

# UNDERSTANDING SECURED TRANSACTIONS

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# UNDERSTANDING SECURED TRANSACTIONS

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*FIFTH EDITION*

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MATTHEW  BENDER

# DEDICATION

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*For my son, Marcus, with love*  
W.H.L.

*For Emma, Ayden, and Liam*  
W.H.H.

*For my wife, Shari, with love and gratitude*  
R.W.F.



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William H. Lawrence  
William H. Henning  
R. Wilson Freyermuth

July 2012





# PREFACE

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Like the other books in the *Understanding* series, this book is designed as a student text. Our approach is to aid students' understanding of secured transactions by informing them about both the law and the nature of the transactions to which the law applies.

The primary sources of law are Article 9 of the Uniform Commercial Code and selected provisions of the Bankruptcy Reform Act. Beyond a focus on the text of the statutes, an analysis of their underlying rationales is critical to an in-depth understanding of the codified provisions. The Official Comments to the U.C.C. and the Historical and Revision Notes to the Bankruptcy Reform Act are helpful but often lack sufficient insights or clarity to provide adequate guidance. Learning the essence of each statutory section in isolation is difficult and insufficient; students must learn to interrelate multiple sections in a sophisticated manner in order to solve problems in this complex area of the law.

When the first edition of this book was published, the 1972 text of Article 9, as amended from time to time, was in effect. In 1998, the U.C.C.'s sponsoring bodies, the Uniform Law Commission and the American Law Institute, adopted a revised version of Article 9.<sup>1</sup> The revision represented a comprehensive modernization and reformulation of the law governing secured transactions. It was not in effect in any state as of the publication date of the second edition of this book, which was designed as a transitional work. The primary emphasis of the second edition was the 1972 Official Text, but it also provided a discussion of the revision and explained how its provisions would change existing law.

Revised Article 9 was a remarkable success! It was promulgated with a delayed effective date of July 1, 2001,<sup>2</sup> and by that date it was in effect in virtually every state, with the other states coming along within a few months thereafter. This universal adoption compelled the third edition, which focused on revised Article 9 and discussed former law only to the extent necessary to shed light on particular provisions of the revision.

The fourth edition incorporated significant revisions to bankruptcy law resulting from the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and this Fifth Edition was necessitated by a significant set of amendments to revised Article 9 promulgated by the sponsors in 2012. As this edition goes to print, the amendments have been enacted in over half the states, with a deferred effective date of July 1, 2013.

The law of secured transactions reflects business practices with which many students are unfamiliar. An understanding of the essential aspects of the transactions themselves is crucial for any student who seeks to comprehend the law that governs them. This book explains different types of secured transactions. For example, it describes the structure and use of financing arrangements that are made possible through such techniques as asset-based securitization, mortgage warehouse lending, terminal and field warehousing,

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<sup>1</sup> The sponsors approved minor amendments to revised Article 9 in 1999, 2000, and 2001.

<sup>2</sup> This was done to avoid the "horrendous complications" that would have arisen had part of the country remained subject to former law while another part adopted revised Article 9. U.C.C. § 9-701, Comment 1.

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## *PREFACE*

financing of accounts, factoring of accounts, and floor planning, as well as other methods of transacting business. The discussion of each financing arrangement is integrated into the place in the text in which the relevant substantive concepts are covered.

Much of the practice in the area of secured transactions involves preventative law, in which the practitioner advises the client on alternative methods of structuring transactions and the risks associated with each option. The book integrates and develops significant aspects of these considerations, going beyond the text of the U.C.C. by explaining the practical constraints that ultimately shape decision-making in this field.

The organization of the subject matter of the text is largely based upon the traditional five-part approach to the law of secured transactions: (1) scope of the article, (2) attachment (creation) of security interests, (3) perfection of security interests, (4) priorities among competing claimants to collateral (*i.e.*, the effects of perfection or nonperfection), and (5) enforcement of security interests. This organizational scheme is emphasized by designating each of these five concepts as a separate Part of the book.

Entries in the Table of Contents include a descriptive word or phrase, along with relevant section numbers of the U.C.C. and the Bankruptcy Reform Act. The Table of Contents does not cite all the provisions that might be relevant, but only the most fundamental provisions relating to the particular topic. This approach should aid students using the book as a supplemental text by enabling them to find the relevant discussion based on either the subject or the basic statutory section numbers. The Table of Statutes and Index enable a more detailed search.

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