

## Preface

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Secured transactions under Article 9 of the Uniform Commercial Code (UCC) continues to be the most heavily litigated area of commercial law. One-half of the reported decisions on the UCC involve Article 9. In many cases, the forum is the bankruptcy courts, but nearly every state now has important appellate decisions construing various parts of Article 9. This revised edition analyzes in detail this outpouring of case law and provides guidance on all aspects of secured lending.

The most important recent development in secured transactions continues to be the enactment by all states of Revised Article 9, which was promulgated by the Commissioners on Uniform State Laws in 1998 and is now effective in all jurisdictions. This edition of the book incorporates Revised Article 9 throughout. Litigation going on at the present time often involves old Article 9, and will continue to do so for several years. In most situations, old Article 9 case law has relevance to Revised Article 9 and continues to provide guidance to the secured lender because the concepts and rules from the old law are generally carried forward into the Revision.

Besides Article 9 of the UCC, other statutes and regulations that shape the law of secured transactions include the Bankruptcy Code, the Federal Tax Lien Act, the Federal Trade Commission's trade regulation rules for secured consumer lending, and special federal statutes governing intellectual property and agricultural lending. Article 9 continues to occupy center place in the law of secured transactions, but these other statutes must be analyzed as well. In fact, the law in this area has to a surprising extent become "federalized." This book deals extensively with the intersections between Article 9 of the UCC and these various federal statutes and regulations.

This book is aimed at those who deal with personal property security interests, in both commercial and consumer lending. This includes attorneys representing both creditors and debtors, banks, finance companies, credit unions, savings and loan associations under their broadened lending power, retailers, dealers, manufacturers, legal services organizations, specialized lenders such as production credit associations, trustees in bankruptcy, law professors and law students, state and federal judges, and various governmental agencies—to name the most obvious.

The text contains a large number of examples illustrating the rules, as well as suggested language for security agreements, financing statements, continuing guaranties, and other documents. In fact, loan documentation is at the heart of the book.

The book is divided into three parts. The first part analyzes the elements of an Article 9 security interest and treats the subject matter in a way that reflects the organization of Article 9 itself—problems of scope and coverage, how to

perfect a security interest, priority rules, and default. The chapter on default is a long one, indicating the great number of judicial decisions that we continue to see in this area. Unhappily, this is the subject (along with bankruptcy) that generates most interest when economic times are bad in a particular industry or geographic area. The default chapter also discusses elements of lender liability and the perpetual problem of keeping the guarantor on the hook.

The second part of the book takes a detailed look at the two federal statutes that have the greatest impact on Article 9—the Federal Tax Lien Act and the Bankruptcy Code. With respect to bankruptcy, most attention is given to the secured lender’s three devils: the trustee’s avoidance powers, the automatic stay, and adequate protection.

The third part of the book takes a transactional approach to personal property security interests. It contains separate chapters dealing with possessory security interests; the world of agricultural finance; equipment, accessions, and fixtures financing; inventory and accounts receivable financing under the “floating lien”; the financing of executory construction and supply contracts (i.e., “project financing”); consumer credit transactions; the oil and gas loan; and security interests in investment property. It seems apparent that this is a practical way to slice the subject matter, because secured transactions do not occur in the abstract.

The transition from old Article 9 to Revised Article 9 is covered at ¶ 1.01[4]. Even as to transactions predating it, Revised Article 9 is important as a source of legal principles and as a codification of prior law. Where this edition refers to old Article 9, we cite “old UCC” followed by the section number, for example, “old UCC 9-307”; where we refer to Revised Article 9, we cite “Rev. UCC,” for example, “Rev. UCC 9-307.”

Previous editions of *The Law of Secured Transactions* have been well received by those who till the field of secured transactions, and we hope that this revised edition will be even more useful.

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