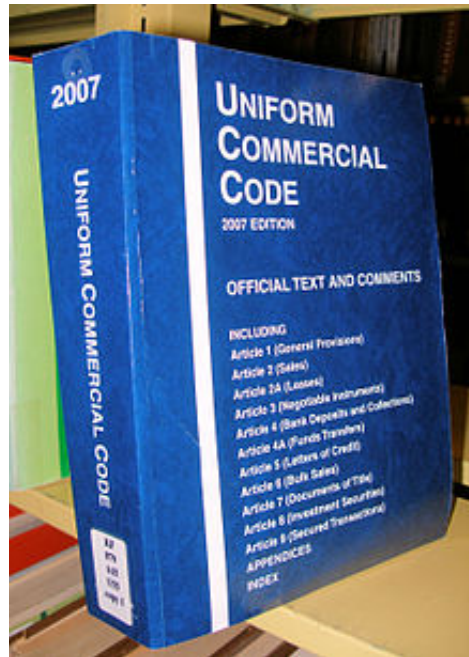


Article 9 UCC Security Interest



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Security interest. Interest in property pursuant to a security agreement. Any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability (Black's Law 6th Ed.). A security interest is a right by a creditor to have a specific item or items of property sold to satisfy the debt owed to the secured party (Green - Seifter Attorneys. PLLC).

The security interest must be properly created and perfected in order that it be enforced against other creditors and in bankruptcy. In order that it be enforceable, the security agreement must be made internationally known, i.e. "notice" of the security interest, thus making the secured parties rights fully enforceable. This is known as perfection.

As of July 1, 2001, Article 9 of the Uniform Commercial Code was revised. Article 9 contains rules for the creation and perfection of security interests. Although the rules might seem insignificant, if not followed, it could create a fatal flaw in the secured interest.

There are three requirements for the creation of an enforceable security instrument against the debtor. They are in UCC 9-203(b) and are as follows:

1. Value has been given/the secured party must give value
2. The debtor must have rights in the collateral/or the power to transfer rights in the collateral to a [secured party](#); and
3. (A) the [debtor](#) has [authenticated](#) (signed) 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;

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Article 9 uses the phrase "authenticate" to mean "signed", but authentication may include electronic signatures or any other symbol, encryption or similar process which identifies the debtor and manifests adoption or acceptance (UCC 9-102(a)(7) and Green - Seiftner Attorney, PLLC)

7) **"Authenticate"** means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a [record](#) in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

see <http://www.law.cornell.edu/ucc/9/article9.htm> UCC 9-203(b) "Enforceability" for three other

options (B), (C), and (D) that meet requirement number 3 for enforcement of a security interest.

Meeting the requirements entails the creditor obtaining a signed security agreement (authenticated record) which describes and states that debt is secured by the collateral (the property subject to the security interest/lien). After the 3 requirements of enforcement are met the security interest is considered "Attached"

§ 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.

The revised Article 9 makes clear that a blanket security interest (security interest in virtually all of the debtor's personal property) need be reflected in the security agreement. Listing "all the debtor's assets" or "all the debtor's personal property" may be permitted in certain financing statements but with regard to the security agreement, these "supergeneric" descriptions are not sufficient to identify the collateral and will fail to create a security interest.

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§ 9-108. SUFFICIENCY OF DESCRIPTION.

(c) [Supergeneric description not sufficient.]

A description of [collateral](#) as "all the [debtor](#)'s assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

Revised Article 9 permits the practice under the Former Article 9 of listing defined categories of assets in both the security agreement and the financing statements. UCC 9-108(b)(3); UCC 9-504(1) (Green -Seifter Attorney - PLC)

UCC 9-108

(b) [Examples of reasonable identification.]

Except as otherwise provided in subsection (d), a description of [collateral](#) reasonably identifies the collateral if it identifies the collateral by:

- (1) specific listing;
- (2) category;
- (3) except as otherwise provided in subsection (e), a type of [collateral](#) defined in [the Uniform Commercial Code];
- (4) quantity;
- (5) computational or allocational formula or procedure; or
- (6) except as otherwise provided in subsection (c), any other method, if the identity of the [collateral](#) is objectively determinable.

§ 9-504. INDICATION OF COLLATERAL.

A [financing statement](#) sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to Section [9-108](#); or
- (2) an indication that the financing statement covers all assets or all personal property.

Categories of collateral: Tangible property such as Goods, Inventory, Equipment, Fixtures. Intangible property such as Account, Chattel Paper, General Intangibles (see Code for Other Categories like documents UCC 9-102(a)(30), instruments UCC 9-102(a)(47), commercial tort claims UCC 9-102(a)(13), investment property (UCC 9-102(a)(49), letter of credit, deposit accounts, money, or oil, gas, or other mineral rights.

