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I. HIGHLIGHTS OF REVISED UCC ARTICLE 9

A. (§6.1) Revised UCC Article 9

The Oregon Legislature enacted most of Revised Article 9 of the Uniform Commercial Code. See 2001 Or Laws ch 445. The legislation took effect on July 1, 2001. 2001 Or Laws ch 445, §205. The intent of the National Conference of Commissioners on Uniform State Laws (NCCUSL) was for Revised Article 9 to take effect in all states on July 1, 2001. Not all 50 states met the deadline; however, Oregon did. See §8.1, infra.

Oregon’s Revised UCC Article 9 is substantially the same as the NCCUSL draft. The Oregon version contains some nonuniform
provisions, the most important of which is the exclusion of agricultural statutory liens. See §6.17, infra. By far the most significant changes in the law are the filing rules (for financing statements) and the related choice-of-law rules.

CAVEAT: Although these changes make perfection of security interests less complicated, the need for the complex transition rules from the old law to the new one unfortunately creates many malpractice traps for the unwary.

In keeping with the historically low number of reported decisions under the UCC in Oregon, there have been only three reported decisions involving UCC Article 9 since the July 1, 2001, the effective date of Revised Article 9. Only one of those cases relates to judicial foreclosure of personal property. For a discussion of that case, see §6.9, infra.

NOTE: The citations to the UCC in this chapter are to Revised Article 9 unless otherwise stated. The citations to the ORS are to the 2005 statutes.

B. (§6.2) Research Tools

The Official Comments (“Comments”) prepared by the NCCUSL for each section of the uniform draft of Revised Article 9 should be the lawyer’s first resource. The Comments will likely become part of the legislative history of the version adopted by the Oregon Legislature. The Comments provide the reasoning of the drafters, illuminate the changes made from old Article 9, and contain many helpful examples and hypotheticals applying the new rules. The following sources may also be helpful:

- JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERICAL CODE, SECURED TRANSACTIONS (5th ed 1999 & Supp 2005). This is a paperback supplement to the authors’ UNIFORM COMMERICAL CODE. It contains an extensive analysis of Revised Article 9.
- ABA Section of Business Law, The New Article 9: Uniform Commercial Code (2d ed 2000). This resource is a paperback with supplements, edited by Corrine Cooper.

The uniform draft of Revised Article 9 is already being applied by judges in a way that the CLARK book calls “soft retroactivity.” 1 CLARK & CLARK, supra, ¶1.01[3], at 1-7. If there is a gap under old
Article 9, courts are applying Revised Article 9 as a clarification of existing law.

C. (§6.3) New Section Numbers

Old Article 9 had just five parts:
• Part 1, Short Title, Applicability, and Definitions
• Part 2, Validity of Security Agreement and Rights of Parties Thereto
• Part 3, Rights of Third Parties: Perfected and Unperfected Security Interests; Rules of Priority
• Part 4, Filing
• Part 5, Default.

Revised Article 9 has seven parts and 12 subparts:
• Part 1, General Provisions:
  — Subpart 1, Short Title, Definitions, and General Concepts
  — Subpart 2, Applicability of Chapter
• Part 2, Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement
  — Subpart 1, Effectiveness and Attachment
  — Subpart 2, Rights and Duties
• Part 3, Perfection and Priority:
  — Subpart 1, Law Governing Perfection and Priority
  — Subpart 2, Perfection
  — Subpart 3, Priority
  — Subpart 4, Rights of Bank
• Part 4, Rights of Third Parties.
• Part 5, Filing:
  — Subpart 1, Filing Office; Contents and Effectiveness of Financing Statement
  — Subpart 2, Duties and Operation of Filing Office
Part 6, Default:
— Subpart 1, Default and Enforcement of Security Interest
— Subpart 2, Noncompliance with Chapter

Part 7, Transition.

D. (§6.4) Transition Provisions

As noted in §6.1, supra, Revised Article 9 took effect in Oregon on July 1, 2001. The first and perhaps most significant malpractice trap is presented by the new law’s complex “transition provisions” (UCC §§9-701 to 9-709), which include several grandfather provisions covering both security agreements and financing statements. If a security agreement is enforceable under the old law before July 1, 2001, but the security agreement would be unenforceable under the new law, then the security agreement remains enforceable for a period of one year (through July 1, 2002). If the defect in the security agreement is corrected under the new law within the one-year grace period, the security agreement is enforceable after July 1, 2002. UCC §9-703.

All financing statements that are effective under the old law as of July 1, 2001, remain effective until their five-year lapse date occurs under the old law. UCC §9-705(c). The statement may then be continued by filing an “initial financing statement in lieu of continuation statement.” UCC §9-706. The initial financing statement in lieu of continuation must be filed in the appropriate state under the new law (in the state where the debtor is located). The new statement can be filed at any time and the new statement will lapse five years after the date it was filed.

Caveat: For the first five years after July 1, 2001, creditors searching for financing statements may have to search in multiple jurisdictions because of the new rules providing for filing the financing statement where the debtor is located. UCC §§9-301, 9-307. See §6.6, infra.

If a security interest is perfected under the old law by a method other than filing and the new law requires filing to perfect, the security interest remains perfected for one year (until July 1, 2002). If the defect in perfection is cured by filing within the grace period, the security interest remains perfected for five years thereafter. UCC §9-705(a).
E. (§6.5) Revised UCC Article 9 Coverage

Revised Article 9 includes commercial bank accounts (ORS 79.0104; UCC §9-104), health-care-insurance receivables (ORS 79.0109(4)(h); UCC §9-109(d)(8)), and software that has been licensed to the debtor (ORS 79.0408, 79.0102(1)(pp); UCC §§9-408, 9-102(a)(42)) as collateral in which a security interest may be granted.

A bank perfects a security interest in a bank account automatically if the account is maintained at the bank. ORS 79.0104(1)(a); UCC §9-104(a)(1). A creditor other than a bank needs an agreement authenticated by the debtor that the bank will pay the money over to the creditor pursuant to the creditor’s instructions or by opening an account in the creditor’s name.

The term health-care-insurance receivables refers to the obligations of health care insurers to doctors and other medical service providers. ORS 79.0102(1)(tt); UCC §9-102(a)(46).

Software is now included in the definition of general intangibles. ORS 79.0102(1)(pp); UCC §9-102(a)(42). The definition of goods includes software that is “embedded in goods,” but software is not a good if the software “consist[s] solely of the medium in which the program is embedded.” ORS 79.0102(1)(rr); UCC §9-102(a)(44). For example, a computer chip incorporated in an automobile engine is software embedded in goods. A software license can be collateral even in the face of an antiassignment clause (see ORS 79.0408(1); UCC §9-408(a)); however, the secured creditor is not allowed to use, sell, or otherwise dispose of the license without the licensor’s consent.

F. (§6.6) Perfection and Filing

As explained in §6.5, supra, a bank perfects a security interest in a bank account automatically if the debtor’s account is maintained at the bank. A creditor other than a bank needs an agreement by the debtor allowing the bank to pay the money over to the creditor pursuant to the creditor’s instructions or directing the opening of an account in the creditor’s name. Under either scenario, perfection is via “control” as provided in ORS 79.0104(1) and UCC §9-104(a). The control agreement among the bank, debtor, and secured party must be authenticated. ORS 79.0104(1)(b); UCC §9-104(a)(2). The secured party “has control, even if the debtor retains the right to direct the disposition of funds from the deposit account” (most cases). ORS 79.0104(2); UCC §9-104(b).