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# UCC-9: CREATION, ENFORCEMENT, PERFECTION, AND PRIORITY OF UCC SECURITY INTERESTS

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## FUNDAMENTAL CONCEPTS

A security interest secures an obligor's performance of an obligation. Most often, the obligation is to repay a loan with interest, but a security interest is not limited to loan obligations. It can secure covenants not to undertake a particular act or the timely performance of an act.

A security interest is a limited ownership interest. It gives the holder of the security interest (**secured party**) recourse against property (**collateral**) if the obligor fails to perform. Often, though not always, the person granting the security interest (**debtor**) is also the obligor, and the secured party is the obligee. The secured party's recourse against the debtor's collateral is cumulative with the obligee's personal recourse against the obligor.

Unlike most other liens, the creation of a security interest is a voluntary act. This affects the security interest's enforceability and priority relative to other liens and interests. The law governing a security interest depends on the nature of the collateral. If the collateral is personal property, the security interest is governed by the relevant state's version of the Uniform Commercial Code.<sup>1</sup> Every state has adopted the Uniform Commercial Code, but there are slight variations between the states. It is therefore important to consult the adopted statutes and not rely solely on the model Code. Washington's version of the Uniform Commercial Code is at Title 62A RCW.

The Uniform Commercial Code (both the model Code and Washington's version) is organized into nine articles regulating a variety of commercial transactions. These include, without limitation, sales of goods, letters of credit, negotiable instruments, documents of title, electronic fund transfers, and security interests in personal property. Article 9 governs security interests in personal property, though other parts of the Uniform Commercial Code sometimes play a role in the creation, enforcement, perfection, and priority of security interests. In Washington, Article 9 is at Chapter 62A.9A RCW.

### A. ATTACHMENT

The process for creating a security interest is known as **attachment**. This is the most common method for creating a security interest governed by Article 9. There are, however, a handful of other transactions the Uniform Commercial Code subjects to Article 9 even though the parties may not have intended to create a security interest. Among others, this includes agricultural liens. The complete list of these transactions is in RCW 62A.9A-109. It is worth consulting this section anytime a transaction appears to separate rights associated with title ownership—e.g., one party receives the right of possession while a different party holds title.

The attachment of a security interest involves concepts derived from the common law of contracts and the common law of property. Article 9 requires three elements to attach a security interest. See RCW 62A.9A-203(b). They are discussed below.

#### 1. Exchange of value

First, the transaction must involve an exchange of value. RCW 62A.9A-203(b)(1). This is essentially the same as the "consideration" required to make a contract enforceable. A peppercorn is enough in the right circumstances.

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<sup>1</sup> In Washington, security interests in real property (often known as mortgages) are governed by Title 61 RCW as well as the common law. This section and presentation focus on security interests in personal property.

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In most lending transactions, the promise to lend money in exchange for the promise to repay it with interest is sufficient to satisfy this element.

Notably, the Code is written in the passive voice. This means the exchange of value need not run directly between the debtor and secured party. For example, a company's owner may grant a security interest in her car to a bank's holding company in exchange for a loan from the bank to the company.

## 2. Right to grant a security interest in collateral

Second, the debtor must have a right to grant a security interest in the proposed collateral. RCW 62A.9A-203(b)(2). This element derives from the property law principle of *nemo dat quod non habet*, meaning one cannot convey an interest that one does not have. See *State v. Mermis*, 105 Wn. App. 738, 748 n.27 (2001).

This element is satisfied the moment the debtor obtains any interest in the collateral—even though it may not be to the full extent of title ownership interest. In this sense, a debtor may grant a security interest as early as the moment the debtor obtains an insurable interest in the collateral as described in RCW 62A.2-501. Because the fundamental concept here is that the debtor cannot grant an interest greater than its own, the nature and extent of a security interest can change as the nature and extent of the debtor's ownership interest changes.

There are a pair of circumstances in which a debtor may grant a security interest that is potentially greater than the debtor's own interest in the collateral. The first is where a debtor is a good faith purchaser, as defined in RCW 62A.2-403. In that circumstance, the debtor may grant a security interest in collateral even though the debtor's underlying title to that collateral is voidable. The second circumstance is where the debtor bought the collateral as a "buyer in the ordinary course of business," as defined in RCW 62A.1-201(b)(9). There, the debtor may grant a security interest in that collateral even if the underlying seller's title was void.

## 3. Objective manifestation of intent to grant security interest

Third, there must be an objective manifestation of the debtor's intent to grant a security interest in the proposed collateral. RCW 62A.9A-203(b)(3). This is akin to the requirements for real property conveyances found in Statute of Frauds, though Article 9 is not limited to signed writings in the same way, as detailed below.

### a) Security agreement

The most common method for satisfying this requirement is nevertheless a signed writing, known as a **security agreement**. To satisfy the Uniform Commercial Code, a security agreement must be authenticated by the debtor and contain an adequate description of the collateral. The collateral need not be described with absolute precision; it is sufficient to use the generic classifications found in the definitions at RCW 62A.9A-102. For example, a description using the terms "equipment and inventory" is sufficient.

The degree of precision used may be a matter of negotiation. Debtors may want the security agreement to identify each piece of collateral precisely, even by serial number or the like, to keep the scope of their encumbered assets narrow. Secured parties may want the description to be broad because of turnover in assets.

The Uniform Commercial Code allows parties to agree that future property will be subject to the security interest, RCW 62A.9A-204, but that agreement is not implied in the contract. In other words, if the parties

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have agreed that property to be acquired later will also serve as collateral, that arrangement must be express in the security agreement. This is typically done using phrases such as “existing and after-acquired inventory” or “all equipment now or hereafter owned.” Absent that type of text, the security interest will attach only to property in which the debtor had authority to convey a security interest when the security agreement was signed.

#### b) Other forms of object manifestation

For certain types of collateral, Article 9 recognizes that the intent to convey a security interest may be conveyed without a signed writing. These additional forms are listed in RCW 62A.9A-203(b)(3). They include acts such as possession, control, and notation on certain kinds of certificated documents.

#### 4. Automatic attachment

Article 9 recognizes that security interests automatically attach to certain kinds of personal property even without the satisfaction of the elements in RCW 62A.9A-203(b). A common example is the automatic attachment to identifiable proceeds of existing collateral. RCW 62A.9A-315. A security interest will also automatically attach to obligations supporting collateral. See RCW 62A.9A-203(f)–(i). For example, if the collateral is a promissory note supported by a separate personal guaranty, the security interest will automatically attach to the guaranty even though the guaranty may not be listed in the security agreement.

## B. ENFORCEMENT

The process by which a secured party extracts value from collateral is known as the process of **enforcement**. The right to enforce a security interest is a conditional right; it is conditioned on the existence of a **default** in the secured obligation. So long as the obligor performs the secured obligation, the secured party has no right to enforce the security interest. The Uniform Commercial Code does not define the term “default,” leaving that to the contracting parties. The options, procedures, and rules for enforcement depend on the nature of the collateral.

#### 1. Tangible collateral

For tangible collateral, secured parties have several options. They may first repossess or disable the collateral. RCW 62A.9A-609. They may proceed in this manner through judicial process, obtaining a writ instructing the sheriff to act, or non-judicially so long as the repossession is done without breaching the peace.

Article 9 does not include statutory standards for what constitutes a breach of the peace. Whether a repossession breaches the peace is a highly fact-dependent question and the subject of many published decisions around the country. See, e.g., *Ragde v. Peoples Bank*, 53 Wn. App. 173, 767 P.2d 949 (1989); *Giles v. First Va. Credit Servs., Inc.*, 560 S.E.2d 557 (N.C. Ct. App. 2002). Courts generally find breaches of the peace where there is property damage, personal injury, or subterfuge. See *Giles*, supra. This is by no means an exclusive list. Caution is warranted when undertaking a non-judicial repossession. Repossession does not change title ownership of the collateral—the debtor is still the title owner. A secured party in possession of repossessed collateral is effectively a bailee and owes the attendant duties of care that all bailees owe their bailors.

To change title ownership of collateral and extract value from it, a secured party has two options: **disposition** or **acceptance**. Disposition is the process by which the collateral is sold, leased, licensed, or otherwise transferred for cash value. Acceptance is the process by which the secured creditor takes title ownership (and

possession, if it has not already repossessed) in full or partial satisfaction of the secured obligation. Disposition is governed by RCW 62A.9A-610 through 9A-617. In general terms, the secured party must give notice to known interested parties and conduct the disposition in a commercially reasonable manner. If the collateral is perishable or the collateral is sold at the current price in a recognized market, the secured party's notice requirements are somewhat relaxed. Once the disposition is complete, RCW 62A.9A-615(a) sets out the following order for distributing the resulting proceeds:

1. Costs of repair, maintenance, and sale
2. Secured obligation
3. Obligations secured by subordinate liens or security interests
4. Debtor

Note that those with lien and security interests with priority ahead of the disposing party's security interest receive no distribution. Instead, senior liens and security interests remain attached to the collateral notwithstanding the disposition. RCW 62A.9A-617. Subordinate liens and security interests are, however, discharged. *Id.*

## 2. Intangible collateral

Assets like accounts-receivable, chattel paper, instruments, deposit or investment accounts, and intellectual property are intangible collateral. To enforce a security interest in intangible collateral, a secured party exercises the rights constituting the intangible collateral. Depending on the precise nature of the intangible collateral, the process is known as **enforcement** or **collection**. In general, a secured party "steps into the shoes" of its debtor when enforcing a security interest in intangible collateral. In other words, the secured party's ability to enforce or collect the debtor's contract rights is generally subject to any defenses and setoff rights the counterparty, defined in Article 9 as an **account debtor**, may have. RCW 62A.9A-404.

To enforce or collect on intangible collateral, the secured party instructs the account debtor to render performance directly to the secured party. RCW 62A.9A-607(a). The nature of the instruction, of course, depends on the nature of the account debtor's obligation. *See id.*; *see also* RCW 62A.9A-406. After receiving an instruction to render performance to the secured party, an account debtor may discharge its obligation only by rendering performance to the secured party. RCW 62A.9A-406(a). If the account debtor doubts the propriety of the secured party's instruction, the account debtor may demand proof of the right to collect or enforce the debtor's contract rights (i.e., the intangible collateral). RCW 62A.9A-406(c).

Proceeds from intangible collateral are distributed in the same order as proceeds from tangible collateral:

1. Costs of collection or enforcement
2. Secured obligation
3. Obligations secured by subordinate liens or security interests
4. Debtor

RCW 62A.9A-608(a). As with tangible collateral, those with lien and security interests with priority ahead of the disposing party's security interest receive no distribution. Unlike dispositions of tangible collateral, however, senior liens and security interests in intangible collateral are effectively terminated because the collateral itself no longer exists because the account debtor has discharged it through performance. Subordinate liens and security interests in intangible collateral are also discharged for the same reason.

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## C. PERFECTION

**Perfection** is the process by which a secured party makes a security interest enforceable against others holding interests in the same collateral. A secured party's status as "perfected" or "unperfected" affects the priority of its security interest relative to other interests in the collateral. This status has no bearing on the secured party's ability to enforce its security interest against the debtor. On the other hand, this status is entirely meaningless unless and until the security interest has attached.

The fundamental goal of Article 9's perfection scheme is to provide inquiry notice to others who might be interested in the secured party's collateral. This objective derives from contract principles of reliance and the property law principle of *nemo dat quod non habet* noted above. Article 9's rules for perfection reflect both principles.

There are five basic methods of perfection: (1) filing a **financing statement**; (2) using an alternative filing system; (3) possession; (4) control; and (5) automatic perfection upon attachment. The methods available in any given circumstance will depend on the nature of the collateral. In most circumstances, more than one method is available.

None of these methods is permanent in the same way a mortgage remains on title until discharged or otherwise removed from title. A security interest in personal property can become "unperfected" if circumstances render the method of perfection inapplicable or ineffective. This has consequences for priority relative to other liens and security interests, but it does not render the security interest unenforceable as against the debtor. Moreover, a lapse in perfection does not prohibit a subsequent act to "re-perfecting," though this does not always cure the impact to priority.

### 1. Filing a UCC-1 financing statement

The baseline method of perfection is to file a financing statement. RCW 62A.9A-310(a). The financing-statement filing system is akin to the recording system used for lien and mortgage interests in real property. Each state's version of the Uniform Commercial Code designates an agency responsible for maintaining the state's filing system. In Washington, the relevant agency is the Department of Licensing.<sup>2</sup> RCW 62A.9A-501(a).

#### a) Contents

To be effective, a financing statement must state the names of the debtor and secured party (or the secured party's representative) and must indicate the collateral. RCW 62A.9A-502(a). In practice, this is done using a form published by the International Association of Commercial Administrators. A copy of the form is included at the end of this section. The Department of Licensing is required to accept a properly completed form accompanying the filing fee. RCW 62A.9A-521. Lawyers should pay special attention to two key elements in the form: (a) the name of the debtor; and (b) indication of the collateral. See RCW 62A.9A-502(a).

The first element is important because financing statements are organized by the name of the debtor. If the debtor is an organization registered with the Secretary of State, the filer must use the debtor's registered name. RCW 62A.9A-503(a)(1). If the debtor is an unregistered organization, the filer must use the organization's name or the names of its partners or members if it has no name. RCW 62A.9A-503(a)(6). If the debtor is an individual with a valid Washington driver's license, the filer must use the name on the license. RCW 62A.9A-503(a)(4).

<sup>2</sup> The Department of Licensing's website includes a section dedicated to financing statements, available at <https://www.dol.wa.gov/business/UCC/uccfiling.html>. There, the public can file financing statements online or search for financing statements filed by or against others.

Otherwise, the filer must use the person's first and last name generally. RCW 62A.9A-503(a)(5). A filer may include the debtor's trade name, but using the trade name alone is not sufficient. RCW 62A.9A-503(c). Misstating the debtor's name can render the financing statement ineffective if it is not produced in a search using the debtor's correct name. See RCW 62A.9A-506.

The second element is important because it discloses the collateral in which the secured party claims a security interest. The standard of sufficiency here is more liberal than the standard governing security agreements. A collateral description is sufficient for purposes of perfection through a financing statement if it uses the descriptions set out in RCW 62A.9A-108 or if it indicates "all assets" or "all personal property." RCW 62A.9A-504. In many instances, lenders will simply copy the text used in the security agreement. This shorthand may be convenient, but lawyers should consider whether this is the best approach for the particular transaction. If there is a possibility of future financing secured by other types of collateral, a broader collateral description may be appropriate.

### **b) Authority to file**

The Uniform Commercial Code restricts who may file a financing statement naming another person as a debtor. The debtor must, in a signed writing, authorize the filer to do so. RCW 62A.9A-509(a). A security agreement meets this requirement with respect to the collateral covered in it as well as proceeds. RCW 62A.9A-509(b).

### **c) Expiration and continuation**

A financing statement is generally effective for five years, after which it expires unless it is continued. RCW 62A.9A-515(a). To continue the effectiveness of the financing statement, a **secured party of record**<sup>3</sup> or debtor may file a **continuation statement**. RCW 62A.9A-509(d); RCW 62A.9A-512. They may do so only during the final six months of the existing five-year period. RCW 62A.9A-515(d). A timely continuation statement extends the financing statement's effectiveness for another five years. RCW 62A.9A-515(e). Otherwise, the financing statement terminates at the end of the existing five-year period.

### **d) Amendments and termination**

A **secured party of record** and debtor may also make changes to the financing statement. Both may change names and addresses in the statement. RCW 62A.9A-509(d); *see also* RCW 62A.9A-512; RCW 62A.9A-514. Only the debtor, however, may add new collateral or new debtors to the financing statement. RCW 62A.9A-509(a). If the security interest is discharged or terminated for some other reason, the secured party of record may file a **termination statement**. RCW 62A.9A-509(d); *see also* RCW 62A.9A-513. If it fails to do so, the debtor may file it. RCW 62A.9A-509(d)(2).

## 2. Use of an alternate filing system

For certain types of collateral, the Uniform Commercial Code defers the question of perfection to regulatory frameworks established in other bodies of law. RCW 62A.9A-311. In some instances, this involves deference to federal regulatory scheme. RCW 62A.9A-311(a)(1). Common examples include aircraft and seagoing vessels registered in the United States. For aircraft, a secured party or debtor must record a Claim of Lien in the FAA Aircraft Registry.<sup>4</sup> For seagoing vessels registered in the United States, a secured party or debtor must file or

<sup>3</sup> A secured party of record is the party whose name appears on the financing statement as the "secured party." RCW 62A.9A-511.

<sup>4</sup> [https://www.faa.gov/licenses\\_certificates/aircraft\\_certification/aircraft\\_registry/record\\_security\\_agreement](https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/record_security_agreement)

record a Claim of Lien with the U.S. Coast Guard's National Vessel Documentation Center.<sup>5</sup> In other instances, this involves deference to state laws. RCW 62A.9A-311(a)(3). The most common example of this involves state motor vehicle registration laws. For motor vehicles titled in Washington, a secured party's name must appear on title as the vehicle's legal owner. RCW 46.12.675.

It is important to note that the deference contemplated in RCW 62A.9A-311 does not apply until the collateral in question becomes subject to the alternative filing system. For example, the method of perfection contemplated in RCW 62A.9A-311 does not apply to a new car sitting on a dealer's lot until the car is sold and a title and license plates are issued. RCW 62A.9A-311(a)(2); *see also* RCW 46.12.675(1). Until that happens, the car is merely inventory the same as donuts in a bakery or suits on the rack in a clothing store.

### 3. Possession

A secured party may perfect a security interest in tangible collateral by taking possession of it. RCW 62A.9A-313. A secured party may do this directly or through an appropriately designated agent. RCW 62A.9A-313(h). In general, this is an additional method of perfection, with filing as the baseline. If the collateral is money, however, possession is the only method of perfection. RCW 62A.9A-312(b)(3). If the collateral is governed by a certificate of title statute, possession may be a temporary method of perfection if the collateral has moved across state lines. RCW 62A.9A-316(b). Otherwise, as discussed above, compliance with the applicable certificate of title statute is the only method of perfection.

This method is effective only while the secured party or its agent possesses the collateral. RCW 62A.9A-313(d). A security interest perfected by possession becomes unperfected when the secured party or its agent relinquishes possession unless the security interest is perfected by some other method beforehand.

### 4. Control

Analogous to possession of tangible collateral, a secured party may perfect a security interest in certain intangible collateral by taking control of it. RCW 62A.9A-313(a). With a few exceptions, control is an additional method of perfection, with filing as the base method. *See* RCW 62A.9A-312; RCW 62A.9A-314(a). The exceptions are deposit accounts and letter-of-credit rights, both of which may be perfected only by control. *See* RCW 62A.9A-312(b). The standard for obtaining "control" for purposes of perfection depends on the collateral. RCW 62A.9A-314. For deposit accounts, three types of secured parties have control: (a) the depository institution; (b) those who have entered into a control agreement with the bank and debtor; and (c) those who are listed as customer on the deposit account. RCW 62A.9A-104.

### 5. Automatic

Finally, the Uniform Commercial Code recognizes 13 transactions in which the resulting security interest is automatically perfected upon its creation. RCW 62A.9A-309. The most common of these is the purchase-money security interest in consumer goods other than goods regulated by a certificate of title statute. *See* RCW 62A.9A-309(1). A **purchase-money security interest** is a security interest in collateral that secures a loan used to buy the collateral. For example, a security interest in hay baler is a purchase-money security interest if it secures a loan used to buy that same hay baler. If the collateral is a consumer good that does not require a certificate of title, the purchase-money security interest is automatically perfected upon its creation. *Id.*

### 6. Choice of law

Because personal property is mobile, the law governing the perfection of security interests in personal property can change as circumstances change. For this reason, the Uniform Commercial Code contains special

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<sup>5</sup> <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/NCL.pdf?ver=2018-12-28-130935-257>

choice of law rules for questions of perfection and priority.<sup>6</sup> In general, the location of the debtor determines the governing law. RCW 62A.9A-301(1). The law of the state in which the collateral is located will govern, however, if: (a) the secured party has possession; (b) the collateral is a fixture; (c) the collateral is timber; or (d) the collateral is extracted through a minehead or wellhead. RCW 62A.9A-301(2)–(4).

The determination of a debtor’s location tracks the rules for establishing a litigant’s domicile for determining jurisdiction and venue. An individual debtor is located in the state of his or her principal residence. RCW 62A.9A-307(b)(1). A registered organization is located in the state where it is registered. RCW 62A.9A-307(e). An unregistered organization is located where it does business or, if it does business in more than one state, the state where its chief executive office is located. RCW 62A.9A-307(b)(2)–(3).

## 7. Changes

Changes in the collateral and the parties can affect perfection. Secured parties bear the risk of losing their perfected status if a change renders their method of perfection ineffective. To ameliorate some of this risk, the Uniform Commercial Code includes grace periods in which secured parties may take steps to maintain perfection after a change renders their prior perfection ineffective.

### **a) Proceeds of original collateral**

As noted above, a security interest in collateral automatically attaches to all identifiable proceeds of that collateral. RCW 62A.9A-315. In some instances, the proceeds already fit the collateral description in the secured party’s existing financing statement and no further action is needed. For example, a financing statement indicating “inventory, equipment, and promissory notes” as collateral will cover a promissory note the debtor received in exchange for its equipment. The secured party in that instance has a perfected security interest in the promissory note with no further action needed. If the collateral does not fit within the existing description, however, the parties have 21 days to amend the financing statement. RCW 62A.9A-315(d).

### **b) Change in debtor's location**

As noted above, the debtor’s location determines the law governing perfection. RCW 62A.9A-301. If the debtor moves to a different state, the law governing perfection changes, including the appropriate agency with which to file a financing statement. The Uniform Commercial Code gives secured parties a grace period of four months to file a new financing statement in the debtor’s new home state. RCW 62A.9A-316(a)(2). If the change results from a sale to a new debtor in a different state, the secured party has one year to file a new financing statement in the new debtor’s home state. RCW 62A.9A-316(a)(3).

### **c) Change in debtor's name**

Debtors occasionally change their name. This may or may not require action to maintain the effectiveness of a financing statement. An amendment is necessary if the existing financing statement would not appear in a search using the debtor’s new name because this means the old name is sufficiently different to render the financing statement ineffective. See RCW 62A.9A-506. If the financing statement would appear in a search using the debtor’s new name, no further action should be necessary (though best practice is to update the financing statement nevertheless).

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<sup>6</sup> The law governing attachment is usually fixed by the security agreement’s choice of law provision. If there is no such provision, the Uniform Commercial Code instructs parties to apply choice-of-law principles widely recognized in case law. See RCW 62A.1-301.

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## D. PRIORITY

Frequently, a debtor's personal property is encumbered by more than one lien or security interest. **Priority** is the ranking of those liens and security interests to establish an order of distribution following a disposition, collection, or enforcement of a security interest. Article 9's rules of priority reflect the same tenets of contract and property law discussed above, including the principles of "first in time, first in right" and reliance. The basic rule is that a security interest has priority over all other liens and security interests, except as otherwise provided in Article 9. RCW 62A.9A-201(a). Perhaps predictably, there are a multitude of specific exceptions to this general rule. It is in these exceptions one usually finds the applicable rule of priority.

### 1. Security interests v. other types of liens

A security interest is subordinate to a lien that attaches to collateral before: (a) the security interest is perfected; or (b) a financing statement is filed and there is an objective manifestation of the debtor's intent to grant the security interest. RCW 62A.9A-317(a)(2). Also, a purchase-money security interest will have priority over a lien if an authorized person files a related financing statement before or within 20 days after the debtor receives delivery of the collateral. RCW 62A.9A-317(e).

A possessory lien arising under other laws has priority over a security interest unless the other law provides otherwise. RCW 62A.9A-333(b). To qualify as a possessory lien for purposes of priority, the lien must: (1) secure payment for goods or services rendered in the lienor's ordinary course of business; (2) be created in favor of the lienor under a law other than the Uniform Commercial Code; and (3) be effective only while the lienor has possession of the collateral. RCW 62A.9A-333(a).

As noted above, agricultural liens are subject to Article 9. On the question of priority, however, Article 9 defers to Washington's agricultural lien statute. The priority of agricultural liens and security interests in crops is thus governed by RCW 60.11.050.

### 2. Security interests v. security interests

Priority between competing security interests depends on their status as perfected or unperfected as well as the timing and method of perfection. Between two perfected security interests, the first to be perfected or to have a related financing statement filed will have priority. RCW 62A.9A-322(a)(1). The perfection or filing must be continuous. If the security interest subsequently becomes unperfected or the filing becomes ineffective, it will lose its prior position and be re-ranked based on the date on which the security interest becomes perfected again or a new effective financing statement is filed. If one security interest is perfected and the other is unperfected, the perfected security interest will have priority. RCW 62A.9A-322(a)(2). If neither security interest is perfected, the first to attach will have priority. RCW 62A.9A-322(a)(3).

### 3. Perfected purchase-money security interests

Article 9 includes special "super-priority" rules for perfected purchase-money security interests. See RCW 62A.9A-324. A security interest qualifying for super-priority will have priority ahead of a competing security interest no matter when the competing interest was perfected or the related financing statement was filed. The super-priority rules are organized around four types of collateral: (1) inventory; (2) livestock; (3) software; and (4) all other goods.

#### (a) Inventory

A perfected purchase-money security interest in inventory will have priority ahead of all other security interests if: (a) it was perfected when the debtor took possession of the collateral; (b) the purchase-money

### 3. Perfected purchase-money security interests

secured party sent notice of its interest to other secured parties; (c) the other secured parties received that notice within five years before the debtor received possession of the collateral; and (d) the notice states that the purchase-money secured party has or will obtain a purchase-money security interest in the collateral. RCW 62A.9A-324(b). The purchase-money secured party is required to give notice only to competing secured parties who were perfected before the purchase-money secured party filed a financing statement or within 20 days. RCW 62A.9A-324(c).

#### **(b) Livestock**

A perfected purchase-money security interest in livestock will have priority ahead of all other security interests if: (a) it was perfected when the debtor took possession of the collateral; (b) the purchase-money secured party sent notice of its interest to other secured parties; (c) the other secured parties received that notice within six months before the debtor received possession of the collateral; and (d) the notice states that the purchase-money secured party has or will obtain a purchase-money security interest in the collateral. RCW 62A.9A-324(d). The purchase-money secured party is required to give notice only to competing secured parties who were perfected before the purchase-money secured party filed a financing statement or within 20 days. RCW 62A.9A-324(e).

#### **(c) Software**

A perfected purchase-money security interest in software has the same priority as a purchase-money security interest in the goods operated by the software. RCW 62A.9A-324(f).

#### **(d) All other goods**

A perfected purchase-money security interest in all other goods will have priority ahead of all other security interests if it is perfected when the debtor obtains possession of the goods or within 20 days thereafter. RCW 62A.9A-324(a).

### 4. Priority in deposit accounts

The priority of competing security interests in a deposit account is based on the control each secured party has in the deposit account. See RCW 62A.9A-327. A security interest held by a customer on the deposit account has priority over all other security interests in the deposit account. RCW 62A.9A-327(4); RCW 62A.9A-104(a)(3). A security interest held by the bank itself has next priority. RCW 62A.9A-327(3). A security interest held by a secured party with control under a control agreement has next priority. RCW 62A.9A-327(2); RCW 62A.9A-314. Finally, a security interest held by a secured party with no control has lowest priority. RCW 62A.9A-327(1); RCW 62A.9A-104.