A Roadmap to Certificate of Title Issues in Revised UCC Article 9

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II. Overview of the Basic Structure of Certificate of Title Analysis in Revised Article 9

A. Introduction

To determine the applicable law covering certificate of title issues under revised Article 9 in a multi-state scenario requires an orderly analysis of revised sections 9-303, 9-311, 9-313, 9-316 and 9-337. The analysis of each of these sections is built on the foundation of the prior sections, so that an analysis which skips any of these sections may be incomplete and yield an incorrect result.

B. Sample Scenario

This overview will consider the appropriate analysis in the context of a typical multi-state problem scenario, where a debtor has created a certificate of title lien entry perfection in one state (State A) in favor of secured party number one (SP1), and State B creates a new title and creates a competing lien in favor of SP2 in State B. Which law applies, State A or State B? Who has priority, SP1 or SP2? This scenario will be discussed more thoroughly in Part VI, but for now consider the basic analytical path to be followed through revised Article 9.

C. Section 9-303

The foundation for certificate of title choice of law is revised section 9-303(a), which provides that the state whose certificate of title "covers" the collateral is the source of the governing law. Section 9-303(b) provides that this occurs when

a proper application for a certificate of title has been made, and section 9-303(a) extends to all other connection with the collateral or parties is required. If the analysis stopped here, in the sample multi-state scenario SP2 wins because State B law will apply with the goods become covered by the state certificate of title (and only SP2 perfected in State B).

But there is more.

D. Sections 9-311 and 9-313

Section 9-311(a)(2) and (b) provide that for certificate of title goods no Article 9 filing is required to perfect a security interest; instead, compliance with the appropriate certificate of title lien entry system is equivalent to filing a financing statement for purposes of Article 9. There is an exception at section 9-311(d)(6) for inventory held for sale or lease or goods on lease, which remain subject to perfection by filing as under old section 9-320(b)(3). There is a new exception at revised sections 9-313(b) and 9-316(c), allowing perfection by possession as a matter of course if collateral subject to perfection by any other lien state (e.g., State A) becomes covered by a certificate of title in another state (e.g., State B). This provision has no counterpart in old Article 9. In the sample scenario, this would allow SP1 toPerfect in State B by repossessing the collateral within four months, thereby achieving continued perfection despite a possible inability to reperfect under the State B certificate of title law due to lack of debtor cooperation. If the analysis in the sample scenario stops here, SP1 could win, upon repossession by possession within the four month period or at a time prior to the State B perfection of SP2. But again there is more.

E. Section 9-316

Section 9-316(d) provides that a security interest perfected in one state (e.g., State A) when the goods become covered by a certificate of title in another state (e.g., State B) remains perfected in the second state (State B) for as long as it would have remained perfected to the first state (State A) had the goods not become so covered. This provides continuing perfection for SP1 pursuant to the law of State B, even if the State A certificate of title and lien entry are cancelled and there is no lien entry in State B. If the analysis stopped here, SP1 would always win, because SP1 will be perfected in State B and unsecured section 9-316(d) this perfection runs continuously from the time of the earlier perfection in State A; thus SP1's date of perfection will always be prior to time to SP2 (or any other claimant in State B). But there is more. Section 9-316(e) qualifies section 9-316(d) by providing that the security interest of SP1 from State A is deemed unperfected for purposes of State B against a purchaser of the goods if there is no reperfection in State B before the State A perfection would otherwise lapse or before the end of four months after the goods became covered by the State B certificate. In some cases this means that SP1 has four months to reperfect in State B in order to prevail over SP2. If

SP1 reperfected in State B before the end of this four month period, SP1 will have continuing perfected (and priority) in State B. If SP1 does not reperfected by the end of this four month period, SP1 will become retroactively perfected as a result of the 9-316(d) where SP2 qualifies as a "purchaser" under section 9-316(e) (but will remain perfected against other claimants who do not qualify as a "purchaser," under section 9-316(d)).

If the analysis stopped here, it would appear that SP1 can remain continuously perfected and thereby prevail over all State B buyers and secured parties under section 9-316(e), by reperfecion in State B (e.g., by possession under section 9-313) before the end of the four month period provided at section 9-316(e). But there is still more.

F. Section 9-337

Section 9-337 is a priority section, not a choice of law or perfection rule like those in sections 9-303, 9-311, 9-313, and 9-316. But it sits astride those other sections extending exceptions to the priority rules that otherwise may flow from those choice of law and perfection rules. Thus one must apply sections 9-303, 9-311, 9-313 and 9-316, determine which law applies, and whether the competing security interests are perfected. The normal priority rules will then apply, but will be subject to the possible effects of section 9-337.

Section 9-337 provides in essence that if a security interest is perfected in State A, and State B issues a "clean" certificate of title that does not show the State A security interest, a non-debtor buyer or secured party who gives value and has no knowledge of the State A security interest will prevail over the State A security interest. In our sample scenario, this...
means that SP2 can override SP1 in State B. If SP2 obtained attachment and possession in its security interest after the goods became covered by a "clean" State B certificate of title, \(1,6\) even if SP1 repossessed it in State B within four months so as to otherwise have a perfected security interest under section 9-316(d) and (e).

G. Summary

In this sample analysis, the pendulum of perfection and priority has swung several times, from section 9-303 (favoring SP2), to section 9-313 (favoring SP1), to section 9-311 (favoring SP2), to section 9-316 (favoring SP1), to section 9-316 (possibly favoring SP2 but also allowing SP1 to repossess within four months), and finally section 9-337 (possibly favoring SPD). To stop anywhere along the line, or to view any of these sections in isolation, would be to risk an incomplete analysis.

Thus an unchanging understanding of the statutory system in Revised Article 9 is essential. But a thorough consideration of the individual issues is also warranted. Some of these are discussed in more detail infra at Parts IV-A1 to X. But first, as background and for comparative purposes, the following Part III A encompasses the adoption and perfection of the choice of law issues for certificates of title under old Article 9.

III. Certificate of Title and Choice of Law Under Old Article 9

A. Old Article 9-103

Under old Article 9, choice of law for goods subject to a certificate of title is governed by section 9-103(2) if the applicable certificate of title requires perfection by notation of the security interest on the face of the certificate of title. \(1,7\) Old section 9-103(2) applies, then perfection and the effects of perfection or nonperfection generally will be governed by the law of the state that issued the current certificate of title. Once a security interest is properly perfected by certificate of title lien entry, it remains perfected upon removal of the goods from that state "until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction." \(1,8\) But no event does the security interest continue to be perfected "beyond surrender of the certificate" in the second jurisdiction. \(1,9\) This apparently was intended to refer to surrender of the certificate of title to the registration authorities in the second or removal state, although the terms "registration" and "surrender" are not defined and there has always been uncertainty as to precisely what they mean. \(1,10\) Thus old Article 9 created a system whereby choice of law for the perfection and priority of a security interest in certificate of title goods generally will follow the state issuing the latest certificate of title. When a certificate of title is reassigned in a second (removal) state which recognizes certificate of title perfection, if the system works as intended, the security interest from the prior state will be perfected by notation on the new certificate of title and priority under the law of the second state will date continuously from the initial perfection in the first state.

As stated in old section 9-103, Official Comment 4(b):

It has long been hoped that "exclusive certificate of title laws" would provide a sure means of controlling property interests in goods like automobiles which, because of their nature, cannot readily be controlled by local or statewide filing alone. In theory, the certificate of title should control and perfect the property interests in the vehicle wherever the vehicle may be.

The widespread adoption of certificate of title lien entry perfection statutes has brought this theory close to reality. The adoption of perfection for this purpose, \(1,11\) or in an ordinary chattel mortgage by the choice of law rules in old section 9-102(1) and the filing rules at section 9-140, is in many cases relatively simple.

Unfortunately, however, the problems have not been eliminated entirely. For one thing, the certificate of title statutes adopted by the various states may differ significantly, both in coverage and content. In particular, the meaning of "registration" and "surrender of the certificate," both crucial terms under old section 9-103(2)(b) and somewhat vague at best, may be different in different states. In addition, there is the uncertain effect of the so-called "four-month rule" at old section 9-103(2). For example, in In re Hargrave and Pettis v. Barrett Bank, \(1,12\) Florida bank repossessed a car long after the certificate of title perfection was noted, but the court held that the certificate was still effective as a "technical perfection." The court held the bank had the "right of possession" even though not listed on the certificate of title. In 1973, the Wisconsin Supreme Court in 1973 rejected the Florida court's holding in another car repossession case, holding that the certificate was not "perfected" in Wisconsin by the Florida certificate of title. \(1,13\) Wisconsin did have a certification provision which it had not used since 1963, since 1973, Wisconsin has had a "Certificate of Title" provision which it has not used since 1973. Wisconsin has not used its "Certificate of Title" provision since 1973.

25. See, e.g., Ans. Pet., 315 F. Supp. 2d 976, 980, 981 (E.D. Wis. 1995); In the State of Wisconsin, the bank was able to perfect its security interest in the car by possession in Wisconsin even though the certificate of title was held by another state. If the certificate of title was held by another state, the security interest was perfected in Wisconsin by possession there even though the certificate of title was not "registered." In Wisconsin, the bank's security interest was perfected by possession in Wisconsin even though the certificate of title was held by another state. If the certificate of title was held by another state, the security interest was perfected in Wisconsin by possession there even though the certificate of title was not "registered." The certificate of title provided a "means of controlling property interests in goods like automobiles which, because of their nature, cannot readily be controlled by local or statewide filing alone. In theory, the certificate of title should control and perfect the property interests in the vehicle wherever the vehicle may be."

26. Id. (citations omitted). See also id. at 976-77 (citations omitted).

27. See infra Part IV-A1 to X.

28. See infra Part IV-A1 to X.

29. See infra Part IV-A1 to X.

30. See infra Part IV-A1 to X.

31. See infra Part IV-A1 to X.

32. See infra Part IV-A1 to X.

33. See infra Part IV-A1 to X.

34. See infra Part IV-A1 to X.

35. See infra Part IV-A1 to X.

36. See infra Part IV-A1 to X.

37. See infra Part IV-A1 to X.
while eliminating the ambiguous concepts of "registration" and "surrender." 19

While Does Perfection Occur? 20
As noted above, there is potential for confusion under old Article 9, by reason of variations between various states and statutes as to what constitutes a "registration" and "perfection" in certificate of title cases. As to perfection, under old Article 9 there are two primary views.21 One view is that perfection occurs upon presentation of the certificate of title documents to the certificate of title registration authorities; the other view is that perfection occurs only if and when the security interest is actually noted on the certificate of title. The distinction may be crucial to the rights of secured parties whose security interests, though properly documented and submitted, are subsequently omitted from the certificate of title through error or fraud.

Two Oklahoma cases, both decided under the same statute, illustrate this point. In Security National Bank and Trust Company v. Richardson,22 a secured party complied with the statutory procedure for notation of a security interest on the certificate of title. As a result of fraud, the certificate of title was released and the debtor obtained a "clean" certificate of title issued in the second state. The secured party in the first state also lost to a buyer in the second state despite the four-month rule.23 Reversing Article 9 confirms this rule and extends it to cover secured parties as well as buyers in the second state,24 while eliminating the ambiguous concepts of "registration" and "surrender."25

Among the most important and basic of the certificate of title matters affected by revised Article 9 is the question of when a security interest in a certificate of title is perfected.26 Revised Article 9 section 9-303 re- solves many of these problems by specifying what rights a buyer of a certificate of title is subject to the local law of the jurisdiction that issued the certificate of title covering the goods, for purposes of perfection and the priority of security interes ts. 27 Rights and "ownership" relationships exist between the goods and the state that the goods are "covered" by a certificate of title when the applicable appropriation is made and the fees are paid. In case law such as Lightfoot, this clarifies that the Illinois certificate of title lien entry should be effective even though the collateral and debtor have left the state. The consequences of this for perfection and priority in the context of interstate priority disputes are discussed further infra at Pt. VII.

Revised Article 9 should address and resolve the issues raised in In re Buige,28 by affirming the decision in that case that a certificate of title is valid even though issued by a state that has no other connection to the goods or transaction.29 Revised Article 9 should also address and resolve problems associated with use of ambiguous terms such as "surrender"and "registration" in o. Article 9 section 9-303(2), by eliminating these concepts and instead providing a clear and simple rule for determination of the application of various states ' laws .31

V. Methods of Perfection Under Revised Article 9
Revised section 9-305(1) provides for automatic perfection upon attachment of a purchase money security interest in consumer goods (similarly to current section 9-301(1)(d)), except for goods subject to a statute described at revised section 9-311(a) (as well as provided in revised section 9-311(d)). Section 9-311 provides as follows:

SECTION 9-311. MEN WITH SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, OR ORDINANCES
(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or ordinance of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property described in Section 9-305(a); 32

[This last certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any non-UCU central filing statute]; or

[Useful in 9-305(b) for sale of goods in V.E, 2].
(d) A certificate of title issued by the business of selling or leasing goods of that kind, this section does not apply to a security interest in collateral created by that person as debtor.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of any third party is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected unless the security interest is being enforced, and any financing statement is revoked or amended as a result of an enforce-ment of a judgment against the security interest in the title collateral.

(c) A security interest described in subsection (d) and Section 9-316(d) and (e), duration and renewal of perfection of a security interest by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty.

(VI. Perfection by possession for Certificate of Title Collateral Revised section 9-311(b) provides that perfection by possession of a certificate of title collateral is by exclusive means of delivery by the owner of certificate of title collateral, but only in the circum-
stances "as otherwise provided in" revised sections 9-313 and 9-316(d) and (e).

Revised section 9-313 provides at section 9-313(b) that perfection by possession of a certificate of title goods is allowed "only in the circumstances described in Section 9-316(d)." This refers to the shift in revised section 9-316, which provides in relevant part as follows:

(d) Except as otherwise provided in subsection (c), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313 are not satisfied before the earlier of:

(i) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(ii) The expiration of four months after the goods become so covered.

While the progression of analysis from revised section 9-311(b) through 9-313 (b) and (c) may not initially appear entirely obvious, the ultimate effect is clear. Essentially revised section 9-316(c) provides that a security interest in title collateral is unperfected as against a purchaser of the goods for value if the perfected possession of a certificate of title by another State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. This is essentially the same as Section 9-313(c).

A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313 are not satisfied before the earlier of:

(i) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(ii) The expiration of four months after the goods become so covered.

While the progression of analysis from revised section 9-311(b) through 9-313 (b) and (c) may not initially appear entirely obvious, the ultimate effect is clear. Essentially revised section 9-316(c) provides that a security interest in title collateral is unperfected as against a purchaser of the goods for value if the perfected possession of a certificate of title by another State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered. This is essentially the same as Section 9-313(c).
Under old Article 9, the answer is not clear, and may depend on whether the debtor "surrendered" the State certificate of title in order to obtain the State certificate of title in State B. It may also depend on whether the collateral was real property or personal property. If personal property, the creditor may have a lien on the collateral to secure payment of the debt. If real property, the lien is attached to the property itself. The lien is then subject to the same priorities as other liens on the property.

Under old Article 9, if the debtor defaulted, the creditor could foreclose on the collateral and sell it at a public auction to satisfy the debt. If the proceeds were insufficient to cover the debt, the creditor could sue the debtor for the remaining balance. Under new Article 9, the process is the same, but the lien is automatically transferred to the creditor upon default.

The change in law was intended to simplify the process of enforcing liens and to reduce the burden on creditors. The new law also provides for a more uniform approach to lien enforcement within the state, making it easier for creditors to obtain satisfaction of their debts.

In summary, the new law provides for a more streamlined process for enforcing liens on personal property, including motor vehicles and boats. The lien is automatically transferred to the creditor upon default, simplifying the enforcement process. The new law also provides for a uniform approach to lien enforcement within the state, making it easier for creditors to obtain satisfaction of their debts.

For more information on the new law, see the Department of Motor Vehicles website or consult with an attorney experienced in lien enforcement.

ally cancelled in State B but that SP's security interest nevertheless continues to be perfected under the laws of State A. Thus, under old Article 9, SP's may be wholly unperfected. In some cases SP's may be able to argue that it remains perfect in State A because, e.g., it still holds another title with its lien entered on the certificate, or because a State A certificate of title has been "rendered" within the meaning of old section 9-103(b)(2). But this is an uncertain line of reasoning and an unsatisfactory state of the law. Revised Article 9 resolves these issues by providing at section 9-316(d) for continued perfection of SP's under the law of State B, subject to the possible claims of SP's or another purchaser after four months under section 9-316(e) and possibly subject to section 9-313. The result under revised Article 9 is a more clear-cut line of reasoning that does not depend on varying interpretations of undefined concepts like "surrender." Continuing perfection for SP's is assured, along with a right to repurchase by reposition, subject to clear rules governing competing purchasers at section 9-316(e) and 9-337. As a result, under revised Article 9, SP's should be able to rely on a "clean" State B certificate of title, because of the priority rule at revised section 9-337.1 At the end of four months, unless SP has taken possession of the goods, on default there has been perfected in State B, SP is also safe under section 9-316(e).

But it should be emphasized that, even during that section 9-337 grace period for SP in State B, SP will be protected and have priority under one section 9-337(c), if State B has issued a clean certificate of title and SP perfects its security interest without knowledge of SP's security interest. This is an expansion of the rule of the rule at old section 9-103(d), which protects non-dealer buyers and directly their secured creditors; however, revised Article 9 directly extends its protection to secured parties.

Thus, under revised Article 9 there is the possibility that section 9-316(d) and (e) might give priority to a prior security interest (SP1) from State A under the four month rule. While this is possible under current law, it is clear under revised Article 9. But in revised Article 9 this is subject to section 9-337, directly protecting SP2 if State B has issued a clean certificate of title. Thus under revised Article 9, the State B certificate of title continues to have priority, even during the four month grace period, and the scope of this protection is extended to directly cover secured parties. SP2 will have more protection before and during the four month period after the goods become covered by a State B certificate of title, because of sections 9-313 and 9-316(d) and (e). But because of section 9-337, SP2 will be able to continue relying on the latest certificate of title, absent knowledge of SP1's security interest.

VIII. The Importance of Revised Section 9-337

Revised section 9-337 provides as follows:

SECTION 9-337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A STATE B CERTIFICATE OF TITLE. If, while a security interest in goods is perfected by any method under the law of any other jurisdiction, this State certifies a certificate of title that does not show that the goods are subject to the security interest or contain a statement

that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person that is in business of selling goods of that kind, takes free of the security interest if the buyer gets possession of the delivery of the goods after issuance of the certificate and without knowledge of the security interest;

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Although derived from the choice of law section in old Article 9 (section 9-103(d)), this is a priority rule and is treated as such by being separated from the choice of law rules in revised Article 9. Still, it will operate in a multi-state context.

Section 9-337 addresses priority conflicts that arise when a debtor takes collateral from one state (State A) to another (State B) and obtains a "clean" certificate of title in State B, even without certification of SP1's security interest. Revised section 9-337 assures that the holder of a conflicting security interest from protection under subsection (2).

Revised section 9-337(d) thus provides that, in the above referenced circumstances, the priority of security interests in SP1 is subordinate to a conflicting security interest (e.g., SP2) that is perfected by certificate of title lien entry in the second state (State B). Thus, if even if SP1 has previously reperfected by possession under section 9-313.

As discussed supra, the priority of a security interest perfected by certificate of title lien entry in the second state (as against the priority security interest perfected in the first state) would also be governed to some extent by revised sections 9-305, 9-313, 1-9-31, and 9-309 and (e). The security interest perfected by lien entry in the second state will be recognized under revised sections 9-305, 9-313, and 9-316(a) and (e)

will qualify as a purchaser for value and as having a perfected security interest in the goods in State B. And under section 9-309(d) will be entitled to treat the priority security interest (SP1) as unperfected if the priority security interest (SP1) is not reperfected in State B within four months. As noted supra at Pt. VII, the Article 9 revisions will give the security interest of SP1 perfected by lien entry in State A some enhanced protection before, during and after the four month period after the goods become covered by a State B certificate of title, for example as against a competing lien creditor in State B. However, under revised section 9-337 this enhanced protection does not protect SP1 against: (1) buyers in the business of selling such goods, and (2) a secured party in State B who perfects after issuance of a clean State B certificate of title.

IX. Boot Title Issues

A. Introduction

Financing of pleasure boats involves some unique issues and considerations not encountered with regard to vehicle financing, including such things as the relationship between the federal Ship Mortgage Act and state laws, and variations in state certificate of title laws. In state that this provision to go beyond the equivalent variations for vehicles. For example, federal law may impose a state of principal use requirement for boats that are not federally documented under the Ship Mortgage Act (as a prerequisite to participation in the Coast Guard's Interagency Vessel Registration System), and some states could refer to this system in their boot title statutes, potentially creating a "boot residency" requirement under state law. And under section 9-337, a boat's residency requirement would not have any motor vehicle counterpart. Moreover, the state law still requires perfection of a security interest in a boat in a filing a financing statement, while others have adopted certificate of title lien entry systems. These variations may create inter-state conflicts of laws and tires not encountered in the motor vehicle context. 129 And now the impact of the Article 9 revisions must also be considered.

This article does not seek to identify and resolve every one of these potential issues. This discussion will explore a few issues that have come to your author's attention, with the hope of providing some guidance on the effects of revised Article 9.130

B. Boot "Residency" Requirements

One question is whether revised section 9-305 (allowing certificate of title to be issued in any state regardless of where the boat is apparently located) 129 would override a state residency requirement for boot titles. It is possible that
C. The "Virtual Title" Issue

Revised section 9-303 recognizes that (subject to other applicable laws and requirements) any state can (issue a certificate of title, regardless of where the collateral is located, and further recognizes the law of that state as governing perfection and priority of security interests from that state. The revised section also becomes "covered" by the certificate of title.

While this rule governs only perfection and priority of security interests and would not necessarily be dispositive as to other issues, it does recognize a certificate of title state as applicable for purposes of perfection and priority even though the collateral is located elsewhere, perhaps in a jurisdiction with a boat residency requirement or one that requires perfection by filing. Of course this would require an application for a certificate of title that is otherwise valid in the issuing state.

But once this accomplished the scope of the resulting perfection would be nationwide - the nationwide scope of this perfection and priority rule is intentional and is an important part of revised Article 9.

Thus under revised Article 9 it is possible to have a boat located and used in a state that requires perfection by filing (State A), that is "covered" by a certificate of title with a valid lien entry issued by another state (State B). In this scenario, the lien perfection in State B would be effective and should be recognized nationwide. Moreover, this is true under both old and revised Article 9, though the revisions make it more clear. Hopefully in such a case there would be a cooperative cancellation of any state A certificate of title by the State A and State B titling authorities, so that State A officials would be aware of the State B title. Interested parties would then have a means to monitor the status of the boat's title. But revised Article 9 cannot be expected to eliminate all such problems arising from inconsistent state boat title laws. The obvious solution is for states to adopt a uniform certificate of title law.

As noted, this problem can also arise under old Article 9, at least revised Article 9 provides rules (as discussed in this article) to resolve ambiguities and clarify the priority issues in such circumstances. Of course, many of the other problems will have to await the resolution of nonuniformities and deficiencies in state titling laws, and cannot be eliminated solely by revised Article 9. But in the meantime the Article 9 revisions should help, as further illustrated below.

D. Resolving Boat Title Issues

To summarize the above example under revised Article 9, suppose there is a boat located in State A, which requires perfection by filing, and State B issues a certificate of title covering the boat under section 9-303. There could be a secured party (SP1) perfected by filing in State A and another (SP2) perfected by registration in another state. As noted, this is an existing state and federal problem. Revised Article 9 is not a creature of the revision. Revised Article 9 merely clarifies the correct result and confirms the case law. But clearly, the best solution is for all states to enact a uniform certificate of title law, and revised Article 9.

Another variation of the scenario described above would involve a prior certificate of title lien entry perfection in State B, followed by removal of the boat to State A where there is a subsequent perfection by filing and "registration" of the boat more than four months later. Under old Article 9, there is a risk that the prior lien entry perfection would not be recognized in State A even if the prior (State B) secured party still had the only lien entry on the only outstanding certificate of title. Revised Article 9 should resolve this by specifically continuing to recognize the last certificate of title.

E. Coast Guard VES System

The U.S. Coast Guard has in place a Vessel Identification System (VIS) establishing criteria for participation in the federal numbering system, for boats not subject to the regulations under the lake and Ship Mortgage Act.46 This requires a state boat title law to conform to federal requirements before the state is eligible to participate in the VIS system.

Electrons can participate to mean effective federalization of that state's boat laws.47 To date, to your author's knowledge, no state has elected to participate. But there are strong inducements to do so: a state titling system that meets the federal requirements would allow extension of federal preferred mortgage status to security interests in boats that are not otherwise eligible for federal documentation.48 If this VIS system is adopted by the states, it would, to some extent federalize the law of security interests for boats that are not currently subject to federal documentation, by giving preferred mortgage status to certificate of title liens that the federal government recognizes (or will recognize, if ongoing federal residency requirement).

In such a case other state laws (including Article 9) that are in conflict arguably would be preempted by federal law. This could preempt the Article 9 rules on perfection and priority, and perhaps other issues as well,49 rendering perfection under Article 9 and revised section 9-303 ineffective.

If some states elected to participate in the VIS, and some did not, current problems with nonuniformity and conflicts of laws would only worsen. These issues should be considered by anyone interested in certificate of title transactions. Again, the obvious alternative is for the states to adopt a uniform boat title law.

S. Summary and Conclusions

None of this provides a basis for objecting to revised Article 9 or section 9-303, which merely clarifies the majority rule under existing law. As noted, section 9-303 does not directly interfere with any other state titling law requirements, though it could mean the separation of numbering/registration and titling/perfection in some instances. If this is troubling, the obvious solution is for the state to modernize its law by enacting a uniform boat title law and revised Article 9.

In any event, a state could require numbering for tax purposes in the state where the boat is located, regardless of where the boat is titled. There is no apparent reason why perfection of security interests has been aligned with taxation.

X. Accessions

Revised section 9-335 governs security interests in aircraft.50 This permits creation of a separate security interest in aircraft, subject to the usual perfection and priority rules except that a security interest in an accession will be subordinate to a security interest in the whole accession perfected under a certificate of title lien entry statute.51 This recognizes the priority of certificate of title lien entry perfection with regard to the whole, including accesses.

The separate security interest in the accession may be enforced on default by
removing the accession, but only if the accession security interest has priority over all persons with an interest in the whole. Upon such removal the accession secured party must promptly reimburse any encumbrancer or owner of any interest in the whole (other than the debtor) for the cost of any resulting repairs to the whole necessitated by the removal (but not for any diminution in value of the whole caused by the removal). The person entitled to such reimbursement may refuse permission for removal of the accession pending receipt of adequate assurance of such reimbursement.

The following extensive Official Comment accompanies revised section 9-335:

Official Comment

1. Source. New. This section replaces former Section 9-314.

2. "Accession." This section applies to an "accession," as defined in Section 9-102, regardless of the cost or difficulty of removing the accession from the other goods, and regardless of whether the original goods have come to form an integral part of the other goods. This section does not apply to goods whose identity has been lost. Goods of that kind are "commingled goods" governed by Section 9-336. Neither this section nor the following one addresses the case of collateral that changes form without the addition of other goods.

3. "Accession" versus "Other Goods." This section distinguishes among the "accession," the "other goods," and the "whole." The last term refers to the combination of the accession and the other goods. If one person's collateral becomes physical to another person's collateral, each is an "accession."

Example 1: SP-1 holds a security interest in the debtor's tractors (which are not subject to a certificate of title law), and SP-2 holds a security interest in a particular tractor engine. The engine is installed in a tractor. From the perspective of SP-1, the tractor becomes an "accession" to the engine, and the engine is the "other goods." The engine is the "other goods." From the perspective of SP-2, the engine is the "accession" and the tractor is the "other goods." The completed tractor-tractor cum engine constitutes the "whole."

4. Scope. This section governs only a few issues concerning accessions. Subsection (a) contains rules governing continuance of a security interest in an accession before an accession is added. Subsection (b) contains rules governing perfection of a security interest in goods that become an accession. Subsection (c) contains general rules governing accessions that become a part of a whole covered by a certificate of title. Subsection (d) governs enforcement of a security interest in an accession. See subsection (c).

5. Masters Left to Other Provisions of This Article: Attachment and Perfection. Other provisions of this Article often govern accession-related issues. For example, this section does not address whether a secured party acquires a security interest in the whole if its collateral becomes an accession. Normally this will turn on the description of the collateral. The first-to-file or first-perfect rule of Section 9-324 would apply in the memory. If, however, SP-1's security interest is a purchase money security interest, Section 9-324(c) would afford priority in the memory to SP-2, regardless of whether the security interest was perfected first.

6. Matters Left to Other Provisions of This Article: Priority. With one exception, concerns goods covered by a certificate of title (see subsection (d)), the other provisions of this Article governing purchase-money security interests determine the priority of most security interests in an accession, including the relative priority of a security interest in an accession and a security interest in the whole. See subsection (c).

Example 3: Debtor owns an automobile subject to a security interest in favor of SP-1. Debtor acquires a perfected security interest in the memory to SP-2. Debtor installs the memory in the automobile, at which time (we assume) SP-1's security interest attaches to the automobile. The financed state law of title to the memory, the first-to-file or first-perfect rule of Section 9-324 would apply in the memory. If, however, SP-1's security interest is a purchase money security interest, Section 9-324(c) would afford priority in the memory to SP-2, regardless of whether the security interest was perfected first.

7. Goods Covered by a Certificate of Title. This section does govern the priority of a security interest in an accession that is or becomes part of a whole that is subject to a security interest perfected by compliance with a certificate of title statute. Subsection (d) provides that a security interest in the whole, perfected by compliance with a certificate of title statute, takes priority over a security interest in the accession. It enables a secured party to rely upon a certificate of title without having to check the UCC files to determine whether any components of the collateral may be encumbered. The subsection imposes a corresponding risk upon those who finance goods that may become part of goods covered by a certificate of title. In doing so, it reverses the priority that appeared reasonable to most pre-UCC courts.

Example 4: Debtor owns an automobile subject to a security interest in favor of SP-1. Debtor acquires a perfected security interest in the memory to SP-2. Debtor installs the memory in the automobile, at which time (we assume) SP-1's security interest attaches to the automobile. The financed state law of title to the memory, the first-to-file or first-perfect rule of Section 9-324 would apply in the memory. If, however, SP-1's security interest is a purchase money security interest, Section 9-324(c) would afford priority in the memory to SP-2, regardless of whether the security interest was perfected first.

X. Repossession Sales

Revised section 9-619 recognizes a "transfer statement" as an authenticated record stating that: (1) the debtor has defaulted on a lease agreement; (2) the secured party has exercised its remedies; (3) as a result of the transferee has acquired the rights of the debtor; and (4) containing the name and mailing address of the secured party, debtor and transferee. This entitles the transferee to all rights of the debtor with regard to the collateral, with respect to any filing, recording, registration, or certificate of title system. Filing officers and others maintaining a filing, registration or certificate of title system are required to accept such statements and amend the system to reflect the ownership change and issue a new certificate of title if appropriate. A fee may be charged.

A transfer of the record or legal title to the secured party does not constitute a disposition of collateral under Article 9 or trigger the Article 9 requirements for a disposition of collateral. The Remover's Comments to section 9-619 provide:


2. Transfer of Record or Legal Title, Partially-beneficial of title, possession of collateral that is covered by a certificate of title (e.g., an automobile) is subject to a repossession or legal title to the record or legal title to the collateral. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as of right or otherwise, the debtor refuses to cooperate, the secured party may have difficultly disposing of the collateral.

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its dispositional remedies under this Part, as well as a transfer to a secured party prior to the exercise of those remedies under federal law. Where subsection (b) transfers of record or legal title, under subsection (b) or other law, to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee in foreclosure. A secured party that has obtained record or legal title retains its rights to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., a certificate of title statute, federal registry rules, or the like) may provide a means by which the secured party may obtain a transfer record or legal title for
the purpose of a disposition of the property under this Article.
The mechanism provided by this section is in addition to any
title-clearing provision under law other than this Article.

XII. Conclusion

Revised Article 9 resolves many uncertainties under prior law and for the
most part codifies the better view as evidenced by the mainstream case law. But
in doing so it makes many changes that present a challenge in terms of assimilating
the new rules. And the full potential cannot be realized without a measure
of uniformity in state certificate of title laws.

**NCCUSL Appoints Study Committee on Certificate of Title Laws**

The National Conference of Commissioners on Uniform State Laws (NCCUSL), which promul
gates uniform laws for enactment by the states and (with the American Law Institute) sponsors the
Uniform Commercial Code (UCC), has appointed a Study Committee on Certificate of Title Laws.

The purpose of the NCCUSL Study Committee is to consider and recommend whether this area
of law is suitable for enactment of a uniform law. If the Study Committee concludes that this area
of law would benefit from updating or increased state law uniformity, the recommendations of the Study
Committee will be considered by NCCUSL in determining whether to appoint a Drafting Commit
tee to draft a new uniform certificate of title law.

The American Bar Association UCC Committee Task Force on State Certificate of Title Laws
has been studying these issues since the early 1990s. The Task Force produced the article on the impact
of revised Article 9 that appears in this issue of the *Quarterly Report*. This article generally supports
the need for greater uniformity in state certificate of title laws. The ABA Task Force is continuing its
efforts and is expected to work with the NCCUSL Study Committee.

The Chair of the NCCUSL Study Committee is Edwin E. Smith of Bingham, Dana LLP in Bos
ton. He has been an active member of the ABA Task Force and contributed to the *Quarterly Re
port* article. He is also a former chair of the ABA UCC Committee, and served on the NCCUSL Drafting Committee for revised UCC Article 9.

The other members of the NCCUSL Study Committee on Certificate of Title Laws are:
William H. Henning, Professor of Law at the University of Missouri-Columbia School of Law; the
Honorable Richard J. Macy, Justice of the Supreme Court of Wyoming; Esson McKenzie Miller, Jr., of
the Division of Legislative Services for the State of Virginia; and Neal Ossen of Ossen & Murphy in
Hartford, Connecticut: (also a member of the ABA Task Force).

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**Appendix**

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