

HB

239

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB239

Revision Date/Time: _____	Dept Affected: <u>Natural Resources</u>
Title: <u>"An act relating to the Uniform Commercial Code...."</u>	BRU: <u>Information/Data Management</u>
Sponsor: <u>Rep. Murkowski</u>	Component: <u>Recorder's Office/UCC</u>
Requestor: <u>(H) L&C</u>	Component No. <u>802</u>

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	1.5	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	16.5	24.0	0.0	0.0	0.0	0.0
SUPPLIES	2.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	6.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS & CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	26.0	24.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	0.0	(20.0)	(16.0)	(12.0)	(9.0)	(6.7)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	26.0	24.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	26.0	24.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

Under HB239, all UCC filings (except fixture filings, timber to be cut and as-extracted collateral) would be filed at the central filing office. Local district offices would continue to accept filings on fixtures, timber to be cut and as-extracted collateral, but all other filings would occur at the central office, simplifying the process immensely for filing officers and secured lenders alike.

The declining revenues shown above represent the decrease attributable to the gradual elimination of dual filings over the transitional period. Decreasing revenues are expected until all filings have transitioned to UCC Central, or lapsed.

..... continued on page 2.....

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Division:	Support Services Division	Date :	03-Feb-00
Approved by Commissioner:	John Shively <i>[Signature]</i>	Date:	03-02-2000
Agency:	Natural Resources		

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The initial anticipated increase in filings at UCC Central will be 30 to 40 percent per year, with a corresponding decrease at the local district level. After the transition period, the UCC Central volume should stabilize at 150 to 167 percent of its current total. The overall decrease in revenues for the component as a result of the change in filing office is expected to total \$63.7 over the five year transition period. The component regularly generates between \$1 and \$2.5 million in excess of its operating budget annually.

With the expected 50 to 67 per cent increase in UCC Central filings under this bill (approximately 10,000 to 15,000 documents per year), the component estimates that an additional two to two and a half FTE staff would be required in the UCC Central office to process the increased volume. This staffing would be handled via lateral transfers from the larger recording district offices. Little impact would be seen at the remote office sites as they do not currently have large volumes of UCC transactions under the current law. Because the component expects to utilize existing cross-trained employees from larger recording offices to handle the increased filing volume at UCC Central, the fiscal note does not request any new personal services funding to implement this bill. However, because this code revision would result in some major operational changes in the way UCC documents are processed, there are some secondary costs, including programming costs, that have to be considered in the implementation phase.

In order to meet the July 1, 2001 target implementation date, some programming costs would be incurred to implement usage of check digits as required by the bill, to establish a status code, to add a page count to UCC filings, and to facilitate purging of lapsed and terminated filings. This cost is estimated at one month of labor at a cost of \$6,000 in programming time. This expense would need to be incurred during FY01 in order to be ready for the July 1, 2001 target date. Other costs that would be required to implement this bill are related to staff training, user education sessions, notifications to users regarding changes, additional equipment for UCC Central public access library, and preparation and implementation of administrative rules and reporting mechanisms required under HB239. The component estimates a total expense in this area of \$20,000.

One of the goals of the revised UCC is to pave the way toward electronic filing and increased usage of technology in the UCC systems throughout the country. The component has identified costs of \$18,000 in information systems staff time to work toward accepting UCC filings electronically, accept payment for such filings electronically and utilize the national standard forms for electronic filings. An additional \$6,000 in programming time (one man-month) may be needed to update the UCC search programs to meet specifications expected to be included in the Model Administrative Rules referenced in the bill. Because the Model Rules are not yet in a final format, it is unknown at this time what their impact may be on existing programs.

Chair:
MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



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Sponsor Statement House Bill 239

Revised Uniform Commercial Code Article 9 – Secured Transactions

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code (UCC). UCC Article 9 – Secured Transactions, provides a statutory framework that governs transactions in which a creditor takes a security interest in specific property of a debtor, allowing the creditor to take the property in the event the debtor defaults on the debt. Article 9 of the UCC has been adopted in every state and was last revised in 1972. Major revisions to Article 9 by the Uniform Law Commissioners were completed in 1998. These revisions bring Article 9 into the 21st Century.

There are many reasons Revised Article 9 should be adopted in Alaska:

- **Technology** Paper-based transactions are giving way to electronic transactions and revised Article 9 allows for this.
- **Volume** Article 9 was first proposed in 1951 and was last updated in 1972. Since then, the volume of commerce and credit has increased exponentially. The filing system revisions are particularly necessary to meet the problem of increased volume.
- **New Collateral** New kinds of property and transactions have been developed since Article 9 was last amended. The scope of Article 9 expands to keep up with these changes. Deposit accounts, health insurance receivables, and commercial tort claims are examples of new collateral.
- **Certainty of Perfection** Uncertainties about where to perfect a security interest under the original Article 9 are overcome in the revisions making the location of the debtor the place where the creditor perfects the security interest.
- **New Liens** Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral if there is no public notice of their existence. Article 9 includes certain statutory,

non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

- **Clarification of Rules** Historically, courts have interpreted provisions of Article 9 in conflicting ways. Some of their decisions have dealt with issues that were not explicitly addressed in the original Article 9. This has resulted in an ambiguous application of some rules. The revisions to Article 9 address and rectify the accrued ambiguities.
- **Simplified Filing** A simplified and unified statewide filing system of finance statements to perfect security interests replaces the original filing system, which allowed only certain local filing.
- **Consumer Impact** Revised Article 9 addresses consumer issues that were not considered in the original Article 9 such as a specific disclosure of creditor's deficiency rights and notice requirements upon repossession.
- **Commitment to Uniformity** Amendments to Article 9 have varied from state to state and thus have created differences that have impaired interstate transactions. In an effort to reestablish uniformity of the laws governing these transactions, the revisions address specific types of secured transactions like oil and gas and agriculture.

States that have adopted Revised Article 9:

Arizona	Nebraska
California	Nevada
Maryland	Texas
Montana	

2000 Introductions:

Alaska	Minnesota
Delaware	Missouri
District of Columbia	New Hampshire
Hawaii	New Mexico
Illinois	Oklahoma
Indiana	South Carolina
Kansas	Tennessee
Kentucky	Vermont
Maine	Virginia
Michigan	Washington

CS FOR HOUSE BILL NO. 239()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MURKOWSKI BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Uniform Commercial Code; relating to secured**
2 **transactions; amending Rule 79, Alaska Rules of Civil Procedure; and providing**
3 **for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1. AS 45.09 is repealed and reenacted to read:**

6 **Chapter 09. Secured Transactions.**

7 **Article 1. General Provisions.**

8 **Sec. 45.09.101. Short title. This chapter may be cited as Uniform**
9 **Commercial Code - Secured Transactions.**

10 **Sec. 45.09.102. Definitions. (a) In this chapter,**

11 **(1) "accession" means goods that are physically united with other goods**
12 **in a manner so that the identity of the original goods is not lost;**

13 **(2) "account," except as used in "account for,"**

14 **(A) means a right to payment of a monetary obligation, whether**

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or not earned by performance,

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a state, a governmental unit of a state, or a person licensed or authorized to operate the game by a state or a governmental unit of a state;

(B) includes health care insurance receivables;

(C) does not include rights to payment evidenced by chattel paper or by an instrument, commercial tort claims, deposit accounts, investment property, letter-of-credit rights or letters of credit, or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;

(3) "account debtor" means a person obligated on an account, chattel paper, or general intangible, except that "account debtor" does not include persons obligated to pay a negotiable instrument even if the instrument constitutes part of chattel paper;

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

(A) authenticated by a secured party;

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

1 (C) identifying the components of the obligations in reasonable
2 detail;

3 (5) "agricultural lien" means an interest, other than a security interest,
4 in farm products

5 (A) that secures payment or performance of an obligation for
6 (i) goods or services furnished in connection with a
7 debtor's farming operation; or

8 (ii) rent on real property leased by a debtor in
9 connection with the debtor's farming operation;

10 (B) that is created by statute in favor of a person who

11 (i) in the ordinary course of its business, furnished goods
12 or services to a debtor in connection with the debtor's farming
13 operation; or

14 (ii) leased real property to a debtor in connection with
15 the debtor's farming operation; and

16 (C) whose effectiveness does not depend on the person's
17 possession of the personal property;

18 (6) "applicant" means a person at whose request or for whose account
19 a letter of credit is issued, including a person who requests an issuer to issue a letter
20 of credit on behalf of another if the person making the request undertakes an obligation
21 to reimburse the issuer;

22 (7) "as-extracted collateral" means

23 (A) oil, gas, or other minerals that are subject to a security
24 interest that

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

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

28 (B) accounts arising out of the sale at the wellhead or minehead
29 of oil, gas, or other minerals in which the debtor had an interest before
30 extraction;

31 (8) "authenticate" means to

1 (A) sign; or

2 (B) execute or otherwise adopt a symbol, or to encrypt or
3 similarly process a record in whole or in part, with the present intent of the
4 authenticating person to identify the person and adopt or accept a record;

5 (9) "bank" means an organization that is engaged in the business of
6 banking, including a savings bank, savings and loan association, credit union, and trust
7 company;

8 (10) "beneficiary" means a person who, under the terms of a letter of
9 credit, is entitled to have its complying presentation honored, including a person to
10 whom drawing rights have been transferred under a transferable letter of credit;

11 (11) "broker" has the meaning given in AS 45.08.102(a);

12 (12) "cash proceeds" means proceeds that are money, checks, deposit
13 accounts, or the like;

14 (13) "certificated security" has the meaning given in AS 45.08.102(a);

15 (14) "certificate of title" means a certificate of title with respect to
16 which a statute provides for the security interest in question to be indicated on the
17 certificate as a condition or result of the security interest's obtaining priority over the
18 rights of a lien creditor with respect to the collateral;

19 (15) "chattel paper" means a record or records that evidence both a
20 monetary obligation and a security interest in specific goods, a security interest in
21 specific goods and software used in the goods, or a lease of specific goods, except that
22 "chattel paper" does not include charters or other contracts involving the use or hire
23 of a vessel; if a transaction is evidenced both by a security agreement or lease and by
24 an instrument or series of instruments, the group of records taken together constitutes
25 chattel paper;

26 (16) "check" has the meaning given in AS 45.03.104(f);

27 (17) "collateral" means the property subject to a security interest or
28 agricultural lien, including

29 (A) proceeds to which a security interest attaches;

30 (B) accounts, chattel paper, payment intangibles, and promissory
31 notes that have been sold; and

- 1 (C) goods that are the subject of a consignment;
- 2 (18) "commercial tort claim" means a claim arising in tort with respect
- 3 to which the claimant is
- 4 (A) an organization; or
- 5 (B) an individual and the claim
- 6 (i) arose in the course of the claimant's business or
- 7 profession; and
- 8 (ii) does not include damages arising out of personal
- 9 injury to or the death of an individual;
- 10 (19) "commodity account" means an account maintained by a
- 11 commodity intermediary in which a commodity contract is carried for a commodity
- 12 customer;
- 13 (20) "commodity contract" means a commodity futures contract, an
- 14 option on a commodity futures contract, a commodity option, or another contract if the
- 15 contract or option is traded on
- 16 (A) or subject to the rules of a board of trade that has been
- 17 designated as a contract market for the contract under federal commodities
- 18 laws; or
- 19 (B) a foreign commodity board of trade, exchange, or market
- 20 and is carried on the books of a commodity intermediary for a commodity
- 21 customer;
- 22 (21) "commodity customer" means a person for whom a commodity
- 23 intermediary carries a commodity contract on its books;
- 24 (22) "commodity intermediary" means a person who
- 25 (A) is registered as a futures commission merchant under
- 26 federal commodities law; or
- 27 (B) in the ordinary course of its business, provides clearance or
- 28 settlement services for a board of trade that has been designated as a contract
- 29 market under federal commodities laws;
- 30 (23) "communicate" means
- 31 (A) to send a written or other tangible record;

1 (B) to transmit a record by any means agreed upon by the
2 persons sending and receiving the record; or

3 (C) in the case of transmission of a record to or by a filing
4 office, to transmit a record by any means prescribed by filing office regulation;

5 (24) "consignee" means a merchant to whom goods are delivered in a
6 consignment;

7 (25) "consignment" means a transaction, regardless of its form, in
8 which a person delivers goods to a merchant for the purpose of sale and

9 (A) the merchant

10 (i) deals in goods of that kind under a name other than
11 the name of the person making delivery;

12 (ii) is not an auctioneer; and

13 (iii) is not generally known by the merchant's creditors
14 to be substantially engaged in selling the goods of others;

15 (B) with respect to each delivery, the aggregate value of the
16 goods is \$1,000 or more at the time of delivery;

17 (C) the goods are not consumer goods immediately before
18 delivery; and

19 (D) the transaction does not create a security interest that
20 secures an obligation;

21 (26) "consignor" means a person who delivers goods to a consignee in
22 a consignment;

23 (27) "consumer goods" means goods that are used or bought for use
24 primarily for personal, family, or household purposes;

25 (28) "consumer goods transaction" means a consumer transaction in
26 which

27 (A) an individual incurs an obligation primarily for personal,
28 family, or household purposes; and

29 (B) a security interest in consumer goods secures the obligation;

30 (29) "consumer obligor" means an obligor who is an individual and
31 who incurred the obligation as part of a transaction entered into primarily for personal,

1 family, or household purposes;

2 (30) "consumer transaction" means a transaction, including a consumer
3 goods transaction, in which

4 (A) an individual incurs an obligation primarily for personal,
5 family, or household purposes;

6 (B) a security interest secures the obligation; and

7 (C) the collateral is held or acquired primarily for personal,
8 family, or household purposes;

9 (31) "continuation statement" means an amendment of a financing
10 statement that

11 (A) identifies, by its file number, the initial financing statement
12 to which it relates; and

13 (B) indicates that it is a continuation statement for, or that it is
14 filed to continue the effectiveness of, the identified financing statement;

15 (32) "contract for sale" has the meaning given in AS 45.02.106(a);

16 (33) "customer" has the meaning given in AS 45.04.104(a);

17 (34) "debtor" means

18 (A) a person having an interest, other than a security interest or
19 other lien, in the collateral whether or not the person is an obligor;

20 (B) a seller of accounts, chattel paper, payment intangibles, or
21 promissory notes; or

22 (C) a consignee;

23 (35) "deposit account" means a demand, time, savings, passbook, or
24 similar account maintained with a bank except that the term does not include
25 investment property or accounts evidenced by an instrument;

26 (36) "document" means a document of title or a receipt of the type
27 described in AS 45.07.201(b);

28 (37) "electronic chattel paper" means chattel paper evidenced by a
29 record or records consisting of information stored in an electronic medium;

30 (38) "encumbrance" means a right, other than an ownership interest, in
31 real property, including mortgages and other liens on real property;

- 1 (39) "entitlement holder" has the meaning given in AS 45.08.102(a);
- 2 (40) "equipment" means goods other than inventory, farm products, or
- 3 consumer goods;
- 4 (41) "farm products" means goods, other than standing timber, with
- 5 respect to which the debtor is engaged in a farming operation and that are
- 6 (A) crops grown, growing, or to be grown, including
- 7 (i) crops produced on trees, vines, and bushes; and
- 8 (ii) aquatic goods produced in aquacultural operations;
- 9 (B) livestock, born or unborn, including aquatic goods produced
- 10 in aquacultural operations;
- 11 (C) supplies used or produced in a farming operation; or
- 12 (D) products of crops or livestock in their unmanufactured
- 13 states;
- 14 (42) "farming operation" means raising, cultivating, propagating,
- 15 fattening, grazing, or other farming, livestock, or aquacultural operation.
- 16 (43) "file number" means the number assigned to an initial financing
- 17 statement under AS 45.09.519(a);
- 18 (44) "filing office" means an office designated in AS 45.09.501 as the
- 19 place to file a financing statement;
- 20 (45) "filing office regulation" means a regulation adopted under
- 21 AS 44.37.027;
- 22 (46) "financial asset" has the meaning given in AS 45.08.102(a);
- 23 (47) "financing statement" means a record or records composed of an
- 24 initial financing statement and any filed record relating to the initial financing
- 25 statement;
- 26 (48) "fixture filing" means the filing of a financing statement covering
- 27 goods that are or are to become fixtures and satisfying AS 45.09.502(a) and (b),
- 28 including the filing of a financing statement covering goods of a transmitting utility
- 29 that are or are to become fixtures;
- 30 (49) "fixtures" means goods that have become so related to particular
- 31 real property that an interest in them arises under real property law;

1 (50) "general intangible" means personal property, including payment
2 intangibles, software, and things in action, other than accounts, chattel paper,
3 commercial tort claims, deposit accounts, documents, goods, instruments, investment
4 property, letter-of-credit rights, letters of credit, money, and, before extraction, oil, gas,
5 or other minerals;

6 (51) "good faith" means honesty in fact and the observance of
7 reasonable commercial standards of fair dealing;

8 (52) "goods" means things that are movable when a security interest
9 attaches; the term includes (A) fixtures; (B) standing timber that is to be cut and
10 removed under a conveyance or contract for sale; (C) the unborn young of animals;
11 (D) crops grown, growing, or to be grown, even if the crops are produced on trees,
12 vines, or bushes; and (E) manufactured homes; the term also includes a computer
13 program embedded in goods and supporting information provided in connection with
14 a transaction relating to the program if the program is associated with the goods in
15 such a manner that it customarily is considered part of the goods or if, by becoming
16 the owner of the goods, a person acquires a right to use the program in connection
17 with the goods; the term does not include a computer program embedded in goods that
18 consist solely of the medium with which the program is embedded; the term also does
19 not include accounts, chattel paper, commercial tort claims, deposit accounts,
20 documents, general intangibles, instruments, investment property, letter-of-credit rights,
21 letters of credit, money, or, before extraction, oil, gas, or other minerals;

22 (53) "governmental unit" means

23 (A) a subdivision, agency, department, county, parish,
24 municipality, or other unit of the government of the United States, a state, or
25 a foreign country;

26 (B) an organization having a separate corporate existence if the
27 organization is eligible to issue debt on which interest is exempt from income
28 taxation under the laws of the United States;

29 (54) "health care insurance receivable" means an interest in or claim
30 under a policy of insurance that is a right to payment of a monetary obligation for
31 health-care goods or services provided;

- 1 (55) "holder in due course" has the meaning given in AS 45.03.302;
- 2 (56) "instrument" means a negotiable instrument or other writing that
- 3 evidences a right to the payment of a monetary obligation and is not itself a security
- 4 agreement or lease and is of a type that in ordinary course of business is transferred
- 5 by delivery with any necessary endorsement or assignment; the term does not include
- 6 (A) investment property;
- 7 (B) letters of credit; or
- 8 (C) writings that evidence a right to payment arising out of the
- 9 use of a credit or charge card or information contained on or for use with the
- 10 card;
- 11 (57) "inventory" means goods, other than farm products, that
- 12 (A) are leased by a person as lessor;
- 13 (B) are held by a person for sale or lease or to be furnished
- 14 under a contract of service;
- 15 (C) are furnished by a person under a contract of service; or
- 16 (D) consist of raw materials, work in process, or materials used
- 17 or consumed in a business;
- 18 (58) "investment property" means a security, whether certificated or
- 19 uncertificated, security entitlement, securities account, commodity contract, or
- 20 commodity account;
- 21 (59) "issuer," with respect to a
- 22 (A) letter of credit or letter-of-credit right, means a bank or
- 23 other person that issues a letter of credit, except that the term does not include
- 24 an individual who makes an engagement for personal, family, or household
- 25 purposes;
- 26 (B) security, has the meaning given in AS 45.08.201(a);
- 27 (60) "jurisdiction of organization," with respect to a registered
- 28 organization, means the jurisdiction under whose law the organization is organized;
- 29 (61) "lease," "lease agreement," "lease contract," "leasehold interest,"
- 30 "lessee," "lessee in ordinary course of business," "lessor," and "lessor's residual
- 31 interest" have the meanings given in AS 45.12.103(a);

1 (62) "letter of credit" means a definite undertaking that satisfies the
2 requirements of AS 45.05.104 by an issuer to a beneficiary at the request or for the
3 account of an applicant or, in the case of a financial institution, to itself or for its own
4 account, to honor a documentary presentation by payment of delivery of an item of
5 value;

6 (63) "letter-of-credit right" means a right to payment and performance
7 under a letter of credit whether or not the beneficiary has demanded or is at the time
8 entitled to demand payment or performance; the term does not include the right of a
9 beneficiary to demand payment or performance under a letter of credit;

10 (64) "lien creditor" means

11 (A) a creditor who has acquired a lien on the property involved
12 by attachment, levy, or the like;

13 (B) an assignee for benefit of creditors from the time of
14 assignment;

15 (C) a trustee in bankruptcy from the date of the filing of the
16 petition; or

17 (D) a receiver in equity from the time of appointment;

18 (65) "manufactured home" means a structure, transportable in one or
19 more sections, that, in the traveling mode, is eight body feet or more in width or 40
20 body feet or more in length, or, when erected on site, is 320 or more square feet, and
21 that is built on a permanent chassis and designed to be used as a dwelling with or
22 without a permanent foundation when connected to the required utilities, and includes
23 the plumbing, heating, air-conditioning, and electrical systems contained in the
24 structure; the term includes a structure that meets all of the requirements of this
25 paragraph except the size requirements and with respect to which the manufacturer
26 voluntarily files a certification required by the United States Secretary of Housing and
27 Urban Development and complies with the standards established under Title 42, United
28 States Code;

29 (66) "manufactured home transaction" means a secured transaction

30 (A) that creates a purchase money security interest in a
31 manufactured home, other than a manufactured home held as inventory; or

1 (B) in which a manufactured home, other than a manufactured
2 home held as inventory, is the primary collateral;

3 (67) "merchant" has the meaning given in AS 45.02.104(a);

4 (68) "mortgage" means a consensual interest in real property, including
5 fixtures, that secures payment or performance of an obligation;

6 (69) "negotiable instrument" has the meaning given in AS 45.03.104;

7 (70) "new debtor" means a person who becomes bound as debtor under
8 AS 45.09.203(d) by a security agreement previously entered into by another person;

9 (71) "new value" means (A) money, (B) money's worth in property,
10 services, or new credit; or (C) release by a transferee of an interest in property
11 previously transferred to the transferee; the term does not include an obligation
12 substituted for another obligation;

13 (72) "nominated person" means a person whom the issuer

14 (A) designates or authorizes to pay, accept, negotiate, or
15 otherwise give value under a letter of credit; and

16 (B) undertakes by agreement or custom and practice to
17 reimburse;

18 (73) "noncash proceeds" means proceeds other than cash proceeds;

19 (74) "note" has the meaning given in AS 45.03.104;

20 (75) "obligor" means a person who, with respect to an obligation
21 secured by a security interest in or an agricultural lien on the collateral; (A) owes
22 payment or other performance of the obligation; (B) has provided property other than
23 the collateral to secure payment or other performance of the obligation; or (C) is
24 otherwise accountable in whole or in part for payment or other performance of the
25 obligation; the term does not include issuers or nominated persons under a letter of
26 credit;

27 (76) "original debtor" means a person who, as debtor, entered into a
28 security agreement to which a new debtor has become bound under AS 45.09.203(d);

29 (77) "payment intangible" means a general intangible under which the
30 account debtor's principal obligation is a monetary obligation;

31 (78) "person related to," with respect to an

- 1 (A) individual, means
2 (i) the spouse of the individual;
3 (ii) a brother, brother-in-law, sister, or sister-in-law of
4 the individual;
5 (iii) an ancestor or lineal descendant of the individual or
6 the individual's spouse; or
7 (iv) another relative, by blood or marriage, of the
8 individual or the individual's spouse who shares the same home with the
9 individual;
- 10 (B) an organization, means
11 (i) a person directly or indirectly controlling, controlled
12 by, or under common control with the organization;
13 (ii) an officer or director of, or a person performing
14 similar functions with respect to, the organization;
15 (iii) an officer or director of, or a person performing
16 similar functions with respect to, a person described in (i) of this
17 subparagraph;
18 (iv) the spouse of an individual described in (i), (ii), or
19 (iii) of this subparagraph; or
20 (v) an individual who is related by blood or marriage to
21 an individual described in (i), (ii), (iii), or (iv) of this subparagraph and
22 shares the same home with the individual;
- 23 (79) "proceeds" means the following property:
24 (A) whatever is acquired upon the sale, lease, license, exchange,
25 or other disposition of collateral;
26 (B) whatever is collected on, or distributed on account of,
27 collateral;
28 (C) rights arising out of collateral;
29 (D) to the extent of the value of collateral, claims arising out
30 of the loss, nonconformity, or interference with the use of, defects or
31 infringement of rights in, or damage to the collateral; or

1 (E) to the extent of the value of collateral and to the extent
2 payable to the debtor or the secured party, insurance payable by reason of the
3 loss or nonconformity of, defects or infringement of rights in, or damage to, the
4 collateral;

5 (80) "proceeds of the letter of credit" means the cash, check, accepted
6 draft, or other item of value paid or delivered upon honor or giving of value by the
7 issuer or any nominated person under the letter of credit, except that the term does not
8 include a beneficiary's drawing rights or documents presented by the beneficiary;

9 (81) "promissory note" means an instrument that evidences a promise
10 to pay a monetary obligation, does not evidence an order to pay, and does not contain
11 an acknowledgment by a bank that the bank has received for deposit a sum of money
12 or funds;

13 (82) "proposal" means a record authenticated by a secured party that
14 includes the terms on which the secured party is willing to accept collateral in full or
15 partial satisfaction of the obligation it secures under AS 45.09.620 - 45.09.622;

16 (83) "prove" has the meaning given in AS 45.03.103(a);

17 (84) "public finance transaction" means a secured transaction in
18 connection with which

19 (A) debt securities are issued;

20 (B) all or a portion of the securities issued have an initial stated
21 maturity of at least 20 years; and

22 (C) the debtor, obligor, secured party, account debtor or other
23 person obligated on collateral, assignor or assignee of a secured obligation, or
24 assignor or assignee of a security interest is a state or a governmental unit of
25 a state;

26 (85) "pursuant to a commitment," with respect to an advance made or
27 other value given by a secured party, means in accordance with a secured party's
28 obligation, whether or not a subsequent event of default or other event not within the
29 secured party's control has relieved or may relieve the secured party from its
30 obligation;

31 (86) "record," except as used in "for record," "of record," "record or

1 legal title," and "record owner," means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is retrievable in
3 perceivable form;

4 (87) "registered organization" means an organization organized solely
5 under the law of a single state or the United States and as to which the state or the
6 United States must maintain a public record showing the organization to have been
7 organized;

8 (88) "sale" has the meaning given in AS 45.02.106(a);

9 (89) "secondary obligor" means an obligor to the extent that

10 (A) the obligor's obligation is secondary; or

11 (B) the obligor has a right of recourse with respect to an
12 obligation secured by collateral against the debtor or another obligor, or
13 property of either;

14 (90) "secured party" means

15 (A) a person in whose favor a security interest is created or
16 provided for under a security agreement, whether or not an obligation to be
17 secured is outstanding;

18 (B) a person that holds an agricultural lien;

19 (C) a consignor;

20 (D) a person to which accounts, chattel paper, payment
21 intangibles, or promissory notes have been sold;

22 (E) a trustee, indenture trustee, agent, collateral agent, or other
23 representative in whose favor a security interest or agricultural lien is created
24 or provided for; or

25 (F) a person who holds a security interest arising under
26 AS 45.02.401, 45.02.505, 45.02.711(c), AS 45.04.210, AS 45.05.118, or
27 AS 45.12.508(e);

28 (91) "securities account" has the meaning given in AS 45.08.501(e);

29 (92) "securities intermediary" has the meaning given in
30 AS 45.08.102(a);

31 (93) "security" has the meaning given in AS 45.08.102(a);

1 (94) "security agreement" means an agreement that creates or provides
2 for a security interest;

3 (95) "security certificate" has the meaning given in AS 45.08.102(a);

4 (96) "security entitlement" has the meaning given in AS 45.08.102(a);

5 (97) "send," in connection with a record or notification, means to

6 (A) deposit in the mail, deliver for transmission, or transmit by
7 another usual means of communication, with postage or cost of transmission
8 provided for, addressed to an address reasonable under the circumstances; or

9 (B) cause the record or notification to be received within the
10 time that it would have been received if properly sent under (A) of this
11 paragraph;

12 (98) "software" means a computer program and supporting information
13 provided in connection with a transaction relating to the program; the term does not
14 include a computer program that is included in the definition of "goods";

15 (99) "state" means a state of the United States, the District of
16 Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular
17 possession subject to the jurisdiction of the United States;

18 (100) "supporting obligation" means a letter-of-credit right or secondary
19 obligation that supports the payment or performance of an account, chattel paper, a
20 document, a general intangible, an instrument, or investment property;

21 (101) "tangible chattel paper" means chattel paper evidenced by a
22 record or records consisting of information that is inscribed on a tangible medium;

23 (102) "termination statement" means an amendment of a financing
24 statement that

25 (A) identifies by its file number the initial financing statement
26 to which it relates; and

27 (B) indicates either that it is a termination statement or that the
28 identified financing statement is no longer effective;

29 (103) "transmitting utility" means a person primarily engaged in the
30 business of

31 (A) operating a railroad, subway, street railway, or trolley bus;

1 (B) transmitting communications electrically,
2 electromagnetically, or by light;

3 (C) transmitting goods by pipeline or sewer; or

4 (D) transmitting or producing and transmitting electricity, steam,
5 gas, or water;

6 (104) "uncertificated security" has the meaning given in
7 AS 45.08.102(a).

8 (b) In addition, AS 45.01 contains general definitions and principles of
9 construction and interpretation applicable throughout this chapter.

10 **Sec. 45.09.103. Purchase money security interest; application of payments;
11 burden of establishing.** (a) In this section,

12 (1) "purchase money collateral" means goods or software that secures
13 a purchase money obligation incurred with respect to that collateral; and

14 (2) "purchase money obligation" means an obligation of an obligor
15 incurred as all or part of the price of the collateral or for value given to enable the
16 debtor to acquire rights in or the use of the collateral if the value is in fact so used.

17 (b) A security interest in goods is a purchase money security interest

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

20 (2) if the security interest is in inventory that is or was purchase money
21 collateral, to the extent that the security interest secures a purchase money obligation
22 incurred with respect to other inventory in which the secured party holds or held a
23 purchase money security interest; and

24 (3) to the extent that the security interest secures a purchase money
25 obligation incurred with respect to software in which the secured party holds or held
26 a purchase money security interest.

27 (c) A security interest in software is a purchase money security interest to the
28 extent that the security interest also secures a purchase money obligation incurred with
29 respect to goods in which the secured party holds or held a purchase money security
30 interest if the debtor acquired its interest in the software

31 (1) in an integrated transaction in which it acquired an interest in the

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goods; and

(2) for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase money security interest in inventory.

(e) In a transaction other than a consumer goods transaction, if the extent to which a security interest is a purchase money security interest depends on the application of a payment to a particular obligation, the payment must be applied

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

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

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

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase money security interests in the order in which those obligations were incurred.

(f) In a transaction, other than a consumer goods transaction, a purchase money security interest does not lose its status as such even if

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

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

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

(g) In a transaction other than a consumer goods transaction, a secured party claiming a purchase money security interest has the burden of establishing the extent to which the security interest is a purchase money security interest.

(h) The limitation of the rules in (e) - (g) of this section to transactions other than consumer goods transactions is intended to leave to the court the determination

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1 of the proper rules in consumer goods transactions. The court may not infer from that
2 limitation the nature of the proper rule in consumer goods transactions and may
3 continue to apply established approaches.

4 **Sec. 45.09.104. Control of deposit account.** (a) A secured party has control
5 of a deposit account if

6 (1) the secured party is the bank with which the deposit account is
7 maintained;

8 (2) the debtor, secured party, and bank have agreed in an authenticated
9 record that the bank will comply with instructions originated by the secured party
10 directing disposition of the funds in the account without further consent by the debtor;
11 or

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

14 (b) A secured party that has satisfied (a) of this section has control even if the
15 debtor retains the right to direct the disposition of funds from the deposit account.

16 **Sec. 45.09.105. Control of electronic chattel paper.** A secured party has
17 control of electronic chattel paper if the record or records comprising the chattel paper
18 are created, stored, and assigned in such a manner that

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

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

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

26 (4) copies or revisions that add or change an identified assignee of the
27 authoritative copy can be made only with the participation of the secured party;

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

30 (6) any revision of the authoritative copy is readily identifiable as an
31 authorized or unauthorized revision.

1 **Sec. 45.09.106. Control of investment property.** (a) A person has control
2 of a certificated security, uncertificated security, or security entitlement as provided in
3 AS 45.08.106.

4 (b) A secured party has control of a commodity contract if

5 (1) the secured party is the commodity intermediary with which the
6 commodity contract is carried; or

7 (2) the commodity customer, secured party, and commodity
8 intermediary have agreed that the commodity intermediary will apply any value
9 distributed on account of the commodity contract as directed by the secured party
10 without further consent by the commodity customer.

11 (c) A secured party having control of all security entitlements or commodity
12 contracts carried in a securities account or commodity account has control over the
13 securities account or commodity account.

14 **Sec. 45.09.107. Control of letter-of-credit right.** A secured party has control
15 of a letter-of-credit right to the extent of any right to payment or performance by the
16 issuer or a nominated person if the issuer or nominated person has consented to an
17 assignment of proceeds of the letter of credit under AS 45.05.114(c) or otherwise
18 applicable law or practice.

19 **Sec. 45.09.108. Sufficiency of description.** (a) Except as otherwise provided
20 in (c) - (e) of this section, a description of personal or real property is sufficient,
21 whether or not it is specific, if it reasonably identifies what is described.

22 (b) Except as otherwise provided in (d) of this section, a description of
23 collateral reasonably identifies the collateral if it identifies the collateral by

24 (1) specific listing;

25 (2) category;

26 (3) except as otherwise provided in (e) of this section, a type of
27 collateral defined in AS 45.01 - AS 45.09, AS 45.12, or AS 45.14 (Uniform
28 Commercial Code);

29 (4) quantity;

30 (5) computational or allocational formula or procedure; or

31 (6) except as otherwise provided in (c) of this section, another method

1 if the identity of the collateral is objectively determinable.

2 (c) A description of collateral as "all the debtor's assets" or "all the debtor's
3 personal property" or using words of similar import does not reasonably identify the
4 collateral.

5 (d) Except as otherwise provided in (e) of this section, a description of a
6 security entitlement, securities account, or commodity account is sufficient if it
7 describes

8 (1) the collateral by those terms or as investment property; or

9 (2) the underlying financial asset or commodity contract.

10 (e) A description only by type of collateral defined in AS 45.01 - AS 45.09,
11 AS 45.12, or AS 45.14 (Uniform Commercial Code) is an insufficient description of

12 (1) a commercial tort claim; or

13 (2) in a consumer transaction, consumer goods, a security entitlement,
14 a securities account, or a commodity account.

15 **Sec. 45.09.109. Scope.** (a) Except as otherwise provided in (c) and (d) of this
16 section, this chapter applies to

17 (1) a transaction, regardless of its form, that creates a security interest
18 in personal property or fixtures by contract;

19 (2) an agricultural lien;

20 (3) a sale of accounts, chattel paper, payment intangibles, or promissory
21 notes;

22 (4) a consignment;

23 (5) a security interest arising under AS 45.02.401, 45.02.505,
24 45.02.711(c), or AS 45.12.508(e), as provided in AS 45.09.110; and

25 (6) a security interest arising under AS 45.04.210 or AS 45.05.118.

26 (b) The application of this chapter to a security interest in a secured obligation
27 is not affected by the fact that the obligation is itself secured by a transaction or
28 interest to which this chapter does not apply.

29 (c) This chapter does not apply to the extent that

30 (1) a statute, regulation, or treaty of the United States preempts this
31 chapter;

1 (2) another statute of this state expressly governs the creation.
2 perfection, priority, or enforcement of a security interest created by this state or a
3 governmental unit of this state;

4 (3) a statute of another state, a foreign country, or a governmental unit
5 of another state or a foreign country, other than a statute generally applicable to
6 security interests, expressly governs creation, perfection, priority, or enforcement of
7 a security interest created by the state, country, or governmental unit; or

8 (4) the rights of a transferee beneficiary or nominated person under a
9 letter of credit are independent and superior under AS 45.05.114.

10 (d) This chapter does not apply to

11 (1) a landlord's lien, other than an agricultural lien;

12 (2) a lien, other than an agricultural lien, given by statute or other rule
13 of law for services or materials, but AS 45.09.333 applies with respect to priority of
14 the lien;

15 (3) an assignment of a claim for wages, salary, or other compensation
16 of an employee;

17 (4) a sale of accounts, chattel paper, payment intangibles, or promissory
18 notes as part of a sale of the business out of which they arose;

19 (5) an assignment of accounts, chattel paper, payment intangibles, or
20 promissory notes that is for the purpose of collection only;

21 (6) an assignment of a right to payment under a contract to an assignee
22 that is also obligated to perform under the contract;

23 (7) an assignment of a single account, payment intangible, or
24 promissory note to an assignee in full or partial satisfaction of a preexisting
25 indebtedness;

26 (8) a transfer of an interest in or an assignment of a claim under a
27 policy of insurance, other than an assignment by or to a health care provider of a
28 health care insurance receivable and any subsequent assignment of the right to
29 payment, but AS 45.09.315 and 45.09.322 apply with respect to proceeds and priorities
30 in proceeds;

31 (9) an assignment of a right represented by a judgment, other than a

1 judgment taken on a right to payment that was collateral;

2 (10) a right of recoupment or setoff, but

3 (A) AS 45.09.340 applies with respect to the effectiveness of
4 rights of recoupment or setoff against deposit accounts; and

5 (B) AS 45.09.404 applies with respect to defenses or claims of
6 an account debtor;

7 (11) the creation or transfer of an interest in or lien on real property,
8 including a lease or rents thereunder, except to the extent that provision is made for

9 (A) liens on real property in AS 45.09.203 and 45.09.308;

10 (B) fixtures in AS 45.09.334;

11 (C) fixture filings in AS 45.09.501, 45.09.502, 45.09.512,
12 45.09.516, and 45.09.519; and

13 (D) security agreements covering personal and real property in
14 AS 45.09.604;

15 (12) an assignment of a claim arising in tort, other than a commercial
16 tort claim, but AS 45.09.315 and 45.09.322 apply with respect to proceeds and
17 priorities in proceeds; or

18 (13) an assignment of a deposit account in a consumer transaction, but
19 AS 45.09.315 and 45.09.322 apply with respect to proceeds and priorities in proceeds.

20 **Sec. 45.09.110. Security interests arising under AS 45.02 or AS 45.12.** A
21 security interest arising under AS 45.02.401, 45.02.505, 45.02.711(c), or
22 AS 45.12.508(e) is subject to this chapter. However, until the debtor obtains
23 possession of the goods,

24 (1) the security interest is enforceable even if AS 45.09.203(b)(3) has
25 not been satisfied;

26 (2) filing is not required to perfect the security interest;

27 (3) the rights of the secured party after default by the debtor are
28 governed by AS 45.02 or AS 45.12; and

29 (4) the security interest has priority over a conflicting security interest
30 created by the debtor.

31 **Article 2. Security Agreements; Security Interests.**

1 **Sec. 45.09.201. General effectiveness of security agreement.** (a) Except as
2 otherwise provided in AS 45.01 - AS 45.09, AS 45.12, and AS 45.14 (the Uniform
3 Commercial Code), a security agreement is effective according to its terms between
4 the parties, against purchasers of the collateral, and against creditors.

5 (b) A transaction subject to this chapter is subject to

6 (1) an applicable rule of law that establishes a different rule for
7 consumers;

8 (2) another statute or regulation that regulates the rates, charges,
9 agreements, and practices for loans, credit sales, or other extensions of credit; and

10 (3) consumer protection statutes or regulations.

11 (c) In case of conflict between this chapter and a rule of law, statute, or
12 regulation described in (b) of this section, the rule of law, statute, or regulation
13 controls. Failure to comply with a statute or regulation described in (b) of this section
14 has only the effect the statute or regulation specifies.

15 (d) This chapter does not

16 (1) validate a rate, charge, agreement, or practice that violates a rule
17 of law, statute, or regulation described in (b) of this section; or

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

20 **Sec. 45.09.202. Title to collateral immaterial.** Except as otherwise provided
21 with respect to consignments or sales of accounts, chattel paper, payment intangibles,
22 or promissory notes, the provisions of this chapter with regard to rights and obligations
23 apply whether title to collateral is in the secured party or the debtor.

24 **Sec. 45.09.203. Attachment and enforceability of security interest;**
25 **proceeds; supporting obligations; formal requisites.** (a) A security interest attaches
26 to collateral when it becomes enforceable against the debtor with respect to the
27 collateral unless an agreement expressly postpones the time of attachment.

28 (b) Except as otherwise provided in (c) - (i) of this section, a security interest
29 is enforceable against the debtor and third parties with respect to the collateral only
30 if

31 (1) value has been given;

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

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

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

7 (B) the collateral is not a certificated security and is in the
8 possession of the secured party under AS 45.09.313 under the debtor's security
9 agreement;

10 (C) the collateral is a certificated security in registered form,
11 and the security certificate has been delivered to the secured party under
12 AS 45.08.301 under the debtor's security agreement; or

13 (D) the collateral is deposit accounts, electronic chattel paper,
14 investment property, or letter-of-credit rights, and the secured party has control
15 under AS 45.09.104, 45.09.105, 45.09.106, or 45.09.107 under the debtor's
16 security agreement.

17 (c) The provisions of (b) of this section are subject to

18 (1) AS 45.04.210 on the security interest of a collecting bank;

19 (2) AS 45.05.118 on the security interest of a letter-of-credit issuer or
20 nominated person;

21 (3) AS 45.09.110 on a security interest arising under AS 45.02 or
22 AS 45.12; and

23 (4) AS 45.09.206 on security interests in investment property.

24 (d) A person becomes bound as debtor by a security agreement entered into
25 by another person if, by operation of law other than this chapter or by contract,

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

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

31 (e) If a new debtor becomes bound as debtor by a security agreement entered

1 into by another person,

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

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

7 (f) The attachment of a security interest in collateral gives the secured party
8 the rights to proceeds provided by AS 45.09.315 and is also attachment of a security
9 interest in a supporting obligation for the collateral.

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

13 (h) The attachment of a security interest in a securities account is also
14 attachment of a security interest in the security entitlement carried in the securities
15 account.

16 (i) The attachment of a security interest in a commodity account is also
17 attachment of a security interest in the commodity contracts carried in the commodity
18 account.

19 **Sec. 45.09.204. After-acquired property; future advances.** (a) Except as
20 otherwise provided in (b) of this section, a security agreement may create or provide
21 for a security interest in after-acquired collateral.

22 (b) A security interest does not attach under a term constituting an
23 after-acquired property clause to

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

27 (2) a commercial tort claim.

28 (c) A security agreement may provide that collateral secures, or that accounts,
29 chattel paper, payment intangibles, or promissory notes are sold in connection with,
30 future advances or other value, whether or not the advances or value are given
31 pursuant to a commitment.

1 **Sec. 45.09.205. Use or disposition of collateral permissible.** (a) A security
2 interest is not invalid or fraudulent against creditors solely because

3 (1) the debtor has the right or ability to

4 (A) use, commingle, or dispose of all or part of the collateral,
5 including returned or repossessed goods;

6 (B) collect, compromise, enforce, or otherwise deal with
7 collateral;

8 (C) accept the return of collateral or make repossessions; or

9 (D) use, commingle, or dispose of proceeds; or

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

12 (b) This section does not relax the requirements of possession if attachment,
13 perfection, or enforcement of a security interest depends upon possession of the
14 collateral by the secured party.

15 **Sec. 45.09.206. Security interest arising in purchase or delivery of financial**
16 **asset.** (a) A security interest in favor of a securities intermediary attaches to a
17 person's security entitlement if

18 (1) the person buys a financial asset through the securities intermediary
19 in a transaction in which the person is obligated to pay the purchase price to the
20 securities intermediary at the time of the purchase; and

21 (2) the securities intermediary credits the financial asset to the buyer's
22 securities account before the buyer pays the securities intermediary.

23 (b) The security interest described in (a) of this section secures the person's
24 obligation to pay for the financial asset.

25 (c) A security interest in favor of a person who delivers a certificated security
26 or other financial asset represented by a writing attaches to the security or other
27 financial asset if

28 (1) the security or other financial asset

29 (A) in the ordinary course of business, is transferred by delivery
30 with any necessary endorsement or assignment; and

31 (B) is delivered under an agreement between persons in the

1 business of dealing with such securities or financial assets; and

2 (2) the agreement calls for delivery against payment.

3 (d) The security interest described in (c) of this section secures the obligation
4 to make payment for the delivery.

5 **Sec. 45.09.207. Rights and duties of secured party having possession or**
6 **control of collateral.** (a) Except as otherwise provided in (d) of this section, a
7 secured party shall use reasonable care in the custody and preservation of collateral in
8 the secured party's possession. In the case of chattel paper or an instrument,
9 reasonable care includes taking necessary steps to preserve rights against prior parties
10 unless otherwise agreed.

11 (b) Except as otherwise provided in (d) of this section, if a secured party has
12 possession of collateral,

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

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

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

20 (4) the secured party may use or operate the collateral

21 (A) for the purpose of preserving the collateral or its value;

22 (B) as permitted by an order of a court having competent
23 jurisdiction; or

24 (C) except in the case of consumer goods, in the manner and
25 to the extent agreed by the debtor.

26 (c) Except as otherwise provided in (d) of this section, a secured party having
27 possession of collateral or control of collateral under AS 45.09.104, 45.09.105,
28 45.09.106, or 45.09.107

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

31 (2) shall apply money or funds received from the collateral to reduce

1 the secured obligation unless remitted to the debtor; and

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

3 (d) If the secured party is a buyer of accounts, chattel paper, payment
4 intangibles, or promissory notes or a consignor,

5 (1) the provisions of (a) of this section do not apply unless the secured
6 party is entitled under an agreement

7 (A) to charge back uncollected collateral; or

8 (B) otherwise to full or limited recourse against the debtor or
9 a secondary obligor based on the nonpayment or other default of an account
10 debtor or other obligor on the collateral; and

11 (2) the provisions of (b) and (c) of this section do not apply.

12 **Sec. 45.09.208. Additional duties of secured party having control of**
13 **collateral.** (a) This section applies to a case in which there is no outstanding secured
14 obligation and the secured party is not committed to make advances, incur obligations,
15 or otherwise give value.

16 (b) Within 10 days after receiving an authenticated demand by the debtor a
17 secured party

18 (1) having control of a deposit account under AS 45.09 104(a)(2) shall
19 send to the bank with which the deposit account is maintained an authenticated
20 statement that releases the bank from further obligation to comply with instructions
21 originated by the secured party;

22 (2) having control of a deposit account under AS 45.09.104(a)(3) shall

23 (A) pay the debtor the balance on deposit in the deposit
24 account; or

25 (B) transfer the balance on deposit into a deposit account in the
26 debtor's name;

27 (3) other than a buyer, having control of electronic chattel paper under
28 AS 45.09.105 shall

29 (A) communicate the authoritative copy of the electronic chattel
30 paper to the debtor or its designated custodian;

31 (B) if the debtor designates a custodian that is the designated

1 custodian with which the authoritative copy of the electronic chattel paper is
2 maintained for the secured party, communicate to the custodian an
3 authenticated record releasing the designated custodian from further obligation
4 to comply with instructions originated by the secured party and instructing the
5 custodian to comply with instructions originated by the debtor; and

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

10 (4) having control of investment property under AS 45.08.106(d)(2) or
11 AS 45.09.106(b) shall send to the securities intermediary or commodity intermediary
12 with which the security entitlement or commodity contract is maintained an
13 authenticated record that releases the securities intermediary or commodity
14 intermediary from further obligation to comply with entitlement orders or directions
15 originated by the secured party; and

16 (5) having control of a letter-of-credit right under AS 45.09.107 shall
17 send to each person having an unfulfilled obligation to pay or deliver proceeds of the
18 letter of credit to the secured party an authenticated release from further obligation to
19 pay or deliver proceeds of the letter of credit to the secured party.

20 **Sec. 45.09.209. Duties of secured party if account debtor has been notified**
21 **of assignment.** (a) Except as otherwise provided in (c) of this section, this section
22 applies to a case in which

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

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

26 (b) Within 10 days after receiving an authenticated demand by the debtor, a
27 secured party shall send to an account debtor that has received notification of an
28 assignment to the secured party as assignee under AS 45.09.406(a) an authenticated
29 record that releases the account debtor from further obligation to the secured party.

30 (c) This section does not apply to an assignment constituting the sale of an
31 account, chattel paper, or payment intangible.

1 **Sec. 45.09.210. Request for accounting; request regarding list of collateral**
2 **or statement of account.** (a) In this section,

3 (1) "request" means a record of a type described in (2), (3), or (4) of
4 this subsection;

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

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

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

18 (b) Subject to (c) - (f) of this section, a secured party, other than a buyer of
19 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall
20 comply with a request within 14 days after receipt

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

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

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

30 (d) A person who receives a request regarding a list of collateral, who claims
31 no interest in the collateral when the person receives the request, and who claimed an

1 interest in the collateral at an earlier time shall comply with the request within 14 days
2 after receipt by sending to the debtor an authenticated record

3 (1) disclaiming interest in the collateral; and

4 (2) if known to the recipient, providing the name and mailing address
5 of an assignee of or successor to the recipient's security interest in the collateral.

6 (e) A person who receives a request for an accounting or a request regarding
7 a statement of account, who claims no interest in the obligations when the person
8 receives the request, and who claimed an interest in the obligations at an earlier time
9 shall comply with the request within 14 days after receipt by sending to the debtor an
10 authenticated record

11 (1) disclaiming interest in the obligations; and

12 (2) if known to the recipient, providing the name and mailing address
13 of an assignee of or successor to the recipient's interest in the obligations.

14 (f) A debtor is entitled without charge to one response to a request under this
15 section during a six-month period. The secured party may require payment of a charge
16 not exceeding \$25 for each additional response.

17 **Article 3. Perfection and Priority.**

18 **Sec. 45.09.301. Law governing perfection and priority of security interests.**

19 Except as otherwise provided in AS 45.09.303 - 45.09.306, the following rules
20 determine the law governing perfection, the effect of perfection or nonperfection, and
21 the priority of a security interest in collateral:

22 (1) except as otherwise provided in this section, while a debtor is
23 located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect
24 of perfection or nonperfection, and the priority of a security interest in collateral;

25 (2) while collateral is located in a jurisdiction, the local law of that
26 jurisdiction governs perfection, the effect of perfection or nonperfection, and the
27 priority of a possessory security interest in that collateral;

28 (3) except as otherwise provided in (4) of this section, while negotiable
29 documents, goods, instruments, money, or tangible chattel paper is located in a
30 jurisdiction, the local law of that jurisdiction governs

31 (A) perfection of a security interest in the goods by filing a

- 1 fixture filing;
- 2 (B) perfection of a security interest in timber to be cut; and
- 3 (C) the effect of perfection or nonperfection and the priority of
- 4 a nonpossessory security interest in the collateral;
- 5 (4) the local law of the jurisdiction in which the wellhead or minehead
- 6 is located governs perfection, the effect of perfection or nonperfection, and the priority
- 7 of a security interest in as-extracted collateral.

8 **Sec. 45.09.302. Law governing perfection and priority of agricultural liens.**

9 While farm products are located in a jurisdiction, the local law of that jurisdiction

10 governs perfection, the effect of perfection or nonperfection, and the priority of an

11 agricultural lien on the farm products.

12 **Sec. 45.09.303. Law governing perfection and priority of security interests**

13 **in goods covered by a certificate of title.** (a) This section applies to goods covered

14 by a certificate of title even if there is no other relationship between the jurisdiction

15 under whose certificate of title the goods are covered and the goods or the debtor.

16 (b) Goods become covered by a certificate of title when a valid application for

17 the certificate of title and the applicable fee are delivered to the appropriate authority.

18 Goods cease to be covered by a certificate of title at the earlier of the time

19 (1) the certificate of title ceases to be effective under the law of the

20 issuing jurisdiction; or

21 (2) the goods become covered subsequently by a certificate of title

22 issued by another jurisdiction.

23 (c) The local law of the jurisdiction under whose certificate of title the goods

24 are covered governs perfection, the effect of perfection or nonperfection, and the

25 priority of a security interest in goods covered by a certificate of title from the time

26 the goods become covered by the certificate of title until the goods cease to be covered

27 by the certificate of title.

28 **Sec. 45.09.304. Law governing perfection and priority of security interests**

29 **in deposit accounts.** (a) The local law of a bank's jurisdiction governs perfection,

30 the effect of perfection or nonperfection, and the priority of a security interest in a

31 deposit account maintained with that bank.

1 (b) The following rules determine a bank's jurisdiction for purposes of
2 AS 45.09.301 - 45.09.342:

3 (1) if an agreement between the bank and the debtor governing the
4 deposit account expressly provides that a particular jurisdiction is the bank's
5 jurisdiction for purposes of AS 45.09.301 - 45.09.342, this chapter, or AS 45.01 -
6 AS 45.09, AS 45.12, or AS 45.14 (Uniform Commercial Code), that jurisdiction is the
7 bank's jurisdiction;

8 (2) if (1) of this subsection does not apply and an agreement between
9 the bank and its customer governing the deposit account expressly provides that the
10 agreement is governed by the law of a particular jurisdiction, that jurisdiction is the
11 bank's jurisdiction;

12 (3) if neither (1) nor (2) of this subsection applies and an agreement
13 between the bank and its customer governing the deposit account expressly provides
14 that the deposit account is maintained at an office in a particular jurisdiction, that
15 jurisdiction is the bank's jurisdiction;

16 (4) if (1), (2), or (3) of this subsection does not apply, the bank's
17 jurisdiction is the jurisdiction in which the office identified in an account statement as
18 the office serving the customer's account is located;

19 (5) if (1), (2), (3), or (4) of this subsection does not apply, the bank's
20 jurisdiction is the jurisdiction in which the chief executive office of the bank is
21 located.

22 **Sec. 45.09.305. Law governing perfection and priority of security interests**
23 **in investment property.** (a) Except as otherwise provided in (c) of this section, the
24 following rules apply:

25 (1) while a security certificate is located in a jurisdiction, the local law
26 of that jurisdiction governs perfection, the effect of perfection or nonperfection, and
27 the priority of a security interest in the certificated security represented by the security
28 certificate;

29 (2) the local law of the issuer's jurisdiction as specified in
30 AS 45.08.110 governs perfection, the effect of perfection or nonperfection, and the
31 priority of a security interest in an uncertificated security;

1 (3) the local law of the securities intermediary's jurisdiction as specified
2 in AS 45.08.110(e) governs perfection, the effect of perfection or nonperfection, and
3 the priority of a security interest in a security entitlement or securities account;

4 (4) the local law of the commodity intermediary's jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and the priority of a security
6 interest in a commodity contract or commodity account.

7 (b) The following rules determine a commodity intermediary's jurisdiction for
8 purposes of AS 45.09.301 - 45.09.342:

9 (1) if an agreement between the commodity intermediary and
10 commodity customer governing the commodity account expressly provides that a
11 particular jurisdiction is the commodity intermediary's jurisdiction for purposes of
12 AS 45.09.301 - 45.09.342, this chapter, or AS 45.01 - AS 45.09, AS 45.12, or
13 AS 45.14 (Uniform Commercial Code), that jurisdiction is the commodity
14 intermediary's jurisdiction;

15 (2) if (1) of this subsection does not apply and an agreement between
16 the commodity intermediary and commodity customer governing the commodity
17 account expressly provides that the agreement is governed by the law of a particular
18 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

19 (3) if neither (1) nor (2) of this subsection applies and an agreement
20 between the commodity intermediary and commodity customer governing the
21 commodity account expressly provides that the commodity account is maintained at
22 an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's
23 jurisdiction;

24 (4) if (1), (2), or (3) of this subsection does not apply, the commodity
25 intermediary's jurisdiction is the jurisdiction in which the office identified in an
26 account statement as the office serving the commodity customer's account is located;

27 (5) if (1), (2), (3), or (4) of this subsection does not apply, the
28 commodity intermediary's jurisdiction is the jurisdiction in which the chief executive
29 office of the commodity intermediary is located.

30 (c) The local law of the jurisdiction in which the debtor is located governs

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

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

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

5 **Sec. 45.09.306. Law governing perfection and priority of security interests**
6 **in letter-of-credit rights.** (a) Subject to (c) of this section, the local law of the
7 issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect
8 of perfection or nonperfection, and the priority of a security interest in a letter-of-credit
9 right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

10 (b) For purposes of AS 45.09.301 - 45.09.342, an issuer's jurisdiction or
11 nominated person's jurisdiction is the jurisdiction whose law governs the liability of
12 the issuer or nominated person with respect to the letter-of-credit right as provided in
13 AS 45.05.116.

14 (c) This section does not apply to a security interest that is perfected only
15 under AS 45.09.308(d).

16 **Sec. 45.09.307. Location of debtor.** (a) In this section, "place of business"
17 means a place where a debtor conducts its affairs.

18 (b) Except as otherwise provided in this section, the following rules determine
19 a debtor's location:

20 (1) an debtor who is an individual is located at the individual's principal
21 residence;

22 (2) a debtor that is an organization and has only one place of business
23 is located at its place of business;

24 (3) a debtor that is an organization and has more than one place of
25 business is located at its chief executive office.

26 (c) The provisions of (b) of this section apply only if a debtor's residence,
27 place of business, or chief executive office, as applicable, is located in a jurisdiction
28 whose law generally requires information concerning the existence of a nonpossessory
29 security interest to be made generally available in a filing, recording, or registration
30 system as a condition or result of the security interest's obtaining priority over the
31 rights of a lien creditor with respect to the collateral. If (b) of this section does not

1 apply, the debtor is located in the District of Columbia.

2 (d) A person that ceases to exist, have a residence, or have a place of business
3 continues to be located in the jurisdiction specified by (b) and (c) of this section.

4 (e) A registered organization that is organized under the law of a state is
5 located in that state.

6 (f) Except as otherwise provided in (i) of this section, a registered organization
7 that is organized under the law of the United States and a branch or agency of a bank
8 that is not organized under the law of the United States or a state are located

9 (1) in the state that the law of the United States designates if the law
10 designates a state of location;

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

14 (3) in the District of Columbia if neither (1) nor (2) of this subsection
15 applies.

16 (g) A registered organization continues to be located in the jurisdiction
17 specified by (e) or (f) of this section notwithstanding

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

20 (2) the dissolution, winding up, or cancellation of the existence of the
21 registered organization.

22 (h) The United States is located in the District of Columbia.

23 (i) A branch or agency of a bank that is not organized under the law of the
24 United States or a state is located in the state in which the branch or agency is licensed
25 if all branches and agencies of the bank are licensed in only one state.

26 (j) A foreign air carrier, under the Federal Aviation Act of 1958, as amended,
27 is located at the designated office of the agent upon which service of process may be
28 made on behalf of the carrier.

29 (k) This section applies only for purposes of AS 45.09.301 - 45.09.342.

30 **Sec. 45.09.308. When security interest or agricultural lien is perfected;**
31 **continuity of perfection.** (a) Except as otherwise provided in this section and

1 AS 45.09.309, a security interest is perfected if it has attached and all of the applicable
2 requirements for perfection in AS 45.09.310 - 45.09.316 have been satisfied. A
3 security interest is perfected when it attaches if the applicable requirements are
4 satisfied before the security interest attaches.

5 (b) An agricultural lien is perfected if it has become effective and all of the
6 applicable requirements for perfection in AS 45.09.310 have been satisfied. An
7 agricultural lien is perfected when it becomes effective if the applicable requirements
8 are satisfied before the agricultural lien becomes effective.

9 (c) A security interest or agricultural lien is perfected continuously if it is
10 originally perfected by one method under this chapter and is later perfected by another
11 method under this chapter, without an intermediate period when it was unperfected.

12 (d) Perfection of a security interest in collateral also perfects a security interest
13 in a supporting obligation for the collateral.

14 (e) Perfection of a security interest in a right to payment or performance also
15 perfects a security interest in a security interest, mortgage, or other lien on personal
16 or real property securing the right.

17 (f) Perfection of a security interest in a securities account also perfects a
18 security interest in the security entitlements carried in the securities account.

19 (g) Perfection of a security interest in a commodity account also perfects a
20 security interest in the commodity contracts carried in the commodity account.

21 **Sec. 45.09.309. Security interest perfected upon attachment.** The following
22 security interests are perfected when they attach:

23 (1) a purchase money security interest in consumer goods, except as
24 otherwise provided in AS 45.09.311(b) with respect to consumer goods that are subject
25 to a statute or treaty described in AS 45.09.311(a);

26 (2) an assignment of accounts or payment intangibles that does not, by
27 itself or in conjunction with other assignments to the same assignee, transfer a
28 significant part of the assignor's outstanding accounts or payment intangibles;

29 (3) a sale of a payment intangible;

30 (4) a sale of a promissory note;

31 (5) a security interest created by the assignment of a health care

1 insurance receivable to the provider of the health care goods or services;

2 (6) a security interest arising under AS 45.02.401, 45.02.505,
3 45.02.711(c), or AS 45.12.508(e), until the debtor obtains possession of the collateral;

4 (7) a security interest of a collecting bank arising under AS 45.04.210;

5 (8) a security interest of an issuer or nominated person arising under
6 AS 45.05.118;

7 (9) a security interest arising in the delivery of a financial asset under
8 AS 45.09.206(c);

9 (10) a security interest in investment property created by a broker or
10 securities intermediary;

11 (11) a security interest in a commodity contract or a commodity
12 account created by a commodity intermediary;

13 (12) an assignment for the benefit of all creditors of the transferor and
14 subsequent transfers by the assignee thereunder; and

15 (13) a security interest created by an assignment of a beneficial interest
16 in a decedent's estate.

17 **Sec. 45.09.310. When filing required to perfect security interest or**
18 **agricultural lien; security interests and agricultural liens to which filing provisions**
19 **do not apply.** (a) Except as otherwise provided in (b) of this section and
20 AS 45.09.312(b), a financing statement must be filed to perfect all security interests
21 and agricultural liens.

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

24 (1) that is perfected under AS 45.09.308(d), (e), (f), or (g);

25 (2) that is perfected under AS 45.09.309 when it attaches;

26 (3) in property subject to a statute, regulation, or treaty described in
27 AS 45.09.311(a);

28 (4) in goods in possession of a bailee that is perfected under
29 AS 45.09.312(d)(1) or (2);

30 (5) in certificated securities, documents, goods, or instruments that is
31 perfected without filing or possession under AS 45.09.312(e), (f), or (g);

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- (6) in collateral in the secured party's possession under AS 45.09.313;
- (7) in a certificated security that is perfected by delivery of the security certificate to the secured party under AS 45.09.313;
- (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights that is perfected by control under AS 45.09.314;
- (9) in proceeds that is perfected under AS 45.09.315; or
- (10) that is perfected under AS 45.09.316.

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

Sec. 45.09.311. Perfection of security interests in property subject to certain statutes, regulations, and treaties. (a) Except as otherwise provided in (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to

- (1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt AS 45.09.310(a);
- (2) AS 28.10; however, during a period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of AS 45.09.501 - 45.09.527 apply to a security interest in that collateral created by that person as debtor; or
- (3) a certificate-of-title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in (d) of this section, AS 45.09.313, and 45.09.316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in (a) of this section may be perfected only by

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1 compliance with those requirements, and a security interest so perfected remains
2 perfected notwithstanding a change in the use or transfer of possession of the
3 collateral.

4 (c) Except as otherwise provided in (d) of this section and AS 45.09.316(d)
5 and (e), duration and renewal of perfection of a security interest perfected by
6 compliance with the requirements prescribed by a statute, regulation, or treaty
7 described in (a) of this section are governed by the statute, regulation, or treaty. In
8 other respects, the security interest is subject to this chapter.

9 (d) During a period in which collateral is inventory held for sale or lease by
10 a person or leased by that person as lessor and that person is in the business of selling
11 or leasing goods of that kind, this section does not apply to a security interest in that
12 collateral created by that person as debtor.

13 **Sec. 45.09.312. Perfection of security interests in chattel paper, deposit**
14 **accounts, documents, goods covered by documents, instruments, investment**
15 **property, letter-of-credit rights, and money; perfection by permissive filing;**
16 **temporary perfection without filing or transfer of possession. (a) A security**
17 **interest in chattel paper, negotiable documents, instruments, or investment property**
18 **may be perfected by filing.**

19 (b) Except as otherwise provided in AS 45.09.315(c) and (d) for proceeds,

20 (1) a security interest in a deposit account may be perfected only by
21 control under AS 45.09.314;

22 (2) and except as otherwise provided in AS 45.09.308(d), a security
23 interest in a letter-of-credit right may be perfected only by control under AS 45.09.314;
24 and

25 (3) a security interest in money may be perfected only by the secured
26 party's taking possession under AS 45.09.313.

27 (c) While goods are in the possession of a bailee that has issued a negotiable
28 document covering the goods, a security interest

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

31 (2) perfected in the document has priority over a security interest that

1 becomes perfected in the goods by another method during that time.

2 (d) While goods are in the possession of a bailee that has issued a
3 nonnegotiable document covering the goods, a security interest in the goods may be
4 perfected by

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

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

7 (3) filing as to the goods.

8 (e) A security interest in certificated securities, negotiable documents, or
9 instruments is perfected without filing or the taking of possession for a period of 20
10 days from the time the security interest attaches to the extent that it arises for new
11 value given under an authenticated security agreement.

12 (f) A perfected security interest in a negotiable document or goods in
13 possession of a bailee, other than one that has issued a negotiable document for the
14 goods, remains perfected for 20 days without filing if the secured party makes
15 available to the debtor the goods or documents representing the goods for the purpose
16 of

17 (1) ultimate sale or exchange; or

18 (2) loading, unloading, storing, shipping, transshipping, manufacturing,
19 processing, or otherwise dealing with the goods or documents representing the goods
20 in a manner preliminary to their sale or exchange.

21 (g) A perfected security interest in a certificated security or instrument remains
22 perfected for 20 days without filing if the secured party delivers the security certificate
23 or instrument to the debtor for the purpose of

24 (1) ultimate sale or exchange; or

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

27 (h) After the 20-day period specified in (e), (f), or (g) of this section expires,
28 perfection depends upon compliance with this chapter.

29 **Sec. 45.09.313. When possession by or delivery to secured party perfects**
30 **security interest without filing.** (a) Except as otherwise provided in (b) of this
31 section, a secured party may perfect a security interest in negotiable documents, goods,

1 instruments, money, or tangible chattel paper by taking possession of the collateral.
2 A secured party may perfect a security interest in certificated securities by taking
3 delivery of the certificated securities under AS 45.08.301.

4 (b) With respect to goods covered by a certificate of title issued by this state,
5 a secured party may perfect a security interest in the goods by taking possession of the
6 goods only in the circumstances described in AS 45.09.316(d).

7 (c) With respect to collateral other than certificated securities and goods
8 covered by a document, a secured party takes possession of collateral in the possession
9 of a person other than the debtor, the secured party, or a lessee of the collateral from
10 the debtor in the ordinary course of the debtor's business, when the person

11 (1) in possession authenticates a record acknowledging that the person
12 holds possession of the collateral for the secured party's benefit; or

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

15 (d) If perfection of a security interest depends upon possession of the collateral
16 by a secured party, perfection occurs no earlier than the time the secured party takes
17 possession and continues only while the secured party retains possession.

18 (e) A security interest in a certificated security in registered form is perfected
19 by delivery when delivery of the certificated security occurs under AS 45.08.301 and
20 remains perfected by delivery until the debtor obtains possession of the security
21 certificate.

22 (f) A person in possession of collateral is not required to acknowledge that it
23 holds possession for a secured party's benefit.

24 (g) If a person acknowledges that it holds possession for the secured party's
25 benefit,

26 (1) the acknowledgment is effective under (c) of this section or
27 AS 45.08.301(a), even if the acknowledgment violates the rights of a debtor; and

28 (2) unless the person otherwise agrees or law other than this chapter
29 otherwise provides, the person does not owe a duty to the secured party and is not
30 required to confirm the acknowledgment to another person.

31 (h) A secured party having possession of collateral does not relinquish

1 possession by delivering the collateral to a person other than the debtor or a lessee of
2 the collateral from the debtor in the ordinary course of the debtor's business if the
3 person was instructed before the delivery or is instructed contemporaneously with the
4 delivery to

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

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

7 (i) A secured party does not relinquish possession, even if a delivery under (h)
8 of this section violates the rights of a debtor. A person to whom collateral is delivered
9 under (h) of this section does not owe a duty to the secured party and is not required
10 to confirm the delivery to another person unless the person otherwise agrees or law
11 other than this chapter otherwise provides.

12 **Sec. 45.09.314. Perfection by control.** (a) A security interest in deposit
13 accounts, electronic chattel paper, investment property, or letter-of-credit rights, or may
14 be perfected by control of the collateral under AS 45.09.104, 45.09.105, 45.09.106, or
15 45.09.107.

16 (b) A security interest in deposit accounts, electronic chattel paper, or letter-of-
17 credit rights is perfected by control under AS 45.09.104, 45.09.105, or 45.09.107 when
18 the secured party obtains control and remains perfected by control only while the
19 secured party retains control.

20 (c) A security interest in investment property is perfected by control under
21 AS 45.09.106 from the time the secured party obtains control and remains perfected
22 by control until

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

24 (2) one of the following occurs:

25 (A) if the collateral is a certificated security, the debtor has or
26 acquires possession of the security certificate;

27 (B) if the collateral is an uncertificated security, the issuer has
28 registered or registers the debtor as the registered owner; or

29 (C) if the collateral is a security entitlement, the debtor is or
30 becomes the entitlement holder.

31 **Sec. 45.09.315. Secured party's rights on disposition of collateral and in**

1 proceeds. (a) Except as otherwise provided in this chapter,

2 (1) a security interest or agricultural lien continues in collateral
3 notwithstanding sale, lease, license, exchange, or other disposition of the security
4 interest or agricultural lien unless the secured party authorized the disposition free of
5 the security interest or agricultural lien; and

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

7 (b) Proceeds that are commingled with other property are identifiable proceeds
8 if the proceeds

9 (1) are goods, to the extent provided by AS 45.09.336; and

10 (2) are not goods, to the extent that the secured party identifies the
11 proceeds by a method of tracing, including application of equitable principles, that is
12 permitted under law other than this chapter with respect to commingled property of the
13 type involved.

14 (c) A security interest in proceeds is a perfected security interest if the security
15 interest in the original collateral was perfected.

16 (d) A perfected security interest in proceeds becomes unperfected on the 21st
17 day after the security interest attaches to the proceeds unless

18 (1) the following conditions are satisfied

19 (A) a filed financing statement covers the original collateral;

20 (B) the proceeds are collateral in which a security interest may
21 be perfected by filing in the office in which the financing statement has been
22 filed; and

23 (C) the proceeds are not acquired with cash proceeds;

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

25 (3) the security interest in the proceeds is perfected other than under
26 (c) of this section when the security interest attaches to the proceeds or within 20 days
27 thereafter.

28 (e) If a filed financing statement covers the original collateral, a security
29 interest in proceeds that remains perfected under (d)(1) of this section becomes
30 unperfected at the later of

31 (1) when the effectiveness of the filed financing statement lapses under

1 AS 45.09.515 or is terminated under AS 45.09.513; or

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

3 **Sec. 45.09.316. Continued perfection of security interest following change**
4 **in governing law.** (a) A security interest perfected under the law of the jurisdiction

5 designated in AS 45.09.301(1) or 45.09.305(c) remains perfected until the earliest of

6 (1) the time perfection would have ceased under the law of that
7 jurisdiction;

8 (2) the expiration of four months after a change of the debtor's location
9 to another jurisdiction;

10 (3) the expiration of one year after a transfer of collateral to a person
11 who thereby becomes a debtor and is located in another jurisdiction; or

12 (4) the expiration of one year after a new debtor located in another
13 jurisdiction becomes bound under AS 45.09.203(d).

14 (b) If a security interest described in (a) of this section becomes perfected
15 under the law of the other jurisdiction before the earliest time or event described in (a)
16 of this section, it remains perfected thereafter. If the security interest does not become
17 perfected under the law of the other jurisdiction before the earliest time or event, it
18 becomes unperfected and is considered never to have been perfected as against a
19 purchaser of the collateral for value.

20 (c) A possessory security interest in collateral, other than goods covered by a
21 certificate of title and as-extracted collateral consisting of goods, remains continuously
22 perfected if

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

25 (2) after the event described in (1) of this subsection occurs, the
26 collateral is brought into another jurisdiction; and

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

29 (d) Except as otherwise provided in (e) of this section, a security interest in
30 goods covered by a certificate of title that is perfected by a method under the law of
31 another jurisdiction when the goods become covered by a certificate of title from this

1 state remains perfected until the security interest would have become unperfected under
2 the law of the other jurisdiction had the goods not become so covered.

3 (e) A security interest described in (d) of this section becomes unperfected as
4 against a purchaser of the goods for value and is considered never to have been
5 perfected as against a purchaser of the goods for value if the applicable requirements
6 for perfection under AS 45.09.311(b) or 45.09.313 are not satisfied before the earlier
7 of

8 (1) the time the security interest would have become unperfected under
9 the law of the other jurisdiction had the goods not become covered by a certificate of
10 title from this state; or

11 (2) the expiration of four months after the goods had become so
12 covered.

13 (f) A security interest in deposit accounts, letter-of-credit rights, or investment
14 property that is perfected under the law of the bank's jurisdiction, the issuer's
15 jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction,
16 or the commodity intermediary's jurisdiction, as applicable, remains perfected until the
17 earlier of

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

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

22 (g) If a security interest described in (f) of this section becomes perfected
23 under the law of the other jurisdiction before the earlier of the time or the end of the
24 period described in (f) of this section, it remains perfected thereafter. If the security
25 interest does not become perfected under the law of the other jurisdiction before the
26 earlier of that time or the end of that period, it becomes unperfected and is considered
27 never to have been perfected as against a purchaser of the collateral for value.

28 **Sec. 45.09.317. Interests that take priority over or take free of unperfected**
29 **security interest or agricultural lien.** (a) An unperfected security interest or
30 agricultural lien is subordinate to the rights of a person

31 (1) entitled to priority under AS 45.09.322; and

1 (2) who becomes a lien creditor before the earlier of the time the
2 security interest or agricultural lien is perfected or a financing statement covering the
3 collateral is filed.

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

9 (c) Except as otherwise provided in (e) of this section, a lessee of goods takes
10 free of a security interest or agricultural lien if the lessee gives value and receives
11 delivery of the collateral without knowledge of the security interest or agricultural lien
12 and before it is perfected.

13 (d) A licensee of a general intangible or a buyer, other than a secured party,
14 of accounts, electronic chattel paper, general intangibles, or investment property other
15 than a certificated security takes free of a security interest if the licensee or buyer
16 gives value without knowledge of the security interest and before it is perfected.

17 (e) Except as otherwise provided in AS 45.09.320 and 45.09.321, if a person
18 files a financing statement with respect to a purchase money security interest before
19 or within 20 days after the debtor receives delivery of the collateral, the security
20 interest takes priority over the rights of a buyer, lessee, or lien creditor that arise
21 between the time the security interest attaches and the time of filing.

22 **Sec. 45.09.318. No interest retained in right to payment that is sold; rights**
23 **and title of seller of account or chattel paper with respect to creditors and**
24 **purchasers.** (a) A debtor that has sold an account, chattel paper, payment intangible,
25 or promissory note does not retain a legal or equitable interest in the collateral sold.

26 (b) For purposes of determining the rights of creditors of, and purchasers for
27 value of an account or chattel paper from, a debtor that has sold an account or chattel
28 paper, while the buyer's security interest is unperfected, the debtor is considered to
29 have rights and title to the account or chattel paper identical to those the debtor sold.

30 **Sec. 45.09.319. Rights and title of consignee with respect to creditors and**
31 **purchasers.** (a) Except as otherwise provided in (b) of this section, for purposes of

1 determining the rights of creditors of, and purchasers for value of goods from, a
2 consignee, while the goods are in the possession of the consignee, the consignee has
3 rights and title to the goods identical to those the consignor had or had power to
4 transfer.

5 (b) For purposes of determining the rights of a creditor of a consignee, law
6 other than this chapter determines the rights and title of a consignee while goods are
7 in the consignee's possession if, under AS 45.09.301 - 45.09.342, a perfected security
8 interest held by the consignor would have priority over the rights of the creditor.

9 **Sec. 45.09.320. Buyer of goods.** (a) Except as otherwise provided in (e) of
10 this section, a buyer in ordinary course of business, other than a person buying farm
11 products from a person engaged in farming operations, takes free of a security interest
12 created by the buyer's seller, even if the security interest is perfected and the buyer
13 knows of its existence.

14 (b) Except as otherwise provided in (e) of this section, a buyer of goods from
15 a person who used or bought the goods for use primarily for personal, family, or
16 household purposes takes free of a security interest, even if perfected, if the buyer buys

17 (1) without knowledge of the security interest;

18 (2) for value;

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

20 and

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

22 (c) To the extent that it affects the priority of a security interest over a buyer
23 of goods under (b) of this section, the period of effectiveness of a filing made in the
24 jurisdiction in which the seller is located is governed by AS 45.09.316(a) and (b).

25 (d) A buyer in ordinary course of business buying oil, gas, or other minerals
26 at the wellhead or minehead or after extraction takes free of an interest arising out of
27 an encumbrance.

28 (e) The provisions of (a) and (b) of this section do not affect a security interest
29 in goods in the possession of the secured party under AS 45.09.313.

30 **Sec. 45.09.321. Licensee of general intangible and lessee of goods in**
31 **ordinary course of business.** (a) In this section, "licensee in ordinary course of

1 business" means a person who becomes a licensee of a general intangible in good
2 faith, without knowledge that the license violates the rights of another person in the
3 general intangible, and in the ordinary course from a person in the business of
4 licensing general intangibles of that kind. A person becomes a licensee in the ordinary
5 course if the license to the person comports with the usual or customary practices in
6 the kind of business in which the licensor is engaged or with the licensor's own usual
7 or customary practices.

8 (b) A licensee in ordinary course of business takes its rights under the license
9 free of a security interest in the general intangible created by the licensor even if the
10 security interest is perfected and the licensee knows of its existence.

11 (c) A lessee in ordinary course of business takes its leasehold interest free of
12 a security interest in the goods created by the lessor even if the security interest is
13 perfected and the lessee knows of its existence.

14 **Sec. 45.09.322. Priorities among conflicting security interests in and**
15 **agricultural liens on same collateral.** (a) Except as otherwise provided in this
16 section, priority among conflicting security interests and agricultural liens in the same
17 collateral is determined according to the following rules:

18 (1) conflicting perfected security interests and agricultural liens rank
19 according to priority in time of filing or perfection; priority dates from the earlier of
20 the time a filing covering the collateral is first made or the security interest or
21 agricultural lien is first perfected if there is no period thereafter when there is neither
22 filing nor perfection;

23 (2) a perfected security interest or agricultural lien has priority over a
24 conflicting unperfected security interest or agricultural lien;

25 (3) the first security interest or agricultural lien to attach or become
26 effective has priority if conflicting security interests and agricultural liens are
27 unperfected.

28 (b) For the purposes of (a)(1) of this section, the time of filing or perfection
29 as to a security interest in collateral

30 (1) is also the time of filing or perfection as to a security interest in
31 proceeds; and

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

3 (c) Except as otherwise provided in (f) of this section, a security interest in
4 collateral that qualifies for priority over a conflicting security interest under
5 AS 45.09.327, 45.09.328, 45.09.329, 45.09.330, or 45.09.331 also has priority over a
6 conflicting security interest in

7 (1) supporting obligation for the collateral; and

8 (2) proceeds of the collateral if

9 (A) the security interest in proceeds is perfected;

10 (B) the proceeds are cash proceeds or of the same type as the
11 collateral; and

12 (C) in the case of proceeds that are proceeds of proceeds, all
13 intervening proceeds are cash proceeds, proceeds of the same type as the
14 collateral, or an account relating to the collateral.

15 (d) Subject to (e) of this section and except as otherwise provided in (f) of this
16 section, if a security interest in chattel paper, deposit accounts, negotiable documents,
17 instruments, investment property, or letter-of-credit rights is perfected by a method
18 other than filing, conflicting perfected security interests in proceeds of the collateral
19 rank according to priority in time of filing.

20 (e) The provisions of (d) of this section apply only if the proceeds of the
21 collateral are not cash proceeds, chattel paper, negotiable documents, instruments,
22 investment property, or letter-of-credit rights.

23 (f) The provisions of (a) - (e) of this section are subject to

24 (1) the provisions of (g) of this section and the other provisions of
25 AS 45.09.301 - 45.09.342;

26 (2) AS 45.04.210 with respect to a security interest of a collecting
27 bank;

28 (3) AS 45.05.118 with respect to a security interest of an issuer or
29 nominated person; and

30 (4) AS 45.09.110 with respect to a security interest arising under
31 AS 45.02 or AS 45.12.

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

4 **Sec. 45.09.323. Future advances.** (a) Except as otherwise provided in (c) of
5 this section, for purposes of determining the priority of a perfected security interest
6 under AS 45.09.322(a)(1), perfection of the security interest dates from the time an
7 advance is made to the extent that the security interest secures an advance that

8 (1) is made while the security interest is perfected only

9 (A) under AS 45.09.309 when it attaches; or

10 (B) temporarily under AS 45.09.312(e), (f), or (g); and

11 (2) not made pursuant to a commitment entered into before or while
12 the security interest is perfected by a method other than under AS 45.09.309 or
13 45.09.312(e), (f), or (g).

14 (b) Except as otherwise provided in (c) of this section, a security interest is
15 subordinate to the rights of a person who becomes a lien creditor while the security
16 interest is perfected only to the extent that the security interest secures advances made
17 more than 45 days after the person becomes a lien creditor unless the advance is made

18 (1) without knowledge of the lien; or

19 (2) pursuant to a commitment entered into without knowledge of the
20 lien.

21 (c) The provisions of (a) and (b) of this section do not apply to a security
22 interest held by a secured party that is a buyer of accounts, chattel paper, payment
23 intangibles, or promissory notes or a consignor.

24 (d) Except as otherwise provided in (e) of this section, a buyer of goods other
25 than a buyer in ordinary course of business takes free of a security interest to the
26 extent that it secures advances made after the earlier of

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

29 (2) 45 days after the purchase.

30 (e) The provisions of (d) of this section do not apply if the advance is made
31 pursuant to a commitment entered into without knowledge of the buyer's purchase and

1 before the expiration of the 45-day period.

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

5 (1) the time the secured party acquires knowledge of the lease; or

6 (2) 45 days after the lease contract becomes enforceable.

7 (g) The provisions of (f) of this section do not apply if the advance is made
8 pursuant to a commitment entered into without knowledge of the lease and before the
9 expiration of the 45-day period.

10 **Sec. 45.09.324. Priority of purchase money security interests.** (a) Except
11 as otherwise provided in (g) of this section, a perfected purchase money security
12 interest in goods other than inventory or livestock has priority over a conflicting
13 security interest in the same goods, and, except as otherwise provided in AS 45.09.327,
14 a perfected security interest in its identifiable proceeds also has priority if the purchase
15 money security interest is perfected when the debtor receives possession of the
16 collateral or within 20 days thereafter.

17 (b) Subject to (c) of this section and except as otherwise provided in (g) of this
18 section, a perfected purchase money security interest in inventory has priority over a
19 conflicting security interest in the same inventory, has priority over a conflicting
20 security interest in chattel paper or an instrument constituting proceeds of the inventory
21 and in proceeds of the chattel paper if so provided in AS 45.09.330, and, except as
22 otherwise provided in AS 45.09.327, also has priority in identifiable cash proceeds of
23 the inventory to the extent the identifiable cash proceeds are received on or before the
24 delivery of the inventory to a buyer if

25 (1) the purchase money security interest is perfected when the debtor
26 receives possession of the inventory;

27 (2) the purchase money secured party sends an authenticated
28 notification to the holder of the conflicting security interest;

29 (3) the holder of the conflicting security interest receives the
30 notification within five years before the debtor receives possession of the inventory;
31 and

1 (4) the notification states that the person sending the notification has
2 or expects to acquire a purchase money security interest in inventory of the debtor and
3 describes the inventory.

4 (c) The provisions of (b)(2) - (4) of this section apply only if the holder of the
5 conflicting security interest had filed a financing statement covering the same types of
6 inventory if the purchase money security interest is

7 (1) perfected by filing, before the date of the filing; or

8 (2) temporarily perfected without filing or possession under
9 AS 45.09.312(f) before the beginning of the 20-day period under AS 45.09.312(f).

10 (d) Subject to (e) of this section and except as otherwise provided in (g) of this
11 section, a perfected purchase money security interest in livestock that are farm
12 products has priority over a conflicting security interest in the same livestock, and,
13 except as otherwise provided in AS 45.09.327, a perfected security interest in their
14 identifiable proceeds and identifiable products in their unmanufactured states also has
15 priority if

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

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

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

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

26 (e) The provisions of (d)(2) - (4) of this section apply only if the holder of the
27 conflicting security interest had filed a financing statement covering the same types of
28 livestock if the purchase money security interest is

29 (1) perfected by filing before the date of the filing; or

30 (2) temporarily perfected without filing or possession under
31 AS 45.09.312(f) before the beginning of the 20-day period under AS 45.09.312(f).

1 (f) Except as otherwise provided in (g) of this section, a perfected purchase-
2 money security interest in software has priority over a conflicting security interest in
3 the same collateral, and, except as otherwise provided in AS 45.09.327, a perfected
4 security interest in its identifiable proceeds also has priority to the extent that the
5 purchase money security interest in the goods in which the software was acquired for
6 use has priority in the goods and proceeds of the goods under this section.

7 (g) If more than one security interest qualifies for priority in the same
8 collateral under (a), (b), (d), or (f) of this section,

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

13 (2) in all other cases, AS 45.09.322(a) applies to the qualifying security
14 interests.

15 **Sec. 45.09.325. Priority of security interests in transferred collateral.** (a)
16 Except as otherwise provided in (b) of this section, a security interest created by a
17 debtor is subordinate to a security interest in the same collateral created by another
18 person if

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

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

23 (3) there is no period after the events described in (1) and (2) of this
24 subsection when the security interest is unperfected.

25 (b) The provisions of (a) of this section subordinate a security interest only if
26 the security interest

27 (1) otherwise would have priority solely under AS 45.09.322(a) or
28 45.09.324; or

29 (2) arose solely under AS 45.02.711(c) or AS 45.12.508(e).

30 **Sec. 45.09.326. Priority of security interests created by new debtor.** (a)
31 Subject to (b) of this section, a security interest created by a new debtor that is

1 perfected by a filed financing statement that is effective solely under AS 45.09.508 in
2 collateral in which a new debtor has or acquires rights is subordinate to a security
3 interest in the same collateral that is perfected by another method.

4 (b) If more than one security interest in the same collateral is subordinate
5 under (a) of this section, the other provisions of AS 45.09.301 - 45.09.342 determine
6 the priority among the subordinated security interests.

7 **Sec. 45.09.327. Priority of security interests in deposit account.** The
8 following rules govern priority among conflicting security interests in the same deposit
9 account:

10 (1) a security interest held by a secured party having control of the
11 deposit account under AS 45.09.104 has priority over a conflicting security interest
12 held by a secured party that does not have control;

13 (2) except as otherwise provided in (3) and (4) of this section, security
14 interests perfected by control under AS 45.09.314 rank according to priority in time
15 of obtaining control;

16 (3) except as otherwise provided in (4) of this section, a security
17 interest held by the bank with which the deposit account is maintained has priority
18 over a conflicting security interest held by another secured party;

19 (4) a security interest perfected by control under AS 45.09.104(a)(3)
20 has priority over a security interest held by the bank with which the deposit account
21 is maintained.

22 **Sec. 45.09.328. Priority of security interests in investment property.** The
23 following rules govern priority among conflicting security interests in the same
24 investment property:

25 (1) a security interest held by a secured party having control of
26 investment property under AS 45.09.106 has priority over a security interest held by
27 a secured party that does not have control of the investment property;

28 (2) except as otherwise provided in (3) and (4) of this section,
29 conflicting security interests held by secured parties each of which has control under
30 AS 45.09.106 rank according to priority in time, if the collateral is

31 (A) a security, of obtaining control;

- 1 (B) a security entitlement carried in a securities account and if
2 the secured party obtained control
- 3 (i) under AS 45.08.106(d)(1), of the secured party's
4 becoming the person for which the securities account is maintained;
- 5 (ii) under AS 45.08.106(d)(2), of the securities
6 intermediary's agreement to comply with the secured party's entitlement
7 orders with respect to security entitlements carried or to be carried in
8 the securities account; or
- 9 (iii) through another person under AS 45.08.106(d)(3),
10 of the time on which priority would be based under this paragraph if
11 the other person were the secured party; or
- 12 (C) a commodity contract carried with a commodity
13 intermediary, of the satisfaction of the requirement for control specified in
14 AS 45.09.106(b)(2) with respect to commodity contracts carried or to be carried
15 with the commodity intermediary;
- 16 (3) a security interest held by a securities intermediary in a security
17 entitlement or a securities account maintained with the securities intermediary has
18 priority over a conflicting security interest held by another secured party;
- 19 (4) a security interest held by a commodity intermediary in a
20 commodity contract or a commodity account maintained with the commodity
21 intermediary has priority over a conflicting security interest held by another secured
22 party;
- 23 (5) a security interest in a certificated security in registered form that
24 is perfected by taking delivery under AS 45.09.313(a) and not by control under
25 AS 45.09.314 has priority over a conflicting security interest perfected by a method
26 other than control;
- 27 (6) conflicting security interests created by a broker, securities
28 intermediary, or commodity intermediary that are perfected without control under
29 AS 45.09.106 rank equally;
- 30 (7) in all other cases, priority among conflicting security interests in
31 investment property is governed by AS 45.09.322 and 45.09.323.

1 **Sec. 45.09.329. Priority of security interests in letter-of-credit right.** The
2 following rules govern priority among conflicting security interests in the same letter-
3 of-credit right:

4 (1) a security interest held by a secured party having control of the
5 letter-of-credit right under AS 45.09.107 has priority to the extent of its control over
6 a conflicting security interest held by a secured party that does not have control;

7 (2) security interests perfected by control under AS 45.09.314 rank
8 according to priority in time of obtaining control.

9 **Sec. 45.09.330. Priority of purchaser of chattel paper or instrument.** (a)
10 A purchaser of chattel paper has priority over a security interest in the chattel paper
11 that is claimed merely as proceeds of inventory subject to a security interest if

12 (1) in good faith and in the ordinary course of the purchaser's business,
13 the purchaser gives new value and takes possession of the chattel paper or obtains
14 control of the chattel paper under AS 45.09.105; and

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

17 (b) A purchaser of chattel paper has priority over a security interest in the
18 chattel paper that is claimed other than merely as proceeds of inventory subject to a
19 security interest if the purchaser gives new value and takes possession of the chattel
20 paper or obtains control of the chattel paper under AS 45.09.105 in good faith, in the
21 ordinary course of the purchaser's business, and without knowledge that the purchase
22 violates the rights of the secured party.

23 (c) Except as otherwise provided in AS 45.09.327, a purchaser having priority
24 in chattel paper under (a) or (b) of this section also has priority in proceeds of the
25 chattel paper to the extent that

26 (1) AS 45.09.322 provides for priority in the proceeds; or

27 (2) the proceeds consist of the specific goods covered by the chattel
28 paper or cash proceeds of the specific goods even if the purchaser's security interest
29 in the proceeds is unperfected.

30 (d) Except as otherwise provided in AS 45.09.331(a), a purchaser of an
31 instrument has priority over a security interest in the instrument perfected by a method

1 other than possession if the purchaser gives value and takes possession of the
2 instrument in good faith and without knowledge that the purchase violates the rights
3 of the secured party.

4 (e) For purposes of (a) and (b) of this section, the holder of a purchase money
5 security interest in inventory gives new value for chattel paper constituting proceeds
6 of the inventory.

7 (f) For purposes of (b) and (d) of this section, if chattel paper or an instrument
8 indicates that it has been assigned to an identified secured party other than the
9 purchaser, a purchaser of the chattel paper or instrument has knowledge that the
10 purchase violates the rights of the secured party.

11 **Sec. 45.09.331. Priority of rights of purchasers of instruments, documents,**
12 **and securities under other chapters; priority of interests in financial assets and**
13 **security entitlements under AS 45.08.** (a) This chapter does not limit the rights of
14 a holder in due course of a negotiable instrument, a holder to which a negotiable
15 document of title has been duly negotiated, or a protected purchaser of a security.
16 These holders or purchasers take priority over an earlier security interest, even if
17 perfected, to the extent provided in AS 45.03, AS 45.07, and AS 45.08.

18 (b) This chapter does not limit the rights of or impose liability on a person to
19 the extent that the person is protected against the assertion of an adverse claim under
20 AS 45.08.

21 (c) Filing under this chapter does not constitute notice of a claim or defense
22 to the holders, purchasers, or persons described in (a) and (b) of this section.

23 **Sec. 45.09.332. Transfer of money; transfer of funds from deposit account.**
24 (a) A transferee of money takes the money free of a security interest unless the
25 transferee acts in collusion with the debtor in violating the rights of the secured party.

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

29 **Sec. 45.09.333. Priority of certain liens arising by operation of law.** (a)
30 In this section, "possessory lien" means an interest, other than a security interest or an
31 agricultural lien,

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

4 (2) that is created by statute or rule of law in favor of the person; and

5 (3) whose effectiveness depends on the person's possession of the
6 goods.

7 (b) A possessory lien on goods has priority over a security interest in the
8 goods unless the lien is created by a statute that expressly provides otherwise.

9 **Sec. 45.09.334. Priority of security interests in fixtures and crops.** (a) A
10 security interest under this chapter may be created in goods that are fixtures or may
11 continue in goods that become fixtures. A security interest does not exist under this
12 chapter in ordinary building materials incorporated into an improvement on land.

13 (b) This chapter does not prevent creation of an encumbrance upon fixtures
14 under real property law.

15 (c) In cases not governed by (d) - (h) of this section, a security interest in
16 fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the
17 related real property other than the debtor.

18 (d) Except as otherwise provided in (h) of this section, a perfected security
19 interest in fixtures has priority over a conflicting interest of an encumbrancer or owner
20 of the real property if the debtor has an interest of record in or is in possession of the
21 real property and

22 (1) the security interest is a purchase money security interest;

23 (2) the interest of the encumbrancer or owner arises before the goods
24 become fixtures; and

25 (3) the security interest is perfected by a fixture filing before the goods
26 become fixtures or within 20 days after the goods become fixtures.

27 (e) A perfected security interest in fixtures has priority over a conflicting
28 interest of an encumbrancer or owner of the real property if

29 (1) the debtor has an interest of record in the real property or is in
30 possession of the real property and the security interest

31 (A) is perfected by a fixture filing before the interest of the

- 1 encumbrancer or owner is of record; and
- 2 (B) has priority over any conflicting interest of a predecessor
- 3 in title of the encumbrancer or owner;
- 4 (2) before the goods become fixtures, the security interest is perfected
- 5 by a method permitted by this chapter and the fixtures are readily removable
- 6 (A) factory or office machines;
- 7 (B) equipment that is not primarily used or leased for use in the
- 8 operation of the real property; or
- 9 (C) replacements of domestic appliances that are consumer
- 10 goods;
- 11 (3) the conflicting interest is a lien on the real property obtained by
- 12 legal or equitable proceedings after the security interest was perfected by a method
- 13 permitted by this chapter; or
- 14 (4) the security interest is
- 15 (A) created in a manufactured home in a manufactured home
- 16 transaction; and
- 17 (B) perfected under a statute described in AS 45.09.311(a)(2).
- 18 (f) A security interest in fixtures, whether or not perfected, has priority over
- 19 a conflicting interest of an encumbrancer or owner of the real property if
- 20 (1) the encumbrancer or owner has, in an authenticated record,
- 21 consented to the security interest or disclaimed an interest in the goods as fixtures; or
- 22 (2) the debtor has a right to remove the goods as against the
- 23 encumbrancer or owner.
- 24 (g) The priority of the security interest under (f) of this section continues for
- 25 a reasonable time if the debtor's right to remove the goods as against the encumbrancer
- 26 or owner terminates.
- 27 (h) A mortgage is a construction mortgage to the extent that it secures an
- 28 obligation incurred for the construction of an improvement on land, including the
- 29 acquisition cost of the land if a recorded mortgage so indicates. Except as otherwise
- 30 provided in (e) and (f) of this section, a security interest in fixtures is subordinate to
- 31 a construction mortgage if the mortgage is recorded before the goods become fixtures

1 become fixtures and the goods become fixtures before the completion of the
2 construction. A mortgage has this priority to the same extent as a construction
3 mortgage to the extent that it is given to refinance a construction mortgage.

4 (i) A perfected security interest in crops growing on real property has priority
5 over a conflicting interest of an encumbrancer or owner of the real property if the
6 debtor has an interest of record in or is in possession of the real property.

7 (j) The provisions of (i) of this section prevail over an inconsistent statute
8 unless that statute contains an exemption that refers specifically to this section.

9 **Sec. 45.09.335. Accessions.** (a) A security interest may be created in an
10 accession and continues in collateral that becomes an accession.

11 (b) If a security interest is perfected when the collateral becomes an accession,
12 the security interest remains perfected in the collateral.

13 (c) Except as otherwise provided in (d) of this section, the other provisions of
14 AS 45.09.301 - 45.09.342 determine the priority of a security interest in an accession.

15 (d) A security interest in an accession is subordinate to a security interest in
16 the whole that is perfected by compliance with the requirements of a certificate of title
17 statute under AS 45.09.311(b).

18 (e) After default, subject to AS 45.09.601 - 45.09.628, a secured party may
19 remove an accession from other goods if the security interest in the accession has
20 priority over the claims of every person having an interest in the whole.

21 (f) A secured party that removes an accession from other goods under (e) of
22 this section shall promptly reimburse an encumbrancer or owner of the whole or of the
23 other goods, other than the debtor, for the cost of repair of a physical injury to the
24 whole or the other goods. The secured party need not reimburse the encumbrancer or
25 owner for diminution in value of the whole or the other goods caused by the absence
26 of the accession removed or by a necessity for replacing it. A person entitled to
27 reimbursement may refuse permission to remove until the secured party gives adequate
28 assurance for the performance of the obligation to reimburse.

29 **Sec. 45.09.336. Commingled goods.** (a) In this section, "commingled goods"
30 means goods that are physically united with other goods in a manner so that their
31 identity is lost in a product or mass.

1 (b) A security interest does not exist in commingled goods as such. However,
2 a security interest may attach to a product or mass that results when goods become
3 commingled goods.

4 (c) If collateral becomes commingled goods, a security interest attaches to the
5 product or mass.

6 (d) If a security interest in collateral is perfected before the collateral becomes
7 commingled goods, the security interest that attaches to the product or mass under (c)
8 of this section is perfected.

9 (e) Except as otherwise provided in (f) of this section, the other provisions of
10 AS 45.09.301 - 45.09.342 determine the priority of a security interest that attaches to
11 the product or mass under (c) of this section.

12 (f) If more than one security interest attaches to the product or mass under (c)
13 of this section, the following rules determine priority:

14 (1) a security interest that is perfected under (d) of this section has
15 priority over a security interest that is unperfected at the time the collateral becomes
16 commingled goods;

17 (2) if more than one security interest is perfected under (d) of this
18 section, the security interests rank equally in proportion to the value of the collateral
19 at the time it became commingled goods.

20 **Sec. 45.09.337. Priority of security interests in goods covered by certificate**
21 **of title.** If, while a security interest in goods is perfected by a method under the law
22 of another jurisdiction, this state issues a certificate of title that does not show that the
23 goods are subject to the security interest or contain a statement that the goods may be
24 subject to security interests not shown on the certificate,

25 (1) a buyer of the goods, other than a person in the business of selling
26 goods of that kind, takes free of the security interest if the buyer gives value and
27 receives delivery of the goods after issuance of the certificate and without knowledge
28 of the security interest; and

29 (2) the security interest is subordinate to a conflicting security interest
30 in the goods that attaches, and is perfected under AS 45.09.311(b) after issuance of the
31 certificate and without the conflicting secured party's knowledge of the security

1 interest.

2 **Sec. 45.09.338. Priority of security interest or agricultural lien perfected**
3 **by filed financing statement providing certain incorrect information.** If a security
4 interest or agricultural lien is perfected by a filed financing statement providing
5 information described in AS 45.09.516(b)(5) that is incorrect at the time the financing
6 statement is filed,

7 (1) the security interest or agricultural lien is subordinate to a
8 conflicting perfected security interest in the collateral to the extent that the holder of
9 the conflicting security interest gives value in reasonable reliance upon the incorrect
10 information; and

11 (2) a purchaser, other than a secured party, of the collateral takes free
12 of the security interest or agricultural lien to the extent that, in reasonable reliance
13 upon the incorrect information, the purchaser gives value and, in the case of chattel
14 paper, documents, goods, instruments, or a security certificate, receives delivery of the
15 collateral.

16 **Sec. 45.09.339. Priority subject to subordination.** This chapter does not
17 preclude subordination by agreement by a person entitled to priority.

18 **Sec. 45.09.340. Effectiveness of right of recoupment or setoff against**
19 **deposit account.** (a) Except as otherwise provided in (c) of this section, a bank with
20 which a deposit account is maintained may exercise a right of recoupment or setoff
21 against a secured party that holds a security interest in the deposit account.

22 (b) Except as otherwise provided in (c) of this section, the application of this
23 chapter to a security interest in a deposit account does not affect a right of recoupment
24 or setoff of the secured party as to a deposit account maintained with the secured
25 party.

26 (c) The exercise by a bank of a setoff against a deposit account is ineffective
27 against a secured party that holds a security interest in the deposit account that is
28 perfected by control under AS 45.09.104(a)(3) if the setoff is based on a claim against
29 the debtor.

30 **Sec. 45.09.341. Bank's rights and duties with respect to deposit account.**
31 Except as otherwise provided in AS 45.09.340(c), and unless the bank otherwise agrees

1 in an authenticated record, a bank's rights and duties with respect to a deposit account
2 maintained with the bank are not terminated, suspended, or modified by

3 (1) the creation, attachment, or perfection of a security interest in the
4 deposit account;

5 (2) the bank's knowledge of the security interest; or

6 (3) the bank's receipt of instructions from the secured party.

7 **Sec. 45.09.342. Bank's right to refuse to enter into or disclose existence of**
8 **control agreement.** This chapter does not require a bank to enter into an agreement
9 of the kind described in AS 45.09.104(a)(2), even if its customer so requests or directs.
10 A bank that has entered into such an agreement is not required to confirm the
11 existence of the agreement to another person unless requested to do so by its customer.

12 **Article 4. Rights of Third Parties.**

13 **Sec. 45.09.401. Alienability of debtor's rights.** (a) Except as otherwise
14 provided in (b) of this section and AS 45.09.406 - 45.09.409, whether a debtor's rights
15 in collateral may be voluntarily or involuntarily transferred is governed by law other
16 than this chapter.

17 (b) An agreement between the debtor and secured party that prohibits a
18 transfer of the debtor's rights in collateral or makes the transfer a default does not
19 prevent the transfer from taking effect.

20 **Sec. 45.09.402. Secured party not obligated on contract of debtor or in**
21 **tort.** The existence of a security interest, agricultural lien, or authority given to a
22 debtor to dispose of or use collateral, without more, does not subject a secured party
23 to liability in contract or tort for the debtor's acts or omissions.

24 **Sec. 45.09.403. Agreement not to assert defenses against assignee.** (a) In
25 this section, the issue of whether an assignment is taken for value is governed by the
26 provisions of AS 45.03.303(a).

27 (b) Except as otherwise provided in this section, an agreement between an
28 account debtor and an assignor not to assert against an assignee a claim or defense that
29 the account debtor may have against the assignor is enforceable by an assignee that
30 takes an assignment

31 (1) for value;

- 1 (2) in good faith;
- 2 (3) without notice of a claim of a property or possessory right to the
- 3 property assigned; and
- 4 (4) without notice of a defense or claim in recoupment of the type that
- 5 may be asserted against a person entitled to enforce a negotiable instrument under
- 6 AS 45.03.305(a).

7 (c) The provisions of (b) of this section do not apply to defenses of a type that

8 may be asserted against a holder in due course of a negotiable instrument under

9 AS 45.03.305(b).

10 (d) In a consumer transaction, if a record evidences the account debtor's

11 obligation, if law other than this chapter requires that the record include a statement

12 to the effect that the rights of an assignee are subject to claims or defenses that the

13 account debtor could assert against the original obligee, and if the record does not

14 include the statement,

15 (1) the record has the same effect as if the record included the a

16 statement; and

17 (2) the account debtor may assert against an assignee the claims and

18 defenses that would have been available if the record included the statement.

19 (e) This section is subject to law other than this chapter that establishes a

20 different rule for an account debtor who is an individual and who incurred the

21 obligation primarily for personal, family, or household purposes.

22 (f) Except as otherwise provided in (d) of this section, this section does not

23 displace law other than this chapter that gives effect to an agreement by an account

24 debtor not to assert a claim or defense against an assignee.

25 **Sec. 45.09.404. Rights acquired by assignee; claims and defenses against**

26 **assignee.** (a) Unless an account debtor has made an enforceable agreement not to

27 assert defenses or claims, and subject to (b) - (e) of this section, the rights of an

28 assignee are subject to

29 (1) all terms of the agreement between the account debtor and assignor

30 and a defense or claim in recoupment arising from the transaction that gave rise to the

31 contract; and

1 (2) any other defense or claim of the account debtor against the
2 assignor that accrues before the account debtor receives a notification of the
3 assignment authenticated by the assignor or the assignee.

4 (b) Subject to (c) of this section and except as otherwise provided in (d) of this
5 section, the claim of an account debtor against an assignor may be asserted against an
6 assignee under (a) of this section only to reduce the amount the account debtor owes.

7 (c) This section is subject to law other than this chapter that establishes a
8 different rule for an account debtor who is an individual and who incurred the
9 obligation primarily for personal, family, or household purposes.

10 (d) In a consumer transaction, if a record evidences the account debtor's
11 obligation, law other than this chapter requires that the record include a statement to
12 the effect that the account debtor's recovery against an assignee with respect to claims
13 and defenses against the assignor may not exceed amounts paid by the account debtor
14 under the record, and the record does not include the statement, the extent to which
15 a claim of an account debtor against the assignor may be asserted against an assignee
16 is determined as if the record included the statement.

17 (e) This section does not apply to an assignment of a health care insurance
18 receivable.

19 **Sec. 45.09.405. Modification of assigned contract.** (a) A modification of
20 or substitution for an assigned contract is effective against an assignee if made in good
21 faith. The assignee acquires corresponding rights under the modified or substituted
22 contract. The assignment may provide that the modification or substitution is a breach
23 of contract by the assignor. This subsection is subject to (b) - (d) of this section.

24 (b) The provisions of (a) of this section apply to the extent that the right to
25 payment or the right to partial payment

26 (1) under an assigned contract has not been fully earned by
27 performance; or

28 (2) has been fully earned by performance and the account debtor has
29 not received notification of the assignment under AS 45.09.406(a).

30 (c) This section is subject to law other than this chapter that establishes a
31 different rule for an account debtor who is an individual and who incurred the

1 obligation primarily for personal, family, or household purposes.

2 (d) This section does not apply to an assignment of a health care insurance
3 receivable.

4 **Sec. 45.09.406. Discharge of account debtor; notification of assignment;
5 identification and proof of assignment; term prohibiting assignment ineffective.**

6 (a) Subject to (b) - (h) of this section, an account debtor on an account,
7 chattel paper, or a payment intangible may discharge its obligation by paying the
8 assignor until, but not after, the account debtor receives a notification, authenticated
9 by the assignor or the assignee, that the amount due or to become due has been
10 assigned and that payment is to be made to the assignee. After receipt of the
11 notification, the account debtor may discharge its obligation by paying the assignee
12 and may not discharge its obligation by paying the assignor.

13 (b) Subject to (g) of this section, notification is ineffective under (a) of this
14 section

15 (1) if it does not reasonably identify the rights assigned;

16 (2) to the extent that an agreement between an account debtor and a
17 seller of a payment intangible limits the account debtor's duty to pay a person other
18 than the seller and the limitation is effective under law other than this chapter; or

19 (3) at the option of an account debtor, if the notification notifies the
20 account debtor to make less than the full amount of any installment or other periodic
21 payment to the assignee even if

22 (A) only a portion of the account, chattel paper, or general
23 intangible has been assigned to that assignee;

24 (B) a portion has been assigned to another assignee; or

25 (C) the account debtor knows that the assignment to that
26 assignee is limited.

27 (c) Subject to (g) of this section, if requested by the account debtor, an
28 assignee shall seasonably furnish reasonable proof that the assignment has been made.
29 Unless the assignee complies, the account debtor may discharge its obligation by
30 paying the assignor even if the account debtor has received a notification under (a) of
31 this section.

1 (d) Except as otherwise provided in (e) of this section, AS 45.09.407, and
2 AS 45.12.303, and subject to (g) of this section, a term in an agreement between an
3 account debtor and an assignor or in a promissory note is ineffective to the extent that
4 it

5 (1) prohibits, restricts, or requires the consent of the account debtor or
6 person obligated on the promissory note to the assignment or transfer of, or the
7 creation, attachment, perfection, or enforcement of a security interest in, the account,
8 chattel paper, payment intangible, or promissory note; or

9 (2) provides that the creation, attachment, perfection, or enforcement
10 of the security interest may give rise to a default, breach, right of recoupment, claim,
11 defense, termination, right of termination, or remedy under the account, chattel paper,
12 payment intangible, or promissory note.

13 (e) The provisions of (d) of this section do not apply to the sale of a payment
14 intangible or promissory note.

15 (f) Subject to (g) of this section, an account debtor may not waive or vary its
16 option under (b)(3) of this section.

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

20 (h) This section does not apply to an assignment of a health care insurance
21 receivable.

22 **Sec. 45.09.407. Restrictions on creation or enforcement of security interest**
23 **in leasehold interest or in lessor's residual interest.** (a) Except as otherwise
24 provided in (b) of this section, a term in a lease agreement is ineffective to the extent
25 that it

26 (1) prohibits, restricts, or requires the consent of a party to the lease
27 to the creation, attachment, perfection, or enforcement of a security interest in an
28 interest of a party under the lease contract or in the lessor's residual interest in the
29 goods; or

30 (2) provides that the creation, attachment, perfection, or enforcement
31 of the security interest may give rise to a default, breach, right of recoupment, claim,

1 defense, termination, right of termination, or remedy under the lease.

2 (b) Except as otherwise provided in AS 45.12.303(g), a term described in
3 (a)(2) of this section is effective to the extent that there is

4 (1) a transfer by the lessee of the lessee's right of possession or use of
5 the goods in violation of the term; or

6 (2) a delegation of a material performance of either party to the lease
7 contract in violation of the term.

8 (c) The creation, attachment, perfection, or enforcement of a security interest
9 in the lessor's interest under the lease contract or the lessor's residual interest in the
10 goods is not a transfer that materially impairs the lessee's prospect of obtaining return
11 performance or materially changes the duty of or materially increases the burden or
12 risk imposed on the lessee within the purview of AS 45.12.303(d) unless, and then
13 only to the extent that, enforcement actually results in a delegation of material
14 performance of the seller. Even in that event, the creation, attachment, perfection, and
15 enforcement of the security interest remain effective.

16 **Sec. 45.09.408. Restrictions on assignment of promissory notes, health-**
17 **care-insurance receivables, and certain general intangibles ineffective.** (a) Except
18 as otherwise provided in (b) of this section, a term in a promissory note or in an
19 agreement between an account debtor and a debtor that relates to a health care
20 insurance receivable or a general intangible, including a contract, permit, license, or
21 franchise, and that prohibits, restricts, or requires the consent of the person obligated
22 on the promissory note or the account debtor to the assignment or transfer of, or
23 creation, attachment, or perfection of a security interest in the promissory note, health
24 care insurance receivable, or general intangible is ineffective to the extent that the term

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

27 (2) provides that the creation, attachment, or perfection of the security
28 interest may give rise to a default, breach, right of recoupment, claim, defense,
29 termination, right of termination, or remedy under the promissory note, health care
30 insurance receivable, or general intangible.

31 (b) The provisions of (a) of this section apply to a security interest in a

1 payment intangible or promissory note only if the security interest arises out of a sale
2 of the payment intangible or promissory note.

3 (c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the
4 consent of a government, governmental body or official, person obligated on a
5 promissory note, or account debtor to the assignment or transfer of or creation of a
6 security interest in a promissory note, health care insurance receivable, or general
7 intangible, including a contract, permit, license, or franchise between an account debtor
8 and a debtor, is ineffective to the extent that the rule of law, statute, or regulation

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

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

15 (d) To the extent that a term in a promissory note or in an agreement between
16 an account debtor and a debtor that relates to a health care insurance receivable or
17 general intangible or a rule of law, statute, or regulation described in (c) of this section
18 would be effective under law other than this chapter but is ineffective under (a) or (c)
19 of this section, the creation, attachment, or perfection of a security interest in the
20 promissory note, health care insurance receivable, or general intangible

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

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

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

28 (4) does not entitle the secured party to use or assign the debtor's rights
29 under the promissory note, health care insurance receivable, or general intangible,
30 including related information or materials furnished to the debtor in the transaction
31 giving rise to the promissory note, health care insurance receivable, or general

1 intangible;

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

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

7 (e) This section prevails over inconsistent provisions of other statutes unless
8 the other statute contains an exemption that refers specifically to this section.

9 **Sec. 45.09.409. Restrictions on assignment of letter-of-credit rights**
10 **ineffective.** (a) A term in a letter of credit or a rule of law, statute, regulation,
11 custom, or practice applicable to the letter of credit that prohibits, restricts, or requires
12 the consent of an applicant, issuer, or nominated person to a beneficiary's assignment
13 of or creation of a security interest in a letter-of-credit right is ineffective to the extent
14 that the term or rule of law, statute, regulation, custom, or practice

15 (1) would impair the creation, attachment, or perfection of a security
16 interest in the letter-of-credit right; or

17 (2) provides that the creation, attachment, or perfection of the security
18 interest may give rise to a default, breach, right of recoupment, claim, defense,
19 termination, right of termination, or remedy under the letter-of-credit right.

20 (b) To the extent that a term in a letter of credit is ineffective under (a) of this
21 section but would be effective under law other than this chapter or a custom or
22 practice applicable to the letter of credit, to the transfer of a right to draw or otherwise
23 demand performance under the letter of credit, or to the assignment of a right to
24 proceeds of the letter of credit, the creation, attachment, or perfection of a security
25 interest in the letter-of-credit right

26 (1) is not enforceable against the applicant, issuer, nominated person,
27 or transferee beneficiary;

28 (2) imposes no duties or obligations on the applicant, issuer, nominated
29 person, or transferee beneficiary; and

30 (3) does not require the applicant, issuer, nominated person, or
31 transferee beneficiary to recognize the security interest, pay or render performance to

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the secured party, or accept payment or other performance from the secured party.

Article 5. Filing.

Sec. 45.09.501. Filing office. (a) Except as otherwise provided in (b) of this section, if the law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is

(1) the office designated for the recording of a mortgage on the related real property if

(A) the collateral is as-extracted collateral or timber to be cut;

or

(B) the financing statement is filed for record as a fixture filing

and the collateral is goods that are or are to become fixtures; or

(2) in all other cases, the central filing office of the Department of Natural Resources established under AS 44.37.027, including a case in which the collateral consists of goods that are or are to become fixtures and the financing statement is not filed for record as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the central filing office of the Department of Natural Resources established under AS 44.37.027. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

Sec. 45.09.502. Contents of financing statement; mortgage as financing statement; time of filing financing statement. (a) Subject to (b) of this section, a financing statement is sufficient only if it

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in AS 45.09.501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must

- 1 (1) satisfy (a) of this section;
- 2 (2) indicate that the financing statement covers this type of collateral;
- 3 (3) indicate that the financing statement is to be filed for record in the
- 4 real property records;
- 5 (4) provide a description of the real property to which the collateral is
- 6 related sufficient to give constructive notice of a mortgage under the law of this state
- 7 if the description were contained in the mortgage of the real property; and
- 8 (5) if the debtor does not have an interest of record in the real property,
- 9 provide the name of a record owner.

10 (c) A mortgage is effective from the date of recording as a financing statement

11 filed as a fixture filing or as a financing statement covering as-extracted collateral or

12 timber to be cut only if

- 13 (1) the mortgage indicates the goods or accounts that it covers;
- 14 (2) the goods are or are to become fixtures related to the real property
- 15 described in the mortgage or the collateral is related to the real property described in
- 16 the mortgage and is as-extracted collateral or timber to be cut;
- 17 (3) the mortgage complies with the requirements for a financing
- 18 statement in this section other than an indication that it is to be filed in the real
- 19 property records; and
- 20 (4) the mortgage is recorded.

21 (d) A financing statement may be filed before a security agreement is made

22 or a security interest otherwise attaches.

23 **Sec. 45.09.503. Name of debtor and secured party.** (a) A financing

24 statement sufficiently provides the name of the debtor

- 25 (1) if the debtor is a registered organization, only if the financing
- 26 statement provides the name of the debtor indicated on the public record of the debtor's
- 27 jurisdiction of organization that shows the debtor to have been organized;
- 28 (2) if the debtor is a decedent's estate, only if the financing statement
- 29 provides the name of the decedent and indicates that the debtor is an estate;
- 30 (3) if the debtor is a trust or a trustee acting with respect to property
- 31 held in trust, only if the financing statement

1 (A) provides the name specified for the trust in its organic
2 documents or, if no name is specified, provides the name of the settlor and
3 additional information sufficient to distinguish the debtor from other trusts
4 having one or more of the same settlors; and

5 (B) indicates, in the debtor's name or otherwise, that the debtor
6 is a trust or is a trustee acting with respect to property held in trust; and

7 (4) in other cases, if the debtor

8 (A) has a name, only if the financing statement provides the
9 individual or organizational name of the debtor; and

10 (B) does not have a name, only if the financing statement
11 provides the names of the partners, members, associates, or other persons
12 comprising the debtor.

13 (b) A financing statement that provides the name of the debtor in accordance
14 with (a) of this section is not rendered ineffective by the absence of

15 (1) a trade name or other name of the debtor; or

16 (2) unless required under (a)(4)(B) of this section, names of partners,
17 members, associates, or other persons comprising the debtor.

18 (c) A financing statement that provides only the debtor's trade name does not
19 sufficiently provide the name of the debtor.

20 (d) Failure to indicate the representative capacity of a secured party or
21 representative of a secured party does not affect the sufficiency of a financing
22 statement.

23 (e) A financing statement may provide the name of more than one debtor and
24 the name of more than one secured party.

25 **Sec. 45.09.504. Indication of collateral.** A financing statement sufficiently
26 indicates the collateral that it covers if the financing statement provides

27 (1) a description of the collateral pursuant to AS 45.09.108; or

28 (2) an indication that the financing statement covers all assets or all
29 personal property.

30 **Sec. 45.09.505. Filing and compliance with other statutes and treaties for**
31 **consignments, leases, other bailments, and other transactions.** (a) A consignor,

1 lessor, or other bailor of goods or a buyer of a payment intangible or promissory note
2 may file a financing statement or may comply with a statute or treaty described in
3 AS 45.09.311(a) using the terms "consignor," "consignee," "lessor," "lessee," "bailor,"
4 "bailee," "owner," "registered owner," "buyer," "seller," or words of similar import
5 instead of the terms "secured party" and "debtor."

6 (b) AS 45.09.501 - 45.09.525 apply to the filing of a financing statement under
7 (a) of this section and, as appropriate, to compliance that is equivalent to filing a
8 financing statement under AS 45.09.311(b), but the filing or compliance is not of itself
9 a factor in determining whether the collateral secures an obligation. If it is determined
10 for another reason that the collateral secures an obligation, a security interest held by
11 the consignor, lessor, bailor, owner, or buyer that attaches to the collateral is perfected
12 by the filing or compliance.

13 **Sec. 45.09.506. Effect of errors or omissions.** (a) A financing statement
14 substantially satisfying the requirements of AS 45.09.501 - 45.09.525 is effective, even
15 if it has minor errors or omissions, unless the errors or omissions make the financing
16 statement seriously misleading.

17 (b) Except as otherwise provided in (c) of this section, a financing statement
18 that fails sufficiently to provide the name of the debtor in accordance with
19 AS 45.09.503(a) is seriously misleading.

20 (c) If a search of the records of the filing office under the debtor's correct
21 name, using the filing office's standard search logic, if any, would disclose a financing
22 statement that fails sufficiently to provide the name of the debtor in accordance with
23 AS 45.09.503(a), the name provided does not make the financing statement seriously
24 misleading.

25 (d) For purposes of AS 45.09.508(b), the "debtor's correct name" in (c) of this
26 section means the correct name of the new debtor.

27 **Sec. 45.09.507. Effect of certain events on effectiveness of financing**
28 **statement.** (a) A filed financing statement remains effective with respect to collateral
29 that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a
30 security interest or agricultural lien continues even if the secured party knows of or
31 consents to the disposition.

1 (b) Except as otherwise provided in (c) of this section and AS 45.09.508, a
2 financing statement is not rendered ineffective if, after the financing statement is filed,
3 the information provided in the financing statement becomes seriously misleading
4 under AS 45.09.506.

5 (c) If a debtor changes its name sufficiently to cause a filed financing
6 statement to become seriously misleading under AS 45.09.506, the financing statement
7 is

8 (1) effective to perfect a security interest in collateral acquired by the
9 debtor before, or within four months after, the change; and

10 (2) not effective to perfect a security interest in collateral acquired by
11 the debtor more than four months after the change unless an amendment to the
12 financing statement that renders the financing statement not seriously misleading is
13 filed within four months after the change.

14 **Sec. 45.09.508. Effectiveness of financing statement if new debtor becomes**
15 **bound by security agreement.** (a) Except as otherwise provided in this section, a
16 filed financing statement naming an original debtor is effective to perfect a security
17 interest in collateral in which a new debtor has or acquires rights to the extent that the
18 financing statement would have been effective had the original debtor acquired rights
19 in the collateral.

20 (b) If the difference between the name of the original debtor and that of the
21 new debtor causes a filed financing statement that is effective under (a) of this section
22 to be seriously misleading under AS 45.09.506, the financing statement is

23 (1) effective to perfect a security interest in collateral acquired by the
24 new debtor before, and within four months after, the new debtor becomes bound under
25 AS 45.09.203(d); and

26 (2) not effective to perfect a security interest in collateral acquired by
27 the new debtor more than four months after the new debtor becomes bound under
28 AS 45.09.203(d) unless an initial financing statement providing the name of the new
29 debtor is filed before the expiration of that time.

30 (c) This section does not apply to collateral as to which a filed financing
31 statement remains effective against the new debtor under AS 45.09.507(a).

1 **Sec. 45.09.509. Persons entitled to file a record.** (a) A person may file an
2 initial financing statement, amendment that adds collateral covered by a financing
3 statement, or amendment that adds a debtor to a financing statement only if

4 (1) the debtor authorizes the filing in an authenticated record; or

5 (2) the person holds an agricultural lien that has become effective at
6 the time of filing and the financing statement covers only collateral in which the
7 person holds an agricultural lien.

8 (b) By authenticating a security agreement, a debtor authorizes the filing of an
9 initial financing statement and an amendment covering

10 (1) the collateral described in the security agreement; and

11 (2) property that becomes collateral under AS 45.09.315(a)(2), whether
12 or not the security agreement expressly covers proceeds.

13 (c) By acquiring collateral in which a security interest or agricultural lien
14 continues under AS 45.09.315(a)(1), a debtor authorizes the filing of an initial
15 financing statement and an amendment covering the collateral and property that
16 becomes collateral under AS 45.09.315(a)(2).

17 (d) A person may file an amendment other than an amendment that adds
18 collateral covered by a financing statement or an amendment that adds a debtor to a
19 financing statement only if

20 (1) the secured party of record authorizes the filing; or

21 (2) the amendment is a termination statement for a financing statement
22 as to which the secured party of record has failed to file or send a termination
23 statement required under AS 45.09.513(a) or (c), the debtor authorizes the filing, and
24 the termination statement indicates that the debtor authorized it to be filed.

25 (e) If there is more than one secured party of record for a financing statement,
26 each secured party of record may authorize the filing of an amendment under (d) of
27 this section.

28 **Sec. 45.09.510. Effectiveness of filed record.** (a) A filed record is effective
29 only to the extent that it was filed by a person who may file it under AS 45.09.509.

30 (b) A record authorized by one secured party of record does not affect the
31 financing statement with respect to another secured party of record.

1 (c) A continuation statement that is not filed within the six-month period
2 prescribed by AS 45.09.515(d) is ineffective.

3 **Sec. 45.09.511. Secured party of record.** (a) A secured party of record with
4 respect to a financing statement is a person whose name is provided as the name of
5 the secured party or a representative of the secured party in an initial financing
6 statement that has been filed. If an initial financing statement is filed under
7 AS 45.09.514(a), the assignee named in the initial financing statement is the secured
8 party of record with respect to the financing statement.

9 (b) If an amendment of a financing statement that provides the name of a
10 person as a secured party or a representative of a secured party is filed, the person
11 named in the amendment is a secured party of record. If an amendment is filed under
12 AS 45.09.514(b), the assignee named in the amendment is a secured party of record.

13 (c) A person remains a secured party of record until the filing of an
14 amendment of the financing statement that deletes the person.

15 **Sec. 45.09.512. Amendment of financing statement.** (a) Subject to
16 AS 45.09.509, a person may add or delete collateral covered by, continue or terminate
17 the effectiveness of, or, subject to (e) of this section, otherwise amend the information
18 provided in, a financing statement by filing an amendment that

19 (1) identifies by its file number the initial financing statement to which
20 the amendment relates; and

21 (2) if the amendment relates to an initial financing statement filed or
22 recorded in a filing office described in AS 45.09.501(a)(1), provides the date that the
23 initial financing statement was filed or recorded and the information specified in
24 AS 45.09.502(b).

25 (b) Except as otherwise provided in AS 45.09.515, the filing of an amendment
26 does not extend the period of effectiveness of the financing statement.

27 (c) A financing statement that is amended by an amendment that adds
28 collateral is effective as to the added collateral only from the date of the filing of the
29 amendment.

30 (d) A financing statement that is amended by an amendment that adds a debtor
31 is effective as to the added debtor only from the date of the filing of the amendment.

- 1 (e) An amendment is ineffective to the extent it purports to delete all
2 (1) debtors and fails to provide the name of a debtor to be covered by
3 the financing statement; or
4 (2) secured parties of record and fails to provide the name of a new
5 secured party of record.

6 **Sec. 45.09.513. Termination statement.** (a) A secured party shall cause the
7 secured party of record for a financing statement to file a termination statement for the
8 financing statement if the financing statement covers consumer goods and

- 9 (1) there is no obligation secured by the collateral covered by the
10 financing statement and no commitment to make an advance, incur an obligation, or
11 otherwise give value; or
12 (2) the debtor did not authorize the filing of the initial financing
13 statement.

14 (b) To comply with (a) of this section, a secured party shall cause the secured
15 party of record to file the termination statement

16 (1) within one month after there is no obligation secured by the
17 collateral covered by the financing statement and no commitment to make an advance,
18 incur an obligation, or otherwise give value; or

19 (2) if earlier, within 20 days after the secured party receives an
20 authenticated demand from a debtor.

21 (c) In cases not governed by (a) of this section, within 20 days after a secured
22 party receives an authenticated demand from a debtor, the secured party shall cause
23 the secured party of record for a financing statement to send to the debtor a
24 termination statement for the financing statement or file the termination statement in
25 the filing office if

26 (1) except in the case of a financing statement covering accounts or
27 chattel paper that has been sold or goods that are the subject of a consignment, there
28 is no obligation secured by the collateral covered by the financing statement and no
29 commitment to make an advance, incur an obligation, or otherwise give value;

30 (2) the financing statement covers accounts or chattel paper that has
31 been sold but as to which the account debtor or other person obligated has discharged

1 its obligation;

2 (3) the financing statement covers goods that were the subject of a
3 consignment to the debtor but are not in the debtor's possession; or

4 (4) the debtor did not authorize the filing of the initial financing
5 statement.

6 (d) Except as otherwise provided in AS 45.09.510, upon the filing of a
7 termination statement with the filing office, the financing statement to which the
8 termination statement relates ceases to be effective.

9 **Sec. 45.09.514. Assignment of powers of secured party of record.** (a)
10 Except as otherwise provided in (c) of this section, an initial financing statement may
11 reflect an assignment of all of the secured party's power to authorize an amendment
12 to the financing statement by providing the name and mailing address of the assignee
13 as the name and address of the secured party.

14 (b) Except as otherwise provided in (c) of this section, a secured party of
15 record may assign of record all or part of its power to authorize an amendment to a
16 financing statement by filing in the filing office an amendment of the financing
17 statement that

18 (1) identifies by its file number the initial financing statement to which
19 it relates;

20 (2) provides the name of the assignor; and

21 (3) provides the name and mailing address of the assignee.

22 (c) An assignment of record of a security interest in a fixture covered by a
23 mortgage that is effective as a financing statement filed as a fixture filing under
24 AS 45.09.502(c) may be made only by an assignment of record of the mortgage in the
25 manner provided by law of this state other than AS 45.01 - AS 45.09, AS 45.12, and
26 AS 45.14 (Uniform Commercial Code).

27 **Sec. 45.09.515. Duration and effectiveness of financing statement; effect**
28 **of lapsed financing statement.** (a) Except as otherwise provided in (b) and (e) - (g)
29 of this section, a filed financing statement is effective for a period of five years after
30 the date of filing.

31 (b) Except as otherwise provided in (e) - (g) of this section, an initial financing

1 statement filed in connection with a public finance transaction or manufactured home
2 transaction is effective for a period of 30 years after the date of filing if it indicates
3 that it is filed in connection with a public finance transaction or manufactured home
4 transaction.

5 (c) The effectiveness of a filed financing statement lapses on the expiration of
6 the period of its effectiveness unless, before the lapse, a continuation statement is filed
7 under (d) of this section. Upon lapse, a financing statement ceases to be effective and
8 a security interest or agricultural lien that was perfected by the financing statement
9 becomes unperfected unless the security interest is perfected without filing. If the
10 security interest or agricultural lien becomes unperfected upon lapse, it is deemed
11 never to have been perfected as against a purchaser of the collateral for value.

12 (d) A continuation statement may be filed only within six months before the
13 expiration of the five-year period specified in (a) of this section or the 30-year period
14 specified in (b) of this section, whichever is applicable.

15 (e) Except as otherwise provided in AS 45.09.510, upon timely filing of a
16 continuation statement, the effectiveness of the initial financing statement continues for
17 a period of five years commencing on the day on which the financing statement would
18 have become ineffective in the absence of the filing. Upon the expiration of the five-
19 year period, the financing statement lapses in the same manner as provided in (c) of
20 this section unless, before the lapse, another continuation statement is filed under (d)
21 of this section. Succeeding continuation statements may be filed in the same manner
22 to continue the effectiveness of the initial financing statement.

23 (f) If a debtor is a transmitting utility and a filed financing statement so
24 indicates, the financing statement is effective until a termination statement is filed.

25 (g) A mortgage that is effective as a financing statement filed as a fixture
26 filing under AS 45.09.502(c) remains effective as a financing statement filed as a
27 fixture filing until the mortgage is released or satisfied of record or its effectiveness
28 otherwise terminates as to the real property.

29 **Sec. 45.09.516. What constitutes filing; effectiveness of filing.** (a) Except
30 as otherwise provided in (b) of this section, communication of a record to a filing
31 office and tender of the filing fee or acceptance of the record by the filing office

1 constitutes filing.

2 (b) Filing does not occur with respect to a record that a filing office refuses
3 to accept because

4 (1) the record is not communicated by a method or medium of
5 communication authorized by the filing office;

6 (2) an amount equal to or greater than the applicable filing fee is not
7 tendered;

8 (3) the filing office is unable to index the record because, in the case
9 of

10 (A) an initial financing statement, the record does not provide
11 a name for the debtor;

12 (B) an amendment or correction statement, the record

13 (i) does not identify the initial financing statement as
14 required by AS 45.09.512 or 45.09.518, as applicable; or

15 (ii) identifies an initial financing statement whose
16 effectiveness has lapsed under AS 45.09.515;

17 (C) an initial financing statement that provides the name of a
18 debtor identified as an individual or an amendment that provides a name of a
19 debtor identified as an individual that was not previously provided in the
20 financing statement to which the record relates, the record does not identify the
21 debtor's last name; or

22 (D) a record filed in the filing office described in
23 AS 45.09.501(a)(1) that relates to real property, the record does not provide a
24 sufficient description of the real property to which it relates;

25 (E) a fixture filing or other filing allowed to be filed for record
26 in a filing office described in AS 45.09.501(a)(1), the filing does not provide
27 the name of the debtor and record owner;

28 (4) in the case of an initial financing statement or an amendment that
29 adds a secured party of record, the record does not provide a name and mailing
30 address for the secured party of record;

31 (5) in the case of an initial financing statement or an amendment that

1 provides a name of a debtor that was not previously provided in the financing
2 statement to which the amendment relates, the record does not

3 (A) provide a mailing address for the debtor;

4 (B) indicate whether the debtor is an individual or an
5 organization; or

6 (C) if the financing statement indicates that the debtor is an
7 organization, provide

8 (i) a type of organization for the debtor;

9 (ii) a jurisdiction of organization for the debtor; or

10 (iii) an organizational identification number for the
11 debtor or indicate that the debtor does not have an organizational
12 identification number;

13 (6) in the case of an assignment reflected in an initial financing
14 statement under AS 45.09.514(a) or an amendment filed under AS 45.09.514(b), the
15 record does not provide a name and mailing address for the assignee; or

16 (7) in the case of a continuation statement, the record is not filed within
17 the six-month period prescribed by AS 45.09.515(d).

18 (c) For purposes of (b) of this section, a record

19 (1) does not provide information if the filing office is unable to read
20 or decipher the information; and

21 (2) that does not indicate that it is an amendment or identify an initial
22 financing statement to which it relates as required by AS 45.09.512, 45.09.514, or
23 45.09.518 is an initial financing statement.

24 (d) A record that is communicated to the filing office with tender of the filing
25 fee, but which the filing office refuses to accept for a reason other than one set out in
26 (b) of this section, is effective as a filed record except as against a purchaser of the
27 collateral who gives value in reasonable reliance on the absence of the record from the
28 files.

29 **Sec. 45.09.517. Effect of indexing errors.** The failure of the filing office to
30 index a record correctly does not affect the effectiveness of the filed record.

31 **Sec. 45.09.518. Claim concerning inaccurate or wrongfully filed record.**

1 (a) A person may file in the filing office a correction statement with respect
2 to a record indexed there under the person's name if the person believes that the record
3 is inaccurate or was wrongfully filed.

4 (b) A correction statement must

5 (1) identify the record to which it relates by

6 (A) the file number assigned to the initial financing statement
7 to which the record relates; and

8 (B) if the correction statement relates to a record filed for
9 record in a filing office described in AS 45.09.501(a)(1), the date that the
10 initial financing statement was filed for record and the information specified
11 in AS 45.09.502(b);

12 (2) indicate that it is a correction statement; and

13 (3) provide the basis for the person's belief that the record is inaccurate
14 and indicate the manner in which the person believes the record should be amended
15 to cure the inaccuracy or provide the basis for the person's belief that the record was
16 wrongfully filed.

17 (c) The filing of a correction statement does not affect the effectiveness of an
18 initial financing statement or other filed record.

19 **Sec. 45.09.519. Numbering, maintaining, and indexing records;**
20 **communicating information provided in records.** (a) For each record filed in a
21 filing office, the filing office shall

22 (1) assign a unique number to the filed record;

23 (2) create a record that bears the number assigned to the filed record
24 and the date and time of filing;

25 (3) maintain the filed record for public inspection; and

26 (4) index the filed record in accordance with (c) - (e) of this section.

27 (b) Except as otherwise provided in (i) of this section, a file number assigned
28 after January 1, 2002, must include a digit that

29 (1) is mathematically derived from or related to the other digits of the
30 file number; and

31 (2) enables the filing office to detect whether a number communicated

1 as the file number includes a single digit or transpositional error.

2 (c) Except as otherwise provided in (d) and (e) of this section, the filing office
3 shall index

4 (1) an initial financing statement according to the name of the debtor
5 and index all filed records relating to the initial financing statement in a manner that
6 associates with one another an initial financing statement and all filed records relating
7 to the initial financing statement; and

8 (2) a record that provides a name of a debtor that was not previously
9 provided in the financing statement to which the record relates also according to the
10 name that was not previously provided.

11 (d) If a financing statement is filed as a fixture filing or covers as-extracted
12 collateral or timber to be cut, it must be filed for record and the filing office shall
13 index it

14 (1) under the names of the debtor and of each owner of record shown
15 on the financing statement as if they were the mortgagors under a mortgage of the real
16 property described; and

17 (2) to the extent that the law of this state provides for indexing of
18 mortgages under the name of the mortgagee, under the name of the secured party as
19 if the secured party were the mortgagee thereunder, or, if indexing is by description,
20 as if the financing statement were a mortgage of the real property described.

21 (e) If a financing statement is filed as a fixture filing or covers as-extracted
22 collateral or timber to be cut, the filing office shall index an assignment filed under
23 AS 45.09.514(a) or an amendment filed under AS 45.09.514(b)

24 (1) under the name of the assignor as grantor; and

25 (2) to the extent that the law of this state provides for indexing a record
26 of the assignment of a mortgage under the name of the assignee, under the name of
27 the assignee.

28 (f) The filing office shall maintain a capability to

29 (1) retrieve a record by the name of the debtor and, if the filing office
30 is described in

31 (A) AS 45.09.501(a)(1), by the file number assigned to the

1 initial financing statement to which the record relates and the date and time that
2 the record was filed for record; or

3 (B) AS 45.09.501(a)(2), by the file number assigned to the
4 initial financing statement to which the record relates; and

5 (2) associate and retrieve with one another an initial financing statement
6 and each filed record relating to the initial financing statement.

7 (g) The filing office may not remove a debtor's name from the index until one
8 year after the effectiveness of a financing statement naming the debtor lapses under
9 AS 45.09.515 with respect to all secured parties of record.

10 (h) Except as otherwise provided in (i) of this section, the filing office shall
11 perform the acts required by (a) - (e) of this section at the time and in the manner
12 prescribed by filing office regulations, but not later than two business days after the
13 filing office receives the record in question.

14 (i) The requirements of (b) and (h) of this section do not apply to a filing
15 office described in AS 45.09.501(a)(1).

16 **Sec. 45.09.520. Acceptance and refusal to accept record.** (a) A filing office
17 shall refuse to accept a record for filing for a reason set out in AS 45.09.516(b) and
18 may refuse to accept a record for filing only for a reason set out in AS 45.09.516(b).

19 (b) If a filing office refuses to accept a record for filing, the filing office shall
20 communicate to the person who presented the record the fact of and reason for the
21 refusal and the date and time the record would have been filed had the filing office
22 accepted it. The communication must be made at the time and in the manner
23 prescribed by filing office regulation but, in the case of a filing office described in AS
24 45.09.501(a)(2), no more than two business days after the filing office receives the
25 record.

26 (c) A filed financing statement satisfying AS 45.09.502(a) and (b) is effective
27 even if the filing office is required to refuse to accept it for filing under (a) of this
28 section. However, AS 45.09.338 applies to a filed financing statement providing
29 information described in AS 45.09.516(b)(5) that is incorrect at the time the financing
30 statement is filed.

31 (d) If a record communicated to a filing office provides information that relates

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to more than one debtor, AS 45.09.501 - 45.09.525 applies as to each debtor separately.

Sec. 45.09.521. Uniform form of written financing statement and amendment. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set out in AS 45.09.516(b):

UCC FINANCING STATEMENT
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SURFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID # EIN OR EIN **1e. TYPE OF ORGANIZATION** **1f. JURISDICTION OF ORGANIZATION** **1g. ORGANIZATIONAL ID #, if any** NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SURFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID # EIN OR EIN **2e. TYPE OF ORGANIZATION** **2f. JURISDICTION OF ORGANIZATION** **2g. ORGANIZATIONAL ID #, if any** NONE

3. SECURED PARTY'S NAME - Insert name of TOTAL ASSIGNOR or ASSIGNOR (SP) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SURFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable)	LEASOR/LESSOR	CONDOR/CONDONOR	SALE/SELLER	PURCHASER/BUYER	A.G. LIEN	NON-UCC FILING
6. THIS FINANCING STATEMENT IS TO BE FILED (for records) (or recorded) IN THE LEGAL JURISDICTION OF:	7. CHECK IN FIGURES IF SECURED PARTY (SP) OR UNSECURED PARTY (UP)		8. OPTIONAL FILER REFERENCE DATA			
6a. LEGAL JURISDICTION	7a. Jurisdiction	7b. Secured Party	7c. Unsecured Party	8a. All Debtors	8b. Debtor 1	8c. Debtor 2

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/28/03)

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UCC FINANCING STATEMENT ADDENDUM
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

8. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICES USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only 999 name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID # 92H OR 92I ADD'L INFO RE ORGANIZATION 11e. TYPE OF ORGANIZATION 11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID #, if any NONE

12. ADDITIONAL SECURED PARTYS or ASSIGNOR S/PS NAME - insert only 999 name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers interest in the real or personal, or is filed as a Return filing.

14. Description of real estate:

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

16. Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent and a Estate

17. Check 92b if legal aid is not checked 92d and box.

18. Check 92d if applicable and check 92e and box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a non-reciprocal name Transmission -- effective 30 years

Filed in connection with a Public-File -- Transmission -- effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1ad) (REV. 07/29/88)

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set out in AS 45.09.516(b):

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UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or re-record) in the REAL ESTATE REG. BOOK

2. TERMINATION: Effectiveness of the Financing Statement number above is terminated with respect to security interest(s) of the Secured Party underwriting this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement number above with respect to security interest(s) of the Secured Party underwriting this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (all or part): Give name of assignee in item 7a or 7b and address of assignee in item 7c and also give ratio of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in item 6 under 7.

CHANGE name and/or address: Give current name in item 6a or 6b; also give new name (if name changed in item 7a or 7b) and/or new address (if address changed) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c, and complete item 7d, 7e (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

7d. TAX ID # SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION FLUORESCENCE OF ORGANIZATION 7f. ORGANIZATIONAL ID #, if any NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral deleted or added, or give other revised collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment; if this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

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UCC FINANCING STATEMENT AMENDMENT ADDENDUM		
FOLLOW INSTRUCTIONS (front and back) CAREFULLY		
11. INITIAL FINANCING STATEMENT FILE # (insert old file # on Amendment form)		
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (insert old name # on Amendment form)		
12a. ORGANIZATION'S NAME		
OR		
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME(SUFFIX)
13. Use this space for additional information		
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY		
NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)		

Sec. 45.09.522. Maintenance and destruction of records. (a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under AS 45.09.515 with respect to all secured parties of record. The record must be

1 retrievable by using the name of the debtor and,

2 (1) if the record was filed for record in the filing office described in
3 AS 45.09.501(a)(1), by using the file number assigned to the initial financing statement
4 to which the record relates and the date that the record was filed for record; or

5 (2) if the record was filed in the filing office described in
6 AS 45.09.501(a)(2), by using the file number assigned to the initial financing statement
7 to which the record relates.

8 (b) Except to the extent that a statute governing disposition of public records
9 provides otherwise, the filing office immediately may destroy a written record
10 evidencing a financing statement. However, if the filing office destroys a written
11 record, it shall maintain another record of the financing statement that complies with
12 (a) of this section.

13 **Sec. 45.09.523. Information from filing office; sale or license of records.**

14 (a) If a person who files a written record requests an acknowledgment of the
15 filing, the filing office shall send to the person an image of the record showing the
16 number assigned to the record under AS 45.09.519(a)(1) and the date and time of the
17 filing of the record. However, if the person furnishes a copy of the record to the filing
18 office, the filing office may instead

19 (1) note on the copy the number assigned to the record under
20 AS 45.09.519(a)(1) and the date and time of the filing of the record; and

21 (2) send the copy to the person.

22 (b) If a person files a record other than a written record, the filing office shall
23 communicate to the person an acknowledgment that provides

24 (1) the information in the record;

25 (2) the number assigned to the record under AS 45.09.519(a)(1); and

26 (3) the date and time of the filing of the record.

27 (c) The filing office shall communicate or otherwise make available in a record
28 the following information to a person that requests it:

29 (1) whether there is on file on a date and time specified by the filing
30 office, but not a date earlier than three business days before the filing office receives
31 the request, a financing statement that

- 1 (A) designates a particular debtor;
- 2 (B) has not lapsed under AS 45.09.515 with respect to all
- 3 secured parties of record; and
- 4 (C) if the request so states, has lapsed under AS 45.09.515 and
- 5 a record of which is maintained by the filing office under AS 45.09.522(a);
- 6 (2) the date and time of filing of each financing statement; and
- 7 (3) the information provided in each financing statement.

8 (d) In complying with its duty under (c) of this section, the filing office may

9 communicate information in any medium. However, if requested, the filing office

10 shall communicate information by issuing its written certificate.

11 (e) The filing office shall perform the acts required by (a) - (d) of this section

12 at the time and in the manner prescribed by filing office regulations but, in the case

13 of a filing office described in AS 45.09.501(a)(2), not later than two business days

14 after the filing office receives the request.

15 (f) At least bi-weekly, the filing office described in AS 45.09.501(a)(2) shall

16 offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all

17 records filed in it under AS 45.09.501 - 45.09.525, in every medium from time to time

18 available to the filing office.

19 **Sec. 45.09.524. Delay by filing office.** Delay by the filing office beyond a

20 time limit prescribed in AS 45.09.501 - 45.09.525 is excused if

21 (1) the delay is caused by interruption of communication or computer

22 facilities, war, emergency conditions, failure of equipment, or other circumstances

23 beyond control of the filing office; and

24 (2) the filing office exercises reasonable diligence under the

25 circumstances.

26 **Sec. 45.09.525. Fees.** The Department of Natural Resources shall adopt

27 regulations that set the fees for

28 (1) recording or filing and indexing a document under AS 45.09.501 -

29 45.09.525; and

30 (2) responding to a request for information or copies from the filing

31 office, including for communicating whether there is on file a financing statement

1 naming a particular debtor.

2 **Article 6. Default.**

3 **Sec. 45.09.601. Rights after default; judicial enforcement; consignor or**
4 **buyer of accounts, chattel paper, payment intangibles, or promissory notes. (a)**
5 After default, a secured party has the rights provided in AS 45.09.601 - 45.09.628 and,
6 except as otherwise provided in AS 45.09.602, those provided by agreement of the
7 parties. A secured party

8 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the
9 claim, security interest, or agricultural lien by available judicial procedures; and

10 (2) if the collateral is documents, may proceed either as to the
11 documents or as to the goods the documents cover.

12 (b) A secured party in possession of collateral or control of collateral under
13 AS 45.09.104, 45.09.105, 45.09.106, or 45.09.107 has the rights and duties provided
14 in AS 45.09.207.

15 (c) The rights under (a) and (b) of this section are cumulative and may be
16 exercised simultaneously.

17 (d) Except as otherwise provided in (g) of this section and AS 45.09.605, after
18 default, a debtor and an obligor have the rights provided in this part and by agreement
19 of the parties.

20 (e) If a secured party has reduced its claim to judgment, the lien of a levy that
21 may be made upon the collateral by virtue of an execution based on the judgment
22 relates back to the earliest of the date

23 (1) of perfection of the security interest or agricultural lien in the
24 collateral;

25 (2) of filing a financing statement covering the collateral; or

26 (3) specified in a statute under which the agricultural lien was created.

27 (f) A sale pursuant to an execution is a foreclosure of the security interest or
28 agricultural lien by judicial procedure within the meaning of this section. A secured
29 party may purchase at the sale and thereafter hold the collateral free of any other
30 requirements of this chapter.

31 (g) Except as otherwise provided in AS 45.09.607(c), AS 45.09.601 -

1 45.09.628 imposes no duties on a secured party that is a consignor or is a buyer of
2 accounts, chattel paper, payment intangibles, or promissory notes.

3 **Sec. 45.09.602. Waiver and variance of rights and duties.** Except as
4 otherwise provided in AS 45.09.624, to the extent that they give rights to a debtor or
5 obligor and impose duties on a secured party, the debtor or obligor may not waive or
6 vary the rules stated in the following sections:

7 (1) AS 45.09.207(b)(4)(C), which deals with use and operation of the
8 collateral by the secured party;

9 (2) AS 45.09.210, which deals with requests for an accounting and
10 requests concerning a list of collateral and statement of account;

11 (3) AS 45.09.607(c), which deals with collection and enforcement of
12 collateral;

13 (4) AS 45.09.608(a) and 45.09.615(c) to the extent that they deal with
14 application or payment of noncash proceeds of collection, enforcement, or disposition;

15 (5) AS 45.09.608(a) and 45.09.615(d) to the extent that they require
16 accounting for or payment of surplus proceeds of collateral;

17 (6) AS 45.09.609 to the extent that it imposes on a secured party that
18 takes possession of collateral without judicial process the duty to do so without breach
19 of the peace;

20 (7) AS 45.09.610(b), 45.09.611, 45.09.613, and 45.09.614, which deal
21 with disposition of collateral;

22 (8) AS 45.09.615(f), which deals with calculation of a deficiency or
23 surplus when a disposition is made to the secured party, a person related to the secured
24 party, or a secondary obligor;

25 (9) AS 45.09.616, which deals with explanation of the calculation of
26 a surplus or deficiency;

27 (10) AS 45.09.620 - 45.09.622, which deal with acceptance of collateral
28 in satisfaction of obligation;

29 (11) AS 45.09.623, which deals with redemption of collateral;

30 (12) AS 45.09.624, which deals with permissible waivers; and

31 (13) AS 45.09.625 and 45.09.626, which deal with the secured party's

1 liability for failure to comply with this chapter.

2 **Sec. 45.09.603. Agreement on standards concerning rights and duties.** (a)

3 The parties may determine by agreement the standards measuring the fulfillment of the
4 rights of a debtor or obligor and the duties of a secured party under a rule stated in
5 AS 45.09.602 if the standards are not manifestly unreasonable.

6 (b) The provisions of (a) of this section do not apply to the duty under
7 AS 45.09.609 to refrain from breaching the peace.

8 **Sec. 45.09.604. Procedure if security agreement covers real property or**
9 **fixtures.** (a) If a security agreement covers both personal and real property, a secured
10 party may proceed

11 (1) under AS 45.09.601 - 45.09.628 as to the personal property without
12 prejudicing any rights with respect to the real property; or

13 (2) as to both the personal property and the real property in accordance
14 with the rights with respect to the real property, in which case the other provisions of
15 AS 45.09.601 - 45.09.628 do not apply.

16 (b) Subject to (c) of this section, if a security agreement covers goods that are
17 or become fixtures, a secured party may proceed

18 (1) under AS 45.09.601 - 45.09.628; or

19 (2) in accordance with the rights with respect to real property, in which
20 case the other provisions of AS 45.09.601 - 45.09.628 do not apply.

21 (c) Subject to the other provisions of AS 45.09.601 - 45.09.628, if a secured
22 party holding a security interest in fixtures has priority over all owners and
23 encumbrancers of the real property, the secured party, after default, may remove the
24 collateral from the real property.

25 (d) A secured party that removes collateral shall promptly reimburse an
26 encumbrancer or owner of the real property, other than the debtor, for the cost of
27 repair of physical injury caused by the removal. The secured party need not reimburse
28 the encumbrancer or owner for diminution in value of the real property caused by the
29 absence of the goods removed or by the necessity of replacing them. A person entitled
30 to reimbursement may refuse permission to remove until the secured party gives
31 adequate assurance for the performance of the obligation to reimburse.

1 **Sec. 45.09.605. Unknown debtor or secondary obligor.** A secured party
2 does not owe a duty based on its status as secured party to

3 (1) a person that is a debtor or obligor unless the secured party knows

4 (A) that the person is a debtor or obligor;

5 (B) the identity of the person; and

6 (C) how to communicate with the person; or

7 (2) a secured party or lienholder that has filed a financing statement
8 against a person unless the secured party knows

9 (A) that the person is a debtor; and

10 (B) the identity of the person.

11 **Sec. 45.09.606. Time of default for agricultural lien.** For purposes of
12 AS 45.09.601 - 45.09.628, a default occurs in connection with an agricultural lien at
13 the time the secured party becomes entitled to enforce the lien in accordance with the
14 statute under which it was created.

15 **Sec. 45.09.607. Collection and enforcement by secured party.** (a) If so
16 agreed and, in any event, after default, a secured party

17 (1) may notify an account debtor or other person obligated on collateral
18 to make payment or otherwise render performance to or for the benefit of the secured
19 party;

20 (2) may take proceeds to which the secured party is entitled under
21 AS 45.09.315;

22 (3) may enforce the obligations of an account debtor or other person
23 obligated on collateral and exercise the rights of the debtor with respect to the
24 obligation of the account debtor or other person obligated on collateral to make
25 payment or otherwise render performance to the debtor and with respect to property
26 that secures the obligations of the account debtor or other person obligated on the
27 collateral;

28 (4) if it holds a security interest in a deposit account perfected by
29 control under AS 45.09.104(a)(1), may apply the balance of the deposit account to the
30 obligation secured by the deposit account; and

31 (5) if it holds a security interest in a deposit account perfected by

1 control under AS 45.09.104(a)(2) or (3), may instruct the bank to pay the balance of
2 the deposit account to or for the benefit of the secured party.

3 (b) If necessary to enable a secured party to exercise under (a)(3) of this
4 section the right of a debtor to enforce a mortgage nonjudicially, the secured party may
5 record in the office in which the mortgage is recorded

6 (1) a copy of the security agreement that creates or provides for a
7 security interest in the obligation secured by the mortgage; and

8 (2) the secured party's sworn affidavit in recordable form stating that

9 (A) a default has occurred; and

10 (B) the secured party is entitled to enforce the mortgage
11 nonjudicially.

12 (c) A secured party shall proceed in a commercially reasonable manner if the
13 secured party

14 (1) undertakes to collect from or enforce an obligation of an account
15 debtor or other person obligated on collateral; and

16 (2) is entitled to charge back uncollected collateral or otherwise to full
17 or limited recourse against the debtor or a secondary obligor.

18 (d) A secured party may deduct from the collections made under (c) of this
19 section reasonable expenses of collection and enforcement, including reasonable
20 attorney fees and legal expenses incurred by the secured party.

21 (e) This section does not determine whether an account debtor, bank, or other
22 person obligated on collateral owes a duty to a secured party.

23 **Sec. 45.09.608. Application of proceeds of collection or enforcement;**
24 **liability for deficiency and right to surplus.** (a) If a security interest or agricultural
25 lien secures payment or performance of an obligation, the following rules apply:

26 (1) a secured party shall apply or pay over for application the cash
27 proceeds of collection or enforcement under this section in the following order to

28 (A) the reasonable expenses of collection and enforcement and,
29 to the extent provided for by agreement and not prohibited by law, reasonable
30 attorney fees and legal expenses incurred by the secured party;

31 (B) the satisfaction of obligations secured by the security

1 interest or agricultural lien under which the collection or enforcement is made;
2 and

3 (C) the satisfaction of obligations secured by a subordinate
4 security interest in or other lien on the collateral subject to the security interest
5 or agricultural lien under which the collection or enforcement is made if the
6 secured party receives an authenticated demand for proceeds before distribution
7 of the proceeds is completed;

8 (2) if requested by a secured party, a holder of a subordinate security
9 interest or other lien shall furnish reasonable proof of the interest or lien within a
10 reasonable time; unless the holder complies, the secured party need not comply with
11 the holder's demand under (1)(C) of this subsection;

12 (3) a secured party need not apply or pay over for application noncash
13 proceeds of collection and enforcement under this subsection unless the failure to do
14 so would be commercially unreasonable; a secured party that applies or pays over for
15 application noncash proceeds shall do so in a commercially reasonable manner;

16 (4) a secured party shall account to and pay a debtor for any surplus,
17 and the obligor is liable for any deficiency.

18 (b) If the underlying transaction is a sale of accounts, chattel paper, payment
19 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the
20 obligor is not liable for any deficiency.

21 **Sec. 45.09.609. Secured party's right to take possession after default.** (a)
22 After default, a secured party

23 (1) may take possession of the collateral; and

24 (2) without removal, may render equipment unusable and dispose of
25 collateral on a debtor's premises under AS 45.09.610.

26 (b) A secured party may proceed under subsection (a) of this section

27 (1) in accordance with judicial process; or

28 (2) without judicial process if it proceeds without breach of the peace.

29 (c) If so agreed and, in any event, after default, a secured party may require
30 the debtor to assemble the collateral and make it available to the secured party at a
31 place to be designated by the secured party that is reasonably convenient to both

1 parties.

2 **Sec. 45.09.610. Disposition of collateral after default.** (a) After default, a
3 secured party may sell, lease, license, or otherwise dispose of any or all of the
4 collateral in its present condition or following commercially reasonable preparation or
5 processing.

6 (b) Every aspect of a disposition of collateral, including the method, manner,
7 time, place, and other terms, must be commercially reasonable. If commercially
8 reasonable, a secured party may dispose of collateral by public or private proceedings,
9 by one or more contracts, as a unit or in parcels, and at any time and place and on any
10 terms.

11 (c) A secured party may purchase collateral

12 (1) at a public disposition; or

13 (2) at a private disposition only if the collateral is of a kind that is
14 customarily sold on a recognized market or the subject of widely distributed standard
15 price quotations.

16 (d) A contract for sale, lease, license, or other disposition includes the
17 warranties relating to title, possession, quiet enjoyment, and the like that by operation
18 of law accompany a voluntary disposition of property of the kind subject to the
19 contract.

20 (e) A secured party may disclaim or modify warranties under (d) of this
21 section

22 (1) in a manner that would be effective to disclaim or modify the
23 warranties in a voluntary disposition of property of the kind subject to the contract of
24 disposition; or

25 (2) by communicating to the purchaser a record evidencing the contract
26 for disposition and including an express disclaimer or modification of the warranties.

27 (f) A record is sufficient to disclaim warranties under (e) of this section if it
28 indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like
29 in this disposition" or uses words of similar import.

30 **Sec. 45.09.611. Notification before disposition of collateral.** (a) In this
31 section, "notification date" means the earlier of the date on which

1 (1) a secured party sends to the debtor and any secondary obligor an
2 authenticated notification of disposition; or

3 (2) the debtor and any secondary obligor waive the right to notification.

4 (b) Except as otherwise provided in (d) of this section, a secured party that
5 disposes of collateral under AS 45.09.610 shall send to the persons specified in (c) of
6 this section a reasonable authenticated notification of disposition.

7 (c) To comply with (b) of this section, the secured party shall send an
8 authenticated notification of disposition to

9 (1) the debtor;

10 (2) any secondary obligor; and

11 (3) if the collateral is other than consumer goods,

12 (A) any other person from which the secured party has received,
13 before the notification date, an authenticated notification of a claim of an
14 interest in the collateral;

15 (B) any other secured party or lienholder that, 10 days before
16 the notification date, held a security interest in or other lien on the collateral
17 perfected by the filing of a financing statement that

18 (i) identified the collateral;

19 (ii) was indexed under the debtor's name as of that date;

20 and

21 (iii) was filed in the office in which to file a financing
22 statement against the debtor covering the collateral as of that date; and

23 (C) any other secured party that, 10 days before the notification
24 date, held a security interest in the collateral perfected by compliance with a
25 statute, regulation, or treaty described in AS 45.09.311(a).

26 (d) The provisions of (b) of this section do not apply if the collateral is
27 perishable or threatens to decline speedily in value or is of a type customarily sold on
28 a recognized market.

29 (e) A secured party complies with the requirement for notification prescribed
30 in (c)(3)(B) of this section if

31 (1) not later than 20 days or earlier than 30 days before the notification

1 date, the secured party requests, in a commercially reasonable manner, information
 2 concerning financing statements indexed under the debtor's name in the office indicated
 3 in (c)(3)(B) of this section; and

- 4 (2) before the notification date, the secured party
 5 (A) did not receive a response to the request for information;
 6 or
 7 (B) received a response to the request for information and sent
 8 an authenticated notification of disposition to each secured party named in that
 9 response whose financing statement covered the collateral.

10 **Sec. 45.09.612. Timeliness of notification before disposition of collateral.**

11 (a) Except as otherwise provided in (b) of this section, whether a notification is sent
 12 within a reasonable time is a question of fact.

13 (b) In a transaction other than a consumer transaction, a notification of
 14 disposition sent after default and 10 days or more before the earliest time of
 15 disposition set out in the notification is sent within a reasonable time before the
 16 disposition.

17 **Sec. 45.09.613. General notification before disposition of collateral.** Except
 18 in a consumer goods transaction, the following rules apply:

- 19 (1) the contents of a notification of disposition are sufficient if the
 20 notification
 21 (A) describes the debtor and the secured party;
 22 (B) describes the collateral that is the subject of the intended
 23 disposition;
 24 (C) states the method of intended disposition;
 25 (D) states that the debtor is entitled to an accounting of the
 26 unpaid indebtedness and states the charge, if any, for an accounting; and
 27 (E) states the time and place of a public sale or the time after
 28 which any other disposition is to be made;
 29 (2) whether the contents of a notification that lacks any of the
 30 information specified in (1) of this section are nevertheless sufficient is a question of
 31 fact;

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(3) the contents of a notification providing substantially the information specified in (1) of this section are sufficient even if the notification includes
(A) information not specified by that paragraph; or
(B) minor errors that are not seriously misleading;
(4) a particular phrasing of the notification is not required;
(5) the following form of notification and the form appearing in AS 45.09.614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) are not an addressee)

(For a public disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) (to the highest qualified bidder) in public as follows:

Day and Date: _____

Time: _____

Place: _____

(For a private disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$ _____). You may request an accounting by calling us at (telephone number).

Sec. 45.09.614. Notification before disposition of collateral in consumer goods transaction. In a consumer goods transaction, the following rules apply:

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

(A) the information specified in AS 45.09.613(1);

(B) a description of any liability for a deficiency of the person

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to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under AS 45.09.623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) a particular phrasing of the notification is not required;

(3) the following form of notification, when completed, provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

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

Subject: (Identification of Transaction)

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

(For a public disposition:)

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

Date: _____

Time: _____

Place: _____

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

(For a private disposition:)

We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we

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1 must pay it to someone else.

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

6 If you want us to explain to you in writing how we have figured the
7 amount that you owe us, you may call us at (telephone number)
8 (or write us at (secured party's address)) and request a written
9 explanation. (We will charge you \$ _____ for the explanation if we
10 sent you another written explanation of the amount you owe us within
11 the last six months.)

12 If you need more information about the sale call us at (telephone
13 number) (or write us at (secured party's address)).

14 We are sending this notice to the following other people who have an
15 interest in (describe collateral) or who owe money under your
16 agreement:

17 (Names of all other debtors and obligors, if any).

18 (4) a notification in the form of (3) of this section is sufficient even if
19 additional information appears at the end of the form;

20 (5) a notification in the form of (3) of this section is sufficient even if
21 it includes errors in information not required by (1) of this section unless the error is
22 misleading with respect to rights arising under this chapter;

23 (6) if a notification under this section is not in the form set out in (3)
24 of this section, law other than this chapter determines the effect of including
25 information not required by (1) of this section.

26 **Sec. 45.09.615. Application of proceeds of disposition; liability for**
27 **~~deficiency and right to surplus.~~** (a) A secured party shall apply or pay over for
28 application the cash proceeds of disposition in the following order:

29 (1) the reasonable expenses of retaking, holding, preparing for
30 disposition, processing, and disposing and, to the extent provided for by agreement and
31 not prohibited by law, reasonable attorney fees and legal expenses incurred by the

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secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

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

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under (a)(3) of this section.

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by (a) of this section and permitted by (c) of this section,

(1) unless (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes,

1 (1) the debtor is not entitled to any surplus; and

2 (2) the obligor is not liable for any deficiency.

3 (f) The surplus or deficiency after a disposition is calculated based on the
4 amount of proceeds that would have been realized in a disposition complying with
5 AS 45.09.601 - 45.09.628 to a transferee other than the secured party, a person related
6 to the secured party, or a secondary obligor if

7 (1) the transferee in the disposition is the secured party, a person
8 related to the secured party, or a secondary obligor; and

9 (2) the amount of proceeds of the disposition is significantly below the
10 range of proceeds that a complying disposition to a person other than the secured
11 party, a person related to the secured party, or a secondary obligor would have
12 brought.

13 (g) A secured party who receives cash proceeds of a disposition in good faith
14 and without knowledge that the receipt violates the rights of the holder of a security
15 interest or other lien that is not subordinate to the security interest or agricultural lien
16 under which the disposition is made

17 (1) takes the cash proceeds free of the security interest or other lien;

18 (2) is not obligated to apply the proceeds of the disposition to the
19 satisfaction of obligations secured by the security interest or other lien; and

20 (3) is not obligated to account to or pay the holder of the security
21 interest or other lien for any surplus.

22 Sec. 45.09.616. Explanation of calculation of surplus or deficiency. (a) In
23 this section,

24 (1) "explanation" means a writing that

25 (A) states the amount of the surplus or deficiency;

26 (B) provides an explanation in accordance with (c) of this
27 section of how the secured party calculated the surplus or deficiency;

28 (C) states, if applicable, that future debits, credits, charges,
29 including additional credit service charges or interest, rebates, and expenses
30 may affect the amount of the surplus or deficiency; and

31 (D) provides a telephone number or mailing address from which

1 additional information concerning the transaction is available;

2 (2) "request" means a record

3 (A) authenticated by a debtor or consumer obligor;

4 (B) requesting that the recipient provide an explanation; and

5 (C) sent after disposition of the collateral under AS 45.09.610.

6 (b) In a consumer goods transaction in which the debtor is entitled to a surplus
7 or a consumer obligor is liable for a deficiency under AS 45.09.615, the secured party
8 shall

9 (1) send an explanation to the debtor or consumer obligor, as
10 applicable, after the disposition and

11 (A) before or when the secured party accounts to the debtor and
12 pays any surplus or first makes written demand on the consumer obligor after
13 the disposition for payment of the deficiency; and

14 (B) within 14 days after receipt of a request; or

15 (2) in the case of a consumer obligor who is liable for a deficiency,
16 within 14 days after receipt of a request, send to the consumer obligor a record
17 waiving the secured party's right to a deficiency.

18 (c) To comply with (a)(1)(B) of this section, a writing must provide the
19 following information in the following order:

20 (1) the aggregate amount of obligations secured by the security interest
21 under which the disposition was made, and, if the amount reflects a rebate of unearned
22 interest or credit service charge, an indication of that fact, calculated as of a specified
23 date

24 (A) if the secured party takes or receives possession of the
25 collateral after default, not more than 35 days before the secured party takes
26 or receives possession; or

27 (B) if the secured party takes or receives possession of the
28 collateral before default or does not take possession of the collateral, not more
29 than 35 days before the disposition;

30 (2) the amount of proceeds of the disposition;

31 (3) the aggregate amount of the obligations after deducting the amount

1 of proceeds;

2 (4) the amount, in the aggregate or by type, and types of expenses,
3 including expenses of retaking, holding, preparing for disposition, processing, and
4 disposing of the collateral, and attorney fees secured by the collateral that are known
5 to the secured party and relate to the current disposition;

6 (5) the amount, in the aggregate or by type, and types of credits,
7 including rebates of interest or credit service charges, to which the obligor is known
8 to be entitled and that are not reflected in the amount in (1) of this subsection; and

9 (6) the amount of the surplus or deficiency.

10 (d) A particular phrasing of the explanation is not required. An explanation
11 complying substantially with the requirements of (a) of this section is sufficient even
12 if it includes minor errors that are not seriously misleading.

13 (e) A debtor or consumer obligor is entitled without charge to one response
14 to a request under this section during any six-month period in which the secured party
15 did not send to the debtor or consumer obligor an explanation under (b)(1) of this
16 section. The secured party may require payment of a charge not exceeding \$25 for
17 each additional response.

18 **Sec. 45.09.617. Rights of transferee of collateral.** (a) A secured party's
19 disposition of collateral after default

20 (1) transfers to a transferee for value all of the debtor's rights in the
21 collateral;

22 (2) discharges the security interest under which the disposition is made;
23 and

24 (3) discharges any subordinate security interest or other subordinate
25 lien.

26 (b) A transferee who acts in good faith takes free of the rights and interests
27 described in (a) of this section even if the secured party fails to comply with this
28 chapter or the requirements of a judicial proceeding.

29 (c) If a transferee does not take free of the rights and interests described in (a)
30 of this section, the transferee takes the collateral subject to

31 (1) the debtor's rights in the collateral;

1 (2) the security interest or agricultural lien under which the disposition
2 is made; and

3 (3) any security interest or other lien.

4 **Sec. 45.09.618. Rights and duties of certain secondary obligors.** (a) A
5 secondary obligor acquires the rights and becomes obligated to perform the duties of
6 the secured party after the secondary obligor

7 (1) receives an assignment of a secured obligation from the secured
8 party;

9 (2) receives a transfer of collateral from the secured party and agrees
10 to accept the rights and assume the duties of the secured party; or

11 (3) is subrogated to the rights of a secured party with respect to
12 collateral.

13 (b) An assignment, transfer, or subrogation described in (a) of this section

14 (1) is not a disposition of collateral under AS 45.09.610; and

15 (2) relieves the secured party of further duties under this chapter.

16 **Sec. 45.09.619. Transfer of record or legal title.** (a) In this section,
17 "transfer statement" means a record authenticated by a secured party stating

18 (1) that the debtor has defaulted in connection with an obligation
19 secured by specified collateral;

20 (2) that the secured party has exercised its post-default remedies with
21 respect to the collateral;

22 (3) that, by reason of the exercise, a transferee has acquired the rights
23 of the debtor in the collateral; and

24 (4) the name and mailing address of the secured party, debtor, and
25 transferee.

26 (b) A transfer statement entitles the transferee to the transfer of record of all
27 rights of the debtor in the collateral specified in the statement in an official filing,
28 recording, registration, or certificate-of-title system covering the collateral. If a
29 transfer statement is presented with the applicable fee and request form to the official
30 or office responsible for maintaining the system, the official or office shall

31 (1) accept the transfer statement;

- 1 (2) promptly amend its records to reflect the transfer; and
2 (3) if applicable, issue a new appropriate certificate of title in the name
3 of transferee.

4 (c) A transfer of the record or legal title to collateral to a secured party under
5 (b) of this section or otherwise is not of itself a disposition of collateral under this
6 chapter and does not of itself relieve the secured party of its duties under this chapter.

7 **Sec. 45.09.620. Acceptance of collateral in full or partial satisfaction of**
8 **obligation; compulsory disposition of collateral.** (a) Except as otherwise provided
9 in (g) of this section, a secured party may accept collateral in full or partial satisfaction
10 of the obligation it secures only if

- 11 (1) the debtor consents to the acceptance under (c) of this section;
12 (2) the secured party does not receive, within the time set out in (d) of
13 this section, a notification of objection to the proposal authenticated by

14 (A) a person to which the secured party was required to send
15 a proposal under AS 45.09.621; or

16 (B) any other person, other than the debtor, holding an interest
17 in the collateral subordinate to the security interest that is the subject of the
18 proposal;

19 (3) if the collateral is consumer goods, the collateral is not in the
20 possession of the debtor when the debtor consents to the acceptance; and

21 (4) the provisions of (e) of this section do not require the secured party
22 to dispose of the collateral or the debtor waives the requirement under AS 45.09.624.

23 (b) A purported or apparent acceptance of collateral under this section is
24 ineffective unless

25 (1) the secured party consents to the acceptance in an authenticated
26 record or sends a proposal to the debtor; and

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

28 (c) For purposes of this section, a debtor consents to an acceptance of
29 collateral

30 (1) in partial satisfaction of the obligation it secures only if the debtor
31 agrees to the terms of the acceptance in a record authenticated after default; and

1 (2) in full satisfaction of the obligation it secures only if the debtor
2 agrees to the terms of the acceptance in a record authenticated after default or the
3 secured party

4 (A) sends to the debtor after default a proposal that is
5 unconditional or subject only to a condition that collateral not in the possession
6 of the secured party be preserved or maintained;

7 (B) in the proposal, proposes to accept collateral in full
8 satisfaction of the obligation it secures; and

9 (C) does not receive a notification of objection authenticated by
10 the debtor within 20 days after the proposal is sent.

11 (d) To be effective under (a)(2) of this section, a notification of objection must
12 be received by the secured party

13 (1) in the case of a person to which the proposal was sent under
14 AS 45.09.621, within 20 days after notification was sent to that person; and

15 (2) in other cases,

16 (A) within 20 days after the last notification was sent under
17 AS 45.09.621; or

18 (B) if a notification was not sent, before the debtor consents to
19 the acceptance under (c) of this section.

20 (e) A secured party that has taken possession of collateral shall dispose of the
21 collateral under AS 45.09.610 within the time specified in (f) of this section if

22 (1) 60 percent of the cash price has been paid in the case of a purchase
23 money security interest in consumer goods; or

24 (2) 60 percent of the principal amount of the obligation secured has
25 been paid in the case of a nonpurchase money security interest in consumer goods.

26 (f) To comply with (e) of this section, the secured party shall dispose of the
27 collateral within

28 (1) 90 days after taking possession; or

29 (2) any longer period to which the debtor and all secondary obligors
30 have agreed in an agreement to that effect entered into and authenticated after default.

31 (g) In a consumer transaction, a secured party may not accept collateral in

1 partial satisfaction of the obligation it secures.

2 **Sec. 45.09.621. Notification of proposal to accept collateral.** (a) A secured
3 party who desires to accept collateral in full or partial satisfaction of the obligation it
4 secures shall send its proposal to

5 (1) any person from which the secured party has received, before the
6 debtor consented to the acceptance, an authenticated notification of a claim of an
7 interest in the collateral;

8 (2) any other secured party or lienholder who, 10 days before the
9 debtor consented to the acceptance, held a security interest in or other lien on the
10 collateral perfected by the filing of a financing statement that

11 (A) identified the collateral;

12 (B) was indexed under the debtor's name as of that date; and

13 (C) was filed in the office or offices in which to file a financing
14 statement against the debtor covering the collateral as of that date; and

15 (3) any other secured party who, 10 days before the debtor consented
16 to the acceptance, held a security interest in the collateral perfected by compliance
17 with a statute, regulation, or treaty described in AS 45.09.311(a).

18 (b) A secured party who desires to accept collateral in partial satisfaction of
19 the obligation it secures shall send its proposal to any secondary obligor in addition
20 to the persons described in (a) of this section.

21 **Sec. 45.09.622. Effect of acceptance of collateral.** (a) A secured party's
22 acceptance of collateral in full or partial satisfaction of the obligation it secures

23 (1) discharges the obligation to the extent consented to by the debtor;

24 (2) transfers to the secured party all of a debtor's rights in the
25 collateral;

26 (3) discharges the security interest or agricultural lien that is the subject
27 of the debtor's consent and any subordinate security interest or other subordinate lien;
28 and

29 (4) terminates any other subordinate interest.

30 (b) A subordinate interest is discharged or terminated under (a) of this section,
31 whether or not the secured party sends or is required to send its proposal to the holder

1 of the interest. However, a person to which the secured party was required to send,
2 but did not send, its proposal has the remedy provided by AS 45.09.625(b).

3 **Sec. 45.09.623. Right to redeem collateral.** (a) A debtor, a secondary
4 obligor, or other secured party or lienholder may redeem collateral.

5 (b) To redeem collateral, a person shall tender

6 (1) fulfillment of all obligations secured by the collateral; and

7 (2) the reasonable expenses and attorney fees described in
8 AS 45.09.615(a)(1).

9 (c) A redemption may occur at any time before a secured party has

10 (1) collected collateral under AS 45.09.607;

11 (2) disposed of collateral or entered into a contract for its disposition
12 under AS 45.09.610; or

13 (3) accepted collateral in full or partial satisfaction of the obligation it
14 secures under AS 45.09.622.

15 **Sec. 45.09.624. Waiver.** (a) A debtor or secondary obligor may waive the
16 right to notification of disposition of collateral under AS 45.09.611 only by an
17 agreement to that effect entered into and authenticated after default.

18 (b) A debtor may waive the right to require disposition of collateral under
19 AS 45.09.620(e) only by an agreement to that effect entered into and authenticated
20 after default.

21 (c) Except in a consumer goods transaction, a debtor or secondary obligor may
22 waive the right to redeem collateral under AS 45.09.623 only by an agreement to that
23 effect entered into and authenticated after default.

24 **Sec. 45.09.625. Remedies for secured party's failure to comply with**
25 **chapter.** (a) If it is established that a secured party is not proceeding in accordance
26 with this chapter, a court may order or restrain collection, enforcement, or disposition
27 of collateral on appropriate terms and conditions.

28 (b) Subject to (c), (d), and (f) of this section, a secured party is liable for
29 damages in the amount of any loss caused by a failure to comply with this chapter.
30 Loss caused by a failure to comply with a request under AS 45.09.210 may include
31 loss resulting from the debtor's inability to obtain, or increased costs of, alternative

1 financing.

2 (c) Except as otherwise provided in AS 45.09.628,

3 (1) a person who, at the time of the failure, was a debtor or an obligor
4 or held a security interest in or other lien on the collateral may recover damages under
5 (b) of this section for its loss; and

6 (2) if the collateral is consumer goods, a person who was a debtor or
7 secondary obligor at the time a secured party failed to comply with AS 45.09.601 -
8 45.09.628 may recover for that failure in any event an amount not less than the credit
9 service charge plus 10 percent of the principal amount of the obligation or the time-
10 price differential plus 10 percent of the cash price.

11 (d) A debtor whose deficiency is eliminated under AS 45.09.626 may recover
12 damages for the loss of any surplus. However, a debtor or secondary obligor whose
13 deficiency is eliminated or reduced under AS 45.09.626 may not otherwise recover
14 under (b) of this section for noncompliance with the provisions of AS 45.09.601 -
15 45.09.628 relating to collection, enforcement, disposition, or acceptance.

16 (e) In addition to damages recoverable under (b) of this section, the debtor,
17 consumer obligor, or person named as a debtor in a filed record, as applicable, may
18 recover \$500 in each case from

19 (1) a secured party who fails to comply with AS 45.09.208;

20 (2) a secured party who fails to comply with AS 45.09.209;

21 (3) a person who files a record that the person is not entitled to file
22 under AS 45.09.509(a);

23 (4) a secured party who fails to cause the secured party of record to file
24 or send a termination statement as required by AS 45.09.513(a) or (c);

25 (5) a secured party that fails to comply with AS 45.09.616(b)(1) and
26 whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

27 (6) a secured party who fails to comply with AS 45.09.616(b)(2).

28 (f) A debtor or consumer obligor may recover damages under (b) of this
29 section and, in addition, \$500 in each case from a person who, without reasonable
30 cause, fails to comply with a request under AS 45.09.210. A recipient of a request
31 under AS 45.09.210 who never claimed an interest in the collateral or obligations that

1 are the subject of a request under that section has a reasonable excuse for failure to
2 comply with the request within the meaning of this subsection.

3 (g) If a secured party fails to comply with a request regarding a list of
4 collateral or a statement of account under AS 45.09.210, the secured party may claim
5 a security interest only as shown in the statement included in the request as against a
6 person who is reasonably misled by the failure.

7 **Sec. 45.09.626. Action in which deficiency or surplus is in issue.** (a) In an
8 action arising from a transaction, other than a consumer transaction, in which the
9 amount of a deficiency or surplus is in issue, the following rules apply:

10 (1) a secured party need not prove compliance with the provisions of
11 AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or acceptance
12 unless the debtor or secondary obligor places the secured party's compliance in issue;

13 (2) if the secured party's compliance is placed in issue, the secured
14 party has the burden of establishing that the collection, enforcement, disposition, or
15 acceptance was conducted in compliance with the provisions of AS 45.09.601 -
16 45.09.628;

17 (3) except as otherwise provided in AS 45.09.628, if a secured party
18 fails to prove that the collection, enforcement, disposition, or acceptance was
19 conducted in compliance with the provisions of AS 45.09.601 - 45.09.628 relating to
20 collection, enforcement, disposition, or acceptance, the liability of a debtor or
21 secondary obligor for a deficiency is limited to an amount by which the sum of the
22 secured obligation, expenses, and attorney fees exceeds the greater of

23 (A) the proceeds of the collection, enforcement, disposition, or
24 acceptance; or

25 (B) the amount of proceeds that would have been realized had
26 the noncomplying secured party proceeded in compliance with the provisions
27 of AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or
28 acceptance;

29 (4) for purposes of (3)(B) of this subsection, the amount of proceeds
30 that would have been realized is equal to the sum of the secured obligation, expenses,
31 and attorney fees unless the secured party proves that the amount is less than that sum;

1 (5) if a deficiency or surplus is calculated under AS 45.09.615(f), the
2 debtor or obligor has the burden of establishing that the amount of proceeds of the
3 disposition is significantly below the range of prices that a complying disposition to
4 a person other than the secured party, a person related to the secured party, or a
5 secondary obligor would have brought.

6 (b) The limitation of the rules in (a) of this section to transactions other than
7 consumer transactions is intended to leave to the court the determination of the proper
8 rules in consumer transactions. The court may not infer from that limitation the nature
9 of the proper rule in consumer transactions and may continue to apply established
10 approaches.

11 **Sec. 45.09.627. Determination of whether conduct was commercially**
12 **reasonable.** (a) The fact that a greater amount could have been obtained by a
13 collection, enforcement, disposition, or acceptance at a different time or in a different
14 method from that selected by the secured party is not of itself sufficient to preclude
15 the secured party from establishing that the collection, enforcement, disposition, or
16 acceptance was made in a commercially reasonable manner.

17 (b) A disposition of collateral is made in a commercially reasonable manner
18 if the disposition is made

19 (1) in the usual manner on any recognized market;

20 (2) at the price current in any recognized market at the time of the
21 disposition; or

22 (3) otherwise in conformity with reasonable commercial practices
23 among dealers in the type of property that was the subject of the disposition.

24 (c) A collection, enforcement, disposition, or acceptance is commercially
25 reasonable if it has been approved

26 (1) in a judicial proceeding;

27 (2) by a bona fide creditors' committee;

28 (3) by a representative of creditors; or

29 (4) by an assignee for the benefit of creditors.

30 (d) Approval under (c) of this section need not be obtained, and lack of
31 approval does not mean that the collection, enforcement, disposition, or acceptance is

1 not commercially reasonable.

2 **Sec. 45.09.628. Nonliability and limitation on liability of secured party;**
3 **liability of secondary obligor.** (a) Unless a secured party knows that a person is a
4 debtor or obligor, knows the identity of the person, and knows how to communicate
5 with the person,

6 (1) the secured party is not liable to the person, or to a secured party
7 or lienholder that has filed a financing statement against the person, for failure to
8 comply with this chapter; and

9 (2) the secured party's failure to comply with this chapter does not
10 affect the liability of the person for a deficiency.

11 (b) A secured party is not liable because of its status as secured party

12 (1) to a person that is a debtor or obligor unless the secured party
13 knows

14 (A) that the person is a debtor or obligor;

15 (B) the identity of the person; and

16 (C) how to communicate with the person; or

17 (2) to a secured party or lienholder that has filed a financing statement
18 against a person unless the secured party knows

19 (A) that the person is a debtor; and

20 (B) the identity of the person.

21 (c) A secured party is not liable to a person, and a person's liability for a
22 deficiency is not affected, because of an act or omission arising out of the secured
23 party's reasonable belief that a transaction is not a consumer goods transaction or a
24 consumer transaction or that goods are not consumer goods if the secured party's belief
25 is based on its reasonable reliance on

26 (1) a debtor's representation concerning the purpose for which collateral
27 was to be used, acquired, or held; or

28 (2) an obligor's representation concerning the purpose for which a
29 secured obligation was incurred.

30 (d) A secured party is not liable to a person under AS 45.09.625(c)(2) for its
31 failure to comply with AS 45.09.616.

1 (e) A secured party is not liable under AS 45.09.625(c)(2) more than once with
2 respect to any one secured obligation.

3 **Article 7. Transitional Provisions.**

4 **Sec. 45.09.702. Savings clause.** (a) Except as otherwise provided in
5 AS 45.09.702 - 45.09.708, this chapter applies to a transaction or lien within the scope
6 of this chapter, even if the transaction or lien was entered into or created before July 1,
7 2001.

8 (b) Except as otherwise provided in (c) of this section and AS 45.09.703 -
9 45.09.708,

10 (1) transactions and liens that were not governed by former AS 45.09,
11 were validly entered into or created before July 1, 2001, and would be subject to this
12 chapter if they had been entered into or created on or after July 1, 2001, and the rights,
13 duties, and interests flowing from those transactions and liens remain valid on and
14 after July 1, 2001; and

15 (2) the transactions and liens may be terminated, completed,
16 consummated, and enforced as required or permitted under this chapter or by the law
17 that otherwise would apply if this chapter had not taken effect.

18 **Sec. 45.09.703. Security interest perfected before effective date.** (a) A
19 security interest that is enforceable June 30, 2001, and would have priority over the
20 rights of a person who becomes a lien creditor June 30, 2001, is a perfected security
21 interest under this chapter if, on July 1, 2001, the applicable requirements for
22 enforceability and perfection under this chapter are satisfied without further action.

23 (b) Except as otherwise provided in AS 45.09.705, if, on June 30, 2001, a
24 security interest is enforceable and would have priority over the rights of a person who
25 becomes a lien creditor June 30, 2001, but the applicable requirements for
26 enforceability or perfection under this chapter are not satisfied on July 1, 2001, the
27 security interest

28 (1) is a perfected security interest until July 1, 2002;

29 (2) remains enforceable on and after July 1, 2002, only if the security
30 interest becomes enforceable under AS 45.09.203 before July 1, 2002; and

31 (3) remains perfected on and after July 1, 2002, only if the applicable

1 requirements for perfection under this chapter are satisfied before July 1, 2002.

2 **Sec. 45.09.704. Security interest unperfected before effective date.** A
3 security interest that is enforceable June 30, 2001, but that would be subordinate to the
4 rights of a person who becomes a lien creditor June 30, 2001,

5 (1) remains an enforceable security interest until July 1, 2002;

6 (2) remains enforceable on and after July 1, 2002, if the security
7 interest becomes enforceable under AS 45.09.203 on July 1, 2001, or before July 1,
8 2002; and

9 (3) becomes perfected

10 (A) without further action on July 1, 2001, if the applicable
11 requirements for perfection under this chapter are satisfied before July 1, 2001;

12 or

13 (B) when the applicable requirements for perfection are satisfied
14 if the requirements are satisfied on or after July 1, 2001.

15 **Sec. 45.09.705. Effectiveness of action taken before effective date.** (a) If
16 action, other than the filing of a financing statement, is taken before July 1, 2001, and
17 the action would have resulted in priority of a security interest over the rights of a
18 person who becomes a lien creditor had the security interest become enforceable before
19 July 1, 2001, the action is effective to perfect a security interest that attaches under this
20 chapter before July 1, 2002. An attached security interest becomes unperfected on
21 July 1, 2002, unless the security interest becomes a perfected security interest under
22 this chapter before July 1, 2002.

23 (b) The filing of a financing statement before July 1, 2001, is effective to
24 perfect a security interest to the extent the filing would satisfy the applicable
25 requirements for perfection under this chapter.

26 (c) This chapter does not render ineffective an effective financing statement
27 that was filed before July 1, 2001, and satisfied the applicable requirements for
28 perfection under the law of the jurisdiction governing perfection as provided in former
29 AS 45.09.103. However, except as otherwise provided in (d) and (e) of this section
30 and AS 45.09.706, the financing statement ceases to be effective at the earlier of

31 (1) the time the financing statement would have ceased to be effective

1 under the law of the jurisdiction in which it is filed; or

2 (2) June 30, 2006.

3 (d) The filing of a continuation statement on or after July 1, 2001, does not
4 continue the effectiveness of the financing statement filed before July 1, 2001.
5 However, upon the timely filing of a continuation statement on or after July 1, 2001,
6 and in accordance with the law of the jurisdiction governing perfection as provided in
7 AS 45.09.301 - 45.09.342, the effectiveness of a financing statement filed in the same
8 office in that jurisdiction before July 1, 2001, continues for the period provided by the
9 law of that jurisdiction.

10 (e) The provisions of (c)(2) of this section apply to a financing statement that
11 is filed against a transmitting utility before July 1, 2001, and satisfied the applicable
12 requirements for perfection under the law of the jurisdiction governing perfection as
13 provided in former AS 45.09.103 only to the extent that AS 45.09.301 - 45.09.342
14 provides that the law of a jurisdiction other than jurisdiction in which the financing
15 statement is filed governs perfection of a security interest in collateral covered by the
16 financing statement.

17 (f) A financing statement that includes a financing statement filed before
18 July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective
19 only to the extent that it satisfies the requirements of AS 45.09.501 - 45.09.525 for an
20 initial financing statement.

21 **Sec. 45.09.706. When initial financing statement suffices as continuation**
22 **statement.** (a) The filing of an initial financing statement in the office specified in
23 AS 45.09.501 continues the effectiveness of a financing statement filed before July 1,
24 2001, for the period provided in AS 45.09.515 with respect to an initial financing
25 statement if

26 (1) the filing of an initial financing statement in that office would be
27 effective to perfect a security interest under this chapter;

28 (2) the pre-effective date financing statement was filed in an office in
29 another state or another office in this state; and

30 (3) the initial financing statement satisfies (b) of this section.

31 (b) To be effective for purposes of (a) of this section, an initial financing

1 statement must

2 (1) satisfy the requirements of AS 45.09.501 - 45.09.524 for an initial
3 financing statement;

4 (2) identify the pre-effective date financing statement by indicating the
5 office in which the financing statement was filed and providing the dates of filing and
6 file numbers, if any, of the financing statement and of the most recent continuation
7 statement filed with respect to the financing statement; and

8 (3) indicate that the pre-effective date financing statement remains
9 effective.

10 **Sec. 45.09.707. Persons entitled to file initial financing statement or**
11 **continuation statement.** A person may file an initial financing statement or a
12 continuation statement under AS 45.09.702 - 45.09.708 if

13 (1) the secured party of record authorizes the filing; and

14 (2) the filing is necessary under AS 45.09.702 - 45.09.708 to

15 (A) continue the effectiveness of a financing statement filed
16 before July 1, 2001; or

17 (B) perfect or continue the perfection of a security interest.

18 **Sec. 45.09.708. Priority.** (a) Former AS 45.09 determines the priority of
19 conflicting claims to collateral if the relative priorities of the parties were fixed before
20 July 1, 2001. In other cases, AS 45.09 determines priority.

21 (b) For purposes of AS 45.09.322(a), the priority of a security interest that
22 becomes a perfected security interest under AS 45.09.704 dates from the time the
23 applicable requirements for perfection are satisfied. This subsection does not apply to
24 conflicting security interests each of which becomes a perfected security interest under
25 AS 45.09.704.

26 (c) For purposes of AS 45.09.322(a), the priority of a security interest that
27 becomes enforceable under AS 45.09.203 dates from July 1, 2001, if the security
28 interest is perfected under this chapter by the filing of a financing statement before
29 July 1, 2001, that would not have been effective to perfect the security interest under
30 former AS 45.09. This subsection does not apply to conflicting security interests each
31 of which is perfected by the filing of such a financing statement.

1 * Sec. 2. AS 44.37.027 is amended by adding new subsections to read:

2 (d) To keep the filing office regulations and practices of the filing office in
3 harmony with the regulations and practices of filing offices in other jurisdictions that
4 enact laws that are substantially similar to AS 45.09.501 - 45.09.525, and to keep the
5 technology used by the filing office compatible with the technology used by filing
6 offices in those other jurisdictions, the Department of Natural Resources, so far as is
7 consistent with the purposes, policies, and provisions of this chapter, in adopting,
8 amending, and repealing filing office regulations, shall

9 (1) consult with filing offices in other jurisdictions that enact laws that
10 are substantially similar to AS 45.09.501 - 45.09.525; and

11 (2) consult the most recent version of the Model Rules promulgated by
12 the International Association of Corporate Administrators or any successor
13 organization; and

14 (3) take into consideration the regulations and practices of, and the
15 technology used by, filing offices in other jurisdictions that enact laws that are
16 substantially similar to AS 45.09.501 - 45.09.525.

17 (e) The Department of Natural Resources shall report annually on or before
18 January 15 to the governor on the operation of the filing office described in
19 AS 45.09.501(a)(2). The report must contain a statement of the extent to which the
20 filing office regulations are not in harmony with

21 (1) the regulations of filing offices in other jurisdictions that enact laws
22 that are substantially similar to AS 45.09.501 - 45.09.525 and the reasons for these
23 variations; and

24 (2) the most recent version of the Model Rules promulgated by the
25 International Association of Corporate Administrators, or any successor organization,
26 and the reasons for these variations.

27 * Sec. 3. AS 45.01.105(b) is amended to read:

28 (b) Where one of the following provisions of the code specifies the applicable
29 law, that provision governs and a contrary agreement is effective only to the extent
30 permitted by the law, including the conflict of laws rules, so specified:

31 (1) AS 45.02.402 (rights of creditors against sold goods);

- 1 (2) AS 45.04.102 (applicability of the chapter on bank deposits and
2 collections);
- 3 (3) AS 45.05.116 (applicability of the chapter on letters of credit);
- 4 (4) AS 45.08.110 (applicability of the chapter on investment securities);
- 5 (5) AS 45.09.301 - 45.09.307 (perfection and the priority of security
6 interests [AS 45.09.103 (PERFECTION PROVISIONS OF THE CHAPTER ON
7 SECURED TRANSACTIONS)];
- 8 (6) AS 45.12.105 and 45.12.106 (applicability of the chapter on leases);
- 9 (7) AS 45.14 (funds transfers).

10 * Sec. 4. AS 45.01.201(9) is repealed and reenacted to read:

11 (9) "buyer in ordinary course of business" means a person that buys
12 goods in good faith, without knowledge that the sale violates the rights of another
13 person in the goods, and in the ordinary course from a person, other than a
14 pawnbroker, in the business of selling goods of that kind; a person buys goods in the
15 ordinary course if the sale to the person comports with the usual or customary
16 practices in the kind of business in which the seller is engaged or with the seller's own
17 usual or customary practices; a person that sells oil, gas, or other minerals at the
18 wellhead or minehead is a person in the business of selling goods of that kind; a buyer
19 in ordinary course of business may buy for cash, by exchange of other property, or on
20 secured or unsecured credit, and may acquire goods or documents of title under a
21 preexisting contract for sale; only a buyer that takes possession of the goods or has a
22 right to recover the goods from the seller under AS 45.02 may be a buyer in ordinary
23 course of business; a person that acquires goods in a transfer in bulk or as security for
24 or in total or partial satisfaction of a money debt is not a buyer in ordinary course of
25 business;

26 * Sec. 5. AS 45.01.201(33) is amended to read:

27 (33) "purchase" includes taking by sale, discount, negotiation,
28 mortgage, pledge, lien, security interest, issue or re-issue, gift, or any other voluntary
29 transaction creating an interest in property;

30 * Sec. 6. AS 45.01.201(38) is amended to read:

31 (38) "security interest" means an interest in personal property or

1 fixtures that secures payment or performance of an obligation; [THE RETENTION OR
2 RESERVATION OF TITLE BY A SELLER OF GOODS NOTWITHSTANDING
3 SHIPMENT OR DELIVERY TO THE BUYER (AS 45.02.401) IS LIMITED IN
4 EFFECT TO A RESERVATION OF A "SECURITY INTEREST";] the term also
5 includes an interest of a consignor and a buyer of accounts, [OR] chattel paper, a
6 payment intangible, or a promissory note in a transaction that is subject to
7 AS 45.09; the special property interest of a buyer of goods on identification of the
8 goods to a contract for sale under AS 45.02.401 is not a "security interest," but a buyer
9 may also acquire a "security interest" by complying with AS 45.09; except as
10 otherwise provided in AS 45.02.505, the right of a seller or lessor of goods under
11 AS 45.02 or AS 45.12 to retain or acquire possession of the goods is not a
12 "security interest," but a seller or lessor may also acquire a "security interest"
13 by complying with AS 45.09; the retention or reservation of title by a seller of
14 goods notwithstanding shipment or delivery to the buyer (AS 45.02.401) is limited
15 in effect to a reservation of a "security interest" [UNLESS A CONSIGNMENT IS
16 INTENDED AS SECURITY, RESERVATION OF TITLE UNDER THE
17 CONSIGNMENT IS NOT A "SECURITY INTEREST," BUT A CONSIGNMENT IS
18 IN ANY EVENT SUBJECT TO THE PROVISIONS ON CONSIGNMENT SALES
19 (AS 45.02.326)]; whether a transaction creates a lease or security interest is determined
20 by the facts of each case; however,

21 (A) a transaction creates a security interest if the consideration
22 the lessee is to pay the lessor for the right to possession and use of the goods
23 is an obligation for the term of the lease not subject to termination by the
24 lessee; and

25 (i) the original term of the lease is equal to or greater
26 than the remaining economic life of the goods;

27 (ii) the lessee is bound to renew the lease for the
28 remaining economic life of the goods or is bound to become the owner
29 of the goods;

30 (iii) the lessee has an option to renew the lease for the
31 remaining economic life of the goods for no additional consideration or

1 nominal additional consideration upon compliance with the lease
2 agreement; or

3 (iv) the lessee has an option to become the owner of the
4 goods for no additional consideration or nominal additional
5 consideration upon compliance with the lease agreement;

6 (B) a transaction does not create a security interest merely
7 because it provides that

8 (i) the present value of the consideration the lessee is
9 obligated to pay the lessor for the right to possession and use of the
10 goods is substantially equal to or is greater than the fair market value
11 of the goods at the time the lease is entered into;

12 (ii) the lessee assumes risk of loss of the goods, or
13 agrees to pay taxes, insurance, filing, recording, or registration fees, or
14 service or maintenance costs with respect to the goods;

15 (iii) the lessee has an option to renew the lease or to
16 become the owner of the goods;

17 (iv) the lessee has an option to renew the lease for a
18 fixed rent that is equal to or greater than the reasonably predictable fair
19 market rent for the use of the goods for the term of the renewal at the
20 time the option is to be performed; or

21 (v) the lessee has an option to become the owner of the
22 goods for a fixed price that is equal to or greater than the reasonably
23 predictable fair market value of the goods at the time the option is to
24 be performed;

25 (C) in this paragraph, additional consideration is nominal if it
26 is less than the lessee's reasonably predictable cost of performing under the
27 lease agreement if the option is not exercised; additional consideration is not
28 nominal if

29 (i) when the option to renew the lease is granted to the
30 lessee, the rent is stated to be the fair market rent for the use of the
31 goods for the term of the renewal determined at the time the option is

1 to be performed; or

2 (ii) when the option to become the owner of the goods
3 is granted to the lessee, the price is stated to be the fair market value
4 of the goods determined at the time the option is to be performed;

5 (D) in this paragraph,

6 (i) "present value" means the amount as of a date certain
7 of one or more sums payable in the future, discounted to the date
8 certain; the discount is determined by the interest rate specified by the
9 parties if the rate is not manifestly unreasonable at the time the
10 transaction is entered into; otherwise, the discount is determined by a
11 commercially reasonable rate that takes into account the facts and
12 circumstances of each case at the time the transaction was entered into;
13 and

14 (ii) "reasonably predictable" and "remaining economic
15 life of the goods" are to be determined with reference to the facts and
16 circumstances at the time the transaction is entered into;

17 * Sec. 7. AS 45.02.103(c) is amended to read:

18 (c) The following definitions in other chapters apply to this chapter:

- 19 (1) "check" (AS 45.03.104);
20 (2) "consignee" (AS 45.07.102);
21 (3) "consignor" (AS 45.07.102);
22 (4) "consumer goods" (AS 45.09.102 [AS 45.09.109]);
23 (5) "dishonor" (AS 45.03.502);
24 (6) "draft" (AS 45.03.104).

25 * Sec. 8. AS 45.02.210 is repealed and reenacted to read:

26 **Sec. 45.02.210. Delegation of performance; assignment of rights.** (a) A
27 party may perform the party's duty through a delegate unless otherwise agreed or
28 unless the other party has a substantial interest in having the original promisor perform
29 or control the acts required by the contract. No delegation of performance relieves the
30 party delegating of a duty to perform or a liability for breach.

31 (b) Unless otherwise agreed, all rights of either seller or buyer can be assigned

1 except where the assignment would materially change the duty of the other party,
2 increase materially the burden or risk imposed on the other party by the contract, or
3 impair materially the chance of obtaining return performance. A right to damages for
4 breach of the whole contract or a right arising out of the assignor's due performance
5 of the entire obligation can be assigned despite agreement otherwise.

6 (c) The creation, attachment, perfection, or enforcement of a security interest
7 in the seller's interest under a contract is not a transfer that materially changes the duty
8 of or increases materially the burden or risk imposed on the buyer or impairs
9 materially the buyer's chance of obtaining return performance within the purview of
10 (b) of this section unless, and then only to the extent that, enforcement actually results
11 in a delegation of material performance of the seller; even in that event, the creation,
12 attachment, perfection, and enforcement of the security interest remain effective, but

13 (1) the seller is liable to the buyer for damages caused by the
14 delegation to the extent that the damages could not reasonably be prevented by the
15 buyer; and

16 (2) a court having jurisdiction may grant other appropriate relief,
17 including cancellation of the contract for sale or an injunction against enforcement of
18 the security interest or consummation of the enforcement.

19 (d) Unless the circumstances indicate the contrary, a prohibition of assignment
20 of "the contract" is to be construed as barring only the delegation to the assignee of
21 the assignor's performance.

22 (e) An assignment of "the contract" or "all my rights under the contract" or an
23 assignment in similar general terms is an assignment of rights and, unless the language
24 or the circumstances (as in an assignment for security) indicate the contrary, it is a
25 delegation of performance of the duties of the assignor and its acceptance by the
26 assignee constitutes a promise by the assignee to perform those duties. This promise
27 is enforceable by either the assignor or the other party to the original contract.

28 (f) The other party may treat an assignment which delegates performance as
29 creating reasonable grounds for insecurity and may, without prejudice to the party's
30 rights against the assignor, demand assurances from the assignee (AS 45.02.609).

31 * Sec. 9. AS 45.02.326 is repealed and reenacted to read:

1 **Sec. 45.02.326. Sale on approval and sale or return; rights of creditors.**

2 (a) Unless otherwise agreed, if delivered goods may be returned by the buyer even
3 though they conform to the contract, the transaction is

4 (1) a "sale on approval" if the goods are delivered primarily for use;
5 and

6 (2) a "sale or return" if the goods are delivered primarily for resale.

7 (b) Goods held on approval are not subject to the claims of the buyer's
8 creditors until acceptance; goods held on sale or return are subject to such claims while
9 in the buyer's possession.

10 (c) An "or return" term of a contract for sale is to be treated as a separate
11 contract for sale within the statute of frauds section (AS 45.02.201), and as
12 contradicting the sale aspect of the contract within the provisions on parol or extrinsic
13 evidence (AS 45.02.202).

14 (d) Whenever an artist delivers or causes to be delivered a work of fine art of
15 the artist's creation to an art dealer for the purpose of sale, or exhibition and sale to
16 the public on a commission or fee or other basis of compensation, the work of fine art
17 is not subject to the claims of the art dealer's creditors. For the purposes of this
18 subsection,

19 (1) "art dealer" means a person other than a public auctioneer engaged
20 in the business of selling works of fine art;

21 (2) "artist" means the creator of a work of fine art;

22 (3) "fine art" includes a painting, sculpture, drawing, photograph, or
23 work of graphic art.

24 * **Sec. 10.** AS 45.02.502 is repealed and reenacted to read:

25 **Sec. 45.02.502. Buyer's right to goods on seller's repudiation, failure to**
26 **deliver, or insolvency.** (a) Subject to (b) and (c) of this section and even though the
27 goods have not been shipped, a buyer who has paid a part or all of the price of goods
28 in which the buyer has a special property under the provisions of AS 45.02.501 may,
29 on making and keeping good a tender of an unpaid portion of their price, recover them
30 from the seller if

31 (1) in the case of goods bought for personal, family, or household

1 purposes, the seller repudiates or fails to deliver as required by the contract; or

2 (2) in other cases, the seller becomes insolvent within 10 days after
3 receipt of the first installment on their price.

4 (b) The buyer's right to recover the goods under (a)(1) of this section vests
5 upon acquisition of a special property even if the seller had not then repudiated or
6 failed to deliver.

7 (c) If the identification creating the buyer's special property has been made by
8 the buyer, the buyer acquires the right to recover the goods only if they conform to the
9 contract for sale.

10 * Sec. 11. AS 45.02.716(c) is amended to read:

11 (c) The buyer has a right of replevin for goods identified to the contract if
12 after reasonable effort the buyer is unable to effect cover for the goods or the
13 circumstances reasonably indicate that such effort will be unavailing or if the goods
14 have been shipped under reservation and satisfaction of the security interest in them
15 has been made or tendered. In the case of goods bought for personal, family, or
16 household purposes, the buyer's right of replevin vests upon acquisition of a
17 special property even if the seller had not then repudiated or failed to deliver.

18 * Sec. 12. AS 45.04.210(c) is amended to read:

19 (c) Receipt by a collecting bank of a final settlement for an item is a
20 realization on its security interest in the item, accompanying documents, and proceeds.
21 So long as the bank does not receive final settlement for the item or give up
22 possession of the item or accompanying documents for purposes other than collection,
23 the security interest continues to that extent and is subject to AS 45.09, but

24 (1) a security agreement is not necessary to make the security interest
25 enforceable AS 45.09.203(b)(3)(A) [(AS 45.09.203(a))].

26 (2) filing is not required to perfect the security interest; and

27 (3) the security interest has priority over conflicting perfected security
28 interests in the item, accompanying documents, or proceeds.

29 * Sec. 13. AS 45.05 is amended by adding a new section to read:

30 **Sec. 45.05.118. Security interest of issuer or nominated person.** (a) An
31 issuer or nominated person has a security interest in a document presented under a

1 letter of credit to the extent that the issuer or nominated person honors or gives value
2 for the presentation.

3 (b) So long as and to the extent that an issuer or nominated person has not
4 been reimbursed or has not otherwise recovered the value given with respect to a
5 security interest in a document under (a) of this section, the security interest continues
6 and is subject to AS 45.09, but

7 (1) a security agreement is not necessary to make the security interest
8 enforceable under AS 45.09.203(b)(3);

9 (2) if the document is presented in a medium other than a written or
10 other tangible medium, the security interest is perfected; and

11 (3) if the document is presented in a written or other tangible medium
12 and is not a certificated security, chattel paper, a document of title, an instrument, or
13 a letter of credit, the security interest is perfected and has priority over a conflicting
14 security interest in the document so long as the debtor does not have possession of the
15 document.

16 * Sec. 14. AS 45.07.503(a) is amended to read:

17 (a) A document of title confers no right in goods against a person who, before
18 issuance of the document, had a legal interest or a perfected security interest in them
19 and who neither

20 (1) delivered or entrusted them or a document of title covering them
21 to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or
22 sell or with power to obtain delivery under AS 45.07.403 or with power of disposition
23 under AS 45.02.403 and AS 45.09.320 [AS 45.09.307] or other statute or rule of law;
24 nor

25 (2) acquiesced in the procurement by the bailor or the bailor's nominee
26 of a document of title.

27 * Sec. 15. AS 45.08.103(f) is amended to read:

28 (f) A commodity contract, as defined in AS 45.09.102(a) [AS 45.09.115], is
29 not a security or a financial asset.

30 * Sec. 16. AS 45.08.106(d) is amended to read:

31 (d) A purchaser has control of a security entitlement if

- 1 (1) the purchaser becomes the entitlement holder; or
2 (2) the securities intermediary has agreed that the securities
3 intermediary will comply with entitlement orders originated by the purchaser without
4 further consent by the entitlement holder; or
5 (3) another person has control of the security entitlement on behalf
6 of the purchaser or, having previously acquired control of the security
7 entitlement, acknowledges that it has control on behalf of the purchaser.

8 * Sec. 17. AS 45.08.106(f) is amended to read:

9 (f) A purchaser who has satisfied the requirements of (c) or (d) [(c)(2) OR
10 (d)(2)] of this section has control even if the registered owner in the case of (c) [(c)(2)]
11 of this section or the entitlement holder in the case of (d) [(d)(2)] of this section
12 retains the right to make substitutions for the uncertificated security or security
13 entitlement, to originate instructions or entitlement orders to the issuer or securities
14 intermediary, or otherwise to deal with the uncertificated security or security
15 entitlement.

16 * Sec. 18. AS 45.08.110(d) is amended to read:

17 (d) The following rules determine a securities intermediary's jurisdiction for
18 purposes of this section:

19 (1) if an agreement between the securities intermediary and its
20 entitlement holder governing the securities account expressly provides that a
21 particular jurisdiction is the securities intermediary's jurisdiction for purposes of
22 AS 45.08.101 - 45.08.116, this chapter, or this code [SPECIFIES THAT IT IS
23 GOVERNED BY THE LAW OF A PARTICULAR JURISDICTION], that jurisdiction
24 is the securities intermediary's jurisdiction;

25 (2) if (1) of this subsection does not apply and an agreement
26 between the securities intermediary and its entitlement holder expressly provides
27 that the agreement is governed by the law of a particular jurisdiction, that
28 jurisdiction is the securities intermediary's jurisdiction;

29 (3) if neither (1) nor (2) of this subsection applies and an agreement
30 between the securities intermediary and its entitlement holder governing the securities
31 account [DOES NOT SPECIFY THE GOVERNING LAW AS PROVIDED IN (1) OF

1 THIS SUBSECTION, BUT] expressly provides specifies that the securities account
2 is maintained at an office in a particular jurisdiction, that jurisdiction is the securities
3 intermediary's jurisdiction;

4 (4) [(3)] if none of the preceding paragraphs of this subsection
5 applies [AN AGREEMENT BETWEEN THE SECURITIES INTERMEDIARY AND
6 ITS ENTITLEMENT HOLDER DOES NOT SPECIFY A JURISDICTION
7 AS PROVIDED IN (1) OR (2) OF THIS SUBSECTION], the securities intermediary's
8 jurisdiction is the jurisdiction in which [IS LOCATED] the office identified in an
9 account statement as the office serving the entitlement holder's account is located;

10 (5) [(4)] if none of the preceding paragraphs of this subsection
11 applies [AN AGREEMENT BETWEEN THE SECURITIES INTERMEDIARY AND
12 ITS ENTITLEMENT HOLDER DOES NOT SPECIFY A JURISDICTION
13 AS PROVIDED IN (1) OR (2) OF THIS SUBSECTION AND AN ACCOUNT
14 STATEMENT DOES NOT IDENTIFY AN OFFICE SERVING THE ENTITLEMENT
15 HOLDER'S ACCOUNT AS PROVIDED IN (3) OF THIS SUBSECTION], the
16 securities intermediary's jurisdiction is the jurisdiction in which [IS LOCATED] the
17 chief executive office of the securities intermediary is located.

18 * Sec. 19. AS 45.08.301(a) is amended to read:

19 (a) Delivery of a certificated security to a purchaser occurs when

20 (1) the purchaser acquires possession of the security certificate;

21 (2) another person, other than a securities intermediary, either acquires
22 possession of the security certificate on behalf of the purchaser or, having previously
23 acquired possession of the certificate, acknowledges that it holds for the purchaser; or

24 (3) a securities intermediary acting on behalf of the purchaser acquires
25 possession of the security certificate, only if the certificate is in registered form and
26 is

27 (A) registered in the name of the purchaser;

28 (B) pavable to the order of the purchaser; or

29 (C) [HAS BEEN] specially endorsed to the purchaser by an
30 effective endorsement and has not been endorsed to the securities
31 intermediary or in blank.

1 * Sec. 20. AS 45.08.302(a) is amended to read:

2 (a) Except as otherwise provided in (b) and (c) of this section, a purchaser
3 [UPON DELIVERY] of a certificated or uncertificated security [TO A PURCHASER,
4 THE PURCHASER] acquires all rights in the security that the transferor had or had
5 power to transfer.

6 * Sec. 21. AS 45.08.510(a) is amended to read:

7 (a) In a case not covered by the priority rules in AS 45.09 or the rules
8 stated in (c) of this section, an [AN] action based on an adverse claim to a financial
9 asset or security entitlement, whether framed in conversion, replevin, constructive trust,
10 equitable lien, or other theory, may not be asserted against a person who purchases a
11 security entitlement, or an interest in a security entitlement, from an entitlement holder
12 if the purchaser gives value, does not have notice of the adverse claim, and obtains
13 control.

14 * Sec. 22. AS 45.08.510(c) is amended to read:

15 (c) In a case not covered by the priority rules in AS 45.09, a purchaser for
16 value of a security entitlement, or an interest in a security entitlement, who obtains
17 control has priority over a purchaser of a security entitlement, or an interest in a
18 security entitlement, who does not obtain control. Except as otherwise provided in
19 (d) of this section, purchasers [PURCHASERS] who have control rank according to
20 priority in time of

21 (1) the purchaser's becoming the person for whom the securities
22 account, in which the security entitlement is carried is maintained, if the
23 purchaser obtained control under AS 45.08.106(d)(1);

24 (2) the securities intermediary's agreement to comply with the
25 purchaser's entitlement orders with respect to security entitlements carried or to
26 be carried in the securities account in which the security entitlement is carried if
27 the purchaser obtained control under AS 45.08.106(d)(2); or

28 (3) if the purchaser obtained control through another person under
29 AS 45.08.106(d)(3), the time on which priority would be based under this
30 subsection if the other person were the secured party [EQUALLY, EXCEPT THAT
31 A SECURITIES INTERMEDIARY AS PURCHASER HAS PRIORITY OVER A

1 CONFLICTING PURCHASER WHO HAS CONTROL UNLESS OTHERWISE
2 AGREED BY THE SECURITIES INTERMEDIARY].

3 * Sec. 23. AS 45.08.510 is amended by adding a new subsection to read:

4 (d) A securities intermediary as purchaser has priority over a conflicting
5 purchaser who has control unless otherwise agreed by the securities intermediary.

6 * Sec. 24. AS 45.12.103(c) is amended to read:

7 (c) The following definitions in AS 45.02 and AS 45.09 apply to this chapter:

- 8 (1) "account" (AS 45.09.102(a) [AS 45.09.106]);
- 9 (2) "between merchants" (AS 45.02.104(c));
- 10 (3) "buyer" (AS 45.02.103(a)(1));
- 11 (4) "chattel paper" (AS 45.09.102(a) [AS 45.09.105(a)(2)]);
- 12 (5) "consumer goods" (AS 45.09.102(a) [AS 45.09.109(1)]);
- 13 (6) "document" (AS 45.09.102(a) [AS 45.09.105(a)(6)]);
- 14 (7) "entrusting" (AS 45.02.403(c));
- 15 (8) "general intangible" (AS 45.09.102(a) [INTANGIBLES"
16 (AS 45.09.106)];
- 17 (9) "good faith" (AS 45.02.103(a)(2));
- 18 (10) "instrument" (AS 45.09.102(a) [AS 45.09.105(a)(9)]);
- 19 (11) "merchant" (AS 45.02.104(a));
- 20 (12) "mortgage" (AS 45.09.102(a) [AS 45.09.105(a)(10)]);
- 21 (13) "pursuant to a commitment" (AS 45.09.102(a)
22 [AS 45.09.105(a)(11)]);
- 23 (14) "receipt" (AS 45.02.103(a)(3));
- 24 (15) "sale" (AS 45.02.106(a));
- 25 (16) "sale on approval" (AS 45.02.326);
- 26 (17) "sale or return" (AS 45.02.326);
- 27 (18) "seller" (AS 45.02.103(a)(4)).

28 * Sec. 25. AS 45.12.303(a) is amended to read:

29 (a) Except as provided in (d) [(b) - (d)] of this section and AS 45.09.407, a
30 provision in a lease agreement that does either of the following gives rise to the rights
31 and remedies provided in (e) of this section, but a transfer that is prohibited or is an

1 event of default under the lease agreement is otherwise effective:

2 (1) prohibits the voluntary or involuntary transfer, including a transfer
3 by sale, sublease, creation or enforcement of a security interest, or attachment, levy,
4 or other judicial process, of

5 (A) an interest of a party under the lease contract; or

6 (B) the lessor's residual interest in the goods; or

7 (2) makes a transfer under (1) of this subsection an event of default.

8 * Sec. 26. AS 45.12.303(e) is amended to read:

9 (e) Subject to (d) [(b) - (d)] of this section and AS 45.09.407.

10 (1) if a transfer is made that is made an event of default under a lease
11 agreement, the party to the lease contract not making the transfer, unless that party
12 waives the default or otherwise agrees, has the rights and remedies under
13 AS 45.12.501(b);

14 (2) if (1) of this subsection is not applicable and if a transfer is made
15 that is prohibited under a lease agreement or that materially impairs the prospect of
16 obtaining return performance by, materially changes the duty of, or materially increases
17 the burden or risk imposed on, the other party to the lease contract, unless the party
18 not making the transfer agrees at any time to the transfer in the lease contract or
19 otherwise, then, except as limited by contract, the transferor is liable to the party not
20 making the transfer for damages caused by the transfer to the extent that the damages
21 could not reasonably be prevented by the party not making the transfer, and a court
22 having jurisdiction may grant other appropriate relief, including cancellation of the
23 lease contract or an injunction against the transfer.

24 * Sec. 27. AS 45.12.303(i) is amended to read:

25 (i) In this section, "creation of a security interest" includes the sale of a lease
26 contract that is subject to AS 45.09, on secured transactions, by reason of
27 AS 45.09.109(a)(3) [AS 45.09.102(a)(2)].

28 * Sec. 28. AS 45.12.307(b) is amended to read:

29 (b) Except as otherwise provided in (c) [AND (d)] of this section and in
30 AS 45.12.306 and 45.12.308, a creditor of a lessor takes subject to the lease contract
31 unless

1 (1) the creditor holds a lien that attached to the goods before the lease
2 contract became enforceable[;

3 (2) THE CREDITOR HOLDS A SECURITY INTEREST IN THE
4 GOODS AND THE LESSEE GAVE VALUE AND RECEIVED DELIVERY OF THE
5 GOODS WITH KNOWLEDGE OF THE SECURITY INTEREST; OR

6 (3) THE CREDITOR HOLDS IN THE GOODS A SECURITY
7 INTEREST THAT WAS PERFECTED UNDER AS 45.09.303 BEFORE THE LEASE
8 CONTRACT BECAME ENFORCEABLE].

9 * Sec. 29. AS 45.12.307(c) is repealed and reenacted to read:

10 (c) Except as otherwise provided in AS 45.09.317, 45.09.321, and 45.09.323,
11 a lessee takes a leasehold interest subject to a security interest held by a creditor of the
12 lessor.

13 * Sec. 30. AS 45.12.309(j)(2) is amended to read:

14 (2) a "fixture filing" is the recording, in the office where a mortgage
15 on the real estate would be recorded, of a financing statement covering goods that are
16 or are to become fixtures and conforming to the requirements of AS 45.09.502(a) and
17 (b) [AS 45.09.402(f)];

18 * Sec. 31. AS 45.12.303(b), 45.12.303(c), and 45.12.307(d) are repealed.

19 * Sec. 32. The uncodified law of the State of Alaska is amended by adding a new section
20 to read:

21 COURT RULE CHANGE. To the extent that they may allow the recovery of expenses
22 in a court action that are not allowed under Rule 79, Alaska Rules of Civil procedure, the
23 following sections have the effect of amending Rule 79, Alaska Rules of Civil procedure:
24 AS 45.09.607(d), 45.09.608(a)(1)(A), 45.09.615(a)(1), and 45.09.626(a)(3) and (4).

25 * Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section
26 to read:

27 REGULATIONS. The Department of Natural Resources may proceed to adopt
28 regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative
29 Procedure Act) but not before July 1, 2001.

30 * Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section
31 to read:

1 APPLICABILITY. This Act does not apply to an action, case, or proceeding
2 commenced before July 1, 2001.

3 * Sec. 35. Except as provided in sec. 36 of this Act, this Act takes effect July 1, 2001.

4 * Sec. 36. Section 33 of this Act takes effect immediately under AS 01.10.070(c).

UNIFORM COMMERCIAL CODE, ARTICLE 9, SECURED TRANSACTIONS
THE 1998 REVISIONS
AN INTRODUCTION

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it takes place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests that the record displays, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following chapters of this backgrounder are meant to suggest and highlight Article 9 as revised in 1998. They are not a treatise on revised Article 9, but are meant to be a schematic guide to it. Each chapter addresses a specific topic qua issue. What follows in this introduction is an introduction to each of those issues.

1. The Scope Issue. The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9.

2. Perfection. Although filing a financing statement remains the dominant way to perfect a security interest in most kinds of property, there are expanded property types in which "control" is the operative method of perfection. Specific perfection rules are extended to property that comes under the scope of Article 9 for the first time in the 1998 revisions.

3. Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 change the rules substantially.

4. The Filing System. Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing--one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records.

5. Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor.

SCOPE OF UCC ARTICLE 9

What kinds of property may become collateral under Uniform Commercial Code, Article 9? This is the "scope" question. In the 1998 revision to Uniform Commercial Code, Article 9, scope expands. That is, more kinds of property may be used as collateral and more types of transactions are covered. Also, some kinds of property that may have fallen into a more general category of collateral under pre-1998 Article 9, become defined and subject to specific rules.

SCOPE OF UCC ARTICLE 9 BEFORE THE 1998 REVISIONS

These kinds of property were (and will continue to be in the 1998 revisions to Article 9) subject to Article 9:

1. Tangible personal property. Property that is not real estate, but is tangible in form. Subdivisions of "tangible personal property" include "consumer goods," "equipment," "farm products," and "inventory."
2. Fixtures. This category of tangible personal property is separated from other personal property. Fixtures are items of tangible personal property that become so attached to real property that they are treated as part of the real estate. Fixtures begin as personal property, become real estate, but become personal property again when removed from the real estate. Special rules apply to fixtures under Article 9.
3. Documents. These are "documents of title" which, in general, establish that the person in possession has the rights to the goods which are represented in the title document. Bills of lading, dock warrants, dock receipts and warehouse receipts are included.
4. Instruments. An instrument generally is a negotiable instrument that evidences a right to the payment of money. An instrument becomes negotiable when it meets the criteria for negotiability in Article 3 of the Uniform Commercial Code. A note or draft is an example.
5. General Intangibles. Any intangible (meaning not goods) property interest that is not specifically addressed in Article 9. This is a gap-filling concept. Investment property is intangible property, for

example, but because it is specifically addressed in Article 9, it is not a general intangible.

6. Chattel Paper. The writings that evidence a debt owed coupled with a security interest in goods or a lease of goods are chattel paper.

7. Accounts. An account is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. A "deposit account" like a bank account is not included.

SPECIFIC EXCLUSIONS FROM UCC ARTICLE 9 BEFORE 1998

These kinds of property or transactions are specifically excluded in the pre-1998 Article 9:

1. Statutory or common law liens.
2. Tort claims.
3. Deposit accounts (except those represented by certificates of deposit).
4. Governmental transfers.
5. Insurance claims or interests.
6. A right represented by a judgment.
7. Creation or transfer of an interest in or a lien on real estate.
8. Federally preempted rights.
9. Set off.
10. Transfer of a claim for wages, salary or compensation.
11. Sale of accounts and chattel paper as part of a sale of the business from which they arose.
12. Assignment of accounts and chattel paper for collection only, and
13. Transfer for performance of a contract or transfer of a single account to satisfy a pre-existing indebtedness.
14. Transfer of interest in a letter of credit, except for proceeds of a written letter of credit.

CHANGES IN THE SCOPE OF UCC ARTICLE 9 IN 1998

The 1998 revision to Article 9 keeps many of the exclusions in pre-1998 Article 9 but makes some significant changes as well. This list of changes tend to fall (though not wholly) into two categories, interests that are no longer excluded and interests that were included under more general categories such as "general intangibles" or "accounts" but that need to be addressed with specific secured transaction rules:

1. Nonpossessory statutory agricultural liens. These liens were excluded under Article 9 prior to 1998. They are included for purposes of perfection and priority in revised Article 9. *Note other nonpossessory*

statutory liens remain excluded.

2. Sales of payment intangibles and promissory notes. Payment intangibles were a kind of general intangible, now distinguished by the characteristic of a primary monetary obligation. Promissory notes are a kind of instrument. These interests are sold, securitized and pooled. The interests sold are so like security interests that distinguishing these sales transactions from secured transactions is virtually impossible. The 1998 revision to Article 9 includes these kinds of property.

3. Security interests created by governmental debtors. The general pre-1998 exclusion has been narrowed. Only those governmental transfers that are subject to another statute on establishing and enforcing security interests are excluded. Federal preemption would, also, apply.

4. Health insurance receivables. The general exclusion of insurance proceeds in pre-1998 Article 9 is curbed for these specific kinds of receivables.

5. Consignments. Consignments of goods are included within the scope of Article 9 in the 1998 revisions. A consignment is a delivery of goods by the owner to another person, who sells for the consignor. A consignor is deemed to hold a purchase money security interest as against the consignee's secured creditors in the 1998 revisions to Article 9. Failure to comply with the requirements for a purchase money security interest potentially subjects the goods to the consignee's secured creditors. Before the 1998 revisions, a consignor had to perfect by filing a financing statement even though consignments fell within the scope of Article 2.

6. Commercial tort claims. The general exclusion of tort claims is narrowed so that security interests may be taken in commercial tort claims.

7. Liens on property. Certain liens on real property are included to the extent the lien establishes a right to payment.

8. Deposit accounts. Security interests may be taken in deposit accounts (with some restrictions). A security interest can be taken, therefore, in an ordinary bank account.

9. Supporting obligations. An example is a guarantee of payment or a letter of credit supporting an obligation to pay money.

PERFECTION OF SECURITY INTERESTS

A security interest is perfected when the secured creditor has met the statutory requirements for notice to unsecured creditors, and most creditors who perfect their interests after the first secured creditor's perfection. There are four basic kinds of perfection: 1) perfection by filing; 2) perfection by possession; 3) perfection by control; and, 4) automatic perfection. All forms of perfection were available in Article 9 before 1998. However, Article 9 assigns a perfection method for each new kind of property within its scope in the 1998 revisions. "Control" as a method of perfection is expanded beyond the single kind of property, investment property, in which a security interest could be perfected by control in the pre-1998 Article 9. Thus "control" takes on new and larger significance after 1998 than it did before 1998.

Automatic perfection is specific to certain kinds of transactions. Purchase money security interests in consumer goods are a kind of security interest that perfects automatically. However, automatic perfection is usually temporary and extinguishes unless another appropriate form of perfection occurs during the temporary period of automatic perfection. There are more kinds of automatic perfection in the 1998 revisions than was the case before 1998.

Unless otherwise noted, conflicting security interests take priority in order of filing or other perfection in time. First in time usually wins, but note that purchase money security interests often provide a creditor priority notwithstanding the time perfection took place.

Each method of perfecting a security interest is discussed as follows:

1. Filing a financing statement. Filing a financing statement in the appropriate place of record maintained by a state will perfect almost every kind of security interest (There are some exceptions.). The 1998 revisions make it clearer that filing will perfect, even if there is another method of perfection available. The old maxim, "When in doubt, file," is even more appropriate after the 1998 revisions. This is the time-honored method of perfection.

2. Possession. A secured creditor may perfect a security interest in a broad range of collateral by taking possession of that collateral. Possession is the only way to perfect a security interest in money, except for proceeds from a sale of property subject to a security interest. The 1998 revisions to Article 9 clarify issues of possession as a method of perfection, but do not change the rules materially. For example, there is a method for a third-party bailee to acknowledge the creditor's interest. Such a method is not expressly provided pre-1998.

3. Control. Control as a method of perfection first applied to investment property in amendments to Article 9 that followed the 1994 revision of Uniform Commercial Code, Article 8. A creditor has control, and a perfected security interest, when the debtor's interest can be transferred by the secured creditor without the debtor's consent. For certain kinds of property, like certificated securities, possession is tantamount to control. The 1998 revisions of Article 9 allow a creditor to perfect a security interest in deposit accounts and letter-of-credit rights by control, as well as in investment property. Control is effectively the only way to perfect a security interest in deposit accounts and letter-of-credit rights. It is possible to perfect an interest in investment property by filing, but perfection by control always has priority over perfection by filing if there are conflicting security interests, no matter which kind of perfection occurs first in time.

4. Automatic perfection. In some kinds of secured transactions, attachment is perfection. The "purchase money security interest" (PMSI) in consumer goods is such a case of automatic perfection. It arises when credit is extended to purchase goods. Other types of security interests are automatically perfected but only temporarily. An example is a security interest in a certificated security perfected for 20 days even though there is no filing or possession when it is delivered for sale or the like. Generally, a purchase money security interest has priority over security interests perfected before it in time. There are new specific PMSI's in the 1998 revisions, such as a PMSI in computer software and livestock.

Examples of other kinds of security interests that perfect upon attachment are a sale of a payment intangible, a sale of a promissory note, a security interest in a healthcare insurance receivable (all new in 1998), and a broker's security interest in investment property created by the broker (from the 1994 Article 8 revisions). Most of these security interests will, also, have priority over other kinds of security interests that perfect earlier in time.

CHOICE OF LAW RULES

A transaction in which a creditor takes a "security interest" in the collateral of a debtor may involve more than one state. The creditor may be in one state, the debtor in another, and the collateral in another. Further, the collateral may move at some point in the transaction from one state to another. Both the creditor and the debtor may be able to claim more than one place as residence or domicile. Therefore, Article 9 has always had

rules that determine which state's law will apply to the perfection, the effect of perfection and the priority of creditors in collateral.

When perfection requires filing a "financing statement" it is important to identify with certainty the state in which to file the financing statement. It is also important that creditors know with certainty that same state is the state in which they must search the record for financing statements indicating the existence of prior security interests. The state which the "choice of law" rules identify as the state whose law governs perfection, effect of perfection and the priority of creditors in the collateral, is the state in which the financing statement must be filed.

The 1998 revisions to Article 9 both simplify and substantially change the "choice of law" rules, meaning that in some cases different states will be the states in which perfection, the effect of perfection and the priority of creditors will be established than is the case under pre-1998 Article 9. The ultimate result is greater certainty for those who file financing statements and those who search for filed financing statements about which state is the right state.

Major Changes

There are two major changes in the "choice of law" rules:

1. Pre-1998, the basic rule chooses the law of the state in which the collateral is found to govern perfection and the effect of perfection of a security interest. If perfection occurs when a financing statement is filed, then the filing must take place in the state where the collateral is found. In the 1998 revisions, the basic rule chooses the law of the state in which the debtor is located as the law governing perfection, effect of perfection and the priority of a security interest in collateral. If a filing of a financing statement is required, then the statement must be filed where the debtor is, without regard for the location of the collateral. The location of the debtor is less likely to change than the location of the collateral and reliance on the location of the debtor provides creditors with more certainty about where to file and where to search. (Exceptions to both these rules to be discussed later on.)
2. If the debtor is a registered organization (corporation, limited partnership, limited liability partnership, limited liability company, etc.), pre-1998 treated the state with the chief executive office as the debtor's state. In the 1998 revisions, the debtor's state is the state in which it is a registered organization. Again, the objective of certainty about the place to file and the place to search is better served by the new rule than by the old rule, but the change will probably result in very little change in the actual place of filing in the vast number of cases.

Exceptions and Continuity

There are prominent exceptions to the new general rule in the 1998 revisions to Article 9. In most instances these exceptions mean no practical change in the choice of law rules from pre-1998 Article 9:

1. All possessory (meaning that there is no filing of a financing statement) security interests are perfected under the law of the state in which the collateral is located (where the creditor has possession). The practical effect is to leave the law unchanged for possessory security interests in any kind of collateral.
2. For other kinds of collateral, there are also no effective changes in the "choice of law" rules. These other kinds of collateral include property subject to certificates of title, and minerals, letter of credit rights and investment property.

3. For deposit accounts, which were not in the scope of pre-1998 Article 9, the location of the bank determines the place for perfection, effect of perfection and non-perfection, and the priority of security interests.

4. For agricultural liens, which were not within the scope of pre-1998 Article 9, the location of the farm products determines the place for perfection, effect of perfection and non-perfection, and the priority of security interests.

5. There are security interests that perfect in the location of the debtor under pre-1998 Article 9. Since the location of the debtor is the fundamental rule in the 1998 revisions, perfection rules effectively do not change for these security interests under the 1998 revisions to Article 9. Included are security interests in accounts, general intangibles and mobile goods (no distinction between mobile and other goods in the 1998 revisions), automatic perfection of a broker in investment property, and automatic perfection of the security interest of a commodity broker in a commodity contract.

Important Differences for Some Collateral

Under the 1998 revisions, the law governing perfection may be different from the law governing effect of perfection and priority of security interests for some kinds of property. These kinds of property include negotiable documents, goods, instruments, money and tangible chattel paper. The effect of perfection and priority of nonpossessory security interests in these kinds of collateral will be determined by the location of the collateral. This means that the place to file or the place where automatic perfection takes place, is the location of the debtor, but the impact of filing may be determined under the law of the state where the collateral is.

THE FILING SYSTEM

The primary and principal method for perfecting a security interest under Uniform Commercial Code, Article 9 is to file a financing statement with the filing authority or authorities in the appropriate state. Before 1998, most states had centralized the filing of financing statements covering most collateral in one state office. A few states continued to have both general central and local filing for all collateral. Many of the states that have centralized filing for most collateral, still continue to have local filing for some kinds of collateral. The result is a very mixed array of filing and search requirements. For filing must facilitate the search of records by subsequent creditors who must be able to find prior security interests. The fundamental objective of uniformity has been substantially impaired by the lack of uniformity just in the filing systems.

The new filing system is designed to forge a uniform system that is simpler and more reasonable to use:

1. Medium neutral. The new system is designed to be medium neutral. This simply means that the filing systems are no longer to be required to file paper only. The systems can convert to any and all forms of electronic communications for filing purposes.

2. Centralized filing. Every state will have a central filing authority. One place to file and one place to search. The only exception is fixture filings, which must continue to be made (and searched) in the real estate records.

3. Simplified financing statement. The statement must name debtor, creditor and generally describe some collateral. No signature is required. Identity of filer is immaterial.

4. Filing office operations. No discretion resides in the filing office as to sufficiency of a filing. A file cannot be cleared until one year after a termination occurs, extending the availability of the record for

one year longer than pre-1998 Article 9.

5. Correction statement. A debtor can file a correction to an improper or falsely filed financing statement.

6. Extended effective dates. Most financing statements lapse after five years from the date of filing. Two kinds of financing statements, those for public-finance transactions and for manufactured-home transactions are initially effective for 30 years.

7. National forms and fees. There is an effort to establish the same forms for filing in every state and to nationalize filing fees. Uniformity, therefore, is intended to go to the administration of filing as well as to the basic law.

CONSUMER TRANSACTIONS

In the 1998 revisions to Uniform Commercial Code, Article 9, there are special provisions for secured transactions in which the debtor is a consumer. A "consumer transaction" is defined to be one in which an individual incurs an obligation primarily for personal, family, or household purposes, a security interest secures the obligation, and the collateral is held or acquired primarily for personal, family, or household purposes. Most consumer secured transactions are consumer-goods transactions, meaning that an individual purchases an item, i.e. a refrigerator, a couch, and finances the purchase. The item, i.e., the refrigerator, the couch, are the collateral. If the consumer debtor defaults on the debt, the item is repossessed. The 1998 revisions make a distinction between a consumer debtor and a consumer obligor. In Article 9, a "debtor" is defined in terms of an interest in the collateral. An "obligor" is a person obligated to pay the debt. Usually they are the same person, but there are obligors who are not debtors, i.e., a person who guarantees the payment of the debt for the debtor. Most of the special consumer transaction rules pertain to enforcement of a security interest after the debtor defaults on the basic obligation. Some of these rules are as follows:

1. Right to Redeem. A consumer-goods transaction debtor may not waive the right to redeem collateral taken to satisfy the debt, a right which all debtors have. Redemption is the right under Article 9 that collateral be returned to the debtor if the debt is satisfied after a default. Commercial and business debtors are able to waive that right as part of credit acquisition. Consumer debtors will not be able to waive their right.

2. Process Presumption. In an action against a secured creditor for errors in enforcement and collection process, the presumption is that the collateral is worth the debt. In order to establish a deficiency, a creditor must rebut the presumption. These rules do not apply to consumer transactions. The courts will determine the rule to apply in consumer transactions and could choose a different rule.

3. No Dual Status Rule. The 1998 revisions to UCC Article 9 provide that the same collateral may secure a purchase-money security interest and a non-purchase-money security interest. This "dual status" rule is adopted in the 1998 revisions to Article 9, rejecting the opposing "transformation" rule applied in some pre-1998 court cases. Because the "dual status" rule may limit the benefit of purchase money security interests, consumer-goods transactions are excepted from its application. In a consumer-goods transaction, the courts must determine the appropriate rule to apply.

4. Pre-Payment Rights. Amendments to Article 2 of the Uniform Commercial Code that accompany the 1998 revisions to Article 9 provide greater protection for a consumer buyer of goods who pays in whole or in part before delivery of the goods. The buyer has an enforceable interest under Article 2 that allows the buyer to obtain the goods.

5. FTC Rule 433. A consumer's rights under Federal Trade Commission Rule 433 on preservation of claims and defenses are specifically recognized in the 1998 revisions to Article 9, and will continue even if the required notification in the appropriate record is missing.

6. Deficiency Statement. A consumer-goods debtor or consumer obligor is entitled to a written statement which provides the amount of a deficiency (what is owed after collateral is sold to satisfy the debt) and the calculation which results in that amount.

7. No Partial Satisfaction. A secured party may not accept collateral as partial satisfaction of a consumer obligation.

8. Sufficient Description. A description of consumer goods, a security entitlement, a security account, or a commodity account that is by category only is not a sufficient description when there is a consumer transaction. A security entitlement, a security account and a commodity account are types of investment property under Article 8 of the Uniform Commercial Code.

GOOD FAITH

The 1998 revisions to Article 9 adopt the more "objective" good faith standard: "honesty in fact and observance of reasonable commercial standards of fair dealing."

DEFAULT AND ENFORCEMENT

When a debtor defaults on an obligation secured under Uniform Commercial Code, Article 9, a secured creditor has a right to take the collateral, sell that collateral, and apply the proceeds to pay off the debt. If the proceeds are insufficient to satisfy the debt, there may be a deficiency that the debtor will be obligated to pay. The creditor will be entitled to pursue the deficiency with the creditor's remedies available under other law. If there is a surplus after sale, that surplus will be the debtor's, unless other creditors act to obtain satisfaction of their debts, as well. Strict foreclosure is an alternative to sale. The creditor keeps the collateral in a strict foreclosure. The procedures under Article 9 are generally non-judicial procedures. (Although a creditor may seek enforcement in court.) Usually the secured creditor will repossess the collateral and pursue the available remedies without a court proceeding. Article 9 has its own procedural requirements for creditors. Not following them may mean that a creditor will not obtain a full remedy under Article 9.

The 1998 revisions do not fundamentally change the rules for enforcement of a security interest upon a debtor's default. The revisions provide for problems perceived in enforcement prior to 1998. Some of the important changes are as follows:

1. Secondary Obligors. A secured party owes duties to "secondary" obligors on the secured debt. A secondary obligor is liable for a debt only if the primary obligor does not satisfy the debt. A guarantor is an example. There are notifications that must be given to known secondary obligors by secured parties upon default. Contrary to the law of suretyship, the 1998 revisions generally prohibit waiver of rights by a secondary obligor. A secondary obligor can waive notification of disposition of the collateral, and (in a non-consumer transaction) the right to redeem, but only after the default has actually taken place.

2. Deposit Accounts. The enforcement rights of a depository bank holding a security interest in a deposit account are expressly provided for. Security interests in deposit accounts under Article 9 were not possible before the 1998 revision.

3. Warranties. A secured party is subject to warranties of title, quiet possession and the like, applicable under other law (usually Uniform Commercial Code, Article 2), including rules for their exclusion or

modification when disposing of collateral.

4. Notification of Junior Creditors. A secured party taking collateral and disposing of it upon default, has a broader obligation to notify other secured parties and lienholders who have filed financing statements against the debtor covering the same collateral than is the case under pre-1998 Article 9. There are specific notification requirements and a requirement for notification within a reasonable time (no less than 10 days after the earliest time of disposition of the collateral).

5. Transfer to a Secondary Obligor from Secured Party. A secondary obligor obtains the rights and assumes the duties of a secured party if it takes an assignment of the secured obligation, agrees to assume the secured party's obligations, or is subrogated to the rights of the secured party. This is not a disposition of the collateral by the secured party, but relieves the secured party of further duties and obligations.

6. Transfer of Title to Secured Party. The 1998 revisions make it clear that a transfer of record or legal title to a secured party in order to facilitate a disposition, is not of itself a disposition of the collateral.

7. Strict Foreclosure. A secured party may accept collateral in partial (except in consumer-goods transactions) or full satisfaction of a debt. Junior claimants rights are accounted for. Acceptance of collateral in satisfaction of a debt is not of itself an unreasonable delay of disposition. Strict foreclosure is permissible if it is commercially reasonable, and unreasonable delay can occur only if the foreclosure itself is not commercially reasonable.

8. Damages for Secured Party's Noncompliance. Secured parties are subject to a "rebuttable presumption" that the collateral value equals the debt if they do not comply with the enforcement procedures and requirements in Article 9 for non-consumer transactions. If there is breach on the part of the secured party, the obligor is credited with the difference between the actual disposition price and the price that would have been paid if the disposition had been conducted in a commercially reasonable manner. The "absolute bar" rule is not mentioned but should be unnecessary (except that it may be selected for consumer transactions).

9. Deficiency Calculation. If there is a procedurally regular disposition that nonetheless fetches a low price, and the disposition is to an insider transferee, the deficiency is calculated on the basis of what the price should have been in a commercially reasonable disposition.



JOHN KNOWLES, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES
SUPPORT SERVICES DIVISION
RECORDER'S OFFICE**

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ANCHORAGE, ALASKA 99501-3564
PHONE: (907) 269-8882
FAX: (907) 269-8912

January 25, 2000

The Honorable Lisa Murkowski
House of Representatives
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 239 - Uniform Commercial Code Revision

Dear Representative Murkowski:

HB239 contains a number of significant revisions of the Uniform Commercial Code in Alaska, including the modernization of the filing system operated by the Recorder's/UCC component in the Department of Natural Resources. As State Recorder, my duties include administration of the state's recording system as well as the Uniform Commercial Code Central File System in Alaska. I strongly support passage of this bill as it would serve to streamline the state's UCC filing system in a number of ways that are important to our customers.

While the bill contains other substantive changes that are important to secured lenders (e.g. making perfection easier, strengthening the purchase money security interest, facilitating foreclosure, etc.), our concern here in the Recorder's/UCC section is primarily with the filing provisions found in proposed Article 5 of AS 45.09. My office, with assistance from the Attorney General's office, had earlier submitted some minor revisions necessary to more closely align the filing provisions of the bill with the national version and to accommodate the implementation of IIB239 under our present processing structure and indexing system. It is my understanding that these recommendations are being incorporated into the bill.

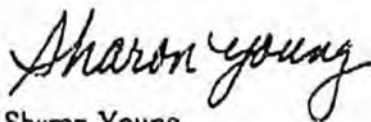
Since the objective of the national UCC revision process is to achieve uniformity in the handling of secured transactions among the states, it is critical that each state's legislation remain as close as possible to the recommended national version. While implementation of this bill would result in an increased workload in our UCC Central office, we anticipate handling this increase through lateral transfers from larger recording offices which would concurrently experience lower filing volumes.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Rep. Murkowski
January 25, 2000
Page Two

Passage of this bill would afford many benefits to our UCC customers. Among other benefits, this bill would eliminate the confusion regarding place of filing by doing away with all local district filings other than fixtures, it would eliminate signature requirements on all filings, it would limit the number of reasons that could be used to reject filings, and it would pave the way for implementation of electronic filings in the future. This is a long overdue step toward bringing real uniformity to the Uniform Commercial Code!

Sincerely,



Sharon Young
State Recorder

Cc: Nico Bus
Admin Services Manager

Linda Kesterson
Assistant Attorney General



January 24, 2000

Representative Lisa Murkowski
State Capitol
Juneau, AK 99801-1182.

RE: House Bill 239
Article 9

Dear Representative Murkowski:

Thank you for the opportunity for our association to comment on HB239.

After careful review, we find this bill to be a benefit to our industry as it simplifies the filing process.

In centralizing the file system, our risk is greatly reduced in searching the system for existing liens on our clients' personal property. We currently search the recording district where the property is located as well as the Central File System. As you can see, there is a larger margin for error if a filing district is missed.

We feel that this bill enhances the uniformity necessary for the Uniform Commercial Code and we support its passage.

Respectfully,

LUCINDA M. ECKERT
Legislative Affairs Chairman
Alaska State Escrow Association
301 W. Northern Lights Blvd.
Anchorage, AK 99503

ALASKA LAND TITLE ASSOCIATION

P. O. Box 241181, Anchorage Alaska 99524-1811

January 24, 2000

Rep. Lisa Murkoswki
State Capitol
Juneau AK 99801-1182

RE: HB239 - Revision of Uniform Commercial Code

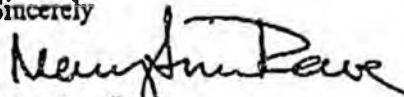
The Alaska Land Title Association represents more than 28 offices and over 400 employees statewide dealing in the title insurance industry.

We have reviewed SB239 and feel that this bill could help streamline the current UCC system in Alaska.

Our association is in full support of HB239 and urge the passage of said bill.

We appreciate your efforts on matters affecting our industry.

Sincerely



Mary Ann Rowe
Legislative Co-Chair



Jeff Blake
Legislative Co-Chair

BRIAN W. DURRELL P.C.
L A W O F F I C E

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February 3, 2000

Representative Lisa Murkowski
Alaska State Legislature
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: HB 239

Dear Representative Murkowski:

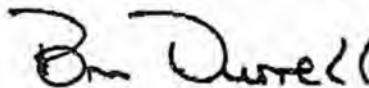
I send this letter to offer my support and endorsement of HB 239, which of course deals with the revisions to AS 45.09 (UCC Article 9). I have had substantial experience working with commercial law matters in Alaska. I spent the first fourteen years of my law career anchoring the commercial law practice at the Anchorage office of Bogle & Gates. Three years ago, I opened my own law office to continue my work in representing Alaska entrepreneurs, businesses and financial institutions in negotiating and documenting a wide variety of commercial transactions. I deal with issues controlled by AS 45.09 on a daily basis.

I believe that it is imperative that Alaska modernize its commercial code provisions to keep them up to date in light of changes in today's business world. I also believe that for Alaska to continue to develop of local, national and international commerce, we must have a set of commercial laws that follow as closely as possible the Uniform Commercial Code, deviating only when necessary to address matters peculiar to Alaska.

For these reasons, I urge the Alaska Legislature to act upon HB 239 so that it may be passed as swiftly as possible this session.

Very truly yours,

BRIAN W. DURRELL, P.C.



Brian W. Durrell

BWD:jk

AlaskaUSA

Federal Credit Union

Honorable Lisa Murkowski
Alaska State House of Representatives
Juneau, AK 99801

February 9, 2000

Dear Representative Murkowski:

Thank you for the opportunity to submit comment on HB 239 regarding proposed amendments to Article 9 of the Uniform Commercial Code (UCC). As you know, the revised Article 9 has been approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) with a target date for adoption in all 50 states by July 2001.

This legislation will not fundamentally alter the law of secured transactions; however, it will introduce numerous significant changes designed to clarify and modernize the current version. While we have not had an opportunity to review the sectional analysis directly associated with HB 239, we have reviewed the comparative information provided by the NCCUSL. We support the early adoption of this legislation and believe it is in the best interest of Alaska's lenders to maintain conformity with other states with respect to the rules associated with secured transactions.

Of particular interest is the introduction in this proposal to the concept of "electronic chattel paper," which refers to chattel paper in the form of a record or records consisting of information stored in an electronic medium. We believe this provision will significantly benefit the efficient and timely execution of secured transaction agreements and filings.

At your request, we have read the amendments being offered by the State Recorder's Office and find no areas of disagreement with their proposals. For the most part, they appear to be "housekeeping" in nature for the purposes of bringing the provisions of the UCC into line with State operational considerations.

This proposal can be somewhat intimidating due to its volume and complexity. It has been twelve years in the making. The benefits associated with Alaska's adoption of these provisions will provide certainty for lenders and with early adoption, the opportunity to transition to the new rules in a comprehensive and sensible manner.

Thank you again for the opportunity to comment. Should you be interested in a more specific discussion of these issues, I invite you to contact Mr. Tom Greene, Alaska USA's Senior Vice President, Consumer Lending, who will be pleased to discuss the implications of this proposal with you in greater detail. He may be reached in Anchorage at (907) 786-2733.

Sincerely,



Nancy Bear Usura
Senior Vice President,
Corporate Development