



AMERICAN
BANKRUPTCY
INSTITUTE

Rocky Mountain Bankruptcy Conference

Secured Transactions in Bankruptcy

Kenneth L. Cannon II

Dentons | Salt Lake City

Hon. Bruce A. Harwood (ret.)

San Francisco

Rachel A. Sternlieb

Nelson Mullins Riley & Scarborough LLP | Denver

Timothy M. Swanson

Frost Brown Todd LLP | Denver

Hon. William T. Thurman

U.S. Bankruptcy Court (D. Utah) | Salt Lake City



**Secured Transactions in Bankruptcy 101:
The Intersection of UCC Article 9 and the Bankruptcy Code**

June 12, 2025

Hon. William E. Thurman
United States Bankruptcy Court for the District of
Utah

Hon. Bruce A. Harwood (ret.)
United States Bankruptcy Court for the District of
New Hampshire

Rachel A. Sternlieb
Nelson Mullins Riley & Scarborough LLP

Kenneth L. Cannon, II
Dentons Durham Jones Pinegar P.C.

Timothy M. Swanson
Frost Brown Todd LLP



Roles and Appearances

- Hon. William E. Thurman
 - Bankruptcy Judge
- Hon. Bruce A. Harwood (ret.)
 - SparkTech – Debtor
- Kenneth L. Cannon, II
 - FirstBank – Creditor
- Rachel A. Sternlieb
 - GreenBuild – Creditor
- Timothy M. Swanson
 - EquipCo – Creditor
- Attendees
 - SecondBank – Creditor



The Tale of SparkTech, Inc.



SparkTech, Inc. ("SparkTech") is a Delaware-organized startup that manufactures solar-powered generators.

To finance and expand its operations, SparkTech needs financing and enters into the following transactions....



ROCKY MOUNTAIN Bankruptcy Conference

1. Loan from FirstBank

SparkTech prepared, electronically signed and delivered its loan application to FirstBank on **December 29th**. The application states that as of the date the application is signed FirstBank may file one or more financing statements on all assets. .

On **January 2nd**, FirstBank files a UCC-1 financing statement with the Delaware Secretary of State, identifying “all assets now owned and hereafter acquired.”

On **January 15th**, SparkTech borrows \$50,000 from FirstBank. As collateral, SparkTech executes an agreement that grants FirstBank a security interest in "all existing and after-acquired assets, including inventory and equipment."



ROCKY MOUNTAIN Bankruptcy Conference

2. Purchase by GreenBuild



On **May 25th**, GreenBuild Construction Co. buys 50 solar-powered generators from SparkTech in the ordinary course of business for \$250,000. GreenBuild pays \$50,000 in cash up front with the remaining \$200,000 payable within Net-30.

SparkTech uses all of the \$50,000 cash as a down payment on machinery it is purchasing from EquipCo.

GreenBuild does not want to pay the full amount up front because GreenBuild knows that FirstBank has a security interest due to its properly filed “all assets” financing statement.



3. Purchase of Machinery from EquipCo.



On **June 4th**, SparkTech purchases from EquipCo machinery for \$250,000 which will be used to manufacture solar panels to be sold with the solar powered generators that SparkTech sells to its customers and authenticates a security agreement granting EquipCo a security interest in the machinery sold.

EquipCo delivers the machinery to SparkTech on **June 8th** but does not file a UCC-1 financing statement in Delaware as to that machinery until **June 19th** – as to which there is a factual dispute of whether EquipCo was aware of the chapter 11 filing.

Before EquipCo delivered the machinery to SparkTech, it provided authenticated notice to FirstBank of its intent to obtain a security interest in the machinery.



4. Loan from SecondBank

On **June 6th**, SecondBank obtains a certified UCC lien search from Delaware that reflects only the filing by FirstBank. SparkTech certifies to SecondBank that the FirstBank loan has a balance of \$50,000 and provides to SecondBank a copy of the current loan statement from FirstBank reflecting a balance owed of \$50,000.

On **June 6th**, SecondBank calls FirstBank and verifies the balance owed of \$50,000.

On **June 8th**, SparkTech obtains a \$300,000 revolving loan from SecondBank, which files on that same day a financing statement in Delaware that states “all assets, now owned or hereafter acquired.”

On that same day, SparkTech executes a security agreement describing SecondBank’s collateral as “all equipment, inventory, accounts, instruments, and general intangibles now owned or hereafter acquired.”

On **June 9th**, SecondBank advances \$150,000 that SparkTech uses as the retainer for its chapter 11 counsel.





5. Another Loan from FirstBank

On **June 10th**, in an extremely rushed loan, SparkTech signs a new note in favor of FirstBank, along with a security agreement as to “all inventory, accounts, equipment, and general intangibles, both currently owned and acquired in the future” and receives \$400,000 from FirstBank to be used as working capital. No additional financing statement is submitted.



Pre-Petition Issues to Consider....



6. Chapter 11 Bankruptcy Filing:

On **June 15th**, SparkTech files for Chapter 11 bankruptcy after a \$1 million judgment is entered against it in favor of a trade creditor who is a direct competitor EquipCo. At the time of filing SparkTech's assets and liabilities are as follows:



Assets

- \$200,000 inventory in warehouse
- GreenBuild account \$200,000 due 6/24
- Equipment (other than EquipCo new machinery) valued at \$50,000
- \$250,000 cash (remaining from the \$400,000 advanced by FirstBank)
- \$100,000 Website and patent rights
- Total \$800,000

Liabilities

- FirstBank owed \$50,000 on first loan
- EquipCo owed \$200,000 balance SecondBank is owed \$150,000
- FirstBank owed \$400,000 on second loan
- Trade Creditor has a \$1,000,000 judgment
- Total \$1,800,000 judgment



Post-Petition Issues to Consider....



QUESTIONS?

**Secured Transactions in Bankruptcy 101: Article 9 Refresher and
the Impact of the United States Bankruptcy Code's Avoidance
Powers on Uniform Commercial Code Article 9 Secured
Transactions**

Hon. William E. Thurman

United States Bankruptcy Court for the District of Utah

Hon. Bruce A. Harwood (ret.)

United States Bankruptcy Court for the District of New Hampshire

Rachel A. Sternlieb

Nelson Mullins Riley & Scarborough LLP

Kenneth L. Cannon, II

Dentons Durham Jones Pinegar P.C.

Timothy M. Swanson

Frost Brown Todd LLP

American Bankruptcy Institute
Rocky Mountain Conference
Deer Valley, UT

June 12, 2025

TABLE OF CONTENTS

I.	Refresher – UCC Art. 9 – Secured Transactions Basics	1
A.	Introduction.....	1
B.	Attachment.....	3
C.	Perfection.....	3
D.	Proceeds, After-Acquired Property, and Future Advances.	4
II.	The Avoiding Powers of the Bankruptcy Code, Generally.	4
A.	Preferences.....	4
B.	“Fraudulent” Transfers under Section 548 and 544 (Incorporating State Law).	5
1.	Types of Fraudulent Transfer.....	5
2.	11 U.S.C. § 548.....	5
3.	11 U.S.C. § 544.....	6
C.	Unauthorized Postpetition Transfers.....	6
D.	Nullification of After-Acquired Property Clauses under 11 U.S.C. § 552.	6
III.	Helpful UCC References	8

I. Refresher – UCC Art. 9 – Secured Transactions Basics

A. Introduction

Secured transactions law under Article 9 of the Uniform Commercial Code (“Article 9”) governs the creation, perfection, priority, and enforceability (and enforcement) of security interests in most personal property. The UCC isn’t, itself, binding law in any state. Rather, it serves as a set of recommended guidelines for state legislatures to consider when crafting their own, state-specific laws. Indeed, Article 9 has been adopted by all states, though occasionally with minor variations. Typically, a lender or seller (the “secured party”) makes a loan or sells goods to a borrower (the “debtor”) and secures payment of the debt by the debtor’s contractual agreement granting a security interest in specified personal property collateral.

The UCC is organized into 12 distinct “Articles,” each covering a specific area of commercial law. The Articles of the UCC are:

- Article 1: General Provisions (applicable to all articles)
- Article 2: Sales
- Article 2A: Leases
- Article 3: Negotiable Instruments
- Article 4: Bank Deposits
- Article 4A: Funds Transfers
- Article 5: Letters of Credit
- Article 6: Bulk Sales
- Article 7: Warehouse Receipts
- Article 8: Investment Securities
- Article 9: Secured Transactions
- Article 12: Controllable Electronic Records

Article 9 of the UCC governs security interests in personal property. It provides comprehensive rules on the creation, attachment, and perfection of security interests in various types of collateral; the priority of competing interests; and the procedures and remedies in the event of default. When addressing an issue under Article 9, it’s important to consult the relevant state statute to determine if there are any deviations from the UCC. Because, in most cases, state

law closely mirrors the UCC, this article discusses the UCC provisions. Official comments to Article 9 are adopted by some States but others see those comments as persuasive authority. The official comments may be updated from time to time by the Permanent Editorial Board.

Even though Article 9 underwent a substantial revision in 2001, Article 9 and all states have since adopted the updated version, subject to some limited exceptions, the pre-2001 version is significant. That is, because of the substantial body of case law interpreting the 2001 version's provisions—many of which were retained or reflected in the revised text of Article 9. The 2001 revisions also changed the numbering of sections, so it is pivotal when relying on pre-2001 case law, to double-check which section of the current UCC 9 is being discussed. Clarifying amendments on the form of names on financing statements were made in 2010 and adopted by all jurisdictions. To address emerging technologies, amendments regarding transfers of digital assets - “Controllable Electronic Records” – were proposed in 2022, including creation of new Article 12, and have been adopted in 28 jurisdictions, including Colorado, but the legislation has yet to be introduced in Utah and Wyoming.

The scope of Article 9 also includes agricultural liens, consignments, and sales of accounts, chattel paper, payment intangibles and promissory notes. UCC § 109(a). Security interests and liens are essential legal mechanisms that protect secured parties by giving them rights in collateral: a source of repayment if a debtor defaults. A security interest represents a current transfer of a property right to the secured party. Typically, though not always, it is nonpossessory – allowing the debtor to retain use of the collateral while the security interest remains in effect. If the borrower defaults, then the security interest can be enforced through sale. The collateral—*i.e.*, the asset subject to the security interest—is personal property, whether tangible (like a vehicle or copier) or intangible (like a copyright or accounts). (Note that a lien on real estate, like an office building,

falls outside the scope of Article 9 and is instead governed by state real estate mortgage laws. However, personal property collateral like a promissory note that is secured by real estate is within the scope of Article 9 because the collateral follows the note).

To enforce the rights and remedies provided under Article 9, a secured lender must ensure that the security interest is both: (1) attached to the collateral (UCC § 9-203), and (2) if other secured creditors are involved, then perfected in the collateral (UCC § 9-301). In order to have priority over other secured creditors, the lender's security interest must not only be attached and perfected but must also have priority in the collateral under the "first to file or perfect" rule. UCC § 322.

The concepts of attachment, perfection, and priority are fundamental to secured transactions. Article 9 permits the filing of a financing statement in advance of attachment but, a security interest is not perfected until it has attached. While terms like "lien" and "pledge" are commonly used to describe these types of arrangements, any form of transaction that secures payment of performance of an obligation is a security interest governed by Article 9. UCC § 1-201(b)(35) and UCC § 9-109(a).

B. Attachment.

A security interest is enforceable and attaches to the identified collateral when the three following events have occurred: (1) value has been given by the secured party, (2) the debtor has rights in the collateral; and (3) a security agreement as to the collateral. UCC § 9-203(b). Attachment governs the rights between the secured party and debtor.

C. Perfection.

Article 9 also provides that the secured party may create priority for its security interest over other interests in the same collateral by "perfecting" its security interest. Depending on the

type of collateral, perfection must occur by one of five methods, most commonly the filing of a financing statement in the appropriate location or by taking another step authorized by Article 9. Perfection governs the rights among secured parties. There is no perfection without attachment.

D. Proceeds, After-Acquired Property, and Future Advances.

The secured party receives a security interest in proceeds of the collateral in accordance with UCC § 9-315 and may also be entitled to after-acquired property under UCC § 9-204(a) to secure the debt, including future loan advances under UCC § 9-204(c).

II. The Avoiding Powers of the Bankruptcy Code, Generally.

The Bankruptcy Code provides an arsenal of avoiding powers to the trustee or debtor in possession and, sometimes, with court approval an official creditors' committee (the "trustee") to avoid transfers of "property" to certain parties, including secured creditors. These powers include avoidance of "preferences" under section 547 of the Code, "fraudulent transfers" under sections 548 and 544 (and applying state law), and "unauthorized postpetition transfers" under section 549. Under any of these sections, the trustee must file a lawsuit (called an "adversary proceeding" in bankruptcy) to avoid the transfer of property. In addition, section 552 of the Bankruptcy Code nullifies after-acquired property provisions of a prepetition security agreement, though there are important exceptions to the general nullification of such property interests. The trustee need not take any action for the benefits of section 552 to be effective.

A. Preferences.

Under section 547(b) an avoidable preference is (1) a transfer of property of the debtor, (2) to or for benefit of a creditor, (3) on account of antecedent debt, (4) made while the debtor was insolvent (insolvency is rebuttably presumed for the ninety days prior to bankruptcy), (5) made within ninety days (or, if the preference recipient is an insider, within one year), that (6) enables

the creditor to receive more than it would have in Chapter 7. Each element of a preference must be found. If any element is missing, the transfer is not avoidable as a preference. The kinds of “property” that the transfer of which can be avoided include property such as the creation or perfection of a security interest or obtaining a judgment. These types of rights do not always seem like “property,” but they are in the context of an avoiding action under the Bankruptcy Code. There are important defenses to preference liability that every bankruptcy lawyer should be familiar with, some of which are quite complicated.

B. “Fraudulent” Transfers under Section 548 and 544 (Incorporating State Law).

The term “fraudulent transfer” sounds ominous and can be. Under 11 U.S.C. § 548, which is an independent federal provision, and section 544, which essentially incorporates state law and endows bankruptcy trustees with rights of other parties, fraudulent transfers can be set aside by a bankruptcy court to the theoretical benefit of creditors who were harmed by the transfer.

1. Types of Fraudulent Transfer.

There are two types of fraudulent transfer, (1) one involving actual intent to hinder, delay, or defraud creditors, and the other (2) involving "constructive" fraud, which requires a showing of two things, (a) a transfer made while the debtor/transferor was insolvent or otherwise in financial distress, and (b) for less than reasonable value.

2. 11 U.S.C. § 548.

Section 548 is an independent federal statute authorizing the avoidance of fraudulent transfer. The trustee may seek to avoid a fraudulent transfer under section 548 made within the shorter of two years before the bankruptcy petition or the date of closing of the bankruptcy case.

3. 11 U.S.C. § 544.

Section 544 endows the trustee with powers of certain parties to reorder priorities in property under state law. Under section 544(a), the so-called “strong-arm statute,” the trustee holds the rights and powers of a hypothetical intervening lien creditor, a judgment lien creditor, and a creditor who advances credit (all of whom can assert liens under state law with priority over a secured creditor with a defective claim or lack of proper perfection) as of the bankruptcy petition date. Section 544(b) permits the trustee to stand in the shoes of an actual unsecured creditor to avoid a transfer avoidable under state law by unsecured creditors. Under the rule in the 1931 U.S. Supreme Court decision, *Moore v. Bay*, 284 U.S. 4, 52 S. Ct. 3 (1931), the trustee, acting on behalf of the bankruptcy estate, can avoid an entire transfer (which could be for millions or billions of dollars even though the actual “golden” unsecured creditor could avoid the transfer only to the extent of damage to it (which could be a very small amount)). Actions brought by the trustee under either section 544(a) or (b) may be brought within the time period provided for under state law, so vary from state to state. A common statute of limitation under state law for avoidance of fraudulent transfers is four years, much longer than the two-year statute under section 548.

C. Unauthorized Postpetition Transfers.

Under section 549, the trustee may avoid a transfer after the petition date that was not authorized by the Bankruptcy Code or the bankruptcy court. The trustee must file an action to avoid the transfer within two years of the transfer or before the case is closed.

D. Nullification of After-Acquired Property Clauses under 11 U.S.C. § 552.

Subject to certain exceptions, section 552(a) of the Bankruptcy Code nullifies a prepetition lien on property acquired by a debtor after the petition is filed. This is mostly relevant to after-acquired property provisions of pre-bankruptcy security interests. Section 552(b) excepts out from

nullification after-acquired clauses of prepetition security interests to the extent they apply to proceeds, products, offspring, rents acquired after the petition. Subsection (b) of section 552 also permits the bankruptcy court to except a security interest on property acquired postpetition based on the “equities of the case.” Lively litigation over whether “rents” included nightly charges for a hotel stay was resolved by Congress’ amendment to section 552(b) in the early 2000’s but continues in cases involving facilities such as golf courses. As a practical matter, secured creditors are often granted a “replacement lien” on postpetition cash collateral in exchange for the secured creditor’s consent for the trustee to use cash collateral as part of a stipulation.

III. Helpful UCC References

UCC § 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;
 - (C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or
 - (D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) is subject to Section 4-210 on the security interest of a collecting bank, Section 5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 9-110 on a security interest arising under Article 2 or 2A, and Section 9-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

- (1) the security agreement becomes effective to create a security interest in the person's property; or
- (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

UCC § 9-204. AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES.

(a) **After-acquired collateral.** Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) **When after-acquired property clause not effective.** A security interest does not attach under a term constituting an after-acquired property clause to:

- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
- (2) a commercial tort claim.

(c) **Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

UCC § 9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS.

(a) **Disposition of collateral: continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this article and in Section 2-403(2):

- (1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
- (2) a security interest attaches to any identifiable proceeds of collateral.

(b) **When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

- (1) if the proceeds are goods, to the extent provided by Section 9-336; and
- (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted

under law other than this article with respect to commingled property of the type involved.

(c) **Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) **Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
 - (A) a filed financing statement covers the original collateral;
 - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (C) the proceeds are not acquired with cash proceeds;
- (2) the proceeds are identifiable cash proceeds; or
- (3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) **When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

- (1) when the effectiveness of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or
- (2) the 21st day after the security interest attaches to the proceeds.

UCC § 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under Section 9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) the security interest or agricultural lien is perfected; or
 - (B) one of the conditions specified in Section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

§ 9-320. BUYER OF GOODS.

(a) **Buyer in ordinary course of business.** Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) **Buyer of consumer goods.** Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) **Effectiveness of filing for subsection (b).** To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 9-316(a) and (b).

(d) **Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) **Possessory security interest not affected.** Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 9-313.

UCC § 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.

(a) **General priority rules.** Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

- (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

- (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
- (3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a)(1):

- (1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
- (2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:

- (1) any supporting obligation for the collateral; and
- (2) proceeds of the collateral if:
 - (A) the security interest in proceeds is perfected;
 - (B) the proceeds are cash proceeds or of the same type as the collateral; and
 - (C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e) are subject to:

- (1) subsection (g) and the other provisions of this part;
- (2) Section 4-210 with respect to a security interest of a collecting bank;
- (3) Section 5-118 with respect to a security interest of an issuer or nominated person; and
- (4) Section 9-110 with respect to a security interest arising under Article 2 or 2A.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§ 9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.

(a) **General rule: purchase-money priority.** Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) **Inventory purchase-money priority.** Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.
- (e) **Holders of conflicting livestock security interests to be notified.** Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:
 - (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
 - (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.
- (f) **Software purchase-money priority.** Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.
- (g) **Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):
 - (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
 - (2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

Faculty

Kenneth L. Cannon, II is senior counsel with Dentons Durham Jones Pinegar, P.C. in Salt Lake City and has specialized in commercial bankruptcy law, representing debtors, secured and unsecured creditors, purchasers, DIP lenders, creditors' committees, shareholders, trustees, receivers and examiners in chapter 11 reorganization cases, workouts, receiverships, and chapter 7 cases and appeals. He has served successfully as a mediator in the resolution of disputes in bankruptcy cases and has appeared as an expert witness a number of times. Mr. Cannon also advises clients and issues critical bankruptcy and New York law opinions in a variety of commercial transactions. He is a Fellow of the American College of Bankruptcy, for which he served as the Regent from the Tenth Circuit from 2017-21. He also served for a number of years on the advisory board of ABI's Rocky Mountain Bankruptcy Conference, has been named *The Best Lawyers in America's* Salt Lake City Lawyer of the Year in Bankruptcy and Creditor/Debtor Law or Bankruptcy Litigation three times, and is listed in *Lawdragon 500*. Mr. Cannon has taught commercial law at the S.J. Quinney College of Law at the University of Utah and debtor/creditor and chapter 11 reorganization courses at BYU's J. Reuben Clark Law School. In 1985, he served as a senior Fulbright Scholar on the Law Faculty of the University of Helsinki. For a number of years, he chaired the Utah Bankruptcy Court's Local Bankruptcy Rules Committee and the Utah District Court's Attorney Discipline Committee. Mr. Cannon has written articles and is a frequent lecturer at seminars on a variety of bankruptcy topics. He co-authored a history of bankruptcy in Utah with former Judge Judith Boulden and has published two books and several dozen scholarly articles on Utah, Mormon and legal history topics. Mr. Cannon is admitted to practice in Utah and New York. He received his B.A. *summa cum laude*, his M.A. in American history and his J.D. *cum laude* from Brigham Young University, where he was a member of the Order of the Coif. In 1985, he served as a senior Fulbright Scholar on the Oikeustieteellinen Tiedekunta (law faculty) at the University of Helsinki, where he conducted research on Scandinavian insolvency law.

Hon. Bruce A. Harwood is a retired U.S. Bankruptcy Judge for the District of New Hampshire in Concord, appointed to the bench in March 2013, and currently resides in San Francisco. He also served as Chief Bankruptcy Judge prior to his retirement from the bench, and he served on the First Circuit's Bankruptcy Appellate Panel. Prior to his appointment to the bench, Judge Harwood chaired the Bankruptcy, Insolvency and Creditors' Rights Group at Sheehan Phinney Bass + Green in Manchester, N.H., representing business debtors, asset-purchasers, secured and unsecured creditors, creditors' committees, trustees in bankruptcy, and insurance and banking regulators in connection with the rehabilitation and liquidation of insolvent insurers and trust companies. He was a chapter 7 panel trustee in the District of New Hampshire and mediated insolvency-related disputes. Judge Harwood is ABI's President. He previously served as ABI's Secretary and Vice President-Communication, Information & Technology, as co-chair of ABI's Commercial Fraud Committee, as program co-chair and judicial chair of ABI's Northeast Bankruptcy Conference, and as Northeast Regional Chair of the ABI Endowment Fund's Development Committee. He also served on ABI's Civility Task Force. Judge Harwood is a Fellow in the American College of Bankruptcy and was consistently recognized in the bankruptcy law section of *The Best Lawyers in America*, in *New England SuperLawyers* and by *Chambers USA*. He received his B.A. from Northwestern University and his J.D. from Washington University School of Law.

Rachel A. Sternlieb is a partner at Nelson Mullins Riley & Scarborough, LLP in Denver, where she focuses her practice in the areas of bankruptcy and restructuring, as well as complex commercial and business litigation in state and federal courts, and administrative forums and arbitration proceedings. Her practice includes matters ranging from business and contract disputes, including franchise and distribution litigation, to complex bankruptcy and reorganization matters. Ms. Sternlieb represents businesses of all sizes and individuals, as well as receivers, chapter 7 bankruptcy trustees, and creditors in chapter 7 and 11 bankruptcy cases. Before relocating to Denver in 2016, she practiced in New Orleans. Ms. Sternlieb currently serves as a member of the board of directors of the International Women's Insolvency & Restructuring Confederation's Mountain-Desert Network, and on ABI's Rocky Mountain Bankruptcy Conference Advisory Board, and she co-chairs the Bankruptcy Subsection of the Business Law Section for the Colorado Bar Association. She has been named a *Super Lawyers* "Rising Star" in Business Litigation for the past four years. In addition, she chairs the Community Professionals Board of the Heart and Hand Center, a local Denver nonprofit organization. Ms. Sternlieb received her undergraduate degree from the University of Georgia in 2010 and her J.D. from Loyola University New Orleans College of Law in 2013.

Timothy M. Swanson is a partner with Frost Brown Todd LLP in Denver with Moye White LLP in Denver focuses primarily on commercial bankruptcy, creditors' rights and commercial litigation, bringing creative problem-solving to complex and insolvency scenarios with an emphasis on obtaining practical and cost-driven results. He has experience with chapter 7 and 11 matters, drafting and arguing motions, objections, briefs and other pleadings along with contested bankruptcy court proceedings and appellate proceedings. Mr. Swanson has represented numerous clients in bankruptcy proceedings, including secured creditors, trade creditors, landlords, tenants, debtors, creditors' committees, trustees, asset-purchasers, equityholders and various other interested parties. He also regularly counsels lending clients in matters involving workouts, creditors' rates (foreclosure, guaranty, replevin, etc.) and loan documentation. Mr. Swanson serves as regional workout council to the trustee of a large loan portfolio, and as national bankruptcy council to numerous commercial landlords and property-owners. A large portion of his practice focuses on advising strategic asset-purchasers of distressed assets. Mr. Swanson has appeared on behalf of clients in distressed situations in California, Colorado, Delaware, Illinois, Kansas, Missouri, New York, Wisconsin and Wyoming. He received his B.A. from the University of Kansas, his J.D. from the University of Kansas School of Law, and his LL.M. in taxation from Northwestern University.

Hon. William T. Thurman is a U.S. Bankruptcy Judge for the District of Utah in Salt Lake City, appointed in 2001 and now on recall status, and served as its chief judge. He also is a member and former chief judge of the Tenth Circuit Bankruptcy Appellate Panel. Judge Thurman served as a member of the U.S. Judicial Conference's Code of Conduct Committee and as a member of Conference's Financial Disclosure Committee. He has been active in the National Conference of Bankruptcy Judges, having served on its board and chaired several of its committees. He also has been a frequent speaker for and member of other national and local organizations focusing on lawyer and judicial education and ethical conduct, and he is a Fellow with the American College of Bankruptcy. Prior to his appointment, Judge Thurman was in private practice in Salt Lake City with McKay, Burton & Thurman for 27 years, where he focused on bankruptcy law and served as a panel chapter 7 trustee. He received both his B.A. and J.D. from the University of Utah.