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3 AMENDMENTS TO
4 UNIFORM COMMERCIAL CODE
5 ARTICLE 9

6 As Approved by

7
8 The American Law Institute
9 May 21-23, 2018

10
11 And

12
13 The National Conference of Commissioners on Uniform State Laws
14 March 1, 2018
15

16
17 Section 9-406 is amended to read:

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19 **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF**
20 **ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS**
21 **ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,**
22 **AND PROMISSORY NOTES INEFFECTIVE.**

23 (a) **[Discharge of account debtor; effect of notification.]** Subject to subsections (b)
24 through (i), an account debtor on an account, chattel paper, or a payment intangible may
25 discharge its obligation by paying the assignor until, but not after, the account debtor receives a
26 notification, authenticated by the assignor or the assignee, that the amount due or to become due
27 has been assigned and that payment is to be made to the assignee. After receipt of the
28 notification, the account debtor may discharge its obligation by paying the assignee and may not
29 discharge the obligation by paying the assignor.

30 (b) **[When notification ineffective.]** Subject to subsection (h), notification is ineffective
31 under subsection (a):

32 (1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **[Proof of assignment.]** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **[Term restricting assignment generally ineffective.]** Except as otherwise provided in ~~subsection~~ subsections (e) and (k) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **[Inapplicability of subsection (d) to certain sales.]** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

(f) **[Legal restrictions on assignment generally ineffective.]** Except as otherwise provided in subsection (k) and Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **[Subsection (b)(3) not waivable.]** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **[Rule for individual under other law.]** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who

1 incurred the obligation primarily for personal, family, or household purposes.

2 (i) **[Inapplicability to health-care-insurance receivable.]** This section does not apply
3 to an assignment of a health-care-insurance receivable.

4 (j) **[Section prevails over specified inconsistent law.]** This section prevails over any
5 inconsistent provisions of the following statutes, rules, and regulations:

6 [List here any statutes, rules, and regulations containing provisions inconsistent
7 with this section.]

8 **(k) [Inapplicability to interests in certain entities.]** Subsections (d), (f), and (j) do not
9 apply to a security interest in an ownership interest in a general partnership, limited partnership,
10 or limited liability company.

11 ***Legislative Note:** States that amend statutes, rules, and regulations to remove provisions*
12 *inconsistent with this section need not enact subsection (j).*

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14 **Comment**

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18 **10. Inapplicability to Certain Ownership Interests.** This section does not apply to an
19 ownership interest in a limited liability company, limited partnership, or general partnership,
20 regardless of the name of the interest and whether the interest: (i) pertains to economic rights,
21 governance rights, or both; (ii) arises under: (a) an operating agreement, the applicable limited
22 liability company act, or both; or (b) a partnership agreement, the applicable partnership act, or
23 both; or (iii) is owned by: (a) a member of a company or transferee or assignee of a member; or
24 (b) a partner or a transferee or assignee of a partner; or (iv) comprises contractual, property, other
25 rights, or some combination thereof.

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30 Section 9-408 is amended to read:

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32 **SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY**
33 **NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL**
34 **INTANGIBLES INEFFECTIVE.**

1 (a) **[Term restricting assignment generally ineffective.]** Except as otherwise provided
2 in ~~subsection~~ subsections (b) and (f), a term in a promissory note or in an agreement between an
3 account debtor and a debtor which relates to a health-care-insurance receivable or a general
4 intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts,
5 or requires the consent of the person obligated on the promissory note or the account debtor to,
6 the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the
7 promissory note, health-care-insurance receivable, or general intangible, is ineffective to the
8 extent that the term:

9 (1) would impair the creation, attachment, or perfection of a security interest; or

10 (2) provides that the assignment or transfer or the creation, attachment, or
11 perfection of the security interest may give rise to a default, breach, right of recoupment, claim,
12 defense, termination, right of termination, or remedy under the promissory note, health-care-
13 insurance receivable, or general intangible.

14 (b) **[Applicability of subsection (a) to sales of certain rights to payment.]** Subsection
15 (a) applies to a security interest in a payment intangible or promissory note only if the security
16 interest arises out of a sale of the payment intangible or promissory note, other than a sale
17 pursuant to a disposition under Section 9-610 or an acceptance of collateral under Section 9-620.

18 (c) **[Legal restrictions on assignment generally ineffective.]** ~~A~~ Except as otherwise
19 provided in subsection (f), a rule of law, statute, or regulation that prohibits, restricts, or requires
20 the consent of a government, governmental body or official, person obligated on a promissory
21 note, or account debtor to the assignment or transfer of, or creation of a security interest in, a
22 promissory note, health-care-insurance receivable, or general intangible, including a contract,
23 permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent

1 that the rule of law, statute, or regulation:

2 (1) would impair the creation, attachment, or perfection of a security interest; or

3 (2) provides that the assignment or transfer or the creation, attachment, or
4 perfection of the security interest may give rise to a default, breach, right of recoupment, claim,
5 defense, termination, right of termination, or remedy under the promissory note, health-care-
6 insurance receivable, or general intangible.

7 (d) **[Limitation on ineffectiveness under subsections (a) and (c).]** To the extent that a
8 term in a promissory note or in an agreement between an account debtor and a debtor which
9 relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or
10 regulation described in subsection (c) would be effective under law other than this article but is
11 ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security
12 interest in the promissory note, health-care-insurance receivable, or general intangible:

13 (1) is not enforceable against the person obligated on the promissory note or the
14 account debtor;

15 (2) does not impose a duty or obligation on the person obligated on the
16 promissory note or the account debtor;

17 (3) does not require the person obligated on the promissory note or the account
18 debtor to recognize the security interest, pay or render performance to the secured party, or
19 accept payment or performance from the secured party;

20 (4) does not entitle the secured party to use or assign the debtor's rights under the
21 promissory note, health-care-insurance receivable, or general intangible, including any related
22 information or materials furnished to the debtor in the transaction giving rise to the promissory
23 note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **[Section prevails over specified inconsistent law.]** This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

(f) **[Inapplicability to interests in certain entities.]** This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

Legislative Note: States that amend statutes, rules, and regulations to remove provisions inconsistent with this section need not enact subsection (e).

Comment

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3. Nature of Debtor's Interest. Neither this section nor any other provision of this Article determines whether a debtor has a property interest. The definition of the term "security interest" provides that it is an "interest in personal property." See Section ~~1-201(37)~~. 1-201(b)(35). Ordinarily, a debtor can create a security interest in collateral only if it has "rights in the collateral." See Section 9-203(b). Other law determines whether a debtor has a property interest ("rights in the collateral") and the nature of that interest. For example, the nonexclusive license addressed in Example 1 may not create any property interest whatsoever in the intellectual property (e.g., copyright) that underlies the license and that effectively enables the licensor to grant the license. The debtor's property interest may be confined solely to its interest in the promises made by the licensor in the license agreement (e.g., a promise not to sue the debtor for its use of the software).

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1 **10. Inapplicability to Certain Ownership Interests.** This section does not apply to an
2 ownership interest in a limited liability company, limited partnership, or general partnership,
3 regardless of the name of the interest and whether the interest: (i) pertains to economic rights,
4 governance rights, or both; (ii) arises under: (a) an operating agreement, the applicable limited
5 liability company act, or both; or (b) a partnership agreement, the applicable partnership act, or
6 both; or (iii) is owned by: (a) a member of a company or transferee or assignee of a member; or
7 (b) a partner or a transferee or assignee of a partner; or (iv) comprises contractual, property, other
8 rights, or some combination thereof.