

AT No. 5159

FEDERAL RESERVE BANK OF NEW YORK

NEW YORK 45, N.Y.

RECTOR 2-5700

DIGEST OF SECURED
ARTICLE 9, UNIFORM

March 1, 1962

To All New Jersey Commercial Banks
in the Second Federal Reserve District:

As you know, the Uniform Commercial Code is to become effective in New Jersey on January 1, 1963.

As a service to New Jersey banks located in the Third Federal Reserve District, the Federal Reserve Bank of Philadelphia is distributing to those banks, on March 1, 1962, copies of a "Digest of Secured Transactions, Article 9, Uniform Commercial Code", which was originally prepared by General Counsel to the Federal Reserve Bank of Philadelphia to reflect the provisions of Article 9 as adopted in Pennsylvania. In order to complement this distribution, we are sending copies of the Digest to New Jersey banks located in the Second Federal Reserve District. Your copy is enclosed herewith.

We invite your attention to the explanatory material regarding the contents of the Digest and its use, appearing on the front cover, and particularly to the red overprinting thereon, which lists the changes to be made in order to conform it exactly to Article 9 as adopted in New Jersey.

Additional copies of the Digest may be obtained upon request.

ALFRED HAYES,
President.

Enclosure

DIGEST OF SECURED TRANSACTIONS

ARTICLE 9, UNIFORM COMMERCIAL CODE

MURDOCH K. GOODWIN, *General Counsel*
FEDERAL RESERVE BANK OF PHILADELPHIA

This Digest constitutes a summary only of Pennsylvania Pamphlet Law No. 1, April 6, 1953, 12A P.S. 9-101, as amended by Act No. 426, approved October 2, 1959, and by Act No. 687, approved December 16, 1959, effective January 1, 1960. The amending statutes of 1959 confirm the Uniform Commercial Code of Pennsylvania to the 1958 Official Text of the American Law Institute and Commissioners on Uniform State Laws. Reference should be made to Article 9 in the use of this Digest; it is not intended as a substitute for consultation with counsel. Various rules stated under particular headings may be affected by rules listed in other categories, particularly by those under the topics included in General Comments. The importance of definitions is emphasized.

Due to the choice of options by the New Jersey Legislature, the following changes should be marked on the Digest:

- (1) Under the two columns headed "Code Filing" on the first page, change the name "Prothonotary" to "County Clerk."
- (2) Under the same columns delete the phrase "also county filing if all debtor's places of business are in one county."
- (3) Substitute the following for item 19(c):
"If the collateral is affixed or is to be affixed to real estate or the collateral is crops, a description of the real estate and the name of the record owner thereof are required. (§9-110, §9-402(1).)"
- (4) On the inside page, strike out the last sentence only of item 19(f), which reads as follows:
"A removal of collateral from one county to another or of the debtor's residence or place of business likewise requires filing in the new county within 4 months when filing depends on such fact."

(Because of the conformity of the Pennsylvania Statute with the Official Text of the Law Institute and Commissioners, this Digest may be helpful for use in other states whose statutes likewise conform. Care should be taken in such use because of a choice of options suggested by the Official Text as well as minor variations adopted to conform to local preferences.)

December 31, 1959

GENERAL COMMENTS

15. APPLICABILITY OF ARTICLE 9

- a. Code does not apply to interest subject to United States statute that regulates rights of parties; landlord's liens; common law or statutory liens for services or materials; assignments of wages or compensation of employees; equipment trusts covering railway rolling stock; sale of accounts, contract rights and chattel paper as part of the sale of a business or for collection only, or of contract rights to assignees who are to perform the contract; transfers of insurance claims, rights represented by judgments; rights of set-off; liens on or leases of real estate (except for fixtures); transfers of tort claims or bank or savings accounts (9-104).
- b. The law of the state where the assignor of accounts or contract rights keeps his records concerning them governs the validity of a security interest in such collateral (9-103(1)).
- c. The law of the state where the debtor maintains its chief place of business governs the validity of a security interest in general intangibles and goods of a type normally used in more than one state, like vehicles, rolling stock, airplanes, construction equipment, if they are classified as equipment or if they are classified as inventory because they are leased by a debtor to others (9-103(2)).
- d. Statutes of any state requiring endorsement of a security interest on a certificate of title govern the validity of such interest (9-103(4)).
- e. Application of Act to a security interest in a secured obligation is not affected by the fact that the Act does not apply to its collateral (9-102(3)).
- f. A security interest under Article 2 (Sales) is subject to Article 9 only if debtor has possession of the goods (9-113, 9-302(1)).
- g. The security interest of a collecting bank in possession of collection items needs no security agreement or filing (4-208, 9-203, 9-302).
- h. In case of conflict between Article 9 and regulatory statutes, the latter govern (9-203(2)).

16. CREATION OF SECURITY INTEREST

- a. "Security interest" is defined as an interest in personal property or fixtures to the real estate which secures payment or performance of an obligation. It includes any interest of a buyer of accounts, chattel paper, or contract rights. Leases and consignments not intended as security are not security interests (1-201(37), 2-326, 2-327).
- b. A "security agreement" evidencing what is called a "security interest" represents a pledge, assignment, chattel mortgage, factor's lien, equipment trust, conditional sale, lease intended as security, trust receipt and consignment intended as security (9-102(2)).
- c. Security interest is created and protected against third parties in three ways:
 - (1) By oral agreement and delivery of possession. See item 1. (9-203, 9-305).
 - (2) By written agreement only (9-203, 9-304(4), 9-304(5)).
 - (3) Written agreement and filing of a "financing statement" (9-203, 9-302).Compliance with the procedures for obtaining protection of the security interest against third parties is called "perfection" (9-303). A security interest perfected in one way and then perfected in another way without an intermediate period when it was unperfected is a continuously perfected interest (9-303(2), 9-305(2), 9-312(6)).
- d. Right of debtor to use, commingle, or dispose of collateral or its proceeds or to collect or compromise accounts receivable, contract rights or chattel paper does not invalidate a security interest unless validity of the security interest depends on possession. *Benedict v. Ratner*, 268 U. S. 353, is no longer the rule (9-205).

17. PURCHASE MONEY SECURITY INTERESTS

- a. The Code creates these as a new type of property interest to which special benefits are extended.
- b. Defined as interest to secure purchase price retained by a seller or to secure advances made and used to enable debtors to acquire rights in collateral (9-107).
- c. Ten days allowed for filing after debtor receives possession as against intervening lien creditors or bulk transferees. Intervening buyers may get good title (9-301(2)).
- d. See items 9b and 11b.
- e. See items 9d and 11c.
- f. See items 3c and 28f.

18. SECURITY AGREEMENT

- a. Security agreement is effective between the parties according to its terms (9-201).
- b. Should be signed by the debtor and describe the collateral and also the real estate when the interest is in crops or standing timber, oil, gas, or minerals (9-203(1)). Descriptions of personal property or real estate are sufficient if they reasonably identify the property (9-110).
- c. The security agreement may be filed as the financing statement if it complies with the requirements of that statement (9-402(1)).
- d. Discretionary provisions:
 - (1) Whether future advances are to be secured (9-204(5)).
 - (2) Whether advance is to be secured by after-acquired property (9-204(3)).
 - (3) Whether assignee of accounts receivable or instruments has the right to demand direct payment before default (9-502(1)). (No right exists unless agreement so provides).
 - (4) Recital of events of default.
 - (5) Description of real estate if the goods are to be affixed thereto.
 - (6) Use or operation of collateral by secured party in possession after default. See item 26a.
- e. See item 15g.

19. FINANCING STATEMENT

- a. Unnecessary (1) when possession delivered to secured party; (2) as stated in items 1 to 14; (3) as to assignments of security interests in order to continue interest against original debtors; (4) as to interests of a collecting bank; or (5) when U. S. statute or state statute provides for registration or central filing (9-302). A change in the use of collateral does not impair original filing (9-401(3)).
- b. Must be signed by debtor and secured party, contain their addresses and describe the collateral (9-402(1)).
- c. If the collateral is affixed or is to be affixed to real estate or the collateral is crops, a description of the real estate is required (9-110, 9-402(1)).
- d. If proceeds are claimed, a statement to that effect is required (9-306(3)).
- e. Discretionary provisions:
 - (1) Whether proceeds are claimed. See item 23.
 - (2) Whether interest in commingled or resulting product or mass is claimed. See item 22.
 - (3) Whether after-acquired property is claimed. See item 20.
- f. Security interests perfected on property (other than accounts, contract rights, general intangibles, automotive equipment, etc., which is "equipment" or inventory of a debtor because leased to others, items 15b, c) in another state are effective in this state for 4 months after removal to this state, during which period a financing statement should be filed to avoid interruption of continuance of the interest (9-103(3)). A removal of collateral from one county to another or of the debtor's residence or place of business likewise requires filing in the new county within 4 months when filing depends on such fact (9-401(3)).
- g. Financing statements filed for the purpose of covering proceeds or to continue in this state security interests on goods brought into the state or because of removal to another county need only be signed by the secured party (9-401(3), 9-402(2)).
- h. If financing statement states a maturity date of 5 years or less, the filing is effective until that date plus 60 days. If no maturity date is stated, the filing is effective for 5 years. A continuation statement may be filed within 6 months prior to the date of lapse for an additional period of 5 years and signed only by the secured party to renew the interest. A continuation statement may also be filed within a period of 60 days after a stated maturity date of 5 years or less (9-403).
- i. The secured party must furnish a termination statement when his security interest ceases (9-404).
- j. Assignments of security interest may be filed (9-405).

20. AFTER-ACQUIRED PROPERTY

- a. Security agreement may provide that after-acquired property shall secure all obligations covered by the agreement, but limited as to crops and consumer goods (9-204(3)). Grant of security interest in after-acquired collateral acquired in ordinary course of business or within a reasonable time pursuant to the security agreement may be supported by new value (9-108).
- b. The interest in after-acquired property dates from the time of original perfection (9-312(5)).
- c. See items 9e and 10b.
- d. See item 3c.

21. FUTURE ADVANCES

- a. Security agreement may provide that collateral given at time of execution shall secure future advances (9-204(5)).
- b. The lien for subsequent advances dates from the perfection of the original security interest (9-204(5), 9-312(5)).

22. COMMINGLED GOODS

- a. A perfected interest in goods which become part of a product or mass continues in the product or mass if the goods lose their identity in processing or manufacturing or the financing statement covers the product in which the goods are assembled (9-315(1)).
- b. When more than one interest attaches to the mass or product they rank equally in proportion to their contribution to the mass (9-315(2)).

23. PROCEEDS

- a. Proceeds are whatever is received in exchange for collateral. "Cash proceeds" include checks and money and the like. All other proceeds are "noncash proceeds" (9-306(1)). The word "proceeds" needs no further description in describing collateral (9-203(1)).
- b. The security interest continues in the original collateral in the hands of third parties except as listed under item 27 (9-306(2)).
- c. Secured party is entitled to proceeds of the original collateral, subject to the comments under items 27 and 28 (9-306(2)).
- d. If the original financing statement does not claim proceeds, a second financing statement must be filed within 10 days after the receipt of proceeds by the debtor to support an interest in them (9-306(3), 9-402(2)).
- e. Rights in proceeds are subject to comment contained in item 5d.
- f. In insolvency, rights in undeposited cash proceeds or noncash proceeds are dependent on identifiability (9-306(4)).
- g. In insolvency proceedings secured party has the right to other cash proceeds deposited or commingled, but limited to the amounts received by debtor within 10 days prior to such proceedings, without requirement of identification but reduced by amount received by the debtor and paid to creditor within the 10-day period and subject to set-off (9-306(4)).

24. FLOATING LIENS

- a. The rules relating to after-acquired property, future advances, commingled or processed goods and proceeds make possible a lien on a shifting stock of goods. A lien may also begin with raw material, pass to work in process, to finished inventory, to accounts receivable or chattel paper and their cash proceeds.

25. FIELD WAREHOUSING

- a. The arrangement, heretofore supported by court decisions, of pledging property which remains located on the premises of the debtor and is identified by signs is valid without the accomplishment of filing only if nonnegotiable warehouse receipts are issued by an independent bailee to whom possession is delivered or if notice is given to the bailee (9-205, 9-304). See item 2c.

26. RIGHTS, DUTIES AND REMEDIES

- a. A secured party in possession must preserve the collateral with reasonable care and is subject to liability for failure to do so. He may use or operate the collateral as permitted in the security agreement or to preserve its value and may repledge the collateral subject to the right of redemption (9-207).
- b. The risk of loss is on the debtor who is responsible for the payment of taxes, insurance, and storage charges unless otherwise agreed when collateral is in possession of secured party (9-207).
- c. The creditor must within two weeks of receipt affirm or disaffirm a statement received from the debtor of the amount of the debt and of the collateral. The creditor is liable for loss if he fails to comply (9-208).
- d. After default the creditor has the right to judgment, to collect accounts, contract rights, chattel paper and documents, to foreclose, to repossess by peaceful means or by replevin, and to sell the property at public or private sale after notification to the debtor. Notice of sale to other filed or known security interests is required except in the case of consumer goods. He has the right to buy at the public sale and the right to buy at the private sale if the collateral is quoted on a recognized market. The lien of a levy on collateral relates back to the date of perfection of the security interest (9-501 to 9-504).
- e. The sale must be in a commercially reasonable manner, but the fact that a better price was obtainable at another time or place does not make the sale unreasonable (9-504(3), 9-507(2)).
- f. The creditor may retain the collateral in discharge of the debt unless the debtor or other interested parties object. If the debtor has paid 60 per cent in the case of an obligation incurred in connection with consumer goods, the public or private sale must be made within 90 days unless the debtor renounces such rights (9-505(1), 9-505(2)).

27. EXCEPTIONS TO SUPERIORITY OF HOLDER OF PERFECTED SECURITY INTERESTS

- a. Buyer in ordinary course of business of inventory other than farm products gets good title (9-307(1), 1-201(9)).
- b. Buyer of farm equipment costing \$2,500 and under and consumer goods without knowledge of previous security interest may get good title unless filing was accomplished (9-307(2)).
- c. Holders in due course of negotiable instruments and negotiable documents and bona fide purchasers of securities may get good title (9-309).
- d. Common law or statutory liens for services and materials take priority unless statute provides otherwise (9-310).
- e. See items 5c and 5d.
- f. See items 3c, 12a, 12b, 12c, 12d, 13b, 13c, 13d, 13e.
- g. A buyer of nonnegotiable instruments from debtor without knowledge may get good title (9-308).

28. CONFLICTING SECURITY INTERESTS — PRIORITIES

- a. If filing is accomplished as to both security interests in the same collateral, they rank according to the time of filing (9-312(5)). Filing may occur before value is given (9-312(5)(a), 9-402(1)).
- b. If filing is not accomplished as to both security interests, they rank according to date of perfection (9-312(5)).
- c. If neither security interest is perfected, they rank according to date value was given and the debtor acquired an interest in the collateral (9-312(5)).
- d. Subsequent advances on the original collateral under the security agreement are secured as of the date of original perfection (9-204(5), 9-312(5)).
- e. Interests in after-acquired collateral date from the date of original perfection (9-312(5)).
- f. A purchase money security interest has priority over a conflicting interest in collateral other than inventory if perfected within 10 days after receipt of the collateral by the debtor. If the collateral is inventory, filing must be accomplished and notice must be given to the other known or filed security interests before the debtor receives the collateral (9-312(3), 9-312(4)).
- g. When collateral is crops, a party who gives new value within 3 months prior to planting, in order to enable the debtor to produce the crops, has priority over an earlier interest in the crops which secures an obligation which is due more than 6 months before planting (9-312(2)).
- h. A security interest in goods represented by a negotiable document is subject to a security interest in the document (9-304). See item 2b.
- i. Goods returned after sale are resubjected to a prior security interest and superior to the security interest of the intervening assignee of the account created by the sale. But a transferee of chattel paper created by the sale may have a superior security interest (9-306(5), 9-308).
- j. The security interest of banks collecting items and accompanying documents is superior to conflicting security interests in the item or documents (4-208).
- k. Unperfected security interests are subject to the rights acquired in the collateral by many third parties (9-301).

**DIGEST OF SECURED TRANSACTIONS
ARTICLE 9, UNIFORM COMMERCIAL CODE**

MURDOCH K. GOODWIN, ESQ.
PHILADELPHIA, PENNSYLVANIA

This Digest constitutes a summary only of Pennsylvania Pamphlet Law No. 1, April 6, 1953, 12A P.S. 9-101, as amended by Act No. 426, approved October 2, 1959, and by Act No. 687, approved December 16, 1959, effective January 1, 1960. The amending statutes of 1959 conform the Uniform Commercial Code of Pennsylvania to the 1958 Official Text of the American Law Institute and Commissioners on Uniform State Laws. Reference should be made to Article 9 in the use of this Digest; it is not intended as a substitute for consultation with counsel. Various rules stated under particular headings may be affected by rules listed in other categories, particularly by those under the topics included in General Comments. The importance of definitions is emphasized.

TYPE OF COLLATERAL	CODE FILING (9-401)		RULES APPLICABLE
	CENTRAL (Secretary of State; also county filing if all debtor's places of business are in one county)	COUNTY (Prothonotary except for goods affixed to real estate)	
1. INSTRUMENTS	NONE	NONE	a. Defined as negotiable instruments, securities, and any other writing which evidences a debt and which is not a security agreement or lease (9-105). b. Delivery of physical possession required (9-304(1)). Relinquishment for 21 days allowed for purposes stated except bona fide purchaser during such period may get good title (9-304, 9-308, 9-309). c. Possession by secured party of any collateral, including letters of credit, except general intangibles, accounts receivable, or contract rights eliminates filing (9-302(1), 9-305(1)). d. A buyer of nonnegotiable instruments without knowledge may get good title (9-308).
2. DOCUMENTS AND GOODS	X		a. "Documents" means documents of title (bills of lading, warehouse receipts, etc.) (1-201, 9-105). b. Either filing or possession permitted as to negotiable documents. A security interest in negotiable documents includes the goods they represent (9-304). See item 28h. c. Notice of a security interest to a bailee or his issuance of a document to secured party eliminates need of filing as to goods. Thus field warehousing is permissible (9-304, 9-305). See item 25. d. Filing as to negotiable documents or possession not required for 21 days after giving new value (9-304). e. Relinquishment of goods in hands of a bailee or negotiable documents allowed for 21 days for purposes stated without filing (9-304). Bona fide purchasers of negotiable documents during such period may get good title (9-309).
3. INVENTORY	X		a. Defined as goods held for sale or lease or materials consumed in a business. "Inventory" includes raw materials and work in process (9-109(4)). b. Buyer from debtor gets good title in ordinary course of business (9-307(1)). c. Interest in "after-acquired" inventory may be subject to purchase money interest in such inventory if notice is given (9-312(3)). d. Motor vehicles which constitute inventory held for sale require filing under the Code rather than endorsement of the lien on a certificate of title. See item 14. (9-302(3)).
4. EQUIPMENT	X		a. Defined as goods used or bought for use primarily in a business (including farming or a profession) (9-109(2)). b. See item 15c. c. Filing requirements of the Code do not apply to motor vehicles as to which endorsement of the lien is permitted on the certificate of title (9-302(3)). See item 14.
5. CHATTEL PAPER	X		a. Applies to sales of chattel paper (9-102(1)). b. Defined as a writing evidencing both a debt and a security interest in or lease of specific goods (9-105). c. Unless possession is obtained by secured party, a buyer from debtor without knowledge may get good title (9-308). d. If chattel paper is proceeds of original inventory collateral, even a buyer with knowledge may get good title (9-308). e. Only possession gives absolute security. f. See item 16d. g. An agreement by a buyer not to assert defenses against an assignee is valid (9-206(1), 9-318).
6. CONTRACT RIGHTS	X		a. Applies to sales of contract rights (9-102(1)). b. Defined as right to payment conditioned on prior performance and not evidenced by an instrument or chattel paper (9-106). c. Proceeds include resulting accounts receivable (9-306(1)). d. Agreement of debtor not to assert defenses against assignee is valid (9-206(1), 9-318). e. No filing needed when assignment is not of a significant part of contract rights (9-302(1)). As to contract rights of farmers, see item 10a. f. see item 15b. g. see item 16d. h. Filing requirements are applicable to assignment of United States contracts. i. Prohibition against assignment is ineffective (9-318(4)).
7. ACCOUNTS RECEIVABLE	X		a. Applies to sales of accounts (9-102(1)). b. Defined as right to payment not evidenced by instrument or chattel paper (9-106). c. Agreement of debtor not to assert defenses against assignee is valid (9-206(1), 9-318). d. No filing needed when assignment is not of a significant part of accounts (9-302(1)). As to accounts of farmers, see item 10a. e. See item 15b. f. See item 16d. g. Prohibition against assignment is ineffective (9-318(4)).

TYPE OF COLLATERAL	CODE FILING (9-401)		RULES APPLICABLE
	CENTRAL (Secretary of State; also county filing if all debtor's places of business are in one county)	COUNTY (Prothonotary except for goods affixed to real estate)	
8. GENERAL INTANGIBLES	X		a. Defined as any personal property other than goods, accounts, contract rights, chattel paper, documents and instruments (9-106). b. See item 1c and 15c. As to general intangibles of farmers, see item 10a.
9. CONSUMER GOODS		X	a. Defined as goods used or bought primarily for personal, family, or household purposes (9-109(1)). b. Purchase money interest does not require filing as against creditors unless it is affixed to real estate or is in a titled motor vehicle (9-302(1)). See item 14. c. Filing required if not a purchase money interest (9-302). d. If no filing, buyer of other than fixtures without knowledge may get good title if he buys for personal use (9-307(2)). e. After-acquired property clause not effective, except as to accessions, if acquisition by debtor is more than 10 days after original value was given (9-204(4)). f. An agreement by a debtor not to assert defenses against an assignee is valid unless another statute or decision establishes a different rule (9-206(1), 9-318).
10. FARM PRODUCTS		X	a. Defined as crops, farm livestock, and their products of a farmer (9-109(3)). When collateral is accounts, contract rights, or general intangibles resulting from sale of farm products by a farmer, filing is local (9-401). b. After-acquired property clause effective as to crops for one year only unless created by lease, land purchase, mortgage, or improvement transaction (9-204(4)). c. See item 28g. d. A buyer of farm products from a farmer is subject to a security interest created by the seller (9-307(1)).
11. FARM EQUIPMENT		X	a. Defined as equipment used in farming (9-109(2)). b. No filing required for purchase money security interest in farm equipment costing \$2,500 and under unless it is affixed to real estate or is in a titled motor vehicle (9-302(1)). See item 14. c. If no filing, buyer of other than fixtures without knowledge may get good title if he buys for farming use (9-307(2)). d. Filing is required if not a purchase money interest (9-302).
12. GOODS AFFIXED TO REAL ESTATE		X (Office where real estate mortgages are filed)	a. A security interest in goods which is created before they are affixed to real estate is superior to prior claims in the real estate and also superior to subsequent claims in the real estate if filed before they arise (9-313(2), 9-313(4)). b. A security interest in goods which is created after they are affixed to the real estate is superior only to subsequent interests in the real estate if filed before they arise (9-313(3), 9-313(4)). c. Both types of interests described in (a) and (b) are subject to subsequent advances contracted for under a prior encumbrance of record (9-313). d. Interests in the real estate which intervene before filing may take priority (9-313). e. Removal causes responsibility only for physical injury to the real estate and not for diminution in value (9-313). f. Goods like lumber, bricks, etc., incorporated in a structure cannot be subjected to a security interest (9-313).
13. GOODS ATTACHED TO OTHER GOODS	X	X	a. Place of filing depends on whether goods are "equipment," "consumer goods," "inventory," or "farm equipment." b. A security interest in goods which is created before they are attached to other goods is superior to prior claims in the other goods and also superior to subsequent claims in the other goods if filed before they arise (9-314(1), 9-314(3)). c. A security interest in goods which is created after they are attached to other goods is superior only to subsequent interests in the other goods if filed before they arise (9-314(2), 9-314(3)). d. Both types of interests described in (b) and (c) are subject to subsequent advances contracted for under a prior perfected security interest (9-314). e. Interests in the other goods which intervene before filing may take priority (9-314). f. Removal causes responsibility only for physical injury to the other goods and not for diminution in value (9-314).
14. MOTOR VEHICLES	X	X	a. The filing provisions of the Code do not apply to interests in motor vehicles on whose certificates of title another statute permits the endorsement of the security interest. Such endorsement is required except as to motor vehicles held for sale (9-302(3)). b. This requirement of notation on certificates of title to motor vehicles applies to vehicles even though the security interest is a purchase money interest in vehicles which are farm equipment costing \$2,500 and less or is a purchase money security interest in consumer goods (9-302(1)). c. Untitled motor vehicles and those held for sale are subject to the filing provisions of the Code.