section, a power is exclusive under
9 subdivisions (c)(3)(A) and (c)(3)(B) of this section even if:

10 (1) the authoritative electronic copy, a record attached to or logically
11 associated with the authoritative electronic copy, or a system in which the
12 authoritative electronic copy is recorded limits the use of the document of title
13 or has a protocol that is programmed to cause a change, including a transfer or
14 loss of control; or

15 (2) the power is shared with another person.

16 (e) A power of a person is not shared with another person under
17 subdivision (d)(2) of this section and the person's power is not exclusive if:

18 (1) the person can exercise the power only if the power also is exercised
19 by the other person; and

20 (2) the other person:

1 (A) can exercise the power without exercise of the power by the
2 person; or

3 (B) is the transferor to the person of an interest in the document of
4 title.

5 (f) If a person has the powers specified in subdivisions (c)(3)(A) and
6 (c)(3)(B) of this section, the powers are presumed to be exclusive.

7 (g) A person has control of an electronic document of title if another
8 person, other than the transferor to the person of an interest in the document:

9 (1) has control of the document and acknowledges that it has control on
10 behalf of the person; or

11 (2) obtains control of the document after having acknowledged that it
12 will obtain control of the document on behalf of the person.

13 (h) A person that has control under this section is not required to
14 acknowledge that it has control on behalf of another person.

15 (i) If a person acknowledges that it has or will obtain control on behalf of
16 another person, unless the person otherwise agrees or law other than this article
17 or Article 9 of this title otherwise provides, the person does not owe any duty
18 to the other person and is not required to confirm the acknowledgment to any
19 other person.

20 * * *

Sec. 8. 9A V.S.A. article 8 is amended to read:

ARTICLE 8. INVESTMENT SECURITIES

* * *

§ 8—102. DEFINITIONS

(a) In this article:

* * *

(6) “Communicate” means to:

(i) send a signed ~~writing~~ record; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

* * *

(b) ~~Other~~ The following definitions ~~applying to~~ in this article and the sections in which they appear are other articles apply to this article:

Appropriate person	section 8—107
Control	section 8—106
<u>Controllable account</u>	<u>section 9—102</u>
<u>Controllable electronic record</u>	<u>section 12—102</u>
<u>Controllable payment intangible</u>	<u>section 9—102</u>
Delivery	section 8—301

* * *

§ 8—103. RULES FOR DETERMINING WHETHER CERTAIN
OBLIGATIONS AND INTERESTS ARE SECURITIES OR
FINANCIAL ASSETS

* * *

(h) A controllable account, controllable electronic record, or controllable
payment intangible is not a financial asset unless subdivisions 8—102(a)(9)(iii)
applies.

* * *

§ 8—106. CONTROL

* * *

(d) A purchaser has “control” of a security entitlement if:

* * *

(3) another person ~~has control of the security entitlement on behalf of
the purchaser or, having previously acquired control of the security
entitlement, acknowledges that it has control on behalf of the purchaser, other
than the transferor to the purchaser of an interest in the security entitlement:~~

(A) has control of the security entitlement and acknowledges that it
has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having
acknowledged that it will obtain control of the security entitlement on behalf of
the purchaser.

* * *

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this article or Article 9 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to any other person.

* * *

§ 8—110. APPLICABILITY; CHOICE OF LAW

* * *

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) of this section even if the matter or transaction does not bear any relation to the jurisdiction.

* * *

§ 8—303. PROTECTED PURCHASER

(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

1 (3) obtains control of the certificated or uncertificated security.

2 (b) ~~In addition to acquiring the rights of a purchaser, a~~ A protected
3 purchaser also acquires its interest in the security free of any adverse claim.

4 * * *

5 Sec. 9. 9A V.S.A. article 9 is amended to read:

6 ARTICLE 9. SECURED TRANSACTIONS

7 * * *

8 § 9—102. DEFINITIONS AND INDEX OF DEFINITIONS

9 (a) In this article:

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 lost.

12 (2) “Account,” except as used in “account for,” “account statement,”
13 “account to,” “commodity account” in subdivision (14) of this subsection,
14 “customer’s account,” “deposit account” in subdivision (29) of this subsection,
15 “on account of,” and “statement of account,” means a right to payment of a
16 monetary obligation, whether or not earned by performance, (i) for property
17 that has been or is to be sold, leased, licensed, assigned, or otherwise disposed
18 of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance
19 issued or to be issued, (iv) for a secondary obligation incurred or to be
20 incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a
21 vessel under a charter or other contract, (vii) arising out of the use of a credit or

1 charge card or information contained on or for use with the card, or (viii) as
2 winnings in a lottery or other game of chance operated or sponsored by a state,
3 governmental unit of a state, or person licensed or authorized to operate the
4 game by a state or governmental unit of a state. The term includes controllable
5 accounts and health-care-insurance receivables. The term does not include (i)
6 ~~rights to payment evidenced by chattel paper or an instrument~~ chattel paper,
7 (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v)
8 letter-of-credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or
9 funds advanced or sold, other than rights arising out of the use of a credit or
10 charge card or information contained on or for use with the card, or (vii) rights
11 to payment evidenced by an instrument.

12 (3) "Account debtor" means a person obligated on an account, chattel
13 paper, or general intangible. The term does not include persons obligated to
14 pay a negotiable instrument, even if the negotiable instrument ~~constitutes part~~
15 ~~of~~ evidences chattel paper.

16 (4) "Accounting," except as used in "accounting for," means a record:

17 (A) ~~authenticated~~ signed by a secured party;

18 (B) indicating the aggregate unpaid secured obligations as of a date
19 not more than 35 days earlier or 35 days later than the date of the record; and

20 (C) identifying the components of the obligations in reasonable
21 detail.

* * *

(7) ~~“Authenticate” means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or
logically associate with the record an electronic sound, symbol, or process.~~

[Reserved.]

(7A) “Assignee,” except as used in “assignee for benefit of creditors,”

means a person (i) in whose favor a security interest that secures an obligation
is created or provided for under a security agreement, whether or not the
obligation is outstanding or (ii) to which an account, chattel paper, payment
intangible, or promissory note has been sold. The term includes a person to
which a security interest has been transferred by a secured party.

(7B) “Assignor” means a person that (i) under a security agreement

creates or provides for a security interest that secures an obligation or (ii) sells
an account, chattel paper, payment intangible, or promissory note. The term
includes a secured party that has transferred a security interest to another
person.

* * *

~~(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~~

1 ~~goods and license of software used in the goods, a lease of specific goods, or a~~
2 ~~lease of specific goods and license of software used in the goods. In this~~
3 ~~subdivision, “monetary obligation” means a monetary obligation secured by~~
4 ~~the goods or owed under a lease of the goods and includes a monetary~~
5 ~~obligation with respect to software used in the goods. The term does not~~
6 ~~include:~~

7 ~~(A) Charters or other contracts involving the use or hire of a vessel.~~

8 ~~(B) Records that evidence a right to payment arising out of the use of~~
9 ~~a credit or charge card, or information contained on or for use with the card. If~~
10 ~~a transaction is evidenced by records that include an instrument or series of~~
11 ~~instruments, the group of records taken together constitutes chattel paper.~~

12 (11) “Chattel paper” means:

13 (A) a right to payment of a monetary obligation secured by specific
14 goods, if the right to payment and security agreement are evidenced by a
15 record; or

16 (B) a right to payment of a monetary obligation owed by a lessee
17 under a lease agreement with respect to specific goods and a monetary
18 obligation owed by the lessee in connection with the transaction giving rise to
19 the lease, if:

20 (i) the right to payment and lease agreement are evidenced by a
21 record; and

* * *

(27B) “Controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under section 12—105 of this title of the controllable electronic record.

* * *

(31) ~~“Electronic chattel paper” means chattel paper evidenced by a
record or records consisting of information stored in an electronic medium.~~

[Reserved.]

(31A) “Electronic money” means money in an electronic form.

* * *

(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 controllable electronic records, payment intangibles, and
software.

* * *

(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, or (iv)
writings that evidence chattel paper.

* * *

(54A) “Money” has the meaning in subdivision 1—201(b)(24) of this title, but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under section 9—105A of this title.

* * *

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation. The term includes a controllable payment intangible.

* * *

(65) “Production-money crops” means crops that secure a production money obligation incurred with respect to those crops.

(66) “Production-money obligation” means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) “Production of crops” includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops, and protecting them from damage or disease.

(68) “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.

* * *

~~(B) to cause the record or notification to be received within the time~~
~~could have been received if properly sent under subdivision (A) of this~~
~~ion (78). [Reserved.]~~

* * *

[Reserved.]

* * *

VT LEG #383188 v.1

- 1 “Applicant” Section 5—102.
- 2 “Beneficiary” Section 5—102.
- 3 “Broker” Section 8—102.
- 4 “Certificated security” Section 8—102.
- 5 “Check” Section 3—104.
- 6 “Clearing corporation” Section 8—102.
- 7 “Contract for sale” Section 2—106.
- 8 “Controllable electronic record” Section 12—102.
- 9 “Customer” Section 4—104.
- 10 “Entitlement holder” Section 8—102.
- 11 “Financial asset” Section 8—102.
- 12 “Holder in due course” Section 3—302.
- 13 “Issuer” (with respect to a letter of credit or letter-of-credit right) Section
- 14 5—102.
- 15 “Issuer” (with respect to documents of title) Section 7—102.
- 16 “Issuer” (with respect to a security) Section 8—201.
- 17 “Lease” Section 2A—103.
- 18 “Lease agreement” Section 2A—103.
- 19 “Lease contract” Section 2A—103.
- 20 “Leasehold interest” Section 2A—103.
- 21 “Lessee” Section 2A—103.

1 “Lessee in ordinary course of business” Section 2A—103.

2 “Lessor” Section 2A—103.

3 “Lessor’s residual interest” Section 2A—103.

4 “Letter of credit” Section 5—102.

5 “Merchant” Section 2—104.

6 “Negotiable instrument” Section 3—104.

7 “Nominated person” Section 5—102.

8 “Note” Section 3—104.

9 “Proceeds of a letter of credit” Section 5—114.

10 “Protected purchaser” Section 8—303.

11 “Prove” Section 3—103.

12 “Qualifying purchaser” Section 12—102.

13 “Sale” Section 2—106.

14 * * *

15 § 9—104. CONTROL OF DEPOSIT ACCOUNT

16 (a) A secured party has control of a deposit account if:

17 (1) the secured party is the bank with which the deposit account is
18 maintained;

19 (2) the debtor, secured party, and bank have agreed in ~~an authenticated a~~
20 signed record that the bank will comply with instructions originated by the

1 secured party directing disposition of the funds in the account without further
2 consent by the debtor; ~~or~~

3 (3) the secured party becomes the bank's customer with respect to the
4 deposit account; or

5 (4) another person, other than the debtor:

6 (A) has control of the deposit account and acknowledges that it has
7 control on behalf of the secured party; or

8 (B) obtains control of the deposit account after having acknowledged
9 that it will obtain control of the deposit account on behalf of the secured party.

10 * * *

11 ~~§ 9—105. CONTROL OF ELECTRONIC CHATTEL PAPER~~

12 ~~(a) A secured party has control of electronic chattel paper if a system~~
13 ~~employed for evidencing the transfer of interests in the chattel paper reliably~~
14 ~~establishes the secured party as the person to which the chattel paper was~~
15 ~~assigned.~~

16 ~~(b) A system satisfies subsection (a) of this section if the record or records~~
17 ~~comprising the chattel paper are created, stored, and assigned in such a manner~~
18 ~~that:~~

19 ~~(1) a single authoritative copy of the record or records exists which is~~
20 ~~unique, identifiable and, except as otherwise provided in subdivisions (4), (5),~~
21 ~~and (6) of this subsection, unalterable;~~

1 ~~(2) the authoritative copy identifies the secured party as the assignee of~~
2 ~~the record or records;~~

3 ~~(3) the authoritative copy is communicated to and maintained by the~~
4 ~~secured party or its designated custodian;~~

5 ~~(4) copies or amendments that add or change an identified assignee of~~
6 ~~the authoritative copy can be made only with the consent of the secured party;~~

7 ~~(5) each copy of the authoritative copy and any copy of a copy is readily~~
8 ~~identifiable as a copy that is not the authoritative copy; and~~

9 ~~(6) any amendment of the authoritative copy is readily identifiable as~~
10 ~~authorized or unauthorized.~~

11 § 9—105. CONTROL OF ELECTRONIC COPY OF RECORD

12 EVIDENCING CHATTEL PAPER

13 (a) A purchaser has control of an authoritative electronic copy of a record
14 evidencing chattel paper if a system employed for evidencing the assignment
15 of interests in the chattel paper reliably establishes the purchaser as the person
16 to which the authoritative electronic copy was assigned.

17 (b) A system satisfies subsection (a) of this section if the record or records
18 evidencing the chattel paper are created, stored, and assigned in a manner that:

19 (1) a single authoritative copy of the record or records exists which is
20 unique, identifiable, and, except as otherwise provided in subdivisions (4), (5),
21 and (6) of this subsection, unalterable;

1 (2) the authoritative copy identifies the purchaser as the assignee of the
2 record or records;

3 (3) the authoritative copy is communicated to and maintained by the
4 purchaser or its designated custodian;

5 (4) copies or amendments that add or change an identified assignee of
6 the authoritative copy can be made only with the consent of the purchaser;

7 (5) each copy of the authoritative copy and any copy of a copy is readily
8 identifiable as a copy that is not the authoritative copy; and

9 (6) any amendment of the authoritative copy is readily identifiable as
10 authorized or unauthorized.

11 (c) A system satisfies subsection (a) of this section, and a purchaser has
12 control of an authoritative electronic copy of a record evidencing chattel paper,
13 if the electronic copy, a record attached to or logically associated with the
14 electronic copy, or a system in which the electronic copy is recorded:

15 (1) enables the purchaser readily to identify each electronic copy as
16 either an authoritative copy or a nonauthoritative copy;

17 (2) enables the purchaser readily to identify itself in any way, including
18 by name, identifying number, cryptographic key, office, or account number, as
19 the assignee of the authoritative electronic copy; and

20 (3) gives the purchaser exclusive power, subject to subsection (d) of this
21 section, to:

1 (A) prevent others from adding or changing an identified assignee of
2 the authoritative electronic copy; and

3 (B) transfer control of the authoritative electronic copy.

4 (d) Subject to subsection (e) of this section, a power is exclusive under
5 subdivisions (c)(3)(A) and (B) of this section even if:

6 (1) the authoritative electronic copy, a record attached to or logically
7 associated with the authoritative electronic copy, or a system in which the
8 authoritative electronic copy is recorded limits the use of the authoritative
9 electronic copy or has a protocol programmed to cause a change, including a
10 transfer or loss of control; or

11 (2) the power is shared with another person.

12 (e) A power of a purchaser is not shared with another person under
13 subdivision (d)(2) of this section and the purchaser's power is not exclusive if:

14 (1) the purchaser can exercise the power only if the power also is
15 exercised by the other person; and

16 (2) the other person:

17 (A) can exercise the power without exercise of the power by the
18 purchaser; or

19 (B) is the transferor to the purchaser of an interest in the chattel
20 paper.

1 (f) If a purchaser has the powers specified in subdivisions (c)(3)(A) and (B)
2 of this section, the powers are presumed to be exclusive.

3 (g) A purchaser has control of an authoritative electronic copy of a record
4 evidencing chattel paper if another person, other than the transferor to the
5 purchaser of an interest in the chattel paper:

6 (1) has control of the authoritative electronic copy and acknowledges
7 that it has control on behalf of the purchaser; or

8 (2) obtains control of the authoritative electronic copy after having
9 acknowledged that it will obtain control of the electronic copy on behalf of the
10 purchaser.

11 § 9—105A. CONTROL OF ELECTRONIC MONEY

12 (a) A person has control of electronic money if:

13 (1) the electronic money, a record attached to or logically associated
14 with the electronic money, or a system in which the electronic money is
15 recorded gives the person:

16 (A) power to avail itself of substantially all the benefit from the
17 electronic money; and

18 (B) exclusive power, subject to subsection (b) of this section, to:

19 (i) prevent others from availing themselves of substantially all the
20 benefit from the electronic money; and

1 (ii) transfer control of the electronic money to another person or
2 cause another person to obtain control of other electronic money as a result of
3 the transfer of the electronic money; and

4 (2) the electronic money, a record attached to or logically associated
5 with the electronic money, or a system in which the electronic money is
6 recorded enables the person readily to identify itself in any way, including by
7 name, identifying number, cryptographic key, office, or account number, as
8 having the powers under subdivision (1) of this subsection.

9 (b) Subject to subsection (c) of this section, a power is exclusive under
10 subdivisions (a)(1)(B)(i) and (ii) of this section even if:

11 (1) the electronic money, a record attached to or logically associated
12 with the electronic money, or a system in which the electronic money is
13 recorded limits the use of the electronic money or has a protocol programmed
14 to cause a change, including a transfer or loss of control; or

15 (2) the power is shared with another person.

16 (c) A power of a person is not shared with another person under
17 subdivision (b)(2) of this section and the person's power is not exclusive if:

18 (1) the person can exercise the power only if the power also is exercised
19 by the other person; and

20 (2) the other person:

1 (A) can exercise the power without exercise of the power by the
2 person; or

3 (B) is the transferor to the person of an interest in the electronic
4 money.

5 (d) If a person has the powers specified in subdivisions (a)(1)(B)(i) and (ii)
6 of this section, the powers are presumed to be exclusive.

7 (e) A person has control of electronic money if another person, other than
8 the transferor to the person of an interest in the electronic money:

9 (1) has control of the electronic money and acknowledges that it has
10 control on behalf of the person; or

11 (2) obtains control of the electronic money after having acknowledged
12 that it will obtain control of the electronic money on behalf of the person.

13 * * *

14 § 9—107A. CONTROL OF CONTROLLABLE ELECTRONIC RECORD,
15 CONTROLLABLE ACCOUNT, OR CONTROLLABLE
16 PAYMENT INTANGIBLE

17 (a) A secured party has control of a controllable electronic record as
18 provided in section 12—105 of this title.

19 (b) A secured party has control of a controllable account or controllable
20 payment intangible if the secured party has control of the controllable
21 electronic record that evidences the controllable account or controllable

1 payment intangible.

2 § 9—107B. NO REQUIREMENT TO ACKNOWLEDGE OR CONFIRM;

3 NO DUTIES

4 (a) A person that has control under section 9—104, 9—105, or 9—105A of
5 this title is not required to acknowledge that it has control on behalf of another
6 person.

7 (b) If a person acknowledges that it has or will obtain control on behalf of
8 another person, unless the person otherwise agrees or law other than this article
9 otherwise provides, the person does not owe any duty to the other person and is
10 not required to confirm the acknowledgment to any other person.

11 * * *

12 § 9—203. ATTACHMENT AND ENFORCEABILITY OF SECURITY

13 INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS;

14 FORMAL REQUISITES

15 (a) A security interest attaches to collateral when it becomes enforceable
16 against the debtor with respect to the collateral, unless an agreement expressly
17 postpones the time of attachment.

18 (b) Except as otherwise provided in subsections (c) through (i) of this
19 section, a security interest is enforceable against the debtor and third parties
20 with respect to the collateral only if:

1 (1) value has been given;

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

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

5 (A) the debtor has ~~authenticated~~ signed a security agreement that
6 provides a description of the collateral and, if the security interest covers
7 timber to be cut, a description of the land concerned;

8 (B) the collateral is not a certificated security and is in the possession
9 of the secured party under section 9—313 of this title pursuant to the debtor's
10 security agreement;

11 (C) the collateral is a certificated security in registered form and the
12 security certificate has been delivered to the secured party under section 8-301
13 of this title pursuant to the debtor's security agreement; ~~or~~

14 (D) the collateral is controllable accounts, controllable electronic
15 records, controllable payment intangibles, deposit accounts, ~~electronic chattel~~
16 ~~paper, electronic documents, electronic money,~~ investment property, or letter-
17 of-credit rights, ~~or electronic documents,~~ and the secured party has control
18 under section 7—106, 9—104, ~~9—105, 9-105A,~~ 9—106, ~~or 9—107, or 9-~~
19 107A of this title pursuant to the debtor's security agreement; or

* * *

1 (3) under an after-acquired property clause to property that is proceeds
2 of consumer goods or a commercial tort claim.

3 * * *

4 § 9—207. RIGHTS AND DUTIES OF SECURED PARTY HAVING
5 POSSESSION OR CONTROL OF COLLATERAL

6 * * *

7 (c) Except as otherwise provided in subsection (d) of this section, a secured
8 party having possession of collateral or control of collateral under section 7—
9 106, 9—104, 9—105, 9-105A, 9-106, ~~or 9-107~~, or 9-107A of this title:

10 * * *

11 § 9—208. ADDITIONAL DUTIES OF SECURED PARTY HAVING
12 CONTROL OF COLLATERAL

13 * * *

14 (b) Within 10 days after receiving ~~an authenticated~~ a signed demand by the
15 debtor:

16 (1) a secured party having control of a deposit account under
17 subdivision 9—104(a)(2) of this title shall send to the bank with which the
18 deposit account is maintained ~~an authenticated statement~~ a signed record that
19 releases the bank from any further obligation to comply with instructions
20 originated by the secured party;

21 * * *

1 (3) ~~a secured party, other than a buyer, having control of electronic~~
2 ~~chattel paper under section 9—105 of this title shall:~~

3 ~~(A) communicate the authoritative copy of the electronic chattel paper~~
4 ~~to the debtor or its designated custodian;~~

5 ~~(B) if the debtor designates a custodian that is the designated~~
6 ~~custodian with which the authoritative copy of the electronic chattel paper is~~
7 ~~maintained for the secured party, communicate to the custodian an~~
8 ~~authenticated record releasing the designated custodian from any further~~
9 ~~obligation to comply with instructions originated by the secured party and~~
10 ~~instructing the custodian to comply with instructions originated by the debtor;~~
11 ~~and~~

12 ~~(C) take appropriate action to enable the debtor or its designated~~
13 ~~custodian to make copies of or revisions to the authoritative copy which add or~~
14 ~~change an identified assignee of the authoritative copy without the consent of~~
15 ~~the secured party~~ a secured party, other than a buyer, having control under
16 section 9-105 of this title of an authoritative electronic copy of a record
17 evidencing chattel paper shall transfer control of the electronic copy to the
18 debtor or a person designated by the debtor;

19 (4) a secured party having control of investment property under
20 subdivision 8—106(d)(2) or subsection 9—106(b) of this title shall send to the
21 securities intermediary or commodity intermediary with which the security

1 entitlement or commodity contract is maintained ~~an authenticated~~ a signed
2 record that releases the securities intermediary or commodity intermediary
3 from any further obligation to comply with entitlement orders or directions
4 originated by the secured party;

5 (5) a secured party having control of a letter-of-credit right under section
6 9-107 of this title shall send to each person having an unfulfilled obligation to
7 pay or deliver proceeds of the letter of credit to the secured party ~~an~~
8 ~~authenticated~~ a signed release from any further obligation to pay or deliver
9 proceeds of the letter of credit to the secured party; ~~and~~

10 (6) ~~a secured party having control of an electronic document shall:~~
11 ~~(A) give control of the electronic document to the debtor or its~~
12 ~~designated custodian~~

13 ~~(B) if the debtor designates a custodian that is the designated~~
14 ~~custodian with which the authoritative copy of the electronic document is~~
15 ~~maintained for the secured party, communicate to the custodian an~~
16 ~~authenticated record releasing the designated custodian from any further~~
17 ~~obligation to comply with instructions originated by the secured party and~~
18 ~~instructing the custodian to comply with instructions originated by the debtor;~~
19 ~~and~~

20 ~~(C) take appropriate action to enable the debtor or its designated~~
21 ~~custodian to make copies of or revisions to the authoritative copy which add or~~

1 ~~change an identified assignee of the authoritative copy without the consent of~~
2 ~~the secured party~~ a secured party having control under section 7—106 of this
3 title of an authoritative electronic copy of an electronic document shall transfer
4 control of the electronic copy to the debtor or a person designated by the
5 debtor;

6 (7) a secured party having control under section 9-105A of this title of
7 electronic money shall transfer control of the electronic money to the debtor or
8 a person designated by the debtor; and

9 (8) a secured party having control under section 12-105 of this title of a
10 controllable electronic record, other than a buyer of a controllable account or
11 controllable payment intangible evidenced by the controllable electronic
12 record, shall transfer control of the controllable electronic record to the debtor
13 or a person designated by the debtor.

14 § 9—209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS
15 BEEN NOTIFIED OF ASSIGNMENT

16 * * *

17 (b) Within 10 days after receiving ~~an authenticated~~ a signed demand by the
18 debtor, a secured party shall send to an account debtor that has received
19 notification under subsection 9-406(a) or 12-106(b) of this title of an
20 assignment to the secured party as assignee ~~under subsection 9—406(a) of this~~

1 ~~title an authenticated~~ a signed record that releases the account debtor from any
2 further obligation to the secured party.

3 * * *

4 § 9—210. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST
5 OF COLLATERAL OR STATEMENT OF ACCOUNT

6 (a) In this section:

7 (1) “Request” means a record of a type described in subdivision (2), (3),
8 or (4) of this subsection.

9 (2) “Request for an accounting” means a record ~~authenticated~~ signed by
10 a debtor requesting that the recipient provide an accounting of the unpaid
11 obligations secured by collateral and reasonably identifying the transaction or
12 relationship that is the subject of the request.

13 (3) “Request regarding a list of collateral” means a record ~~authenticated~~
14 signed by a debtor requesting that the recipient approve or correct a list of what
15 the debtor believes to be the collateral securing an obligation and reasonably
16 identifying the transaction or relationship that is the subject of the request.

17 (4) “Request regarding a statement of account” means a record
18 ~~authenticated~~ signed by a debtor requesting that the recipient approve or
19 correct a statement indicating what the debtor believes to be the aggregate
20 amount of unpaid obligations secured by collateral as of a specified date and

1 reasonably identifying the transaction or relationship that is the subject of the
2 request.

3 (b) Subject to subsections (c), (d), (e), and (f) of this section, a secured
4 party, other than a buyer of accounts, chattel paper, payment intangibles, or
5 promissory notes or a consignor, shall comply with a request within 14 days
6 after receipt:

7 (1) in the case of a request for an accounting, by ~~authenticating~~ signing
8 and sending to the debtor an accounting; and

9 (2) in the case of a request regarding a list of collateral or a request
10 regarding a statement of account, by ~~authenticating~~ signing and sending to the
11 debtor an approval or correction.

12 (c) A secured party that claims a security interest in all of a particular type
13 of collateral owned by the debtor may comply with a request regarding a list of
14 collateral by sending to the debtor ~~an authenticated~~ a signed record including a
15 statement to that effect within 14 days after receipt.

16 (d) A person that receives a request regarding a list of collateral, claims no
17 interest in the collateral when it receives the request, and claimed an interest in
18 the collateral at an earlier time shall comply with the request within 14 days
19 after receipt by sending to the debtor ~~an authenticated~~ a signed record:

9 * * *

12 Except as otherwise provided in sections 9—303 through ~~9—306~~ 9—306B
13 of this title, the following rules determine the law governing perfection, the
14 effect of perfection or nonperfection, and the priority of a security interest in
15 collateral:

16 ***

VT LEG #383188 v.1

1 (A) perfection of a security interest in the goods by filing a fixture
2 filing;

3 (B) perfection of a security interest in timber to be cut; and

4 (C) the effect of perfection or nonperfection and the priority of a
5 nonpossessory security interest in the collateral.

6 * * *

7 § 9—304. LAW GOVERNING PERFECTION AND PRIORITY OF
8 SECURITY INTERESTS IN DEPOSIT ACCOUNTS

9 (a) The local law of a bank's jurisdiction governs perfection, the effect of
10 perfection or nonperfection, and the priority of a security interest in a deposit
11 account maintained with that bank even if the transaction does not bear any
12 relation to the bank's jurisdiction.

13 * * *

14 § 9—305. LAW GOVERNING PERFECTION AND PRIORITY OF
15 SECURITY INTERESTS IN INVESTMENT PROPERTY

16 (a) Except as otherwise provided in subsection (c) of this section, the
17 following rules apply:

18 * * *

19 (5) Subdivisions (2), (3), and (4) of this subsection apply even if the
20 transaction does not bear any relation to the jurisdiction.

21 * * *

§ 9—306. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS

* * *

§ 9-306A. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN CHATTEL PAPER

(a) Except as provided in subsection (d) of this section, if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) The following rules determine the chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

1 (2) If subdivision (1) of this subsection does not apply and the rules of
2 the system in which the authoritative electronic copy is recorded are readily
3 available for review and expressly provide that a particular jurisdiction is the
4 chattel paper's jurisdiction for purposes of this part, this article, or the Uniform
5 Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

6 (3) If subdivisions (1) and (2) of this subsection do not apply and the
7 authoritative electronic copy, or a record attached to or logically associated
8 with the electronic copy and readily available for review, expressly provides
9 that the chattel paper is governed by the law of a particular jurisdiction, that
10 jurisdiction is the chattel paper's jurisdiction.

11 (4) If subdivisions (1), (2), and (3) of this subsection do not apply and
12 the rules of the system in which the authoritative electronic copy is recorded
13 are readily available for review and expressly provide that the chattel paper or
14 the system is governed by the law of a particular jurisdiction, that jurisdiction
15 is the chattel paper's jurisdiction.

16 (5) If subdivisions (1) through (4) of this subsection do not apply, the
17 chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

18 (c) If an authoritative tangible copy of a record evidences chattel paper and
19 the chattel paper is not evidenced by an authoritative electronic copy, while the
20 authoritative tangible copy of the record evidencing chattel paper is located in
21 a jurisdiction, the local law of that jurisdiction governs:

1 (1) perfection of a security interest in the chattel paper by possession
2 under section 9-314A of this title; and

3 (2) the effect of perfection or nonperfection and the priority of a security
4 interest in the chattel paper.

5 (d) The local law of the jurisdiction in which the debtor is located governs
6 perfection of a security interest in chattel paper by filing.

7 § 9-306B. LAW GOVERNING PERFECTION AND PRIORITY OF

8 SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS,

9 CONTROLLABLE ELECTRONIC RECORDS, AND

10 CONTROLLABLE PAYMENT INTANGIBLES

11 (a) Except as provided in subsection (b) of this section, the local law of the
12 controllable electronic record's jurisdiction specified in subsections 12-107(c)
13 and (d) of this title governs perfection, the effect of perfection or
14 nonperfection, and the priority of a security interest in a controllable electronic
15 record and a security interest in a controllable account or controllable payment
16 intangible evidenced by the controllable electronic record.

17 (b) The local law of the jurisdiction in which the debtor is located governs:

18 (1) perfection of a security interest in a controllable account,
19 controllable electronic record, or controllable payment intangible by filing; and

20 (2) automatic perfection of a security interest in a controllable payment
21 intangible created by a sale of the controllable payment intangible.

* * *

§ 9—310. WHEN FILING REQUIRED TO PERFECT SECURITY

INTEREST OR AGRICULTURAL LIEN; SECURITY

INTERESTS AND AGRICULTURAL LIENS TO WHICH

FILING PROVISIONS DO NOT APPLY

* * *

(b) The filing of a financing statement is not necessary to perfect a security interest:

* * *

(8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 9—314 of this title;

(8.1) in chattel paper which is perfected by possession and control under section 9-314A of this title;

(9) in proceeds which is perfected under section 9—315 of this title; or

* * *

§ 9—312. PERFECTION OF SECURITY INTERESTS IN CHATTEL

PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE

ELECTRONIC RECORDS, CONTROLLABLE PAYMENT

INTANGIBLES, DEPOSIT ACCOUNTS, NEGOTIABLE

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) A security interest in chattel paper, ~~negotiable documents~~, controllable accounts, controllable electronic records, controllable payment intangibles, instruments, ~~or~~ investment property, or negotiable documents may be perfected by filing.

(b) Except as otherwise provided in subsections 9—315(c) and (d) of this title for proceeds:

* * *

(2) ~~and~~ except as otherwise provided in subsection 9—308(d) of this title, a security interest in a letter-of-credit right may be perfected only by control under section 9—314 of this title; ~~and~~

(3) a security interest in tangible money may be perfected only by the secured party's taking possession under section 9—313 of this title; and

(4) a security interest in electronic money may be perfected only by control under section 9—314 of this title.

* * *

1 (e) A security interest in certificated securities, negotiable documents, or
2 instruments is perfected without filing or the taking of possession or control for
3 a period of 20 days from the time it attaches to the extent that it arises for new
4 value given under ~~an authenticated~~ a signed security agreement.

5 * * *

6 § 9—313. WHEN POSSESSION BY OR DELIVERY TO SECURED

7 PARTY PERFECTS SECURITY INTEREST WITHOUT FILING

8 (a) ~~Perfection by possession or delivery.~~ Except as otherwise provided in
9 subsection (b) of this section, a secured party may perfect a security interest in
10 ~~tangible negotiable documents,~~ goods, instruments, negotiable tangible
11 documents, or tangible money, ~~or tangible chattel paper~~ by taking possession
12 of the collateral. A secured party may perfect a security interest in certificated
13 securities by taking delivery of the certificated securities under section 8—301
14 of this title.

15 * * *

16 (c) With respect to collateral other than certificated securities and goods
17 covered by a document, a secured party takes possession of collateral in the
18 possession of a person other than the debtor, the secured party, or a lessee of
19 the collateral from the debtor in the ordinary course of the debtor's business,
20 when:

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

3 (2) the person takes possession of the collateral after having
4 ~~authenticated~~ signed a record acknowledging that it will hold possession of the
5 collateral for the secured party's benefit.

6 (d) If perfection of a security interest depends upon possession of the
7 collateral by a secured party, perfection occurs ~~no~~ not earlier than the time the
8 secured party takes possession and continues only while the secured party
9 retains possession.

10 * * *

11 § 9—314. PERFECTION BY CONTROL

12 (a) A security interest in ~~investment property, deposit accounts, letter-of-~~
13 ~~credit rights, electronic chattel paper, or electronic documents~~ controllable
14 accounts, controllable electronic records, controllable payment intangibles,
15 deposit accounts, electronic documents, electronic money, investment
16 property, or letter-of-credit rights may be perfected by control of the collateral
17 under section 7—106, 9—104, ~~9-105~~, 9-105A, 9-106, ~~or 9-107~~, or 9-107A of
18 this title.

19 (b) A security interest in ~~deposit accounts, electronic chattel paper, letter-~~
20 ~~of-credit rights, or electronic documents~~ controllable accounts, controllable
21 electronic records, controllable payment intangibles, deposit accounts,

1 electronic documents, electronic money, or letter-of-credit rights is perfected
2 by control under section 7—106, 9—104, ~~9—105, or 9—105A~~, 9-107, or 9—
3 107A of this title ~~when~~ not earlier than the time the secured party obtains
4 control and remains perfected by control only while the secured party retains
5 control.

6 (c) A security interest in investment property is perfected by control under
7 section 9—106 of this title ~~from~~ not earlier than the time the secured party
8 obtains control and remains perfected by control until:

9 * * *

10 § 9—314A. PERFECTION BY POSSESSION AND CONTROL OF
11 CHATTEL PAPER

12 (a) A secured party may perfect a security interest in chattel paper by
13 taking possession of each authoritative tangible copy of the record evidencing
14 the chattel paper and obtaining control of each authoritative electronic copy of
15 the electronic record evidencing the chattel paper.

16 (b) A security interest is perfected under subsection (a) of this section not
17 earlier than the time the secured party takes possession and obtains control and
18 remains perfected under subsection (a) of this section only while the secured
19 party retains possession and control.

* * *

* * *

* * *

* * *

1 (b) Except as otherwise provided in subsection (e) of this section, a buyer,
2 other than a secured party, ~~of tangible chattel paper, tangible documents, of~~
3 goods, instruments, tangible documents, or a certificated security takes free of
4 a security interest or agricultural lien if the buyer gives value and receives
5 delivery of the collateral without knowledge of the security interest or
6 agricultural lien and before it is perfected.

7 * * *

8 (d) ~~A~~ Subject to subsections (f)–(i) of this section, a licensee of a general
9 intangible or a buyer, other than a secured party, of accounts, electronic chattel
10 paper, electronic documents, general intangibles, or investment property other
11 than a certificated security collateral other than electronic money, goods,
12 instruments, tangible documents, or a certified security takes free of a security
13 interest if the licensee or buyer gives value without knowledge of the security
14 interest and before it is perfected.

15 * * *

16 (f) A buyer, other than a secured party, of chattel paper takes free of a
17 security interest if, without knowledge of the security interest and before it is
18 perfected, the buyer gives value and:

19 (1) receives delivery of each authoritative tangible copy of the record
20 evidencing the chattel paper; and

1 (2) if each authoritative electronic copy of the record evidencing the
2 chattel paper can be subjected to control under section 9-105 of this title,
3 obtains control of each authoritative electronic copy.

4 (g) A buyer of an electronic document takes free of a security interest if,
5 without knowledge of the security interest and before it is perfected, the buyer
6 gives value and, if each authoritative electronic copy of the document can be
7 subjected to control under section 7-106 of this title, obtains control of each
8 authoritative electronic copy.

9 (h) A buyer of a controllable electronic record takes free of a security
10 interest if, without knowledge of the security interest and before it is perfected,
11 the buyer gives value and obtains control of the controllable electronic record.

12 (i) A buyer, other than a secured party, of a controllable account or a
13 controllable payment intangible takes free of a security interest if, without
14 knowledge of the security interest and before it is perfected, the buyer gives
15 value and obtains control of the controllable account or controllable payment
16 intangible.

17 * * *

§ 9—323. FUTURE ADVANCES

* * *

(d) Except as otherwise provided in subsection (e) of this section, 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:

* * *

(f) Except as otherwise provided in subsection (g) of this section, 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:

* * *

§ 9—324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS

* * *

(b) Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, 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 section 9—330 of this title, and, except as otherwise provided in section 9—327 of this title, also has priority in identifiable cash

1 proceeds of the inventory to the extent the identifiable cash proceeds are
2 received on or before the delivery of the inventory to a buyer, if:

3 (1) the purchase-money security interest is perfected when the debtor
4 receives possession of the inventory;

5 (2) the purchase-money secured party sends ~~an authenticated~~ a signed
6 notification to the holder of the conflicting security interest;

7 * * *

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

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

17 (2) the purchase-money secured party sends ~~an authenticated~~ a signed
18 notification to the holder of the conflicting security interest;

19 * * *

1 § 9—324A. PRIORITY OF PRODUCTION-MONEY SECURITY

2 INTERESTS AND AGRICULTURAL LIENS

3 (a) Except as otherwise provided in subsections (c), (d), and (e) of this
4 section, if the requirements of subsection (b) of this section are satisfied, a
5 perfected production-money security interest in production-money crops has
6 priority over a conflicting security interest in the same crops and, except as
7 otherwise provided in section 9—327 of this title, also has priority in their
8 identifiable proceeds.

9 (b) A production-money security interest has priority under subsection (a)
10 of this section if:

11 (1) the production-money security interest is perfected by filing when
12 the production-money secured party first gives new value to enable the debtor
13 to produce the crops;

14 (2) the production-money secured party sends an authenticated
15 notification to the holder of the conflicting security interest not less than 10 or
16 more than 30 days before the production-money secured party first gives new
17 value to enable the debtor to produce the crops if the holder had filed a
18 financing statement covering the crops before the date of the filing made by the
19 production-money secured party; and

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

* * *

§ 9—326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW
DEBTOR

* * *

1 § 9—326A. PRIORITY OF SECURITY INTEREST IN CONTROLLABLE
2 ACCOUNT, CONTROLLABLE ELECTRONIC RECORD,
3 AND CONTROLLABLE PAYMENT INTANGIBLE

4 A security interest in a controllable account, controllable electronic record,
5 or controllable payment intangible held by a secured party having control of
6 the account, electronic record, or payment intangible has priority over a
7 conflicting security interest held by a secured party that does not have control.

8 * * *

9 § 9—330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR
10 INSTRUMENT

11 (a) A purchaser of chattel paper has priority over a security interest in the
12 chattel paper which is claimed merely as proceeds of inventory subject to a
13 security interest if:

14 (1) in good faith and in the ordinary course of the purchaser's business,
15 the purchaser gives new value ~~and~~, takes possession of each authoritative
16 tangible copy of the record evidencing the chattel paper or, and obtains control
17 of under section 9—105 of this title of each authoritative electronic copy of the
18 record evidencing the chattel paper under section 9—105 of this title; and

19 (2) the ~~chattel paper does~~ authoritative copies of the record evidencing
20 the chattel paper do not indicate that ~~it~~ the chattel paper has been assigned to
21 an identified assignee other than the purchaser.

1 (b) A purchaser of chattel paper has priority over a security interest in the
2 chattel paper which is claimed other than merely as proceeds of inventory
3 subject to a security interest if the purchaser gives new value ~~and~~, takes
4 possession of each authoritative tangible copy of the record evidencing the
5 chattel paper or, and obtains control of under section 9—105 of this title of
6 each authoritative electronic copy of the record evidencing the chattel paper
7 ~~under section 9—105 of this title~~ in good faith, in the ordinary course of the
8 purchaser's business, and without knowledge that the purchase violates the
9 rights of the secured party.

10 * * *

11 (f) For purposes of subsections (b) and (d) of this section, if the
12 authoritative copies of the record evidencing chattel paper or an instrument
13 ~~indicates~~ indicate that ~~it~~ the chattel paper or instrument has been assigned to an
14 identified secured party other than the purchaser, a purchaser of the chattel
15 paper or instrument has knowledge that the purchase violates the rights of the
16 secured party.

17 § 9—331. PRIORITY OF RIGHTS OF PURCHASERS OF ~~INSTRUMENTS,~~
18 CONTROLLABLE ACCOUNTS, CONTROLLABLE
19 ELECTRONIC RECORDS, CONTROLLABLE PAYMENT
20 INTANGIBLES, DOCUMENTS, INSTRUMENTS, AND
21 SECURITIES UNDER OTHER ARTICLES; PRIORITY OF

1 INTERESTS IN FINANCIAL ASSETS AND SECURITY
2 ENTITLEMENTS AND PROTECTION AGAINST ASSERTION
3 OF CLAIM UNDER ARTICLE ARTICLES 8 AND 12

4 (a) This article does not limit the rights of a holder in due course of a
5 negotiable instrument, a holder to which a negotiable document of title has
6 been duly negotiated, ~~or~~ a protected purchaser of a security, or a qualifying
7 purchaser of a controllable account, controllable electronic record, or
8 controllable payment intangible. These holders or purchasers take priority
9 over an earlier security interest, even if perfected, to the extent provided in
10 Articles 3, 7, ~~and 8,~~ and 12 of this title.

11 (b) This article does not limit the rights of or impose liability on a person to
12 the extent that the person is protected against the assertion of an adverse claim
13 under Article 8 or 12 of this title.

14 * * *

15 § 9—332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM
16 DEPOSIT ACCOUNT

17 (a) A transferee of tangible money takes the money free of a security
18 interest ~~unless the transferee acts~~ if the transferee receives possession of the
19 money without acting in collusion with the debtor in violating the rights of the
20 secured party.

1 (b) A transferee of funds from a deposit account takes the funds free of a
2 security interest in the deposit account ~~unless the transferee acts~~ if the
3 transferee receives the funds without acting in collusion with the debtor in
4 violating the rights of the secured party.

5 (c) A transferee of electronic money takes the money free of a security
6 interest if the transferee obtains control of the money without acting in
7 collusion with the debtor in violating the rights of the secured party.

8 * * *

9 § 9—334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND
10 CROPS

11 * * *

12 (f) A security interest in fixtures, whether or not perfected, has priority over
13 a conflicting interest of an encumbrancer or owner of the real property if:

14 (1) the encumbrancer or owner has, in ~~an authenticated~~ a signed record,
15 consented to the security interest or disclaimed an interest in the goods as
16 fixtures; or

17 * * *

18 § 9—341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO
19 DEPOSIT ACCOUNT

20 Except as otherwise provided in subsection 9—340(c) of this title, and
21 unless the bank otherwise agrees in ~~an authenticated~~ a signed record, a bank's

1 rights and duties with respect to a deposit account maintained with the bank are
2 not terminated, suspended, or modified by:

3 * * *

4 § 9—404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND
5 DEFENSES AGAINST ASSIGNEE

6 (a) Unless an account debtor has made an enforceable agreement not to
7 assert defenses or claims, and subject to subsections (b) through (e) of this
8 section, the rights of an assignee are subject to:

9 (1) all terms of the agreement between the account debtor and assignor
10 and any defense or claim in recoupment arising from the transaction that gave
11 rise to the contract; and

12 (2) any other defense or claim of the account debtor against the assignor
13 which accrues before the account debtor receives a notification of the
14 assignment ~~authenticated~~ signed by the assignor or the assignee.

15 * * *

16 § 9—406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF
17 ASSIGNMENT; IDENTIFICATION AND PROOF OF
18 ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF
19 ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,
20 AND PROMISSORY NOTES INEFFECTIVE

1 (a) Subject to subsections (b) through ~~(h)~~(i) and (l) of this section, an
2 account debtor on an account, chattel paper, or a payment intangible may
3 discharge its obligation by paying the assignor until, but not after, the account
4 debtor receives a notification, ~~authenticated~~ signed by the assignor or the
5 assignee, that the amount due or to become due has been assigned and that
6 payment is to be made to the assignee. After receipt of the notification, the
7 account debtor may discharge its obligation by paying the assignee and may
8 not discharge the obligation by paying the assignor.

9 (b) Subject to ~~subsection (g)~~ subsections (h) and (l) of this section,
10 notification is ineffective under subsection (a) of this section:

11 * * *

12 (c) Subject to ~~subsection (g)~~ subsections (h) and (l) of this section, if
13 requested by the account debtor, an assignee shall seasonably furnish
14 reasonable proof that the assignment has been made. Unless the assignee
15 complies, the account debtor may discharge its obligation by paying the
16 assignor, even if the account debtor has received a notification under
17 subsection (a) of this section.

18 (d) In this subsection, “promissory note” includes a negotiable instrument
19 that evidences chattel paper. Except as otherwise provided in ~~subsection~~
20 subsections (e) and (k) of this section and sections 2A—303 and 9—407 of
21 this title, and subject to subsection ~~(g)~~(h) of this section, a term in an

1 agreement between an account debtor and an assignor or in a promissory note
2 is ineffective to the extent that it:

3 * * *

4 (e) Subsection (d) of this section does not apply to the sale of a payment
5 intangible or promissory note, other than a sale pursuant to a disposition under
6 section 9—610 of this title or an acceptance of collateral under section 9—620
7 of this title.

8 (f) ~~Subject to subsection (g) of this section, an account debtor may not~~
9 ~~waive or vary its option under subdivision (b)(3) of this section. Except as~~
10 otherwise provided in subsection (k) of this section and sections 2A—303 and
11 9—407 of this title and subject to subsections (h) and (i) of this section, a rule
12 of law, statute, or regulation that prohibits, restricts, or requires the consent of
13 a government, governmental body or official, or account debtor to the
14 assignment or transfer of, or creation of a security interest in, an account or
15 chattel paper is ineffective to the extent that the rule of law, statute, or
16 regulation:

17 (1) prohibits, restricts, or requires the consent of the government,
18 governmental body or official, or account debtor to the assignment or transfer
19 of, or the creation, attachment, perfection, or enforcement of, a security interest
20 in the account or chattel paper; or

1 (2) provides that the assignment or transfer or the creation, attachment,
2 perfection, or enforcement of the security interest may give rise to a default,
3 breach, right of recoupment, claim, defense, termination, right of termination,
4 or remedy under the account or chattel paper.

5 ~~(g) This section is subject to law other than this article which establishes a~~
6 ~~different rule for an account debtor who is an individual and who incurred the~~
7 ~~obligation primarily for personal, family, or household purposes. Subject to~~
8 subsections (h) and (l) of this section, an account debtor may not waive or vary
9 its option under subdivision (b)(3) of this section.

10 ~~(h) This section does not apply to an assignment of a health care insurance~~
11 ~~receivable~~ This section is subject to law other than this article which
12 establishes a different rule for an account debtor who is an individual and who
13 incurred the obligation primarily for personal, family, or household purposes.

14 (i) This section does not apply to an assignment of a health care insurance
15 receivable.

16 (j) This section prevails over any inconsistent provisions of this title.

17 (k) Subsections (d), (f), and (j) of this section do not apply to a security
18 interest in an ownership interest in a general partnership, limited partnership,
19 or limited liability company.

20 (l) Subsections (a), (b), (c), and (g) of this section do not apply to a
21 controllable account or controllable payment intangible.

* * *

§ 9—408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY

NOTES, HEALTH CARE INSURANCE RECEIVABLES, AND
CERTAIN GENERAL INTANGIBLES INEFFECTIVE

(a) Except as otherwise provided in ~~subsection~~ subsections (b) and (f) of this section, 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) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of

1 the payment intangible or promissory note, other than a sale pursuant to a
2 disposition under section 9—610 of this title or an acceptance of collateral
3 under section 9—620 of this title.

4 (c) ~~A~~ Except as otherwise provided in subsection (f) of this section, a rule
5 of law, statute, or regulation, which prohibits, restricts, or requires the consent
6 of a government, governmental body or official, person obligated on a
7 promissory note, or account debtor to the assignment or transfer of, or creation
8 of a security interest in, a promissory note, health care insurance receivable, or
9 general intangible, including a contract, permit, license, or franchise between
10 an account debtor and a debtor, is ineffective to the extent that the rule of law,
11 statute, or regulation:

12 (1) would impair the creation, attachment, or perfection of a security
13 interest; or

14 (2) provides that the assignment or transfer or the creation, attachment,
15 or perfection of the security interest may give rise to a default, breach, right of
16 recoupment, claim, defense, termination, right of termination, or remedy under
17 the promissory note, health care insurance receivable, or general intangible.

18 (d) To the extent that a term in a promissory note or in an agreement
19 between an account debtor and a debtor which relates to a health care
20 insurance receivable or general intangible or a rule of law, statute, or
21 regulation described in subsection (c) of this section would be effective under

1 law other than this article but is ineffective under subsection (a) or (c) of this
2 section, the creation, attachment, or perfection of a security interest in the
3 promissory note, health care insurance receivable, or general intangible:

4 (1) is not enforceable against the person obligated on the promissory
5 note or the account debtor;

6 (2) does not impose a duty or obligation on the person obligated on the
7 promissory note or the account debtor;

8 (3) does not require the person obligated on the promissory note or the
9 account debtor to recognize the security interest, pay or render performance to
10 the secured party, or accept payment or performance from the secured party;

11 (4) does not entitle the secured party to use or assign the debtor's rights
12 under the promissory note, health care insurance receivable, or general
13 intangible, including any related information or materials furnished to the
14 debtor in the transaction giving rise to the promissory note, health care
15 insurance receivable, or general intangible;

16 (5) does not entitle the secured party to use, assign, possess, or have
17 access to any trade secrets or confidential information of the person obligated
18 on the promissory note or the account debtor; and

19 (6) does not entitle the secured party to enforce the security interest in
20 the promissory note, health care insurance receivable, or general intangible.

(g) In this section, “promissory note” includes a negotiable instrument that evidences chattel paper.

* * *

§ 9—509. PERSONS ENTITLED TO FILE A RECORD

(a) 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~~ signed record or pursuant to subsection (b) or (c) of this section; 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) By ~~authenticating~~ signing 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:

* * *

§ 9—513. TERMINATION STATEMENT

* * *

(b) To comply with subsection (a) of this section, 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 a signed demand from a debtor.

(c) In cases not governed by subsection (a) of this section, within 20 days after a secured party receives ~~an authenticated~~ a signed 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:

* * *

§ 9—601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT;
CONSIGNOR OR BUYER ACCOUNTS; CHATTEL PAPER,
PAYMENT INTANGIBLES, OR PROMISSORY NOTES

* * *

1 (b) A secured party in possession of collateral or control of collateral under
2 section 7—106, 9—104, 9—105, 9—105A, 9—106, ~~or 9—107~~, or 9—107A of
3 this title has the rights and duties provided in section 9—207 of this title.

4 * * *

5 § 9—605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR

6 (a) ~~A~~ Except as provided in subsection (b) of this section, a secured party
7 does not owe a duty based on its status as secured party:

8 * * *

9 (b) A secured party owes a duty based on its status as a secured party to a
10 person if, at the time the secured party obtains control of collateral that is a
11 controllable account, controllable electronic record, or controllable payment
12 intangible or at the time the security interest attaches to the collateral,
13 whichever is later:

14 (1) the person is a debtor or obligor; and

15 (2) the secured party knows that the information in subdivision

16 (a)(1)(A), (B), or (C) of this section relating to the person is not provided by
17 the collateral, a record attached to or logically associated with the collateral, or
18 the system in which the collateral is recorded.

19 * * *

§ 9—608. APPLICATION OF PROCEEDS OF COLLECTION OR
ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT
TO SURPLUS

(a) 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 section 9—607 of this title in the
following order to:

* * *

(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~~ a signed demand for proceeds before
distribution of the proceeds is completed.

* * *

§ 9—611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL

(a) 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~~ a signed notification of disposition; or

* * *

§ 9—613. CONTENTS AND FORM OF NOTIFICATION BEFORE
DISPOSITION OF COLLATERAL: GENERAL

(a) Except in a consumer-goods transaction, the following rules apply:

* * *

(5) The following form of notification and the form appearing in subdivision ~~9—614(3)~~ 9—614(a)(3) of this title, when completed in accordance with the instructions in subsection (b) of this section and subsection 9—614(b) of this title, 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 the [describe collateral] to the highest qualified bidder in public
as follows:~~

~~Day and Date: _____~~

~~Time: _____~~

~~Place: _____~~

~~For a private disposition:~~

~~We will sell 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. You may request an accounting by calling us at~~
~~[telephone number].~~

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)

{1} Name of any debtor that is not an addressee: (Name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at
public sale. A sale could include a lease or license. The sale will be held as
follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date).

A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured
by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting you must pay a charge of \$ (amount).

{6} You may request an accounting by calling us at (telephone number).

1 **(b) The following instructions apply to the form of notification in**
2 **subdivision (a)(5) of this section:**

3 **(1) The instructions in this subsection refer to the numbers in braces**
4 **before items in the form of notification in subdivision (a)(5) of this section.**
5 **Do not include the numbers or braces in the notification. The numbers and**
6 **braces are used only for the purpose of these instructions.**

7 **(2) Include and complete item {1} only if there is a debtor that is not an**
8 **addressee of the notification and list the name or names.**

9 **(3) Include and complete either item {2}, if the notification relates to a**
10 **public disposition of the collateral, or item {3}, if the notification relates to a**
11 **private disposition of the collateral. If item {2} is included, include the words**
12 **“to the highest qualified bidder” only if applicable.**

13 **(4) Include and complete items {4} and {6}.**

14 **(5) Include and complete item {5} only if the sender will charge the**
15 **recipient for an accounting.**

16 § 9—614. CONTENTS AND FORM OF NOTIFICATION BEFORE
17 DISPOSITION OF COLLATERAL; CONSUMER GOODS
18 TRANSACTION

19 **(a)** In a consumer goods transaction, the following rules apply:

20 (1) A notification of disposition must provide the following information:

(A) the information specified in subdivision ~~9—613(1)~~ 9—613(a)(1)
of this title;

* * *

(3) The following form of notification, when completed in accordance
with the instructions in subsection (b) of this section, 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:~~

1 ~~Place:~~

2 ~~You may attend the sale and bring bidders if you want.~~

3 ~~or~~

4 ~~For a private disposition:~~

5 ~~We will sell [describe collateral] at private sale sometime after~~

6 ~~..... [date] A sale could include a lease or license.~~

7 ~~The money that we get from the sale (after paying our costs) will reduce the~~
8 ~~amount you owe. If we get less money than you owe, you [will or will not,~~

9 ~~as applicable] still owe us the difference. If we get more money than you~~
10 ~~owe, you will get the extra money, unless we must pay it to someone else.~~

11 ~~You can get the property back at any time before we sell it by paying us the~~
12 ~~full amount you owe (not just the past due payments), including our expenses.~~

13 ~~To learn the exact amount you must pay, call us at [telephone number~~
14 ~~].....~~

15 ~~If you want us to explain to you in writing how we have figured the amount~~
16 ~~that you owe us, you may call us at [telephone number] or~~
17 ~~write us at [secured party's address] and request a~~
18 ~~written explanation. We will charge you \$..... for the explanation if we sent you~~
19 ~~another written explanation of the amount you owe us within the last six~~
20 ~~months.~~

1 ~~If you need more information about the sale call us at [telephone~~
2 ~~number] or write us at [secured party's address]~~
3 ~~.....~~

4 ~~We are sending this notice to the following other people who have an interest~~
5 ~~in [describe collateral] or who owe money under your agreement:~~
6 ~~..... [it Names of all other debtors and obligors, if any]~~

7 (Name and address of secured party)

8 (Date)

9 NOTICE OF OUR PLAN TO SELL PROPERTY

10 (Name and address of any obligor who is also a debtor)

11 Subject: (Identify transaction)

12 We have your (describe collateral), because you broke promises in our
13 agreement.

14 { 1 } We will sell (describe collateral) at public sale. A sale could include a
15 lease or license. The sale will be held as follows:

16 (Date)

17 (Time)

18 (Place)

19 You may attend the sale and bring bidders if you want.

20 { 2 } We will sell (describe collateral) at private sale sometime after (date).

21 A sale could include a lease or license.

1 {3} The money that we get from the sale, after paying our costs, will
2 reduce the amount you owe. If we get less money than you owe, you (will or
3 will not, as applicable) still owe us the difference. If we get more money than
4 you owe, you will get the extra money, unless we must pay it to someone else.

5 {4} You can get the property back at any time before we sell it by paying
6 us the full amount you owe, not just the past due payments, including our
7 expenses. To learn the exact amount you must pay, call us at (telephone
8 number).

9 {5} If you want us to explain to you in (writing) (writing or in (description
10 of electronic record)) (description of electronic record) how we have figured
11 the amount that you owe us, {6} call us at (telephone number) (or) (write us at
12 (secured party's address)) (or contact us by (description of electronic
13 communication method)) {7} and request (a written explanation) (a written
14 explanation or an explanation in (description of electronic record)) (an
15 explanation in (description of electronic record)).

16 {8} We will charge you \$ (amount) for the explanation if we sent you
17 another written explanation of the amount you owe us within the last six
18 months.

19 {9} If you need more information about the sale (call us at (telephone
20 number)) (or) (write us at (secured party's address)) (or contact us by
21 (description of electronic communication method)).

* * *

(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication—writing or electronic communication—for the recipient of the notification to communicate with the sender. Neither of the

1 two additional methods of communication is required to be included.

2 (6) In item {7}, include and complete the method or methods for the
3 explanation—writing, writing or electronic record, or electronic record—
4 included in item {5}.

5 (7) Include and complete item {8} only if a written explanation is
6 included in item {5} as a method for communicating the explanation and the
7 sender will charge the recipient for another written explanation.

8 (8) In item {9}, include either the telephone number or the address or
9 both the telephone number and the address. In addition, the sender may
10 include and complete the additional method of communication—electronic
11 communication—for the recipient of the notification to communicate with the
12 sender. The additional method of electronic communication is not required to
13 be included.

14 (9) If item {10} does not apply, insert “None” after “agreement:”.

15 § 9—615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY

16 FOR DEFICIENCY AND RIGHT TO SURPLUS

17 (a) A secured party shall apply or pay over for application the cash
18 proceeds of disposition under section 9—610 of this title in the following order
19 to:

20 * * *

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds is completed.

* * *

§ 9—616. EXPLANATION OF CALCULATION OF SURPLUS OR
DEFICIENCY

(a) In this section:

(1) “Explanation” means a ~~writing~~ record that:

* * *

(2) “Request” means a record:

(A) ~~authenticated~~ signed by a debtor or consumer obligor;

* * *

1 (b) In a consumer goods transaction in which the debtor is entitled to a
2 surplus or a consumer obligor is liable for a deficiency under section 9—615 of
3 this title, the secured party shall:

4 (1) send an explanation to the debtor or consumer obligor, as applicable,
5 after the disposition and:

6 (A) before or when the secured party accounts to the debtor and pays
7 any surplus or first makes ~~written~~ demand in a record on the consumer obligor
8 after the disposition for payment of the deficiency; and

9 * * *

10 (c) To comply with subdivision (a)(1)(B) of this section, ~~a writing~~ an
11 explanation must provide the following information in the following order:

12 * * *

13 § 9—619. TRANSFER OF RECORD OR LEGAL TITLE

14 (a) In this section, “transfer statement” means a record ~~authenticated~~ signed
15 by a secured party stating:

16 * * *

17 § 9—620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL

18 SATISFACTION OF OBLIGATION; COMPULSORY

19 DISPOSITION OF COLLATERAL

1 (a) Except as otherwise provided in subsection (g) of this section, a secured
2 party may accept collateral in full or partial satisfaction of the obligation it
3 secures only if:

4 (1) the debtor consents to the acceptance under subsection (c) of this
5 section;

6 (2) the secured party does not receive, within the time set forth in
7 subsection (d) of this section, a notification of objection to the proposal
8 ~~authenticated~~ signed by:

9 * * *

10 (b) A purported or apparent acceptance of collateral under this section is
11 ineffective unless:

12 (1) the secured party consents to the acceptance in ~~an authenticated a~~
13 signed record or sends a proposal to the debtor; and

14 (2) the conditions of subsection (a) of this section are met.

15 (c) For purposes of this section:

16 (1) a debtor consents to an acceptance of collateral in partial satisfaction
17 of the obligation it secures only if the debtor agrees to the terms of the
18 acceptance in a record ~~authenticated~~ signed after default; and

19 (2) a debtor consents to an acceptance of collateral in full satisfaction of
20 the obligation it secures only if the debtor agrees to the terms of the acceptance
21 in a record ~~authenticated~~ signed after default or the secured party:

1 * * *

2 (C) does not receive a notification of objection ~~authenticated~~ signed
3 by the debtor within 20 days after the proposal is sent.

4 * * *

5 (f) To comply with subsection (e) of this section, the secured party shall
6 dispose of the collateral:

7 (1) within 90 days after taking possession; or

8 (2) within any longer period to which the debtor and all secondary
9 obligors have agreed in an agreement to that effect entered into and
10 ~~authenticated~~ signed after default.

11 * * *

12 § 9—621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL

13 (a) A secured party that desires to accept collateral in full or partial
14 satisfaction of the obligation it secures shall send its proposal to:

15 (1) any person from which the secured party has received, before the
16 debtor consented to the acceptance, ~~an authenticated~~ a signed notification of a
17 claim of an interest in the collateral;

18 * * *

§ 9—624. WAIVER

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9—611 of this title only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(b) A debtor may waive the right to require disposition of collateral under subsection 9—620(e) of this title only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(c) Except in a consumer goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9—623 of this title only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

* * *

§ 9—628. NONLIABILITY AND LIMITATION ON LIABILITY OF
SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR

(a) ~~Unless~~ Subject to subsection (f) of this section, 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:

* * *

(b) ~~A~~ Subject to subsection (f) of this section, a secured party is not liable because of its status as secured party:

* * *

1 (f) Subsections (a) and (b) of this section do not apply to limit the liability
2 of a secured party to a person if, at the time the secured party obtains control of
3 collateral that is a controllable account, controllable electronic record, or
4 controllable payment intangible or at the time the security interest attaches to
5 the collateral, whichever is later:

6 (1) the person is a debtor or obligor; and

7 (2) the secured party knows that the information in subdivision
8 (b)(1)(A), (B), or (C) of this section relating to the person is not provided by
9 the collateral, a record attached to or logically associated with the collateral, or
10 the system in which the collateral is recorded.

11 * * *

12 Sec. 10. 9A V.S.A. article 12 is added to read:

13 ARTICLE 12. CONTROLLABLE ELECTRONIC RECORDS

14 § 12—101. TITLE

15 This article may be cited as Uniform Commercial Code—Controllable
16 Electronic Records.

17 § 12—102. DEFINITIONS

18 (a) In this article:

19 (1) “Controllable electronic record” means a record stored in an
20 electronic medium that can be subjected to control under section 12—105 of
21 this title. The term does not include a controllable account, a controllable

1 payment intangible, a deposit account, an electronic copy of a record
2 evidencing chattel paper, an electronic document of title, electronic money,
3 investment property, or a transferable record.

4 (2) “Qualifying purchaser” means a purchaser of a controllable
5 electronic record or an interest in a controllable electronic record that obtains
6 control of the controllable electronic record for value, in good faith, and
7 without notice of a claim of a property right in the controllable electronic
8 record.

9 (3) “Transferable record” has the meaning provided for that term:

10 (A) in section 201(a)(1) of the Electronic Signatures in Global and
11 National Commerce Act, 15 U.S.C. Section 7021(a)(1), as may be amended; or

12 (B) as defined in 9 V.S.A. § 285.

13 (4) “Value” has the meaning provided in subsection 3—303(a) of this
14 title, as if references in that subsection to an “instrument” were references to a
15 controllable account, controllable electronic record, or controllable payment
16 intangible.

17 (b) The definitions in Article 9 of this title of “account debtor,”
18 “controllable account,” “controllable payment intangible,” “chattel paper,”
19 “deposit account,” “electronic money,” and “investment property” apply to this
20 article.

1 § 12—103. RELATION TO ARTICLE 9 AND CONSUMER LAWS

2 (a) If there is conflict between this article and Article 9, Article 9 governs.

3 (b) A transaction subject to this article is subject to any applicable rule of
4 law that establishes a different rule for consumers, to any other statute or rule
5 of this State that regulates the rates, charges, agreements, and practices for
6 loans, credit sales, or other extensions of credit, and to any consumer
7 protection statute or rule of this State.

8 (c) Article 1 of this title contains general definitions and principles of
9 construction and interpretation applicable throughout this article.

10 § 12—104. RIGHTS IN CONTROLLABLE ACCOUNT, CONTROLLABLE
11 ELECTRONIC RECORD, AND CONTROLLABLE PAYMENT
12 INTANGIBLE

13 (a) This section applies to the acquisition and purchase of rights in a
14 controllable account or controllable payment intangible, including the rights
15 and benefits under subsections (c), (d), (e), (g), and (h) of this section of a
16 purchaser and qualifying purchaser, in the same manner this section applies to
17 a controllable electronic record.

18 (b) To determine whether a purchaser of a controllable account or a
19 controllable payment intangible is a qualifying purchaser, the purchaser
20 obtains control of the account or payment intangible if it obtains control of the

1 controllable electronic record that evidences the account or payment
2 intangible.

3 (c) Except as provided in this section, law other than this article determines
4 whether a person acquires a right in a controllable electronic record and the
5 right the person acquires.

6 (d) A purchaser of a controllable electronic record acquires all rights in the
7 controllable electronic record that the transferor had or had power to transfer,
8 except that a purchaser of a limited interest in a controllable electronic record
9 acquires rights only to the extent of the interest purchased.

10 (e) A qualifying purchaser acquires its rights in the controllable electronic
11 record free of a claim of a property right in the controllable electronic record.

12 (f) Except as provided in subsections (a) and (e) of this section for a
13 controllable account and a controllable payment intangible or law other than
14 this article, a qualifying purchaser takes a right to payment, right to
15 performance, or other interest in property evidenced by the controllable
16 electronic record subject to a claim of a property right in the right to payment,
17 right to performance, or other interest in property.

18 (g) An action may not be asserted against a qualifying purchaser based on
19 both a purchase by the qualifying purchaser of a controllable electronic record
20 and a claim of a property right in another controllable electronic record.

1 whether the action is framed in conversion, replevin, constructive trust,
2 equitable lien, or other theory.

3 (h) Filing of a financing statement under Article 9 is not notice of a claim
4 of a property right in a controllable electronic record.

5 § 12—105. CONTROL OF CONTROLLABLE ELECTRONIC RECORD

6 (a) A person has control of a controllable electronic record if the electronic
7 record, a record attached to or logically associated with the electronic record,
8 or a system in which the electronic record is recorded:

9 (1) gives the person:

10 (A) power to avail itself of substantially all the benefit from the
11 electronic record; and

12 (B) exclusive power, subject to subsection (b) of this section, to:

13 (i) prevent others from availing themselves of substantially all the
14 benefit from the electronic record; and

15 (ii) transfer control of the electronic record to another person or
16 cause another person to obtain control of another controllable electronic record
17 as a result of the transfer of the electronic record; and

18 (2) enables the person readily to identify itself in any way, including by
19 name, identifying number, cryptographic key, office, or account number, as
20 having the powers specified in subdivision (1) of this subsection.

1 (b) Subject to subsection (c) of this section, a power is exclusive under
2 subdivisions (a)(1)(B)(i) and (ii) of this section even if:

3 (1) the controllable electronic record, a record attached to or logically
4 associated with the electronic record, or a system in which the electronic
5 record is recorded limits the use of the electronic record or has a protocol
6 programmed to cause a change, including a transfer or loss of control or a
7 modification of benefits afforded by the electronic record; or

8 (2) the power is shared with another person.

9 (c) A power of a person is not shared with another person under
10 subdivision (b)(2) of this section and the person's power is not exclusive if:

11 (1) the person can exercise the power only if the power also is exercised
12 by the other person; and

13 (2) the other person:

14 (A) can exercise the power without exercise of the power by the
15 person; or

16 (B) is the transferor to the person of an interest in the controllable
17 electronic record or a controllable account or controllable payment intangible
18 evidenced by the controllable electronic record.

19 (d) If a person has the powers specified in subdivisions (a)(1)(B)(i) and (ii)
20 of this section, the powers are presumed to be exclusive.

1 (e) A person has control of a controllable electronic record if another
2 person, other than the transferor to the person of an interest in the controllable
3 electronic record or a controllable account or controllable payment intangible
4 evidenced by the controllable electronic record:

5 (1) has control of the electronic record and acknowledges that it has
6 control on behalf of the person; or

7 (2) obtains control of the electronic record after having acknowledged
8 that it will obtain control of the electronic record on behalf of the person.

9 (f) A person that has control under this section is not required to
10 acknowledge that it has control on behalf of another person.

11 (g) If a person acknowledges that it has or will obtain control on behalf of
12 another person, unless the person otherwise agrees or law other than this article
13 or Article 9 otherwise provides, the person does not owe any duty to the other
14 person and is not required to confirm the acknowledgment to any other person.

15 § 12—106. DISCHARGE OF ACCOUNT DEBTOR ON CONTROLLABLE

16 ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE

17 (a) An account debtor on a controllable account or controllable payment
18 intangible may discharge its obligation by paying:

19 (1) the person having control of the controllable electronic record that
20 evidences the controllable account or controllable payment intangible; or

1 (2) except as provided in subsection (b) of this section, a person that
2 formerly had control of the controllable electronic record.

3 (b) Subject to subsection (d) of this section, the account debtor may not
4 discharge its obligation by paying a person that formerly had control of the
5 controllable electronic record if the account debtor receives a notification that:

6 (1) is signed by a person that formerly had control or the person to
7 which control was transferred;

8 (2) reasonably identifies the controllable account or controllable
9 payment intangible;

10 (3) notifies the account debtor that control of the controllable electronic
11 record that evidences the controllable account or controllable payment
12 intangible was transferred;

13 (4) identifies the transferee, in any reasonable way, including by name,
14 identifying number, cryptographic key, office, or account number; and

15 (5) provides a commercially reasonable method by which the account
16 debtor is to pay the transferee.

17 (c) After receipt of a notification that complies with subsection (b) of this
18 section, the account debtor may discharge its obligation by paying in
19 accordance with the notification and may not discharge the obligation by
20 paying a person that formerly had control.

1 (d) Subject to subsection (h) of this section, notification is ineffective under
2 subsection (b) of this section:

3 (1) unless, before the notification is sent, the account debtor and the
4 person that, at that time, had control of the controllable electronic record that
5 evidences the controllable account or controllable payment intangible agree in
6 a signed record to a commercially reasonable method by which a person may
7 furnish reasonable proof that control has been transferred;

8 (2) to the extent an agreement between the account debtor and seller of a
9 payment intangible limits the account debtor's duty to pay a person other than
10 the seller and the limitation is effective under law other than this article; or

11 (3) at the option of the account debtor, if the notification notifies the
12 account debtor to:

13 (A) divide a payment;

14 (B) make less than the full amount of an installment or other periodic
15 payment; or

16 (C) pay any part of a payment by more than one method or to more
17 than one person.

18 (e) Subject to subsection (h) of this section, if requested by the account
19 debtor, the person giving the notification under subsection (b) of this section
20 seasonably shall furnish reasonable proof, using the method in the agreement
21 referred to in subdivision (d)(1) of this section, that control of the controllable

1 electronic record has been transferred. Unless the person complies with the
2 request, the account debtor may discharge its obligation by paying a person
3 that formerly had control, even if the account debtor has received a notification
4 under subsection (b) of this section.

5 (f) A person furnishes reasonable proof under subsection (e) of this section
6 that control has been transferred if the person demonstrates, using the method
7 in the agreement referred to in subdivision (d)(1) of this section, that the
8 transferee has the power to:

9 (1) avail itself of substantially all the benefit from the controllable
10 electronic record;

11 (2) prevent others from availing themselves of substantially all the
12 benefit from the controllable electronic record; and

13 (3) transfer the powers specified in subdivisions (1) and (2) of this
14 subsection to another person.

15 (g) Subject to subsection (h) of this section, an account debtor may not
16 waive or vary its rights under subdivision (d)(1) or subsection (e) of this
17 section or its option under subdivision (d)(3) of this section.

18 (h) This section is subject to law other than this article which establishes a
19 different rule for an account debtor who is an individual and who incurred the
20 obligation primarily for personal, family, or household purposes.

1 § 12—107. GOVERNING LAW

2 (a) Except as provided in subsection (b) of this section, the local law of a
3 controllable electronic record's jurisdiction governs a matter covered by this
4 article.

5 (b) For a controllable electronic record that evidences a controllable
6 account or controllable payment intangible, the local law of the controllable
7 electronic record's jurisdiction governs a matter covered by section 12—106 of
8 this title unless an effective agreement determines that the local law of another
9 jurisdiction governs.

10 (c) The following rules determine a controllable electronic record's
11 jurisdiction under this section:

12 (1) If the controllable electronic record, or a record attached to or
13 logically associated with the controllable electronic record and readily
14 available for review, expressly provides that a particular jurisdiction is the
15 controllable electronic record's jurisdiction for purposes of this article or title,
16 that jurisdiction is the controllable electronic record's jurisdiction.

17 (2) If subdivision (1) of this subsection does not apply and the rules of
18 the system in which the controllable electronic record is recorded are readily
19 available for review and expressly provide that a particular jurisdiction is the

1 controllable electronic record's jurisdiction for purposes of this article or title,
2 that jurisdiction is the controllable electronic record's jurisdiction.

3 (3) If subdivisions (1) and (2) of this subsection do not apply and the
4 controllable electronic record, or a record attached to or logically associated
5 with the controllable electronic record and readily available for review,
6 expressly provides that the controllable electronic record is governed by the
7 law of a particular jurisdiction, that jurisdiction is the controllable electronic
8 record's jurisdiction.

9 (4) If subdivisions (1), (2), and (3) of this subsection do not apply and
10 the rules of the system in which the controllable electronic record is recorded
11 are readily available for review and expressly provide that the controllable
12 electronic record or the system is governed by the law of a particular
13 jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

14 (5) If subdivisions (1)–(4) of this subsection do not apply, the
15 controllable electronic record's jurisdiction is the District of Columbia.

16 (d) If subdivision (5) of subsection (c) of this section applies and Article 12
17 is not in effect in the District of Columbia without material modification, the
18 governing law for a matter covered by this article is the law of the District of
19 Columbia as though Article 12 were in effect in the District of Columbia

1 without material modification. In this subsection, “Article 12” means Article
2 12 of Uniform Commercial Code Amendments (2022).

3 (e) To the extent subsections (a) and (b) of this section provide that the
4 local law of the controllable electronic record’s jurisdiction governs a matter
5 covered by this article, that law governs even if the matter or a transaction to
6 which the matter relates does not bear any relation to the controllable
7 electronic record’s jurisdiction.

8 (f) The rights acquired under section 12—104 of this title by a purchaser or
9 qualifying purchaser are governed by the law applicable under this section at
10 the time of purchase.

11 Sec. 11. TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12 OF
12 THE UNIFORM COMMERCIAL CODE AMENDMENTS

13 (a) General provisions and definitions.

14 (1) This section may be cited as Transitional Provisions for Uniform
15 Commercial Code Amendments (2022).

16 (2) As used in this section:

17 (A) “Adjustment date” means July 1, 2026, or the date that is one
18 year after the effective date of this act, whichever is later.

19 (B) “Article 12” means Article 12 of the Uniform Commercial Code.

20 (C) “Article 12 property” means a controllable account, controllable
21 electronic record, or controllable payment intangible.

1 (D) “Controllable account” has the same meaning as in section 9—
2 102 of the Uniform Commercial Code—Secured Transactions.

3 (E) “Controllable electronic record” has the same meaning as in
4 section 12—102 of the Uniform Commercial Code—Controllable Electronic
5 Records.

6 (F) “Controllable payment intangible” has the same meaning as in
7 section 9—102 of the Uniform Commercial Code—Secured Transactions.

8 (G) “Electronic money” has the same meaning as in section 9-102 of
9 the Uniform Commercial Code—Secured Transactions.

10 (H) “Financing statement” has the same meaning as in section 9—
11 102 of the Uniform Commercial Code—Secured Transactions.

12 (3) Article 1 of the Uniform Commercial Code contains general
13 definitions and principles of construction and interpretation applicable
14 throughout this section.

15 (b) Saving clause and exceptions.

16 (1) Except as provided in subsections (c)–(g) of this section:

17 (A) A transaction validly entered into before July 1, 2025 and the
18 rights, duties, and interests flowing from the transaction remain valid thereafter
19 and may be terminated, completed, consummated, or enforced as required or
20 permitted by law other than the Uniform Commercial Code, or, if applicable,
21 the Uniform Commercial Code, as though this act had not taken effect.

1 (B) Except as provided in subsections (c)—(g) of this section,
2 Article 9 as amended by this act and Article 12 apply to a transaction, lien, or
3 other interest in property, even if the transaction, lien, or interest was entered
4 into, created, or acquired before July 1, 2025.

5 (2) Except as provided in subdivision (3) of this subsection and
6 subsections (c)—(g) of this section:

7 (A) a transaction, lien, or interest in property that was validly entered
8 into, created, or transferred before July 1, 2025 and was not governed by the
9 Uniform Commercial Code, but would be subject to Article 9 as amended by
10 this act or Article 12 if it had been entered into, created, or transferred on or
11 after July 1, 2025, including the rights, duties, and interests flowing from the
12 transaction, lien, or interest, remains valid on and after July 1, 2025; and

13 (B) the transaction, lien, or interest may be terminated, completed,
14 consummated, and enforced as required or permitted by this act or by the law
15 that would apply if this act had not taken effect.

16 (3) This act does not affect an action, case, or proceeding commenced
17 before July 1, 2025.

18 (c) Security interest perfected before effective date.

19 (1) A security interest that is enforceable and perfected immediately
20 before July 1, 2025 is a perfected security interest under this act if, on July 1,

1 2025, the requirements for enforceability and perfection under this act are
2 satisfied without further action.

3 (2) If a security interest is enforceable and perfected immediately before
4 July 1, 2025, but the requirements for enforceability or perfection under this
5 act are not satisfied on July 1, 2025, the security interest:

6 (A) is a perfected security interest until the earlier of the time
7 perfection would have ceased under the law in effect immediately before July
8 1, 2025 or the adjustment date;

9 (B) remains enforceable thereafter only if the security interest
10 satisfies the requirements for enforceability under section 9—203 of the
11 Uniform Commercial Code, as amended by this act, before the adjustment
12 date; and

13 (C) remains perfected thereafter only if the requirements for
14 perfection under this act are satisfied before the time specified in subdivision
15 (A) of this subdivision (c)(2).

16 (d) Security interest unperfected before effective date. A security interest
17 that is enforceable immediately before July 1, 2025 but is unperfected at that
18 time;

1 (1) remains an enforceable security interest until the adjustment date;

2 (2) remains enforceable thereafter if the security interest becomes
3 enforceable under section 9—203 of the Uniform Commercial Code, as
4 amended by this act, on or before the adjustment date; and

5 (3) becomes perfected:

6 (A) without further action, on July 1, 2025 if the requirements for
7 perfection under this act are satisfied before or at that time; or

8 (B) when the requirements for perfection are satisfied if the
9 requirements are satisfied after that time.

10 (e) Effectiveness of actions taken before effective date.

11 (1) If action, other than the filing of a financing statement, is taken
12 before July 1, 2025 and the action would have resulted in perfection of the
13 security interest had the security interest become enforceable before July 1,
14 2025, the action is effective to perfect a security interest that attaches under
15 this act before the adjustment date. An attached security interest becomes
16 unperfected on the adjustment date unless the security interest becomes a
17 perfected security interest under this act before the adjustment date.

18 (2) The filing of a financing statement before July 1, 2025 is effective to
19 perfect a security interest on July 1, 2025 to the extent the filing would satisfy
20 the requirements for perfection under this act.

1 (3) The taking of an action before July 1, 2025 is sufficient for the
2 enforceability of a security interest on July 1, 2025 if the action would satisfy
3 the requirements for enforceability under this act.

4 (f) Priority.

5 (1) Subject to subdivisions (2) and (3) of this subsection, this act
6 determines the priority of conflicting claims to collateral.

7 (2) Subject to subdivision (3) of this subsection, if the priorities of
8 claims to collateral were established before July 1, 2025, Article 9 as in effect
9 before July 1, 2025 determines priority.

10 (3) On the adjustment date, to the extent the priorities determined by
11 Article 9 as amended by this act modify the priorities established before July 1,
12 2025, the priorities of claims to Article 12 property and electronic money
13 established before July 1, 2025 cease to apply.

14 (g) Priority of claims when priority rules of Article 9 do not apply.

15 (1) Subject to subdivisions (2) and (3) of this subsection, Article 12
16 determines the priority of conflicting claims to Article 12 property when the
17 priority rules of Article 9 as amended by this act do not apply.

18 (2) Subject to subdivision (3) of this subsection, when the priority rules
19 of Article 9 as amended by this act do not apply and the priorities of claims to
20 Article 12 property were established before July 1, 2025, law other than Article
21 12 determines priority.

1 (3) When the priority rules of Article 9 as amended by this act do not
2 apply, to the extent the priorities determined by this act modify the priorities
3 established before July 1, 2025, the priorities of claims to Article 12 property
4 established before July 1, 2025 cease to apply on the adjustment date.

5 Sec. 11a. INCLUSION OF OFFICIAL COMMENTS

6 Codification of the changes set forth in this act shall include the official
7 comments of the Uniform Commercial Code as set forth in the final official
8 text of the American Law Institute and the National Conference of
9 Commissioners on Uniform State Laws, provided that the comments shall, in
10 addition, include appropriate references to any Vermont variations to the
11 official text.

12 Sec. 12. EFFECTIVE DATE

13 This act shall take effect on July 1, 2025.