

NORTH CAROLINA GENERAL ASSEMBLY  
1975 SESSION

CHAPTER 862  
SENATE BILL 666

AN ACT TO AMEND CHAPTER 25 OF THE GENERAL STATUTES, UNIFORM COMMERCIAL CODE, IN ORDER TO CONFORM SAID CHAPTER AND PARTICULARLY ARTICLE 9 THEREOF TO THE 1972 OFFICIAL TEXT OF THE UNIFORM COMMERCIAL CODE.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 25-1-105 is amended to read as follows:

**"§ 25-1-105. Territorial application of the act; parties' power to choose applicable law. —**

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this State.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the Article on Bank Deposits and Collections. (G.S. 25-4-102).

Bulk transfers subject to the Article on Bulk Transfers. (G.S. 25-6-102).

Applicability of the Article on Investment Securities. (G.S. 25-8-106).

Perfection provisions of the Article on Secured Transactions. (G.S. 25-9-103)."

**Sec. 2.** G.S. 25-1-201(9) is amended to read as follows:

"(9) 'Buyer in ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt."

**Sec. 3.** G.S. 25-1-201(37) is amended to read as follows:

"(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under G.S. 25-2-401 is not a 'security interest', but a buyer may also acquire a 'security interest' by complying with Article 9. Unless a lease or consignment is

intended as security, reservation of title thereunder is not a 'security interest' but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security."

**Sec. 4.** G.S. 25-2-107 is amended to read as follows:

"§ 25-2-107. **Goods to be severed from realty, recording.** — (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale."

**Sec. 5.** G.S. 25-5-116 is amended to read as follows:

"§ 25-5-116. **Transfer and assignment.** — (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Article 9 on Secured Transactions and is governed by that Article except that

- (a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and\
- (b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and
- (c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit."

**Sec. 6.** Article 9; Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper, of Chapter 25, Uniform Commercial Code; G.S. 25-9-101 through G.S. 25-9-607, inclusive, as the same appears in 1965 Replacement Volume ID of the General Statutes of North Carolina and the 1974 Cumulative Supplement, in its entirety, is repealed.

**Sec. 7.** Article 9; Secured Transactions; Sales of Accounts and Chattel Paper, of Chapter 25, Uniform Commercial Code, is hereby rewritten to read as follows:

"ARTICLE 9

"SECURED TRANSACTIONS; SALES OF  
"ACCOUNTS AND CHATTEL PAPER

"PART I "SHORT TITLE, APPLICABILITY AND DEFINITIONS

"§ 25-9-101. **Short title.** — This Article shall be known and may be cited as Uniform Commercial Code - Secured Transactions.

"§ 25-9-102. **Policy and subject matter of Article.** — (1) Except as otherwise provided in G.S. 25-9-104 on excluded transactions, this Article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts: and also

(b) to any sale of accounts or chattel paper.

(2) This Article 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 Article does not apply to statutory liens except as provided in G.S. 25-9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

"§ 25-9-103. **Perfection of security interests in multiple State transactions.** — (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection(2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) 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, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

- (iii) for the purpose of priority over a buyer of consumer goods(subsection (2) of G.S. 25-9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).
- (2) Certificate of title.
  - (a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
  - (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
  - (c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).
  - (d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.
- (3) Accounts, general intangibles and mobile goods.
  - (a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).
  - (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.
  - (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, 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 and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or

Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, 'United States' includes its territories and possessions and the Commonwealth of Puerto Rico.

- (d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.
- (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper. The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals. Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

**"§ 25-9-104. Transactions excluded from Article.** — This Article does not apply

- (a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or
- (b) to a landlord's lien; or
- (c) to a lien given by statute or other rule of law for services or materials except as provided in G.S. 25-9-310 on priority of such liens; or
- (d) to a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) to a transfer by a government or governmental subdivision or agency; or
- (f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to any assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- (g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (G.S. 25-9-306) and priorities in proceeds (G.S. 25-9-312); or
- (h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (i) to any right of set-off; or

- (j) except to the extent that provision is made for fixtures in G.S. 25-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (k) to a transfer in whole or in part of any claim arising out of tort; or
- (l) to a transfer of an interest in any deposit account (subsection (1) of G.S. 25-9-105), except as provided with respect to proceeds (G.S. 25-9-306) and priorities in proceeds (G.S. 25-9-312).

**"§ 25-9-105. Definitions and index of definitions.** — (1) In this Article unless the context otherwise requires:

- (a) 'Account debtor' means the person who is obligated on an account, chattel paper or general intangible;
- (b) 'Chattel paper' means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) 'Collateral' means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
- (d) 'Debtor' means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) 'Deposit account' means 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;
- (f) 'Document' means document of title as defined in the general definitions of Article 1 (G.S. 25-1-201), and a receipt of the kind described in subsection (2) of G.S. 25-7-201;
- (g) 'Encumbrance' includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (G.S. 25-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. 'Goods' also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;
- (i) 'Instrument' means a negotiable instrument (defined in G.S. 25-3-104), or a security (defined in G.S. 25-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;
- (j) 'Mortgage' means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (k) 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;

- (l) 'Security agreement' means an agreement which creates or provides for a security interest;
- (m) 'Secured party' means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.
- (2) Other definitions applying to this Article and the sections in which they appear are:
- 'Account' (G.S. 25-9-106).
  - 'Attach.' (G.S. 25-9-203).
  - 'Construction mortgage.' (G.S. 25-9-313(1)).
  - 'Consumer goods.' (G.S. 25-9-109(1)).
  - 'Equipment.' (G.S. 25-9-109(2)).
  - 'Farm products.' (G.S. 25-9-109(3)).
  - 'Fixture.' (G.S. 25-9-313(1)).
  - 'Fixture filing.' (G.S. 25-9-313(1)).
  - 'General intangibles.' (G.S. 25-9-106).
  - 'Inventory.' (G.S. 25-9-109(4)).
  - 'Lien creditor.' (G.S. 25-9-301(3)).
  - 'Proceeds.' (G.S. 25-9-306(1)).
  - 'Purchase money security interest.' (G.S. 25-9-107).
  - 'United States.' (G.S. 25-9-103).
- (3) The following definitions in other Articles apply to this Article: 'Check.' (G.S. 25-3-104).
- 'Contract for sale.' (G.S. 25-2-106).
  - 'Holder in due course.' (G.S. 25-3-302).
  - 'Note.' (G.S. 25-3-104).
  - 'Sale.' (G.S. 25-2-106).
- (4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.
- "§ 25-9-106. Definitions: 'Account'; 'General Intangibles'.** — 'Account' means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. 'General intangibles' means any personal property(including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.
- "§ 25-9-107. Definitions: 'Purchase money security interest'.** — A security interest is a 'purchase money security interest' to the extent that it is (a) taken or retained by the seller of the collateral to secure all or part of its price; or (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.
- "§ 25-9-108. When after-acquired collateral not security for antecedent debt.** — Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after- acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.
- "§ 25-9-109. Classification of goods; 'consumer goods'; 'equipment'; 'farm products'; 'inventory .** — Goods are

- (1) 'consumer goods' if they are used or bought for use primarily for personal, family or household purposes;
- (2) 'equipment' if they are used or bought for use primarily in business(including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;
- (3) 'farm products' if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;
- (4) 'inventory' if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

**"§ 25-9-110. Sufficiency of description.** — For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

**"§ 25-9-111. Applicability of bulk transfer laws.** — The creation of a security interest is not a bulk transfer under Article 6 (see G.S. 25-6-103).

**"§ 25-9-112. Where collateral is not owned by debtor.** — Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under G.S. 25-9-502(2) or under G.S. 25-9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (a) to receive statements under G.S. 25-9-208;
- (b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under G.S. 25-9-505;
- (c) to redeem the collateral under G.S. 25-9-506;
- (d) to obtain injunctive or other relief under G.S. 25-9-507(1); and (e) to recover losses caused to him under G.S. 25-9-208(2).

**"§ 25-9-113. Security interests arising under Article on Sales.** — A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (a) no security agreement is necessary to make the security interest enforceable; and
- (b) no filing is required to perfect the security interest; and
- (c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).

**"§ 25-9-114. Consignment.** — (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Article by paragraph (3)(c) of G.S. 25-2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

- (a) the consignor complies with the filing provision of the Article on Sales with respect to consignments (paragraph (3)(c) of G.S. 25-2-326) before the consignee receives possession of the goods; and

- (b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
- (c) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and
- (d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor."

## "PART 2

### "VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

"§ 25-9-201. **General validity of security agreement.** — Except as otherwise provided by this Act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

"§ 25-9-202. **Title to collateral immaterial.** — Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

"§ 25-9-203. **Attachment and enforceability of security interest; proceeds; formal requisites.** — (1) Subject to the provisions of G.S. 25-4-208 on the security interest of a collecting bank and G.S. 25-9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

- (a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by G.S. 25-9-306.

(4) A transaction, although subject to this Article, is also subject to the North Carolina Consumer Finance Act (being G.S. 53-164 through G.S. 53-191), G.S. 24-1 and G.S. 24-2, and G.S. 91-1 through G.S. 91-8, the Retail Installment Sales Act (being Chapter 25A of the North Carolina General Statutes), and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

"§ 25-9-204. **After-acquired property; future advances.** — (1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (G.S. 25-9-314) when given as additional security unless the debtor acquired rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of G.S. 25-9-105).

**"§ 25-9-205. Use or disposition of collateral without accounting permissible.** — A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

**"§ 25-9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.** — (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

**"§ 25-9-207. Rights and duties when collateral is in secured party's possession.** — (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

- (a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;
- (c) the secured party may hold as additional security any increase or profits(except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
- (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

**"§ 25-9-208. Request for statement of account or list of collateral.** — (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other

record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars (\$10.00) for each additional statement furnished.

### "PART 3

#### "RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY.

**"§ 25-9-301. Persons who take priority over unperfected security interests; rights of lien creditor'.** — (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of (a) persons entitled to priority under G.S. 25-9-312; (b) a person who becomes a lien creditor before the security interest is perfected; (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; (d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) 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 the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A 'lien creditor' means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

**"§ 25-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply.** — (1) A financing statement must be filed to perfect all security interests except the following:

- (a) a security interest in collateral in possession of the secured party under G.S. 25-9-305;
- (b) a security interest temporarily perfected in instruments or documents without delivery under G.S. 25-9-304 or in proceeds for a 10 day period under G.S. 25-9-306;

- (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) a purchase money security interest in consumer goods; but compliance with G.S. 20-58 et seq. is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in G.S. 25-9-313;
- (e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) a security interest of a collecting bank (G.S. 25-4-208) or arising under the Article on Sales (see G.S. 25-9-113) or covered in subsection (3) of this section;
- (g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to (a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or (b) the following statute of this State: G.S. 20-58 et seq. as to any personal property required to be registered pursuant to Chapter 20 of the General Statutes; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or (c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of G.S. 25-9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in G.S. 25-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) The filing provisions of this Article do not apply to a security interest in property of any description or any interest therein created by a deed of trust or mortgage made by a public utility as defined in G.S. 62-3(23) or by any electric or telephone membership domesticated or incorporated in North Carolina, but the deed of trust or mortgage shall be registered in the county or counties in which such deed of trust or mortgage is required by G.S. 47-20 to be registered.

(6) The filing provisions of this Article do not apply to any security interest created in connection with the issuance of any bond, note or other evidence of indebtedness for borrowed money by this State or any political subdivision or agency thereof.

**"§ 25-9-303. When security interest is perfected; continuity of perfection.** — (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in G.S. 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken before the security interest attaches, it is perfected at the time it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate

period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.

**"§ 25-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.** — (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of G.S. 25-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

- (a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of G.S. 25-9-312; or
- (b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.

**"§ 25-9-305. When possession by secured party perfects security interest without filing.** — A security interest in letters of credit and advices of credit (subsection (2) (a) of G.S. 25-5-116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

**"§ 25-9-306. 'Proceeds'; secured party's rights on disposition of collateral.** — (1) 'Proceeds' includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are 'cash proceeds'. All other proceeds are 'non-cash proceeds'.

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was

authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

- (a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or
- (b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or
- (c) the security interest in the proceeds is perfected before the expiration of the 10 day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

- (a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;
- (b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- (c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph(d) is
  - (i) subject to any right to set-off; and
  - (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such periods and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

- (a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
- (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest

asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under G.S. 25-9-308.

- (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph(a).
- (d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

**"§ 25-9-307. Protection of buyers of goods.** — (1) A buyer in ordinary course of business (subsection (9) of G.S. 25-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, which ever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

**"§ 25-9-308. Purchase of chattel paper and instruments.** — A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

- (a) which is perfected under G.S. 25-9-304 (permissive filing and temporary perfection) or under G.S. 25-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or
- (b) which is claimed merely as proceeds of inventory subject to a security interest (G.S. 25-9-306) even though he knows that the specific paper or instrument is subject to the security interest.

**"§ 25-9-309. Protection of purchasers of instruments and documents.** — Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (G.S. 25-3-302) or a holder to whom a negotiable document of title has been duly negotiated (G.S. 25-7-501) or a bona fide purchaser of a security(G.S. 25-8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.

**"§ 25-9-310. Priority of certain liens arising by operation of law.** — When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

**"§ 25-9-311. Alienability of debtor's rights: judicial process.** — The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

**"§ 25-9-312. Priorities among conflicting security interests in the same collateral.** — (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

- (a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and
- (c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

- (a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.
- (b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, 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.

**"§ 25-9-313. Priority of security interests in fixtures.** — (1) In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

- (a) goods are 'fixtures' when they become so related to particular real estate that an interest in them arises under real estate law

- (b) a 'fixture filing' is the filing of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of G.S. 25-9-402 or of a mortgage or deed of trust conforming to the requirements of subsection (6) of G.S. 25-9-402.
  - (c) 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 recorded writing so indicates.
- (2) A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.
- (3) This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.
- (4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where
- (a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or
  - (b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or
  - (c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or
  - (d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.
- (5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where (a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or (b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.
- (6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.
- (7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.
- (8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by

any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

**"§ 25-9-314. Accessions.** — (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section 'accessions') over the claims of all persons to the whole except as stated in subsection (3) and subject to G.S. 25-9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over (a) a subsequent purchaser for value of any interest in the whole; or (b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

**"§ 25-9-315. Priority when goods are commingled or processed.** — (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

- (a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- (b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under G.S. 25-9-314.

(2) When under subsection (1) more than one security interest attaches to the 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.

**"§ 25-9-316. Priority subject to subordination.** — Nothing in this Article prevents subordination by agreement by any person entitled to priority.

**"§ 25-9-317. Secured party not obligated on contract of debtor.** — The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

**"§ 25-9-318. — Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective ; identification and proof of assignment.** — (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in G.S. 25-9-206 the rights of an assignee are subject to

- (a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor as otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

"PART 4

"FILING

"§ 25-9-401. **Place of filing; erroneous filing; removal of collateral.** — (1) The proper place to file in order to perfect a security interest is as follows:

- (a) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the Register of Deeds in the county of the debtor's residence or if the debtor is not a resident of this State then in the office of the Register of Deeds in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the Register of Deeds in the county where the land is located;
- (b) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) or G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is goods which are or are to become fixtures, then in the office of the Register of Deeds in the county where the land is located;
- (c) in all other cases, in the office of the Secretary of State and in addition, if the debtor has a place of business in only one county of this State, also in the office of the Register of Deeds of such county, or, if the debtor has no place of business in this State, but resides in the State, also in the office of the Register of Deeds of the county in which he resides.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this State continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in G.S. 25-9-103 determine whether filing is necessary in this State.

(5) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

"§ 25-9-402. **Formal requisites of financing statement; amendments; mortgage as financing statement.** — (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must indicate that the collateral is or includes crops and must contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like(including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or when the financing statement is filed as a fixture filing (G.S. 25-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above 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 if the security agreement so provides or if the original has been filed in this State.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

- (a) collateral already subject to a security interest in another jurisdiction when it is brought into this State, or when the debtor's location is changed to this State. Such a financing statement must state that the collateral was brought into this State or that the debtor's location was changed to this State under such circumstances; or
- (b) proceeds under G.S. 25-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
- (c) collateral as to which the filing has lapsed; or
- (d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)\_\_\_\_\_

Address\_\_\_\_\_

Name of secured party (or assignee)\_\_\_\_\_

Address\_\_\_\_\_

- 1. This financing statement covers the following types (or items) of property:  
(Describe)\_\_\_\_\_
- 2. (If collateral is crops) The above described crops are growing or are to be grown on:  
(Describe Real Estate)\_\_\_\_\_
- 3. (If applicable) The above goods are to become fixtures on\*

\*Where appropriate substitute either 'The above timber is standing on\_\_\_ ' or 'The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on..'

(Describe Real Estate)\_\_\_\_\_

(If the debtor does not have an interest of record) The name of a record owner is\_\_\_\_\_.

- 4. (If products of collateral are claimed) Products of the collateral are also covered.  
(use \_\_\_\_\_)

whichever  
is  
applicable)

Signature or Debtor (or Assignor)

\_\_\_\_\_  
Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term 'financing statement' means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals of the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or a financing statement filed as a fixture filing (G.S. 25-9-313) must contain a description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner. A financing statement filed as a fixture filing (G.S. 25-9-313) must bear the statement "Collateral is or includes fixtures" or its substantial equivalent or have checked the appropriate box identifying "FIXTURES". If a copy of a security agreement is filed as a financing statement, as authorized by G.S. 25-9-402, to perfect security interests in fixtures, the secured party or other filer shall stamp or print conspicuously on the face of the first page of such copy the legend "Collateral is or includes fixtures".

(6) A mortgage or deed of trust is effective as a financing statement filed as a fixture filing from the date of its recording if

- (a) the goods are described in the mortgage or deed of trust by item or type; and
- (b) the goods are or are to become fixtures related to the real estate described in the mortgage or deed of trust; and
- (c) the mortgage or deed of trust complies with the requirements for a financing statement in this section; and
- (d) the mortgage or deed of trust is duly recorded in the real estate records. Such a mortgage or deed of trust shall not be indexed or filed in the Uniform Commercial Code files. No fee with reference to such a mortgage or deed of trust is required other than the regular recording and satisfaction fees with respect to the mortgage or deed of trust.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the 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. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(9) The Secretary of State shall have the authority to promulgate, issue and prescribe such financing statement forms and such other forms as he deems necessary to be used as standard forms for any filing contemplated by any section of this Article.

**"§ 25-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.** — (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) Except as provided in subsection (6), or in Article 12 of Chapter 44, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period

unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) A filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statement according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be four dollars (\$4.00) for an approved statutory form statement as prescribed in G.S. 25-9-402 when printed on a standard-size form approved by the Secretary of State, and for all other statements, a five dollar (\$5.00) minimum charge for up to and including three pages and one dollar (\$1.00) per page for all over three pages. There shall be an additional fee of two dollars (\$2.00) for each financing statement and continuation statement subject to subsection (5) of G.S. 25-9-402.

(6) A real estate mortgage which is effective as a fixture filing under subsection (6) of G.S. 25-9-402 remains effective as a fixture filing until the mortgage is redeemed or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, or is filed as a fixture filing, the filing officer, in addition to complying with subsection (4) of this section, shall

- (a) index the statements in the Uniform Commercial Code index to financing statements so as to reflect the name of any record owner given in the statement. When the debtor is not the record owner, the filing officer shall enter the name of the record owner in the place designated for entry of the name of the debtor and shall stamp or print conspicuously beneath the surname of the record owner the legend "RECORD OWNER" and shall note

therein the file number of the financing statement. When the debtor is also the record owner, the filing officer shall make one index entry in the name of the debtor and shall stamp or print conspicuously beneath his surname the legend, "RECORD OWNER". The filing officer shall also:

- (b) index the statements in the real estate indexes under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this State provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

**"§ 25-9-404. Termination statement.** — (1) If a financing statement covering consumer goods is filed on or after July 1, 1976, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor, he shall be liable to the debtor for one hundred dollars (\$100.00), and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the Uniform Commercial Code index and also, if the financing statement to be terminated is subject to subsection (5) of G.S. 25-9-402, in the real estate index. The termination statement shall then remain in the file for such period of time as the financing statement or a continuation statement would be effective under the five-year life provided in G.S. 25-9-403, and then may be destroyed. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the filing officer has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof.

(3) There shall be no fee charged for termination statements.

**"§ 25-9-405. Assignment of security interest; duties of filing officer; fees.** — (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be four dollars (\$4.00) when submitted on a standard-size form approved by the Secretary of State, and for all other statements a five dollar (\$5.00) minimum charge for up to and including three pages and one dollar (\$1.00) per page for all over three pages.

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be three dollars (\$3.00) when submitted on a standard-size form approved by the Secretary of State, and for all other statements a four dollar (\$4.00) minimum charge for up to and including three pages and one dollar (\$1.00) per page for all over three pages. When the assignment is of a financing statement subject to subsection (5) of G.S. 25-9-402, there shall be an additional fee of two dollars (\$2.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Act.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

**"§ 25-9-406. Release of collateral; duties of filing officer, fees.** — A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be three dollars (\$3.00) when submitted on a standard-size form approved by the Secretary of State, and for all other statements a four dollar (\$4.00) minimum charge for up to and including three pages and one dollar (\$1.00) per page for all over three pages. There shall be an additional fee of two dollars (\$2.00) when the statement of release affects a financing statement subject to subsection (5) of G.S. 25-9-402.

**"§ 25-9-407. Information from filing officer.** — (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and

the names and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars (\$3.00) plus one dollar (\$1.00) for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar (\$1.00) per page.

**"§ 25-9-408. Financing statements covering consigned or leased goods.** — A consignor or lessor of goods may file a financing statement using the terms 'consignor,' 'consignee,' 'lessor,' 'lessee' or the like instead of the terms specified in G.S. 25-9-402. The provisions of this Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (G.S. 25-1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

"Part 5

"DEFAULT

**"§ 25-9-501. Default, procedure when security agreement covers both real and personal property.** — (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in G.S. 25-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in G.S. 25-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of G.S. 25-9-504 and G.S. 25-9-505) and with respect to redemption of collateral (G.S. 25-9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

- (a) subsection (2) of G.S. 25-9-502 and subsection (2) of G.S. 25-9-504 insofar as they require accounting for surplus proceeds of collateral;
- (b) subsection (3) of G.S. 25-9-504 and subsection (1) of G.S. 25-9-505 which deal with disposition of collateral;
- (c) subsection (2) of G.S. 25-9-505 which deals with acceptance of collateral as discharge of obligation;
- (d) G.S. 25-9-506 which deals with redemption of collateral; and (e) subsection (1) of G.S. 25-9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

"§ 25-9-502. **Collection rights of secured party.** — (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under G.S. 25-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. 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. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

"§ 25-9-503. **Secured party's right to take possession after default.** — Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under G.S. 25-9-504.

"§ 25-9-504. **Secured party's right to dispose of collateral after default; effect of disposition.** — (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

- (a) 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;
- (b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;
- (c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest 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. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other

secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

- (a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
- (b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article.

**"§ 25-9-504.1. Payment of surplus to clerk.** — (1) Any surplus remaining after the application of the proceeds of the sale or other disposition as set out in G.S. 25-9-504 (1) and (2) shall be paid to the person or persons entitled thereto, if the party who made the sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the superior court of the county where the sale or other disposition was held, if the disposition took place in this State. If the sale or other disposition took place outside this State, then the secured party or person making the sale or other disposition shall pay said surplus money to the clerk of superior court of any county in this State in which the secured party or other party conducting the said sale or disposition does business. Said payment discharges the secured party from liability to the extent of the amount so paid. Said clerk of superior court shall accept such surplus from said secured party and shall execute a receipt therefor.

(2) Said clerk of superior court is liable on his official bond for the safekeeping of money so received until it is paid to the party or parties entitled thereto or until it is paid out under the order of a court of competent jurisdiction.

**"§ 25-9-504.2. Special proceedings to determine ownership of surplus.** — (1) A special proceeding may be instituted before the clerk of superior court by any person claiming any portion of the surplus paid into the clerk's office under G.S. 25-9-504.1, to determine who is entitled thereto.

(2) All other persons who have filed with the clerk notice of their claim to the aforesaid surplus or any part thereof, or who, as far as the petitioner(s) know, asserts any claim to said surplus or any part thereof, shall be made defendants in the proceeding.

(3) If any answer is filed raising issues of fact as to the ownership of the surplus (money), the proceeding shall be transferred to the civil issue docket of the district or superior court for trial.

(4) The court may, in its discretion, allow a reasonable attorney's fee for any attorney appearing in behalf of the party or parties who prevail, to be paid out of the funds in controversy, and shall tax all costs against the losing party or parties who have asserted a claim to the fund by petition or answer.

**"§ 25-9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.** — (1) If 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 signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of

collateral must dispose of it under G.S. 25-9-504, and if he fails to do so within ninety days after he takes possession, the debtor at his option may recover in conversion or under G.S. 25-9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party 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. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under G.S. 25-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

**"§ 25-9-506. Debtor's right to redeem collateral.** — At any time before the secured party has disposed of collateral or entered into a contract for its disposition under G.S. 25-9-504 or before the obligation has been discharged under G.S. 25-9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

**"§ 25-9-507. Secured party's liability for failure to comply with this Part.** — (1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

**"§ 25-9-508. Application of statute of limitations to serial notes.** — When a series of notes maturing at different times is secured by a security agreement and the exercise of the power of sale or foreclosure for the satisfaction of one or more of the notes is barred by the statute of limitations, that fact does not bar the exercise of the power of sale or foreclosure for the satisfaction of indebtedness represented by other notes of the series not so barred.

**"§ 25-9-509. Power of sale barred when foreclosure barred.** — (1) Except as provided in subsection (2), no person shall exercise any power of sale contained in any security agreement,

or provided by statute, when an action to foreclose the lien contained in said security agreement is barred by the statute of limitations.

(2) If a sale pursuant to a power of sale contained in a security agreement, or provided by statute, is commenced within the time allowed by the statute of limitations to foreclose the lien of such security agreement, the sale may be completed, although such completion is effected after the time when commencement of an action to foreclose would be barred by the statute. For the purpose of this section, a sale is commenced when the notice of public sale is first posted or published as provided in this Article.

"PART 6

"PUBLIC SALE PROCEDURES

"§ 25-9-601. **Disposition of collateral by public sale.** — Disposition of collateral by public proceedings as permitted by G.S. 25-9-504 may be made in accordance with the provisions of this Part. The provisions of this Part are not mandatory for disposition by public proceedings, but any disposition of the collateral by public sale wherein the secured party has substantially complied with the procedures provided in this Part shall conclusively be deemed to be commercially reasonable in all aspects.

"§ 25-9-602. **Contents of notice of sale.** — The notice of sale shall substantially:

- (a) Refer to the security agreement pursuant to which the sale is held;
- (b) Designate the date, hour and place of sale consistent with the provisions of the security agreement and the provisions found in Part 6 of Article 9 of Chapter 25 of the General Statutes;
- (c) Describe personal property to be sold substantially as it is described in the security agreement pursuant to which the power of sale is being exercised, and may add such further description as will acquaint bidders with the nature of the property;
- (d) State the terms of the sale provided by the security agreement pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the sale;
- (e) Include any other provisions required by the security agreement to be included therein; and
- (f) State that the property will be sold subject to taxes and special assessments if it is to be so sold.

"§ 25-9-603. **Posting and mailing notice of sale.** — (1) In each public sale conducted hereunder, the notice of sale shall be posted on a bulletin board provided for the posting of such legal notices, in the courthouse, in the county in which the sale is to be held, for at least five days immediately preceding the sale.

(2) In addition to the posting of notice required by subsection (1), the secured party or other party holding such public sale shall, at least five days before the date of sale, mail by registered or certified mail a copy of the notice of sale to each debtor obligated under the security agreement: (a) At the actual address of the debtors, if known to the secured party, or (b) At the address, if any, furnished the secured party, in writing, by the debtors, or otherwise at the last known address.

(3) In the case of consumer goods, no other notification need be sent. In other cases, in addition to mailing a copy of the notice of sale to each debtor, the secured party shall also mail a copy of said notice by registered or certified mail to any other secured party from whom the secured party has received (before sending the notice of sale to the debtor(s)) written notice of a claim of an interest in the collateral.

"§ 25-9-604. **Exception as to perishable property.** — If, in the opinion of a secured party about to conduct a public sale of personal property hereunder, the property is perishable because subject to rapid deterioration or threatens to decline speedily in value, he may report such fact, together with a description of the property to the clerk of the superior court of the

county in which the property is to be sold, and apply for authority to sell the property at an earlier date than is provided in this Article. Upon the clerk's determination that the property is such perishable or speedily depreciating property, he shall order a sale thereof to be held at such time and place and upon such notice, if any, as he deems advisable.

**"§ 25-9-605. Postponement of public sale.** — (1) Any person exercising a power of sale or conducting a public sale hereunder may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the sale: (a) When there are no bidders, or (b) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or (c) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable in his judgment, to hold the sale on that day, or (d) When he is unable to hold the sale because of illness or for other good reason, or (e) When other good cause exists.

(2) Upon postponement of a public sale, the person exercising the power of sale shall personally, or through his agent or attorney: (a) At the time and place advertised for the sale, publicly announce the postponement thereof, and (b) On the same day, attach to or enter on the original notice of sale or a copy thereof, posted on the bulletin board provided therefor, as provided by G.S. 25-9-603, a notice of the postponement.

(3) The posted notice of postponement shall: (a) State that the public sale is postponed, (b) State the hour and date to which the public sale is postponed, (c) Substantially state the reason for the postponement, and (d) Be signed by the person authorized to hold the public sale, or by his agent or attorney.

(4) If a public sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor, the person authorized to hold the public sale may readvertise the property in the same manner as he was required to advertise the sale which was not held, and may hold a public sale at such later date as is fixed in the new notice of sale.

**"§ 25-9-606. Procedure upon dissolution of order restraining or enjoining sale.** — (1) When, before the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he may, if the required notice of sale has been given, as provided in G.S. 25-9-603, provide by order that the public sale shall be held without additional notice at the time and place originally fixed therefor; or he may, in his discretion, make an order with respect thereto as provided in subsection (2).

(2) When, after the date fixed for a public sale, a judge dissolves an order restraining or enjoining said sale, he shall, by order, fix the time and place for the sale to be held upon notice to be given and in such manner and for such length of time as he deems advisable.

**"§ 25-9-607. Disposition of proceeds of sale.** — The proceeds of any sale or other disposition of the collateral shall be applied by the person making the sale in the manner prescribed by G.S. 25-9-504 (1) and (2), G.S. 25-9-504.1 and G.S. 25-9-504.2."

**Sec. 8.** Article 11, Effective Date and Transition Provisions, is hereby added to Chapter 25 of the General Statutes of North Carolina, Uniform Commercial Code, immediately following Article 10, G.S. 25-10-101 through G.S. 25-10-106, thereof, and is hereby enacted to read as follows:

## "ARTICLE II

### "EFFECTIVE DATE AND TRANSITION PROVISIONS

**"§ 25-11-101. Effective date.** — This act shall become effective at 12:01 a.m. on July 1, 1976.

**"§ 25-11-101.1. Definitions.** — (1) As used in this Article, 'Old Article 9' means: G.S. 25-1-105, G.S. 25-1-201(9), G.S. 25-1-201(37), G.S. 25-2-107, G.S. 25-5-116, and Article 9 of Chapter 25 of the General Statutes of North Carolina, Uniform Commercial Code, as they are in effect on June 30, 1976, immediately prior to the effective date of this act.

(2) As used in this Article, 'new Article 9' means: G.S. 25-1-105, G.S. 25-1-201(9), G.S. 25-1-201(37), G.S. 25-2-107, G.S. 25-5-116, and Article 9 of Chapter 25 of the General

Statutes of North Carolina, Uniform Commercial Code, as said provisions are enacted pursuant to this act, as of July 1, 1976, its effective date.

"§ 25-11-102. **Preservation of old transition provisions.** — The provisions of Article 10 of Chapter 25 of the General Statutes of North Carolina, Uniform Commercial Code, G.S. 25-10-101 through G.S. 25-10-106, thereof shall continue to apply to new Article 9, and for this purpose the old Article 9 and the new Article 9 shall be considered one continuous statute.

"§ 25-11-103. **Transition to new Article 9; general rule.** — (1) Transactions validly entered into after midnight on June 30, 1967, and before July 1, 1976, and which were subject to the provisions of old Article 9 and which would be subject to this act as amended if they had been entered into after the effective date of new Article 9 and the rights, duties and interests following from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by the new Article 9.

(2) Security interests arising out of such transactions which are perfected when new Article 9 becomes effective shall remain perfected until they lapse as provided in new Article 9, and may be continued as permitted by new Article 9, except as stated in G.S. 25-11-105.

"§ 25-11-104. **Transition provisions on change of requirement of filing.** — A security interest for the perfection of which filing or the taking of possession was required under old Article 9 and which attached prior to the effective date of new Article 9 but was not perfected shall be deemed perfected on the effective date of new Article 9 if new Article 9 permits perfection without filing or authorizes filing in the office or offices where prior ineffective filing was made.

"§ 25-11-105. **Transition provisions on change of place of filing.** — (1) A financing statement or continuation statement filed prior to July 1, 1976, which shall not have lapsed prior to July 1, 1976, shall remain effective for the period provided in the old Article 9, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of new Article 9, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under new Article 9.

(3) The effectiveness of any financing statement or continuation statement filed prior to July 1, 1976, may be continued by a continuation statement as permitted by new Article 9, except that if new Article 9 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to G.S. 25-11-106 shall be filed in that office.

(4) If the record of a mortgage of, or a deed of trust on, real estate would have been effective as a fixture filing of goods described therein if new Article 9 had been in effect on the date of recording the mortgage or deed of trust, the mortgage or deed of trust shall be deemed effective as a fixture filing as to such goods under subsection (6) of G.S. 25-9-402 of the new Article 9 on the effective date of new Article 9.

"§ 25-11-106. **Required refilings.** — (1) If a security interest is perfected or has priority when this act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under new Article 9, the perfection and priority rights of the security interest continue until three years after the effective date of new Article 9. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when new Article 9 takes effect under a law other than Chapter 25 of the General Statutes, Uniform Commercial Code, which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after new Article 9 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of G.S. 25-9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by this act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest which would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under Chapter 25, Uniform Commercial Code, or under any statute or other law repealed or modified by this act is still effective. G. S. 25-9-401 and G. S. 25-9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of G. S. 25-9-403(3) for continuation statements apply to such a financing statement.

**"§ 25-11-107. Transition provisions as to priorities.** — Except as otherwise provided in Article 11, old Article 9 shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of new Article 9. In other cases questions of priority shall be determined by new Article 9.

**"§ 25-11-108. Presumption that rule of law continues unchanged.** — Unless a change in law has clearly been made, the provisions of new Article 9 shall be deemed declaratory of the meaning of the old Article 9."

**Sec. 9.** All laws and clauses of laws which are in conflict with this act as of its effective date are hereby repealed.

**Sec. 10.** This act shall become effective July 1, 1976.

In the General Assembly read three times and ratified, this the 26th day of June, 1975.