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## **Blackfeet Tribal Law and Order Code**

Circa 1999

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### **Title III. BLACKFEET COMMERCIAL CODE - SECURED TRANSACTIONS**

#### **PART 3**

##### **PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY**

###### **Section 9-301. Persons Who Take Priority Over Unperfected Security Interests; Rights of "Lien Creditor"**

1. Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:
  - a. persons entitled to priority under Section 9-312;
  - b. a person who becomes a lien creditor before the security interest is perfected;
  - c. in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
  - d. in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.
2. If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or other buyer out of the ordinary course of business or of a lien creditor which arise between the time the security interest attaches and the time of filing.
3. A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.
4. A person who becomes a lien creditor while security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without

knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

**Comment**

This section states the priority of competing interests when one of the interests is an unperfected security interest, that is where the requirements for perfection so as to provide notice to third parties have not been complied with.

**Section 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Title Do Not Apply**

1. A financing statement must be filed to perfect all security interests except the following:
  - a. a security interest in collateral in possession of the secured party under Section 9-305;
  - b. a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;
  - c. a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
  - d. a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313;
  - e. an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
  - f. a security interest of a collecting bank or in securities covered in subsection (3) of this section;
  - g. an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
2. If a secured party assigns a perfected security interest, no filing under this title is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.
3. The filing of a financing statement otherwise required by this Title is not necessary or effective to perfect a security interest in property subject to:
  - a. a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Title for filing of the security interest; or
  - b. any laws of the Blackfeet Tribe which may be enacted in the future governing certificates of title; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the

- filing provisions of this Title (Part 4) apply to a security interest in that collateral created by him as debtor; or
- c. a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).
  4. Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Title, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Title.

**Comment**

This section declares when filing of a financing statement is required to perfect a security interest and when no filing is required, or registration or filing under a different statute is required. Section 9-302(l)(f) is modified to take into account that the Blackfeet Tribe has not adopted Articles 2, 4, and 8 of the Uniform Commercial Code.

**Section 9-303. When Security Interest is Perfected; Continuity of Perfection**

1. A security interest is perfected when it has attached and when all of the applicable steps required of perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.
2. If a security interest is originally perfected in any way permitted under this Title, and is subsequently perfected in some other way under this Title, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Title.

**Comment**

This section states when a security interest is perfected. It is immaterial whether the interest attaches first or the perfecting steps are taken first. In either event the interest is in fact perfected when both have occurred. If a security interest becomes unperfected but is thereafter perfected, it is the date of the later perfection which is controlling. If, however, a security interest is perfected and thereafter, while still perfected, it is perfected again, the perfection dates as of the original perfection.

**Section 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession**

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this Section and subsections (2) and (3) of Section 9-306.

2. During the period that goods are in the possession of the issuer of a negotiable document therefor, , a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor
  - a. makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312; or
  - b. delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.
6. After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Title.

#### **Comment**

This section describes the manner of perfecting a security interest in instruments, documents, and goods. It covers the perfection of security interests in chattel paper, negotiable documents, instruments, goods in the possession of a third person, and goods in the possession of the issuer of a negotiable document. The section also creates a temporary perfection in the case of instruments or negotiable documents, and permits a temporary release of possession which will not affect the perfection of the interest. The section was modified to reflect the fact that the Blackfeet has not adopted Article 8 of the Uniform Commercial Code regarding certificated securities

#### **Section 9-305. When Possession by Secured Party Perfects Security Interest Without Filing**

A security interest in letters of credit and advices of credit, goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this Title. The security interest may be otherwise perfected as provided in this Title before or after the period of

possession by the secured party.

#### **Comment**

This section specifies when a security interest may be perfected by taking possession, rather than by filing. The section was modified to reflect the fact that the Blackfeet Tribe has not adopted Article 8 of the Uniform Commercial Code.

#### **Section 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral**

1. "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds except to the extent that it is payable to a person other than a party to the security agreement . Money, checks, deposit accounts, and the like are "case proceeds." All other proceeds are "non-case proceeds".
2. Except where this Title otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof, unless the disposition was authorized by the secured party in the security agreement or otherwise and also continues in any identifiable proceeds including collections received by the debtor.
3. The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:
  - a. a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;
  - b. a filed financing statement covers the original collateral and the proceeds are identifiable case proceeds; or
  - c. the security interest in the proceeds is perfected before the expiration of the ten day period.

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

4. In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:
  - a. in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;
  - b. in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
  - c. in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
  - d. in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this

paragraph (d) is

- i. subject to any right to set-off; and
  - ii. limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).
5. If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:
- a. If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
  - b. An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.
  - c. An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).
  - d. A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

#### Comment

This section defines "proceeds", and other terms, and declares the rights of the secured creditor with respect to the collateral and proceeds of the sale or other disposition of the collateral, provides for the perfection of the secured party's interest in proceeds, states the effect of insolvency upon the secured party's interest in proceeds, and lists the priorities which exist when goods are returned or repossessed by the seller after a security interest was created in an account or chattel paper.

#### Section 9-307. Protection of Buyers of Goods

1. A buyer of goods in the ordinary course of business takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.
2. In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his

own personal, family or household purposes.

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

**Comment**

This section describes when buyers of goods are protected from outstanding security interests in the goods. The section has been modified to allow the same protections to buyers in the ordinary course of business for farm products and to consumer purchasers of consumer goods without knowledge of the security interest.

**Section 9-308. Purchase of Chattel Paper and Instruments**

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

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

**Comment**

This section governs the extent to which a purchaser of chattel paper or a non-negotiable instrument takes clear of out-standing security interests.

**Section 9-309. Protection of Purchasers of Instruments, Documents and Securities**

Nothing in this Title limits the rights of a holder in due course of a negotiable instrument or a holder to whom a negotiable document of title has been duly negotiated or a bona fide purchaser of a security interest and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Title does not constitute notice of the security interest to such holders or purchasers.

**Comment**

This section declares that the rights of various favored holders of instruments are not altered by the provisions of this Title and that such holders take priority over an earlier security interest. The fact that the security interest was perfected or filed is immaterial; filing does not constitute notice of the secured party's interest. This section is included even though the Blackfeet has not adopted Articles 3, 7 and 8 of the Uniform Commercial Code regarding negotiable instruments, documents and securities.

**Section 9-310. Priority of Certain Liens Arising by Operation of Law**

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

**Comment**

This section declares that statutory liens involving the furnishing of services or materials take precedence over a competing security interest unless the statute specifically provides otherwise.

**Section 3-111. Alienability of Debtor's Rights**

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

**Comment**

This section states that the debtor's rights in collateral may be transferred voluntarily or involuntarily by any procedure or process, even though a prior security interest exists in the collateral.

**Section 9-312. Priorities Among Conflicting Security Interests in the Same Collateral**

1. The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 9-103 on security interests related to other jurisdictions; Section 9-114 on consignments.
2. A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise take priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.
3. A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if :
  - a. the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
  - b. the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected

- without filing or possession (subsection (5) of Section 9-304); and
- c. the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
  - d. the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.
4. A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.
  5. In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this Section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:
    - a. Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and
    - b. So long as conflicting security interests are unperfected, the first to attach has priority.
  6. For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.
  7. If future advances are made while a security interest is perfected by filing, the taking of possession, or other perfection, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

#### **Comment**

This section states the rules for priority among competing security interests in various types of collateral and in proceeds from the sale or other disposition of collateral. The section refers to the other sections of the Title which make specific provisions for priorities of conflicting claims, addresses specific types of collateral and proceeds and adds a provision regulating the priority in all cases for which provision is not otherwise made.

#### **Section 9-313. Priority of Security Interests in Fixtures**

1. In this section and in the provisions of Part 4 of this Title referring to fixture filing, unless the context otherwise requires:
  - a. goods are "fixtures" when they become so related to particular real estate that

an interest in them arises under federal law or applicable real estate law

- b. a "fixture filing" is the filing in the required office of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of Section 9-402
  - c. a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition of cost of the land, if the recorded writing so indicates.
2. A security interest under this Title may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Title in ordinary building materials incorporated into an improvement on land.
3. This Title does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.
4. A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:
  - a. the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate including possession by assignment of the Blackfeet Tribe; or
  - b. the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate including possession by assignment of the Blackfeet Tribe; or
  - c. the fixtures are readily removable factory, office or business machines and other goods or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Title.
5. A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:
  - a. the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or
  - b. the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.
6. Notwithstanding paragraph (a) of subsection (4), but otherwise subject to subsections (4), (5) and (9), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

7. Subject to subsection (9) , in cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.
8. When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.
9. Except as otherwise provided by lease or agreement, the Blackfeet Tribe consents to the creation of a security interest in fixtures owned by persons validly using or possessing tribal property through an assignment or otherwise, unless federal law would prohibit such security interest. Any interest which the Tribe may have in the fixtures shall not have priority over any security interest in the fixtures under this Title.

#### **Comment**

This section regulates the priority of competing security interests in fixtures. Of particular importance are competing interests claimed by persons having an interest in the land and persons having a security in the goods. This section does not determine whether personal property constitutes a fixture, but refers to federal and local law. Federal law should also be consulted to determine whether fixtures have assumed the characteristics of improvements and taken on trust characteristics if located on trust land so that a security interest may not be allowed. This section has been modified to provide that federal law should also be consulted to determine whether goods are fixtures. It has also been modified to provide that the Blackfeet Tribe consents to the creation of a security interest in fixtures used by persons possessing or using tribal land, and that the Blackfeet Tribe does not claim any priority as a result of any interest it may have in fixtures on tribal land which is possessed or used by others.

#### **Section 9-314. Accessions**

1. A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this Section "accessions") over the claims of all persons to the whole except as stated in subsection (3), and subject to Section 9-315(1).
2. A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3), but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.
3. The security interests described in subsections (1) and (2) do not take priority over:
  - a. a subsequent purchaser for value of any interest in the whole; or
  - b. a creditor with a lien on the whole subsequently obtained by judicial

proceedings; or

- c. a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for, without knowledge of the security interest and before it is perfected A purchaser of the whole at a foreclosure sale (other than the holder of a perfected security interest purchasing at his own foreclosure sale) is a subsequent purchaser within this section.

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

#### **Comment**

This section states the priority of a secured party in, and a secured party's right of removal of, goods which have, under applicable law regarding accession, become part of other goods.

#### **Section 9-315. Priority When Goods Are Commingled or Processed**

1. If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if,
  - a. the goods are so manufactured, processed, assembled, or commingled that their identity is lost in the product or mass; or
  - b. a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

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

2. When under subsection (1) more than one security interest attaches to the product or mass , they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

#### **Comment**

This section declares the extent to which a person having a perfected security interest in goods has an interest in a final commingled, manufactured, or processed mass of which such goods are a part, and states a rule of equality of distribution as to secured parties having

interests in goods which have become a part of the same product or mass.

#### **Section 9-316. Priority Subject to Subordination**

Nothing in this Title prevents subordination by agreement by any person entitled to priority.

##### **Comment**

This section states the general right of a person entitled to priority to agree to surrender such priority in favor of others.

#### **Section 9-317. Secured Party Not Obligated on Contract**

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

##### **Comment**

This section declares that the secured party is not liable for the conduct or contracts of the debtor as a result of the security interest or the fact that the secured party has consented or agreed to the disposal of the property by the debtor.

#### **Section 9-318. Defense Against Assignee: Modification of Contract After Notification of Assignment: Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment**

1. Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9-206 the rights of an assignee are subject to:
  - a. All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
  - b. any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.
2. So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.
3. The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.
4. A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a

general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

**Comment**

This section states the rights and obligations of an account assignee with respect to a contract between the account assignor and the account debtor. Contract terms which prohibit assignments are declared ineffective.

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