

## Roger Williams University Law Review

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Volume 7 | Issue 2

Article 27

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Spring 2002

# 2001 Survey of Rhode Law: Legislation: Business Law: An Act Relating to the Uniform Commercial Code - Revised Article 9

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### Recommended Citation

Castricone, Dena M.; Daly, Michael J.; and Pupecki, Stan (2002) "2001 Survey of Rhode Law: Legislation: Business Law: An Act Relating to the Uniform Commercial Code - Revised Article 9," *Roger Williams University Law Review*: Vol. 7: Iss. 2, Article 27. Available at: [http://docs.rwu.edu/rwu\\_LR/vol7/iss2/27](http://docs.rwu.edu/rwu_LR/vol7/iss2/27)

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**Business Law.** *An Act Relating to the Uniform Commercial Code.* On July 1, 2001, the Revised Article 9 became effective in Rhode Island. The revisions broaden the types of secured transactions covered, accommodate modern electronic technology, address some of the issues with the previous Article 9 and provide guidance for a smooth transition between the previous and revised articles. Effective July 1, 2001. 2000 R.I. Pub. Laws ch. 420.

#### BACKGROUND

Article 9 of the Uniform Commercial Code provides a “comprehensive scheme for the regulation of security interests in personal property and fixtures.”<sup>1</sup> In 1990, the American Law Institute and the National Conference of Commissioners on Uniform State Laws established a committee to review Article 9.<sup>2</sup> In 1992, the committee recommended that the article be revised and six years later, the sponsors approved the Revised Article 9.<sup>3</sup> All 50 states have since adopted the Revised Article 9; it became effective in 46 states, including Rhode Island on July 1, 2001, in Connecticut on October 1, 2001 and in Alabama, Florida and Mississippi on January 1, 2002.<sup>4</sup> The purpose of this survey piece is to highlight some of the major changes to Article 9.<sup>5</sup>

#### HIGHLIGHTED CHANGES

##### *Scope*

The scope of Article 9 has been expanded to include previously excluded types of transactions. The transactions that have been added to coverage include security interests in an agricultural lien; sales of accounts, payment intangibles,<sup>6</sup> or promissory notes; and consignments.<sup>7</sup> Moreover, Revised Article 9 places limitations on some of the previous exclusions.<sup>8</sup> The new limits are that the ex-

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1. R.I. Gen. Law § 6A-9-101 cmt 1. (2001)

2. *Id.* § 6A-9-101 cmt. 2.

3. *Id.*

4. See [www.intercountyclearance.com/whats\\_new/jurisdictional\\_news.html](http://www.intercountyclearance.com/whats_new/jurisdictional_news.html) (last visited April 13, 2002)

5. See § 6A-9-101 cmt. 4.

6. *Id.* § 6A-9-102(61) (defining the new term ‘payment intangibles’ as a type of general intangible).

7. *Id.* § 6A-9-109(a).

8. *Id.* § 6A-9-109(c), (d).

clusion assignment of a deposit account applies only in a consumer transaction; the exclusion of the assignment of interest or claim in an insurance policy does not apply to an assignment by or to a health care provider of a health care insurance receivable<sup>9</sup> and any subsequent right to payment; the exclusion of the assignment of interest in tort claims only applies if it is not a commercial tort claim; and the exclusion for the assignment of lien services and materials does not apply to agricultural liens.<sup>10</sup>

The expanded definition of "account" also serves to extend the article's scope.<sup>11</sup> "Account" now includes, in addition to its former meaning, the right to payment for an insurance policy, a secondary obligation, energy provided, use or hire of vessel under charter or other contract, lottery payments, insurance receivables and the right to payment arising out of the use of credit card.<sup>12</sup>

### *Filing*

The filing requirements laid out in Article 9 provided critical information to a secured creditor who wished to insure that he or she will have priority in the debtor's payment obligations. Revised Article 9 made changes to rules governing: where to file, how to file, and exactly what must be included on a filed financing statement. The law of the jurisdiction of the debtor's location will govern perfection.<sup>13</sup> The debtor's location is either the individual's state of residence or, for a registered organization,<sup>14</sup> the state in which the organization was registered or incorporated.<sup>15</sup> Rhode Island's centralized filing location continues to be the Secretary of State's Office.<sup>16</sup>

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9. *Id.* § 6A-9-102(46) (new definition).

10. *Id.* § 6A-9-109(d).

11. *See* § 6A-9-102(a)(2) (the old definition of account encompassed only the right to payment for the sale or lease of good or services rendered which are not evidence by an instrument or chattel paper).

12. *Id.* Insurance receivables is also a new term meaning "an interest in or claim under a policy of insurance which is a right of payment of a monetary obligation for health-care goods or services provided." R.I. Gen. Laws § 6A-9-102(46) (2001).

13. *Id.* § 6A-9-501. Formerly, Article 9 provided 3 alternatives for filing: local filing, central filing or both. *Id.* at cmt. 2.

14. *Id.* § 6A-9-102(a)(70) (defining the new term "registered organization" as a corporation under the laws of the state in which it was incorporated).

15. *Id.* § 6A-9-307.

16. *Id.* § 6A-9-501.

The drafters of the revisions recognized the technological advances in business transactions and the increased usage of electronic transactions. In response, a financing statement no longer requires a signature.<sup>17</sup> Rather, Revised Article 9 requires that the debtor authorize the filing in an "authenticated record."<sup>18</sup> Thus, the drafters shifted the focus from the actual signature to the authorization of filing. Although the filing office may implement certain authentication procedures, authorization is a question for the courts, not the filing office.

The following information must appear on the initial financing statement: (1) the name of the debtor, (2) the name of the secured party or its representative, and (3) the collateral covered by the financing statement.<sup>19</sup> The debtor's name must be identical to the debtor's name on the public record of the state of organization; a trade name will not suffice.<sup>20</sup> The filing office may refuse to accept the financing statement if it is filed in a method not authorized by the office, if the full filing fee is not tendered, or for lack of information.<sup>21</sup> To be helpful in meeting these requirements, Revised Article 9 provides "safe harbor" written forms that must be accepted in every filing office as long as written communication is accepted.<sup>22</sup> Four forms are provided: (1) the initial financing statement, (2) the initial financing statement addendum, (3) the amendment, and (4) the amendment addendum.<sup>23</sup>

### *Effective Date and Transition Period*

Part Seven of Revised Article 9 provides guidance on the transition between the former and revised articles. The revisions apply to all transactions within its scope entered into or created *before* July 1, 2001 if the former Article 9 did not govern those transactions.<sup>24</sup> In other words, those transactions that are included solely because of the newly expanded scope of the article are covered regardless of the transaction date. In addition to not being governed under the former article, the transaction or lien must be validly

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17. *Id.* § 6A-9-502 cmt. 3.

18. *Id.* § 6A-9-509.

19. *Id.* § 6A-9-502.

20. *Id.* § 6A-9-503(a)(1), (c).

21. *Id.* § 6A-9-516(b).

22. *Id.* § 6A-9-521 cmt 2.

23. *Id.*

24. *Id.* § 6A-9-702.

entered into or created and would be subject to Revised Article 9 if entered into after July 1, 2001, and the rights, duties and interests flowing from these transactions or liens remain valid after July 1, 2001.<sup>25</sup>

If the security interest was perfected under the former article and would be perfected under Revised Article 9 as well, then the security interest remains perfected.<sup>26</sup> That security interest remains perfected for one year after the effective date as a grace period and is only enforceable thereafter if the Revised Article 9 enforcement and attachment requirements are met prior to the expiration of the grace period.<sup>27</sup> Likewise, the security interest is only perfected after July 1, 2002 if the Revised Article 9 perfection requirements are complied with during that year.<sup>28</sup>

An unperfected security interest prior to the effective date remains enforceable for one year after July 1, 2001, and then continues to be enforceable only if the Revised Article 9 enforcement and attachment requirements are satisfied within that year.<sup>29</sup> The unperfected interest becomes perfected in one of two ways: without any action if Revised Article 9 perfection requirements were satisfied prior to July 2002, or upon satisfaction of those requirements.<sup>30</sup>

For action not including a filing, taken prior to the effective date that is enforceable after the effective date, the statute provides a one-year grace period for compliance with Revised Article 9 requirements. A pre-effective date filing is sufficient to perfect if Revised Article 9 requirements are satisfied.<sup>31</sup> If not, perfection continues until the earlier of (1) the time the financing statement expired under the law of the jurisdiction in which it was filed or (2) June 30, 2006. A continuation statement is effective for a pre-effective date filed financing statement if the original filing office is the same office and jurisdiction as required under Revised Article 9.<sup>32</sup>

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25. *Id.*

26. *Id.* § 6A-9-703(a).

27. *Id.*

28. *Id.* § 6A-9-704.

29. *Id.*

30. *Id.* § 6A-9-705.

31. *Id.*

32. *Id.* § 6A-9705(d).

If Revised Article 9 requires a different filing office or jurisdiction, then the initial financing statement must be used to continue a pre-effective date filed financing statement, commonly referred to as "in lieu financing statement."<sup>33</sup> The debtor need not authorize this in lieu financing statement.<sup>34</sup> The in lieu financing statement must indicate certain information regarding the effectiveness of the pre-effective date financing statement.<sup>35</sup> This in lieu financing statement may be filed prior to the effective date or at any time during the effective period.<sup>36</sup> If the statement is filed prior to July 1, 2001, it will retain the effectiveness period of the related pre-effective date financing statement.<sup>37</sup> If it is filed on or after July 1, 2001, the effectiveness period will be calculated using the date that the in lieu financing statement was filed.<sup>38</sup>

Pre-effective date filed financing statements may only be amended if (1) the amendment is filed in the same office as the pre-effective date financing statement, (2) the amendment is filed at the same time or later than the in lieu financing statement, or (3) the amendment is in the in lieu financing statement.<sup>39</sup> The statement may be terminated in the office that the pre-effective date financing statement was filed unless an in lieu financing statement has been filed.<sup>40</sup>

The secured party may file the necessary statement under this part in order to continue the effectiveness of the original financing statement filed prior to July 1, 2001.<sup>41</sup> Because the debtor already authorized the original financing statement, his or her authorization is not required.<sup>42</sup>

As for priority, if priority was established before Revised Article 9 took effect, then former Article 9 governs priority.<sup>43</sup> If a filing occurred before July 1, 2001 and did not serve to perfect the security interest under former Article 9 but would under Revised Article

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33. *Id.* § 6A-9-706.

34. *Id.* § 6A-9-706(c)(i).

35. *Id.* § 6A-9-706(c)(2).

36. *Id.* § 6A-9-706.

37. *Id.* § 6A-9-706(b)(1).

38. *Id.* § 6A-9-706(b)(2).

39. *Id.* § 6A-9-707.

40. *Id.* § 6A-9-707(e).

41. *Id.* § 6A-9-708.

42. *Id.* at cmt.

43. *Id.* § 6A-9-709(a).

9, then the priority of the security interest is perfected from the time that Revised Article 9 took effect.<sup>44</sup>

#### CONCLUSION

The revisions to Article 9 of the Uniform Commercial Code increase the scope of transactions included, accommodate modern technology and address some of the obvious problems with the former Article 9. Now that all states, including Rhode Island, have adopted the revisions, the focus has shifted to a smooth transition from the old to the new.

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44. *Id.* § 6A-9-709(b).