
Thomas A. Harrell

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A. Introduction
Chapter Nine of the Louisiana Commercial Code became effective on January 1, 1990. That Chapter regulates the creation of conventional real security in most movables. It supplants the law of pledge (pawn)
and chattel mortgage with a single device called a security interest. The secured party in possession enjoys about the same rights as a pledgee, and the nonpossessory security interest differs little in substance from a mortgage, or, in the case of intangibles, the pledge or mortgage permitted by the Assignment of Accounts Receivables Act. By separating the consequences of possession from the privilege or priority given by the security, the Chapter permits possession to be gained or lost according to agreement of the parties without otherwise affecting the rights of the secured party.

This guide has been prepared to introduce the student or practitioner to the Chapter and to lead him through its provisions. It is a summary of the Chapter organized functionally and presenting the framework and concepts the Chapter employs to accomplish its purposes. This Article is designed as an aid to the study of the Chapter and as an assistance in organizing and understanding the implications and interrelation of its various provisions.

A summary of a law never reproduces the exact meaning nor captures the nuances of the original; it goes without saying that this work suffers at least from those deficiencies. Resort to the original must be had in all cases to determine the precise limits and application of the Chapter's provisions. In many cases the scope and application of a provision may be limited or expanded by other provisions that are not obvious from law of contracts. Thus, it deals with personal and real property as well as tangible and intangible property. The principal motive triggering the adoption of the Chapter in Louisiana was to achieve some degree of harmony with the laws of other states. Because of the problems that a drastic difference in terminology would engender and because the Act applies to property coming into or leaving the state or that arguably may have its situs in any one of several states, the Louisiana Act leaves the terminology of the Uniform Act unchanged, despite the fact that it does not accurately express the nature of the interests it regulates. To remedy this and still achieve as great a degree of consistency with the Uniform Act as possible, given the differing foundations upon which they are being applied, Section 9-201(4) was added to the Louisiana Act. It declares that when the term "personal property" in the Act is applied to property in Louisiana it means movable property; that "real estate" means immovable property and real rights therein; that "intangibles" and "tangibles" means incorporeal and corporeal property, respectively; and that the terms "lien" and "statutory lien" mean a privilege created by statute (other than a vendor's privilege on immovable property.) Since, for the average practitioner, application of the Chapter to property in Louisiana will undoubtedly constitute his principal concern, the Louisiana terminology has been used throughout this guide and, where the purposes of clarity would be better served, substitution of those terms has been made in quoting the language of the Chapter. The Louisiana terminology is not directly used in the Act, but is only incorporated by reference through Section 9-201. Consequently, it will be obvious to the reader where such substitutions occur and no further notation will be made to indicate that it has been done.

Louisiana's Chapter 9 is codified in La. R.S. 10:9-101 through 9-605 (Supp. 1990), effective January 1, 1990. Unless otherwise noted, citations to the relevant sections of Chapter 9 will be referred to as "Section" throughout this article.
either its language or location in the Chapter. Careful and thoughtful study must be given to the Chapter and especially to the definitions and categories of property it establishes.

Although the substance of a security interest under the Chapter differs little from that of pledge and mortgage, the Chapter works extensive changes in the effectiveness and ranking of conventional security from that which has heretofore prevailed in Louisiana. With a few notable exceptions, until possession of pledged property was obtained or a chattel mortgage was properly filed, the devices were without effect as to third persons. When they became effective they had almost absolute priority over all rights in or over the property arising thereafter, but then were inferior to nearly all such claims preceding their effectiveness. Knowledge of the pledge or mortgage was irrelevant, actual possession or recordation being the *sine qua non* of effectiveness.

The Chapter on the other hand, contains an intricate system of rules regulating the rights of third persons who acquire interests in or over the property and determining priority among competing creditors. Under these rules considerable importance is placed upon the presence or absence of knowledge of unfiled or unpossessed security and upon whether there has been actual reliance by the giving of present value or consideration by third persons. These factors ordinarily have been less important in Louisiana law, and an understanding of the way the Chapter works may require some adjustment in the approach and mindset of the Louisiana practitioner encountering it for the first time.

To accomplish its purposes, the Chapter classifies movables into a variety of categories, each of which has its own rules for creation, perfection, and priority. These classifications follow more or less traditional common law categories, and, with one or two exceptions, they are easily translatable into Louisiana property concepts. They should present few problems to the practitioner once the terminology is mastered.

The Chapter does more than regulate security in movables. It also governs the sale or other transfer of most incorporeal obligations for the payment of money that are not in negotiable form. To this extent the Chapter supersedes the Civil Code articles on the assignment and

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2. Particular care must be taken to consult Chapter 1 of the Commercial Code, located in Title 10 of the Louisiana Revised Statutes, which contains a number of important definitions expanding or restricting the apparent meaning of several terms used in the Chapter.

3. This guide attempts to mention, but does not explore in depth, some areas in which problems peculiar to Louisiana may exist because of differences between the Louisiana law of obligations and property and the contract and property law prevailing in other states.
transfer of credits. It contains provisions for the consignment of goods, thereby partially superseding the law of obligations pertaining to that arrangement. The Chapter also prescribes detailed provisions by which a "true" lease of movables (which is not regulated by the Chapter) is to be distinguished from an arrangement disguised as a lease that in fact is a contract of security, which is subject to the provisions of the Chapter. Finally, Section 9-103 has extensive conflicts of law rules governing interstate or multi-state transactions subject to the Chapter.

A mastery of the Chapter requires familiarity with certain fundamental terms used to effect its purposes. A brief summary of these may aid in the understanding of the discussion that follows.

The **security interest** is a right in or over property giving the secured party the right to have the property sold and its proceeds applied in satisfaction of the debt. The secured party in possession of the property is entitled to receive the fruits, revenues, and proceeds from the property and to apply them to the secured obligation. A security interest thus differs little in substance from Louisiana's concept of real security.

A **security agreement** is the contract by which a security interest is created. The security interest is a conventional device. Statutory privileges or "liens" are not security interests.

**Collateral** is the property, corporeal or incorporeal, subject to the security interest.

**Attachment** refers to the time when the security interest becomes effective between the parties. It ordinarily occurs when there is a completed security agreement and the debtor has a sufficient interest in the collateral to encumber it.

**Perfection** refers both to the steps a secured party must take to make the security interest fully effective against third persons and the status of a security interest as to which such steps have been taken. Perfection ordinarily contemplates possession by the secured party or the filing of a notice of the security agreement in the appropriate records, although some security is temporarily given perfected status before such steps are taken.

A **financing statement** is the notice that is filed in the appropriate records perfecting a security interest by giving publicity to the fact that it may exist. The security agreement may itself be filed as such a statement if it contains adequate information.

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II. INTRODUCTORY PROVISIONS, DEFINITIONS, AND CLASSIFICATIONS

A. The Security Interest—Nature, Scope, And Coverage

A security interest is defined as "an interest in movable property or fixtures which secures payment or performance of an obligation." Section 9-102(1)(a) also effectively defines the interest by providing that, except as expressly excluded by its other provisions, the Chapter applies to any transaction (regardless of its form) that is intended to create a security interest in movable property, corporeal or incorporeal, or in fixtures. Section 9-102(b)(2) declares that the Chapter applies to "security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security." This section also notes that the Chapter "does not apply to statutory liens and privileges except as expressly provided herein."

From the provisions mentioned one can conclude that, with a few exceptions, conventional real security in movables may only be effected by the creation of a security interest. No particular words are necessary to create the interest, and any contract evidencing an intention to give security in movable property, no matter how expressed, should be adequate to do so. It is also theoretically unnecessary to modify the chattel mortgage or pledge forms formerly in usage in Louisiana to create security in movables. There are, of course, several practical reasons why it will be highly desirable to do so.

5. Section 1-201(37). "Fixtures" generally are movables that become component parts of an immovable used for commercial or industrial purposes, excluding things such as ordinary building materials that become an integral part of the land or a building. The concept of fixtures is designed to accomplish what La. R.S. 9:5357 (Supp. 1990) of the Chattel Mortgage Act did by declaring that movables subject to a chattel mortgage remained movable (insofar as the rights of the chattel mortgagee were concerned) when they were installed in an immovable.

6. [The principal test whether a transaction comes under this Article is: is the transaction intended to have effect as security? . . . When it is found that a security interest as defined . . . was intended, this Article applies regardless of the form of the transaction or the name by which the parties may have christened it. . . . The Article does not in terms abolish existing security devices. The conditional sale or bailment-lease for example, is not prohibited; but even though it is used, the rules of this Article govern.

Official Comment to Article 9-102 of the Uniform Commercial Code (Foundation Press 1988). Hereinafter, such comments will be referred to simply as "Official Comments." The comments to Chapter Nine of the Louisiana Commercial Code, prepared by the Louisiana State Law Institute pursuant to 1988 La. Acts No. 528, § 2, will be referred to as "comments." La. R.S. 10:1-102(3) (Supp 1990) notes (perhaps somewhat unnecessarily) that a security interest may be created in an obligation that is itself secured by a transaction or interest that is not subject to the Chapter.
The Chapter also governs a number of contracts that are not security devices. Its provisions cover the sale of "accounts" and "chattel paper." Accounts are essentially non-negotiable obligations for the payment of money (that are not chattel paper) arising from the lease or sale of goods or services. Chattel paper is a written obligation (negotiable or not) secured by a security interest. To this extent the Chapter displaces the Civil Code articles on the transfer or assignment of conventional obligations and modifies somewhat the law regulating the transfer of negotiable instruments.

The consignment of goods is also directly regulated by the Chapter, whether or not the arrangement is in fact truly one of consignment or merely a disguised form of security.7 The term "security interest" is routinely used in the Chapter in a manner that includes the rights of assignees and consignees under such arrangements, and care must be taken to determine if particular provisions of the Chapter are fully applicable to such interests.

B. Property And Transactions Excluded From Coverage

The Act expressly declares that its provisions do not apply to the following property or transactions:8

(1) Security interests to the extent they are regulated by federal law.

(2) The "landlord's lien" and "except as provided in Section 9-310 on priority," a lien given by statute or other rule of law for services or materials.9

(3) Transfers of claims for wages, salary or other compensation of an employee to the extent they are governed by special statute.

(4) Transfers of accounts or chattel paper as part of a sale of the business out of which they arose or solely for the purpose of collection.10

(5) The assignment of a single account in whole or partial satisfaction of a preexisting debt.

(6) The transfer of a right to payment under a contract that is made to an assignee who also is to perform its obligations.

7. Section 9-408. The consignment provisions are discussed in Part XI, see infra text accompanying notes 246-62.

8. All of the exceptions are found in Section 9-104.

9. It is perhaps more accurate to simply state that a statutory privilege is not a security interest, but that the act does to some extent regulate the priority of security interests vis-a-vis privileges.

10. A security interest in such accounts reserved or taken to secure payment of the price of the business or the performance of other obligations would be covered by the Chapter.
(7) The transfer of an interest or claim in or under any policy of insurance "except with respect to life insurance as provided in Sections 9-203(5), and 9-305(2)" and in Sections 9-306 and 9-312 relative to "proceeds" and their priority.

(8) The creation or transfer of an interest in or over immovables except to the extent that the chapter regulates security in fixtures.

(9) The creation or transfer of an interest in or over a lease of an immovable or of the rents derived from such a lease.

(10) To any right of set-off or, presumably, compensation.11

(11) To pledges and assignments of revenues and taxes pursuant to Louisiana Revised Statutes 39:1421-1430 by public entities such as state boards, agencies or commissions and parishes, municipalities, school boards and other similar agencies (as defined in Louisiana Revised Statutes 13:1421) to secure their bonds and other written obligations for the repayment of borrowed money.

(12) "Transactions described in Chapter 7 of Title 12... involving public utility corporations, as to which... pre-existing laws with respect to mortgaging and pledging of movable property shall remain in full force and effect."

(13) Finally, transactions regulated by Parts 1 and 2 of Chapter XII of Title 9 of the Louisiana Revised Statutes as amended "and similar consumer legislation," although not excluded from the coverage of the Chapter, continue to be regulated by such legislation whose provisions are not supplanted by the Chapter.13

The provisions of the Chapter limiting its effects to "movables" and excluding the "transfer of an interest in or over immovables" may present some problems. Civil Code article 473 notes that incorporeals are movable or immovable according to the object to which they apply. In the same vein, Article 470 provides: "Rights and actions that apply to immovable things are incorporeal immovables." The comments to this article, after giving examples of actions that should be classified as

11. This is apparently to negate the suggestion that a right of set-off was itself a security interest that might require compliance with the act to be effective.

12. Chapter 7 of Title 12 of the Louisiana Revised Statutes includes §§ 701-704. In addition to regulating mortgages and bonds issued by "public utilities," § 702 includes mortgages executed by "cable visions companies." The exclusion is ambiguous as to whether it applies to them. 1988 La. Acts No. 171, § 2, extending application of the Chapter to such companies, provides that it shall not be construed as classifying them as public utilities.

13. Section 9-203(4). The parts of the Revised Statutes referred to deal with interest and the Louisiana Consumer Credit Law.
incorporeal immovables, note that the "enumeration of incorporeal immovables is merely illustrative. All rights and actions that have an immovable object are incorporeal immovables." Comment (d) says that the classification of an action should follow the nature of the property involved—an action by an heir to recover a movable being movable and one to recover an immovable being immovable, and so forth. Courts have also held that an interest in a trust comprised of immovable property is immovable. Generally speaking, the courts have recognized that an option to purchase an immovable, a contract to buy or sell an immovable, a trust over immovable property, and so forth, are immovable. Presumably such interests will therefore not be regulated by the Chapter. This distinction may also bring into focus a fact that has frequently been overlooked or ignored under the law of pledge—the provisions regulating pawn in the Civil Code only apply to movables, the pledge of immovables is accomplished by antichresis.\textsuperscript{14} Immovables of the kind described generally were pledged without question by using the Civil Code's provisions on pawn. If the Chapter does not apply to such rights because they are immovable (as it appears is the case) the problem is immediately presented as to how they can be encumbered under Civil Code provisions that likewise are limited to movables.\textsuperscript{15}

C. Definitions

The Chapter defines a number of the terms it uses. Several others are not defined but are so consistently used as to require some comment. Those items that are of general application are discussed below. Others of more limited or specialized application will be considered when they become relevant to the matter under discussion.

A debtor is the obligor of the secured (principal) obligation and, where the context requires, the owner of the movable in which the security interest is created if he is not the obligor of the secured obligation.\textsuperscript{16} Sureties, guarantors, endorsers, and other persons secondarily liable to the secured party are not debtors within the meaning of the Chapter.\textsuperscript{17}

An account debtor is the obligor of an account, of chattel paper, or of a general intangible.\textsuperscript{18}

\textsuperscript{14} Antichresis is probably limited to the pledge of land and other corporeal immovables. See La. Civ. Code arts. 3135, 3176, and 3181.

\textsuperscript{15} La. Civ. Code art. 3135.

\textsuperscript{16} Section 9-105(1)(d).

\textsuperscript{17} Id. This primarily has the effect of removing parties secondarily liable from the notice requirements in the event of default, for example, having the right to demand certain statements from the creditor. There is, of course, no reason why the secondary party may not contract to receive such notices or statements.

\textsuperscript{18} Section 9-105(1)(a).
A secured party is the obligee, from time to time, of the secured obligation, or the person to whom an account or chattel paper has been sold. If the security interest runs in favor of a trustee or other representative of the obligees, the representative is the secured party. Where the context so requires the term also means a consignee, or a person to whom accounts or chattel paper have been sold.

A purchase money security interest is a security interest to the extent that it is taken or retained by the seller of the collateral to secure all or part of the price; or to the extent that it is taken by a person who, by making advances or incurring an obligation, gives value to enable the debtor to acquire rights in or to the use of such collateral if such value is in fact so used.

The term lien creditor is used in the specialized sense of one who has obtained a privilege over property by "seizure, attachment, or the like;" or who is an assignee for the benefit of creditors, from the time of the assignment; or a trustee in bankruptcy from the time of the filing of the petition, and a "receiver in equity" from the time of his appointment. It does not include one who enjoys a lien or privilege over property arising from any other source.

The term immovable or real estate includes immovables and the lease of an immovable.

Mortgage means a conventional mortgage of an immovable and a vendor's privilege over an immovable or a lease of an immovable. The term does not include a judicial mortgage.

A lien or statutory lien is any privilege over a movable or immovable, except the vendor's privilege on immovables.

D. Property Classifications

1. Introduction

Central to the entire scheme of the Chapter is its classification of movables, which is then used to determine the requirements for attach-
ment, perfection, and priority. The classification generally follows the division between corporeals and incorporeals.

Corporeals are called goods. These in turn are divided into consumer goods, farm products, inventory, equipment, and fixtures, according to their nature. Incorporeals have no general synonym such as "goods" or "use." They are classified in a variety of ways, according to their nature, form, terms, or actions that give rise to them.

Because the scheme of classification to some degree depends upon the nature of the collateral, the use to which it is put, and the identity of the debtor, it is possible for the classification of particular property to change from time to time, even while the property is in the hands of the debtor. The classification of goods in particular will frequently change when they are sold or transferred. Ordinarily the classification of the collateral at the time the security interest attaches or is perfected (or in some cases, the classification contemplated by the parties at that time) regulates such attachment and perfection. Attachment and perfection are usually unaffected by later changes in the collateral's classification.

2. The Classification of Goods

The unmodified term goods means all corporeal movables that are not excluded from the coverage of the Chapter as well as fixtures and the unborn young of animals. Goods do not include general intangibles, money, documents, instruments, and accounts (all of which, with the exception perhaps of money, are incorporeals). Standing timber, growing crops, and minerals before they are reduced to possession are also expressly excluded (perhaps somewhat unnecessarily since they are not movables in the first place). Goods are subdivided into consumer goods, fixtures, farm products, inventory, and equipment.

Consumer goods are goods "used or bought for use primarily for personal, family or household purposes." Farm products are agricultural commodities, livestock, and supplies used or produced in farming operations or the "product of such crop or livestock in its unmanufactured state"
that are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations.\textsuperscript{32}

\textit{Inventory} is goods held by a person for sale, lease, or to be furnished under contracts of service; inventory also includes goods that are raw materials, work in process, or materials used or consumed in a business.\textsuperscript{33}

\textit{Equipment} is goods that are bought for use or used primarily in a business (including farming or a profession) or by a debtor who is a non profit organization or a governmental subdivision or agency; also included are goods that do not fall into one of the other classifications.\textsuperscript{34}

The Chapter has rules determining the proper classification of goods that may meet more than one of the criteria set forth above. Because goods that are not consumer goods, inventory, or farm products are classified as equipment, equipment becomes the “residual” classification of corporeals.\textsuperscript{35} The definitions of consumer goods and farm products, inventory, and equipment are mutually exclusive.\textsuperscript{36} Goods that are farm products are neither equipment nor inventory.\textsuperscript{37} Goods that are inventory are not equipment.\textsuperscript{38} The net effect of these rules is that goods that are not consumer goods (a good bought for personal, family, or household usage) but that may fall into more than one of the remaining categories are farm products first, then are inventory, and finally, are equipment. For example, corn held by a farmer is a farm product whether he holds it for sale or for feeding his cattle, and whether or not he raised it or purchased it. Similarly, goods held for lease or to be consumed in manufacturing are inventory, although they also fall within the broad definition of equipment as goods “used primarily in a business.”

\textit{Fixtures} are goods that became component parts of land, buildings and other constructions, and that are used in the conduct of a commercial

\textsuperscript{32} Id. The section gives ginned cotton, wool-clip, maple syrup, milk, and eggs as examples of unmanufactured products.

\textsuperscript{33} Section 9-109(4). Inventory also includes goods held to be furnished under contracts of service if the debtor “has so furnished them.” This contemplates goods supplied in connection with a transaction that may not be technically a lease or sale, such as where one supplies equipment and its operator to another for a fixed price.

\textsuperscript{34} Section 9-109(2).

\textsuperscript{35} Id.

\textsuperscript{36} The Official Comments to Section 9-109 note that the “classes of goods are mutually exclusive; the same property cannot at the same time and as to the same person be both equipment and inventory, for example.” They then declare that in “borderline cases . . . the principal use to which the property is put should be considered as determinative.”

\textsuperscript{37} Section 9-109(3).

\textsuperscript{38} Sections 9-109(4) and 9-109(2).
or industrial activity.\textsuperscript{39} This classification is somewhat different from the others in that the goods that may become immovable may also be consumer goods, inventory, or equipment in the hands of the person who affixes them. The rules relating to fixtures establish when and under what circumstances a security interest continues in the goods after they become immovable and what priority it may have vis-a-vis owners of interests in or over the immovable. Their classification as consumer goods, inventory, or equipment may continue to have relevance for other purposes, as for example, where they are subject to conflicting security interests, all of which have priority over the rights of the owner of the real estate.\textsuperscript{40}

3. \textit{The Classification of Incorporeals}

There is no all-inclusive term, such as goods, to characterize incorporeals. They are divided into instruments, documents, chattel paper, accounts, and general intangibles, with the latter being the residual classification for those that do not fall into one of the other categories.\textsuperscript{41}

\textit{Instruments} include bills, notes and other negotiable instruments as defined in Louisiana Revised Statutes 10:3-104 (1983); corporate stock and other securities defined in Louisiana Revised Statutes 10:8-102 (Supp. 1990); and any other writing "which evidences a right to the payment of money" and "is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment and is not itself a security agreement or lease."\textsuperscript{42}

The first two categories of instruments are clearly defined and easily understood. The last one will be more difficult to apply in Louisiana.\textsuperscript{43}

\begin{itemize}
\item \textsuperscript{39} Section 9-313(1)(a).
\item \textsuperscript{40} For example, a lessee may install financed equipment in a building under a lease that permits him to remove it upon termination. The rules relating to fixtures will regulate whether a mortgagee of the land has a superior claim against the fixtures, and the other rules of the Chapter will regulate the priority of the secured parties, if the mortgagee's claim is deemed not to affect the goods.
\item \textsuperscript{41} The "equipment" category serves the same function for corporeals. Section 9-106. The definitions actually do not explicitly differentiate between corporeals (tangibles) and incorporeals (intangibles). However, any other interpretation leads to an impossible circuity, since goods are defined "to include all things which are movable at the time the security interest attaches except . . . general intangibles [and the other defined categories of incorporeals]." General intangibles are defined to "mean any personal property . . . other than goods . . . [and the other defined categories]." The Official Comments to Section 9-105 note that "collateral, which consists of tangible property is 'goods' . . . For purposes of this Article all intangible collateral fits one of five categories . . . [accounts, general intangibles, documents, instruments, and chattel paper]."\textsuperscript{44}
\item \textsuperscript{42} Section 9-105(1)(j).
\item \textsuperscript{43} Although the definition is somewhat vague, the Official Comments to Section 9-105 state that the term "instruments" is intended to include not only negotiable instruments
\end{itemize}
Furthermore, some of the Chapter’s rules pertaining to instruments are limited to those that are negotiable, thus excluding the last category.

*Documents* are documents of title as defined in Section 1-201 and receipts of the kind defined in Section 7-201. These sections basically comprise warehouse receipts, bills of lading, and similar documents evidencing a person’s right to goods in the hands of a bailee or depositary and his right to transfer them. They also may or may not be negotiable. The Chapter distinguishes between negotiable and non-negotiable documents in some of its provisions.

*Chattel paper* is “a writing, or set of writings that evidence both a monetary obligation and a security interest in, or lease of specific goods.” The classification comprises written obligations that are secured by a security interest, or that evidence rent from the lease of movables. An instrument, written account, or general intangible in writing is chattel paper if it is secured by a security interest in an account or instrument that is itself chattel paper because it is secured by a security interest. The creation of security in instruments and written accounts that are secured by a security interest are thus subject to the rules regulating chattel paper. The negotiation and transfer of negotiable instruments that comprise a part of chattel paper also remain subject to the other provisions of the Commercial Code on such matters.
An account is any right, written or oral, to the payment for goods sold or leased, or for services rendered, that is not evidenced by an instrument or chattel paper, whether or not the right has been earned by performance. It also includes a right to payment arising out of the lease or hire of a vessel whether or not the right is secured.

General intangibles include all other incorporeal movables subject to the Chapter. General intangibles is the residual classification of incorporeals. It includes such things as an interest in a partnership, contractual rights other than those for the payment of money, obligations for the payment of money that do not represent the price of goods or services, and so forth.

The ability to create a security interest in general intangibles is perhaps one of the most significant and useful changes that the Chapter brings to Louisiana law. Before its enactment, the rules for the creation of security in non-moneyed incorporeals, such as interests in partnerships, executory contracts for the performance of services or the delivery of movables, etc., were by no means clear or certain.

III. SECURITY AGREEMENTS—RIGHTS OF PARTIES—TRANSFERS OF SECURITY

A. The Security Agreement—Formal Requirements

A security interest, being conventional, is created by a security agreement. The Chapter only inferentially prescribes the formalities for such an agreement. Minimally, the agreement must be in writing and signed by the debtor, unless the secured party has possession of the collateral pursuant to the agreement. In that case, a verbal agreement suffices. The security agreement must reasonably identify the collateral, and obviously must evidence an intention to create a security interest. Section 9-105(1)(o) indicates that any words expressing a debtor’s intention to give a creditor security in collateral are sufficient evidence of intent.
B. Implied Or Suppletive Provisions And Expressly Permitted Modifications

Scattered throughout the Chapter and in other provisions of the Revised Statutes are several provisions that may be said to represent implied or suppletive conditions of a security agreement. Other provisions expressly permit or prohibit modifications of the Chapter's rules concerning the effect of a security agreement. Of course, the parties are free to regulate the terms and effect of such an agreement within such bounds as do not exceed the limits of its extrinsic nature or violate public policy or some express prohibition of the law.

1. Right to Proceeds

A security agreement implicitly gives the secured party a security interest in proceeds emanating from the collateral. This effect does not necessarily give to the secured party the right to collect the proceeds, although such a right is probably implicit from the transfer of possession of an instrument or goods under which the secured party may collect whatever sums come due as they accrue.

The Chapter expressly provides that a debtor may continue to pay accounts, general intangibles, and chattel paper to his creditor who may have created a security interest in them until the secured party notifies him to the contrary. The Act only expressly authorizes the secured party to give such notice in the case of default. It would accordingly appear that in the case of accounts, unless the agreement expressly provides to the contrary, or unless the transfer is in fact a sale (where such an agreement would be implicit in the nature of the transaction), the secured party is not entitled to notify the debtor and collect the proceeds of accounts, general intangibles, or other movables where the interest is not actually perfected by possession. In any event, it is much more important for the security agreement to define the rights and obligations of the secured party than was formerly the case with pledge and chattel mortgage.

2. Debtor's Right to Obtain Statements from the Secured Party

A debtor from time to time may request the secured party to verify the amount of the secured obligation and a list of the collateral if, in the latter case, the security agreement or other record kept by the secured
party identifies such collateral.\textsuperscript{56} The debtor's request must be in writing and signed by the debtor.\textsuperscript{57} It must state the amount the debtor believes to be the aggregate unpaid balance of the secured debt as of a stated date, and (if appropriate and desired) the request may contain a list of the collateral he believes to be subject to the security interest.\textsuperscript{58}

The secured party must send the debtor a written statement correcting or approving the amount of the obligation and list of collateral (if any) contained in the debtor's request within two weeks after he receives it.\textsuperscript{59} The secured party is responsible for any loss the debtor suffers if, without just cause, he fails to properly respond to the request.\textsuperscript{60} The secured party who claims a security interest in all of a particular type of collateral may so indicate in his reply in lieu of approving or correcting an itemized list of that collateral.\textsuperscript{61} A secured party who fails to properly reply to a request may thereafter only claim a security interest to the extent the collateral is described in the debtor's request as against persons misled by his failure to comply, provided the request was properly made and the debtor's statements of the amount of the obligation and list of collateral were made in good faith.\textsuperscript{62}

A debtor may demand such statements as often as he desires, but if he makes more than one request every six months, the secured party may require him to pay not more than $10.00 for each such additional statement.\textsuperscript{63} The Chapter does not contain any provisions by which a third person (such as another creditor) may obtain verification of the amount or extent of the security without the debtor's concurrence.

\textbf{3. After-Acquired Property}

A security agreement may provide that the collateral will include property acquired in the future, although if the collateral is consumer goods they must be acquired within 10 days of the time the secured party gives value.\textsuperscript{64} A security interest in after acquired property is not deemed to be taken for an antecedent debt if the secured party makes an advance, incurs an obligation, releases a perfected security interest, or "otherwise gives new value" that is to be secured (wholly or partially) by the future collateral and the debtor either acquires his rights to such

\textsuperscript{56} Section 9-208(1).
\textsuperscript{57} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Section 9-208(2).
\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Section 9-208(3).
\textsuperscript{64} Section 9-203(2).
collateral in the ordinary course of business or within a "reasonable time" after new value is given.  

4. Future Obligations

Among creditors holding security interests in the same collateral, the first to perfect by filing a financing statement ordinarily has priority over the others as to the collateral it describes (even as to obligations not contemplated by them at the time of filing). This provision should effectively eliminate the necessity of the so-called collateral chattel mortgage, with its attendant complexity and necessity for separate pledge. In other cases, the Chapter declares that security agreements may cover future advances or "other value," whether they are given pursuant to commitment or are purely optional and result from future agreements by the parties. The matter of priority is discussed hereafter in greater detail.  

5. Provisions Regulating the Use or Transfer of Collateral

A security agreement may permit the debtor to use, commingle, or dispose of all or part of the collateral; collect or compromise accounts or chattel paper; accept the return of goods or make repossessions; or use, commingle or dispose of proceeds. Such provisions, however, do not "relax the requirements of possession" where perfection is dependent upon possession.  

Provisions prohibiting voluntary or involuntary transfer of collateral by sale, judicial process, or the creation of a security interest in it are

65. Section 9-108. The purpose of the section is not to invalidate the security interest, since an antecedent debt is sufficient "value" to support its attachment. It is, rather, "of importance principally in insolvency proceedings under the federal Bankruptcy Act or state statutes which make certain transfers for antecedent debt voidable as preferences." Official Comment 1 to Section 9-108. La. Civ. Code arts. 2036-2044, providing for the revocatory action, do not relate the question of invalidity to when the debt is incurred, but rather make voidable acts of the obligor "made or effected after the right of the obligee arose, that causes or increases the obligor's insolvency." La. Civ. Code art. 2036. Since the after acquired property clause is self-operative and does not depend upon a new act of the obligor (other than acquiring the property) it would appear that in so far as Louisiana law is concerned, the provisions are largely irrelevant.  

66. Section 9-205(3) This provision validates security agreements based upon the purely optional condition that obligations be incurred in the future. It does not, of itself, afford any priority to the security interest. Furthermore, attachment does not occur until "value" is given. Section 9-203(b).

67. See Part VI infra text accompanying notes 160-68.

68. Including "returned or repossessed" goods. Section 9-205.

69. Id. This section also provides that the agreement is not rendered invalid because the secured party fails to require an accounting for proceeds or to replace collateral.

70. Id.
void, although the agreement may make such a transfer an act of default.\textsuperscript{71} A security interest in, or authorization to the debtor to dispose of or use the collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.\textsuperscript{72}

6. \textit{Louisiana Revised Statutes 9:5389 Relative to Additional Sums Secured}

Act 137 of 1989 amended Louisiana Revised Statutes 9:5389 to provide, that a security agreement shall secure "funds advanced by the secured party" for:

1. The "protection, preservation, repair, or recovery of the mortgaged or encumbered property; or"
2. The protection and preservation of the mortgagee's or secured party's security interest thereunder.

Unless the security agreement provides otherwise, all sums so advanced by the secured party are deemed to bear interest at the rate provided under the other secured indebtedness from the date of each such advance. The section further provides that "such provisions" may include that the secured party may, at its sole election, purchase insurance or pay taxes on the mortgaged or encumbered property should the mortgagor or debtor fail to comply with its contractual obligations to do so.\textsuperscript{73}

C. \textit{Restrictions Upon The Creation Or Transfer Of Security Interests}

1. \textit{Transfers of Security Interests and Restrictions Upon Creation or Transfer}

Unlike general Louisiana law, the Chapter does not expressly provide that the assignment or transfer of the secured obligation carries with it an assignment of the security. Neither does it regulate the formal requirements of such an assignment. Nor for that matter, does the Chapter regulate the question of priority that arises if a security interest secures several obligations held by different persons or that are transferred by

\textsuperscript{71} Section 9-311.
\textsuperscript{72} Section 9-317.
\textsuperscript{73} The section, before amendment, provided that a mortgage would secure such advances when it so provided. The amendment by 1989 La. Acts No. 137 changed it in part to provide that every security interest covers such advances without further agreement. However section B still provides that "such provisions" may give the secured party the right to advance such funds etc. How that relates to the section as amended is not quite clear—it is susceptible to the argument that the secured party's right to pay insurance premiums and taxes must be specially agreed to.
the original secured party to different persons. Presumably the prevailing rules, which generally prohibit the assignor from competing in the security against his assignee, would continue.

No contract between an account debtor and an assignor may prohibit assignment of an account or creation of a security interest in a general intangible for money due or to become due or require the account debtor's consent to such an assignment or security interest.\(^7\)

2. **Rights of the Assignee**

An assignment of a security interest perfected by filing must also be made to protect the assignee from subsequent transferees or creditors of the transferor. It is not necessary to make a filing as to transferees or creditors of the original debtor.\(^5\)

An assignee of a security interest, other than one subject to an enforceable agreement not to assert claims (which is discussed hereafter) or that secures a negotiable instrument, takes the interest subject to all the terms of the contract between the account debtor and assignor and any defense or claim arising under it and any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notice of the assignment.\(^6\)

3. **Waivers of Defenses and Warranties**

A buyer or lessee who agrees he will not assert against any assignee a claim or defense that he may have against the seller or lessor may not raise such defenses against an assignee for value, who receives the property in good faith and without notice of a claim or defense, unless the defense is one that could be raised against a holder in due course of a negotiable instrument and, in the case of consumer goods, unless such an agreement is not prohibited by special legislation relating to such goods. Such an agreement is implicit in any security agreement that secures a negotiable instrument given as a part of the same transaction.\(^7\) When a seller retains a purchase money security interest in

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\(^7\) Section 9-318(4). 1989 La. Acts No. 137 added La. R.S. 6:312(E) which provides that "as an exception to R.S. 10:9-318(4), any federally insured financial institution may by contract prohibit or otherwise limit the pledge, assignment, collateral assignment, or granting of any other type of security interest in any deposit account maintained or established at such institution, including those deposit accounts evidenced by certificates of deposit issued by such institution." The provision does not expressly require that the restrictions be noted on the certificates, although one would presume a holder in due course of a negotiable certificate would take free of any such agreement with the depositor.

\(^5\) Section 9-302(2).

\(^6\) Id.

\(^7\) Section 9-206(2).
goods, the law of sale governs the sale and any disclaimer, limitation, or modification of the seller's warranties.\footnote{78}

4. **Right of Secured Party to Modify the Contract**

A contract to which the right to payment has been assigned may be modified or substituted for without consent of the assignee and whether or not he has notified the account debtor.\footnote{79} The rule is subject to the qualification that the contract may not be modified or substituted for to the extent the right to payment has been earned by performance, or if the account debtor has agreed with the secured party that he will not do so.\footnote{80} Furthermore, the modification or substitution must be made in good faith and in accordance with reasonable commercial standards.\footnote{81} The assignment may provide that a modification or substitution of the contract is a breach of its terms.\footnote{82}

5. **Right of Account Debtor to Pay the Assignor**

An account debtor—one who is indebted on an account, general intangible, or chattel paper (even when it secures a negotiable instrument)—may pay the assignor until he is notified that the amount due or to become due has been assigned and that payment is to be made to the assignee. Such a notice is ineffective if it does not reasonably identify the rights assigned. The account debtor who receives such a notice may request the assignee to seasonably furnish reasonable proof that the assignment has been made. If he fails to do so, the account debtor may pay the assignor.\footnote{83}

D. **Rights And Duties Arising From Possession**

The parties may agree that the secured party will have possession of the collateral.\footnote{84} The parties may vary the rights and obligations of the secured party, arising from possession, that are prescribed by the Chapter. Unless they are modified, the secured party in possession of collateral must use reasonable care in its custody and preservation;\footnote{85} he must take steps required to preserve any rights against prior parties to

\footnotesize{
78. Id.
79. Section 9-318(2).
80. Id.
81. Id.
82. Id. These provisions must also be read in light of the provisions of Section 9-104(f) excluding from the terms of the Chapter transfers of a right under a contract "where the transferee is to render the performance."
83. Section 9-318(3).
84. The act does not require the agreement to be in writing.
85. Section 9-207(1).
}
instruments and chattel paper; and he must keep the collateral identifiable, unless it is fungible, in which case it may be commingled.

The secured party may use or operate the collateral to preserve it or its value, or pursuant to the order of a court of appropriate jurisdiction, or, if the collateral is not consumer goods, to the extent such action is permitted by the security agreement. The secured party may repledge the collateral on any terms that do not impair the debtor’s right to redeem it.

The secured party is liable for any loss caused by his failure to comply with his obligations, but he does not lose his security interest. The risk of accidental loss or damage is on the debtor “to the extent of any deficiency in effective insurance coverage.” The secured party in possession may charge the debtor with reasonable expenses (including the cost of insurance, taxes, or other charges) incurred in the custody, preservation, use, or operation of the collateral. The amount the secured party incurs for such purposes are also secured by the collateral.

Unlike Louisiana law, the common law has had difficulty with the concept of possession of incorporeals, therefore accounts and other incorporeals not evidenced by an instrument and transferable by delivery were not subject to pledge. The Uniform Act does not equate notice to the debtor of an account or intangible with giving the secured party the possession of such rights, and is silent as to the obligations of the secured party in such a case.

IV. ATTACHMENT AND PERFECTION

A. Introduction

The terms “attachment” and “perfection” are used to distinguish between the effective creation of the security interest by the parties (i.e. when it “attaches”), and the extent to which further action, such as the transfer of possession or filing of a financing statement, may be required to make the interest fully effective as to third persons (i.e. when it is “perfected”). The concept of “perfection” is complicated by the fact that the security interest is effective against some classes of third persons when it is created (i.e., when it attaches) and also because, in some cases, “perfection” is said to occur upon attachment or to

86. Id.
87. Section 9-207(3)(d).
88. Section 9-207(4).
89. Section 9-207(2)(e).
90. Section 9-207(2)(b).
91. Section 9-207(2)(a).
92. Id.
continue without special action. The most that can be said as a general proposition about the two terms is that when a security interest attaches it becomes effective between the parties and as to certain classes of third persons, depending upon the nature of the collateral. When it is perfected it becomes effective against other classes of persons.

B. Attachment

Attachment occurs when the security interest becomes enforceable against the debtor with respect to the collateral. This occurs when the debtor signs a written security agreement or the secured party has possession of the collateral under the agreement; value has been given; and the debtor "has rights in the collateral." The time of attachment may be delayed by agreement of the parties.

When a security agreement has attached it is effective between the parties, against purchasers of the collateral, and against creditors, including those holding privileges, except as otherwise expressly provided by the Code. The Chapter thus reverses the usual order of persuasion in such matters, which ordinarily places the burden upon the secured party to establish the validity and priority of his security against third persons. A security interest that has attached is effective against all third persons unless one can point to some positive provision of law to the contrary. There are of course many such provisions that are discussed later.

C. Perfection

1. Introduction

Perfection may be accomplished in several ways depending upon the type of collateral and nature of the transaction. The most common methods are filing a financing statement with a clerk of court or obtaining possession of the collateral, either directly or through a third person designated to hold it. Temporary perfection is permitted in a few cases for brief periods pending perfection by filing or taking of possession.

Perfection of security interests in consumer goods is "deemed" to occur upon attachment, therefore special perfection is not required. The

93. Section 9-203(2).
94. Section 9-203(1). The Act thus distinguishes between the time the security agreement is entered into and when the security interest attaches. An agreement to grant security in future property is valid. Section 9-204(1). The security interest does not attach until the debtor has "sufficient rights in the collateral" to create a security interest over it.
95. Section 9-203(2).
96. Section 9-201.
effect of such perfection, as well as that of temporary perfection is limited. Perfection in some particular kinds of property is accomplished by complying with the recordation or registration provisions of certain specialized acts, such as the Motor Vehicle Title Act.

Perfection occurs when all of the applicable steps have been taken and the security interest has attached. Even a "perfected" security interest in certain kinds of property is not valid against certain persons.

The mode of perfection in particular property also may have different effects. Perfection by possession differs little in substance from the concept of pledge that previously existed in Louisiana. Perfection by filing, particularly as applied to goods—i.e. corporeal movables—does embody concepts that are somewhat different from those that have generally prevailed in Louisiana, although the procedures for filing and perfection of incorporeals under the Assignment of Accounts Receivable Act used a similar technique.

Perfection by filing is ordinarily accomplished by filing a financing statement. The security agreement itself is not filed, although it may serve as the financing statement if it contains sufficient information. The financing statement is neither intended nor designed to permit one to determine from the public records whether or to what extent particular collateral may actually be encumbered. The filing merely serves as a warning to the public that a security interest may exist. The statement is required only to identify the debtor, a secured party, and the collateral that may be subject to its terms. A general statement that it covers "inventory," "equipment," "accounts," is sufficient to put third persons on notice that all such property of the debtor, wherever located and whenever acquired is or may be encumbered. No reference to the amount of the debt or its nature is required. Provision is then made for interested persons to obtain from the secured party, through the debtor, verification of the nature and extent of the security and the obligations it secures in the manner previously discussed.

A financing statement may be filed before attachment and even before a security agreement exists or is particularly contemplated by the parties. In such a case perfection does not occur until attachment. Although perfection is generally the point against which the claims of purchasers are measured, filing is the relevant factor in determining priority among other security interests.

The filing of a financing statement gives retroactive effect to the priority of security interests that later attach and are perfected between the parties in the collateral (or type of collateral) it describes or identifies. Such interests have priority over other holders of other security interests.

97. Section 9-303(1).
98. The Assignment of Accounts Receivable Act utilized a somewhat similar vehicle.
in the same collateral whose financing statements are filed later even if their debts are incurred and their security interests attach and are perfected first. It is important to note that even if a particular loan secured by particular collateral is contemplated by the parties, the financing statement is not restricted to any particular loans or debts (and indeed does not even require their amount be stated) nor is it required to be restricted to the collateral described in the financing agreement. Thus, a financing statement covering “all inventory” that is filed in contemplation of particular inventory financing will serve to permit the same parties to incur additional debts secured by any inventory the debtor then or thereafter acquires long after the first loan, and the security interest given by the security agreement for it, is extinguished. A financing statement thus serves as something in the nature of a warrant for the named secured party to thereafter extend credit to the debtor at will with the assurance that he will have priority over others to whom the debtor incurs similar obligations, although such priority is not absolute.

Filing a financing statement gives priority to any security interest granted by the debtor to the secured party in the property (or type of property) it describes as long as it is effective. This permits persons contemplating financing to file their statements before “closing” and having reasonable assurance that their claims will not be outranked by the claims of others who may have acquired some right or interest in the collateral shortly before closing.

A second financier who lends money on collateral that the debtor had previously encumbered to another must not only satisfy himself that the earlier obligations have been satisfied, but must also see that the original financing statement is cancelled from the records by the filing of a termination statement. Otherwise, the debtor can obtain new loans from the first creditor and secure them with a new security interest in the collateral referred to in the original financing statement that will have priority over the interest granted to the second creditor. In some instances perfection by more than one method may be available, or successive methods may be required. If a security interest is properly perfected by more than one method, the interest is deemed to be perfected under each and if the periods of perfection form a continuous term, the perfection is deemed to continue uninterruptedly during such term.99

99. Section 9-303. This section actually only declares that the term of perfection is continuous where there are multiple perfections without an unperfected interval. Perfection by more than one method confers the full benefits of each method during its effective period. For example, a purchase money security interest in consumer goods, is “automatically” perfected, without filing, but it has a limited effect. It can also be perfected by filing and possession. The secured party who perfected by more than one of these
The effect of perfection by filing lapses after a period of time (usually five years) unless a "continuation statement" is filed to extend its effect.\textsuperscript{100} Perfection by possession terminates when possession is lost, although perfection may continue for a brief period if possession is surrendered for certain temporary or limited purposes.

\textbf{2. Perfection by Filing}

\textit{a. Perfection by Filing Required}

A financing statement must be filed in the place and manner directed by the Chapter to perfect a security interest in all cases except the following:

(1) Where perfection by possession is permitted.\textsuperscript{101}

(2) Where temporary perfection occurs in instruments, documents, proceeds, and fixtures, or where perfection temporarily continues upon surrender of possession by the secured party.\textsuperscript{102}

(3) For a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.\textsuperscript{103}

(4) For a purchase money security interest in consumer goods other than a motor vehicle required to be registered.\textsuperscript{104}

(5) For a security interest created by an assignment of accounts that does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.\textsuperscript{105}

(6) For the security interest of a collecting bank given by Section 4-208.\textsuperscript{106}

(7) For the security interest in securities authorized by Section 8-321.\textsuperscript{107}

methods would have whatever protection or rights each method afforded him during the time it was effective. If perfection is obtained and lapses and is then obtained again, the last perfection is given effect as though it were the first time of perfection without regard to the earlier, lapsed perfection.

100. The place, manner, and term of filing are discussed in Part XI. See infra text accompanying notes 263-311.

101. Section 9-302(1)(b). Possessory perfection is authorized by Section 9-305.

102. Section 9-302(1)(b). Temporary possession of instruments and documents is regulated by Section 9-304, and in proceeds by Section 9-306.

103. 9-302(1)(c).

104. 9-302(1)(d). The effect of perfection without filing is limited. Also, if the consumer goods become fixtures, priority with regard to adverse claimants because of their ownership or encumbrances in the real estate, is regulated by the provisions relating to fixtures.

105. 9-302(1)(e).

106. Section 9-302(1)(f).

107. Id.
(8) Where filing a security interest is required to be accomplished under other statutes described in Section 9-302(3).\textsuperscript{108}

(9) When the assignment is one for the benefit of all the creditors of the transferor or is a transfer by the assignee there-under.\textsuperscript{109}

(10) For a security interest in life insurance.\textsuperscript{110}

(11) For a security interests in a ‘‘deposit account.’’\textsuperscript{111}

b. When Perfection by Filing Is Not Permitted

A security interest may be perfected by filing a financing statement in the ordinary manner prescribed by the Act except when the collateral is money or negotiable documents;\textsuperscript{112} fixtures;\textsuperscript{113} an interest in a trust or estate; life insurance; a deposit account; or when compliance with the registration provisions of certain statutes is required by Section 9-302(3).

D. Perfection By Possession

1. When Perfection by Possession Is Required or Permitted

a. Perfection by Possession Required

Security in money is required to be perfected by possession.\textsuperscript{114} Security in instruments (whether negotiable or not) is required to be perfected by possession except when they constitute a part of chattel paper or in those cases where temporary perfection is deemed to occur upon attachment or is deemed to continue upon surrender of possession for certain limited purposes.\textsuperscript{115}

b. Perfection by Possession Permitted

Security in goods, negotiable documents, chattel paper, letters of credit, and advances of credit may be perfected by possession as well as by filing.\textsuperscript{116}

\textsuperscript{108} These regulate filing for motor vehicles, farm products, and statutes of the United States providing for national or international filings such as for airplanes and patents. See Section 9-103.

\textsuperscript{109} Section 9-302(1)(g).

\textsuperscript{110} See Sections 9-302(h) and 9-305(2).

\textsuperscript{111} See Sections 9-302(h) and 9-305(4).

\textsuperscript{112} Section 9-305(1)(a).

\textsuperscript{113} 9-302(1)(d). In the case of fixtures a ‘‘fixture filing’’ is required. Such a filing essentially is the same as an ordinary one except that it must also identify the real estate to which the fixtures are to be attached and name of an owner of it. Section 9-402(1).

\textsuperscript{114} Section 9-304(1).

\textsuperscript{115} Id.

\textsuperscript{116} Section 9-305.
c. Perfection by Possession Not Permitted

Perfection by possession of accounts, general intangibles, and non-negotiable documents is not permitted. The idea that the transfer in pledge of the right to receive or exercise performance of an incorporeal is equivalent to the transfer of possession is not recognized. Although filing is required to perfect such security interests, the rights and obligations of a person holding a security interest in an account who has notified the account debtor of his interest are substantially the same as those of the possessor of chattel paper or an instrument. It is perhaps not improper to consider such a secured party to be in possession of the right in the sense that he is the person who has the right to receive and enforce performance of the obligation.

2. Life Insurance Policies

Perfection of a security interest in a life insurance policy requires:

1. Delivery of the policy (unless the secured party is also the insurer).
2. Delivery to the insurer of a written assignment of the policy.
3. The consent of the beneficiary if such consent is required for attachment.\(^\text{117}\) The requirement for the consent of the beneficiary as a condition to both perfection and attachment insures that there is no "relation back" to the date the insurer is delivered a copy of the assignment if the consent of the beneficiary is thereafter obtained, because perfection in such a case cannot antedate attachment.

3. Deposit Accounts and Securities

A deposit account is defined as "a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization" other than an account evidenced by a certificate of deposit.\(^\text{118}\)

Deposit accounts are excluded from coverage by the Uniform Act. Chapter 9 omits the exclusion and adds Section 9-305(4) providing that a security interest in a deposit account "maintained or established with a third party is perfected by giving notice of the security interest to the

\(^{117}\) All of the requirements are found in Section 9-305(2). Consent of a beneficiary who cannot be changed is required for the security interest to attach. See id.

\(^{118}\) This does, by its terms, exclude so called "uncertificated" deposits regulated by Chapter 8 of Title 10 in the Louisiana Revised Statutes. La. R.S. 10:8-102(1)(c)(ii) (Supp. 1990).
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depositary of the account.’’ The sub-section does not provide (as does the preceding one dealing with life insurance) that a security interest in such an account only may be perfected in the manner it describes. A deposit account not in the form of an instrument is a general intangible, and ordinarily may be perfected by filing. The provisions relating to perfection by notice were probably intended to be exclusive, but one cannot say with certainty that such is the case.

The section provides that if the depositary is the secured party then the security interest is ‘‘automatically’’ perfected, presumably, without further notice, which again would be implicit from the other provisions. The section also provides that the security interest is not prejudiced by the fact that the depositor may withdraw the account. Neither is the granting of a security interest in such an account deemed to be a withdrawal of such funds. This is intended to preclude a later secured party from contending his notice to the depositary who also holds such an interest effects a constructive withdrawal of the funds in his favor, thus defeating the depositary’s interest in those cases where the depositor is permitted to withdraw the funds.

Chapter 8, also adopted by Act 135 of 1989, regulates the creation and priority of security interests in ‘‘securities,” and substantially modifies the rules of Chapter 9 pertaining to attachment, perfection, and priority.

The provisions of Chapter 8 regulating security interest in such securities is not within the scope of this primer.

4. When Perfection by Possession Occurs

Perfection by possession occurs when possession is taken and terminates when possession ceases. When and whether possession has been obtained is determined under the general provisions of law, except for the rules relative to bailees hereafter noted.

Possession of collateral (other than of goods covered by a negotiable document) that is held by a bailee is transferred when the bailee is notified of the secured party’s interest or when the bailee issues a

119. As defined by Chapter 8, a “security” is essentially either (1) “a share, participation, or other interest in property or of an enterprise of the issuer or [(2)] an obligation of the issuer,” which are (1) “of a type commonly dealt in on securities exchanges or markets or commonly recognized in the area in which it is issued or dealt in as a medium for investment,” and (2) “are either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.” La. R.S. 10:8-102(1)(a) (Supp. 1990). In either case the security may be represented by a certificate or instrument, or “may be simply registered upon books maintained for that purpose’’ by the issuer. Id. § 8-102(1)(d) (Supp. 1990).

120. Section 9-305. The effect of such perfection may continue temporarily as noted later in this Part.

121. Section 9-305. The Chapter does not require the notice to be in writing.
document in the name of the secured party.122 Possession of goods in the hands of a bailee who has issued a negotiable document for them is transferred by transferring the document.123 A security interest that is perfected in some other way is not invalid with respect to such goods, but is subordinate to the rights of the holder of the document.124

E. Perfection Without Filing Or Possession

Neither filing nor possession is required to perfect a purchase money security interest in consumer goods, except for motor vehicles that are required to be registered.125

Neither filing nor possession is required to perfect a security interest “created by assignment of accounts” that does not alone or in conjunction with other assignments to the same assignee transfer “a significant part of the outstanding accounts of the debtor.”126 The assignment of a beneficial interests in a trust or decedent's estate is similarly excluded. Presumably, to make such an assignment effective as to the debtor, as well as third persons, notice must be given to the debtor in accordance with the Civil Code provisions concerning the transfer or assignment of rights. An account debtor may continue to deal with the creditor until notified of the security interest.127

F. Temporary Perfection

1. In General

Some security interests are perfected for twenty-one days without either filing or possession. The effect of such perfection is somewhat more limited than if perfection is made by filing.

2. Instruments

A security interest in an instrument is perfected without filing or possession for twenty-one days after attachment, to the extent the interest arises for new value given under a written agreement.128 Perfection by possession of an instrument also continues for twenty-one days after the possession of the secured party ceases if the instrument is delivered

122. Section 9-304(3) Compare Sections 9-304(2) and (3) and Section 9-305 relative to goods covered by negotiable documents.
123. Section 9-304(2).
124. Id.
125. Section 9-302(1)(d).
126. Section 9-302(1)(e).
127. Section 9-318(3).
128. Section 9-304(4).
to the debtor to sell, exchange, present, collect, renew, register, or transfer.\textsuperscript{129}

3. Negotiable Documents

A security interest in a negotiable document is perfected without possession for twenty-one days after attachment to the extent the interest arises for new value given pursuant to a written agreement.\textsuperscript{130} Perfection by possession of such a document also continues for twenty-one days after the possession of the secured party ceases if the document is “made available” to the debtor to sell or exchange the goods represented by it or to load, unload, store, ship, transship, manufacture, process, or otherwise deal with the goods in “a manner preliminary to their sale or exchange.”\textsuperscript{131}

4. Goods for Which a Negotiable Document Has Not Been Issued

A security interest that has been perfected by possession of goods that are held by a bailee continues to be perfected for twenty-one days after the possession of the secured party ceases if the goods are “made available” to the debtor to sell or exchange or to load, unload, store, ship, transship, manufacture, process, or otherwise deal with them in “a manner preliminary to their sale or exchange.”\textsuperscript{132} This rule does not apply when the bailee has issued a negotiable document for the goods.\textsuperscript{133} No provision is made for the temporary continuation of perfection upon surrender to the debtor under a “trust receipt” or similar arrangement of goods in the possession of the secured party himself.

G. Perfection By Compliance With Certain Statutes Or Treaties

A security interest in property subject to the statutes or treaties described below can only be perfected by compliance with their provisions, except as provided in Section 9-103 on multiple state transactions.\textsuperscript{134} The term and renewal of such perfection are also governed by the provisions of the statutes or treaties. In other respects the security interest is subject to the provisions of the Chapter:

\textsuperscript{129} Section 9-304(5)(b).
\textsuperscript{130} Section 9-304(4).
\textsuperscript{131} Id.
\textsuperscript{132} Section 9-304(5).
\textsuperscript{133} The “exception” really does little more than recognize that security in goods for which a negotiable document has been issued is subordinate to the rights of the holder of the document.
\textsuperscript{134} Section 9-302(4).
(1) Statutes and treaties of the United States that provide for a national or international registration or a national or international certificate of title or that specify a place of filing different from that specified in the Chapter for filing of the security interest.\(^\text{135}\)

(2) "R.S. 32:701, et seq., pertaining to motor vehicles" and "R.S. 3:3651, et seq., pertaining to farm products." Security interests created by a person holding such collateral as inventory for sale who is in the business of selling goods of that kind continue to be subject to the ordinary filing provisions of the Chapter.\(^\text{136}\)

(3) Certificate of title statutes of other jurisdictions under whose law indication of a security interest on the certificate is required as a condition of perfection.\(^\text{137}\)

V. Effect Of Attachment Upon Transferees And Buyers Of The Collateral

A. General Principles

Section 9-201 declares that, except as expressly provided to the contrary, a security agreement (whether or not it is perfected) is effective according to its terms not only between the parties, but also as to purchasers of the collateral\(^\text{138}\) and other creditors of the debtor, including those having privileges. There are, of course, numerous exceptions, particularly in the case of unperfected security, that protect most persons dealing with the collateral without knowledge or fair notice of the security interest. Furthermore, the position of ordinary creditors vis-a-vis unperfected security is not changed much by the Chapter.

Lien creditors, i.e. those who obtain a privilege by seizure, are given priority over unperfected security interests. If a judgment is obtained against the debtor and the collateral seized before the security interest is perfected, the seizing creditor wins. If the interest is perfected before seizure the secured party wins. A bankruptcy trustee is also a "lien creditor," having preference over unperfected security interests. Therefore, despite the broad and all inclusive terms of Section 9-201, the Chapter's provisions result in the same "race to the court house" that

\(^{135}\) Section 9-302(3).

\(^{136}\) Id.

\(^{137}\) Id.

\(^{138}\) Section 9-201. Purchaser is essentially defined by Section 1-201 as including anyone who acquires an interest in or over property by any form of voluntary transfer—onerous or gratuitous.
prevails in Louisiana in a dispute between an ordinary creditor and one with security that is not valid as to third persons.

B. Important Terms Defined

1. Categories of Persons Acquiring Interests in the Collateral

The Uniform Act classifies persons who may acquire interests in the collateral in opposition to a security interest in a number of ways, depending upon such factors as whether or to what extent they have given value; whether they are in good or bad faith; and whether they have or should be charged with notice of the interest. In general, the Uniform Act protects only “innocent transferees for value”—those who take without knowledge of a prior security interest before they give value for their interest. The Chapter comes much closer to historic policies of Louisiana depriving a secured party of the benefit of his security if he fails to take the steps necessary to publicize it, whether or not third persons know of it or the transferee has acquired by onerous or gratuitous title. Nevertheless, the terms used in the Chapter concerning transferees and transfers remain relevant. Some of these are discussed hereafter:

The terms transfer and transferee are frequently used in the chapter under circumstance in which the meaning is not entirely clear. Transfer ordinarily refers to goods or corporeals although it also is sometimes used in connection with incorporeals or intangibles. The term ordinarily appears to encompass any form of successor or the creation of any real right in or over the thing. Thus it normally includes the creation of a security interest as well as a transfer of ownership by agreement or involuntarily. Assign and assignment are frequently used with reference to incorporeals and appear to be broad enough to include any form of successor.

A purchaser is expressly defined as one who takes by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift, or any other voluntary transaction creating an interest in property.\(^{139}\)

A buyer in the ordinary course of business is one (other than a pawnbroker) who buys goods in the ordinary course from a person in the business of selling such goods, and who is in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third

\(^{139}\) La. R.S. 10:1-201(32) and (33) (Supp. 1990).
A person is not a buyer if he takes "in bulk" or as "security for or in total or partial satisfaction of a money debt"—such as a security interest or a dation en paiement. A buyer "without knowledge" of a security interest is given special protection by the Chapter in a few places. The distinction between such a buyer and one "in the ordinary course of business" is twofold. First, the goods purchased in the latter case must be of the kind that the seller ordinarily sells in the course of his business. This would normally comprehend inventory, although it is possible that equipment or even consumer goods of the seller could be sold in the ordinary course of his business if they are of the kind in which he usually deals. Second, the buyer in the ordinary course of business may know of the existence of the security interest without affecting his status as long as he is unaware that the sale to him is in violation of its terms. A buyer without knowledge of the security interest is one who is ignorant of the existence of the interest itself.

2. Value, Good Faith, and Knowledge and Notice

Value and the giving of value: A person gives "value" for rights if he acquires them in return for a binding commitment to extend credit or for the immediate extension of credit; as security for or in total or partial satisfaction of a preexisting claim; by accepting delivery pursuant to a pre-existing contract for purchase; or generally in return for any consideration sufficient to support a simple contract. The Chapter distinguishes between the giving of value generally and the giving of "new value." The official comments note that the latter term is deliberately "left without statutory definition."
Good faith: "Good faith" means honesty in fact in the conduct or transaction concerned. 145

Knowledge and notice: The Chapter also distinguishes between knowing a fact; giving notice to or notifying another of a fact; having notice of a fact; and receiving a notice or notification of such a fact. The first expression is concerned with the knowledge a person actually possesses. The others deal with the problems encountered when one person is to communicate with the other in a legally significant manner. 146

A person knows or has knowledge of a fact when he has actual knowledge of it. He has notice of a fact when he either knows of it, has reason to know it exists from all the facts and circumstances known to him, or he receives a notice or notification of it. He receives such a notice or notification when it comes to his attention or it is duly delivered at the place of business where the contract was made or at any other place held out by him as the place for receipt of such communication.

A person gives notice or notifies another when he takes such steps as are reasonably required to inform the person notified in the ordinary course whether or not the other actually learns of it.

C. Validity As Against Purchasers Or Transferees Of The Collateral—General Principles

Although a secured party holding an unperfected security interest is in about the same position with respect to other creditors of the debtor as he was before the enactment of the Chapter, the Chapter makes some changes in the protection afforded the unperfected security interest as against transfers of interests in the collateral itself. Under the prior law, an unpossessed pledge or unfiled chattel mortgage was ineffective as to third persons. Such an interest was dispossessed by the alienation of the property and was subordinate to the imposition of any real right in or over the property. Even a gratuitous transfer would withstand attack by the secured party unless the secured party could bring his action within the ambit of a revocatory action—an expensive and extremely uncertain remedy at best.

Section 9-306 declares that, except as expressly provided to the contrary, a security interest (whether perfected or not) continues in

146. The distinctions discussed here and in the next two paragraphs are all found in id. § 1-201(26) and (27).
collateral notwithstanding its sale, exchange, or other disposition unless the disposition is authorized by the secured party.\textsuperscript{147} The Chapter contains a number of exceptions to the rule, and even perfected security interests may be divested by certain transfers.\textsuperscript{148}

As mentioned above, the exceptions in the Uniform Act appear to be based upon the premise that purchasers for value and in good faith should be protected, but that lack of perfection should not protect either those who gratuitously succeed to the rights of the debtor or who are actually aware of the existence of the security. In some cases the purchaser is protected only "to the extent he gives value." Chapter 9 eliminates many of these distinctions and largely eliminates the effect of the declaration that an unperfected security interest is superior to the rights of purchasers. It is also implicit in the Act that any right or transaction that has priority over or divests a perfected security has the same effect with respect to unperfected security.

\textbf{D. Dispossession Of Security In Goods}

\textit{1. Unperfected Security}

Under the Uniform Act, a "transferee in bulk" or any buyer, including a buyer of farm products, takes free of an unperfected security interest in goods to the extent that he both takes delivery and gives value without notice of the security interest.\textsuperscript{149} Of course, if the buyer is aware of the security interest, then he may still take item free of the interest if the purchase is in the ordinary course and he is unaware that the sale violates the terms of the security agreement, thus making him a buyer in the ordinary course of business.

Essentially, the Uniform Act gives buyers of goods in the ordinary course of business, other than farm products, complete protection from both perfected and unperfected security interests. This protection, it should be noted, is not limited to interests placed on the property by the seller, but includes those antedating his ownership. For example, a security interest on equipment that is sold to a dealer in used items of that kind would be divested if the dealer then sold the goods to a buyer in the ordinary course.\textsuperscript{150}

\textsuperscript{147}. Section 9-306(2).
\textsuperscript{148}. In such cases the amount received or owed by the transferee may well be proceeds over which the security interest rests.
\textsuperscript{149}. U.C.C. § 9-301(1)(c) and (d).
\textsuperscript{150}. If the security interest covers proceeds, as most will, the secured party would enjoy a security interest in the proceeds of the sale by the debtor to the owner of the used equipment. Also, under the common law doctrine of conversion some states would hold the equipment dealer personally liable to the secured party. This doctrine, which is
Under the Uniform Act, if a buyer does not acquire in the ordinary course of business (or if the collateral is farm products) he takes subject to attached but unperfected security interests if he either acquires the collateral gratuitously (does not give value for them) or if he knows of the security interest before he takes delivery of the goods. Furthermore, even if such a buyer is in good faith when he takes delivery, his rights are superior to the unperfected security only to the extent of the value he gives after delivery and before he has notice of the security interest.

Chapter 9 considerably simplifies these provisions. Section 9-301(1)(d) eliminates the distinctions between buyers in the ordinary course and those in good faith, declaring that an unperfected security interest is subordinate to the rights of a purchaser, other than a secured party, who takes delivery or possession of goods or of an intangible before the security interest is perfected. This provision more or less restores the ordinary policy that has prevailed in Louisiana of denying the benefits of security to a creditor who does not take the steps the law declares are necessary to give publicity to his security.

Section 9-301(2) makes one exception to the rule regulating unperfected interests: if the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over a transferee in bulk or lien creditor whose rights arise between attachment and filing.

2. Perfected Security

There are essentially three instances in which a transferee takes free of a perfected security interest in goods. First, a buyer of goods (other than farm products) in the ordinary course of business takes free of such an interest. Second, a buyer for value of consumer goods takes free of a security interest that is perfected without filing if he buys for his own personal, family, or household purposes and without knowledge of the security interest. If the interest is perfected by filing, however, such a buyer takes subject to it. Third, any buyer of goods takes free of a perfected security interest to the extent that it secures advances made more than forty-five days after his purchase or after the secured party has knowledge of the purchase, unless the advances are made not part of Louisiana law, has not generally been applied to hold a third party possessor of mortgaged movables liable simply because they have passed through his hands. It appears to be specifically negated by Section 9-306(2) of the Chapter, which declares that a purchaser of collateral incurs no personal liability on account of an unauthorized transfer to him unless he has conspired with the debtor to defeat the interest of the secured party.

151. Section 9-307(1).
152. Section 9-307(2). A financing statement need not be filed to perfect a purchase money security interest in consumer goods. Section 9-302(1)(d).
pursuant to a commitment entered into before such knowledge or the expiration of such forty-five days.\textsuperscript{153}

E. Dispossession Of Security In Incorporeals

1. In General

The pattern for incorporeals under the Uniform Act generally follows the division between negotiable and non-negotiable obligations. As to the former, one who acquires the rights of a holder in due course is protected under the fundamental rule of negotiability. As to non-negotiable obligations, the Act starts with the ordinary effect of such an obligation—the transferor cannot transfer greater rights than he has. It then makes some exceptions for persons acting in good faith. Chapter 9 has, however, been considerably changed in that Section 9-301(1)(d) declares that an unperfected interest is subordinate to the rights of “a purchaser, other than a secured party, who takes delivery or possession of . . . an intangible before the security interest is perfected.” The Chapter rather clearly eliminates the requirement that value be given and makes knowledge irrelevant. Although the Uniform Act apparently does not contemplate that possession of intangibles can be had unless they are instruments or documents,\textsuperscript{5} Civil Code article 2643 dealing with the transfer of credits, rights, and claims, states that the “transferee is only possessed, as it regards third persons, after notice has been given to the debtor of the transfer.” There appears to be no reason to believe that this provision is not applicable to determine when purchasers of an intangible (not evidenced by a document or instrument) take possession or delivery. It must be remembered that the term “secured party” includes transferees of accounts and chattel paper—so that their rights vis-a-vis each other are dependent upon the provisions regulating priority among secured parties discussed hereafter, rather than those presently under discussion. Furthermore, some other provisions of the Act regulating priority of unperfected security have not been changed—as will also be noted hereafter.

2. Perfected Interests in Negotiable Paper

The provisions of the Commercial Code regulating negotiable paper of various kinds protect some transferees against even perfected security interests. Thus, a person takes a negotiable instrument free of such

\textsuperscript{153} Section 9-307(3). A buyer in the ordinary course of business takes free under the principles previously noted.

\textsuperscript{154} See, e.g., the discussion in paragraph (4) of the Official Comments to Section 9-308 of the Uniform Act.
security interest if he has the rights of a holder in due course under Section 4-208; if he is a holder to whom a negotiable document of title has been negotiated under Section 7-501; or if he is a bona fide purchaser of a security under Section 8-301. Of course, if the security interest is perfected by possession, subsequent assignees will be precluded from obtaining the status required to divest the interest. Furthermore, a secured party who holds such collateral as security may himself be entitled to assert such a status as against those whose claims might otherwise be superior to his.

3. Chattel Paper and Instruments Generally

A purchaser of chattel paper or of an instrument, whether or not it is negotiable, who gives new value and takes possession in the ordinary course of his business acquires free of the security interest, even if it is perfected either by filing or temporarily under Section 9-304 and he acquires without knowledge that the security interest affects the particular paper or instrument. If the security interest is claimed only as proceeds of inventory, he may acquire free of the interest even if he knows the chattel paper or instrument is subject to the security interest.

The provisions regulating instruments and chattel paper generally impart to them what might be called a form of quasi-negotiability (even if the instruments are not negotiable) in that a security interest that is not perfected by possession will be divested by a purchaser in good faith and for value who takes delivery of the instruments or chattel paper in the ordinary course of business. This divestment can be prevented (except as to proceeds) by placing a notice in or on the instrument or chattel paper that a security interest in it has been given to the secured party. The secured party can then perfect his interest by filing.

If the only claim the secured party has to the chattel paper is to the proceeds emanating from the sale of inventory over which he has security, he must take possession of the chattel paper or suffer its loss by a subsequent transfer or encumbrance, even where the purchaser is aware of his claim. This effect prevents all inventory financing from also implicitly including the receivables from the sale of the inventory.

155. Section 9-309 declares that filing under the Chapter does not constitute notice of the security interest to such holders or purchasers.
156. Section 9-308.
157. Section 9-308(b).
158. Unlike the requirements of a buyer of goods in the ordinary course of the seller's business, the provisions under consideration require that the purchase be in the ordinary course of the purchaser's business. The purpose of the provisions is to extend protection to those who are in the business of lending upon or purchasing secured "paper."
A debtor who has created a security interest in his inventory but who has not specifically given the secured party an interest in his chattel paper or instruments, may deal with that paper by discounting it or using it as collateral for other loans. If security in the chattel paper or instrument is bargained for by the inventory financier, a specific security interest to that effect can be included in the security agreement and it will no longer exist "solely" as proceeds of inventory. The provisions under discussion are equally applicable to conflicting claims arising from the sale of instruments and chattel paper as they are to claims arising from the creation of security in them. If the chattel paper is comprised of negotiable instruments, the provisions regulating their negotiability, as well as those described above, must be consulted in any particular case involving conflicting claims.

4. Accounts and General Intangibles

There are no exceptions by which a transferee of accounts in which a security interest has been perfected may take free of the interest. Unless the sale or encumbrance of an account or the encumbrance of a general intangible falls within one of the enumerated exclusions of the act, its effective transfer or encumbrance must be accomplished by the filing of a financing statement. The Civil Code requirement that notice must be given to the account debtor before third persons are bound by a transfer or assignment is superseded to the extent the transaction is regulated by the Chapter. A purchaser (other than a secured party) takes free of an unperfected security interest. This provision is again a deviation from the Uniform Act, which requires the purchaser to also give value and be without knowledge of the unperfected interest.159

F. Other Exceptions

There are exceptions to the priority of security interests, both perfected and unperfected, in situations involving multi-state transactions, proceeds, accessions, products, fixtures, and consignments. These exceptions are noted in connection with the discussion of those topics that follows.

VI. PRIORITY AND RANKING OF SECURITY INTERESTS AMONG CREDITORS

A. Holders Of Statutory Privileges

1. General Rules

159. Section 9-301(c) and (d).
Persons having a privilege over goods in their possession that arises from furnishing services or materials in the ordinary course of their business or who enjoy a privilege "the continued existence of which is dependent upon the possession of the goods by the lien holder," have priority over a security interest, even if it attaches and is perfected before the privilege arises, unless the statute regulating the privilege expressly provides to the contrary. Other privileges are inferior to a security interest without regard to when it attaches or whether it is perfected.

2. Effect on Vendor's Privilege and Right of Resolution

Under the provision referred to in the preceding paragraph, the vendor's privilege on movables is inferior to both perfected and unperfected security interests. This provision, however, does not render the vendor's privilege irrelevant. It still exists and is available for whatever protection it might afford the unpaid vendor. The right of resolution enjoyed by the unpaid vendor would appear to remain unaffected and available in proper cases to the unpaid vendor. Whether it is superior to a later security interest is not clear. A good argument can be made that it is.

B. Holders Of Other Security Interests

1. General Principles

Unperfected security interests rank in the order of attachment until they are perfected. Perfected security interests have priority over unperfected ones. Perfected interests rank in the order of filing or perfection (whichever is earlier). For such purposes the time of filing or perfection of security in proceeds is deemed to be the same date as the filing or perfection of the original collateral with respect to which they are proceeds.

2. Special Priority of Purchase Money Security Interests

a. General Rules

Perfected purchase money security interests are given priority over previously perfected security interests in the following cases.

160. Section 9-310.
161. Section 9-201.
162. Section 9-312(5)(b).
163. Section 9-312(5)(a).
164. Section 9-312(6).
b. Collateral Other Than Inventory

A purchase money interest in collateral, other than inventory, that is perfected when the debtor receives possession or within ten days thereafter, has priority over a conflicting security interest in the same collateral or its proceeds.165

c. Inventory

A purchase money interest in inventory that is perfected when the debtor receives possession of the inventory has priority over another security interest in the same inventory as well as in identifiable cash proceeds from such inventory that are received on or before the delivery of the inventory to a buyer. If the other security interest is perfected in the inventory by filing or temporary possession before the purchase money security interest is perfected by filing, the purchase money secured party must also give notice in writing to the holder of the other interest that he has or expects to acquire a purchase money security interest in inventory of the debtor, describing the inventory by item or type.166

3. Priority of Future Obligations

The provisions relating to future advances are perhaps unduly complicated and even misleading; it read without careful study. Priority, at least between security interests perfected by filing, ranks from the time of filing. As long as the financing statement is effective, priority depends upon time of filing. However, Section 9-312(7) provides that:

If future advances are made while a security interest is perfected by filing or the taking of possession or under R.S. 10:8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases, a perfected security interest has priority from the date the advance is made.

The Official Comments explain the provision as follows:

In general, . . . any secured party takes subject to future advances under a priority security interest while it is perfected through filing or possession, whether the advances are committed or non-committed, and to any advances subsequently made “pursuant to commitment” (Section 9-105) during that period. In

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165. Section 9-312(4).
166. Section 9-312(3).
the rare case when a future advance is made without commitment while the security interest is perfected temporarily without either filing or possession the future advance has priority only from the date it is made. An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.\textsuperscript{167}

C. Other Exceptions

The general rules set forth above are also subject to the following exceptions:

1. The special rules that are set forth in Section 4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds.

2. The rules prescribed in Section 9-103 on security interests involved in multi-state jurisdictions.

3. The provisions of Section 9-114 on consignments.\textsuperscript{168}

VII. SPECIAL CASES: PROCEEDS, ACCESSIONS, PRODUCTS, AND FIXTURES

A. Introduction

The preceding discussion outlines the main structure of the Chapter. Several of its parts regulate exceptional cases of various kinds that must be considered for a complete understanding of the Chapter’s workings.

Four of the cases deal in one way or the other with the legal, economic, or physical transformation of the collateral into other forms of property. Perhaps the most important of these are the provisions on proceeds. This term is used by the Chapter to describe situations where the security in particular collateral is deemed to continue in the fruits, revenues, or other economic benefits derived from the collateral or from its disposition.

The problems encountered when collateral is either physically affixed to another movable or is so incorporated into another movable as to lose its identity are handled by provisions relating to accessions and products. The effect of incorporating collateral into an immovable is determined by the rules pertaining to fixtures.

\textsuperscript{167} Section 9-105(1)(m).
\textsuperscript{168} Section 9-312(1).
B. Proceeds

1. General Principles

A security interest implicitly covers "proceeds" of the collateral. The concept of proceeds includes not only fruits, revenues, and products derived from the collateral, but also amounts received from insurance covering it as well as what is received from its sale, exchange, expropriation, or other voluntary or involuntary disposition whether or not the security interest continues in the collateral in the hands of the transferee. Furthermore, things that are acquired with proceeds or are received from or with respect to them are also proceeds of the collateral. The security interest thus acts in the manner of a general mortgage or privilege, attaching to proceeds without further action, although in some cases additional perfection as to the proceeds may be required. The security in proceeds is also generally deemed to be a continuation of the security in the collateral as though the proceeds were merely a divided part of the collateral. In some cases, because of its nature, the security in proceeds is not given precisely the same priority vis-a-vis third persons as is given to the original collateral.

2. Terms Employed

The unmodified term "proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or of proceeds as well as insurance payable by reason of loss or damage to the extent that it is payable to a person other than a party to the security agreement. Proceeds derived from a sale in execution of the property by another creditor under the Chapter or by judicial proceedings are specifically declared not to be proceeds. This is a provision not found in the Uniform Act. This provision was included to counteract some decisions elsewhere holding that where the holder of a secondary security interest

169. Section 9-203(3).
170. The term "products" in Louisiana property law (and as it is used here) means timber, oil, gas, and other minerals as well as sand, gravel, and other non-recurring substances severed from the soil. The Chapter uses the term to refer to movables that have other things incorporated into them so as to lose their identity.
171. Section 9-306(1). This represents a considerable change in Louisiana law. If a secured party sells the collateral the interest continues to encumber the collateral in the hands of the purchaser, attaches to the price the purchaser pays (or his obligation to pay it), and, assuming they can be traced, it also attaches to movables received or obtained by the original debtor with them.
172. Section 9-306(1).
173. Id.
174. Section 9-306(1).
executed on the collateral and sold it subject to the first security interest, the proceeds received by the foreclosing party were subject to the lien of the first security. Such an interpretation, of course, would make it impossible for a secondary party to ever foreclose on the property.

Proceeds are classified as:

1. **Cash proceeds**, which are money, checks, deposit accounts and the like, or
2. **Non-cash proceeds**, which are all other kinds of proceeds.

Proceeds received from proceeds are also proceeds. For example, if a security interest is perfected in equipment and the debtor sells some of the collateral partly for cash and partly for credit, the interest continues in the collateral, but also attaches to the cash received (as long as it is identifiable) and to the account owed by the purchaser. If the cash initially received from the sale, or from collection of the account, is used to acquire new equipment, or if the debtor invests it in corporate stock, the security interest also attaches to those items. In each case, the degree to which the interest in proceeds is or remains perfected depends upon the special rules discussed below.

3. **Attachment and Perfection in Proceeds**

   a. **In General**

   A security interest that includes proceeds attaches to any identifiable proceeds of the collateral, including collections received by the debtor, and is deemed to be a continuation of the security interest in the collateral.175

   b. **Perfection of the Interest**

   If a security interest in collateral is perfected, the proceeds from it are deemed to be “continuously perfected” (i.e., as a continuation of the perfection in the collateral) for ten days after their receipt by the debtor. Perfection continues thereafter if, before the expiration of the ten days, the secured party perfects the security interest in the proceeds in whatever manner is appropriate for collateral of that type.176

   If a filed financing statement would perfect the security in the proceeds had it been otherwise acquired by the debtor, then no further action need be taken to perfect and the security interest continues. Thus, if a financing statement covers “all equipment” and the debtor uses proceeds to acquire equipment that would be covered by the financing

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175. Section 9-306(2).
176. Section 9-306(3).
statement, the security interest in the proceeds is perfected by filing
upon its acquisition as contemplated by the provisions discussed in the
preceding paragraph.

A security interest in cash proceeds is perfected without further
action if a filed financing statement covers the original collateral and
the cash proceeds are identifiable.\(^\text{177}\)

c. Effect of Debtor's Insolvency

In insolvency proceedings, perfection of an interest in proceeds is
limited to:

1. Identifiable non-cash proceeds;\(^\text{178}\)
2. Separate deposit accounts containing only proceeds;\(^\text{179}\)
3. Identifiable cash proceeds in the form of money that is
   neither commingled with other money nor deposited in a deposit
   account prior to the insolvency proceedings;\(^\text{180}\) and
4. Proceeds in the form of checks and the like that are
   not deposited in a deposit account before the insolvency pro-
   ceedings.\(^\text{181}\)

In these cases, if the proceeds are commingled with other cash that
is not proceeds, or with funds in deposit accounts of the debtor that
are not proceeds, then:

1. They are further subject to any right of set-off the debtor
   has with respect to such cash or account;\(^\text{182}\) and
2. The security interest in such commingled proceeds is
   limited to an amount that is not greater than the amount of
   cash proceeds received by the debtor within ten days before the
   institution of the insolvency proceedings after deducting an amount
   equal to the sum of any payments to the secured party on
   account of such proceeds and of any cash proceeds to which
   the secured party is otherwise entitled that are received by the
   debtor during the ten days.\(^\text{183}\)

d. Return or Repossession of Goods

Because of the interplay between the rules relating to inventory,
proceeds, and account or chattel paper, it is easily possible for conflicts

\[^{177}\text{Section 9-306(3)(b).}\]
\[^{178}\text{Section 9-306(3)(a).}\]
\[^{179}\text{Id.}\]
\[^{180}\text{Section 9-306(4)(a).}\]
\[^{181}\text{Section 9-306(4)(b).}\]
\[^{182}\text{Section 9-306(4)(c)(i).}\]
\[^{183}\text{Section 9-306(4)(c)(ii).}\]
to arise between provisions. Section 9-306(5) establishes the rules for reconciling those conflicts when an account or chattel paper arising from the sale of goods is transferred by the seller to a secured party and the goods are thereafter returned to or repossessed by the seller or by a secured party.

e. Reestablishment of Former Security Interest

If, when the returned or repossessed goods were originally sold, they were subject to a perfected security interest that secured an indebtedness of the seller that is still unpaid when the goods are returned or repossessed, the original security interest attaches again to them and its perfection continues. If the security interest was originally perfected by a filing that is still effective, nothing further is required to continue the perfected status. If the security interest was not originally perfected by filing, the secured party must perfect the interest by filing or taking possession of the goods.

f. Proceeds from Chattel Paper or Accounts Arising from the Original Sale

The unpaid transferee of the chattel paper that was acquired in the original sale of the returned or repossessed goods has a security interest in the returned goods that has priority over a security interest claimed by the transferor of the paper, and also over any interest asserted in them solely as proceeds, to the extent that the transferee of the chattel paper was entitled to priority in the chattel paper under Section 9-308. The transferee of the chattel paper must perfect his security interest in the goods "for protection against" creditors of the transferor of the paper or purchasers of the goods.

An unpaid transferee of an account that arose out of the original sale of the goods has a security interest in the goods against the transferor, but is subordinate to a former security interest in the returned goods that re-attached to them upon their return as described in the first paragraph of this subsection. The transferee of the account must perfect his security interest in the goods "for protection against" cred-

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184. Section 9-306(5)(a).
185. Id.
186. Id.
188. Id. Section 9-308 deals with a purchaser of chattel paper who gives new value for it.
189. Section 9-306(5)(d).
190. Section 9-306(5)(c).
itors of the transferor of the account or purchasers of the goods.\textsuperscript{191}

\section*{C. \textit{Accessions And Products}}

\subsection*{1. Introduction}

Sections 9-314 and 9-315 regulate what are called accessions and products. These rules concern the problems created when goods subject to a security interest are joined or consolidated with another thing or are used or consumed in the manufacture of something—that is, what Louisiana property law ordinarily deals with under the rules regulating accession of movables. The Chapter classifies such accession into two categories:

(1) \textit{Accession} occurs when goods are installed in or affixed to another thing.\textsuperscript{192}

(2) A \textit{product} results when goods are used to manufacture or make other goods, or when goods are so mixed or integrated with, or consumed in the production of, another thing as to lose their identity.\textsuperscript{193}

The two concepts overlap to the extent that accession (when goods are attached or installed to other goods) will frequently also come within the definition of a product (when they are so integrated with the other thing as to lose their identity), and the Chapter permits the parties to a security agreement to contract as to which rules will apply to their interests in such a case.

\subsection*{2. Accessions—Nature and Priority}

A security interest that attaches to goods before they are installed or affixed to another movable—that is before they become accessions—whether or not the interest is perfected, has priority over the claims of anyone asserting an interest in the whole.\textsuperscript{194} A security interest that attaches to goods after they become accessions ordinarily is valid against interests thereafter created in the whole. However, the interest in the accession is invalid against any prior interests in the whole existing when the security interest attaches to the accessions unless the owner of the pre-existing interest consents in writing to the security interest or disclaims an interest in the accessions.\textsuperscript{195}

\begin{footnotesize}
\begin{enumerate}
\item[191.] Section 9-306(5)(d).
\item[192.] Section 9-314(1).
\item[193.] Section 9-315(3).
\item[194.] Section 9-314(1).
\item[195.] Section 9-314(2).
\end{enumerate}
\end{footnotesize}
Notwithstanding the rules mentioned in the preceding paragraph, the following persons acquiring an interest in the whole take ahead of a perfected security interest in goods that have become accessions if they acquire their interest without knowledge of the security interest and before it is perfected:

(1) A subsequent purchaser for value of an interest in the whole (other than the holder of a perfected security interest purchasing at his own foreclosure sale);

(2) A creditor with a lien on the whole obtained by judicial proceedings; or

(3) A creditor with a previously perfected security interest in the whole (to the extent that he makes subsequent advances) before the interest in the accessions is perfected.196

3. Accessions—Right of Removal Upon Default

The holder of a security interest in accessions who has priority over the claims of all persons who have interests in the whole may, on default and subject to the provisions of the Chapter on default, remove his collateral from the whole.197 The holder removing such accessions must reimburse any encumbrancer or owner of the whole (other than the debtor), who has not otherwise agreed, for the costs of repairing any physical injury to the remainder exclusive of any diminution in value of the whole caused by absence of the accessions or the necessity for replacing them.198 A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of the obligation to repair the damage.199 The Chapter is silent as to whether or not, in a judicial sale of the whole, the holder of a security interest in the accessions might obtain a separate appraisal. Under existing principles it would appear he will be able to do so and indeed, if his interest is inferior to the interest in the whole, he will have to do so to preserve his rights.

4. Products—Nature and Priority

If any part of goods that are subject to a perfected security interest become a part of a product or mass of goods, the security interest attaches to and continues in the product or mass if:

(1) The goods are so manufactured, processed, assembled, or commingled as to lose their identity, or

196. Section 9-314(2) and (3).
197. Section 9-314(4).
198. Id.
199. Id.
(2) The financing statement covering the original goods also covers the product into which the goods are manufactured, processed, or assembled.\textsuperscript{200} In such cases the secured party may not claim a separate security interest in the original goods as accessions whether or not they are identifiable and easily removed.\textsuperscript{201}

If several security interests attach to a product or mass because the goods they respectively cover have been incorporated into that product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.\textsuperscript{202} How the rights of such parties would be regulated under Louisiana's procedures for judicial execution is uncertain. A sale pursuant to one interest would appear not to affect the other. Absent a prior determination of the relative proportion that each secures there would be no way to fix the amount of the bid or the cash to be paid. It would appear imperative for the creditor provoking the sale to call the other secured party into the proceedings to fix their rights.

\section*{D. Fixtures}

\subsection*{1. Definition of Fixtures}

Goods are \textit{fixtures} when they are placed on an immovable in such a manner as to become component parts of the land, a building, or other construction, and which are used in the conduct of a trade business, occupation, or other commercial or industrial activity.\textsuperscript{203} Thus, goods that become component parts of an immovable but that are not used in a commercial or industrial activity are not fixtures.

\subsection*{2. Other Terms of Importance}

A \textit{fixture filing} is the filing, made in the mortgage records of the parish where the land is located, of a financing statement covering goods

\begin{itemize}
  \item \textsuperscript{200} Section 9-315(1).
  \item \textsuperscript{201} Id.
  \item \textsuperscript{202} Section 9-315(2).
  \item \textsuperscript{203} Section 9-313(1) There are perhaps three areas in which this may not be entirely correct. Leases are defined as immovables for the purposes of the Chapter. It might have been more proper to simply define them as not falling under the Chapter. La. R.S. 9:5102 (Supp. 1990) permits a lessee to mortgage his interest in the lease and his interest in the "buildings, constructions, and improvements" on the premises. Under La. Civ. Code arts. 461, 463, 475, and 491, "other constructions" owned by a lessee on the land of the lessor would be movables. If the laws relating to this are "part of the real estate laws of the state" then the mortgage of the lease would be an encumbrance and the goods would be fixtures. A somewhat similar problem may exist with respect to constructions, such as pipelines, telephone lines, and so forth, put upon land by the owner of a personal servitude of a right of use, and the constructions of a mineral lessee or servitude owner.
\end{itemize}
that are or are to become fixtures. Unlike the general rule that a change in the nature of collateral does not require a new filing or perfection, previously perfected security interests in goods that become fixtures ordinarily become unperfected as to the owner or encumbrancer of an immovable unless a fixture filing is made for them.

An encumbrance includes mortgages and privileges over immovables and all other rights in an immovable that are not "ownership" interests. The encumbrancer is the owner or holder of the encumbrance, not the person who grants or creates it.

A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the mortgage so indicates by its terms. A mortgage given to refinance a construction mortgage is given the same effect as a construction mortgage to the extent of such refinancing.

3. Attachment

A security interest may be created in goods that are to become fixtures. It may not be created in goods that are already fixtures. A security interest may not be created in fixtures that are ordinary building materials or other things so incorporated into an immovable as to become a component part thereof under Civil Code article 465.

4. Perfection and Priority—General Rules

Unless otherwise provided, a security interest in fixtures is subordinate to the interest of any encumbrancer or owner of the immovable (other than the debtor) whether the interest in the immovable arises before or after perfection of the security interest. This rule is subject to the exceptions described in the succeeding paragraphs:

204. Section 9-313(1)(b).
205. Even then, the security interest may not be effective if the goods are installed on lands owned by someone other than the debtor. See exception (2) discussed infra in text accompanying note 214.
206. Section 9-105(1)(g).
207. Section 9-313(1)(c).
208. Section 9-313(6).
209. Section 9-313(2). Section 9-313(3) also notes that the provisions of this Chapter do not "prevent creation of an encumbrance upon fixtures pursuant to real estate law."
210. Id. The comparable section of the Uniform Act provides that a security interest may be created in goods after they have become fixtures. 1989 La. Acts No. 135 omitted this.
211. Section 9-313(2).
212. Section 9-313(7). This, of course, further recognizes that for an item to become a fixture, it must be a component part of an immovable, or at least that the owner of the immovable must have an "interest in" the thing "under the laws pertaining to immovables."
A purchase money security interest in the fixture has priority over the rights of an encumbrancer or owner (even if the encumbrance is already of record) if:

(a) It is perfected by a fixture filing before the goods become fixtures,

(b) The interest of the encumbrancer or owner arises before the goods become fixtures, and

(c) The debtor has an interest of record in, or is in possession of, the immovable.213

(2) A security interest that is perfected by a fixture filing has priority over an encumbrance or ownership that is not of record at the time the fixture filing is made, if:

(a) The security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and

(b) The debtor has an interest of record in or is in possession of the immovable.214

(3) A security interest in fixtures that is perfected in any manner has priority over a lien over the immovable thereafter obtained by "legal or equitable proceedings."

(4) A security interest, whether perfected or not, has priority over the rights of an owner or encumbrancer:

(a) If he has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures,215 or

(b) If the debtor has the right to remove the goods as against him. In this case the priority of the security interest continues for a reasonable time after the debtor's right to remove the goods terminates.216

5. Exception for Construction Mortgages

The first exception mentioned above gives priority, even over existing recorded encumbrances, to purchase money security interests created by

213. Section 9-313(4). The last requirement prevents anyone other than an owner of the real estate from imposing a security interest on goods that become fixtures. This is appropriate because unless either this or the next exception applies, the interest of the owner of the real estate, who is not a debtor, is superior to the claim of a debtor holding security in the fixture.

214. Section 9-313(4)(b). The significance of requiring a fixture filing (even though the filing is made in the same place as other filings) is that the filing must describe the real estate and identify at least one owner thereof.

215. Section 9-313(5)(a).

216. Section 9-313(5)(b).
an owner of the real estate if they are perfected by a fixture filing before they are installed. The exception is inapplicable to construction mortgages recorded before the goods become fixtures if the goods become fixtures "before the construction is completed."\(^{217}\)

6. **Summary of Effect**

The effect of these exemptions is fairly simple, although their expression is more complicated than would appear necessary at first blush. In general, the concept appears to be as follows:

A security interest in goods that become an integral part of an immovable under Civil Code article 465 is extinguished.

A security interest in goods that otherwise become component parts of an immovable is effective, whether or not it is perfected, against the particular debtor who creates the interest and any other persons who have consented to the security interest in writing, or who are bound to permit the debtor to deimmobilize the goods by removing them.\(^{218}\) This provision obviously will include any case in which the owner of the land himself grants the security interest, so that in the absence of the rights of others, the secured party can always assert his rights against the debtor unless the goods become an integral part of the land, building or other construction.\(^{219}\)

In other cases, where the secured party is claiming a security interest in goods that have become immobilized, the owner of the interest in or over the immovable will prevail unless a fixture filing has been made and the debtor is an owner of the immovable. These requirements serve a dual purpose. First, financing statements covering a debtor's goods generally will not serve to encumber goods when they are installed in a particular immovable unless the parties have anticipated such instal-

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217. Section 9-313(6). The subsection also provides that a later mortgage has the same priority as the construction mortgage to the extent that the later represents a refinancing of the construction mortgage.

218. This should be read in light of La. Civ. Code art. 495, which provides:

One who incorporates in, or attaches to, the immovable of another, with his consent, things that become component parts of the immovable under Articles 465 and 466, may in the absence of other provisions of law or juridical acts, remove them, subject to his obligation of restoring the property to its former condition....

Article 498 provides that "[o]ne who has lost the ownership of a thing to the owner of an immovable may assert his rights under [Article 495]... when they are evidenced by an instrument filed for registry in the appropriate conveyance or mortgage records of the parish...."

219. The exclusion from fixture status for things that become "an integral part" of the land or buildings appears to prevent the secured party from exercising his right of removal, even though the owner has agreed to permit the person supplying the goods to remove them upon penalty of restoration.
lation and identified the immovable in the financing statement. Consequently title examiners, and others, need not concern themselves with financing statements that do not indicate an affect on the property they are interested in.

The other requirement, that the debtor own an interest "of record in" or be the possessor of the property, prevents the creation of security interests in fixtures by persons who are strangers to the title or possession. The combined effect of the requirements is to extend to fixtures the same requirement for notice to the world that one would expect to find for any other interest in or over an immovable, and prevents persons from encumbering goods that they know are to be installed in the immovables of others without the consent of the immovable's owner.

Assuming a fixture filing is properly made, the secured party will generally enjoy priority over the claims of others to the land or building whose claims are not of record at the time the fixture filing is made. Although the security interest must be "created" (attached) before the goods become fixtures, the fixture filing can be made after the goods become immovable.

If the security interest is a purchase money type, as the great majority undoubtedly will be, the secured party is given priority even over those interests that are of record when the security interest is perfected by the fixture filing. Under the Uniform Act, purchase money security interests perfected within the ten days after the goods become fixtures have priority over all interests in the realty including those that are of record but not those interests arising after they are affixed but before the fixture filing is made. The exception protects persons acquiring an interest in the realty who might be misled by the presence of the fixtures on the realty and the absence of a fixture filing in the records. The rule still gives the security interest priority over existing claims which were not acquired in reliance upon the existence on the realty of the fixtures.

The Louisiana Act omits the ten day grace period for filing and requires that a fixture filing be made before the goods become fixtures if the purchase money security interest is to have priority over

220. The efficacy of this is obvious to persons dealing with real estate. Filing under Chapter 9 is in effect statewide. One may file a financing statement simply declaring it covers "all equipment." In the absence of the necessity of a fixture filing particularly identifying the immovable to which it relates, any additions made or fixtures installed in any immovable in which he might own an interest, anywhere in the state, would require a disclaimer or release from the secured party of the equipment.

221. E.g., a supplier to a contractor, knowing goods are to be installed in a building for the owner, cannot take a security interest from the contractor and make a fixture filing that would be effective against the owner.

222. Section 9-313(2) only requires that the interest be "created" in fixtures prior to their becoming component parts. Creation undoubtedly means "attach" in this context.

existing encumberances. The purpose served by the change is not clear but should not unduly hamper the acquisition of purchase money security interests in fixtures. A financing statement may be filed as a fixture filing before the security agreement is even executed and need only contain a general description of the type and nature of the goods to be installed, sufficient to reasonably identify them. A prospective fixture financier can file such a financing statement before the goods are delivered much more easily than he could under the Chattel Mortgage Act which required that the chattel mortgage itself, with a precise description of the collateral usually including a serial number, be filed before the goods were installed.

If the previously recorded mortgage is a construction mortgage, then it is given priority over later perfected security interests in fixtures to the extent the goods become fixtures before the construction is completed. This provision substantially protects the construction lender against fixture filings covering equipment installed by the owner or contractor. The Act does not prohibit fixture filings made before the equipment is acquired (and, indeed, contemplates them). Consequently, if there are goods that the parties contemplate will be installed in the realty that are to be financed separately from the real estate, a financing statement may be filed in advance of the construction mortgage, and a preferred status for it can apparently be obtained—provided of course the construction lender will make his loan in the face of the filed financing statements.

The Chapter also gives priority to a security interest "perfected in any manner" over a lien in the immovable thereafter obtained by legal or equitable proceedings. In this case the security interest need not be perfected as a fixture filing. This provision gives priority to security interests granted by others than the owner of the realty and to those granted when it is not contemplated that the goods might become fixtures. In essence, it permits those holding security interests in goods that are later installed in an immovable by the debtor or his successor to assert their rights against persons who seize the immovable, even though the financing statement does not indicate the goods may be installed in the premises, or it has been given by a debtor who has no interest in the immovable. The rationale for the rule is that there is no reliance by a creditor whose only interest in the immovable is that obtained by seizure. Virtually the only "lien" obtainable by legal or equitable proceedings in Louisiana is that of a seizing creditor. If the seizure is made pursuant to a judicial mortgage filed before the interest is perfected, the mortgagee would prevail. Although the judicial mortgage

224. "Lien," as applied to property in Louisiana, means a privilege created by statute. Section 9-102(4)(b).
is defined as not being a "mortgage" for purposes of the Chapter, it is nonetheless an "encumbrance." Thus, in the majority of cases, the qualification of the exception that the security interest need not be perfected by a fixture filing will be of no real consequence because it will not have priority over a previously recorded encumbrance.

7. Fixtures in Residential Property

Chapter 9 defines fixtures as goods that are immobilized and that "are used in the conduct of a trade, business, occupation, or other commercial or industrial activity." The use referred to must implicitly be that of the immovable to which the goods have become united by accession and probably should be related to the intended use of the property in which the fixtures are installed.

8. Right to Remove Fixtures

A secured party who has priority over all of the owners or encumbrancers of the real estate may, upon default by the debtor, remove the fixtures (subject to the provisions of the Chapter on default) provided he reimburses any encumbrancer or owner (other than the debtor), who has not otherwise consented to the removal, for the cost of repair of any physical injury. The injury does not include any diminution in value of the real estate resulting from the absence of the fixtures or from having to replace them. A person entitled to reimbursement may refuse permission for the removal until the secured party gives adequate security for the performance of his obligation. Although the Chapter seems to contemplate that the right of removal is the only remedy of the secured party, it does not expressly so provide. Arguably, in the case of execution upon the immovable, whether by an inferior or superior mortgagee or privilege holder, the holder of the secured interest could request a separate appraisal.

VIII. Multi-State Transactions

A. Introduction

The Chapter contains an intricate set of rules for determining the law applicable when a transaction involving a security interest has contacts with more than one jurisdiction or the collateral is either moved from one jurisdiction to another or could conceivably be deemed to

225. Section 9-105(1)(h).
226. Section 9-313(1)(a).
227. Section 9-313(8).
have its situs in more than one jurisdiction. Although Section 1-105
generally permits parties to agree that the law of any jurisdiction that
bears a reasonable relationship to the subject matter will regulate their
rights, the provisions relating to perfection of security under the Chapter
are mandatory and may not be waived.\(^\text{228}\) The Chapter consistently
declares that the rules in question regulate "the perfection and the effect
of perfection and non-perfection" of security interests. In the interest
of brevity, the use of the term perfection in this part includes all such
matters. Unless noted to the contrary, matters of priority and effect-
iveness stemming from perfection or the lack thereof are comprehended
within the term for these purposes.

B. Instruments, Documents, And Certain Chattel Paper And Goods

1. Collateral Covered

The rules described in this section of the article apply to the per-
fection of documents and instruments; chattel paper perfected by pos-
session; and goods other than mobile goods, those covered by a certificate
of title, and minerals to the extent that special rules are prescribed for
each.\(^\text{229}\) The rules regulating perfection in accounts and certain general
intangibles are discussed below in the part C.

2. General Rule

Perfection in goods, documents, and chattel paper ordinarily is
governed by the law of the jurisdiction where the collateral is located
when the last event occurs on which the assertion that the security
interest is perfected or unperfected is based.\(^\text{230}\)

3. Exceptions to the Rule

a. Collateral Brought into Louisiana

When collateral is brought into Louisiana that is subject to a security
interest perfected under the law of the jurisdiction from which it is
brought, the security remains perfected unless some further action is
required by the Chapter to perfect it.\(^\text{231}\) If such action is required, the
security interest becomes unperfected (and is deemed to have always
been unperfected as against a person who becomes a purchaser after

\(^{228}\) Section 9-103(2).
\(^{229}\) Section 9-103.
\(^{230}\) Section 9-103(1)(b).
\(^{231}\) Section 9-103(1)(d).
removal) if the action is not taken either before four months elapse after the collateral is brought into Louisiana or the perfection expires in the other jurisdiction.\(^{232}\) If the security interest is perfected in Louisiana within that time, it continues to be perfected in accordance with the provisions of the Chapter.\(^{233}\)

**b. Consumer Goods Perfected by Filing are Subject to the Same Rules**

The rules discussed in the preceding paragraph are applicable to the perfection by filing with respect to consumer goods brought into Louisiana that are subject to a security interest perfected by filing in another jurisdiction.\(^{234}\)

**c. Purchase Money Security Interests in Goods to be Located in Another Jurisdiction**

If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, the law of the jurisdiction where the goods are to be kept governs the perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if, before that time, the goods are taken to the jurisdiction where it is understood they will be located.\(^{235}\)

**C. Certain Account, General Intangibles, And Mobile Goods**

The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection of a security interest in accounts (other than a deposit account or an account derived from minerals described hereafter);\(^{236}\) chattel paper when the security interest is perfected by filing;\(^{237}\) general intangibles;\(^{238}\) and equipment or inventory leased or held for lease by the debtor to others if the equipment or inventory is mobile, of a type normally used in more than one juris-

\(^{232}\) Section 9-103(1)(d)(i).

\(^{233}\) Section 9-103(1)(d)(ii).

\(^{234}\) Section 9-103(1)(d)(iii). This rule was apparently deemed necessary to distinguish the effect of perfection in consumer goods, that exists without filing, from that which occurs from filing. Under the provision referred to, a filing in another state continues to be perfected if a filing is made in Louisiana within the four month period.

\(^{235}\) Section 9-103(c).

\(^{236}\) Section 9-103(1)(a).

\(^{237}\) Section 9-103(4).

\(^{238}\) Section 9-103(3).
diction, and is not covered by a certificate of title. Uncertificated securities are not subject to the special rules discussed below.

1. Location of Debtor—General Rules

For purposes of determining the perfection of the kinds of goods described in the preceding paragraph, a debtor is deemed to be located at his place of business, if he has one; at his chief executive office, if he has more than one place of business; at his residence, if he does not have a place of business; or, if he is a foreign air carrier, under the Federal Aviation Act of 1958, as amended, at the designated office of the agent upon whom service of process may be made.

2. Debtors Located Outside of the United States

a. Jurisdictions Not Providing for Perfection

The law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection of the security interest by filing, if the debtor is located in a jurisdiction that is not a part of the United States and that does not provide for perfection of the security interest by filing or recording in that jurisdiction.

b. Accounts and General Intangibles for Money Due or to Become Due

Security interests in accounts and in general intangibles for money due or to become due may be perfected by notification to the account debtor if the debtor is located in a jurisdiction that is not a part of the United States or Canada. The term “United States” is considered to include its territories and possessions and the Commonwealth of Puerto Rico.

D. Certain Goods Covered By A Certificate Of Title

1. General Rule

The perfection of a security interest in goods covered by a certificate of title issued under a Louisiana statute, or that of another jurisdiction that requires indication of a security interest on the certificate as a
condition of perfection, is governed by the law (including the conflict of laws rules) of the jurisdiction issuing a certificate of title until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in no event beyond surrender of the certificate. After that time, the goods are not covered by the certificate of title within the meaning of the Chapter. 242

2. Where Perfection in Another Jurisdiction is Not by Notation Upon a Certificate

The following rules apply to a security interests perfected in another jurisdiction, other than by notation on a certificate of title, if the goods are brought into this state that are thereafter covered by a certificate of title issued by Louisiana.

(1) The effect of perfection in Louisiana is subject to the rules previously discussed in connection with goods generally.

(2) The security interest is subordinate to the rights of a buyer of the goods who is not in the business of that kind of goods, to the extent that he both gives value and receives delivery of the goods without knowledge of the security interest and after the certificate is issued, unless the Louisiana certificate shows the security interest or discloses that the collateral may be subject to a security interest that is not shown on the certificate. 243

E. Severed Minerals And Their Proceeds

The perfection of a security interest in minerals or the like as they are extracted or in an account resulting from their sale at the wellhead is governed by the law (including the conflict of laws rules) of the jurisdiction in which the wellhead or minehead is located if the interest is created by a debtor who has an interest in the minerals before extraction.

F. Deposit Accounts And Uncertificated Securities

The law of the jurisdiction in which the depository of a deposit account is located regulates perfection of an interest in that account. 244 The law of the jurisdiction of organization of the issuer of uncertificated securities governs the effect of perfection of an interest in them. 245

242. Section 9-103(2)(b).
243. Section 9-103(2)(d).
244. Section 9-103(7).
245. Section 9-103(6).
IX. CONSIGNMENTS

A. Introduction

Section 9-114 distinguishes contracts of consignment (called "true consignments" by the Chapter) from contracts in the form of a consignment that are in fact security agreements. Both are subject to the provisions of the Chapter in that their effect on third persons is dependent upon perfection. The substantive aspects of the true consignment—retention of ownership by the consignor—is preserved and continues to be regulated by ordinary principles of law.

B. Distinction Between A Consignment And A Security Interest

A "true consignment" is a transaction in which goods are delivered by a consignor to a dealer (consignee) primarily for sale by the dealer, and the dealer has the right to return any commercial unit of the goods in lieu of payment. A transaction denominated by the parties as a consignment is a secured transaction if their intention is to create a security interest in the goods.

C. Security Interests In The Form Of Consignments

Security interests in the form of a consignment of goods are subject to all of the provisions regulating security in such goods.

D. True Consignments

1. Rights of Creditors of Consignee Generally

Goods delivered to a true consignee may be seized by creditors as belonging to the consignee unless the consignor establishes that the consignee is generally known by his creditors to be substantially engaged in selling the goods of others or that the consignor perfected his interest by complying with the filing provisions of the Chapter.

2. Exceptional Priority

A true consignor required to file to perfect his interest is given priority in the goods, and in identifiable cash proceeds of such goods, as against the claim of a secured party who has or would have a superior interest.

246. Section 9-114(1).
247. Section 9-114(2).
248. Id.
249. Section 9-114(1).
perfected security interest in such the goods if they were the property of the consignee, if the consignor files his financing statement before the consignee receives possession of the goods.\textsuperscript{250} If the secured party files a financing statement covering the same kind of goods before the consignor files, the consignor must also notify the secured party in writing that he expects to deliver goods on consignment to the debtor.\textsuperscript{251} The effect of such a notice expires in five years.\textsuperscript{252}

X. RULES FOR DISTINGUISHING LEASES FROM SECURITY INTERESTS

A. Introduction

The Chapter does not apply to or regulate the lease of movables, thus remaining subject to the general law. It does however apply to “security interests created by contract, including . . . title retention contract, and lease . . . intended as security,” making it clear that any arrangement in the form of a lease that is in fact one of security falls within its terms.\textsuperscript{253}

B. General Rules

Recognizing the difficulty of distinguishing contractual arrangements that are actually security devices disguised as leases from what might be called a “true lease,” Section 1-201(37) establishes guidelines for making such a determination. Unless the contract under consideration falls within one of the particular rules of the Chapter, the question of whether it creates a lease or security interest is to be “determined by the facts of each case.”\textsuperscript{254}

1. Transactions Deemed to be Security Interests

A transaction creates a security interest if the rent\textsuperscript{255} over the term of the lease is not subject to termination by the lessee and any one of the following additional conditions are present:

\begin{itemize}
  \item Section 9-114(3)(a).
  \item Section 9-114(3)(b).
  \item Section 9-114(3)(c).
  \item Section 9-102(2).
\end{itemize}

\textsuperscript{254} The Chapter actually refers to what is here called rent as the “consideration the lessee is to pay the lessor for the right to possession and use of the goods.” La. R.S. 10:1-201(37) (Supp. 1990). The use of the term “rent” here is for convenience, and should be understood to include all amounts paid or to be paid by the lessee as a consequence of the lease. It may thus include a “bonus” or other consideration that is, arguably, not rent.
(1) The original term of the lease is at least equal to the remaining economic life of the goods;
(2) The lessee is bound to renew the lease for the remaining economic life of the goods, or to become their owner; or
(3) The lessee has the option, without paying more than a nominal additional consideration, to renew the lease for the remaining economic life of the goods, or to become owner of the goods.\(^{256}\)

2. *Factors Not Indicative of an Intent to Create Security*

The Chapter does not attempt to define what constitutes a security interest. It does, however, declare that an agreement does not create such an interest merely because it meets any of the following conditions:

(1) The present value of the rent is substantially equal to or greater than the fair market value of the goods when the lease is made;
(2) The lessee assumes the risk of loss of the goods;
(3) The lessee is to pay for taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods; or
(4) The lessee has the option either to renew the lease or become owner of the goods, or to renew the lease for a fixed rent or acquire the goods for a fixed price if such prices are at least equal to the reasonably predictable fair market rent for the renewal term or fair market value of the goods, as the case may be, when the option is exercisable.\(^{257}\)

The fact that the secured party files a financing statement with respect to the lease in which the parties are identified as lessee and lessor is not necessarily indicative that the contract is one of lease.\(^{258}\)

3. *Standards for Determination*

In determining or applying the rules set forth above the following standards are to be applied:

(1) Additional consideration is not nominal if:
   (a) When the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or

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\(^{256}\) Id. § 1-201(37)(a)-(d).  
\(^{257}\) Id. § 1-201(37)(a)-(e).  
\(^{258}\) Section 9-408.
(b) When the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.259

(2) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;260

(3) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into;261 and

(4) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.262

XI. FINANCING STATEMENTS, FILING, METHOD, AND EFFECT

A. Financing Statements: Formal Requirements And Amendments

1. Formal Requirements

a. In General

A financing statement must be signed by the debtor and provide the debtor's name and a mailing address as well as his social security or taxpayer identification number;263 the name and address of at least one secured party; a statement indicating the types or describing the items of collateral and a statement that the products of collateral are claimed, if such is the case.264

259. These are found in La. R.S. 10:1-201(37)(X) (Supp. 1990).
260. Id.
261. Id. § 1-201(37)(Y).
262. Id. § 1-201(37)(Z).
263. Most other states do not require a taxpayer identification or social security number.
264. Section 9-402(1). The name of each debtor must be given. The financing statement sufficiently shows the name of the debtor "if it gives the individual, partnership, or corporate name of the debtor, and sets forth his or its social security number or taxpayer identification number, as applicable, whether or not it adds other trade names or the
b. Security Interests in Fixtures or Minerals

A financing statement that covers either fixtures or minerals severed at the wellhead or minehead or accounts arising from their sale at the wellhead must also show that it covers that type of collateral and describe the immovable to the same extent and manner as would be required for a mortgage of the land to be valid against third persons. In such cases, if the debtor "does not have an interest of record" in the immovable, the financing statement must also show the name and social security or taxpayer identification number of "a record owner." A financing statement filed as a fixture filing must also recite that it is to be filed for record in the security interest records.

c. When the Debtor's Signature is Not Required

A financing statement may be signed by the secured party instead of the debtor in the following cases:

(1) If it is filed to perfect security in collateral already subject to a security interest in another jurisdiction when it is brought into Louisiana, or when the debtor's location is changed to this state. The statement must declare that the collateral has been brought into Louisiana or that the debtor's location was changed to this state under such circumstances.

(2) If it is to perfect an interest in proceeds under Section 9-306 provided the security interest in the original collateral was perfected and the statement describes the original collateral.

(3) If it is filed with respect to collateral as to which filing has lapsed or that has been acquired after a change of the name, identity, or "corporate structure" of the debtor.
(4) If the filing is an amendment to a financing statement and changes only the name of the secured party or the required address of either party.\textsuperscript{270}

d. Effect of Errors

A financing statement that substantially complies with the requirements of law is effective even though it contains minor errors, as long as the errors are not "seriously misleading."\textsuperscript{271}

2. Copy Serving as an Original

A copy of the security agreement is sufficient as a financing statement if it contains the required information and is signed by the debtor. A carbon, photographic, or "other reproduction" of a security agreement, or a financing statement, is sufficient as a financing statement and need not itself be signed as an original (assuming it otherwise complies with the law) if the security agreement so provides or if "the original" has been filed in Louisiana.\textsuperscript{272} This provision permits one to avoid signing a separate financing statement by inserting a clause in the security agreement to the effect that a copy of it may be filed as a financing statement.

3. Financing Statements Covering Consigned or Leased Goods

A financing statement filed by a secured party, consignor, or lessor of goods may either use the terms "debtor" and "secured party" or the like, indicating the transaction is one of security, or "consignor" or "consignee," or "lessor" or "lessee" or the like, indicating the transaction is a true consignment or lease, without impairing its effectiveness and without regard to the true nature of the transaction.\textsuperscript{273} The fact that such a statement is filed is not to be used in determining whether or not the consignment or lease is intended as a security agreement.\textsuperscript{274}

B. Prescribed Forms—Effect Of Deviations From Them As Non-Standard Forms

The form of a financing statement is sufficient if substantially complied with Section 9-402(3). Section 9-409 authorizes the Secretary of

\textsuperscript{270.} Section 9-402(4).
\textsuperscript{271.} Section 9-402(8).
\textsuperscript{272.} Section 9-402(1).
\textsuperscript{273.} Section 9-408.
\textsuperscript{274.} Id.
State to prescribe forms to be used in making any filing or in requesting any information of the filing officer under the Chapter. A form that is different from one that has been prescribed by the Secretary of State, or that "attaches additional pages" is a "non-standard" form, for which the recording officer may charge a higher fee.

C. Amendment Of A Financing Statement

A financing statement may be amended by a writing signed by both the debtor and secured party unless it only changes the name of the debtor or the required address of either party, in which case it need only be signed by the secured party. An amendment adding collateral is effective as to such collateral only from the time of filing of the amendment. An amendment does not extend the effective period of the financing statement.

An amendment must to be filed if the debtor "so changes his name or in the case of an organization its name, identity or corporate structure" and "also changes its social security number or taxpayer identification number so that a filed financing statement becomes seriously misleading." In such a case the existing filing "is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time."

D. Place Of Filing And Effect Of Erroneous Filing

1. Introduction

One of the major improvements made in the Chapter to the Uniform Act is in its filing system. Under both Acts, to be effective, financing statements, amendments, assignments, releases of collateral, continuation statements, and termination statements must be filed in the place designated. The Uniform Act suggests a number of options, each of which to some degree requires filing in separate offices, depending upon the nature of the collateral. However, once a financing statement is properly filed, a change in the use or nature of the collateral does not impair the effectiveness of the original filing. Disputes as to the proper classification for filing purposes have given rise to as much litigation under the Uniform Act has any other provision. Chapter 9 resolves the matter.

275. Section 9-409.
276. Section 9-402(4).
277. Id.
278. Id.
by providing that all statements are to be filed in the same place, without regard to the nature or classification of the property.

2. **General Rule**

   a. **Place of Filing**

   In all cases a financing statement may be filed with the Clerk of Court of any parish (or in Orleans, with the Recorder of Mortgages).  

   b. **Master Index**

   Upon filing, the clerk or recorder marks the statement with the date and hour of filing and retains it (or a microfilm or photographic copy for inspection). By 4:30 p.m. of the second business day following the filing, the filing officer transmits the information contained on the statement, together with a notation of the date and time of filing, to the Secretary of State.  

   The Secretary of State is charged with maintaining a master index of all financing statements, continuation statements, assignments, releases, termination statements, and other similar statements filed with the various filing officers and transmitted to him. The master index lists all such statements according to the name and social security number or taxpayer identification number, as applicable, of the debtor and shall include all of the information transmitted to the Secretary of State by the filing officers. The information is to be included in the master index within two business days of its receipt. The Secretary of State is also required to send written notice confirming such receipt, and reflecting the information included in the master index, to the secured party.  

   The Chapter provides, in other sections, that other documents filed under its provisions shall also be filed with the various clerks or the Recorder of Orleans and shall be transmitted to the Secretary of State for inclusion in the Master Index within the same time as is provided for financing statements.

E. **Time And Duration Of Filing**

1. **When Filing Occurs**

   A financing statement or other document is filed when it "or a legible telefaxed copy" is presented to the proper officer for filing with

280. Section 9-401.
281. Section 9-403(4).
282. Section 9-403(6).
a tender of the filing fee, or when it is accepted for filing by the proper
officer, whichever occurs first.\textsuperscript{283} A financing statement may be filed
before a security agreement is made or a security interest otherwise
attaches.

2. \textit{Duration of Effect of Filing}

\textit{a. General Rule}

The effect of a financing statement ceases five years after the state-
ment is filed unless the time is extended by filing a continuation statement
or by insolvency proceedings.\textsuperscript{284}

\textit{b. Continuation Statements}

A continuation statement that is filed before, but within six months
of, the fifth anniversary of the original filing (or any such succeeding
anniversary to which the effect of filing has been extended) continues
the effect of filing for five years from such anniversary.\textsuperscript{285}

\textit{c. Insolvency Proceedings}

Insolvency proceedings commenced by or against the debtor continue
the effect of filing until sixty days after the proceedings terminate or
until the expiration of the five year period, whichever occurs later.\textsuperscript{286}

3. \textit{Effect of Lapse}

When the effect of filing lapses, the security interest becomes un-
perfected, unless it is perfected without filing.\textsuperscript{287} If it becomes unperfected
upon lapse, it is deemed to have been unperfected as to any person
who became a purchaser or lien creditor before lapse.\textsuperscript{288} The Chapter
does not expressly give any effect to a continuation statement that is
filed late and apparently contemplates that after lapse a new financing
statement must be filed.\textsuperscript{289}

\textsuperscript{283} Section 9-403(1).
\textsuperscript{284} Section 9-403(2).
\textsuperscript{285} Section 9-403(2) and (3). As many five year extensions as are desired can be
obtained by the filing of continuation statements until a termination statement is filed,
even if the secured obligation is satisfied. A continuation statement has no effect if it is
filed earlier than six months before the effect of filing ceases.
\textsuperscript{286} Section 9-403(2).
\textsuperscript{287} Id.
\textsuperscript{288} Id.
\textsuperscript{289} Section 9-402(2)(c) permits a secured party to sign a financing statement that is
filed with respect to "collateral as to which the filing has lapsed."
4. Form of Continuation Statement

A continuation statement must be signed by the secured party of record. It must identify the original statement by file number, include the name and social security or taxpayer identification number of the debtor, and state that the original statement is still effective.290

F. Manner Of Filing And Indexing

1. General Rule

A financing statement is marked with a file number and with the date and hour of filing.291 It is indexed in the master index according to the name of the debtor, and his taxpayer identification or social security number, with an entry also showing the file number and the debtor's address as given in the financing statement.292

2. Exception for Fixture and Mineral Filings

Fixture filings and financing statements covering minerals severed at the wellhead or minehead or accounts arising from their sale at the wellhead are also indexed under the name and taxpayer identification or social security number of any owner of record of the immovable that is shown in the financing statement.293 The master index entry for such filing must also list the property described in the financing statement.294

3. Continuation Statements

Continuation statements are marked with the date and hour of filing and noted in the master index.295

4. Assignments

An assignment filed as a separate statement is marked with the hour and date of filing and noted on the index of the financing statement.296

5. Releases of Collateral

Releases of collateral are marked with the hour and date of filing and included in the master index.297

290. Section 9-403(3).
291. Section 9-403(4).
292. Section 9-403(4) and (6).
293. Section 9-403(7).
294. Section 9-402(7) and Section 9-403(4) and (6).
295. Section 9-403(4).
296. Section 9-405(2).
297. Section 9-406.
6. Termination Statements

Termination statements are also noted with the date and hour of filing and transmitted for inclusion in the master index.\(^{298}\) The filing officer will return a duplicate copy to the secured party stamped to show the time he receives the statement, if one is sent to him.\(^{299}\) Upon receiving a termination statement, the filing officer may remove the original financing statement and associated documents from his files if he has a microfilm or other photographic copy of them. If he does not have such a copy, he may remove the originals from his file one year after the termination statement is filed.\(^{300}\)

G. The Secured Party Of Record And Documents Emanating From Him

The Chapter contemplates that there will be at least one secured party of record, with whom the filing officer, debtor, and others interested in the security interest may deal. Thus, the secured party of record has a duty to supply information to the debtor concerning the amount of debt and identity of the collateral.\(^{301}\) Only the secured party of record may file amendments, continuation statements, and releases of the collateral, and only he may grant termination statements. The Chapter does not contemplate that more than one person will be identified as the secured party of record and is silent as to whether, if such occurs, either or both secured parties may be required to act with respect to the matters mentioned.

Section 9-405 regulates the assignment or transfer of the security interest "of record." This does not mean that the security is in fact held by such party or that there are not others interested in the security. Neither does an assignment of record evidence or otherwise constitute an assignment or transfer of the secured obligation, or the security accompanying it.

A financing statement may disclose an assignment of the security interest by indicating the name and address of the assignee in the statement, or by an assignment, or a copy thereof, made on the face or back of the statement.\(^{302}\) A secured party may also assign all or part of his rights of record under a financing statement (other than one evidenced by a mortgage filed as a fixture filing) by filing an assignment or a copy of such an assignment in the place where the original financing

\(^{298}\) Section 9-404(2).
\(^{299}\) Id.
\(^{300}\) Id.
\(^{301}\) See Section 9-404(1).
\(^{302}\) Section 9-405(1).
The assignment must be signed by the assignor and contain the name of the secured party of record; the name of the debtor and his appropriate taxpayer identification number; the file number of the financing statement; the name and address of the assignee; and a description of the collateral assigned. After disclosure by the filing of an assignment under the Chapter, the assignee is the secured party of record. If continuation statements, assignments, releases of collateral, or termination statements are not signed by the secured party of record, their filing must be accompanied by assignments from the secured party of record and his assigns sufficient to transfer the security to the person signing such statements as the secured party, as well as by payment of any fees associated with the transfers to the secured party.

H. Release Of Collateral From The Effect Of A Security Agreement

A secured party of record may release all or any part of any collateral described in a filed financing statement. Such a release must be signed by the secured party and contain a description of the collateral being released; the name and address of the debtor and his appropriate taxpayer identification number; the name and address of the secured party; and the file number of the financing statement.

I. Termination Statements

1. Effect of a Termination Statement

A termination statement erases the effect of a financing statement from the records. Under the provisions of the Chapter, it appears that even if the secured obligation is extinguished, a financing statement will serve to perfect entirely new and unrelated transactions between the same parties as long as the collateral, or type of collateral, is described in it. For example, a financing statement covering “inventory” will effectively perfect and give priority from the date of its filing to any subsequent security interest in inventory between the same parties as long as the effect of its filing has not lapsed.

2. Secured Party’s Obligation to File Termination Statements

A secured party is obligated to file a termination statement with each filing officer with whom the financing statement was filed after

303. Section 9-405(2).
304. Id.
305. Section 9-405(3).
306. Section 9-406.
307. Id.
there are no outstanding secured obligations and there is no commitment
to make an advance, incur an obligation, or otherwise give value with
respect to a security agreement. The termination statement must be
signed by the secured party of record, contain a statement to the effect
that he no longer claims a security interest under the financing statement,
and provide the filing number of the financing statement.

In the case of consumer goods, the termination statement is to be
filed no later than one month after the conditions requiring it occur or
within ten days of receipt of written demand of the debtor after such
conditions have occurred, whichever is the earlier. As to other goods,
the secured party must file a termination statement after such conditions
occur, and in no event later than ten days after proper demand has
been made upon him. Failure to properly and timely comply with the
debtor's demand in either case renders the secured party liable to the
debtor for $100.00 and any additional loss suffered by the debtor as
consequence of the failure.

XII. PROVISIONS REGULATING DEFAULT AND EXECUTION

A. Introduction

1. Options Available to the Secured Party Upon Default

Subchapter 5 of the Chapter, Sections 9-501 through 9-508, regulates
the rights of the secured party upon a debtor's default. That subchapter
gives the secured party a number of options. He may reduce his claim
to a judgment and execute upon or otherwise enforce the security interest
by any available judicial procedure. He may exercise the rights and
remedies expressly provided by the Chapter. He may also exercise any
rights and remedies lawfully granted by the security agreement, although
there are a number of provisions that may not be waived or modified

308. Section 9-404(1).
309. Id.
310. Id.
311. Id.
312. The Act does not expressly provide that a default of the secured obligation is
also a default under the security agreement, although the courts have generally assumed
this to be implicit in the Act. Security agreements should expressly contain "cross default"
provisions to the effect that a default in performance any of the terms of the security
agreement permits acceleration of the debt it secures. It should also provide that a default
in any of the terms of the security agreement will permit acceleration of all of the
obligations it secures.
313. Section 9-501(1). The Act contemplates that executory process will be one of
those procedures.
314. Id.
by such an agreement. Finally, the rights given by Section 9-207 to a possessor of collateral or of security in intangibles represent valuable rights in the event of default.

If a security agreement "covers" both movables and immovables, the secured party may proceed to execute upon both under the rules pertaining to immovables. If he does so, the rules of the Chapter do not apply.\textsuperscript{315} The security interest is deemed to continue after judgment is rendered upon the secured obligation whether or not it is recognized in the judgment.\textsuperscript{316} The secured party who purchases the collateral at a judicial sale pursuant to judgment or under executory process holds it free of any further requirements of the Chapter.\textsuperscript{317}

2. Right to Vary Provisions of Law

The security agreement may regulate the rights and duties of the parties in the event of default, except to the extent prohibited by law\textsuperscript{318} or public policy. The parties may not waive or contract contrary to a number of particular provisions of the Chapter to the extent that these provisions give rights to the debtor and impose duties on the secured party. The parties may, however, agree to the standards by which the fulfillment of such rights and duties are measured if such standards are not manifestly unreasonable.\textsuperscript{319} The Chapter expressly declares that the following provisions may not be waived:

(1) Those of Sections 9-502(2) and 9-504(2) insofar as they require accounting for the proceeds of collateral.\textsuperscript{320}
(2) Those of Sections 9-504(3) and 9-505(1) relative to the disposition of collateral.\textsuperscript{321}
(3) Those of Section 9-505(2) relative to the acceptance of collateral as discharge of obligation.\textsuperscript{322}
(4) Those of Section 9-506 relative to redemption of collateral.\textsuperscript{323}

\textsuperscript{315} Section 9-501(4). This apparently will change the present law that if recognition of the security is prayed for, but not granted by the judgment, it is deemed to have been rejected. How this rule will apply if judgment were obtained on an act that is both a security agreement and a mortgage of immovables is not clear.
\textsuperscript{316} Section 9-501(5).
\textsuperscript{317} Id.
\textsuperscript{318} Section 9-501(1), (2), and (3).
\textsuperscript{319} Section 9-501(3).
\textsuperscript{320} Section 9-501(3)(a). The Chapter expressly requires the secured party to "account" only for "surplus" proceeds—but the secured party obviously must account for all of the proceeds, although their proper application to the debt would be a proper disposition of the funds, and he would only be required to pay over to the debtor the surplus.
\textsuperscript{321} Section 9-501(3)(b).
\textsuperscript{322} Section 9-501(3)(c).
\textsuperscript{323} Section 9-501(3)(d).
(5) Those of Section 9-507(1) relative to the secured party’s liability for failure to comply with the act.\textsuperscript{324}

B. Right Of The Secured Party To Collect Proceeds And Concomitant Obligations

1. In General

Upon the debtor’s default, the secured party may notify an account debtor or the obligor on an instrument to make payment to him notwithstanding the provisions of the security agreement relative to the right of the debtor to receive and use proceeds and whether or not he was previously collecting them.\textsuperscript{325} The secured party may also take control of any proceeds to which he is entitled.\textsuperscript{326}

2. Method of Proceeding

A secured party who by agreement may charge back uncollected collateral or who is otherwise entitled to full or limited recourse against the debtor, or who, under Section 9-504, is required to account to the debtor for any surplus received from collateral and who undertakes to collect from the account debtors or obligors, must proceed in a commercially reasonable manner. He must send notice to any other secured party who has a security interest in the same collateral and who has filed a financing statement in Louisiana, indexed in the name of the debtor, or from whom he has received (before sending his notification to the debtor or before the debtor’s renunciation of his interests) written notice of a claim of an interest in the collateral.\textsuperscript{327}

3. Application of Proceeds

The secured party may deduct his reasonable expenses of collection from the realization. A secured party who collects from an account debtor or debtor on an instrument must apply the receipts of such collections to security interests in the order of their priority.\textsuperscript{328}

Thereafter, if the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. If the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled

\textsuperscript{324} Section 9-501(3)(e).
\textsuperscript{325} Section 9-502(1).
\textsuperscript{326} Id. Section 9-306 regulates the secured parties rights in proceeds.
\textsuperscript{327} Section 9-502(2).
\textsuperscript{328} Id.
to any surplus or is liable for any deficiency only if the security agreement so provides.

C. Secured Party's Right To Sell Collateral After Default

1. Property That May be Sold

After the debtor's default, a secured party may "sell, lease, or otherwise dispose of" goods that are in his possession, or that are voluntarily delivered or surrendered to him for such purposes by the debtor. He may similarly dispose of any instruments, documents, accounts, chattel paper, or general intangibles. A secured party may proceed by summary process against the debtor to obtain any instruments, contracts, receipts, or other documents necessary to exercise his right to sell the collateral; to enforce it as provided by Sections 9-207 or 9-502; or to obtain the endorsement of the secured party to any instrument or document for any such purposes.

2. Method of Disposition

The collateral may be disposed of in the condition it is then in or with any commercially reasonable preparation or processing. The sale must, in all respects, be conducted in good faith and in a commercially reasonable manner.

The collateral may be sold as a unit or in parcels at any time and on any terms, publicly or privately, and with or without prior appraisal. The secured party may buy the collateral at any public sale. He may purchase at private sale if the collateral is of a type that is customarily sold in a recognized market or is "the subject of widely distributed standard price quotations."

3. Notice to the Debtor

The secured party must send the debtor reasonable notice of the time and place of any public sale or of the time after which any private

329. Id.
330. Sections 9-503(1), 9-504(1), and 9-502(1)(a). Section 9-503(1) authorizes a "sale" in the manner and with the effect provided by Section 9-504. The latter provides the secured party, after default may "sell, lease or otherwise dispose of" the collateral.
331. Section 9-503(1)(b).
332. Section 9-503(2).
333. Section 9-504(1).
334. Section 9-504(3).
335. Id.
336. Id.
337. Id.
"sale or other intended disposition" is to be made.\textsuperscript{338} The notice need not be sent if it has been renounced or waived in a statement signed by the debtor after default; if the collateral is perishable or threatens to decline speedily in value; or if the collateral is of a type customarily sold in a recognized market.\textsuperscript{339}

\section*{4. Notice to Holders of Other Security}

If a notice of the sale or other disposition must to be given the debtor, a notice must also be sent to any other secured party having security in the same collateral (other than consumer goods) who has properly filed a financing statement that is indexed in the name of the debtor, or who delivers a written notice of his claim to such collateral to the secured party before the latter sends his notice to the debtor or the debtor renounces his right to it.\textsuperscript{340} If the collateral is consumer goods, a notice must only be sent to the debtor.\textsuperscript{341}

\section*{5. Commercially Reasonable Dispositions}

A sale of collateral by the secured party is commercially reasonable if it is made in the usual manner in any recognized market for such kinds of property; or is at the price current in any recognized market for such kinds of property; or is made in conformity with reasonable commercial practices among dealers in the same kind of property.\textsuperscript{342} The fact that a better price could have been obtained by a sale at a different time or by a method different from that chosen by the secured party does not of itself establish that the sale was not commercially reasonable.\textsuperscript{343} These principles are also applicable to other dispositions to the extent they are "appropriate."\textsuperscript{344} Finally, a disposition approved in any judicial proceeding, or by any bona fide creditors committee or similar representative of creditors, is conclusively presumed to be commercially reasonable.\textsuperscript{345}

\section*{6. Effect of a Sale or Other Disposition}

A non-judicial sale of collateral, authorized by the provisions of Section 9-503, transfers to a purchaser for value all of the debtor's

\begin{thebibliography}{9}
\bibitem{338} Id.
\bibitem{339} Id.
\bibitem{340} Id.
\bibitem{341} Id. The section declares that the "examples" listed are not intended to be exclusive.
\bibitem{342} Id.
\bibitem{343} Id.
\bibitem{344} Id.
\bibitem{345} Id. The Act specifically notes that no such approval is required for commercially reasonable dispositions, nor does the fact that a disposition is not so approved indicate it is not commercially reasonable.
\end{thebibliography}
rights in the collateral and discharges the security interest pursuant to which the collateral is sold. Such a sale also discharges any security interest or lien subordinate to the security interest pursuant to which it is sold even if the secured party fails to comply with the requirements of the Chapter or of any judicial proceedings, provided the purchaser acquires the collateral at public sale, without knowledge of defects in the sale, and does not buy in collusion with the secured party, other bidders, or the person conducting the sale. If the purchaser acquires in another manner he is similarly protected if he acts in good faith.

7. Effect Upon Sureties and Other Secondary Parties

Absent a contrary agreement, a surety, guarantor, endorser, obligor under a repurchase agreement, or the like is discharged from his obligation only to the extent that the debtor is so discharged as a result of a sale pursuant to the provisions of Section 9-504 or by a judicial action in execution of the security interest. A transfer of collateral from the secured party to such a secondary party is not a sale or disposition of the collateral within these terms. A secondary party to whom collateral is so transferred, or who is subrogated to the secured party's rights, thereafter has the rights and duties of the secured party.

8. Application of Proceeds

Proceeds received by a secured party from a sale or other disposition of collateral made by him under the provisions of the Chapter are applied as follows:

First, to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys fees and legal expenses incurred by the secured party.

Second, to the satisfaction of indebtedness secured by the security interest under which the disposition is made.

Third, to the satisfaction of the debt secured by any subordinate security interest in the collateral if written notice of

346. Section 9-504(4).
347. Section 9-504(4)(a). This provision apparently applies even though the secured party "fails to comply with the requirements of this part or of any judicial proceedings."
348. Section 9-504(4)(b).
349. Section 9-504(5).
350. Id.
351. Id.
352. Section 9-504(1)(a).
353. Section 9-504(1)(b).
demand is received by the secured party before distribution of
the proceeds is completed.354

Finally, to the debtor if he is entitled to the surplus.355

D. Acceptance Of Collateral In Discharge Of The Obligation

1. Procedure

The Chapter has a special procedure by which a debtor who is
entitled to sell collateral without judicial process may propose to retain
it in satisfaction of the obligation it secures.356

If the secured party is entitled to sell the collateral under the pro-
visions of Section 9-503, he may, after default, propose to retain it in
satisfaction of the obligation.

Written notice of the proposal is to be sent to the debtor if he has
not signed a statement renouncing or modifying his rights after default.
No other notice need be given in cases of consumer

As to
other collateral, notice must be given to any other secured party who
has a security interest in the same collateral and who has duly filed a
financing statement. The financing statement which is indexed in the
name and social security or taxpayer identification number, as applicable,
of the debtor or from whom the secured party has received (before
sending his notice to the debtor or before the debtor's renunciation of
his rights) written notice of a claim of an interest in the collateral.358

2. Exceptions to Right

The secured party may not retain the collateral if he receives an
objection in writing from a person entitled to receive notification within
twenty-one days after the notice was sent, and must proceed to dispose
of it in the manner otherwise provided by law.359 In the absence of
such written objection, the secured party shall be deemed to have ac-
quired the collateral in satisfaction of the debtor's obligation.360

The secured party may not utilize the procedure when the debtor
has paid sixty percent of the cash price, in the case of a purchase
money security interest in consumer goods, or sixty percent of the loan,
in the case of another security interest in consumer goods, and has not

354. Section 9-504(1)(c).
355. Section 9-504(2).
356. The procedure described is found in Section 9-505(2).
357. Section 9-505(2).
358. Id.
359. Id.
360. Id.
signed, after a default, a statement renouncing or modifying his rights under the Chapter.361

E. Surrender Of Property By Debtor—Presumptions

1. Consumer Goods

The voluntary surrender by the debtor to the secured party of consumer goods subject to the security interest after, or in contemplation of, his default is presumed to be made in satisfaction of the secured obligation or, for purposes of sale, at the option of the secured party.362

The secured party is presumed to have accepted the surrendered goods in satisfaction of the debt unless he sends written notice to the debtor that he is unwilling to do so or otherwise notifies the debtor to such effect within twenty days after he has taken actual possession of the goods.363

If the secured party is unwilling364 to take the goods in satisfaction of the debt, he may proceed to dispose of them in any manner authorized by the Chapter.365

2. Other Goods

The debtor’s voluntary surrender of other goods to the secured party that is made after or in contemplation of the debtor’s default is considered a surrender for sale pursuant to the provisions of Section 9-503, in the absence of written agreement to the contrary made substantially with or after such surrender.366

F. Debtor’s Right To Redeem Collateral

The debtor or any other person having a security interest in the collateral may redeem it for the debtor by tendering payment of all obligations secured by the collateral and the reasonable expenses of the secured party in retaking, holding, and preparing the collateral for disposition and arranging for the sale and for reasonable attorney’s fees and legal expenses to the extent provided in the agreement and not prohibited by law.367 The right of redemption may not be exercised after

361. Id.
362. The procedure described is found in Section 9-505(3).
363. Id.
364. The Act reads “willing” but it is an obvious typographical error, since if he is willing to take the goods there is no reason to sell them.
365. Section 9-503(3).
366. Section 9-505(4).
367. Section 9-506.
the secured party has sold or entered into a contract for the disposition of the collateral under Section 9-504 or pursuant to judicial process; after the parties have agreed to the transfer of such collateral in satisfaction of the secured obligations, wholly or partially, as provided or contemplated by Section 9-505; or after it has otherwise been agreed to by the debtor following default.\footnote{368}

G. Secured Party’s Liability For Failure To Comply With The Provisions Of The Chapter

1. General Rules

A secured party may be restrained from proceeding contrary to the provisions of Subchapter 5 (Sections 9-501 through 9-508) by exceeding his rights of possession or selling the collateral in a manner not permitted by the Chapter.\footnote{369} In such cases the court may order the collateral sold by judicial process or in such other manner as may be commercially reasonable.\footnote{370} If the secured party has disposed of the collateral contrary to the provisions of the subchapter he is liable for any loss caused to the debtor, to any person entitled to notification, or to any person whose security interest was made known to the secured party before the disposition.\footnote{371}

2. Limitations on Liability

Neither the obligation or the security interest nor the obligation of any surety, guarantor, or other person secondarily liable, or liable under an accessory contract for the obligation or the security interest, is released, extinguished or forfeited when a secured party may be liable under applicable law to a debtor, or any other person, for losses or damages that were actually caused by his (the secured party) failure to comply with or follow the procedures authorized by the Chapter. This is also true in the case where the secured party has, according to the law, wrongfully seized, executed upon or disposed of collateral, or otherwise attempted to enforce, collect, or assert an obligation secured or purportedly secured by a security interest, or has asserted rights in or to such security interest or the collateral.\footnote{372}

\footnote{368. Id.}
\footnote{369. Section 9-507(1).}
\footnote{370. Id.}
\footnote{371. Id.}
\footnote{372. Id. Of course, the secondary party’s liability may be reduced to the extent the debtor’s obligation is reduced or diminished by the amount of any actual damages he is awarded as a result of such actions.
H. Special Provisions Applicable To The Use Of Executory Process To Enforce Security Interests

Every written security agreement imports a confession of judgment and is deemed sufficiently authentic for purposes of executory process.373 Any written transfer of an obligation secured by a security interest is deemed authentic for purposes of executory process.374 The signatures of all parties to a security agreement, instrument, negotiable document, chattel paper, general intangible, or other writing evidencing a security agreement or obligation secured by a security interest are presumed to be valid and sufficiently authentic for purposes of executory process provided the petition is verified or an attached affidavit alleges or affirms that they are genuine by affiant.375 This same provision applies to the signatures of all parties affixed to any transfer.

The authority and capacity of persons who purport to sign any of the written documents or instruments described in the preceding paragraphs in a representative capacity shall be presumed if the signature is presumed genuine, or proven in any other manner permitted by law. Therefore, no further evidence of such authority or capacity is required for executory process.376

The amount of any advances made (whether in written form or otherwise) or of other obligations secured by any security interest subject to the provisions of the Chapter; the terms of such obligations, insofar as they are relevant; the amount thereof due and unpaid; and the fact of the debtor's default all may be proven by affidavit or verified petition.377

Any of affidavits or verified petitions referred to may be based upon a plaintiff's or affiant's personal knowledge or upon information and belief based upon the records of the secured party, any assignee, or of any other person that are kept or obtained in the ordinary course of business. The petition or affidavit need not specify or identify with particularity the records or data upon which such knowledge, information, or belief is founded.378 The provisions of the subchapter are cumulative and do not preclude proof, as provided by any other manner permitted by law of any fact for purposes of executory process in seeking enforcement of security interests and the obligations they secure.379

373. Section 9-508(1)(a).
374. Section 9-508(1)(b).
375. Section 9-508(1)(c).
376. Section 9-508(1)(d).
377. Section 9-508(1)(e).
378. Section 9-508(1)(f).
379. Section 9-508(2).