

Contents

About the Author	vii
Acknowledgments	viii
Preface	ix
Forms Disk Instructions	xi
CHAPTER 1 TRANSITION AND APPLICABLE LAW	1-1
1.1 Transition Rules	1-1
1.1.1 General Rule: New 9 Applies to Pre-and Post-January 1, 2002, Transactions	1-1
1.1.2 Exceptions to the General Rule	1-2
1.1.2.1. Law Suits	1-2
1.1.2.2. Five-Year Safe Harbor for Financing Statements	1-2
1.1.2.3. One Year for (Almost) Everything Else	1-4
1.1.2.4 Florida Unlimited Safe Harbor for Mortgage Assignments	1-6
1.2 How to Continue Financing Statements Filed Properly under Old 9, but in the Wrong Place under New 9, after January 1, 2002	1-6
1.3 How to Continue Financing Statements Filed in the Right New 9 State and Filing Office after January 1, 2002 (<i>i.e.</i> , the Old 9 and New 9 Locations Are the Same)	1-8
1.4 How to Continue Financing Statements Filed Both in the Right New 9 State and Filing Office and the Wrong New 9 State and Filing Office	1-8.1
1.5 Amendments to Financing Statements Filed before July 1, 2001	1-8.1
1.6 Transition Priorities	1-8.2
1.7 What Law Governs?	1-9
1.7.1 Governing Law for Perfection and Priority	1-9
1.7.2 Governing Law for Other Issues	1-12
1.8 Transactions with Native American Tribes	1-12
CHAPTER 2 OVERVIEW AND DEFINITIONS	2-1
2.1 Security Interest	2-1
2.1.1 Purchase-Money Security Interests	2-1
2.1.1.1. Application of Payments	2-2
2.1.2 Agricultural Liens	2-3
2.1.3 Consignments	2-3

CONTENTS

2.2 Parties 2-4
2.3 Exclusions from New 9 2-6
2.4 New 9 Collateral Categories 2-8
 2.4.1. Intangible and “Semi-Tangible” Property 2-8
 2.4.2. Tangible Personal Property—Goods 2-12
 2.4.3. Investment Property-Related Definitions 2-13
 2.4.4. Supporting Obligation 2-14
 2.4.5. Proceeds 2-14
2.5 Medium Neutral Terms 2-15
2.6 Good Faith 2-15

**CHAPTER 3 CREATING A SECURITY INTEREST—
ATTACHMENT—MAKING THE SECURED
PARTY’S RIGHTS ENFORCEABLE AGAINST
THE DEBTOR 3-1**

3.1 Elements of Attachment 3-1
3.2 Security Agreement 3-2
3.3 Possession 3-4
3.4 Control 3-4
3.5 Attachment to Proceeds and Supporting Obligations 3-4
3.6 Attachment to Securities and Commodity Accounts 3-5
3.7 After-Acquired Property 3-5
3.8 Future Advances and Dragnet Clauses 3-6
3.9 Attachment of Lein Securing Right to Payment 3-6
3.10 Leases of Goods 3-6

CHAPTER 4 PERFECTION 4-1

4.1 General Rule: All Security Interests Must Be Perfected
by Filing a Financing Statement 4-2
4.2 Exception 1: Filing a Financing Statement Doesn’t
Work at All 4-2
4.3 Exception 2: Filing a Financing Statement Is an Optional
Method of Perfection 4-2
4.4 Exception 3: Automatic Perfection 4-2
4.5 Exception 4: Filing a Financing Statement Is Not Required
for Security Interests in Property Subject to a Certificate of
Title or Other Statute 4-3
4.6 Exception 5: Filing a Financing Statement Is Not Required
for Security Interests Perfected by Possession 4-4
4.7 Exception 6: Filing a Financing Statement Is Not Required
for Security Interests Perfected by Control 4-5
4.8 Exception 7: Temporary Perfection 4-5

CHAPTER 5 FINANCING STATEMENT MECHANICS 5-1

5.1 What Kinds of Records Are Filed? 5-1

5.2	Where to File?	5-1
5.3	Contents of a “Sufficient” Financing Statement	5-2
5.4	Debtor’s Name Rules	5-4
	5.4.1 Individual Debtors	5-5
5.5	How to Describe Collateral	5-7
5.6	When Filing Office Can Reject Filings	5-8
5.7	Mistakes	5-9
5.8	Who Can File?	5-10
	5.8.1 Initial Financing Statements	5-10
	5.8.2 Amendments	5-11
5.9	Duration of Financing Statements	5-13
5.10	Continuation Statements	5-13
5.11	Termination Statements	5-14
5.12	Wrongfully Filed Termination Statements	5-14
5.13	The Filing Office	5-15
5.14	Inaccurate or Wrongfully Filed Records	5-15
5.15	Filing Office Indexing Errors	5-16
5.16	Maintenance and Destruction of Records	5-16
5.17	Information from Filing Office	5-16
5.18	Filing Fee	5-17
5.19	Filing Office Rules	5-17
5.20	Documentary Stamp Tax	5-17
5.21	Wrongfully Filed Termination Statements	5-18
5.22	New 9 Searching and Filing Practices	5-19
 CHAPTER 6 PREVAILING AGAINST OTHERS		6-1
6.1	General Rules of Priority among Creditors	6-1
6.2	Exceptions to the “First-to-File-or-Perfect” Rule	6-2
	6.2.1 Control Prevails over Filing	6-2
	6.2.2 Some Security Interests Perfected by Possession or Control Prevail over Earlier Security Interests in Chattel Paper and Instruments Perfected Earlier by Filing	6-2
	6.2.3 The Purchase-Money Security Interest Super-Priority	6-3
	6.2.4 Future Advances	6-5
6.3	Transferees of Collateral	6-5
6.4	Buyers	6-6
6.5	Licenses and Lessees in Ordinary Course of Business	6-7
6.6	Rights under Chapters 673, 677 and 678	6-7
6.7	Possessory Statutory Liens	6-8
6.8	Priority of Security Interest in Fixtures and Crops Against Real Estate Claimants	6-8
	6.8.1 Exception 1: Perfection of Security Interest	6-8

CONTENTS

6.8.2	Exception 2: Perfected Security Interest in a Manufactured Home Transaction	6-8
6.8.3	Crops	6-9
6.8.4	Priority Based on Consent.	6-9
6.9	Accessions	6-9
6.10	Commingled Goods.	6-9
6.11	Contractual Subordination	6-10
CHAPTER 7 PARTICULAR TYPES OF COLLATERAL		7-1
7.1	Investment Property	7-1
7.1.1	Stock Options and Warrants	7-4
7.2	Deposit Accounts	7-5
7.3	Letter-of-Credit Rights	7-8
7.4	Commercial Tort Claims	7-10
7.5	Agricultural Liens	7-10
7.6	Software.	7-11
7.7	Electronic Chattel Paper	7-13
7.8	Patents	7-13
7.9	Trademarks and Service Marks	7-14
7.10	Copyrights	7-14
7.11	Agricultural Collateral.	7-14
7.11.1	Types of Agricultural Collateral	7-15
7.11.2	Financing Statement Filing Location	7-16
7.12	Bailed Goods Covered by Documents	7-16
7.13	Documents of Title	7-17
CHAPTER 8 PROCEEDS.		8-1
8.1	General Rule—Continuation of Security Interest in Original Collateral and Proceeds	8-1
8.2	Twenty-Day Automatic Perfection for Proceeds.	8-1
8.3	How a Security Interest in Proceeds Remains Perfected for More than 20 Days	8-2
8.4	Priority in Proceeds.	8-3
CHAPTER 9 CHANGES AFTER CLOSING.		9-1
9.1	Secured Party Changes	9-1
9.2	Debtor’s Location Changes.	9-2
9.3	Collateral Location Changes	9-3
9.4	Location of Bank, Issuer, Nominated Person, Securities Intermediary or Commodity Intermediary Changes	9-3
9.5	Financing Statements and Changes.	9-3
9.5.1	Debtor’s Name Changes	9-4
9.5.2	New Debtors	9-4
9.6	“Double Debtors”	9-5
9.7	Goods Covered by Certificates of Title.	9-6

CHAPTER 10	THIRD PARTIES—ACCOUNT DEBTORS	10-1
10.1	Account Debtors	10-1
10.2	Terms Restricting Assignment	10-3
10.2.1	Accounts, Chattel Paper and Security Assignments of Payment Intangibles and Promissory Notes	10-3
10.2.2	Health-Care-Insurance Receivables, Certain General Intangibles, Including Contracts, Permits, Licenses and Franchises and Sales of Payment Intangibles and Promissory Notes . .	10-4
10.2.3	Assignment of Letter-of-Credit Rights	10-5
CHAPTER 11	ENFORCEMENT	11-1
11.1	Options	11-1
11.2	Waiver and Variance of Debtor’s and Obligor’s Rights and Secured Party’s Duties	11-2
11.3	Unknown Debtor or Secondary Obligor	11-3
11.4	“Commercially Reasonable”	11-3
11.5	Fixtures	11-4
11.6	Collection and Enforcement of Collateral Consisting of Rights to Payment	11-4
11.7	Application of Proceeds of Collection and Enforcement of Collateral Consisting of Rights to Payment	11-5
11.8	Repossession	11-7
11.9	Disposition of Collateral	11-7
11.10	Notices before Disposition	11-8
11.11	Forms of Notice	11-9
11.11.1	Non-Consumer-Goods Transactions	11-9
11.11.2	Consumer-Goods Transactions	11-10
11.12	Application of Proceeds	11-11
11.13	Accounting	11-12
11.14	Transferees of Collateral	11-13
11.15	Transfers to Secondary Obligors	11-13
11.16	Transfer Statement	11-14
11.17	Acceptance of Collateral in Full or Partial Satisfaction of Obligation — Strict Foreclosure	11-14
11.18	Mandatory Disposition of Consumer Goods	11-16.1
11.19	Right of Redemption	11-17
CHAPTER 12	SECURED PARTY’S OBLIGATIONS	12-1
12.1	Care of Collateral	12-1
12.2	Release Account Debtor	12-1
12.3	Duty to Provide Information	12-2
12.4	Obligation to Terminate	12-3
12.5	Penalties for Failure to Comply with These Obligations	12-4

CHAPTER 13	PENALTIES AGAINST SECURED PARTIES . . .	13-1
13.1	Damages	13-1
13.2	Rebuttable Presumption Rule	13-1
13.3	Insider Dispositions.	13-2
CHAPTER 14	FORMS	14-1
FORM 14-1	New 9 Collateral List for Security Agreement— 679.1081 (Commercial Credit)	14-1
FORM 14-2	New 9 Collateral List—679.1081 (Consumer Credit) . . .	14-2
FORM 14-3	Secured Party’s Release of Control over Deposit Account—679.2081(2)(a).	14-3
FORM 14-4	Secured Party’s Release of Securities Intermediary/ Commodity Intermediary—679.2081(2)(d)	14-4
FORM 14-5	Secured Party’s Release of Control over Letter-of- Credit Right—679.2081(2)(e)	14-4
FORM 14-6	Debtor’s Request for an Accounting—679.210(1)(b) . . .	14-5
FORM 14-7	Debtor’s Request Regarding a List of Collateral— 679.210(1)(c).	14-6
FORM 14-8	Debtor’s Request Regarding a Statement of Account —679.210(1)(d)	14-6
FORM 14-9	Secured Party’s Accounting—679.210(2)(a)	14-7
FORM 14-10	Secured Party’s Response to Debtor’s Request Regarding a List of Collateral—679.210(2)(b).	14-8
FORM 14-11	Secured Party’s Response to Debtor’s Request Regarding a Statement of Account—679.210(2)(b).	14-9
FORM 14-12	Secured Party’s Response to Debtor’s Request Regarding a List of Collateral when Secured Party Claims an Interest in All of a Particular Type of Collateral Owned by the Debtor—679.210(3)	14-10
FORM 14-13	Notice of Exclusive Control of Securities Account	14-10
FORM 14-14	Notice of Disposition of Consumer-Goods —679.614	14-11
FORM 14-15	Notice of Disposition of Non-Consumer-Goods —679.613	14-13
FORM 14-16	Secured Party’s Request for Consent of Issuer or Nominated Person to Assignment of Letter-of-Credit Proceeds and Issuer or Nominated Person’s Consent —679.1071	14-14
FORM 14-17	Exclusion of Warranties by Secured Party Selling Collateral—679.610	14-15
FORM 14-18	Notice of Purchase-Money Security Interest in Inventory—679.324(2)	14-15
FORM 14-19	Notice to Bailee in Possession of Goods Who has Issued a Non-Negotiable Document Covering the Goods—679.3121(4)	14-16
FORM 14-20	Consent of Owner of Real Property to Creation of Security Interest in Fixtures—679.334(3)	14-16

FORM 14-21 Notice from Consignor to Secured Party—679.324(2) . . . 14-17

FORM 14-22 Waiver of Disposition Notification—679.602(7),
679.611, 679.624(1) 14-18

FORM 14-23 Mandatory Disposition of Consumer-Goods—
Agreement of Debtor and Secondary Obligor to
Longer Period of Time—679.620(5) and (6) 14-18

FORM 14-24 Description of Commercial Tort Claim for Purposes
of Security Agreement and Financing Statement—
679.1081, 679.5041, 679.2031(2)(c)1 14-19

FORM 14-25 Grant of Security Interest in Deposit Account to
Depository Bank to Include in Deposit Account
Signature Card—679.2031(2)(c)4 14-20

FORM 14-26 Secured Party’s Proposal to Accept Collateral in
Full Satisfaction of Debt—679.620 14-20

FORM 14-27 Secured Party’s Proposal to Accept Collateral in
Partial Satisfaction of Debt—679.620 14-21

FORM 14-28 Secured Party’s Notice That Strict Foreclosure Has
Occurred 14-23

FORM 14-29 Secured Party’s Notice That Partial Strict Foreclosure
Has Occurred 14-23

FORM 14-30 Governing Law Choices 14-24

FORM 14-31 Application of Payments 14-24

FORM 14-32 Bailee Acknowledgment That It Holds Possession of
Collateral for Secured Party’s Benefit—679.3131(3) 14-25

FORM 14-33 Notice of Assignment to Include on Chattel Paper or
an Instrument—679.330(1)(b) 14-26

FORM 14-34 Notice to Include on Chattel Paper Financing
Statement That Purchase of Chattel Paper from
Debtor Would Violate the Rights of the Secured
Party—679.330(2) 14-26

FORM 14-35 Notice to Account Debtor of Assignment of
Account—679.4061 14-26

FORM 14-36 Agreement of Account Debtor Not to Assert
Claims and Defenses Against Assignee of
Account—679.4031(2) 14-27

FORM 14-37 Secured Party’s Release of Account Debtor—
679.209(2) 14-27

FORM 14-38 Proof Offered by Assignee That Account Has Been
Assigned—679.4061(3) 14-28

FORM 14-39 Secured Party Affidavit in Recordable Form
Regarding Default—679.607(2) 14-29

FORM 14-40 Instruction by Secured Party to Bank to Pay out
Deposit Account Collateral after Default—
679.607(1)(e) 14-30

FORM 14-41 Transfer Statement—679.619 14-31

FORM 14-42 Notice to Secured Party of a Claim or Interest
in the Collateral—679.611(3)(c)1 14-31

CONTENTS

FORM 14-43	Demand by Subordinate Secured Party for Proceeds—679.608(1)(a)3, 679.615(1)(c)1	14-32
FORM 14-44	Demand by Secured Party of Proof of Subordinate Interest—679.608(1)(b), 679.615(2).	14-33
FORM 14-45	Federal Trade Commission Holder-in-Due-Course Notice	14-33
FORM 14-46	Deficiency/Surplus Explanation—679.616	14-34
FORM 14-47	Security Agreement (Consumer).	14-35
FORM 14-48	Security Agreement (Corporate Debtor)	14-45
FORM 14-49	Pledge Agreement (Certificated Security)	14-75
FORM 14-50	Guaranty Security Agreement (Corporate Guarantor)	14-82
FORM 14-51	Investment Property Control Agreement (Joint Control, no withdrawals or distributions of dividends)	14-113
FORM 14-52	Investment Property Control Agreement (Exclusive Creditor Control).	14-116
FORM 14-53	Investment Property Security Agreement (Joint Control).	14-120
FORM 14-54	Investment Property Security Agreement (Exclusive Creditor Control)	14-127
FORM 14-55	Deposit Account Control Agreement (Joint Control)	14-135
FORM 14-56	Deposit Account Control Agreement (Exclusive Creditor Control).	14-138
FORM 14-57	Guaranty Agreement (Corporate Guarantor)	14-141
FORM 14-58	Promissory Note (Commercial)	14-157
FORM 14-59	Subordination Agreement	14-167
FORM 14-60	Deposit Account Security Agreement and Control Agreement (Short Form, no waiver of setoff by Depository)	14-177
FORM 14-61	Loan and Security Agreement (Commercial Loan)	14-179
FORM 14-62	Pledge Agreement (Certificates of Deposit that are “instruments”).	14-215
FORM 14-63	UCC Financing Statement	14-221
FORM 14-64	UCC Financing Statement Addendum	14-222
FORM 14-65	UCC Financing Statement Amendment	14-223
FORM 14-66	UCC Financing Statement Amendment Addendum.	14-224
FORM 14-67	Assignment of Mortgages (Blanket)	14-225
FORM 14-68	Continuation Financing Statement Legend—679.706(3).	14-226
FORM 14-69	Mortgage Deed and Security Agreement—679.5021(3)	14-227
FORM 14-70	Financing Statement Legend—Disclosing Debtor Agreement Not to Grant Junior Security Interests in Collateral—679.331	14-237
FORM 14-71	Waiver of Right to Redeem—679.624(3).	14-238
FORM 14-72	Secured Party’s Disclaimer of an Interest in Collateral or Obligations—679.210(4) and (5)	14-238

FORM 14-73	Collateral List for Financing Statement—679.5041 (Commercial Credit)	14-239
FORM 14-74	Debtor’s Correction Statement—679.518(2).	14-241
FORM 14-75	Authorization to File Financing Statement or Amendment	14-242
FORM 14-76	Notice of Purchase-Money Security Interest in Livestock—9-324(b)	14-243
FORM 14-77	Equipment Lease	14-244
FORM 14-78	Legal Opinion — Attachment and Perfection	14-255
FORM 14-79	UCC Financing Statement Additional Party	14-261
FORM 14-80	UCC Financing Statement Amendment Additional Party.	14-262
FORM 14-81	Subordination Agreement (Obligations and Collateral)	14-263
FORM 14-82	Solvency Certificate (Short Form).	14-276
FORM 14-83	Solvency Certificate (Long Form).	14-276

INDICES

<i>Table of Florida Laws</i>	INDEX-1
<i>Subject Index</i>	INDEX-17
<i>Forms Index</i>	INDEX-33