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1996-2007

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9862 HOUSE JUDICIARY

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

1 the secured party, or accept payment or other performance from the secured party.

2 **Article 5. Filing.**

3 **Sec. 45.09.501. Filing office.** (a) Except as otherwise provided in (b) of this
4 section, if the law of this state governs perfection of a security interest or agricultural
5 lien, the office in which to file a financing statement to perfect the security interest or
6 agricultural lien is

7 (1) the office designated for the recording of a mortgage on the related
8 real property if

9 (A) the collateral is as-extracted collateral or timber to be cut;

10 or

11 (B) the financing statement is filed for record as a fixture filing
12 and the collateral is goods that are or are to become fixtures; or

13 (2) in all other cases, the central filing office of the Department of
14 Natural Resources established under AS 44.37.027, including a case in which the
15 collateral consists of goods that are or are to become fixtures and the financing
16 statement is not filed for record as a fixture filing.

17 (b) The office in which to file a financing statement to perfect a security
18 interest in collateral, including fixtures, of a transmitting utility is the central filing
19 office of the Department of Natural Resources established under AS 44.37.027. The
20 financing statement also constitutes a fixture filing as to the collateral indicated in the
21 financing statement that is or is to become fixtures.

22 **Sec. 45.09.502. Contents of financing statement; mortgage as financing**
23 **statement; time of filing financing statement.** (a) Subject to (b) of this section, a
24 financing statement is sufficient only if it

25 (1) provides the name of the debtor;

26 (2) provides the name of the secured party or a representative of the
27 secured party; and

28 (3) indicates the collateral covered by the financing statement.

29 (b) Except as otherwise provided in AS 45.09.501(b), to be sufficient, a
30 financing statement that covers as-extracted collateral or timber to be cut, or that is
31 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)	1. LESSOR/LESSOR	2. COMBINEE/COMBINEE	3. BAILEE/BAILEE	4. BELLERBUYER	AD. LIEN	NON-UCC FILING
6. THIS FINANCING STATEMENT IS TO BE FILED (for records) (or recorded) IN THE LEGAL JURISDICTION OF:	7. CHECK TO RECORD BY SEPARATE FILING (if an UCC filing)		8. OPTIONAL FILER REFERENCE DATA			
8. LEGAL JURISDICTION	9. ADDITIONAL F.F. #1	10. ADDITIONAL F.F. #2	11. ADDITIONAL F.F. #3	12. ADDITIONAL F.F. #4	13. ADDITIONAL F.F. #5	14. ADDITIONAL F.F. #6

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

1a. ORGANIZATION'S NAME

OR

1b. 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 #: EIN OR EPI ADD'L INFO RE ORGANIZATION DEBTOR **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's ownership interest:

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent and a Estate

Debtor is a TRANSMITTING UTILITY

Filed in connection with a non-recourse home Transaction -- effective 30 years

Filed in connection with a Public-Use -- Transaction -- 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. OFF.

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 or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in 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, if applicable, item 7d, 7e.

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 **ADD INFO RE ORGANIZATION DEBTOR** 7e. **TYPE OF ORGANIZATION** JURISDICTION 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 file # on Amendment form)		
12a. ORGANIZATION'S NAME		
OR		
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME(S) IF ANY
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

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are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under AS 45.09.210, the secured party may claim a security interest only as shown in the statement included in the request as against a person who is reasonably misled by the failure.

Sec. 45.09.626. Action in which deficiency or surplus is in issue. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) a secured party need not prove compliance with the provisions of AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or acceptance unless the debtor or secondary obligor places the secured party's compliance in issue;

(2) if the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in compliance with the provisions of AS 45.09.601 - 45.09.628;

(3) except as otherwise provided in AS 45.09.628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in compliance with the provisions of AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney fees exceeds the greater of

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in compliance with the provisions of AS 45.09.601 - 45.09.628 relating to collection, enforcement, disposition, or acceptance;

(4) for purposes of (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney fees unless the secured party proves that the amount is less than that sum;

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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: