

Chapter 2

The Basics

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§ 2:1 Introduction

It is important that documentation touch all of the bases. Too often, an essential element is overlooked. This chapter presents a basic overview of the scheme of Article 9 secured transactions, from which everything else in the book flows.

The parties to an Article 9 transaction are the *secured party* and the *debtor*. In a financing transaction, the secured party is the lender in whose favor a security interest is created.¹ The debtor is the person who has an interest, other than a security interest or lien, in the collateral, even if the person is not liable on the secured obligation.² Since Article 9 also covers the sale of accounts, chattel paper,

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1. U.C.C. § 9-102(a)(73). Prior U.C.C. § 9-105(m) used a slightly different formulation: “a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold.”
 2. U.C.C. § 9-102(a)(28). Prior U.C.C. § 9-105(d) defined the debtor as the person who owed payment or performance of the secured obligation, and, if not the obligor, the owner of the collateral.

payment intangibles, and promissory notes, in that context, “secured party” is the purchaser of such items, and “debtor” is the seller.³

Old Article 9 created confusion by designing as the “debtor” both the person who owes payment and the owner of any collateral for the obligation.⁴ As noted in the previous paragraph, Revised Article 9 limits “debtor” to a person who has an interest in the collateral other than a lien, a seller in covered sales of intangibles, and a consignee.⁵ The person who owes the obligation is the *obligor*.⁶ A guarantor is a “secondary obligor.”⁷ The definition of *secured party* is slightly expanded to cover purchasers of items in sales not formerly covered by Article 9.⁸

A *security interest* is “an interest in personal property or fixtures which secures payment or performance of an obligation.”⁹ It is created by a *security agreement*, “an agreement that creates or provides for a security interest.”¹⁰

When a security interest becomes enforceable against the debtor with respect to the collateral, it has “attached.”¹¹ Attachment has three elements:

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3. U.C.C. § 9-102(a)(73), (28). Under prior law, Article 9 did not apply to sales of payment intangibles or promissory notes. Prior U.C.C. § 9-102(1)(b); *see also id.* § 9-105(m), (d).
 4. *See infra* section 8:1.
 5. U.C.C. § 9-102(a)(28).
 6. *Id.* § 9-102(a)(59).
 7. *Id.* § 9-102(a)(72); *Regions Bank v. Thomas*, 89 U.C.C. Rep. Serv. 2d 660 (Tex. App. Apr. 27, 2016).
 8. U.C.C. § 9-102(a)(73).
 9. *Id.* § 1-201(b)(35); Prior U.C.C. § 1-201(37); *see infra* section 3:8 (on how the U.C.C. distinguishes between a security interest and a true lease of equipment).
 10. U.C.C. § 9-102(a)(74); Prior U.C.C. § 9-105(1); *see Quisenberry v. Am. State Bank (In re Quisenberry)*, 295 B.R. 855 (Bankr. N.D. Tex. 2003). For a discussion of the extent to which an agreement must create or provide for the security interest, *see cases infra* at chapter 4. The definition under prior law ended with the additional language, “regardless of the label or form of the transaction.” One would have thought that nearly half a century of operation under Article 9 would have made it common knowledge that a reservation of title, absent a security agreement, would fail, but some are still attempting to use that technique. *See, e.g., Meade v. Richardson Fuel, Inc.*, 166 S.W.3d 55 (Ky. Ct. App. 2005). If a third party purports to grant the security interest, the consent of the owner of the collateral to the grant of a security interest must be demonstrated. *Res. Fin. Co. v. Cynergy Data LLC*, 966 N.Y.S.2d 24 (App. Div. 1st Dep’t 2013).
 11. U.C.C. § 9-203(a) (Revised Article 9 adds “unless an agreement expressly postpones the time of attachment”); Prior U.C.C. § 9-203(2).

- (1) agreement has been reached;
- (2) value has been given; and
- (3) the debtor has rights in the collateral.¹²

§ 2:2 Agreement

Under the former statute, the debtor had to sign an agreement that contains a description of the collateral, the only exception being when the collateral was in the possession of the secured party.¹³ This is also the case under current law, except that, as noted below, “signed” has been expanded to “authenticated.”¹⁴

It is not possible to circumvent the technical requirements of Article 9 by asserting an equitable lien or the like.¹⁵

The mere fact of possession does not imply an oral security agreement;¹⁶ the intent of the parties to create an oral security agreement must be clear.¹⁷ This requirement is found in the cases under prior law¹⁸ and in the text of revised section 9-102(a)(7).

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12. U.C.C. § 9-203(b); Prior U.C.C. § 9-203(1).
 13. Prior U.C.C. § 9-203(1)(a); First Nat'l Bank v. Alba (*In re Alba*), 429 B.R. 353, 358 (Bankr. N.D. Ga. 2008); Vt. Indus. Dev. Auth. v. Setze, 600 A.2d 302 (Vt. 1991). As to signatures, see cases *infra* at chapter 17. As to collateral descriptions, see materials *infra* at chapters 13–15. An intention to grant a security interest, absent the writing, will not suffice. *In re Miller*, 320 B.R. 911 (Bankr. E.D. Mo. 2005); Reuter v. Citizens & N. Bank, 599 A.2d 673 (Pa. Super. Ct. 1991). An issue that continually arises at the trial level but is seldom found in reported decisions involves whether possession of a certificate of title to a vehicle is the equivalent of possession of the vehicle for perfection purposes. It is not. *See, e.g., Laurel Motors, Inc. v. Airways Transp. Grp.*, 672 N.E.2d 785 (Ill. App. Ct. 1996). The requirement for possession is strictly construed and actual possession is essential. *Farm Credit Serv. v. First State Bank*, 575 N.W.2d 250 (S.D. 1998).
 14. *See also infra* section 17:1.
 15. *See Wild W. World, LLC v. Larsen Int'l Inc. (In re Wild W. World, LLC)*, 2008 WL 4642266 (Bankr. D. Kan. Oct. 17, 2008); *Webster v. Lazin (In re Millennium Prods., Inc.)*, 48 U.C.C. Rep. Serv. 2d 368 (Bankr. D.D.C. 2002).
 16. *In re Lewis*, 70 B.R. 699 (D. Kan. 1987); *First Nat'l Bank v. Quintana*, 733 P.2d 858 (N.M. 1987); *Grossmann v. Saunders*, 376 S.E.2d 66 (Va. 1989).
 17. *In re Cable's Enter., LLC*, 88 U.C.C. Rep. Serv. 2d 549 (Bankr. M.D.N.C. 2015).
 18. *Arochem Corp. v. Wilomi, Inc.*, 962 F.2d 496 (5th Cir. 1992); *Capitol Transp. v. United States*, 612 F.2d 1312, 1324–25 (1st Cir. 1979) (published tariff establishes a consensual lien); *In re Colortran, Inc.*, 218 B.R. 507 (B.A.P. 9th Cir. 1997), *aff'd*, 165 F.3d 35 (9th Cir. 1998); *Expeditors*

The basic criteria to determine the existence of an oral security agreement are:

- (1) the burden of proof is on the proponent;
- (2) the language used evidenced a definite intent on the part of both of the parties; and
- (3) exclusive possession of the collateral passed to the creditor contemporaneous with the oral agreement.¹⁹

In some cases (historically those where the originator of a credit was a dealer contemplating sale of the obligation to a lender), forms state that the secured party's signature—its authorization under current law—is a condition prerequisite to effectiveness. The few cases that have addressed the question have held that the absence of the secured party's signature/authorization is not necessarily fatal.²⁰

To accommodate electronic security documentation, Revised Article 9 no longer calls for a physical writing. Instead, the requirement is that the debtor has *authenticated* a security agreement that provides a description of the collateral, the new term encompassing both written and other forms.²¹

It is important, once an agreement is found, to determine the outer parameters of that agreement. For example, it must be clear what

Int'l v. Wang Labs., Inc., 1995 U.S. Dist. LEXIS 20007 (D. Mass. Nov. 14, 1995) (course of dealing provides evidence of the security agreement). *But see* *Expeditors Int'l v. Official Creditors Comm. (In re CFLC, Inc.)*, 166 F.3d 1012 (9th Cir. 1988); *see also In re Hryniewicz*, 222 B.R. 14 (D. Conn. 1998); *In re Airwest Int'l*, 70 B.R. 914 (D. Haw. 1987); *Burlesci v. Petersen*, 80 Cal. Rptr. 2d 704 (Ct. App. 1998); *Skiles v. Sec. State Bank*, 494 N.W.2d 355 (Neb. Ct. App. 1992).

19. *Dzikowski v. Steoppelwerth (In re Boca Arena, Inc.)*, 237 B.R. 221 (S.D. Fla. 1999), quoting *Rubin v. Reorganized Church (In re Chuning)*, 70 B.R. 98 (W.D. Mo. 1987).

20. *In re Vic Supply Co.*, 227 F.3d 928 (7th Cir. 2000); *Liquidating Grantor's Tr. v. Finova Capital Corp. (In re Proteva, Inc.)*, 390 B.R. 584, 595–96 (N.D. Ill. 2002).

21. "Authenticate" means: (A) to sign; or (B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record. U.C.C. § 9-102(a)(7). "Record," a broader term than "writing," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. *Id.* § 9-102(a)(7). In the absence of a security agreement, a "naked" financing statement is not authorized. *Scotto Rest. Grp., LLC v. Mission Valley Bank (In re Scott Rest. Grp., LLC)*, 2012 WL 3070351 (Bankr. W.D.N.C. July 30, 2012).

obligations are secured²² and what collateral has been tendered to secure those obligations.²³

§ 2:3 Value

Value has a broad definition, which specifically includes commitments to lend, acquisition as security for or satisfaction of a pre-existing claim, and consideration to support a simple contract under non-U.C.C. law.²⁴

§ 2:4 Rights in the Collateral

The U.C.C. does not define “rights in the collateral,” and other law, state and federal,²⁵ must be consulted to determine the scope of the phrase.²⁶ The statute includes an alternative satisfaction of the requirement if the debtor holds “the power to transfer rights in the collateral to a secured party.”²⁷ This is consistent with cases under old Article 9 holding that “an owner’s permission to use goods as collateral

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22. *In re Watson*, 286 B.R. 594 (D.N.J. 2002); *In re Immerfall*, 216 B.R. 269 (D. Minn. 1998).
 23. See THOMAS S. HEMMENDINGER, HILLMAN ON COMMERCIAL LOAN DOCUMENTATION §§ 10:1–10:4 (PLI 6th ed. 2013 & Supp. 2016).
 24. U.C.C. § 1-204. Prior U.C.C. § 1-201(44); see, e.g., *Citigroup Glob. Mkts. v. KLCC Invs., LLC*, 2015 U.S. Dist. LEXIS 137767 (S.D.N.Y. Sept. 28, 2015) (the value does not have to flow directly to the debtor); *In re Kline Eng’g, PC*, 232 B.R. 579 (E.D.N.Y. 1999); *Hildebrand v. Res. Bancshares Mortg. Grp. (In re Cohee)*, 178 B.R. 154 (M.D. Tenn. 1995); *Adelvision, LP v. Groff*, 859 F. Supp. 797 (E.D. Pa. 1994); *Harder v. United States*, 22 U.C.C. Rep. Serv. 2d 1165 (D. Mass. 1993); *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 326 P.3d 292 (Ariz. Ct. App. 2014) (in which the secured party never gave value); *Press Prods., Inc. v. Geary*, 30 U.C.C. Rep. Serv. 2d 1214 (Wash. Ct. App. 1996). Loans to corporate affiliates of the debtor constitute value to the debtor. 718 Arch St. Assocs., Ltd. v. Blatstein (*In re Blatstein*), 226 B.R. 140 (E.D. Pa. 1998), *rev’d in part, but not as to this point*, 192 F.3d 88 (3d Cir. 1999).
 25. See, e.g., *Lexmark Int’l, Inc. v. Impression Prods.*, 816 F.3d 721 (Fed. Cir. 2016) (upholding a restriction on the resale of patented goods); *S. Audio Servs. v. Carbon Audio, LLC*, 141 F. Supp. 3d 653 (M.D. La. 2015) (foreclosure of security interest in a trademark license does not relieve the buyer from the duty to pay royalties to the licensor).
 26. *Foothill Capital Corp. v. Clare’s Food Mkt., Inc. (In re Coupon Clearing Serv., Inc.)*, 113 F.3d 1091 (9th Cir. 1997).
 27. U.C.C. § 9-203(b)(2); see *Wachovia Bank Nat’l Ass’n v. WL Homes, LLC (In re WL Homes, LLC)*, 534 F. App’x 165, 81 U.C.C. Rep. Serv. 2d 364 (3d Cir. 2013); *Border State Bank v. Bagley Livestock Exch.*, 690 N.W.2d 326 (Minn. Ct. App. 2004); *Zurita v. SVH-1 Partners, Ltd.*, 2011 WL 6118573 (Tex. Ct. App. Dec. 8, 2011).

creates rights in the debtor sufficient to give rise to an enforceable security interest.²⁸

Most of the following cases were decided under the old statute, but should retain their vitality.

A debtor may have rights in collateral without title or ownership.²⁹ The debtor's rights may be subject to the rights of others, such as setoff.³⁰ Ordinarily mere possession or the unexercised option to buy goods does not give rights in the collateral,³¹ but possession by the debtor is not necessary if other rights in the collateral exist.³² A broker does not have rights in the goods offered for sale.³³ But possession

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28. Merchs. Bank v. Atchison (*In re Atchison*), 832 F.2d 1236, 1239 (11th Cir. 1987) (and cases cited); *In re Pubs of Champaign*, 648 F.2d 432 (7th Cir. 1979); see also *Advanced Turbo Prods., Inc. v. Cong. Fin. Corp.* (*In re Advanced Turbo Prods., Inc.*), 126 B.R. 630 (S.D. Fla. 1991); *Kondik v. Ebner* (*In re Standard Foundry Prods., Inc.*), 206 B.R. 475, *reconsideration denied*, 208 B.R. 164 (Bankr. N.D. Ill. 1997); *First Nat'l Bank v. Pleasant Hollow Farm, Inc.*, 532 N.W.2d 60 (S.D. 1995); *Merchs. Nat'l Bank v. Halberstadt*, 425 N.W.2d 429 (Iowa Ct. App. 1988).
29. *Universal Underwriters Ins. Co. v. Winton*, 818 F.3d 1103 (10th Cir. 2016); *Merchs. Bank v. Atchison* (*In re Atchison*), 832 F.2d 1236 (11th Cir. 1987); *Franklin Bank v. Tindall*, 2008 WL 937488 (E.D. Mich. Apr. 7, 2008) (lessee); *Fleet Capital Corp. v. Sutherland Presses* (*In re Enter. Indus., Inc.*), 259 B.R. 163 (N.D. Cal. 2001); *In re Hunt's Pier Assocs.*, 143 B.R. 36 (E.D. Pa. 1992); *Gen. Motors Acceptance Corp. v. Wash. Tr. Co.*, 386 A.2d 1096 (R.I. 1978); *First Nat'l Bank v. Feeney*, 393 N.W.2d 458 (S.D. 1986); *Tokles v. Black Swamp Customs, LLC*, 86 U.C.C. Rep. Serv. 2d 618 (Ohio Ct. App. 2015).
30. See, e.g., *Iowa Oil Co. v. Citgo Petroleum Corp.* (*In re Iowa Oil Co.*), 2004 WL 2326377 (N.D. Iowa Sept. 30, 2004); *Conister Tr. Ltd. v. Boating Corp. of Am.*, 47 U.C.C. Rep. Serv. 2d 210 (Tenn. Ct. App. 2002).
31. *Equip. Fin. Grp. v. Traverse Comput. Brokers*, 973 F.2d 345 (4th Cir. 1992); *Pontchartrain State Bank v. Poulson*, 684 F.2d 704 (10th Cir. 1982); *In re Atl. Marble, Inc.*, 126 B.R. 463 (E.D. Pa. 1991); *Nw. Bank v. First Va. Bank*, 585 F. Supp. 425 (W.D. Va. 1984); *Jerke Constr., Inc. v. Home Fed. Sav. Bank*, 693 N.W.2d 59 (S.D. 2005); *Cont'l W. Ins. Co. v. Black*, 361 P.3d 841 (Wy. 2015) (lease-to-own agreement). Mere possession of goods owned by a third party does not give a debtor rights to use the goods as collateral in the absence of consent, estoppel, etc. *Bank S., N.A. v. Midstates Grp., Inc.*, 364 S.E.2d 58 (Ga. Ct. App. 1987); see also *Barton v. United States* (*In re Barton*), 132 B.R. 23 (W.D. Ark. 1991); *State Bank v. Wagener*, 479 N.W.2d 92 (Minn. Ct. App. 1992); *Zucker v. Hirschl & Adler Galleries, Inc.*, 648 N.Y.S.2d 521 (N.Y. Sup. Ct. 1996) (no rights in consigned artworks under specific New York law).
32. *Kunkel v. Sprague Nat'l Bank*, 128 F.3d 636 (8th Cir. 1997).
33. *A. Lassberg & Co. v. Atl. Cotton Co.*, 352 S.E.2d 501 (S.C. Ct. App. 1986).

with contingent rights of ownership³⁴ or voidable title³⁵ has been held adequate.³⁶ In this regard, case law under U.C.C. section 2-403 is relevant.³⁷

The test has been said to be the extent to which possession is supplemented by control factors.³⁸ A partner may not have a sufficient interest in partnership assets to pledge them for a personal debt.³⁹ An entity has no interest in an asset owned by its shareholders or members.⁴⁰ Possession by a debtor solely as a bailee does not convey sufficient rights in the collateral.⁴¹

When the seller retains possession and the buyer has only the “special property” that arises on identification to the contract under section 2-401(a), the buyer does not have an interest in the goods

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34. *Weaver v. Ford Motor Credit Co. (In re McFarland)*, 131 B.R. 627 (E.D. Tenn. 1990), *aff'd*, 943 F.2d 53 (6th Cir. 1991); *Bischoff v. Thomasson*, 400 So. 2d 359 (Ala. 1981); *Wawak v. Affiliated Food Stores, Inc.*, 812 S.W.2d 679 (Ark. 1991); *K.N.C. Wholesale, Inc. v. AWMCO, Inc.*, 128 Cal. Rptr. 345 (Ct. App. 1976); *First Sec. Bank v. Woolf*, 726 P.2d 792 (Idaho Ct. App. 1986); *Tr. Co. Bank v. Gloucester Corp.*, 643 N.E.2d 16 (Mass. 1994); *N. Supply Co. v. Allco Fin. Serv.*, 728 P.2d 912 (Or. Ct. App. 1986); *Kendrick v. Headwaters Prod. Credit Ass'n*, 523 A.2d 395 (Pa. Super. Ct.), *appeal denied*, 530 A.2d 867 (Pa. 1987).
 35. *Sweetwater Cattle Co. v. Murphy (In re Leonard)*, 565 B.R. 137 (B.A.P. 8th Cir. 2017); *Beebe v. MacMillan Petroleum (Ark.), Inc. (In re MacMillan Petroleum (Ark.), Inc.)*, 115 B.R. 175 (W.D. Ark. 1990); *Foley v. Prod. Credit Ass'n*, 753 S.W.2d 876 (Ky. Ct. App. 1988); *First-Citizens Bank & Tr. Co. v. Academic Archives, Inc.*, 179 S.E.2d 850 (N.C. Ct. App.), *cert. denied*, 181 S.E.2d 601 (N.C. 1971).
 36. See material on government retention of title at *infra* section 3:11.1[H]. It has been held that a debtor has no rights in crops until planted. *Siemers v. AG Servs., Inc. (In re Siemers)*, 249 B.R. 205 (D. Neb. 2000).
 37. See, e.g., *Sweetwater Cattle Co. v. Murphy (In re Leonard)*, 565 B.R. 137 (B.A.P. 8th Cir. 2017); *Mellen, Inc. v. Biltmore Loan & Jewelry-Scottsdale, LLC*, 2017 U.S. Dist. LEXIS 44522 (D. Ariz. Mar. 24, 2017).
 38. *Am. Nat'l Bank v. Joy (In re Joy)*, 169 B.R. 931 (D. Neb. 1994). The decision has been criticized. Steven O. Weise, *U.C.C. Article 9: Personal Property Secured Transactions*, 50 BUS. LAW. 1553, 1560 (1995); see also *First Nat'l Bank v. Pleasant Hollow Farm, Inc.*, 532 N.W.2d 60 (S.D. 1995).
 39. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 554 (5th Cir. 2007); *In re Whatley*, 874 F.2d 997, 1004 (5th Cir. 1989); *Farmers State Bank & Tr. Co. v. Mikesell*, 554 N.E.2d 900 (Ohio Ct. App. 1988).
 40. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 554 (5th Cir. 2007); *Gasser v. Infanti Int'l, Inc.*, 353 F. Supp. 2d 342 (E.D.N.Y. 2005); *Rice v. Fas Fax Corp. (In re Hot Shots Burgers & Fries, Inc.)*, 169 B.R. 920 (E.D. Ark. 1994).
 41. See, e.g., *Rohweder v. Aberdeen Prod. Credit Ass'n*, 765 F.2d 109 (8th Cir. 1985).

sufficient to support a security interest of the buyer's creditor.⁴² The related issue of whether the debtor has rights in the collateral is directly related to the issue of the debtor's identity, discussed in chapter 8.

In some situations, it has been held that a third-party owner of property can authorize the debtor to offer it as collateral to a secured party.⁴³ This creates interesting issues as to the identity of the person who must sign the security agreement. One court required the signature of the actual owner;⁴⁴ another said that the proper signatory was the person having the rights in the collateral.⁴⁵

However, a court may find that the owner of the collateral consented to the security interest, authorized the security interest, or is estopped to object to it.⁴⁶

§ 2:5 Validity

The attached security interest is valid as between the parties⁴⁷ and has priority over a general creditor.⁴⁸ However, unless perfected, the security interest is subject to the rights of many others acquiring interests in the property.⁴⁹

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- 42. Crocker Nat'l Bank v. Ideco Div., Dresser Indus., 839 F.2d 1104, 1109 (5th Cir. 1988); Kenetics Tech. Int'l Corp. v. Fourth Nat'l Bank, 705 F.2d 396 (10th Cir. 1983).
 - 43. See, e.g., Bank of Eng. v. Rice (*In re Webb*), 520 B.R. 748 (Bankr. E.D. Ark. 2014).
 - 44. Nw. Bank v. First Va. Bank, 585 F. Supp. 425 (W.D. Va. 1984).
 - 45. Small Bus. Admin. v. Guar. Bank & Tr. Co. (*In re Whatley*), 874 F.2d 997 (5th Cir. 1989).
 - 46. See, e.g., Wachovia Bank Nat'l Ass'n v. WL Homes, LLC (*In re WL Homes, LLC*), 534 F. App'x 165 (3d Cir. 2013); *In re Pubs, Inc.*, 618 F.2d 432 (7th Cir. 1980).
 - 47. U.C.C. § 9-201(a). Thus, a defective financing statement does not affect the validity of the security interest between the parties. *Supplies & Servs., Inc. v. Nacco Indus., Inc.* (*In re Supplies & Servs., Inc.*), 461 B.R. 699, 707 (B.A.P. 1st Cir. 2011) (quoting text); *Whitmore & Arnold, Inc. v. Lucquet*, 353 S.E.2d 764 (Va. 1987).
 - 48. *S.E.L. Maduro (Fla.), Inc. v. Strachan Shipping Co.*, 800 F.2d 1572 (11th Cir. 1986).
 - 49. U.C.C. §§ 9-310, 9-311. Failure of a secured party to perfect, or loss of perfection by failure to continue a financing statement, does not affect attachment and the consequent validity between the parties. *Provident Hosp. & Training Ass'n v. GMAC Mortg. Co.* (*In re Provident Hosp. & Training Ass'n*), 79 B.R. 374 (N.D. Ill. 1987).

§ 2:6 Perfection

To acquire rights valid against third parties, it is necessary that the security interest be perfected. The available methods of perfection depend upon the nature of the collateral—that is, the U.C.C. classification into which it falls.⁵⁰

The place of perfection of a non-possessory security interest will be controlled by the location of the debtor.⁵¹ If the debtor's location subsequently changes to another jurisdiction, perfection will continue (absent filing in the new jurisdiction) for only four months.⁵²

§ 2:6.1 Under Current Law

The following chart enumerates the various types of collateral and the methods available for perfection of security interests in those types. Also included in the chart are certain non-Code interests that are mentioned in Article 9 and generally excepted from its perfection provisions.

Type of Collateral	How to Perfect
Accounts	filing ⁵³
Assignment for the Benefit of Creditors	automatic ⁵⁴
Beneficial Interest in Decedent's Estate	automatic ⁵⁵

50. See chapter 13.

51. U.C.C. § 9-301(1); Prior U.C.C. § 9-103(1)(b). Filing with an Indian tribe is not an exception to the usual filing location rule. *In re DeCora*, 387 B.R. 230 (Bankr. W.D. Wis. 2008).

52. U.C.C. § 9-316(a)(2); Prior U.C.C. § 9-103(3)(e). The effect of a bankruptcy filing on this period is the subject of conflicting decisions. See, e.g., *Expeditors Int'l v. Liquidating Tr. (In re Schwinn Cycling & Fitness, Inc.)*, 313 B.R. 473 (D. Colo. 2004); *Whitaker v. CIT Grp./Equip. Fin., Inc. (In re Crowell)*, 304 B.R. 255 (W.D.N.C. 2004).

53. U.C.C. § 9-310(a). "An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles" is automatically perfected. *Id.* § 9-309(2). For an application of this rule, see *St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank*, 882 So. 2d 766 (Miss. 2004).

54. U.C.C. § 9-309(12).

55. *Id.* § 9-309(13).

Type of Collateral	How to Perfect
Certificated Securities	temporary automatic; ⁵⁶ possession; ⁵⁷ filing ⁵⁸
Chattel Paper	possession (tangible); ⁵⁹ control (electronic); ⁶⁰ filing (either) ⁶¹
Commodity Contract/Account	filing; ⁶² control; ⁶³ automatic ⁶⁴
Consignments	filing ⁶⁵ and notice to seniors ⁶⁶
Consumer Goods PMSIs	automatic ⁶⁷
Deposit Accounts	control ⁶⁸
Documents	possession ⁶⁹

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56. To the extent of new value, U.C.C. § 9-312(e), or when made available to the debtor under U.C.C. § 9-312(g).
57. *Id.* § 9-313(a); *id.* § 8-301.
58. *Id.* § 9-312(a).
59. *Id.* § 9-313(a); *FDIC v. Kipperman (In re Commercial Money Ctr., Inc.)*, 392 B.R. 814 (B.A.P. 9th Cir. 2008). A purchaser of chattel paper who took possession in the ordinary course of business and without knowledge of the security interest had priority over the holder of a security interest in the chattel paper perfected only by filing. U.C.C. § 9-330(b); *see infra* section 19:3.3.
60. U.C.C. § 9-314(b).
61. *Id.* § 9-312(a).
62. *Id.* § 9-312(a).
63. *Id.* § 9-314(a). Control is defined in U.C.C. § 9-106.
64. Created by a commodity intermediary. *Id.* § 9-309(11).
65. *Id.* § 9-310(a).
66. *Id.* § 9-324(b).
67. *Id.* § 9-309(1). Excepted are titled vehicles and other goods subject to supervening statutes. *See id.* § 9-311. Filing is necessary to protect against a sale to another consumer. *See id.* § 9-320(b).
68. *Id.* § 9-314(b); *Fifth Third Bank v. U.S. Dep't of Agric.-Rural Dev.*, 2013 WL 1787151 (W.D. Mich. Apr. 26, 2013); *E53 Fed. Credit Union v. Perez (In re Perez)*, 440 B.R. 634, 638 (Bankr. D.N.J. 2010) (nonnegotiable and nontransferable certificate of deposit); *In re Verus Inv. Mgmt., LLC*, 344 B.R. 536 (Bankr. N.D. Ohio 2006) (certificate of deposit); *Counciller v. Ecenbarger, Inc.*, 834 N.E.2d 1018 (Ind. Ct. App. 2005). Control is lacking where a certificate of deposit is in the hands of a third-party custodian. *Flener v. Alexander (In re Alexander)*, 429 B.R. 876, 879 (Bankr. W.D. Ky. 2010). For the rights of a secured party who has not obtained control, *see David Forestry Prods., Inc. v. Downeast Power Co.*, 12 A.3d 1180 (Me. 2011). Control lost when funds transferred out of account and are not identifiable proceeds. *In re Milton Abeles, LLC*, 2013 WL 5304014 (Bankr. E.D.N.Y. Sept. 20, 2013).
69. U.C.C. § 9-313(a).

Type of Collateral	How to Perfect
Equipment	filing; ⁷⁰ possession ⁷¹
Fixtures	fixture filing ⁷²
General Intangibles	filing ⁷³
Goods subject to certificate of title laws	certificate of title ⁷⁴ unless held as inventory ⁷⁵
Goods in the possession of a bailee (no negotiable document)	filing; ⁷⁶ notice to bailee; ⁷⁷ issuance of document in secured party's name; ⁷⁸ temporary automatic ⁷⁹
Goods—other	filing; ⁸⁰ possession ⁸¹
Healthcare Insurance Receivable	automatic if to the provider; ⁸² filing ⁸³

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70. Except goods subject to other statutes and treaties, including certificate of title laws. *See id.* § 9-311.
71. *Id.* § 9-313(a); *see* Bank of Neb. v. Rose (*In re* Rose), 2010 WL 1740635 (Bankr. D. Neb. 2010) (coins); *In re* Phillips-Camper, 359 B.R. 659 (Bankr. N.D. Ohio 2007) (same).
72. U.C.C. §§ 9-501(a)(1)(b), 9-501(a)(2); *see* Sturtz Mach., Inc. v. Dove's Indus., Inc., 2014 WL 1383403 (N.D. Ohio Apr. 8, 2014).
73. U.C.C. § 9-310(a). A Pennsylvania liquor license is a general intangible, not subject to perfection by possession. *City of Harrisburg v. Kanoff (In re Kanoff)*, 408 B.R. 53, 59 (Bankr. M.D. Pa. 2009).
74. U.C.C. § 9-311(a)(2); *see infra* chapter 18.
75. U.C.C. § 9-311(d).
76. *Id.* §§ 9-311 and 9-312(d)(3).
77. *Id.* § 9-312(d)(2).
78. *Id.* § 9-312(d)(1).
79. If made available to the debtor for ultimate sale or exchange, or for loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with the goods in a manner preliminary to their sale or exchange. *Id.* § 9-312(f).
80. Except goods subject to other statutes and treaties, such as certificate of title laws. *See id.* § 9-311.
81. *Id.* § 9-313(a); *see* Bank of Neb. v. Rose (*In re* Rose), 2010 WL 1740635 (Bankr. D. Neb. 2010) (coins); *In re* Phillips-Camper, 359 B.R. 659 (Bankr. N.D. Ohio 2007) (same); *see also* U.C.C. § 9-312(d), (f) when goods are in the possession of a bailee that has issued a nonnegotiable document.
82. U.C.C. § 9-309(5).
83. *Id.* § 9-310(a).

Type of Collateral	How to Perfect
Instruments	temporary automatic; ⁸⁴ possession; ⁸⁵ filing ⁸⁶
Inventory	filing; ⁸⁷ possession ⁸⁸
Investment Property	automatic; ⁸⁹ control; ⁹⁰ filing ⁹¹
Letter-of-Credit Rights	control ⁹²
Lien Securing Right to Payment	automatic ⁹³
Manufactured Home	certificate of title (if applicable); ⁹⁴ compliance with non-uniform statute allowing classification of the home as real estate; ⁹⁵ otherwise filing ⁹⁶

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84. To the extent of new value, U.C.C. § 9-312(e), or when made available to the debtor under U.C.C. § 9-312(g).
85. *Id.* §§ 9-313, 9-312(a). For the application of this provision where a note is secured by a real estate mortgage, see *Provident Bank v. Cmty. Home Mortg. Corp.*, 498 F. Supp. 2d 558 (E.D.N.Y. 2007).
86. U.C.C. § 9-312(a); *Everhome Mortg. Co. v. Robey*, 136 P.3d 1066 (Okla. Civ. App. 2006).
87. U.C.C. § 9-310(a); see *In re Hurst*, 308 B.R. 298 (Bankr. S.D. Ohio 2004) (motor vehicle inventory). There may be issues as to whether particular vehicles are held as inventory or not. See, e.g., *In re Skagit Pac. Corp.*, 316 B.R. 330 (B.A.P. 9th Cir. 2004).
88. U.C.C. § 9-313.
89. If created by broker or securities intermediary. *Id.* § 9-309(10).
90. *Id.* § 9-314(c).
91. *Id.* § 9-312(a); *In re GEM Refrigerator Co.*, 512 B.R. 194 (Bankr. E.D. Pa. 2014).
92. U.C.C. § 9-314(b)(2); see *Floyd v. Am. Block Roland Niles Int'l, Inc. (In re Cooper Mfg. Co.)*, 344 B.R. 496 (Bankr. S.D. Tex. 2006), distinguishing assignment of the proceeds of a letter of credit from the grant of a security interest in those proceeds.
93. If the security interest in the collateral was perfected. U.C.C. § 9-308(e); see also *id.* § 9-203(g). *HSBC Bank USA, N.A. v. Perez*, 165 So. 3d 696 (Fla. Dist. Ct. App. 2015); *Bank of Am., N.A. v. Christensen*, 357 P.3d 313 (Kan. Ct. App. 2015); *Everbank v. Seederger Ventures, Inc.*, 2016 Tex. App. LEXIS 7319 (Tex. App. July 12, 2016).
94. U.C.C. § 9-311(a)(2); *In re Starks*, 2011 WL 248521 (Bankr. E.D. Ky. Jan. 24, 2011); *Nazar v. Stuewe (In re Stuewe)*, 2011 WL 2173694 (Bankr. D. Kan. June 2, 2011). The certificate must be filed in the place provided by state law to be valid. *Vanderbilt Mortg. & Fin., Inc. v. Westenhoefer*, 716 F.3d 957 (6th Cir. 2013).
95. See, e.g., OR. REV. STAT. § 446.626; *Wells Fargo Bank, NA v. Haas*, 379 P.3d 693 (Or. Ct. App. 2016).
96. U.C.C. § 9-515(b). Effective period is thirty years.

Type of Collateral	How to Perfect
Money	possession ⁹⁷
Proceeds	automatic ⁹⁸
Securities Account	control; ⁹⁹ filing ¹⁰⁰
Security Entitlement	control; ¹⁰¹ filing ¹⁰²
Supporting Obligations ¹⁰³	automatic ¹⁰⁴
Uncertificated Securities	control; ¹⁰⁵ filing ¹⁰⁶

§ 2:6.2 Under Prior Law

The perfection scheme before Revised Article 9 was somewhat easier to deal with than that which succeeded it:

Type of Collateral	How to Perfect
Accounts	filing ¹⁰⁷
Assignment for the Benefit of Creditors	automatic ¹⁰⁸
Beneficial Interest in Decedent's Estate	automatic ¹⁰⁹

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97. *Id.* § 9-312(a)(3); *United States v. Cox*, 2008 WL 2397615 (W.D.N.C. June 10, 2008); *In re Wright Grp., Inc.*, 443 B.R. 795, 804 (Bankr. N.D. Ind. 2011).
98. If the security interest in the original collateral was perfected. U.C.C. §§ 9-315(c), 9-203(f); *Everbank v. Seedergy Ventures, Inc.*, 2016 Tex. App. LEXIS 7319 (Tex. App. July 12, 2016).
99. U.C.C. § 9-314; *see infra* chapter 18.
100. U.C.C. § 9-310(a); *see infra* chapter 18.
101. U.C.C. § 9-314; *see infra* chapter 18.
102. U.C.C. § 9-310(a).
103. A “supporting obligation” is “a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.” U.C.C. § 9-102(a)(78).
104. If supported obligation is perfected. U.C.C. §§ 9-203(f), 9-308(d).
105. *Id.* § 9-314(a); *see infra* chapter 18.
106. U.C.C. § 9-310(a).
107. Prior U.C.C. § 9-302(1); *see, e.g.*, *Avant Petroleum, Inc. v. Banque Paribas*, 853 F.2d 140 (2d Cir. 1988); *Cent. Wash. Bank v. Mendelson-Zeller, Inc.*, 779 P.2d 697 (Wash. 1989).
108. Prior U.C.C. § 9-302(1)(g).
109. *Id.* § 9-302(1)(c).

Type of Collateral	How to Perfect
Certificated Securities	temporary automatic; ¹¹⁰ possession; ¹¹¹ control ¹¹²
Chattel Paper	possession; ¹¹³ filing ¹¹⁴
Commodity Contract/Account	filing; ¹¹⁵ control; ¹¹⁶ automatic ¹¹⁷
Consignments	filing ¹¹⁸ and notice to seniors ¹¹⁹
Consumer Goods PMSIs	automatic ¹²⁰
Documents (negotiable)	possession; ¹²¹ filing ¹²²
Equipment	filing; ¹²³ possession ¹²⁴
Fixtures	fixture filing ¹²⁵
General Intangibles	filing ¹²⁶
Goods subject to certificate of title laws	certificate of title ¹²⁷ unless held as inventory ¹²⁸

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110. To the extent of new value, Prior U.C.C. § 9-304(4); or when made available to the debtor under Prior U.C.C. § 9-304(5)(b).
111. *Id.* § 9-115(1)(e) and (5); U.C.C. § 8-106; *see* *McFarland v. Brier*, 850 A.2d 965 (R.I. 2004) (certificate of deposit).
112. Prior U.C.C. § 115(4); U.C.C. § 8-106.
113. Prior U.C.C. § 9-305.
114. *Id.* § 9-304(1).
115. *Id.* § 9-115(4)(b).
116. *Id.* § 9-115(4)(a). Control was defined in Prior U.C.C. § 9-115(1)(e).
117. Created by a commodity intermediary. *Id.* § 9-115(4)(d).
118. *Id.* § 9-114.
119. *Id.* § 9-312(3).
120. *Id.* § 9-302(1)(d). However, this provision did not apply to a motor vehicle required to be titled.
121. *Id.* § 9-305; *see* *Marlow v. Rollins Cotton Co. (In re Julien Co.)*, 146 F.3d 420 (6th Cir. 1998) (possession by bailee).
122. Prior U.C.C. § 9-304(1).
123. *Id.* § 9-302(1).
124. *Id.* § 9-305.
125. Prior U.C.C. § 9-401(1)(a) [First Alternative]; *id.* § 9-401(1)(b) [Second Alternative]; *id.* § 9-401(1)(b) [Third Alternative].
126. *Id.* § 9-302(1); *see, e.g.,* *Valley Fed. Sav. Bank v. Stahl*, 793 P.2d 851 (N.M. 1990).
127. Prior U.C.C. § 9-302(3)(b) and (c).
128. *Id.* § 9-302(3)(b) and (c).

Type of Collateral	How to Perfect
Goods in the possession of a bailee (no negotiable document)	filing; ¹²⁹ notice to bailee; ¹³⁰ issuance of document in secured party's name; ¹³¹ temporary automatic ¹³²
Goods—other	filing; ¹³³ possession ¹³⁴
Instruments	temporary automatic; ¹³⁵ possession; ¹³⁶ filing ¹³⁷
Inventory	filing; ¹³⁸ possession ¹³⁹
Investment Property	automatic; ¹⁴⁰ control; ¹⁴¹ filing ¹⁴²
Letter-of-credit proceeds	consent by the issuer and possession of the letter of credit ¹⁴³
Money	possession ¹⁴⁴
Proceeds	automatic ¹⁴⁵
Uncertificated Securities	control; ¹⁴⁶ filing ¹⁴⁷

129. *Id.* § 9-304(3).

130. *Id.*

131. *Id.*

132. If made available to the debtor for ultimate sale or exchange, or for loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with the goods in a manner preliminary to their sale or exchange. *Id.* § 9-304(5).

133. *Id.* § 9-302(1), except goods subject to other statutes and treaties, including certificate of title laws. *See id.* § 9-302(3); *In re Howard's Appliance Corp.*, 91 B.R. 208 (E.D.N.Y. 1988).

134. Prior U.C.C. § 9-305.

135. To the extent of new value, Prior U.C.C. § 9-304(4), or when made available to the debtor under U.C.C. § 9-304(5).

136. *Id.* § 9-305.

137. *Id.* § 9-302(1); *see Omega Envtl., Inc. v. Valley Bank*, 219 F.3d 984 (9th Cir. 2000).

138. Prior U.C.C. § 9-302(1).

139. *Id.* § 9-305.

140. If created by broker or securities intermediary. *Id.* § 9-115(4)(c).

141. *Id.* § 9-115.

142. *Id.* § 9-115(4)(a).

143. U.C.C. § 5-114 and Prior U.C.C. §§ 9-304(1) and 9-305.

144. Prior U.C.C. § 9-305.

145. If the security interest in the original collateral was perfected. Prior U.C.C. §§ 9-306, 9-203(3). *Everbank v. Seedergy Ventures, Inc.*, 2016 Tex. App. LEXIS 7319 (Tex. App. July 12, 2016).

146. Prior U.C.C. § 9-115(4)(a).

147. *Id.* § 9-115(4)(b).

