

# MUSCOGEE (CREEK) NATION CODE ANNOTATED

---

## TITLE 25. INTER-GOVERNMENTAL AND INTER-TRIBAL RELATIONS

### ENRAKRAKV SVPVKE HVTVM ETVLWV SVPVKE EMPVLSVLKE

Chapter	Section
1. OTHER MUSCOGEE (CREEK) TRIBES OR BANDS.....	1-101
2. INTER-TRIBAL COUNCIL OF THE FIVE CIVILIZED TRIBES OF OKLAHOMA. ....	2-101
3. NATIONAL CONGRESS OF AMERICAN INDIANS.....	3-101
4. SELF-GOVERNANCE COMPACT AND ANNUAL FUNDING AGREEMENT. ....	4-101

### CHAPTER 1. OTHER MUSCOGEE (CREEK) TRIBES OR BANDS

#### Subchapter

1. General Provisions
2. Poarch Band of Creek Indians of Atmore, Alabama

#### SUBCHAPTER 1. GENERAL PROVISIONS

#### Section

1-101. Declaration of policy.

#### § 1-101. Declaration of policy

It is the policy of the Muscogee (Creek) Nation to study Federal Acknowledgement Petitions by groups claiming to be Muscogee (Creek) Indian in origin on a case-by-case basis, and to approve the results of such study by Tribal law. [NCA 83-31, § 102, approved Aug. 5, 1983.]

#### Library References

Indians ⇄104.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 3, 25 to 31, 140.

**Code of Federal Regulations**

Procedures for establishing that an American Indian group exists as an Indian tribe, see 25 CFR 83.1 et seq.

**SUBCHAPTER 2. POARCH BAND OF CREEK  
INDIANS OF ATMORE, ALABAMA**

**Section**

- 1–201. Recognition.
- 1–202. Formal relations.
- 1–203. Informal relations.
- 1–204. Joint projects.
- 1–205. Disclaimer.
- 1–206. Intervention as to treaty claims.
- 1–207. Conflicting interests.
- 1–208. Negotiations.

**Historical and Statutory Notes**

NCA 92–153, §§ 110, 111, provide:

“§ 110. Special Finding.

“The National Council finds that the Poarch Band of Creek Indians has taken actions which, although in their economic interest, are threatening the cultural, historical and archeological integrity of Hickory Ground, Alabama. Said actions are contrary to the culture, traditions and best interests of all Muscogee people. Said actions have been taken without consultation with the Muscogee Nation nor with the people of Hickory Ground Tribal Town and Hickory Ground Ceremonial Ground, who are located here within the boundaries and within the body politic of the Muscogee Nation. The Nation recognizes the difficult questions which arise when one Tribe owns land which contains the

cultural artifacts and human remains of another Tribe, but feels that when two groups of one culture are involved, and that culture has specific answers to those questions, that to ignore those cultural precedents is to break the only bonds we have in common.

“Section 111. The government-to-government relationship between the Muscogee Nation and the Poarch Band of Creek Indians which was established by Ordinance NCA 83–32 is hereby suspended until such time as the Principal Chief certifies in writing to the Speaker of the National Council that Hickory Ground, in Alabama, is protected by any means recommended in this Ordinance (or otherwise) to restore its cultural, historical and archeological integrity.”

**§ 1–201. Recognition**

The Muscogee (Creek) Nation hereby recognizes the Poarch Band of Creek Indians as a distinct and separate band of Muscogee (Creek) Indians.

[NCA 83–32, § 101, approved Aug. 5, 1983.]

**Library References**

Indians ⇄103.

Westlaw Topic No. 209.

C.J.S. Indians §§ 3, 25 to 35, 46 to 47, 140.

**§ 1–202. Formal relations**

Formal relationship between the Muscogee (Creek) Nation and the Poarch Band shall be established between the Principal Chief of the Muscogee (Creek) Nation and the Chairman of the Poarch Band.

[NCA 83–32, § 102, approved Aug. 5, 1983.]

**§ 1–203. Informal relations**

Section 25–1–202 shall not preclude informal relations or communications between officers, citizens or staff of the Muscogee (Creek) Nation and the Poarch Band.

[NCA 83–32, § 103, approved Aug. 5, 1983.]

**§ 1–204. Joint projects**

Joint projects between the Muscogee and the Poarch Band shall require a Tribal resolution of the Muscogee (Creek) Nation approving each project. The Muscogee (Creek) Nation shall not enter into such projects without evidence of a Resolution or other act of the Poarch Band.

[NCA 83–32, § 104, approved Aug. 5, 1983.]

**§ 1–205. Disclaimer**

The Muscogee (Creek) Nation disclaims all interest in the internal affairs of the Poarch Band, effective March 24, 1832.

[NCA 83–32, § 105, approved Aug. 5, 1983.]

**§ 1–206. Intervention as to treaty claims**

A. In claims filed hereafter by the Muscogee (Creek) Nation for matters arising under, pursuant to or in conflict with the Treaty of March 24, 1832, or any prior treaty of the Muscogee (Creek) Nation, the Poarch Band may file a petition to be recognized as a Plaintiff-Intervenor, and said petition shall be considered upon its merits.

B. In claims filed hereafter by the Poarch Band for matters arising under, pursuant to or in conflict with the Treaty of March 24, 1832, or any prior treaty of the Muscogee (Creek) Nation, the Muscogee (Creek) Nation may file a petition to be recognized as a Plaintiff-Intervenor, and said petition shall be considered upon its merits.

C. The Muscogee (Creek) Nation and the Poarch Band shall not intervene in claims filed by the other party concerning matters arising after the Treaty of March 24, 1832.

[NCA 83–32, §§ 106 to 108, approved Aug. 5, 1983.]

**§ 1–207. Conflicting interests**

In any matters where the interests of the Muscogee (Creek) Nation conflict with the interests of the Poarch Band, the Principal Chief shall report such conflicts to the National Council.

[NCA 83–32, § 109, approved Aug. 5, 1983.]

**§ 1–208. Negotiations**

The Principal Chief, or his authorized representative, is empowered to negotiate with the Poarch Band of Creek Indians on any subject whatsoever, subject to ratification by the Muscogee (Creek) National Council.

[NCA 83–32, § 110, approved Aug. 5, 1983.]

**Title 25, § 1–208**

**INTER-TRIBAL RELATIONS**

**Library References**

Indians ↻216.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

## **CHAPTER 2. INTER-TRIBAL COUNCIL OF THE FIVE CIVILIZED TRIBES OF OKLAHOMA**

### **Section**

2-101. Declaration of policy.

2-102. Delegation.

### **§ 2-101. Declaration of policy**

It shall be the policy of the Muscogee (Creek) Nation:

A. To abide by Article VI, Section 6(b) of the Muscogee (Creek) Nation Constitution.

B. Inter-Tribal organizations are hereby put on notice the policy positions of the Muscogee (Creek) Nation are to receive approval by law of the Muscogee (Creek) Nation.

[NCA 92-03, § 103, approved Jan. 29, 1992.]

### **§ 2-102. Delegation**

A. The delegation of the Muscogee (Creek) Nation to the Inter-Tribal Council of the Five Civilized Tribes of Oklahoma shall consist of the following:

1. Principal Chief
2. Second Chief
3. Speaker (or his delegate)
4. Second Speaker (or his delegate)
5. Supreme Court Justice or District Court Judge (selection by entire Judiciary)

B. Each individual delegate shall serve during their tenure of office with the Creek Nation.

C. This chapter serves as notification to the Inter-Tribal Council of the Five Civilized Tribes of Oklahoma that the delegation specified in subsection A is the authorized delegation to the Inter-Tribal Council of the Five Civilized Tribes of Oklahoma.

[NCA 92-03, §§ 104, 105, approved Jan. 29, 1992.]

## **CHAPTER 3. NATIONAL CONGRESS OF AMERICAN INDIANS**

### **Section**

3-101. Delegate and alternate delegates.

### **§ 3-101. Delegate and alternate delegates**

The following persons are designated as delegate and alternate delegates, and they are instructed to become individual members in good standing of the National Congress of American Indians in order to fulfill their responsibilities as official delegates to the National Congress of American Indians Annual Convention and Executive Council meetings. This designation shall remain in effect until otherwise provided by law.

DELEGATE: Principal Chief

ALTERNATE DELEGATES: Second Chief, Speaker and Second Speaker

[NCA 92-144, § 105, approved Nov. 25, 1992; amended by NCA 96-11, § 102, approved Feb. 24, 1996.]

### **Cross References**

Budget, National Congress of American Indians, dues, see Title 37, § 2-107.

## **CHAPTER 4. SELF-GOVERNANCE COMPACT AND ANNUAL FUNDING AGREEMENT**

### **Section**

4-101. Compact authorization.

4-102. Compact negotiation and execution.

### **§ 4-101. Compact authorization**

The Muscogee (Creek) Nation authorizes the Principal Chief to enter into and sign the Compact of Self-Governance between the Muscogee (Creek) Nation and the United States of America, and the Annual Funding Agreement for Fiscal Year 1994, signifying the approval of the Nation of said Compact and said Annual Funding Agreement(s) thereafter, for the Department of the Interior and the Indian Health Services.

[NCA 93-55, § 102, approved June 2, 1993; amended by NCA 03-159, § 1, approved Nov. 26, 2003.]

#### **Library References**

Indians ☞210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

### **§ 4-102. Compact negotiation and execution**

The Principal Chief, or in his absence the Second Chief or the designate of the Principal Chief, is hereby authorized to negotiate, sign and execute the Compact of Self-Governance and Annual Funding Agreement or any modifications thereto.

[NCA 93-55, § 103, approved June 2, 1993.]

#### **Library References**

Indians ☞210, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.





# TITLE 26. JUDICIAL BRANCH/COURTS VHAKV FVTCECVLKE/FVTCECKV CUKO

<b>Chapter</b>		<b>Section</b>
1.	SUPREME COURT.....	1-101
2.	DISTRICT COURT.....	2-101
3.	JUSTICES, JUDGES AND JUDICIAL BRANCH PERSONNEL.....	3-101
4.	CODE OF CONDUCT AND CANONS OF JUDICIAL ETHICS FOR MUSCOGEE (CREEK) NATION JUDGES AND EM- PLOYEES.....	4-101
5.	BUDGET, FINANCE AND COMPENSATION.....	5-101
6.	FAMILY DRUG COURT PROGRAM.....	6-101

## CHAPTER 1. SUPREME COURT

**Section**

1-101. Administrative officer.

**§ 1-101. Administrative officer**

The Chief Justice of the Supreme Court shall be the administrative officer for the Supreme Court.

[NCA 99-85, § 105, approved July 1, 1999.]

**Cross References**

Chief Justice, see Const. Art. VII, § 4.

**Library References**

Indians ↻401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## CHAPTER 2. DISTRICT COURT

### Section

- 2-101. Establishment.
- 2-102. Territorial jurisdiction.
- 2-103. Sessions.
- 2-104. Record of proceedings.
- 2-105. Appeals.

### Cross References

Juvenile Division, see Title 6, §§ 1-108, 1-109.

### § 2-101. Establishment

A District Court holding original jurisdiction for all matters not under the exclusive jurisdiction of the Supreme Court of the Muscogee (Creek) Nation is hereby established.

[NCA 81-18, § 101, approved Jan. 6, 1981.]

### Cross References

Courts, see Const. Art. VII, § 1.

### Library References

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 2-102. Territorial jurisdiction

Until otherwise provided by law, there shall be a single District Court, holding jurisdiction over all of the following Districts:

Creek District  
Hughes/Seminole District  
McIntosh District  
Muscogee District  
Okfuskee/Seminole District  
Okmulgee District  
Tulsa District  
Wagoner/Rogers/Mayes District

[NCA 81-18, § 102, approved Jan. 6, 1981.]

### Library References

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 2-103. Sessions

The District Court shall meet in regular, monthly sessions.

[NCA 81-18, § 108, approved Jan. 6, 1981.]

**§ 2-104. Record of proceedings**

The District Court Judge shall insure that a record of proceedings is compiled in the following manner:

A. Trials. The District Court Judge shall employ a public stenographer to act as court reporter. When necessary, the District Court Judge may employ a translator to assist the court reporter with oral testimony given in the Muscogee (Creek) language.

B. Hearings, motions and all other matters. The District Court Judge shall request that a secretary be assigned by the Office of the Administration to record, take notes, and produce written minutes of the proceedings. All recordings shall be preserved by the District Court.

[NCA 81-18, § 107, approved Jan. 6, 1981.]

**§ 2-105. Appeals**

All decisions of the District Court shall be subject to appeal to the Supreme Court of the Muscogee (Creek) Nation as provided by the Procedures of the Supreme Court.<sup>1</sup>

[NCA 81-18, § 109, approved Jan. 6, 1981.]

<sup>1</sup> Title 27, Appendix 2 of the Muscogee (Creek) Nation Code.

**Library References**

Indians ⇄540.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **CHAPTER 3. JUSTICES, JUDGES AND JUDICIAL BRANCH PERSONNEL**

### **Subchapter**

1. General Provisions
2. Nomination and Confirmation Procedures for Supreme Court Justices and District Court Judge

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **Section**

- 3-101. District Court Judge.
- 3-102. Special District Judge.
- 3-103. District Court Clerks.
- 3-104. Peace officers.
- 3-105. Lawmenders.
- 3-106. Public Defenders.
- 3-107. Auditors.
- 3-108. Training.

#### **§ 3-101. District Court Judge**

A. The District Court Judge is hereby created as the presiding Officer of the District Court. The District Court Judge shall possess the following educational and professional qualifications: the District Court Judge must be a graduate of an accredited law school, a member of the Muscogee (Creek) Nation Bar Association, a member of a state bar association and admitted to practice law before the federal courts in Oklahoma. The District Court Judge shall have a minimum of four (4) years active trial and law practice experience. The District Court Judge shall be required to maintain a minimum of twelve (12) hours of continuing legal education each year, one (1) hour of which must be legal ethics.

B. The District Judge shall be the administrative officer for the District Court.

C. The District Court Judge shall be nominated by the Principal Chief and confirmed by the National Council by Tribal Resolution. All nominations rejected by the National Council shall be replaced by new nominations. The term of office shall be for four (4) years commencing on July 1, 2002, and every four (4) years thereafter; provided that the District Court Judge in office as of December 15, 2001, shall serve until the commencement of the new term on July 1, 2002.

D. The District Court Judge shall be subject to removal from office by Tribal Resolution for cause.

[NCA 81-18, §§ 103, 104, 106, approved Jan. 6, 1981; amended by NCA 88-14, § 102, veto overridden May 7, 1988; NCA 88-17, § 105, veto overridden May 7, 1988; NCA 99-85, § 103, approved July 1, 1999; NCA 02-019, §§ 2, 3, approved Feb. 28, 2002.]

**Library References**

Judges ☞2, 4, 5.  
 Westlaw Topic No. 227.  
 C.J.S. Judges §§ 15 to 16, 28 to 39.

**§ 3–102. Special District Judge**

Effective September 30, 1994, the Muscogee (Creek) Nation judicial officers may appoint a Special District Judge using the following method and procedure:

A. Written notice by a Supreme Court Justice or District Judge must be made to the Chief Justice of the Supreme Court detailing with specifics the necessity for appointing a Special District Judge.

B. The Chief Justice shall select from the members of the Muscogee (Creek) Nation Bar a member in good standing or a Muscogee (Creek) citizen to serve as Special District Judge.

C. A majority of the Supreme Court Justices must approve the appointment in a written order detailing the specific duties of the Special District Judge and setting out a time limitation for the appointment.

[NCA 94–67, § 112, approved Sept. 30, 1994.]

**Library References**

Judges ☞3.  
 Westlaw Topic No. 227.  
 C.J.S. Judges §§ 20 to 29.

**§ 3–103. District Court Clerks**

**A. Appointments; duties.** The District Judge shall appoint a person to serve as the District Court Clerk. The District Court Clerk shall render assistance to the District Court and to the Muscogee (Creek) Nation Lighthouse Police. It shall be the further duty of the District Court Clerk or Deputy District Court Clerk to attend and keep a written record of all proceedings of the District Court to administer oaths to witnesses and jurymen, to collect fines paid and authorize the payment of all fees authorized by these laws, and to make an accounting thereof to the Controller of the Muscogee (Creek) Nation. The District Court Clerk and Deputy Court Clerk(s) are to be bonded for not less than five thousand dollars (\$5,000.00).

**B. Deputies.** The District Court Clerk may appoint necessary deputies, clerical assistants, and employees as may be provided for in the District Court budget approved by the National Council and the Principal Chief. Such deputies, clerical assistants, and employees shall be subject to removal with approval of the District Judge as set out in the current written Judicial Branch Personnel Policies Handbook.

[NCA 01–109, § 211, approved July 6, 2001.]

**Historical and Statutory Notes****Derivation**

NCA 82–30, § 505; amended by NCA 99–85, § 105.

**§ 3-104. Peace officers**

A. The District Judge is authorized to commission qualified persons as peace officers, with authority to maintain public order, safety, and health by enforcement of all laws, maintain order in the Courthouse and supervise those persons on probation.

B. 1. "Peace officer" as used herein shall mean any duly appointed person who is charged with responsibility of maintaining public order, safety, and health by the enforcement of all laws or orders of this Nation and who is authorized to bear arms in election of his responsibilities.

2. "Qualified" as used herein shall mean certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training or some other comparable certifying school or agency for peace officers; and where a proper background investigation, with fingerprints to be taken and sent to the Federal Bureau of Investigation.

C. District Court peace officers serve under the direction of the District Court and shall perform such services as are necessary, maintaining order and decorum in the Courthouse, including supervision of those persons on probation. The District Court peace officer shall maintain annual weapon proficiency as required by the Lighthorse Commission

[NCA 01-109, § 211, approved July 6, 2001.]

**§ 3-105. Lawmenders**

A Supreme Court Justice, District Judge or Special District Judge as the case may be shall have the authority to appoint lawmenders.

[NCA 94-67, § 112, approved Sept. 30, 1994.]

**§ 3-106. Public defenders**

The Supreme Court Chief Justice and District Court Judge shall be allowed to engage in contracts for the public defenders to represent: criminal defendants who are unable to employ counsel, children, mothers and fathers, custodial relatives, and others in need of counsel and approved by the Supreme Court. Funds to be expended for public defenders shall be set out in the Judicial Branch budget and approved on a yearly basis or as needed basis by the National Council. The Certified Public Accountant responsible for the audit of the Court system shall be approved by the Supreme Court Chief Justice, District Judge, and Controller.

[NCA 94-67, § 114, approved Sept. 30, 1994; amended by NCA 99-85, § 105, subsec. E, approved July 1, 1999.]

**§ 3-107. Auditors**

The certified public accountant responsible for the audit of the Court system shall be approved by the Supreme Court Chief Justice, District Judge, and Controller.

[NCA 94-67, § 114, approved Sept. 30, 1994; amended by NCA 99-85, § 105, approved July 1, 1999.]

**§ 3–108. Training**

Mandatory training for justices and judges is hereby set at a minimum of eight (8) hours each fiscal period with a maximum carryover of eight (8) hours from one (1) fiscal year to the next.

[NCA 94–67, § 115, approved Sept. 30, 1994.]

SUBCHAPTER 2. NOMINATION AND CONFIRMATION  
PROCEDURES FOR SUPREME COURT JUSTICES  
AND DISTRICT COURT JUDGE

**Section**

- 3–201. Submission of nomination.
- 3–202. Rejection of nomination.
- 3–203. Vacancies.
- 3–204. Expired terms.
- 3–205. Full citizenship required.

**Cross References**

Supreme Court, see Const. Art. VII, § 2.

**§ 3–201. Submission of nomination**

Ninety days prior to expiration of the term of office of a Supreme Court Justice or District Judge, the Principal Chief shall submit a nomination to the National Council.

[NCA 88–17, § 101, veto overridden May 7, 1988.]

**Library References**

Judges ⇨3.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 20 to 29.

**§ 3–202. Rejection of nomination**

In the event a nomination is not approved within sixty (60) days by the National Council, the nomination shall be deemed to be rejected and the Principal Chief shall submit a new nomination within thirty (30) days (i.e., a new nomination and not the one that was rejected).

[NCA 88–17, § 102, veto overridden May 7, 1988.]

**Library References**

Judges ⇨3.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 20 to 29.

**§ 3–203. Vacancies**

In the event of a vacancy caused by resignation or death of a Supreme Court Justice or District Judge then the Principal Chief shall submit a nomination within thirty (30) days of such vacancy.

[NCA 88–17, § 103, veto overridden May 7, 1988.]

**Library References**

Judges ☞8.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 58 to 77.

**§ 3–204. Expired terms**

A justice or judge whose term of office has expired and who has not been reconfirmed by the National Council shall not be permitted to sit as a justice or judge and shall receive no compensation.

[NCA 88–17, § 104, veto overridden May 7, 1988.]

**Library References**

Judges ☞9.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 51, 67.

**§ 3–205. Full citizenship required**

The District Judge and the Supreme Court Justices shall be full citizens.

[NCA 88–17, § 105, veto overridden May 7, 1988.]

**Cross References**

Full citizenship, see Const. Art. III, § 4.

**Library References**

Indians ☞222.  
Judges ☞4.  
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.  
C.J.S. Judges §§ 28 to 35, 38 to 39.



## **CHAPTER 4. CODE OF CONDUCT AND CANONS OF JUDICIAL ETHICS FOR MUSCOGEE (CREEK) NATION JUDGES AND EMPLOYEES**

### **Subchapter**

1. Code of Conduct for Muscogee (Creek) Nation Judges
2. Code of Conduct for Judicial Employees

### **SUBCHAPTER 1. CODE OF CONDUCT FOR MUSCOGEE (CREEK) NATION JUDGES**

#### **Section**

- 4-101. Canon 1: A judge should uphold the integrity and independence of the judiciary.
- 4-102. Canon 2: A judge should avoid impropriety and the appearance of impropriety in all activities.
- 4-103. Canon 3: A judge should perform the duties of the office impartially and diligently.
- 4-104. Canon 4: A judge may engage in extra-judicial activities to improve the law, the legal system and the administration of justice.
- 4-105. Canon 5: A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.
- 4-106. Canon 6: A judge should refrain from Muscogee (Creek) Nation political activity.

#### **§ 4-101. Canon 1: A judge should uphold the integrity and independence of the judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this subchapter should be constructed and applied to further that objective.

[NCA 01-108, § 3, approved July 6, 2001.]

#### **Library References**

Judges ⇌11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

#### **§ 4-102. Canon 2: A judge should avoid impropriety and the appearance of impropriety in all activities**

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit

others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

C. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. [NCA 01–108, § 3, approved July 6, 2001.]

#### **Library References**

Judges ⇌11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

### **§ 4–103. Canon 3: A judge should perform the duties of the office impartially and diligently**

The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

#### **A. Adjudicative responsibilities.**

1. A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.

2. A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

3. A judge should patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

4. A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of pending or impending proceeding. A judge may, however, obtain the advise of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of person consulted and the substance of the advise, and affords the parties reasonable opportunity to respond. A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

5. A judge should dispose promptly of the business of the court.

6. A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

**B. Administrative responsibilities.**

1. A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. A judge should require court official, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge.

3. A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

4. A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism.

5. A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

**C. Disqualification.**

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonable be questioned, including but not limited to instances in which:

a. the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b. the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been material witness;

c. the judge knows that, individually or as fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

d. the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person:

i. is a party to the proceeding, or an officer, director, or trustee of a party;

ii. is acting as a lawyer in the proceeding;

iii. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

iv. is to the judge's knowledge likely to be a material witness in the proceeding;

e. the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

2. A judge should keep informed about the judge's personal and fiduciary financial interests, and make reasonable effort to keep informed about the

personal financial interests of the judge’s spouse and minor children residing in the judge’s household.

3. For the purposes of this section:

a. the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece and nephew; the listed relatives include whole and half blood relatives and most step relatives;

b. “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

c. “financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

i. ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

iii. the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

iv. ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

d. “proceeding” includes pretrial, trial, appellate review, or other stages of litigation.

4. Notwithstanding the preceding provisions of this canon, if a judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

**D. Remittal of disqualification.**

A judge disqualified by the terms of paragraph 1 of subsection C of this canon, except in the circumstances specifically set out in subparagraphs a through e of that paragraph, may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If the parties and their lawyers after such disclosure and opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may

participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

[NCA 01–108, § 3, approved July 6, 2001.]

#### Library References

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

### § 4–104. Canon 4: A judge may engage in extra-judicial activities to improve the law, the legal system and the administration of justice

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities, if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before, or otherwise consult with, an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge’s judicial experience provides special expertise in the area. A judge acting pro-se may also appear before or consult with such officials or bodies in matter involving the judge or the judge’s interest.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in planning fund-raising activities and may participate in the management and investment of funds, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. A judge should not use to any substantial degree judicial chambers, resources, or staff to engage in activities permitted by this canon.

[NCA 01–108, § 3, approved July 6, 2001.]

#### Library References

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

### § 4–105. Canon 5: A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties

A. **Avocational activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recre-

ational activities, if such avocational activities do not detract from dignity of the judge's office or interfere with the performance of the judge's judicial duties.

**B. Civic and charitable activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

2. A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

3. A judge should not give investment advise to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

**C. Financial activities.**

1. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.

2. Subject to the requirements of paragraph 1 of this subsection, a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor, or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" mean persons related to the judge or the judge's spouse within the third degree of relationship calculated according to the civil law system, any other relatives with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

3. A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

4. A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judge may accept a gift as permitted by the Judicial Conference gift regulations.

A judge should endeavor to prevent a member of a judge’s family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference gift regulations.

5. For the purposes of this section “members of the judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

6. A judge should report the value of any gift, bequest, favor, or loan as required by statute of the Muscogee (Creek) Nation.

7. A judge is not required by this subchapter to disclose his or her income, debts, or investments.

8. Information acquired by a judge in the judge’s judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge’s judicial duties.

**D. Practice of law.** Part-time judicial officers may appear as counsel in civil and criminal actions in any court or before any governmental agency, except the courts or governmental agencies of the Muscogee (Creek) Nation.

**E. Extra-judicial appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice unless appointment of a judge is required by Act of Congress. A judge should not, in any event, accept such an appointment if the judge’s governmental duties would interfere with the performance of judicial duties or tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge’s country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

**F. Chambers, resources, and staff.** A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this canon, except for uses that are de minimis.

[NCA 01–108, § 3, approved July 6, 2001.]

#### Library References

Judges ⇌11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

### § 4–106. Canon 6: A judge should refrain from Muscogee (Creek) Nation political activity

A. A judge should not:

1. act as a leader or hold any office in a political organization of the Muscogee (Creek) Nation;

2. make speeches for a Muscogee (Creek) Nation political organization or candidate or publicly endorse or oppose a candidate for Muscogee (Creek) Nation public office;

3. solicit funds for a Muscogee (Creek) Nation political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

B. A judge should resign the judicial office when the judge becomes a candidate either in a primary or in a general election for any Muscogee (Creek) Nation office.

[NCA 01–108, § 3, approved July 6, 2001.]

**Library References**

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

**SUBCHAPTER 2. CODE OF CONDUCT  
FOR JUDICIAL EMPLOYEES**

**Section**

- 4–201. Canon 1: A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee’s office.
- 4–202. Canon 2: A judicial employee should avoid impropriety and the appearance of impropriety in all activities.
- 4–203. Canon 3: A judicial employee should adhere to appropriate standards in performing the duties of the office.
- 4–204. Canon 4: In engaging in outside activities, a judicial employee should avoid the risk of conflict with official duties, should avoid the appearance of impropriety, and should comply with disclosure requirements.
- 4–205. Canon 5: A judicial employee should refrain from inappropriate political activity.

**§ 4–201. Canon 1: A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee’s office**

An independent and honorable judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the judiciary are preserved and the judicial employee’s office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this subchapter should be construed and applied to further these objectives. The standards of this subchapter shall not affect or preclude other more stringent standards required by law, by court order, by the appointing authority.

[NCA 01–108, § 3, approved July 6, 2001.]

**Library References**

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

**§ 4–202. Canon 2: A judicial employee should avoid impropriety and the appearance of impropriety in all activities**

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee’s conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other



relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

[NCA 01–108, § 3, approved July 6, 2001.]

#### **Library References**

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

### **§ 4–203. Canon 3: A judicial employee should adhere to appropriate standards in performing the duties of the office**

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

A. 1. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

2. Note: A number of criminal statutes of general applicability govern officer's and employees' performance of official duties.

a. These include:

- i. All criminal statutes of the Muscogee (Creek) Nation and;
- ii. 18 U.S.C. § 201 (bribery of public officials and witnesses);
- iii. 18 U.S.C. § 287 (false, fictitious, or fraudulent claims against the government);
- iv. 18 U.S.C. § 641 (embezzlement or conversion of government money, property, or records);
- v. 18 U.S.C. § 643 (failing to account for public money);
- vi. 18 U.S.C. § 2071 (concealing, removing, or mutilating a public record);
- vii. 31 U.S.C. § 1344 (misuse of government vehicle);
- viii. 31 U.S.C. § 3729 (false claims against the government).

b. In addition, provisions of specific applicability to court officers include:

- i. 18 U.S.C. § 645 (embezzlement and theft by court officers);
- ii. 18 U.S.C. § 646 (court officers failing to deposit registry moneys);
- iii. 18 U.S.C. § 647 (receiving loans from registry moneys from court officer).

c. This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.

C. A judicial employee should be patient, dignified, respectful, and courteous to persons with whom the judicial employee deals in an official capacity,

including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should a judicial employ imply that he or she is in a position to do so.

D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

E. A judicial employee should not engage in nepotism prohibited by law. Note: See also 5 U.S.C. § 3110 (employment of relatives); 28 U.S.C. § 458 (employment of judges' relatives).

F. Conflicts of interest.

1. A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

2. Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

a. A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

i. he or she has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

ii. he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter, or he, she, or such lawyer has been a material witness;

iii. he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;

iv. he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of an party; (B) is acting as a lawyer in the

## CONDUCT AND ETHICS

## Canon 3 [Title 26, § 4–203]

proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;

v. he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

b. The Court Clerk to a judge whose assignment with a particular judge is reasonably perceived as begin comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such Court Clerk knows that she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as lawyer in the proceeding; (iii) has an interest that could be substantially affected by the outcome of the proceeding; or (iv) is likely to be a material witness in the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the Court Clerk to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the Court Clerk possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Cannons of Judicial Ethics for Muscogee (Creek) Nation may require the judge to recuse.

c. A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:

- i. he or she has a personal bias or prejudice concerning a party;
- ii. he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
- iii. he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.

3. When a judicial employee knows that a conflict on interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.

4. A judicial employee who is subject to paragraph 2 of this subsection should keep informed about his or her personal, financial and fiduciary interests and make a reasonable effort to keep informed about such interests of a spouse or minor child residing in the judicial employee's household.

5. A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a basis

for disqualification of either the staff member or the judge, in a matter pending before the judge.

[NCA 01–108, § 3, approved July 6, 2001.]

**Library References**

Judges ☞11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

**§ 4–204. Canon 4: In engaging in outside activities, a judicial employee should avoid the risk of conflict with official duties, should avoid the appearance of impropriety, and should comply with disclosure requirements**

**A. Outside activities.** A judicial employee’s activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this subchapter, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law, the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this subchapter.

**B. Solicitation of funds.** A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

1. A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.
2. A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge’s personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member’s close relationship to the judge could reasonably be construed to give undue weight to the solicitation.
3. A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

**C. Financial activities.**

1. A judicial employee should refrain from outside financial and personal dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent

permitted by statute and by the court. A member of a judge’s personal staff should consult with the appointing judge concerning any financial and business activities that might reasonable be interpreted as violating this subchapter and should refrain from any activities that fail to conform to the foregoing standards or that the judge concludes may otherwise give rise to an appearance of impropriety.

2. A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties.

**D. Compensation and reimbursement.**

1. A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this subchapter, or other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited tot he actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee’s spouse or relative.

2. Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the Muscogee (Creek) Nation.  
[NCA 01–108, § 3, approved July 6, 2001.]

**Library References**

Judges ⇌11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

**§ 4–205. Canon 5: A judicial employee should refrain from inappropriate political activity**

**Political activity.** A judicial employee should refrain from Muscogee (Creek) Nation political activity; should not act as a leader or hold any office in a Muscogee (Creek) Nation political organization; should not make speeches for or publicly endorse or oppose a Muscogee (Creek) Nation political organization or candidate; should not solicit funds for candidate and should not become a candidate for Muscogee (Creek) Nation political office. This prohibition does not apply to federal, state or local political activity.

[NCA 01–108, § 3, approved July 6, 2001.]

**Library References**

Judges ⇌11(2).  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 78 to 99.

## CHAPTER 5. BUDGET, FINANCE AND COMPENSATION

### Subchapter

1. General Provisions
2. Compensation
3. Travel, Mileage and Per Diem
4. Contract or Grant Funds

### Table of Prior Statutes

Former Section	New Sections	Former Section	New Sections
5-401 .....	none	5-405 .....	none
5-402 .....	5-402	5-406 .....	none
5-403 .....	5-402	5-407 .....	none
5-404 .....	none	5-408 .....	none

### Cross References

Court Clerk Revolving Fund, see Title 37, § 2-203.  
 Court Fund, see Title 37, § 2-201.

## SUBCHAPTER 1. GENERAL PROVISIONS

### Section

- 5-101. Preparation of budget.
- 5-102. Budget modifications.
- 5-103. Accounting policies and procedures.
- 5-104. Federal regulations.
- 5-105. Vouchers.
- 5-106. Process service fees.
- 5-107. Court Clerk Revolving Fund.
- 5-108. Legal Services Court Costs and Publication Fee Revolving Fund.
- 5-109. District Court budget separation.
- 5-110. Mvskoke Press Revolving Fund.

### § 5-101. Preparation of budget

A. The court system shall prepare a budget that separates the Supreme Court and the District Court budget line items.

B. The Supreme Court Clerk shall be responsible for the annual preparation of the Supreme Court budget with input from the Chief Justice and Associate Justices.

C. The District Court Clerk shall be responsible for the annual preparation of the District Court budget with input from the District Judge.

D. The Chief Justice and District Judge shall approve the final overall budget before submission to the Principal Chief and the National Council as required by the Muscogee (Creek) Nation Constitution.

[NCA 99-85, § 105, approved July 1, 1999.]

### Library References

Indians ⇐401.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

**§ 5–102. Budget modifications**

All modifications to line item appropriations shall be made in writing and approved by the respective administrative officer before taking effect. Budget modifications to funds appropriated by line item for the operation of the Supreme Court may be made by the Chief Justice during the fiscal year. Budget modifications to funds to line item for the operation of the District Court may be made by the District Judge or the District Court Clerk during the fiscal year. Budget modifications to line items during any fiscal year which result in the transfer of funds from the District Court line items to Supreme Court line items shall be in writing and approved by the Chief Justice, District Judge, and Judicial Branch Accountant.

[NCA 99–85, § 105, approved July 1, 1999.]

**Library References**

Indians ⇨401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 5–103. Accounting policies and procedures**

The Muscogee (Creek) Nation Judicial Branch Accounting Policies and Procedures Manual, prepared by Arledge & Associates Certified Public Accountants dated November 9, 1993 is hereby made a statute and law of this Nation. Future additions, deletions, or amendments with written justification from by the Court system’s certified public accountant shall be presented to the Controller and National Council for comments before taking effect. The National Council shall have ninety (90) days to comment or by National Council Resolution reject the proposed addition, deletion, or amendment.

[NCA 99–85, § 105, approved July 1, 1999.]

**Library References**

Indians ⇨401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 5–104. Federal regulations**

The Supreme Court and District Court shall follow OMB a–87 and a–102, and the Common Rule Administration Requirements currently in effect as they apply to Indian Tribal governments.

[NCA 99–85, § 105, approved July 1, 1999.]

**Library References**

Indians ⇨401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 5–105. Vouchers**

Vouchers of the Supreme Court shall be documented according to standard Tribal expenditure procedures, and after approval by the Chief Justice, shall be

## **Title 26, § 5–105**

## **JUDICIAL BRANCH/COURTS**

processed by the Office of the Administration as necessary, and forwarded to the Controller for payment.

[NCA 81–31, § 103, approved Feb. 2, 1981.]

### **Library References**

Indians ⇐401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 5–106. Process service fees**

The Judicial Branch is hereby authorized to reimburse the Lighthorse Administration for any process service fees previously collected for such service and any process service fees collected by the Judicial Branch in the future. Such fees shall immediately be paid over to the Muscogee (Creek) Nation Controller to be deposited into a revolving fund for use by the Lighthorse Administration as appropriated by the Muscogee (Creek) National Council.

[NCA 98–103, § 103, approved Oct. 5, 1998.]

### **Cross References**

Lighthorse Administration Revolving Account, see Title 37, § 2–213.

### **Library References**

Indians ⇐401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 5–107. Court Clerk revolving fund**

A revolving fund is hereby created out of the District Court Clerk Fund. This fund is non-appropriated and does not contain any tax and license revenues of the Muscogee (Creek) Nation, nor any funds coming from or belonging to the United States of America. The fund may be used for maintenance and updating of the law library, renovation and moving expense, special events, or supplies upon the written request of the National Council, Principal Chief, Chief Justice, or District Judge. All withdrawals shall be made in accordance with the Accounting Policies and Procedures Manual and shall require original invoices. Pre-payment of expenditures may be made out of this revolving account.

[NCA 89–112, § 106, approved Sept. 8, 1989; amended by NCA 99–85, § 105, approved July 1, 1999.]

### **Library References**

Indians ⇐401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **§ 5–108. Legal Services Court Costs and Publication Fee Revolving Fund**

There is hereby created the Legal Services Court Costs and Publication Fee Revolving Fund. The Fund shall be established with a monetary ceiling of ten thousand and no/100 dollars (\$10,000.00) to be used to pay extra-ordinary travel expenses, service of process fees, court reporter fees, guardian ad litem



fees, court costs and publication expenses in accordance with guidelines adopted by the Commission in connection with services provided by the Muscogee (Creek) Legal Services Department. Services and expenses will be paid for the citizen client who is indigent or unable to afford or pay such extraordinary travel expenses, service of process fees, court reporter fees, guardian ad litem fees, costs and publication expenses. This Revolving Fund shall be held in escrow by the District Court Clerk, who shall only make expenditures in accordance with the above mentioned guidelines and in compliance with the Muscogee (Creek) Nation Judicial Branch Accounting Policies and Procedures, prepared by Arledge & Associates Certified Public Accountants. Whenever this Revolving Fund contains less than one thousand dollars (\$1,000.00), the District Court Clerk shall notify the Speaker and the National Council may address a supplemental appropriation to replenish the Revolving Fund to ten thousand and no/100 dollars (\$10,000.00).

[NCA 02–091, § 10, approved May 30, 2002; amended by NCA 02–211, § 1, approved Dec. 27, 2002; NCA 07–319, § 3, eff. Jan., 2, 2008.]

#### **Cross References**

Muscogee (Creek) Nation Legal Services Clinic, court costs and publication fees, see Title 35, § 10–112.

#### **Library References**

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 5–109. District Court budget separation**

The Court shall be responsible for expenditures and the budget modifications within sources of revenue and approved line items. The budget for the Judicial Branch is separate from and not a part of the general Tribal budget. Expenditures from this budget are not contingent upon funding of any other budget within the Muscogee (Creek) Nation. Funds appropriated under this budget are to be turned over to the Judicial Branch in the form of a draft on the Muscogee (Creek) Nation Treasury to be deposited in a financial institution of the Judicial Branch of the Muscogee (Creek) Nation choosing, and shall be subject to audit at any time by the Executive and/or Legislative Branch of the Muscogee (Creek) Nation.

[NCA 89–112, § 103, approved August 26, 1989; amended by NCA 89–162, § 101, approved Nov. 18, 1989.]

#### **Library References**

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 5–110. Mvskoke Press Revolving Fund**

There is hereby created the Mvskoke Press Revolving Fund. This Revolving Fund shall be held by the District Court Clerk. Expenditures shall be made for the Mvskoke Press in compliance with the Muscogee (Creek) Nation Judicial Branch Accounting Policies and Procedures, prepared by Arledge & Associates

## **Title 26, § 5-110**

## **JUDICIAL BRANCH/COURTS**

Certified Public Accountants. This Revolving Fund shall also be the repository for income from the sale of publications of the Mvskoke Press.

[Added by NCA 08-062, § 6, approved May 1, 2008.]

### **Historical and Statutory Notes**

NCA 08-062, § 2, provides:

“Section Two. Purpose. The purpose of this Act is to authorize a special appropriation to the District Court for the purchase of OCW Press and to contract with Professor Melissa L. Tatum to produce Volume 8 of the MVSKOKE LAW REPORTER. This Act will also amend MCNCA Title 30, 1-111 Publication of the Code of Laws to establish the Mvskoke Press as publisher for the Muscogee (Creek) Nation Code Annotated,

Mvskoke Law Reporter, other publications of the District Court and Supreme Court and Muscogee (Creek) Nation as required and amend 1-117 to delegate all responsibility to the District Court for the maintenance and sale of the Mvskoke Law Reporter, publications of the District Court and Supreme Court and other Muscogee (Creek) Nation publications as required. Add to MCNCA Title 26, § 5-110. The Mvskoke Press Revolving Fund.”

## **SUBCHAPTER 2. COMPENSATION**

### **Section**

- 5-201. Supreme Court Justices.
- 5-202. District Court Judge.
- 5-203. Special District Judge.
- 5-204. District Court Clerks.
- 5-205. Lawmenders.

### **§ 5-201. Supreme Court Justices**

A. Effective October 1, 1994, the Chief Justice of the Supreme Court shall be compensated at the rate of one thousand two hundred dollars (\$1,200.00) per month and the other Supreme Court Justices shall be compensated at the rate of one thousand dollars (\$1,000.00) per month and these monthly compensation amounts shall have F.I.C.A. and federal income taxes withheld by the Judicial Branch in the same manner as any other employee, the Nation shall pay it statutory F.I.C.A. contribution and the Judicial Branch shall remit said F.I.C.A. and taxes withheld to the United States Treasury as required by federal law.

B. Further, the Supreme Court by order may assign a Supreme Court Justice or member of the Muscogee (Creek) Nation Bar Association in good standing to research and write any opinion required and such assigned individual shall be compensated at the rate of sixty dollars (\$60.00) per hour upon receipt of an itemized invoice. All provisions of law in conflict with this section are repealed effective September 30, 1994.

[NCA 94-67, § 109, approved Sept. 30, 1994.]

### **§ 5-202. District Court Judge**

The District Court Judge is to be compensated as a salaried employee on the same basis as other employees in the amount of ninety thousand dollars (\$90,000.00) per year, F.I.C.A. and withholding of federal income tax shall be accomplished by the Judicial Branch in the same manner as any other employee. The District Court Judge may elect to participate in fringe benefits

provided to Judicial Branch employees and may engage in the private practice of law in state and federal courts.

[NCA 94-67, § 113, approved Sept. 30, 1994; amended by NCA 02-079, § 1, approved May 30, 2002; amended by NCA 05-016, § 2, eff. Feb. 9, 2005.]

**Library References**

Judges ⌘22.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 181 to 206, 330.

**§ 5-203. Special District Judge**

The Special District Judge shall be compensated in the same manner as court-appointed attorneys practicing in the Tribal Court.

[NCA 94-67, § 112, approved Sept. 30, 1994.]

**§ 5-204. District Court Clerks**

The District Court Clerk, deputy, or assistant shall not receive any compensation or emoluments through any office or position to which appointed other than that received as such District Court Clerk, deputy or assistant.

[NCA 01-109, § 211, approved July 6, 2001.]

**Historical and Statutory Notes**

**Derivation**

NCA 82-30, § 505, added by NCA 99-85, § 103.

**§ 5-205. Lawmenders**

Lawmenders shall be compensated in accordance with the rules adopted by the Supreme Court and District Court.

[NCA 94-67, § 112, approved Sept. 30, 1994.]

**SUBCHAPTER 3. TRAVEL, MILEAGE AND PER DIEM**

**Section**

5-301. Travel.  
5-302. Mileage.  
5-303. Per diem.

**§ 5-301. Travel**

Supreme Court travel (out-of-Oklahoma) requests must be made in writing and approved by the Chief Justice. District Court (out-of-Oklahoma) travel requests must be made in writing and approved by the District Judge. The District Court Clerk shall be responsible for the court system's accounting and shall be responsible for the preparation of all Justice, Judge, and Court employee travel documentation, thus ensuring all federal government and Muscogee (Creek) Nation travel regulations in effect are complied with and Judicial Branch Accounting Policies and Procedures are strictly adhered to and

## **Title 26, § 5–301**

## **JUDICIAL BRANCH/COURTS**

followed. All out-of-state travel claims shall be approved by the Chief Justice or District Judge and Controller before final payment is made.

[NCA 99–85, § 105, approved July 1, 1999.]

### **Library References**

Judges ☞22.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 181 to 206, 330.

## **§ 5–302. Mileage**

Effective October 1, 1994, the Supreme Court Justices, District Court Judge, and Special Judge shall receive mileage while on judicial business in the amount per mile set out by federal travel regulations for government employees not to exceed a total of two hundred fifty dollars (\$250.00) per month.

[NCA 94–67, § 110, approved Sept. 30, 1994.]

### **Library References**

Judges ☞22.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 181 to 206, 330.

## **§ 5–303. Per diem**

Effective October 1, 1994, the members of the Supreme Court, District Judge, any Special Judge and employees of Judicial Branch shall receive per diem for travel away from their home to attend meetings with federal and state officials, judicial association meeting, schools, seminars, and workshops that are designed to improve the judicial skills and knowledge of the attendee. The per diem in this section shall governed by the actual hotel room rate plus the meals and incidental (m & i) rate per federal travel regulations in effect at the time of the travel.

[NCA 94–67, § 111, approved Sept. 30, 1994.]

### **Library References**

Judges ☞22.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 181 to 206, 330.

## **SUBCHAPTER 4. CONTRACT OR GRANT FUNDS**

### **Section**

- 5–401. District Court Enhancement Grant.
- 5–402. Authorization.
- 5–403. Repealer.
- 5–404. Repealed.
- 5–405. Meeting with National Council Committee.
- 5–406. Expenditures.
- 5–407. Annual audit.
- 5–408. Management procedures.

**Historical and Statutory Notes**

NCA 92-31, § 101, provides:

“The Purpose of this Ordinance is to authorize the Judicial Branch as established BY THE CONSTITUTION OF THE MUSCOGEE (CREEK) NATION, Article VII, and the following Ordinances, NCA 81-18, NCA 81-88, NCA 82-30, NCA 83-50, NCA 88-17, NCA 88-74, NCA 89-21, NCA 89-112, NCA 89-148, NCA 89-162, to contract with the Bureau of Indian Affairs, other Federal Government Agencies or State Government Agencies for funding, to enter into agreements with the Federal, State and other Tribal governments and to provide the authority for the Judicial Branch to contract with Federal and State Agencies.”

NCA 92-31, § 103, provides in part as follows: “All monies expended shall be only upon

approval by at least two Justices or one Justice and the District Court Judge.” This language has been deleted as impliedly repealed by NCA 01-229, § 4, since it is inconsistent with that act’s purpose, as stated by NCA 01-229, § 2, “to eliminate Muscogee (Creek) Nation Supreme Court approval requirements regarding acceptance and expenditure of said funds.” NCA 01-229, § 4, provides:

“SECTION FOUR. REPEALER. NCA 91-84 is hereby repealed. All prior laws in effect as of the date of enactment of this Act which are inconsistent with this Act are hereby repealed and shall have no force and effect from this date forward.”

**§ 5-401. District Court Enhancement Grant**

The purpose of this law is to authorize the Muscogee (Creek) Nation District Court to expend a Tribal Court Enhancement Grant awarded by the United States Department of Justice.

[NCA 01-229, § 2, approved Dec. 4, 2001; amended by NCA 03-202, § 2, approved Nov. 3, 2003.]

**Historical and Statutory Notes**

**Derivation:**

Title 26, § 5-401, added by NCA 92-31, § 102 and repealed by NCA 01-229, § 4.

**§ 5-402. Authorization**

The National Council hereby authorizes the District Court to expend grant funds awarded by the United States Department of Justice in accordance with the attached budget detail worksheet and budget narrative. The National Council further authorizes the District Judge to engage in contracts for the service of certified public accountants, professors of law, graduate attorneys, graduate students, enrolled law students, technical service providers and publishers. The District Judge is hereby authorized to compel the State of Oklahoma by whatever means necessary to return to this Nation, historical court records in the custody of the Oklahoma Historical Society.

[NCA 01-229, § 3, approved Dec. 4, 2001; amended by NCA 03-202, § 3, approved Nov. 3, 2003.]

**Historical and Statutory Notes**

**Derivation:**

Title 26, § 5-402, added by NCA 92-31, § 1, and repealed by NCA 01-229, § 4.

Title 26, § 5-403, added by NCA 92-31, § 108, and repealed by NCA 01-229, § 4.

thority to approve contract proposals, was added by NCA 92-31, § 104 and repealed by NCA 01-229, § 4.

**Former sections:**

Former § 5-402, which granted the Tribal judicial branch and the National Council au-

**Title 26, § 5-403**

**JUDICIAL BRANCH/COURTS**

**§ 5-403. Repealer**

NCA 91-84 is hereby repealed. All prior laws in effect as of the date of enactment of NCA 01-229 which are inconsistent with this Act are hereby repealed and shall have no force and effect from this date forward.

[NCA 01-229, § 4, approved Dec. 4, 2001.]

**Historical and Statutory Notes**

**Derivation:**

Title 26, § 5-403, added by NCA 92-31, § 108  
and repealed by NCA 01-229, § 4.

**§ 5-404. Repealed by NCA 01-229, § 4, eff. Dec. 4, 2001**

**§ 5-405. Meeting with National Council Committee**

Before the expenditure of any contract or grant funds by the Judicial Branch a Supreme Court Justice and the District Judge shall meet with the appropriate National Council Committee to determine if modifications or amendments to the Comprehensive Budget of the Muscogee (Creek) Nation are required.

[NCA 92-31, § 105, approved March 4, 1992.]

**§ 5-406. Expenditures**

Expenditures shall follow the usual accounting procedures as set out by the laws of this Nation.

[NCA 92-31, § 103, approved March 4, 1992.]

**§ 5-407. Annual audit**

All contract and grant funds received by the Judicial Branch shall be included in the annual audit of the Muscogee (Creek) Nation.

[NCA 92-31, § 106, approved March 4, 1992.]

**§ 5-408. Management procedures**

All contract and grant funds shall be managed according to generally accepted accounting procedures.

[NCA 92-31, § 107, approved March 4, 1992.]

## CHAPTER 6. FAMILY DRUG COURT PROGRAM

### Section

- 6-101. Establishment of program.
- 6-102. Powers and authority of Court.
- 6-103. Rules and procedures.
- 6-104. Family Drug Court Implementation Team.
- 6-105. Children and Family Services Administration responsibilities.
- 6-106. Muscogee (Creek) Nation Behavioral Health responsibilities.
- 6-107. Search for funding.
- 6-108. Cooperative agreements or contracts.
- 6-109. Severability.

### Historical and Statutory Notes

NCA 00-32, § 101, provides:

“Findings: The National Council finds that:

“A. On August 29, 1998, the National Council adopted NCA 98-77 that established a Family Drug Court Pilot Project, created a Family Drug Court Implementation Team and authorized the adoption and implementation of Family Drug Court Rules, policies and procedures.

“B. Section 105 of NCA 98-77 created an expiration date for the Family Drug Court Pilot Project which was to occur twenty-fourth months after the date on which said ordinance was enacted.

“C. In June 1999, the Family Drug Court Pilot Project began accepting participants and providing a specialized court docket in which to provide treatment, supervision, case management, and accountability for Family Drug Court participants.

“D. The Family Drug Court Implementation Team has executed a Memorandum of Understanding between the respective agencies involved, drafted policies and procedures to govern the Family Drug Court Program, and developed standardized forms and orders to be used by said Program. The Family Drug Court Implementation Team meets regularly and is encouraged by the operation of the Family Drug Court Program and the level of cooperation between the participating agencies.

“E. There is a need to continue the operation of the Family Drug Court Program beyond the expiration date of the Family Drug Court Pilot Project and to enhance the resources and services provided to Family Drug Court participants and their families.

“F. It is in the best interests of the Muscogee (Creek) Nation and its Indian families to establish a permanent Family Drug Court Program and to pursue funding sources to assist in the continuation of the Family Drug Court Program.”

NCA 98-77, § 101, provides:

“Findings: The National Council finds that:

“1. The Muscogee Nation currently has both a criminal code and a juvenile code governing criminal and juvenile actions arising within the

jurisdictional boundaries of the Muscogee Nation.

“2. Drug and/or alcohol abuse is a commonly recurring factor in a substantial number, if not the majority, of juvenile cases within the Nation’s Children and Family Services Administration as well as in adult criminal cases.

“3. The Nation’s current programs and services designed to address family problems and conditions are often inadequate where such problems and conditions are the result, in whole or in part, of chronic drug and/or alcohol abuse.

“4. There is a need to reduce the incidence of drug and alcohol abuse within the Muscogee Nation and to create and implement a program integrating alcohol and drug treatment and other rehabilitative services and resources within the Nation’s judicial system.

“5. With funding provided in 1996 from a grant funded in 1996 by the U.S. Department of Justice, the Nation formed a family drug court planning team whose members have been meeting since February 1997 to discuss and plan a family drug court program within the Muscogee (Creek) Nation judicial system. The members of the family drug court planning team have also participated in both national and state drug court training sessions to assist them in developing a drug court program.

“6. The family drug court planning team members studied the problems of chronic alcohol and drug abuse and its effects on families and have recommended the establishment of a Family Drug Court Pilot Project as the initial substantive step in creating a program specifically designed to address the cycle of alcohol and drug abuse and the disintegration of families within Muscogee Nation caused by such abuse.

“7. The Muscogee Nation was recently awarded a drug court implementation grant by the U.S. Department of Justice to assist with funding the implementation of a family drug court program within the Nation’s criminal and juvenile justice system.

## Title 26, § 6–101

## JUDICIAL BRANCH/COURTS

“8. It is in the best interests of the Muscogee Nation and its Indian families to implement a Family Drug Court Pilot Project pursuant to the federal drug court grant awarded by the Department of Justice.”

### Cross References

Diversion to Family Drug Court by Attorney General, see Title 14, § 2–709.

### § 6–101. Establishment of program

There is hereby established a Family Drug Court Program within the Muscogee (Creek) Nation’s judicial system.

[NCA 98–77, § 103, approved Sept. 3, 1998; amended by NCA 00–32, § 103, approved March 7, 2000.]

### Library References

Chemical Dependents ☞12, 13.  
Indians ☞401.  
Westlaw Topic Nos. 76A, 209.

C.J.S. Chemical Dependents §§ 18, 20 to 26.  
C.J.S. Indians §§ 151 to 179.

### § 6–102. Powers and authority of Court

The Judge of the Muscogee (Creek) Nation District Court is hereby authorized to order and/or impose sanctions and incentives for participants who enter into the Family Drug Court Program. The Court’s powers and authority hereunder shall include, but are not limited to, the following:

- A. approving and enforcing treatment plans;
- B. holding participants in direct or indirect contempt of court for willful violations of the Court’s orders, including Court-ordered treatment plans;
- C. imposing fines and/or costs;
- D. ordering the performance of community service;
- E. ordering participants to receive mandatory inpatient/outpatient drug or alcohol treatment or counseling;
- F. ordering random and/or periodic urinalysis testing;
- G. placement of child(ren) in the legal and/or physical custody of Children and Family Services Administration and/or other persons;
- H. authorizing increased or restricted contact with other family members or increased or restricted supervised visitation with child(ren);
- I. extending, accelerating, and/or terminating treatment plan(s) and/or ordering that non-compliant participants be discharged from the Family Drug Court program;
- J. where a participant in the program has materially and/or repetitively violated the terms of his or her Court-ordered treatment plan, ordering that the participant be placed in confinement for a period not to exceed five (5) days for each violation, but only after the Court expressly finds that the participant’s violation of the plan was willful and that other sanctions or incentives are inadequate; and



K. imposing any other condition, standard, requirement, treatment, service, training or activity which the Court deems appropriate under the facts and circumstances of the case in the exercise of the Court’s sound discretion.

[NCA 98–77, § 103, approved Sept. 3, 1998; amended by NCA 00–32, § 103, approved March 7, 2000.]

**Library References**

Chemical Dependents ☞13.  
Indians ☞401.  
Westlaw Topic Nos. 76A, 209.

C.J.S. Chemical Dependents §§ 20 to 26.  
C.J.S. Indians §§ 151 to 179.

**§ 6–103. Rules and procedures**

The District Court may, in its discretion, adopt written rules and procedures for the conduct of hearings and proceedings within the Family Drug Court Program and the administration of cases therein, provided that copies of such rules and procedures shall be public documents and made available to all persons participating in the Family Drug Court Program and, upon request to any citizen or attorneys admitted to the Muscogee (Creek) Nation Bar Association.

[NCA 98–77, § 103, approved Sept. 3, 1998.]

**Library References**

Chemical Dependents ☞13.  
Indians ☞401.  
Westlaw Topic Nos. 76A, 209.

C.J.S. Chemical Dependents §§ 20 to 26.  
C.J.S. Indians §§ 151 to 179.

**§ 6–104. Family Drug Court Implementation Team**

A. There is hereby established the Family Drug Court Implementation Team, which shall consist of at least one (1) representative from each of the following agencies or departments of Muscogee (Creek) Nation: Office of the Attorney General, Children and Family Services Administration (hereinafter “CFSA”), Muscogee (Creek) Nation Behavioral Health and/or Employee Health Department, Lighthorse Police, and such other person or persons as may be designated by the Principal Chief. The Speaker of the National Council may appoint one member of the National Council to attend Implementation Team meetings in an ex-officio capacity.

B. The Family Drug Court Implementation Team is hereby authorized to develop policies, procedures, and inter-agency/departmental protocols and standards for use in the operation of the Family Drug Court Program, as well as standardized forms and other documents to be used in the program. In developing the foregoing, the Team shall consult with their respective agencies, the judicial branch, attorneys who provide indigent defense services, and other outside agencies.

[NCA 98–77, § 103, approved Sept. 3, 1998.]

**§ 6–105. Children and Family Services Administration responsibilities**

The CFSA shall be primarily responsible for managing and coordinating services and activities under the individual treatment plans, provided that in drafting and formulating individual treatment plans, CFSA shall consult with

other agencies participating in the program in accordance with the inter-agency protocols and standards adopted pursuant to subsection B of Title 26, § 6-104.

[NCA 98-77, § 103, approved Sept. 3, 1998.]

**§ 6-106. Muscogee (Creek) Nation Behavioral Health responsibilities**

Muscogee (Creek) Nation Behavioral Health shall be the primary service provider for alcohol and drug abuse assessments, testing, counseling, and treatment services to be provided under the individual treatment plans, provided that Muscogee (Creek) Nation Behavioral Health shall coordinate its services with other agencies participating in the program in accordance with the inter-agency protocols and standards adopted pursuant to subsection B of Title 26, § 6-104.

[NCA 98-77, § 103, approved Sept. 3, 1998.]

**§ 6-107. Search for funding**

The Principal Chief or his designee is authorized to seek and apply to other funding or sources for the purpose of implementing a Family Drug Court Program within the Muscogee (Creek) Nation justice system.

[NCA 98-77, § 103, approved Sept. 3, 1998; amended by NCA 00-32, § 103, approved March 7, 2000.]

**§ 6-108. Cooperative agreements or contracts**

A. The Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements with state and local governments for integrating and/or coordinating the Muscogee (Creek) Nation Family Drug Court Program with agencies of such other governments.

B. In addition, the Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements/contracts with substance abuse treatment facilities, local jails and/or detention facilities, and other agencies in order to provide more comprehensive treatment and sanctions services for the Family Drug Court Program.

[NCA 98-77, § 104, approved Sept. 3, 1998; amended by NCA 00-32, §§ 103, 104, approved March 7, 2000.]

**§ 6-109. Severability**

The provisions of this chapter shall be considered severable such that if any provision shall be held invalid by a court of competent jurisdiction, all other provisions shall continue to be valid and given full force and effect.

[NCA 98-77, § 106, approved Sept. 3, 1998.]

# TITLE 27. JUDICIAL PROCEDURES

## FVTCECVLKE SEMEFIYATKV

Chapter	Section
1. AUTHORITY, JURISDICTION, AND APPLICABLE LAW. ....	1-101
2. TRIBAL COURT PROCEEDINGS. ....	2-101
3. APPELLATE PROCEDURE. ....	3-101
4. REPOSSESSION OF PERSONAL PROPERTY. ....	4-101
5. COURT PROCEDURE [REPEALED]. ....	5-101
6. JURISDICTION OVER NON-MEMBERS [REPEALED]. ....	6-101
7. FOREIGN JUDGMENTS. ....	7-101
8. SECURITY TO KEEP PEACE. ....	8-101
APPENDIX 1. RULES AND PROCEDURES OF THE MUSCOGEE (CREEK) NATION TRIBAL COURTS.	
APPENDIX 2. MUSCOGEE (CREEK) NATION SUPREME COURT RULES OF APPELLATE PROCEDURE.	

### Cross References

Child support enforcement, pleadings and actions, see Title 6, § 6-130.  
 Juvenile procedure, generally, see Title 6, § 1-401 et seq.  
 Paternity proceedings, jurisdiction and venue, see Title 6, § 7-301.

## CHAPTER 1. AUTHORITY, JURISDICTION, AND APPLICABLE LAW

Section
1-101. Authority.
1-102. Jurisdiction.
1-103. Law applicable.
1-104. Counselors in matters of Tribal common law.
1-105. Rules of Court.
1-106. Rules of Appellate Procedure.

### § 1-101. Authority

**A. Basis of authority.** The authority of the Muscogee (Creek) Nation to adopt this title is based upon:

1. The inherent sovereignty of the Muscogee (Creek) Nation and the Treaties and Agreements between the Muscogee (Creek) Nation and the United States, including but not limited to the Treaty of 1790 and the Treaty of 1866.
2. The 1979 Constitution of the Muscogee (Creek) Nation, adopted under the provisions of the Oklahoma Indian Welfare Act of 1936,<sup>1</sup> including provisions which define the political jurisdiction of the Muscogee (Creek) Nation, the powers of the Muscogee (Creek) National Council, and the judicial powers of the Courts of the Muscogee (Creek) Nation.

**B. District Court authority.** Exclusive original jurisdiction over all matters described in Title 27, § 1-102 and not otherwise limited by Tribal law is vested in the District Court of the Muscogee (Creek) Nation, Okmulgee District.

**C. Supreme Court authority.** Exclusive appellate jurisdiction over all matters described in Title 27, § 1–102 is vested in the Supreme Court of the Muscogee (Creek) Nation.

[NCA 82–30, § 101, approved Sept. 13, 1982; amended by NCA 92–157, § 102, approved Nov. 25, 1992; NCA 01–109, § 2, approved July 6, 2001.]

<sup>1</sup> 25 U.S.C.A. § 503.

#### Library References

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 1–102. Jurisdiction

**A. Territorial jurisdiction.** The territorial jurisdiction of the Muscogee Courts shall extend to all the territory defined in the 1866 Treaty with the United States, including without limitation any real property within the Nation’s political jurisdiction as defined in Article I, Section 2 of the 1979 Muscogee (Creek) Nation Constitution and which constitutes Muscogee (Creek) Nation Indian country as follows: (1) property owned by any Muscogee citizen subject to federal restrictions against alienation or held in trust by the United States for the benefit of any Muscogee citizen or (2) property held in trust by the United States for the benefit of the Muscogee (Creek) Nation or (3) any property owned by Muscogee (Creek) Nation or (4) property which otherwise constitutes Indian Country as that term is used in 18 U.S.C. § 1151.

**B. Civil jurisdiction.** The Muscogee (Creek) Nation courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Muscogee (Creek) Nation including the Muscogee or Yuchi Common Law, which arise within the Muscogee (Creek) Nation Indian country, regardless of the Indian or non-Indian status of the parties. Personal jurisdiction shall exist over all defendants, regardless of the Indian or non-Indian status of said defendants, in cases arising from any action or event within the Muscogee (Creek) Nation Indian country and in any other cases in which the defendant has established contacts with Muscogee (Creek) Nation Indian Country sufficient to establish personal jurisdiction over said defendant. Personal jurisdiction shall also exist over all persons consenting to such jurisdiction. Residing conducting business, using roadways or engaging in any other activity within the Muscogee (Creek) Nation Indian Country is deemed consent to Muscogee (Creek) Nation jurisdiction. All contracts between the Nation or its citizens and any other party entered into within the Muscogee (Creek) Nation Indian country is deemed as consent to Muscogee (Creek) Nation jurisdiction by the parties. The act of entry upon the Muscogee (Creek) Nation Indian Country by any extraterritorial seller or merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of courts of the Muscogee (Creek) Nation for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered or took place. The Muscogee Courts shall have probate jurisdiction as described by law of the Muscogee (Creek) Nation in Title 47 of the Code of Laws of the Muscogee (Creek) Nation. The Muscogee Courts shall have jurisdiction over proceedings involving family relations, including without limitation, child custody and

divorce proceedings, as described by law of the Muscogee (Creek) Nation, including any such law codified in Title 6 of the Code of Laws of the Muscogee (Creek) Nation. The Muscogee Courts shall exercise such other civil jurisdiction as described by any other law of the Muscogee (Creek) Nation.

**C. Criminal jurisdiction.** The Muscogee Courts shall have original jurisdiction over all Indians alleged to have committed in Muscogee (Creek) Nation Indian Country a criminal offense enumerated and defined by any law or statute of the Muscogee (Creek) Nation insofar as not prohibited by federal law. The Muscogee Courts shall also have original jurisdiction over all Indians alleged to have committed an offense involving the theft, misappropriation or misuse of Muscogee (Creek) Nation property or funds, regardless of the geographical location of any specific act or omission involved or resulting in such theft, misappropriation or misuse.

**D. Suits Against the Muscogee (Creek) Nation.** Nothing in this title shall be construed to be a waiver of the sovereign immunity of the Muscogee (Creek) Nation, its officers, employees, agents, or political subdivisions or to be a consent to any suit except as expressly stated in this subsection D. The sovereign immunity of the Muscogee (Creek) Nation is hereby waived in all actions limited to injunctive, declaratory or equitable relief; provided that such waiver extends only to actions filed in the Muscogee (Creek) Nation courts and does not extend to any actions filed in a court of any other jurisdiction. The waiver of sovereign immunity in actions for injunctive, declaratory or equitable relief shall not be construed as granting a waiver for the purpose of obtaining any equitable relief requiring payment from, delivery of, or otherwise affecting funds in the Treasury of the Muscogee (Creek) Nation, or any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, or any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, except interpleader actions in disputes arising between the Nation and its political subdivisions or the Nation and other parties where financial institutions are holders of disputed funds. Nothing in this subsection D shall be construed as allowing any award of actual damages, punitive damages, exemplary damages or any other type of damages against the Muscogee (Creek) Nation.

[NCA 82–30, § 101, approved Sept. 13, 1982; amended by NCA 90–58, § 102, approved July 10, 1990; NCA 92–205, § 102, approved Dec. 16, 1992; amended and renumbered NCA 82–30, § 101–A, by NCA 01–109, § 2, approved July 6, 2001; amended by NCA 02–136, § 1, approved Aug. 28, 2002.]

#### Cross References

Children, jurisdiction and venue, see Title 6, § 1–301 et seq.

Citizenship, jurisdiction of judicial appeals, see Title 7, § 4–110.

Criminal jurisdiction over crimes involving domestic or family violence, see Title 6, § 3–302.

Law Enforcement Department, jurisdiction, see Title 16, § 4–105.

Non-profit corporations chartered by Nation, jurisdiction, see Title 3, § 2–101.

Protection orders, civil jurisdiction, see Title 6, § 3–401.

Rules of Appellate Procedure not to limit jurisdiction of Judicial Branch, see Title 27, App. 2, Rule 1.

**Library References**

Indians ↻401, 405, 501, 601.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**United States Code Annotated**

Sovereign immunity unaffected by Indian Self-Determination and Education Assistance Act, see 25 U.S.C.A. § 450n.

**Code of Federal Regulations**

Estates of Indians of the Five Civilized Tribes, see 25 CFR 16.1 et seq.

**§ 1–103. Law applicable**

**A. Constitution and laws of the Nation.** In all cases, the Muscogee (Creek) Nation Courts shall apply the Constitution and duly enacted laws of the Muscogee (Creek) Nation, the common law of the Muscogee people as established by customs and usage, and the Treaties and Agreements between the Muscogee (Creek) Nation and the United States.

**B. Federal law.** The Muscogee (Creek) Nation Courts shall apply the Federal Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. No other statutes and laws of the United States shall be applied by the Muscogee (Creek) Nation courts unless: (1) expressly made applicable by law of the Muscogee (Creek) Nation enacted by the National Council or (2) expressly made applicable by an agreement to which the Muscogee (Creek) Nation is a party and which has been approved by the National Council, or (3) expressly required to be applied by the Muscogee (Creek) Nation courts in specific circumstances by compact made between the Muscogee (Creek) Nation and the United States pursuant to the Indian Self-Determination and Education Assistance Act of 1978, as amended, with the approval of the National Council or (4) expressly made applicable to Indian Tribes by duly enacted federal statute

**C. Applicability of Oklahoma Law in limited circumstances.**

1. Applicability of state statutes prohibited; exceptions. The Muscogee (Creek) Nation Courts are not authorized to apply any statutes of the State of Oklahoma unless (1) expressly made applicable by law of the Muscogee (Creek) Nation duly enacted by the National Council or (2) expressly made applicable by an agreement to which the Muscogee (Creek) Nation is a party and which has been duly approved by the National Council; provided, that no law or contract that authorizes applicability of state laws shall be construed as a waiver of the Muscogee (Creek) Nation’s sovereign immunity, absent an express waiver of sovereign immunity by National Council law or Tribal Resolution.

2. Divorce proceedings.

a. Applicability. The Muscogee (Creek) Nation Courts are hereby authorized to apply the statutes of the State of Oklahoma pertaining to divorces and codified in 43 O.S. § 101 et seq. in divorce proceedings subject to the jurisdiction of the Muscogee (Creek) Nation and filed in Muscogee (Creek) Nation District Court, subject to the requirements set forth in subparagraph b of this paragraph.

b. Requirements. For purposes of the application of statutes of the State of Oklahoma authorized in subparagraph a of this paragraph, all references to Oklahoma State Court shall be treated as references to the Muscogee (Creek) Nation Courts. Nothing in this subsection C shall be construed to require the involvement of any state agency in divorce and protective order proceedings in the Muscogee (Creek) Nation Courts. The District Court shall exercise discretion in the interpretation and application of the laws referenced in subparagraph a of this paragraph to ensure a practical, reasonable and fair interpretation and application of such laws to Muscogee (Creek) Nation divorce proceedings and protective order proceedings. In the event of any inconsistency between any law of the Muscogee (Creek) Nation and the state laws referenced in subparagraph a of this paragraph, the laws of the Muscogee (Creek) Nation shall be controlling.

3. Housing proceedings.

a. Applicability. The Muscogee (Creek) Nation Courts are hereby authorized to apply the statutes of the State of Oklahoma involving contracts, as codified in 15 O.S. § 101 et seq., excluding 15 O.S. Chapter 21 in its entirety.

b. Requirements. For the purposes of the application of statutes of the State of Oklahoma authorized in subsection a of this section, all references to the Oklahoma State Court shall be treated as references to the Muscogee (Creek) Nation Courts. In the event of any inconsistency between any law of the Muscogee (Creek) Nation and the state laws referenced in this section, the laws of the Muscogee (Creek) Nation shall be controlling.

[NCA 82–30, § 102, approved Sept. 13, 1982; amended by NCA 01–109, § 3, approved July 6, 2001; NCA 01–157, § 3, eff. Oct. 7, 2001; NCA 05–029, § 2, eff. March 8, 2005.]

**Cross References**

Muscogee (Creek) Nation Office of Child Support Enforcement, jurisdiction of court, see Title 6, § 6–108.

**Library References**

Indians ⇄124, 131, 211, 213, 214, 401.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 5, 42 to 44, 57, 59 to 61, 63,  
65 to 72, 150 to 179, 182.

**§ 1–104. Counselors in matters of Tribal common law**

Where any doubt arises as to the common law of the Muscogee people as established by custom and usage, the Court may request the advice of counselors familiar with these customs and usages.

[NCA 82–30, § 103, approved Sept. 13, 1982.]

**§ 1–105. Rules of Court**

Rules of Court prepared by the District Judge and approved by the National Council may be promulgated to govern the procedures and appearances by parties and attorneys before the Court.

[NCA 82–30, § 210, added by NCA 01–109, § 13, approved July 6, 2001.]

## **Title 27, § 1–105**

## **JUDICIAL PROCEDURES**

### **Historical and Statutory Notes**

#### **Derivation**

NCA 82–30, § 501; repealed by NCA 01–109,  
§ 25.

#### **Library References**

Indians ⇐401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 1–106. Rules of Appellate Procedure**

Rules of Appellate Procedure shall be codified as an Appendix to the Judicial Code. Litigants are required to check with the Supreme Court Clerk for the latest edition of the rules.

[NCA 82–30, § 104, added by NCA 01–88, § 3, eff. June 1, 2001.]

#### **Library References**

Indians ⇐401, 540, 628.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.



## CHAPTER 2. TRIBAL COURT PROCEEDINGS

### Section

- 2-101. Initiation of proceeding.
- 2-102. Period of limitation prescribed.
- 2-103. Docket.
- 2-104. Appearance docket.
- 2-105 to 2-107. Repealed.
- 2-108. Evidence Code.
- 2-109. Trials.
- 2-110. Trial of issues.
- 2-111. Formation of trial jury.
- 2-112. Verdict.
- 2-113. Discharge of jury.
- 2-114, 2-115. Repealed.
- 2-116. Rendering judgment.
- 2-117. Content of judgment.
- 2-118. Costs in civil actions.
- 2-119. New trial.
- 2-120. Appeal.
- 2-121 to 2-128. Repealed.
- 2-129. District Court Clerk may collect judgment and costs.
- 2-130. Executions in civil cases.
- 2-131. Kinds of executions.
- 2-132. Exemptions from judgment and execution.
- 2-133. Writs of execution.
- 2-134. Records.

### § 2-101. Initiation of proceeding

A. All civil District Court proceedings must be commenced by a petition or complaint.

B. The petition must be in writing and give the names of the plaintiff and defendant.

C. The petition must cite in customary form any applicable Muscogee (Creek) Nation law, rule, or regulation and include a brief summary of relevant facts.

D. Criminal proceedings shall be commenced pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws.

[NCA 82-30, § 111, approved Sept. 13, 1982; amended by NCA 01-109, § 4, approved July 6, 2001.]

### Cross References

Child welfare proceedings, petition, see Title 6, § 1-707 et seq.

### Library References

Indians ⇄511, 603.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-102. Period of limitation prescribed**

The period prescribed for commencement of civil actions, other than for the recovery of real property, shall be within two (2) years from the date when plaintiff could first have filed suit in the Tribal Court.

[NCA 82-30, § 304, approved Sept. 13, 1982.]

**Library References**

Indians ⇄508.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-103. Docket**

The Clerk of the District Court shall keep an appearance docket, a trial docket, and such other records as may be ordered by the Court or required by law.

[NCA 82-30, § 112, approved Sept. 13, 1982; amended by NCA 01-109, § 5, approved July 6, 2001.]

**§ 2-104. Appearance docket**

A. On the appearance docket the District Court Clerk shall enter all actions in the order in which they are brought, the date of the summons, the time of the return thereof by the officer, and the return thereon, the time of filing the petition, and all subsequent pleadings and papers, and an abstract of all judgments and orders of the Court.

B. An abstract shall contain a very brief description of the order or judgment rendered. It must not be encumbered with a detailed recital of the terms.

C. Proceedings other than those which culminated in an order or judgment shall not be abstracted into the appearance docket.

D. The District Court Clerk shall cause to be transcribed onto the appearance docket all minute entries made and all the electronically recorded abstracts.

[NCA 82-30, § 113, approved Sept. 13, 1982; amended by NCA 01-109, § 6, approved July 6, 2001.]

**§§ 2-105 to 2-107. Repealed by NCA 01-109, § 25, approved July 6, 2001**

**Historical and Statutory Notes**

Title 27, § 2-105, entitled “judgment docket”, was added by NCA 82-30, § 114.

Title 27, § 2-107, entitled “entry on return of summons”, was added by NCA 82-30, § 117.

Title 27, § 2-106, entitled “execution docket”, was added by NCA 82-30, § 115.

**§ 2-108. Evidence Code**

In the absence of any express Muscogee (Creek) Nation law governing evidence in any specific type of proceeding, including without limitation the admission of evidence and the competence and privileges of witnesses, the Muscogee (Creek) Nation District Court shall apply the Federal Rules of

Evidence prescribed by 28 U.S.C. § 2072, except to the extent that such laws reference or make state laws applicable or reference or govern administrative appeals procedures relating to decisions by federal entities or officials; provided that for purposes of such application, references to the United States shall be treated as references to the Muscogee (Creek) Nation; and provided further, that the District Court shall exercise discretion in the interpretation of any such Federal Rules of Evidence to ensure a reasonable and fair application of such rules to Muscogee (Creek) Nation judicial procedures.

[NCA 01–109, § 14–101, approved July 6, 2001.]

**Historical and Statutory Notes**

**Derivation**

NCA 82–30, § 502; repealed by NCA 01–109, § 25.

**Library References**

Indians ☞520, 610.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2–109. Trials**

A. The trial of cases shall be conducted by the District Court or by such Associate Judge as the District Judge shall designate.

B. The time and place for the trial of cases shall be designated by the District Court Judge.

[NCA 82–30, § 210, added by NCA 01–109, § 13, approved July 6, 2001.]

**Historical and Statutory Notes**

**Derivation**

NCA 82–30, § 501; repealed by NCA 01–109, § 25.

**Library References**

Indians ☞518, 607.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2–110. Trial of issues**

A. Issues of law must be tried by the Court, unless referred to a referee or a constitutional question is referred to the Supreme Court.

B. Issues of fact arising in actions for the recovery of money or specific real or personal property, or other civil actions, shall be tried by jury, unless a jury trial is waived, or a reference be ordered, as hereinafter provided.

C. All other issues of fact shall be tried by the Court, subject to its power to order any issue or issues to be tried by a jury, or a reference be ordered, as hereinafter provided.

[NCA 82–30, §§ 118, 119, approved Sept. 13, 1982; amended by NCA 01–109, § 8, approved July 6, 2001.]

**Cross References**

Criminal offenses, trial by jury or by Court, see Title 14, § 1-104.  
Hearings, cases involving children, see Title 6, § 1-402.  
Jury trials, cases involving children, see Title 6, § 1-403.

**Library References**

Indians ⇄521, 614.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-111. Formation of trial jury**

A. A jury of the trial shall consist of six (6) persons, but the parties may agree to a number less than six (6).

B. All registered voters of the Muscogee (Creek) Nation, residing within the original 1867 territorial boundaries of the Muscogee (Creek) Nation, of sound mind and discretion, of good moral character, not judges, sheriffs or deputies, physicians, attorneys, ministers, jailers or law enforcement officers, shall be compelled to serve as jurors. Provided, however, persons over seventy (70) years of age and persons having custody of minor children may be excused.

C. Habitual drunkards, persons convicted of any felony, or persons who have served in any penitentiary shall not be eligible to serve as jurors.

D. Prospective trial jurors may be summoned by notifying each orally or by mail as to the time and place at which his attendance is required.

E. The District Court Judge shall question all jurors summoned for trial to determine if all are qualified to be empaneled to try the issue or issues before the Court. Attorneys and/or pro se litigants shall examine all jurors selected to try the issue or issues before the Court and may challenge any juror for cause. The dismissal of a juror for cause shall be made by the District Court Judge.

F. Each side shall be entitled to three (3) peremptory challenges.

G. For jury dockets the District Court shall summon a jury panel of not less than twenty-four (24) eligible jurors, to be paid twenty dollars (\$20.00) per day from the Court fund until they shall be dismissed.

[NCA 82-30, § 120, approved Sept. 13, 1982; amended by NCA 88-68, § 101, approved Oct. 18, 1988; NCA 92-201, § 103, approved Feb. 2, 1993; NCA 08-100, § 2, approved July 8, 2008; NCA 08-157, § 2, approved Oct. 2, 2008.]

**Cross References**

Cases involving children, jury trials, see Title 6, § 1-403.  
Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.  
Selection of jurors, see Title 27, App. 1, Rule 13.

**Library References**

Indians ⇄650 to 652.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-112. Verdict**

The verdict shall be returned by the jury in writing to the Judge in open Court and it shall be entered in the minutes.

[NCA 82-30, § 121, approved Sept. 13, 1982.]

**Library References**

Indians ↻523, 616.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-113. Discharge of jury**

The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the Court sooner discharges them.

[NCA 82-30, § 122, approved Sept. 13, 1982.]

**§§ 2-114, 2-115. Repealed by NCA 01-109, § 25, approved July 6, 2001**

**Historical and Statutory Notes**

Title 27, § 2-114, entitled “sentence and judgment”, was added by NCA 82-30, § 123. See, now, Title 14, § 1-601.

Title 27, § 2-115, entitled “criminal executions”, was added by NCA 82-30, § 126. See, now, Title 14, § 1-603.

**§ 2-116. Rendering judgment**

**A. Civil cases.** The judgment shall be rendered in open court.

**B. Criminal cases.** The judgment shall be rendered as provided in the Muscogee (Creek) Nation Criminal Procedures Code contained in Title 14 of the Code of Laws of the Muscogee (Creek) Nation.

[NCA 82-30, § 130, approved Sept. 13, 1982; amended by NCA 01-109, § 12, approved July 6, 2001.]

**Library References**

Indians ↻526, 619.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-117. Content of judgment**

**A.** In all civil cases the judgment shall consist of an order of the Court awarding money damages to be paid to a party, and/or directing the surrender of certain property to a party and/or the performance of some other act for the benefit of a party.

**B.** Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

[NCA 82-30, § 301, approved Sept. 13, 1982.]

**Library References**

Indians ↻526, 619.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-118. Costs in civil actions**

The Court may assess the costs of a civil action against the party or parties against whom judgment is given. Such costs shall consist of the expense of

voluntary witnesses for which either party may be responsible and the fees of the jurors in those cases where a jury trial is had; and such further incidental expense connected with the proceedings before the Court as the Court may direct.

[NCA 82-30, § 302, approved Sept. 13, 1982.]

**Library References**

Indians ☞660 to 662.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-119. New trial**

**A. Definitions and effect.** A new trial is a re-examination of the issue in the same Court, before another jury, after a verdict or finding has been rendered and the granting of a new trial places the parties on the same position as if there had been no trial.

**B. Motion for new trial.**

1. Motions for new trial in criminal proceedings shall be governed by the Muscogee (Creek) Nation Criminal Procedure Code codified in Title 14 of the Code of Laws of the Muscogee (Creek) Nation.

2. Following a civil verdict, either party may move for a new trial in writing within thirty (30) days following a verdict. Reasonable notice of the motion shall be served upon the other party or parties to that case. The motion for a new trial shall specify the grounds therefore.

**C. Alternative authority of Court on hearing motion for new trial.**

On hearing the motion for a new trial, if justified by law and the weight of the evidence, the Court may:

1. Deny the motion;
2. Grant a new trial; or
3. Modify or change the verdict.

[NCA 82-30, § 128, approved Sept. 13, 1982; amended by NCA 01-109, § 11, approved July 6, 2001.]

**Library References**

Indians ☞525, 618.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-120. Appeal**

A. All issues of law on appeal from the District Court shall be tried anew in the Supreme Court. The parties may appeal to the Supreme Court by giving written notice to the District Court Clerk of their intention to appeal within fifteen (15) days after judgment. Within forty-five (45) days the entire record of the District Court proceedings shall be transferred to the Supreme Court or the appeal shall be dismissed. It shall be the duty of the parties to perfect the appeal.

B. What the Court may review on an appeal from a judgment. Upon appeal from a judgment, the Supreme Court may review the verdict or decision, or any intermediate order or decision which involves the merits, or necessarily affects the judgment.

[NCA 82–30, §? 127, 271, approved Sept. 13, 1982; amended by NCA 01–88, § 1, eff. June 1, 2001; NCA 01–109, § 10, approved July 6, 2001; amended by NCA 02–214, § 1, approved Dec. 27, 2002.]

#### Cross References

Appellate procedure, see Title 27, § 3–101 et seq.  
Criminal procedure, appeal, see Title 14, § 1–701 et seq.  
Paternity determination, proceedings, appeal, see Title 6, § 7–312.

#### Library References

Indians ⇄540, 628.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### §§ 2–121 to 2–128. Repealed by NCA 01–109, § 25, approved July 6, 2001

#### Historical and Statutory Notes

Title 27, § 2–121, entitled “arrest of judgment”, was added by NCA 82–30, § 129. See, now, Title 14, § 1–610.

Title 27, § 2–122, entitled “presentence investigations”, was added by NCA 82–30, § 131. See, now, Title 14, § 1–602.

Title 27, § 2–123, entitled “sentence”, was added by NCA 82–30, § 132. See, now, Title 14, § 1–604.

Title 27, § 2–124, entitled “withdrawal of plea on deferred imposition of sentence”, was added by NCA 82–30, § 133. See, now, Title 14, § 1–606.

Title 27, § 2–125, entitled “statement on sentence”, was added by NCA 82–30, § 134. See, now, Title 14, § 1–604.

Title 27, § 2–126, entitled “entry of judgment and judgment roll”, was added by NCA 82–30, § 135. See, now, Title 14, §§ 1–601, 1–607.

Title 27, § 2–127, entitled “credit for time served”, was added by NCA 82–30, § 137.

Title 27, § 2–128, entitled “jail work release program”, was added by NCA 82–30, § 138. See, now, Title 14, § 1–608.

### § 2–129. District Court Clerk may collect judgment and costs

No judicial order, judgment or decree shall direct the payment of attorney fees, child support, alimony, temporary support or any similar type payment through the office of the District Court Clerk, except in the case of necessity duly shown by evidence presented to the court. All such payments when ordered to be paid through the office of the District Court Clerk, shall be made only by money order, government check, or cashier’s check payable to the payee to receive such payment. The District Court Clerk shall make an entry of such payment on the appearance docket, then transmit the money order, government check or cashier’s check to the payee.

[NCA 82–30, § 116, approved Sept. 13, 1982; amended by NCA 01–109, § 7, approved July 6, 2001.]

#### Library References

Indians ⇄137, 533, 660 to 662.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-130. Executions in civil cases**

Executions on judgments shall be deemed process of the Court, and shall be issued by the District Court Clerk, and directed to the Chief of the Lighthouse Police. They may be directed to different districts at the same time.

[NCA 82-30, § 124, approved Sept. 13, 1982; amended by NCA 01-109, § 9, approved July 6, 2001.]

**Library References**

Indians ☞539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2-131. Kinds of executions**

Executions are hereby limited to:

- A. Against the property of the judgment debtor.
- B. For the delivery of possession of real or personal property, with damages for withholding the same and costs.
- C. Executions in special cases.
- D. Criminal executions.

[NCA 82-30, § 125, approved Sept. 13, 1982.]

**§ 2-132. Exemptions from judgment and execution**

The following property shall be reserved to every person, exempt from attachment or execution and every other species of forced sale for the payment of debts except as herein provided:

- A. The home of such person or head of family. The homestead of the family shall consist of the home of the family and not more than five (5) acres of land whether the title to the same be lodged in or owned by the husband or wife.
- B. All household and kitchen furniture.
- C. Any lot or lots in a cemetery held for the purpose of sepulcher.
- D. All implements of husbandry used upon the homestead.
- E. All tools, apparatus and books belonging to and used in any trade or profession.
- F. The family library and all family portraits and pictures, wearing apparel, and articles of antiquity of the Muscogee (Creek) Indian culture.
- G. Twenty (20) milk or beef cows and their calves under six (6) months old.
- H. One hundred (100) chickens.
- I. Two (2) horses, two (2) bridles and two (2) saddles.
- J. One (1) motor vehicle having an equity value not to exceed ten thousand dollars (\$10,000).
- K. One (1) gun.
- L. Ten (10) hogs.
- M. Twenty (20) head of sheep.



N. All provisions and forage on hand, or growing for home consumption and for the use of exempt stock for one (1) year.

O. Seventy-five percent (75%) of all current wages or earnings for personal or professional services earned during the last ninety (90) days.

P. The restricted property of any enrolled Muscogee (Creek) Indian.

[NCA 82–30, § 304, approved Sept. 13, 1982.]

**Cross References**

Repossession of personal property, claim of exemption, see Title 27, § 4–107.

**Library References**

Indians ⇄539.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**§ 2–133. Writs of execution**

A. When a judgment has not been paid or otherwise satisfied, the judgment creditor is entitled after entry of judgment and within ten (10) years thereafter, excluding any period during which execution is stayed or enjoined, to a writ of execution given to the Tribal police, the authority to satisfy the judgment out the personal or real property of the judgment debtor. A new writ of execution may be issued only when all prior writs of execution have been returned and filed.

B. If the judgment or other order prescribes the payment of the judgment in installment, a writ of execution may issue only upon the filing of a declaration by the judgment creditor showing the judgment debtor is in default on the installment payments, noting any part of the judgment that has been satisfied up to the time of default.

C. The judgment creditor may claim interest accruing after entry of judgment by filing with the clerk, at the time of his request for issuance of the writ of execution, a declaration or affidavit specifying the amount of such interest. In no event may the amount of interest claimed exceed ten per cent (10%) per year.

D. Upon request for issuance of the writ of execution, the clerk shall:

1. Make certain there are no outstanding writs of execution on the judgment.

2. Prepare the writ of the execution in an original and as many copies as are required by the Tribal police, attaching to said writ any judgment debtor’s claim of exemptions as approved by the Court, if any, and a list of property of the judgment debtor, not exempt, which the judgment creditor has prepared and which he believes can be levied upon.

3. Instruct the judgment creditor to give the writ, with the attached papers as stated in paragraph 2 of this subsection to the Tribal Chief of Police for action.

E. After action has been taken upon the writ of execution, the Manager of the Lighthorse Administration shall return the writ to the Clerk of Court, noting

## **Title 27, § 2–133**

## **JUDICIAL PROCEDURES**

upon the writ whether it has been wholly unsatisfied, partially satisfied or wholly satisfied and noting the amount, if any, obtained in such satisfaction.

[NCA 82–30, §§ 305, 306, approved Sept. 13, 1982.]

### **Library References**

Indians ↻539.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

## **§ 2–134. Records**

The Court shall be required to keep a record of all proceedings of the Court, which record shall reflect the case styles and case numbers of the cases, the names of the parties, all pleadings filed in the case, the names and addresses of all witness, the date of the hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment, together with any facts or circumstances deemed of importance to the case.

[NCA 82–30, § 212, added by NCA 01–109, § 13, approved July 6, 2001.]

### **Historical and Statutory Notes**

#### **Derivation**

NCA 82–30, § 506; repealed by NCA 01–109, § 25.

## CHAPTER 3. APPELLATE PROCEDURE

### Section

- 3-101. Appellate court.
- 3-102. Jurisdiction.
- 3-103. Number of Justices hearing appeal.
- 3-104. Duties of Chief Justice.
- 3-105. Clerk of the Supreme Court.
- 3-106. Jury trial.
- 3-107. Bond for payment of witnesses.
- 3-108. Rules of Appellate Procedure.
- 3-109. Cases involving constitutional questions where the Nation is not a party.

### Cross References

Criminal procedure, appeal, see Title 14, § 1-701 et seq.  
Juvenile proceedings, appeals, see Title 6, § 1-408.  
Tribal Court, proceedings, appeal, see Title 27, § 2-120.

### § 3-101. Appellate court

The only court of appeal of the Muscogee (Creek) Nation shall be the Supreme Court. The Supreme Court is the appeals court for this Nation and shall not adjudicate a controversy on its own motion, but only when a case is presented to it in a proper pleading by adverse parties or a party requesting a declaratory judgment. The Supreme Court shall issue opinions and/or orders only in cases properly filed and at issue before the court. A judgment or decision of the Supreme Court requires the approval of a minimum of four (4) justices. The administrative officer for the Supreme Court is the Chief Justice. Associate justices shall have no administrative authority and shall function only as appellate justices.

[NCA 82-30, § 201, approved Sept. 13, 1982; amended by NCA 99-85, § 103, approved July 1, 1999.]

### Library References

Indians ⇄401, 540, 628.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3-102. Jurisdiction

The Supreme Court shall hear the appeal of all cases, civil and criminal including juvenile cases, appealed from the Tribal Courts, and shall have original jurisdiction to hear writs of habeas corpus.

[NCA 82-30, § 202, approved Sept. 13, 1982.]

### Library References

Indians ⇄542, 630.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3-103. Number of justices hearing appeal

There must be at least four (4) justices sitting together as a body to hear any case appealed, including writs of habeas corpus.

[NCA 82-30, § 202, approved Sept. 13, 1982.]

**§ 3-104. Duties of Chief Justice**

The Chief Justice shall attend to the administration of the Supreme Court and select members of the Court to set each and every appealed case.

[NCA 82-30, § 202, approved Sept. 13, 1982.]

**§ 3-105. Clerk of the Supreme Court**

The justices of the Supreme Court shall appoint a clerk to act as the Clerk of the Supreme Court to perform all functional and administrative management duties required by law or directed by the Chief Justice.

[NCA 82-30, § 203, approved Sept. 13, 1982.]

**§ 3-106. Jury trial**

In any case in the Supreme Court wherein said Court is exercising its original jurisdiction in which an issue of fact is triable or findable by a jury where either party to said cause demands a jury trial, or in cases of indirect contempt where the accused demands a jury trial, said Court shall grant a trial by a jury.

[NCA 82-30, § 204, approved Sept. 13, 1982.]

**Library References**

Indians ↻651.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-107. Bond for payment of witnesses**

Any person, or persons, instituting a jury trial before the Supreme Court of this Nation shall file a bond with sufficient security satisfactory to the Chief Justice, for the payment of such witnesses as he or she shall summon, and the defendant shall be required to file a bond of the same nature for the payment of such witnesses as he or she shall cause to be summoned.

[NCA 82-30, § 205, approved Sept. 13, 1982.]

**§ 3-108. Rules of Appellate Procedure**

The Supreme Court shall establish procedures for all cases and other matters before the Supreme Court. Such rules shall be transmitted, before their effective date, to the National Council, the District Court, and members of the Muscogee (Creek) Nation bar. Copies of the rules shall be made available to the public for a reasonable fee. Rules may be amended or rescinded by the Supreme Court at any time except that rules in effect at the time of filing of a matter in the original hearing body shall govern that matter until final resolution by the Supreme Court.

[NCA 82-30, § 206, added by NCA 01-88, § 3, eff. June 1, 2001.]

**Cross References**

Appellate procedures, see Const. Art. VII, § 3.  
Rules of Appellate Procedure, see Title 27, App. 2.

**Library References**

Indians ↻401, 540, 628.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3–109. Cases involving constitutional questions where the Nation is not a party**

It shall be the duty of a party or counsel who challenges the constitutionality of any act of the Muscogee (Creek) Nation in any suit or proceeding, civil or criminal, in the Supreme Court to which the Muscogee (Creek) Nation, or any agency, authority, officer or employee thereof is not a party, to give immediate notice in writing to the Court of such a question, specifying the section of the Code or the Law and the article and section of the Constitution allegedly in conflict. The clerk shall certify such to be a fact to the National Council of the Muscogee (Creek) Nation who may enter the case as an amicus curiae upon leave of the Court.

[NCA 82–30, § 209, approved Sept. 13, 1982.]

**Library References**

Indians ↻214.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

## **CHAPTER 4. REPOSSESSION OF PERSONAL PROPERTY**

### **Section**

- 4-101. Commencement of action.
- 4-102. Service of process.
- 4-103. Request for jury trial.
- 4-104. Judgment.
- 4-105. Assignments.
- 4-106. Supplementary proceedings.
- 4-107. Claim of exemption.
- 4-108. Pre-judgment attachment, garnishment and repossession.
- 4-109. Repossession order.
- 4-110. Appeal.

### **§ 4-101. Commencement of action**

Any creditor desiring to repossess any personal property as described above, from a person within the jurisdiction of the Muscogee (Creek) Nation, unless such repossession is with the written consent of the resident-debtor, must file a complaint in the District Court. The creditor may elect to either file a complaint asking for repossession of the property in question or may file a complaint asking for money damages due on such property, but he may not use both remedies for the same property.

[NCA 82-30, § 401, approved Sept. 13, 1982.]

### **§ 4-102. Service of process**

The complaint as described in Title 27, § 4-101, together with a summons issued by the Clerk of the District Court, shall be served upon the defendant, EXCEPT that the time for answering by the defendant may be shortened to not less than ten (10) days if the complaint demands repossession of property.

[NCA 82-30, § 402, approved Sept. 13, 1982.]

#### **Library References**

Indians ⇄510.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 4-103. Request for jury trial**

A plaintiff-creditor and the defendant-debtor in any repossession action shall have the right to a jury trial upon request provided such request is made at least ten (10) days prior to the trial date.

[NCA 82-30, § 403, approved Sept. 13, 1982.]

#### **Library References**

Indians ⇄650.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 4-104. Judgment**

**A. After hearing on merits.** Upon the joining of an issue or issues and the subsequent trial or hearing of the case on the merits of all the pleadings, the judge or the jury shall render judgment in favor of either the plaintiff or the defendant. If judgment is rendered in favor of the plaintiff it must state specifically whether it is for money damages or for return of the personal property in question to the plaintiff.

**B. On default of defendant.** If the defendant has been properly served with the summons and complaint and fails to appear and answer the plaintiff's complaint on file within the time prescribe by law without notifying the Court to order the defendant in default:

1. If it appears to the satisfaction of the Court that the defendant has failed to appear without excuse within the prescribed time period set out in the summons, the Court will enter the default of the defendant and give judgment to the plaintiff, either in money damages or ordering return of the property in question to the plaintiff.

2. The Court, in its discretion, may modify the prayer of the plaintiff in the judgment order if it appears to the Court that return of the property will unjustly enrich the plaintiff due to the amount of equity of the defendant in the property.

3. In any case, wherein the plaintiff has only asked for return of the property, the Court may give judgment for money damages in the alternative in the amount owed by the defendant to the plaintiff on the property.

[NCA 82-30, § 404, approved Sept. 13, 1982.]

**Library References**

Indians ⇄527, 529.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 4-105. Assignments**

Assignments are allowed in a proceeding for repossession of personal property or money damages as an alternative remedy. If an assignment is alleged in the complaint, the assignee must set out the amount of money paid to the original creditor for the assignment of the claim. The amount set out in the pleading must appear to be fair in light of the value of the claim so assigned and no future agreement between assignee and assignor for a percentage of any recovery on the claim will operate to validate an assignment. The assignment must be completed before the filing of the complaint by the assignee with the sum certain paid for such assignment so stated and verified by the assignee. If an assignment is alleged without the required information set out above, the defendant may move to have the complaint amended to show the real party in interest and ask to have assignee dismissed as the plaintiff.

[NCA 82-30, § 405, approved Sept. 13, 1982.]

**§ 4-106. Supplementary proceedings**

If the judgment is rendered in favor of the plaintiff, the plaintiff has all the rights and remedies available to him under the Rules of Civil Procedure of this

Title if he elects a money judgment, including the right to have a Writ of Execution issued out of the District Court against any property of the judgment debtor that is not exempt from execution.

[NCA 82–30, § 406, approved Sept. 13, 1982.]

**§ 4–107. Claim of exemption**

A. If the judgment rendered against the defendant in a repossession proceeding is for money damages, the defendant has the right to submit to the Court within ten (10) days after judgment, a Claim of Exemption, conforming to the Exemption Schedule set out in Title 27, § 2–132. The Clerk of the District Court shall cause the Claim so filed to be served upon the judgment creditor. The judgment creditor then has five (5) days after service upon him of the claim, to protest anything included in the judgment debtor's claim. If such protests is so filed in the District Court, the Clerk shall set a hearing and the Court will determine which of the judgment debtor's claim. If such protests is so filed in the District Court, the Clerk shall set a hearing and the Court will determine which of the judgment is debtor's property, if any, is exempt from execution. If the judgment creditor does not file a protest to the judgment debtor's Claim of Exemption, the Court shall allow such exemption, except that the Court in its discretion, may raise or lower certain amounts contained in such claims.

B. Thereafter, any Claim of Exemption so approved by the Court shall be entered in the record of the case and no property listed in such claim may be executed upon.

[NCA 82–30, § 407, approved Sept. 13, 1982.]

**Library References**

Indians ↻535, 539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 4–108. Pre-judgment attachment, garnishment and repossession**

There shall be no pre-judgment attachment, garnishment or repossession in the District Court upon a claim filed under this chapter, with the exception that if the plaintiff-creditor can show to the Court that certain property which is the subject matter of the complaint, is in imminent danger of leaving the jurisdiction or being destroyed, the Court may order such property picked up and held in a neutral place under the care and custody of the Manager of the Lighthouse Administration until such time as the issue concerning such property is settled. In order to show such danger to the property, the plaintiff-creditor must submit a written affidavit to the Court stating the facts as he believes them. The Court may then order the defendant to come into court to show cause why the property should not be picked up immediately. Any time after such immediate repossession occurs without giving the defendant benefit of a hearing, the defendant may request a hearing on the matter of this emergency repossession and the Court must allow the defendant to appear with notice to the plaintiff of such hearing. If the defendant demonstrates to the satisfaction of the Court that the property is in no danger, the Court may order the Manager of the



Lighthouse Administration to release the property back into the possession of the defendant with attendant orders to the defendant that in the event the property is either destroyed or leaves the jurisdiction of the Court, that the defendant will be held on criminal contempt charges.

[NCA 82-30, § 408, approved Sept. 13, 1982.]

#### **Library References**

Indians ☞539.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **§ 4-109. Repossession order**

A. Upon judgment in favor of the plaintiff ordering that the property in dispute be returned to the possession of the plaintiff, the Court shall prepare a judgment order stating that such property is to be returned to the possession of the plaintiff and cause such an order to be served upon the defendant.

B. The defendant has ten (10) days in which to comply with such order.

1. If the defendant has not returned the property to the judgment creditor within the time allowed, without filing an appeal, the Court shall order the Manager of the Lighthouse Administration to pick up said property and hold it for the judgment debtor.

2. If the judgment debtor appeals the decision of the District Court within this ten (10) day period, the judgment of the District Court shall be stayed pending such appeal.

[NCA 82-30, § 409, approved Sept. 13, 1982.]

### **§ 4-110. Appeal**

A. Both the plaintiff and the defendant have the right to appeal the decision of the District Court to the Muscogee (Creek) Nation Supreme Court within ten (10) days after judgment is rendered by said Court, unless the judgment is by default, in which case the defendant has no right of appeal.

B. If judgment is rendered against the defendant, he must deposit with the clerk of the Tribal Court an amount of money equal to the money judgment against him or in the case of a repossession order, an amount of money equal to the present value of the personal property that is the subject of the judgment.

C. In the alternative, a defendant appellant may procure the signature of a surety or sureties on an undertaking on appeal. The surety or sureties must file an affidavit with the court stating that he is worth, over and above all his debts and liabilities and exemptions an amount equal to the money judgment plus costs on appeal, or to the present value of the property in question, that he is a resident of the Muscogee (Creek) Nation, that in the event the judgment is affirmed or the appeal is dismissed and the judgment debtor fails to pay the judgment within twenty (20) days, either the money judgment or the present value of the property in question, after such dismissal or affirmance, the surety will pay the judgment together with any costs, disbursements interest and/or attorney's fees as the case may be.

D. In the event an appeal is dismissed, or the judgment is affirmed and the judgment debtor does not pay the judgment within the time period set out above, the judgment creditor may proceed against the surety or sureties for collection of the judgment.

E. In the event of a cash deposit, if the appeal is dismissed or the judgment affirmed, the judgment creditor may apply to the District Court for payment of deposit made by the judgment debtor to satisfy the judgment. If the judgment creditor would prefer the personal property returned to him, he may move the Court for such an order.

F. Upon appeal, if the judgment is for return of the personal property to the judgment creditor, the Court shall order the judgment debtor to hold such property in abeyance and neither remove from the jurisdiction or destroy such property pending the outcome of the appeal.

G. If an appeal is not heard within six (6) months from the time of the application for appeal, the judgment creditor may move the court for an order vacating the appeal.

H. Upon the granting of such order, the judgment creditor may then proceed to satisfy the District Court judgment.

[NCA 82–30, § 410, approved Sept. 13, 1982.]

**Library References**

Indians ⇄ 543, 545, 548.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**CHAPTER 5. COURT PROCEDURE [REPEALED]**

**§§ 5–101 to 5–113. Repealed by NCA 01–109, § 25, approved July 6, 2001**

**Historical and Statutory Notes**

Title 27, § 5–101, relating to trials, was added by NCA 82–30, § 501. See, now, Title 27, § 2–109.

Title 27, § 5–102, entitled “evidence”, was added by NCA 82–30, § 502. See, now, Title 27, § 2–108.

Title 27, § 5–103, entitled “juries”, was added by NCA 82–30, § 503.

Title 27, § 5–104, entitled “witnesses”, was added by NCA 82–30, § 504.

Title 27, § 5–105, entitled “clerks”, was added by NCA 82–30, § 505, as amended by NCA 99–85, § 103, approved July 1, 1999. See, now, Title 26, §§ 3–103 and 26–5–204.

Title 27, § 5–106, entitled “records”, was added by NCA 82–30, § 506. See, now, Title 27, § 2–134.

Title 27, § 5–107, entitled “complaints to be sworn”, was added by NCA 82–30, § 507.

Title 27, § 5–108, entitled “warrants to apprehend”, was added by NCA 82–30, § 508. See, now, Title 14, § 1–402.

Title 27, § 5–109, entitled “arrests”, was added by NCA 82–30, § 509. See, now, Title 14, § 1–307.

Title 27, § 5–110, entitled “search warrants”, was added by NCA 82–30, § 510. See, now, Title 14, § 1–306.

Title 27, § 5–111, entitled “commitments”, was added by NCA 82–30, § 511.

Title 27, § 5–112, entitled “bail or bond”, was added by NCA 82–30, § 512. See, now, Title 14, § 1–802.

Title 27, § 5–113, entitled “definition of signature”, was added by NCA 82–30, § 513.

**CHAPTER 6. JURISDICTION OVER  
NON-MEMBERS [REPEALED]**

**§ 6-101. Repealed by NCA 92-205, § 103, approved Dec. 16, 1992; NCA  
01-109, § 25, approved July 6, 2001**

**Historical and Statutory Notes**

The repealed section, relating to jurisdiction over persons who are not enrolled members of the Muscogee Nation, was added by NCA 82-30, § 601. See, now, Title 27, § 1-102.

## CHAPTER 7. FOREIGN JUDGMENTS

### Section

7-101. Recognition of foreign judgments.

### § 7-101. Recognition of foreign judgments

A. The Supreme Court of the Muscogee (Creek) Nation shall have the authority to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian Nation, band or political subdivision thereof, including the Courts of Indian Offenses, which act as Tribal Courts for certain Nations, and of any state, territory or other political subdivision of the United States of America.

B. In issuing any such standards, the Supreme Court of the Muscogee (Creek) Nation may extend such recognition in whole or in part to same type or types of judgments of other jurisdictions that said courts of other jurisdictions agree to grant reciprocity of judgments of the Courts of the Muscogee (Creek) Nation, and may negotiate with other jurisdictions the degree of reciprocity to be given and received.

[NCA 92-82, §§ 102, 103, approved June 3, 1992.]

### Library References

Indians ☞532.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## CHAPTER 8. SECURITY TO KEEP PEACE

### Section

- 8-101. Short title.
- 8-102. Information of threat.
- 8-103. Judge must issue warrant.
- 8-104. Proceedings when charge is controverted.
- 8-105. Discharge, when.
- 8-106. Bond required, when.
- 8-107. When bond is or is not given.
- 8-108. Discharge on giving bond.
- 8-109. Duration of undertaking determined by District Court.
- 8-110. Assault or threat in presence of District Court.
- 8-111. Breach of bond, what constitutes.
- 8-112. Prosecution on breach.
- 8-113. Allegation and proof.
- 8-114. Limitation.
- 8-115. Costs.

### Historical and Statutory Notes

NCA 94-84, §§ 101, 102, provide:

“Section 101. Findings: The National Council finds that:

“A. There are, on occasion, situations where a person threatens to commit an offense against the person or property of another.

“B. Persons, when so threatened are placed in fear for their safety.

“C. When a person who has threatened to commit an offense against the person or property of another is placed under a peace bond,

there is less likelihood the threatened offense will be committed and some measure of security is provided to the person(s) placed in fear.

“Section 102. Purpose:

“To provide a procedure and to authorize the district courts of the Nation to place a person under a bond to keep the peace and to charge the Attorney general’s Office with responsibility for filing information in the district court on behalf of persons threatened with an offense against their person or property.”

### § 8-101. Short title

This chapter shall be known as “The Security to Keep Peace Act.”

[NCA 94-84, § 200, approved Dec. 3, 1994.]

### Library References

Protection of Endangered Persons ⇨30, 31.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace §§ 18 to 19, 23, 28 to 38.

C.J.S. Domestic Abuse and Violence §§ 1, 3 to

4, 6, 41, 43 to 44.

### § 8-102. Information of threat

An information, verified by the oath of the complainant, may be laid before the District Court that a person has threatened to commit an offense against the person or property of the complainant.

[NCA 94-84, § 201, approved Dec. 3, 1994.]

### Library References

Protection of Endangered Persons ⇨40.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace §§ 18, 20, 32 to 35.

C.J.S. Domestic Abuse and Violence §§ 1, 5, 7

to 10, 15 to 16, 18.

**§ 8–103. Judge must issue warrant**

If it appears from the information that there is just reason to fear the commission of the offenses threatened, by the person complained of, the Judge must issue a warrant, directed generally to the Lighthouse Police, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the District Court.

[NCA 94–84, § 202, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons	↔34, 50.	C.J.S. Domestic Abuse and Violence	§§ 2, 4,
Westlaw Topic No.	315P.		11 to 14, 16 to 17, 19 to 34, 36 to 45.
C.J.S. Breach of the Peace	§§ 18, 24 to 28, 32		
	to 38.		

**§ 8–104. Proceedings when charge is controverted**

When the person complained of is brought before the District Court, if the charge be controverted, the District Court must take testimony in relation thereto. The evidence must, on demand of the defendant, be reduced to writing, and subscribed by the witnesses.

[NCA 94–84, § 203, approved Dec. 3, 1994.]

**Library References**

Indians	↔518.	C.J.S. Domestic Abuse and Violence	§§ 2, 4,
Protection of Endangered Persons	↔57, 58.		11 to 14, 16 to 17, 19 to 34, 36 to 45.
Westlaw Topic Nos.	209, 315P.	C.J.S. Indians	§§ 151 to 179.
C.J.S. Breach of the Peace	§§ 18, 24 to 28, 32		
	to 38.		

**§ 8–105. Discharge, when**

Unless it appears from the evidence that there is just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

[NCA 94–84, § 204, approved Dec. 3, 1994.]

**§ 8–106. Bond required, when**

If, however, there be just reason to fear the commission of the offense the person complained of may be required to post a bond in such sum, not exceeding one thousand dollars (\$1,000.00), as the District Court may direct, in the form of cash or with one or more sufficient sureties, to abide the order of the Court for the duration of the undertaking, and in the meantime to keep the peace toward the people of this Nation, and particularly toward the complainant.

[NCA 94–84, § 205, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons	↔35.	C.J.S. Domestic Abuse and Violence	§§ 11, 15
Westlaw Topic No.	315P.		to 16, 18.
C.J.S. Breach of the Peace	§§ 18, 22, 25 to		
	26, 30 to 31.		

**§ 8–107. When bond is or is not given**

If the undertaking required by Title 27, § 8–106 be given, the party complained of may be discharged. If he does not give it, the District Court must commit him to jail, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

[NCA 94–84, § 206, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons $\S$ 35. Westlaw Topic No. 315P.	C.J.S. Domestic Abuse and Violence $\S\S$ 11, 15 to 16, 18.
C.J.S. Breach of the Peace $\S\S$ 18, 22, 25 to 26, 30 to 31.	

**§ 8–108. Discharge on giving bond**

If the person complained of be committed for not giving security he may be discharged by the District Court, upon giving the same.

[NCA 94–84, § 207, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons $\S$ 35. Westlaw Topic No. 315P.	C.J.S. Domestic Abuse and Violence $\S\S$ 11, 15 to 16, 18.
C.J.S. Breach of the Peace $\S\S$ 18, 22, 25 to 26, 30 to 31.	

**§ 8–109. Duration of undertaking determined by District Court**

The undertaking must remain in effect for a time not to exceed one year as determined by the Court.

[NCA 94–84, § 208, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons $\S$ 79. Westlaw Topic No. 315P.	C.J.S. Domestic Abuse and Violence $\S\S$ 3 to 4, 7 to 11, 15 to 19, 21 to 22, 37 to 38.
C.J.S. Breach of the Peace $\S$ 18.	

**§ 8–110. Assault or threat in presence of District Court**

A person who, in the presence of a court, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the Court to give security, as provided in Title 27, § 8–106 or if he refuses to do so, he may be committed as provided in Title 27, § 8–107.

[NCA 94–84, § 209, approved Dec. 3, 1994.]

**§ 8–111. Breach of bond, what constitutes**

An undertaking to keep the peace is broken on the failure of a person complained of to appear at the District Court as provided in this chapter or upon his being convicted of a breach of the peace.

[NCA 94–84, § 210, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons ⇨35. C.J.S. Domestic Abuse and Violence §§ 11, 15  
Westlaw Topic No. 315P. to 16, 18.  
C.J.S. Breach of the Peace §§ 18, 22, 25 to  
26, 30 to 31.

**§ 8–112. Prosecution on breach**

Upon the Attorney General producing evidence of a conviction of a breach of the peace as provided in Title 27, § 8–111 to the District Court to which the undertaking is returned, that court must order the undertaking to be prosecuted, and the Attorney General must thereupon commence an action upon it in the name of the Nation.

[NCA 94–84, § 211, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons ⇨91 to C.J.S. Breach of the Peace §§ 18 to 19, 23, 28  
106. to 38.  
Westlaw Topic No. 315P.

**§ 8–113. Allegation and proof**

In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

[NCA 94–84, § 212, approved Dec. 3, 1994.]

**Library References**

Protection of Endangered Persons ⇨105. C.J.S. Breach of the Peace §§ 18 to 19, 23, 28  
Westlaw Topic No. 315P. to 38.

**§ 8–114. Limitation**

Security to keep the peace or to be of good behavior cannot be required, except as prescribed in this chapter.

[NCA 94–84, § 213, approved Dec. 3, 1994.]

**§ 8–115. Costs**

In all cases of security to keep the peace under this chapter, the Court in addition to the orders mentioned in said chapter shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.

[NCA 94–84, § 214, approved Dec. 3, 1994.]



# **APPENDIX 1. RULES AND PROCEDURES OF THE MUSCOGEE (CREEK) NATION TRIBAL COURTS**

## **Rule**

1. Rules of procedure; title.
2. Title and seal of Court.
3. Terms and location of Court.
4. Attorneys.
5. Costs and attorney fees.
6. Representation by attorneys.
7. Process.
8. Publication notice and filing times.
9. Filing of documents.
10. Time.
11. Request for jury.
12. Jurors.
13. Selection of jurors.
14. Filing fees.
- 15A. Vacancies in District Court and Supreme Court.
- 15B. Review, lending and copying of Court files.

## **Rule 1. Rules of procedure; title**

A. The rules of procedure in proceedings in Muscogee (Creek) Nation Courts shall be as prescribed by Tribal Title 27 and Title 14 of the Muscogee (Creek) Nation Code of Laws and such Court Rules not inconsistent therewith as are approved by the National Council.

B. The District Judge may promulgate and publish rules of decorum and dress for District Court hearings and trials.

C. These rules shall govern all proceedings brought into Tribal Courts after they take effect. They shall also apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice. These rules may be cited as Rules and Procedures of the Muscogee (Creek) Nation Tribal Courts.

D. The Trial Judge, in any civil or criminal case, may in his discretion waive the requirements of these rules when in his opinion the administration of justice requires such waiver.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 15, approved July 6, 2001.]

## **Library References**

Indians ↻401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **Rule 2. Title and seal of Court**

A. The Court adopts “In the District Court of the Muscogee (Creek) Nation, Okmulgee, District” and “In The Supreme Court of the Muscogee (Creek) Nation, Okmulgee, District” as the titles of the Tribal Court.

## **Title 27, App. 1, Rule 2**

## **JUDICIAL PROCEDURES**

B. The seal shall be of a circular design, with the word “SEAL” within the center, and “DISTRICT COURT MUSCOGEE CREEK NATION” in the outer edge. The seal for the Supreme Court shall be the same with the exception of the words, “SUPREME COURT OF THE MUSCOGEE CREEK NATION” in the outer edge.

[NCA 88–69, § 102, approved Oct. 18, 1988; amended by NCA 92–157, § 102, approved Nov. 25, 1992.]

### **Library References**

Indians ⇄401.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **Rule 3. Terms and location of court**

A. The Muscogee (Creek) Nation District Court shall be in session each week. Special Court hearings may be held on weekends or holidays in the event that a state of emergency arises; provided, that nothing herein shall be construed to prohibit the issuance of an ex parte order at times or on dates outside normal District Court office hours if necessary for the protection of persons in criminal or juvenile matters pursuant to other applicable law of the Nation. The District Court Room shall be in the Mound Building or other designated building, located at the Muscogee (Creek) Nation Complex in Okmulgee, Oklahoma. District Court may also be convened at any location within the Constitutional boundaries of the Muscogee (Creek) Nation.

B. All proceedings both civil and criminal shall be commenced at the District Court Clerk’s office at the Muscogee (Creek) Nation Complex, and shall be maintained there unless and until transferred.

C. All pleadings filed and exhibits introduced hereof, shall be on file in the office of the District Court Clerk. No such file shall be removed except upon order of the District Court and in that event, a receipt specifying the record or paper removed shall be given by the party obtaining it and recorded on the “File Check-out Log”. If there is a transcript included with the file which has been made, and the party removing the file wishes a copy, such party shall be responsible for securing the transcript copy at his or her own expense from the court reporter who prepared the transcript (see request for Court records). All juvenile files are confidential and a request must be made to the District Court Judge and the District Judge’s signed permission obtained before any file can be examined and copied; provided that the District Judge may issue a standing order authorizing the Attorney General, attorneys of record and designated Muscogee (Creek) Nation Children and Family Services caseworkers to examine and copy such files.

[NCA 88–69, § 102, approved Oct. 18, 1988; amended by NCA 01–109, § 16, approved July 6, 2001; NCA 02–214, § 2, approved Dec. 27, 2002.]

### **Cross References**

Place of sitting, District Court or Juvenile Division, cases involving children, see Title 6, § 1–109.

Library References

Indians ⇨401.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**Rule 4. Attorneys**

**A. Oath.** The Bar of the Muscogee (Creek) Nation shall consist of those attorneys admitted to practice before the Courts, who have taken the oath prescribed and have been sworn in by the Chief Justice of the Supreme Court, any Justice of the Supreme Court, or the District Judge of the District Court.

**B. Eligibility for admission.** Attorney admission fees and annual dues shall be deposited in an escrow account maintained by the District Court Clerk in accordance with Judicial Branch Accounting Policies & Procedure and may be used for expenses of the Bar of the Muscogee (Creek) Nation. All expenditures require original invoices and shall be authorized and approved by the Chief Justice of the Supreme Court before payment.

**C. List of attorneys.** The Courts of the Muscogee (Creek) Nation shall maintain a list of attorneys admitted to practice in the Muscogee (Creek) Nation Courts. The list shall be compiled from names of attorneys admitted, recognized, or licensed to practice law before the Courts of the Muscogee (Creek) Nation, and shall be provided to the public upon request at no charge.

**D. Licensed legal interns.** Any legal intern who after proper application has been duly licensed by the Muscogee (Creek) Nation Supreme Court, and who has taken an official oath of office, may practice before the Muscogee (Creek) Nation District Court, provided that said legal intern is supervised by a duly licensed attorney in good standing with the Muscogee (Creek) Nation Bar. All pleadings must be signed by both the supervising attorney and the legal intern.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 17, approved July 6, 2001; NCA 02-214, § 3, approved Dec. 27, 2002.]

Library References

Attorney and Client ⇨2.	C.J.S. Attorney and Client §§ 5, 9.
Indians ⇨401.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 45, 209.	

**Rule 5. Costs and attorney fees**

Upon the initiation of any civil action, suit or proceeding, the party initiating such action, except the Muscogee (Creek) Nation, shall pay to the Clerk a filing fee, except that in properly approved forma pauperis proceedings no filing fee will be required.

In appeals in civil cases or criminal cases, a party filing a notice of appeal shall pay to the Clerk a filing fee and in addition shall pay the fees provided by the Judicial Branch for making the transcript of record, except on behalf of the Muscogee (Creek) Nation or taken in forma pauperis.

In addition to the fees for services rendered in cases heretofore, the Clerk shall charge and collect fees for miscellaneous services performed by that office, as provided by this Rule. A fee schedule covering such service shall be maintained in the Office of the Court Clerk.

## **Title 27, App. 1, Rule 5**

## **JUDICIAL PROCEDURES**

Any party entitled to and requesting attorney fees shall within ten (10) days of the entry of judgment or decree make application for such, together with an affidavit setting forth all information the applicant wishes the Court to consider in determining such fees. All other parties shall file setting forth specific objections and any other matters they wish the Court to consider.

[NCA 88-69, § 102, approved Oct. 18, 1988.]

### **Library References**

Indians ☞660 to 662.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **Rule 6. Representation by attorneys**

Whenever certain substantial rights are being determined by the Courts of the Muscogee (Creek) Nation the parties have a right to be represented by counsel. In the following matters a person must be advised by the judge before whom he first appears, at the time of that first appearance, that counsel will be provided for him if he is indigent and desires counsel to be provided:

1. Whenever a person's right to the custody of any minor child is challenged or disputed in action before the court, excluding the case of divorce;
2. Whenever a party might lose Muscogee (Creek) Nation citizenship as a result of a action before the Court;
3. Whenever a person may be subjected to official restraint as a result of an action before the Court.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 18, approved July 6, 2001.]

### **Library References**

Indians ☞500, 638.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### **Rule 7. Process**

Service of process allowed by these rules shall be in accordance with NCA 82-30, Sections 206-207<sup>1</sup> as follows:

Section 206. Filing and service:

A. Documents required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

B. Service of all documents require copies of all documents, including any transcript, filed by any party and not required herein to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him or her on all other parties to the appeal. Service on a party represented by counsel may be made on the counsel.

C. Manner of service. Service may be made by delivering a copy of the summons to the defendant personally or by leaving one at his usual place of

residence with some member of his family over fifteen (15) years of age, at any time before the return day. Service may also be made by publications in those cases where defendant cannot be found.

D. Proof of services. Documents presented for filing shall contain acknowledgment of service by the person served or proof of service in the return of services form or a statement of the date and manner of service and of the names of the person who made service. Proof of service may appear or be affixed to the document filed.

Section 207. Publication—Manner and requisites:

Where service by publication upon a defendant is proper, no summons shall be issued for service upon said defendant, but a notice, signed by the Clerk of the Court, must be published one day a week for three (3) consecutive weeks in some newspaper authorized by law to publish legal notices printed in the district where the petition is filed, if there be any printed in such county, then in some such newspaper printed in this state of general circulation in that county, and once in the *Muscogee Nation News*. All defendants who cannot be found may be included in one notice. The notice shall state the Court in which the petition is filed, the names of all the parties, or where unknown shall describe them as the unknown successors of such person or corporation and must notify the defendants thus to be served that he or they have been sued and must answer the petition filed by the plaintiff on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the Court is based on jurisdiction of the court and any property or debts to be attached or garnished must be described.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 02-213, § 1, approved Dec. 27, 2002.]

<sup>1</sup> NCA 82-30, §§ 206, 207, deleted by NCA 01-88, § 2, eff. June 1, 2001.

**Library References**

Indians ⇄510.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**Rule 8. Publication notice and filing times**

**A. Publication—Manner and requisites.** Where service by publication upon a defendant is proper, no summons shall be issued for service upon said defendant, but a notice, signed by District Court Clerk of the Court must be published one day a week for three (3) consecutive weeks in some newspaper authorized by law to publish legal notices printed in the district where the petition is filed if there be any printed in such county, then in some such newspaper printed in this state of general circulation in that county, and once in the *Muscogee Nation News*. All defendants who cannot be found may be included in one notice. The notice shall state the Court in which the petition is filed, the names of all the parties, or where unknown shall describe them as the unknown successors of such person or corporation and must notify the defendants thus to be served that he or they have been sued and must answer the petition filed by the plaintiff on or before a time to be stated (which shall not be

less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on jurisdiction of the court and any property or debts to be attached or garnished must be described.

**B. Service of papers when required.** The requirement of service shall be in accordance with Section 206 of this Title,<sup>1</sup> unless otherwise expressly provided in these rules.

**C. Manner of service.** Service of all papers requiring service under these rules may be made in accordance with Section 206 of this Title.

**D. Proof of service of pleadings, motions, and other papers.** Except as otherwise provided in Title 27, Appendix 1, Rule 7, or by order of the Court, proof of service of any pleading, motion or other paper to be served shall be made by the certificate of any attorney of record, or if made by any other person, the affidavit of such person. The certificate or affidavit of service shall be filed with the pleadings required to be served with the District Court Clerk.

**E. Notice of actions.** Every writing, pleading, or complaint, in every case, from initial petition or complaint onward, in the Courts of the Muscogee (Creek) Nation, must be accompanied by a certificate of mailing or delivery stating that the pleading has been served by mailing or delivery to all interested parties other than the party certifying and naming the interested parties and setting out the addresses for them.

**F. Filing times in original civil actions.**

1. Whenever a petition or complaint is filed in the District Court the defendant's answer, counterclaims and cross-claims shall be filed no later than thirty (30) days from receipt of the plaintiff's petition by the defendant. Answers to cross-claims made by defendant will be due no later than thirty (30) days from receipt of the defendant's cross-claim petition by the third party defendant. Plaintiff's reply to any counterclaim by defendant and answers to cross-claims made by defendant will be due no later than thirty (30) days after receipt of defendant's answer. Hearing will be set for the next regular scheduled Court day of the District Court.

2. Written motions in all matters will be heard at the next regular scheduled Court session after filing and service, but not sooner than five (5) days after filing and service. Hearings on injunctions, restraints, mandamus, will be heard within ten (10) days from filing and service.

3. Extension of time. At written request or pleading, more time may be granted in any matter, with the consent of all parties. At written request and without consent of all parties, more time may be granted in any matter for good cause shown. No additional time will be granted in any matter if the application for more time is not made within the item prescribed in this section. No additional time will be granted in any matter wherein a minor child has been initially removed from the custody of a parent or custodian except on application or agreement of the parent or custodian.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 19, approved July 6, 2001; NCA 02-214, § 4, approved Dec. 27, 2002.]

<sup>1</sup> Footnote in text inserted by Tribe.

## Library References

Indians ☞510.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 9. Filing of documents**

**A. Filing of original and copies.** All pleadings, motions, applications, and orders tendered to the District Court Clerk for filing shall include the original and such copies as may be required in these Rules, and all attached exhibits shall be clearly legible. The original and one copy of all criminal pleadings, motions, applications or orders shall be tendered for filing.

**B. Original judgments, orders and decrees.** There shall be tendered for filing with each final judgment, order or decree, and with any order affecting real or personal property, a copy of the original thereof to be used by the District Court Clerk in the preparation of the Court Journals. In addition thereto sufficient additional copies shall be tendered for each and all counsel of record in the case.

**C. Discovery documents.** Discovery may include depositions upon oral examination, interrogatories and the answers, with a thirty (30) questions limit. Requests for production or inspection and requests for admissions and the response thereto shall be served upon other counsel or parties within forty-five (45) days. If relief is sought, concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or response to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in question must be filed contemporaneously with any motion filed. If depositions, interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be marked as exhibits prior to trial.

**D. Attorney identification.** The attorney signing a pleading shall cause his name, address and phone number to be typed thereunder.

**E. Related cases.** Attorneys for the defendants shall, on their initial pleading, advise the District Court if there is a related case already filed involving, (1) common property; (2) common issue of fact or growing out of the same transaction, (3) validity or infringement of the same patent copyright or trademark, and advise the name of the Judge and the case number.

**F. Non-compliance with filing requirements.** Any pleading; motion; application or order tendered to the District Court Clerk for filing which is not in conformity with the Rules of this Court may be returned to the party tendering such pleading; motion; application or order.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 20, approved July 6, 2001.]

## Library References

Indians ☞511, 512, 526.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 10. Time**

The computation of any period of time prescribed as allowed by these Rules shall be as follows: Subpoenas and notices of hearings in civil cases, not including juvenile proceedings, shall be sent from the District Court Clerk's office to allow the party receiving such notice ten (10) days, including weekends and holidays, to answer before the Court date, unless otherwise prescribed by law. The filing of briefs in any case is computed to include only working days. If the District Court Clerk does not receive notice to send out subpoenas and notice of hearings within the above stated time frame, the case will be set for hearing at the next regular Court session.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 20, approved July 6, 2001.]

**Library References**

Indians ⇄508, 602.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 11. Request for jury**

**A. Request.** Any party may request a trial by jury. The request may be filed separately or endorsed upon a pleading of the party. If so endorsed, the request shall be set forth separately, at the end of the pleading.

**B. Settlement.** Settlement or other disposition of a case other than by trial must be given to the District Court Clerk of this Court in writing no less than three (3) full days prior to the jury trial setting. Upon failure to give the required notice, the District Court Clerk will assess actual jury costs against the parties and counsel for each prospective juror reporting for service. Any monies collected as a result of said assessment shall be paid to the District Court Clerk for deposit in the District Court Fund.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 21, approved July 6, 2001.]

**Library References**

Indians ⇄650.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 12. Jurors**

**A. Jurors not to be interviewed.** No attorney or any party to action or any other person shall himself or through any investigator or other person acting for him interview, examine or question any juror, relative, friend or associate thereof during the pendency of the trial or with respect to the deliberations or verdict of the jury in any action, except on leave of Court granted upon good cause shown.

**B. Voir dire.** Requested voir dire will be conducted by the Court with additional voir dire to be conducted by attorney representing each party. Requested instruction must be presented in writing in advance of the arguments. Counsel for both sides will be given peremptory challenge, with each side having three (3) challenges.



**C. Arguments.** Argument to juries will be subject to limitations as to time and as to the number of attorneys participating.

[NCA 88–69, § 102, approved Oct. 18, 1988; amended by NCA 01–109, § 22, approved July 6, 2001.]

**Library References**

Indians ☞650.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**Rule 13. Selection of jurors**

**A. Adoption of plan.** The following plan is hereby adopted by the District Court.

**B. Applicability of plan.** This plan is applicable to the Muscogee (Creek) Nation.

**C. Policy.** It is the policy of the Court that all litigants entitled to trial by jury shall have the right to jurors selected from a fair number of each of the communities that constitute the Muscogee (Creek) Nation of Oklahoma, and that all registered voters shall have the opportunity to be considered for services on juries, and shall be obligated to serve as juror when summoned unless excused for valid reasons by the Court.

**D. Supervision of jury selection.** The District Court Clerk shall manage the jury selection process with the assistance of the District Court Judge. Until they have been qualified in open Court, the names of persons summoned for jury service shall not be made public unless the District Court shall otherwise direct. The contents of records or papers used by the District Court Clerk in connection with the jury selection process shall not be disclosed, except upon Order of the Court.

**E. Summons.** The District Court Clerk shall issue summons directed to the persons so drawn for service by first class mail.

**F. Random selection from Election Board’s voter registration database.** The Voter Registration Database represents a fair selection of the communities and districts within the Muscogee (Creek) Nation. The Election Board shall annually provide the District Court with a digital copy of the Voter Registration Database to be used in the Court’s automated jury selection process. The District Court shall make a random selection of names via a reputable court management software. All expenses associated with the transfer of data for jury selection from the Election Board to the District Court shall be paid by the Judicial Branch.

**G. Formation of trial jury.** The formation of a trial jury shall be in accordance with Title 27, § 2–111, subsections A thru E, of the Muscogee (Creek) Nation Code, as follows:

1. A jury of the trial shall consist of six (6) persons, but the parties may agree to a number less than six (6).
2. All registered voters of the Muscogee (Creek) Nation, residing within the original 1867 territorial boundaries of the Muscogee (Creek) Nation, of sound mind and discretion, of good moral character, not judges, sheriffs or deputies,

## **Title 27, App. 1, Rule 13**

## **JUDICIAL PROCEDURES**

physicians, attorneys, ministers, jailers or law enforcement officers, shall be compelled to serve as jurors. Provided, however, persons over seventy (70) years of age or under eighteen (18) years of age and persons having custody of minor children may be excused.

3. Habitual drunkards, persons convicted of any felony, or persons who have served in any penitentiary shall not be eligible to serve as jurors.

4. Prospective trial jurors may be summoned by notifying each orally or by mail as to the time and place at which his attendance is required.

5. For jury dockets, the District Court shall summon a jury panel of not less than twenty-four (24) eligible jurors, to be paid twenty dollars (\$20.00) per day from the Court Fund until they shall be dismissed.

**H. Excuses on individual request.** Excuses on individual requests allowed by these Rules shall be in accordance with Title 27, § 2-111 of the Muscogee (Creek) Nation Code.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 23, approved July 6, 2001; NCA 08-100, § 3, approved July 8, 2008.]

### **Cross References**

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

### **Library References**

Indians ⇄650.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## **Rule 14. Filing fees**

In any case filed in District Court after the effective date of this law, the District Court Clerk shall be required to collect, at the time of filing, the flat fee of eighty-four dollars (\$84.00), none of which shall ever be refundable, and which shall be the only charge for the Court costs, except as is otherwise specifically provided below. The cost required to be collected by this part shall be used in total to compile a law library for the use of the Muscogee (Creek) Nation Judiciary and Court staff and such others as the District Court Clerk gives permission. Once compiled, eighty-four dollars (\$84.00) of every fee collected at the time of filing will be used to maintain and update the law library and remaining excess funds collected at the time of filing will go into the Court fund to be used for the operation of the Muscogee (Creek) Nation Courts; provided those funds collected on behalf of Lighthorse Police Department as designated below shall be forwarded monthly or quarterly to a Lighthorse Revolving Fund for use by the Lighthorse Police Department for procurement of equipment and supplies. In any case where the litigant claims he has just cause of action, and that by reason of poverty, he is unable to pay the fees and costs provided for affidavit in forma pauperis is executed before any officer authorized by law to administer oaths and upon satisfactory showing to the Court that said litigant has no means and is, therefore, unable to pay the applicable fees and costs, no fees or costs shall be required. In all such cases, the determination of the eligibility of the affiant to litigate without payment of fees or costs. Until a final order determining the ineligibility of such affiant has

**RULES AND PROCEDURES**

**Title 27, App. 1, Rule 14**

been entered, the District Court Clerk shall permit such affiant to litigate without payment for fees and costs.

Civil action .....	\$84.00
Traffic citation .....	\$84.00
\$42.00 of fee collected shall be paid to a Lighthouse Revolving Fund	
Traffic citation–No Seatbelt .....	\$84.00
\$42.00 of fee collected shall be paid to a Lighthouse Revolving Fund	
Criminal action .....	\$84.00
\$42.00 of fee collected shall be paid to a Lighthouse Revolving Fund	

**FEES IN CIVIL ACTIONS IN ADDITION TO FLAT FEE OF \$84.00**

- A. For posting notices and filing certificates required by law ..... \$10.00
- B. For mailing by any type of mail writs, warrants, orders process, command, or notice for each person ..... \$7.00
- C. For the actual cost of all postage in each case in excess of \$7.00 . Actual cost
- D. For serving or endeavoring to serve each writ, warrant order, process, command, or notice for each person in one or more counties; provided if the Lighthouse Police Department serves these processes, including the execution of a Writ of Habeas Corpus then the costs, collected in advance, shall be forwarded to a Lighthouse Revolving Fund ..... \$30.00 plus mileage
- E. When a jury is requested ..... \$100.00
- F. The costs of transcribing a record, other than on appeal ..... Actual cost
- G. Copying an instrument of record or on file—
  - first page ..... \$1.00
  - for each subsequent page ..... \$.50
  - certification of each instrument ..... \$.50
  - authentication of court record ..... \$5.00
- H. For issuing summons ..... \$5.00
- I. Pre-sentence investigation ..... \$5.00 to \$250.00
- J. Probation fee ..... \$5.00 per month
- K. Filing of bond in criminal cases ..... \$10.00
- L. Marriage license ..... \$25.00
- M. Issuance of warrant ..... \$5.00
- N. Filing fee for process server license annually ..... \$10.00
- O. Filing fee for bail bondsman’s license annually ..... \$10.00

**FEES IN PARTICULAR CASES:**

- 1. Any proceeding to modify or vacate divorce decree or prior order providing for custody for custody or support ..... \$40.00

2. Guardianship ..... \$84.00

**FEES FOR FILING AN APPEAL:**

Notice of Appeal shall commence at the District Court. The Clerk of the District Court shall charge the sum of seventy-five dollars (\$75.00) for filing a Notice of Appeal to the Supreme Court.

The Clerk of the District Court shall charge the sum of one hundred dollars (\$100.00) for preparing, assembling, indexing and transmitting the record for appellate review.

If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the District Court or by the Supreme Court to commence the principal appeal. The fees collected shall be paid into the Court Fund.

**JUROR'S FEES:**

Jurors shall be paid the following fees out of the Court Cash Fund: For each day's attendance before any court of record, twenty dollars (\$20.00); for each mile necessarily traveled in going to or returning from the place of attendance, at the prevailing Muscogee (Creek) Nation rate as established by the Controller and such mileage shall be allowed each day that said mileage is incurred.

If a jury trial is demanded by the Creek Nation, its Legislative or Executive Branch or their branches, departments, officers, agents or agencies, the Nation shall pay the jury fees specified herein to obtain access to the Tribe's Courts in order to pursue or defend the Tribe's interests and rights. All fees collected pursuant to this Judicial Code shall be deposited into the court fund to defray the expenses of the operation of the Tribe's Courts.

**IN FORMA PAUPERIS IN MUSCOGEE (CREEK) NATION COURT:**

In any case where the litigant claims he has a just cause of action, and that be reason by poverty, he is unable to pay the fees and costs provided for in this section and upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths and upon satisfactory by law to administer oaths said litigant has no means and is, therefore, unable to pay the applicable fees and costs, no fees or costs shall be required. In all in forma pauperis cases, the District Court shall promptly set for hearing the determination the eligibility of the affiant to litigate without payment of fees or costs. Until a final order determining the ineligibility of such affiant has been entered, the District Court Clerk shall permit such affiant to litigate without payment for fees and costs.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 24, approved July 6, 2001; NCA 08-058, approved May 1, 2008.]

**Rule 15A. Vacancies in District Court and Supreme Court**

If illness or other considerations prevent a judge or justice from hearing cases on a scheduled date, or there exists a conflict of interest, or for some

other reason a judge or justice is disqualified, then a temporary judge or justice shall be appointed by the Chief, Speaker of the National Council, and Chief Justice of the Supreme Court acting jointly. Said temporary appointment shall only be for the single case or conflicting issue and no other.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 24, approved July 6, 2001.]

**Library References**

Judges ⇔8, 15.  
Westlaw Topic No. 227.  
C.J.S. Judges §§ 58 to 77, 331 to 342.

**Rule 15B. Review, lending and copying of Court files**

**A. Review procedures for Court files.**

1. Public records; exceptions. All files are public record and are subject to review by any interested party with the following exceptions:

a. Juvenile matters. Juvenile records are confidential and may be reviewed only by order of the Court.

b. Guardianships. Guardianship records are confidential and may be reviewed only by permission of the Court.

c. Adoption matters. Adoption records are confidential and may be reviewed only by order by the Court; except that pursuant to the Indian Child Welfare Act of 1978, any adopted person over the age eighteen (18) may review his/her adoption records.

2. Presence of District Court Clerk. All file reviews are to be conducted in the presence of the District Court Clerk or his or her designee and the District Court Clerk may not allow en masse perusal through Court files by anyone. The interested party must specifically request the file to be reviewed by citing the name of the case.

**B. File lending procedures.** Files shall not be removed from the office of the District Court Clerk, except in accordance with Rule 3.

**C. Copying procedures.** Copies of all court documents are to be provided to elected officials of the Muscogee (Creek) Nation, at their request, for official Tribal use, free of charge; provided, that confidential Court documents relating to juvenile proceedings, including guardianships, deprived actions, juvenile delinquency proceedings and adoptions, not otherwise available to the public shall not be made available to elected officials. All other persons requesting copies are to be charged as: See Rule 14, No 7.

[NCA 88-69, § 102, approved Oct. 18, 1988; amended by NCA 01-109, § 24, approved July 6, 2001.]

**Cross References**

Juvenile proceedings, inspection of court records, see Title 6, § 1-405.

## **APPENDIX 2. MUSCOGEE (CREEK) NATION SUPREME COURT RULES OF APPELLATE PROCEDURE**

### **Rule**

1. Name; authority; title.
2. Commencement of appeal.
3. Interlocutory appeals.
4. Filing and service.
5. Time.
6. Parties to the appeal; multiple appeals.
7. Intervention and amicus curiae.
8. Costs.
9. Motions.
10. Form of motions.
11. Form of briefs.
12. Appellant's brief.
13. Respondent's brief.
14. Appellant's reply brief.
15. Miscellaneous briefs.
16. Relief pending appeal.
17. Record.
18. Remedial powers of Supreme Court.
19. Oral argument.
20. Penalties.
21. Subpoenas.
22. Deliberations.
23. Decision of the Supreme Court.
24. Petition for rehearing.
25. Substantial and insubstantial errors on appeal.
26. Indigent appeal.
27. Habeas corpus.

### **Cross References**

Appellate procedures, see Const. Art. VII, § 3.  
Establishment of procedures, see Title 26, § 3-108.  
Juvenile proceedings, appeals, see Title 6, § 1-408.

### **Rule 1. Name; authority; title**

**A. Citation:** These rules shall be cited as the MCN Rules of Appellate Procedure (MCN RAP).

**B. Applicability:** These rules shall apply to the appellate proceedings conducted by the Supreme Court of the Muscogee (Creek) Nation.

**C. Authority:** The Supreme Court was created by Article VII of the Constitution and has appellate jurisdiction over all cases and controversies, civil and criminal, arising within the Nation. These Appellate Procedures are required by Article VII Section 3 of the Constitution.

**D. Jurisdiction not limited:** These rules shall not be construed to limit the jurisdiction of the Judicial Branch of the Muscogee (Creek) Nation as stated in Title 27, § 1-102, as amended.

**E. Construction:** These rules shall be liberally construed in every appeal to insure that the appellant receives due process of law and prompt and speedy relief.

**F. Customs:** Matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the rules of procedure for other Tribes or the United States may be used as a guide, so long as these guideline rules are not inconsistent with existing rules of procedure, laws, or the customs of the Nation.

[NCA 01-88, § 3, eff. June 1, 2001.]

**Library References**

Indians ☞540, 628.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**Rule 2. Commencement of appeal**

**A. Right to appeal, civil:** A final judgment or final order of any original hearing body or District Court of the Muscogee (Creek) Nation may be appealed to the Supreme Court as a matter of right unless otherwise expressly provided by law.

**B. Right to appeal, criminal:** An appeal may be taken by a defendant only from a final judgment of conviction, orders after judgment which affect the substantial rights of the defendant, or from a denial of a motion to dismiss the charges against the defendants.

**C. Form:** An appeal shall be commenced with the completion and filing in the Supreme Court of the Notice of Intent to Appeal form (Notice of Appeal). The original hearing body shall be served with a copy of the Notice of Appeal.

**D. Fee:** A filing fee of seventy-five dollars (\$75.00) must accompany the Notice of Appeal, or this fee may be waived by order of the Court upon a showing that the appellant is indigent and unable to pay the fee.

**E. Time:** A party has fifteen (15) days from the receipt of the District Court decision to file a Notice of Appeal. If the Muscogee (Creek) Nation or an officer thereof is a party in their official capacity, the Notice of Appeal shall be filed within twenty-five (25) days. Where another law of the Nation provides a different timeframe to file an appeal, that law shall be binding.

**F. Additional information:** The following information shall be provided in or with the filing of the Notice of Appeal:

- 1 A copy of the written decision of the original hearing body.
- 2 A short statement explaining what relief is sought by the appellant.
- 3 A short statement explaining the legal grounds for seeking the appeal and justification for the relief requested.
- 4 A short statement or statements outlining the hearing bodies and/or agencies where the appellant has sought a remedy.
- 5 Name, address and phone numbers of all parties, including respondents.
- 6 Name, address and phone number of all parties' advocates, if known.

**G. Filing deficiencies.** If the appellant fails to pay the filing fee or obtain a waiver from the Court, or any required documents or materials, the appellant shall be so notified of any filing deficiencies within five (5) days and shall have

## Title 27, App. 2, Rule 2

## JUDICIAL PROCEDURES

five (5) days from receipt of this notice to perfect the filing. Failure to perfect the filing within five (5) days shall result in the non-acceptance of the appeal.

**H. Notice to respondent(s):** Within five (5) business days of filing of a perfected Notice of Appeal, the Clerk of the Supreme Court shall serve notice of the Supreme Court's docketing of the of appeal.

[NCA 82-30, §§ 254, 272; amended by NCA 01-88, § 1, eff. June 1, 2001.]

### Library References

Indians ⇄542, 545, 630, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## Rule 3. Interlocutory appeals

**A. Granted by permission:** A non-final judgment or order not appealable as a right under Rule 2 may be appealed via an interlocutory appeal to the Supreme Court prior to a final judgment or order upon leave granted by the Supreme Court if the original hearing body determines that an interlocutory appeal will (or may):

- 1 Materially advance the termination of the litigation or clarify further proceedings in the litigation;
- 2 Protect the petitioner from substantial or irreparable injury; or
- 3 Clarify an issue of general importance in the administration of justice.

**B. Time:** The timeframes for interlocutory appeals shall be accelerated to minimize any delay in the proceedings before the original hearing body. The following times shall be used in order to file and resolve an interlocutory appeal quickly:

- 1 A party aggrieved of an intermediate ruling, judgment or order during an original hearing, who wishes to seek intermediate relief, shall file an interlocutory appeal with the Supreme Court within five (5) days of the receipt of the ruling, judgment, or order in question.
- 2 Initial review of the interlocutory appeal shall be conducted by the Chief Justice within five (5) days of the filing.
- 3 If the interlocutory appeal is accepted for review, the respondent shall have five (5) days to file a response brief to the interlocutory appeal.
- 4 Upon receipt of the respondent's brief, a panel of three judicial officers shall deliberate within five (5) days time and issue a decision.

**C. Rights saved:** Issues not raised or decided in an interlocutory appeal may be considered in an appeal after the final judgment or order.

[NCA 82-30, §§ 254, 272; amended by NCA 01-88, § 1, eff. June 1, 2001.]

### Library References

Indians ⇄542, 630.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.



**Rule 4. Filing and service**

**A. Filing methods:** In person or mail filing are the only acceptable methods of officially filing documents related to cases pending before the Supreme Court.

1. By mail: A party to a pending case may file papers by the U.S. Postal Service or other reliable mailing service, with cover documents to be addressed to the Supreme Court Clerk. Mailed documents must be received by the Clerk prior to the close of business on or before the day that the filing is due. The party filing shall supply the Supreme Court with an original, eight (8) copies of all documents together with an affidavit showing service on opposing counsel. If the filing party desires a file stamped copy by return mail, an additional copy must be sent with a postage paid addressed envelope. Filing shall not be completed upon mailing, but only upon receipt.

2. In person: A party to a pending case, or the party's advocate or authorized agent may file papers in person before the Clerk of the Supreme Court. Filing must be complete prior to thirty (30) minutes before the close of business on the day that any filing is due. The party filing shall supply the Supreme Court with an original, and eight (8) copies of all documents together with an affidavit showing service on opposing counsel.

**C. Service methods:** Service may be made by delivering a copy of the document to the other party personally or by leaving the copy at the party's usual place of residence with some member of the family over fifteen (15) years of age.

**D. Proof of service:** Documents presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons who made service. Proof of service shall be filed with the document filed.

**E. Parties with counsel:** The following rule shall apply where a party is represented by counsel, whether advocate, paralegal or attorney. Only counsel need be served papers. Service to a party is assumed to be completed upon service to the party's counsel.

[NCA 82-30, § 206; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ☞545, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 5. Time**

**A. Calendar days:** All reference to days in these rules of appellate procedure shall refer to the use of calendar days.

**B. Deadline computation:** Days are counted by designating the day after notice is received as day one. If notice is mailed, then three (3) dates shall be added to the normal due date in order to determine the due date. Computation involving calendar days shall include intermediate holidays and weekend days. Computation involving business days shall not include intermediate week end

days. If the last day of the period falls on a Saturday, Sunday or legal holiday, then the next business day shall be the due date. All papers to be filed with the Supreme Court are due no later than thirty (30) minutes before the closing of the office on the last day of the time period.

**C. Extension of time:** The Chief Justice may, upon the petition or motion by a party showing good cause, extend any time period set forth herein for any required act or submission. Motions for an extension of time shall be submitted no less than two (2) days prior to the due date.

**D. Time to complete:** Unless time is extended by the Supreme Court, the time from the filing of the Notice of Appeal subsequent to the entry of the final written decision of the District Court shall not exceed six (6) months.

[NCA 82-30, § 206; amended by NCA 01-88, § 1, eff. June 1, 2001.]

#### Library References

Indians ⇄545, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

#### Rule 6. Parties to the appeal; multiple appeals

**A. Appellant:** The person or persons filing the appeal is the appellant to the case. If the person filing the appeal is the agent or other representative of an agency, department or other Tribal entity, then the full name of the agency shall be listed as the appellant, followed by the filing person's name.

**B. Respondent:** The person or persons against whom appellate relief is sought shall be named as the respondent(s) to the case. If the appellant is seeking relief from an agency action or decision, then that agency, along with the agency's representative shall be named as the respondent.

**C. Joint appeals:** If two or more people are each entitled to appeal from the same judgment or order entered in the same action or proceeding before the original hearing body and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may, after filing separate notices of appeal proceed as a single appellant, upon order of the Court.

**D. Co-appels:** If the parties do not file a joint appeal or elect to proceed as a single appellant, or if joinder is impracticable, they shall be known as appellant and co-appellant, with identical procedural rights and obligations as any single appellant. The appellant shall be that person who has the earlier filing date or time of filing where the people file on the same date.

**E. Cross appeals:** A respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of a cross appeal by an appellant within the time established for the filing of a notice of appeal or ten (10) days after the receipt of the notice of appeal, whichever is later. The respondent shall be listed as the respondent and cross appellant. A cross appellant has the same rights and obligations as an appellant under these rules.

**F. Consolidation of separate appeals:** The appellate court may consolidate separate appeals in separate actions or proceedings in the Trial Court upon its own motion, motion of a party, or stipulation of the parties.

[NCA 82-30, § 206; amended by NCA 01-88, § 1, eff. June 1, 2001.]

Library References

Indians ↻543, 630.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**Rule 7. Intervention and amicus curiae**

**A. Intervention:**

1. A person may, upon a timely motion and with the permission of the Appellate Court, intervene and be treated in all respects as a party to an appeal where:

- a. The movant claims an interest relating to the property or transaction which is the subject of the appeal; and
- b. The movant is so situated that the disposition of the appeal may as a practical matter impair or impede the movant’s ability to protect that interest, and
- c. The movant’s interest is not adequately represented by the existing parties.

2. A person may, upon the timely motion and with the permission of the Appellate Court, intervene in an appeal when the movant’s claim or defense and the main appeal have a question of law or fact in common.

3. A person desiring to intervene shall serve a motion to intervene upon the parties to the main action. This motion shall state the grounds upon which intervention is sought and shall be accompanied by a brief setting forth the arguments for which intervention is sought.

**B. Amicus curiae (friend of the Court):** A person who is not a party to a case but has some interest in the outcome of an appellate case may, upon a timely motion and with permission of the Appellate Court, submit an amicus curiae brief in support of one party to the action or to supplement the arguments of a party. See also Rule 16.

**C. Time:** A person wishing to intervene or file an amicus curiae brief in an appeal shall file a motion to intervene within fifteen (15) days of the entry of the initial review decision accepting the appeal. Parties shall have fifteen (15) days from receipt of the person’s motion to file a response brief to the motion to intervene.

[NCA 82–30, § 260; amended by NCA 01–88, § 1, eff. June 1, 2001.]

**Rule 8. Costs**

**Copy charge:** Parties who fail to supply a sufficient number of copies for use by the Supreme Court and opposing parties shall be assessed a fee per page copied by the Supreme Court Clerk.

[NCA 82–30, § 287; amended by NCA 01–88, § 1, eff. June 1, 2001.]

**Rule 9. Motions**

**A. Procedure:** A party seeking an order or other relief in a docketed appeal shall file a motion for the order or other relief.

**Title 27, App. 2, Rule 9**

**JUDICIAL PROCEDURES**

1. The motion must state specifically the order or relief sought and the grounds on which the motion is based and may include a statement of the positions of other parties as to the granting of the motion.

2. If a motion is supported by brief, affidavit or other paper, then these shall be attached and filed with the motion and designated as exhibits or supporting memoranda.

3. Parties to the case may file a response to the motion within ten (10) days of the receipt of the motion, after which time the Appellate Court will deliberate upon the arguments/positions of the parties, and render a decision which will grant or deny the motion.

**B. Exceptions:**

1. A motion for procedural orders may be granted or denied by the Chief Justice, without notice to the opposing party. A party adversely affected by a procedural order may request reconsideration of the order by the full Appellate Court within five (5) days of receipt of notice of the decision by the lead judicial officer.

2. The Chief Justice, upon receipt of a motion by a party, may order that the opposing party’s response be made within five (5) days for procedural motions or motions where the relief requested requires a decision within the normal ten (10) day response period.

[NCA 82–30, § 208; amended by NCA 01–88, § 1, eff. June 1, 2001.]

**Rule 10. Form of motions**

**A. Caption:** Every motion shall contain a caption heading, “In the Muscogee (Creek) Nation Supreme Court,” names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of motion it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for the brief. Example:

**IN THE MUSCOGEE (CREEK) NATION SUPREME COURT**

Name of Appellant	)	
	Appellant	)
v.	)	SC 2000–____
Name of Respondent	)	
	Respondent	)

Brief of Appellant

Appeal from the District Court of the Muscogee (Creek) Nation  
Okmulgee District, Case No. CV 2000–xx

Name of Appellant or Attorney

Address

Phone

e-mail

**RULES OF APPELLATE PROCEDURE      Title 27, App. 2, Rule 12**

**B. Content:** All motions shall be organized in sections containing a clear designation, which shall include but not be limited to:

1. The facts, events or occurrences which make a specific motion for relief necessary.
2. The specific relief requested by the moving party.
3. The applicable law or laws which are applicable to the motion at hand.
4. The grounds upon which the relief is sought.

[NCA 82-30, § 208; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Rule 11. Form of briefs**

**A. Caption:** Every brief shall contain a caption heading, “In the Muscogee (Creek) Nation Supreme Court,” names of all of the parties to the action, the docket number (if known), a designation as to the purpose or type of brief it is, and the name, address, phone number and other contact information such as an e-mail address of the person responsible for preparing the Brief. See example in Rule 10.

**B. Format:** Briefs shall be double spaced, typed or computer generated, and on 8.5 x 11 inch paper. Type shall be 12 to 14 point readable typefaces such as Helvetica or Arial. Margins shall be at least 1 inch on all sides. Each page shall be numbered at the bottom. Pages shall be printed on one side only. Each copy shall be securely bound such that it lays flat and no words are obscured by the binding. A corner staple is acceptable for short documents. Questions about the acceptability of a document should be addressed to the Supreme Court Clerk before filing. A sample page is available from the Clerk. After filing the court may request reproduction in acceptable form.

**C. Subscription and verification:** Briefs shall be signed by the party or the party’s advocate, if represented. Signing indicates that to the best of the signer’s knowledge, information and belief, the person signing knows that the matters communicated to the court are true and not frivolous, scandalous or indecent.

[NCA 82-30, §§ 259, 281; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ⇄546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 12. Appellant’s brief**

**A. Time:** The appellant shall file a brief within thirty (30) days of the filing of the Notice of Appeal.

**B. Content:** The appellant’s brief must contain the following information:

1. A table of contents with page references to the portions of the brief, including headings of each section of the argument.
2. A table of cases cited in the brief, arranged alphabetically, with a page reference to where the case is cited in the brief.
3. A statement of the issues presented for review by the Appellate Court.

4. A statement of the case which should include: the nature of the case; the course of the proceedings to date, and the cases disposition at the trial court or original hearing level, and the facts relevant to the issues presented for review, with appropriate references to the record of the trial court proceedings.

5. The argument, which may be preceded by a summary. The argument shall contain the positions of the appellant with respect to each of the issues presented for review, with the reasons for these positions and citations to applicable laws, authorities, and parts of the record relied upon by the appellant. The argument of the appellant should be separately identified for each issue presented to the Appellate Court.

6. A short conclusion stating the precise relief sought.

7. All rules, regulations, laws, authorities, and portions of the record cited by the appellant shall be attached as an addendum unless previously filed with the Appellate Court.

8. The appellant's brief may incorporate by clear and specific reference, portions of other documents or material previously submitted to the Appellate Court in the case at hand.

**C. Length:** The brief shall be no more than twenty (20) pages in length, not including any addendums, appendices, attachments, table of contents or list of authorities.

[NCA 82-30, §§ 259, 281; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ⇄546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 13. Respondent's brief**

**A. Time:** The respondent shall file a brief in response to the appellant's brief within thirty (30) days of the filing of the appellant's brief,

**B. Content:** The respondent's brief shall comply with the content requirements of Rule 12B. above.

1. The respondent's brief shall address each issue and argument presented by the appellant in the appellant's brief.

2. The respondent's brief may present additional issues, with the respondent's positions and arguments on these issues.

**C. Length:** The respondent's brief shall be no more than fifteen (15) pages in length, not including any addendums, appendices, attachments, or the tables of contents and authorities.

[NCA 82-30, §§ 259, 281; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ⇄546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 14. Appellant's reply brief**

**A. Time:** The appellant may submit a reply brief within fifteen (15) days of filing of the respondent's brief.

**B. Content:** The reply brief shall be organized in accordance with Rule 12B. The brief shall address only those additional issues presented in the respondent's brief which have not previously been argued by the appellant.

**C. Length:** The reply brief shall be no more than five (5) pages in length, not including any addendums, appendices, attachments, or tables of contents and authorities.

[NCA 82-30, §§ 259, 281; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ¶546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 15. Miscellaneous briefs**

**A. Consolidated/joint appeals:** Each appellant in a consolidated appeal or a joint appeal and each co-appellant may file a separate brief or a joint brief with another appellant or co-appellant. A joint brief must comply with Rules 12, 13 and 15 above related to appellants' briefs and may not exceed the page limit for a single appellant.

**B. Cross appeal:** The parties in a cross appeal have the same rights as a party in an appeal and may file separate cross appellant's and cross respondent's briefs in accordance with the Rules 12 thru 15 above related to parties' briefs.

**C. Amicus curiae briefs:** A person not a party to an action may by motion request permission to file a brief. The motion shall identify the interest of the person and state why a brief filed by that person desirable or necessary.

1. Permission may be granted by the Chief Justice.
2. If permission to file a brief is granted, the non-party brief shall be due fifteen (15) days after permission has been granted.
3. The non-party brief shall comply with the content and form rules of a respondent's brief, Rules 12 and 14.
4. Each party shall have fifteen (15) days to file a response brief to the non-party brief. Such briefs shall comply with the content and form requirements of Rules 12 and 15.

[NCA 82-30, §§ 259, 281; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ¶546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 16. Relief pending appeal**

**A. Effect of appeal:** An appeal from a decision, final or interlocutory, of an original hearing body or the District Court does not stay the enforcement of the

order or judgment appealed from except as provided in these rules, or other Tribal laws.

**B. Stay upon appeal:** A party may file a motion asking the Supreme Court for a stay of enforcement of the original hearing body order or District Court judgment pending the final adjudication of the appeal. The Supreme Court may issue such an order upon its own motion where justice requires.

**C. Bond or other security:** The stay of enforcement may be conditioned upon the posting of a bond or other appropriate security by the moving party, except that where the Tribe or a Tribal entity is the appellant, no bond shall be necessary,

**D. Remedies:** During the pendency of an appeal, the appellate court may:

1. Stay the execution or enforcement of a judgment or order;
2. Suspend, modify, restore, or grant an injunction; or
3. Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment.

**E. Criminal judgment:**

1. Imprisonment: If a defendant is sentenced to time in jail by the District Court and makes a timely application for appeal, the jail sentence is stayed pending the outcome of the appeal. The Tribal Judge may continue the bail as originally set upon the defendant for the charge appealed from or may either lower the amount of the bail or release the defendant upon his own recognition according to the bail procedure set down by the District Court, pending the appeal.

2. Fine: If a defendant is fined and makes a timely appeal, the sentence to pay a fine or other costs shall be stayed by the District Court pending the outcome of the appeal.

3. Probation: If an appeal is taken and the defendant was admitted to probation, he or she shall remain on probation pending the outcome of the appeal or else shall post bail.

4. Suspended sentence: If the defendant was given a suspended sentence by the District Court, such sentence shall be suspended pending the outcome of the appeal.

5. Defense verdict: An appeal taken by the Nation in no way affects or stays the operation of the judgment, decision or order in favor of the defendant until the judgment, decision or order is reversed by the Supreme Court.

[NCA 82-30, § 274; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Rule 17. Record**

**A. General:** The record shall consist of all papers filed with the original hearing body, whether or not admitted for consideration, the exhibits viewed, the transcript or recording of the proceedings, if any, the final decision of the original hearing body, and a certified copy of the entries prepared by the Clerk of the District Court.



## RULES OF APPELLATE PROCEDURE      Title 27, App. 2, Rule 18

**B. Disputes about record:** If any dispute arises as to whether the record on appeal truly tells what occurred in the District Court, the dispute shall be submitted to and settled by that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident, or is misstated therein, the parties by stipulation, or the District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, shall direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

**C. Open record:** The record compiled by the Supreme Court for a completed case is Tribal record and open to the public for viewing subject to the following exceptions and conditions:

1. Any person viewing the record of any completed case may purchase copies of the entire record or parts thereof from the Supreme Court Clerk.

2. Juvenile and guardianship: Records of cases involving juveniles and guardianships shall remain confidential and shall only be viewed by justices, the parties and their counsel, court staff assigned to the case, those other persons who first obtain a written release from a party to view specific material in the record, or by order of the Chief Justice of the Supreme Court.

3. Adoption: Adoption files are confidential and may be viewed only by order of the Court. Any adopted person over the age of eighteen (18) may review his/her adoption records.

4. Sealed files: Where a case involves the review and consideration of material or evidence that would normally be considered confidential, such as trade secrets, attorney/client privilege, etc., the Appellate Court may order that portion of the record sealed and such portion shall be available for viewing only by Supreme Court personnel assigned to the case, the parties and those agents or representatives specifically authorized by the parties to view the material.

5. Permissive viewing: Any person who can prove a legitimate interest in a particular confidential case may review said matter after receiving written permission from the Chief Justice. The original written permission document is to be filed in the case by the Chief Justice and a copy shall be sent to the applicant. The Supreme Court Clerk shall document the date and time at which the person actually viewed the file.

6. Deliberations of the Supreme Court are confidential, are not part of the appellate record, and are not subject to reproduction. Opinions or votes of individual justices may be published in the Final Order.

[NCA 82-30, §§ 256, 276; amended by NCA 01-88, § 1, eff. June 1, 2001.]

### Library References

Indians ☞546, 633.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### Rule 18. Remedial powers of Supreme Court

**A. Civil appeals:** Upon appeal from a judgment or order from an original hearing body decision, the Supreme Court may:

## Title 27, App. 2, Rule 18

## JUDICIAL PROCEDURES

1. Reverse, affirm, or modify the judgment or order as to any or all parties;
2. Remand the matter and order a new trial/hearing on any or all issues presented;
3. If the appeal is from a part of a judgment or order, may reverse, affirm, or modify as to the part which is appealed;
4. Direct the entry of an appropriate judgment or order; or
5. Require such other action or further proceedings as may be appropriate to each individual action.

**B. Criminal appeals:** The Supreme Court may take any action in Section A and/or:

1. Set aside, affirm or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;
2. Reduce the degree of the offense of which the appellant was convicted;
3. Reduce or raise the punishment within the limits of the particular statute, imposed by the District Court, or
4. Order a new trial if justice so requires.

[NCA 82-30, §§ 264, 278; amended by NCA 01-88, § 1, eff. June 1, 2001.]

### Library References

Indians ↻548, 635.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

## Rule 19. Oral argument

**A. When:** If, after a review of the briefs the Appellate Court finds that issues of fact or law remain unclear, oral arguments may be scheduled by the appellate court. An amicus curiae may be granted leave to participate in oral argument.

**B. Procedure:** The following procedure shall apply when conducting oral arguments:

1. Parties will be given at least ten (10) days notice of the scheduled date.
2. Each party shall have twenty (20) minutes to present arguments. Each party may reserve up to five (5) minutes for the purposes of rebuttal of the opposing party's arguments.
3. The appellant shall present that party's argument first. The argument shall consist of the appellant's position or positions on the issues presented in appeal.
4. The respondent shall present that party's argument after the appellant's presentation. The argument shall consist of the respondent's position(s) on the issues presented in the appeal.
5. The appellant, if any time was reserved for rebuttal, may present rebuttal arguments addressing the respondent's positions.
6. The respondent, if any time was reserved for surrebuttal, may present surrebuttal arguments addressing the appellant's positions.

**RULES OF APPELLATE PROCEDURE      Title 27, App. 2, Rule 20**

7. Judicial officers may ask questions of any party at any time during the presentation. Time may be extended by the Chief Justice.

**C.** If a party or his counsel fails to appear for oral argument, the Court will hear the argument of the party who is present and the case will be decided upon the briefs, if any, the oral argument made and the notice and record of appeal.

[NCA 82–30, §§ 259, 283; amended by NCA 01–88, § 1, eff. June 1, 2001.]

**Library References**

Indians ⇄545, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 20. Penalties**

**A. Frivolous claims:** If an appeal or cross-appeal is found by the appellate court to be taken without substantial or reasonable grounds, the court may award to the prevailing party costs and attorney’s fees.

1. Costs may be assessed against the appellant or cross-appellant, their advocate, or both jointly.

2. A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the appellate court:

a. The appeal or cross-appeal was filed, used, or continued in bad faith, solely for the purposes of harassing or injuring the opposing party; or

b. The party or party’s advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

**B. Delay:** If the appellate court finds that an appeal or cross-appeal was taken for the purpose of delay, it may award one or more of the following to the opposing party:

1. Double costs;

2. A penalty of additional interest not exceeding 10% on the award amount affirmed;

3. Damages occasioned by the delay;

4. Attorney’s fees.

**C. Non-compliance with rules:** Failure of a party to comply with a requirement of these rules or an order of the appellate court, does not affect the jurisdiction of the appellate court over the appeal but may be grounds for one or more of the following:

1. Dismissal of the appeal;

2. Summary reversal of the original hearing body decision;

3. Striking of a paper, document or memorandum submitted by a party;

4. Imposition of a penalty or costs on a party or party’s advocate;

5. A finding of contempt against the party in non-compliance.

6. Other action as the appellate court considers appropriate.

[NCA 82-30, § 286; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Rule 21. Subpoenas**

**A. Issuance:** Subpoenas may be ordered by the Supreme Court and issued by the clerk to compel the submission of specific documents or information to be used for consideration in the case.

1. Parties may submit a motion to the Appellate Court for the issuance of a subpoena upon a showing that an adverse party or witness is refusing to submit relevant documents, property, or other evidence for discovery or is refusing to appear before the Supreme Court.

2. A response from said adverse party or witness may be submitted to explain such a refusal.

**B. Service:** May be made following the requirements of service above or by any person not a party to the action, over the age of eighteen (18) years.

**C. Endorsement:** The person serving a subpoena shall endorse upon the copy served the person's name, title and the time, date and place of service.

**D. Return to clerk:** The person serving shall sign a return statement before the clerk stating the name of the case, the name of the person served, the place, date and time of service.

**E. Failure to appear or submit:** Failure to appear by a person properly served a subpoena or failure to submit required papers by order of subpoena may be deemed by the Appellate Court to be contempt on the part of the failing person.

**F. Subpoena not needed:** A person present before the Appellate Court may be required to testify in the same manner as if such presence had been compelled by a subpoena.

[NCA 82-30, § 286; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Library References**

Indians ⇄ 545, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 22. Deliberations**

**A. Motions:** The Appellate Court may deliberate and deny or otherwise dismiss a motion by a party prior to the opposing party's receipt of the motion. Otherwise, the Appellate Court shall delay deliberation on any motion or until after a response brief has been filed or the due date for receipt of the response brief has expired,

**B. Merits:** The Appellate Court shall not deliberate upon the merits of any appeal until after receipt of the appellant's brief, respondent's brief, and appellant's rebuttal brief, or until after the expiration of the due date for the filing of such documents.

**C. Judgment/decision.** A judgment or decision of the Supreme Court requires the approval of a minimum of four (4) justices.

[NCA 82-30, § 286; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**RULES OF APPELLATE PROCEDURE      Title 27, App. 2, Rule 25**

**Library References**

Indians ☞545, 632.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 23. Decision of the Supreme Court**

**A. Time:** Within ten (10) days after the hearing of the case, the Supreme Court will render a decision, render a preliminary decision but reserve time to issue a written opinion, or inform the parties that additional time will be required.

**B. Final procedure:** This decision shall be in writing, signed by the justices sitting on the case who agree with the decision and filed with the Clerk of the Supreme Court. The Clerk of the Supreme Court shall then send a copy of the decision to each party and the Clerk of the District Court. Upon receipt of the decision, the Clerk of the District Court shall report the decision to the Tribal Judge for appropriate action.

[NCA 82-30, §§ 261, 284; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Cross References**

Decisions, see Const. Art. VII, § 5.

**Library References**

Indians ☞545, 548, 632, 635.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 24. Petition for rehearing**

**A. Time:** A petition for a rehearing before the Supreme Court may be filed within ten (10) days after the decision of the Court has been rendered and the adverse party shall have seven (7) days thereafter in which to serve and file objections thereto.

**B. Grounds:** A petition for rehearing may be presented on the following grounds and no others:

1. That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court, or
2. that the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not directed.

**C. Procedure:** The rehearing may be held with or without oral argument and will be decided only upon the petition and the objections thereto.

[NCA 82-30, §§ 261, 284; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Rule 25. Substantial and insubstantial errors on appeal**

**A.** Any defect, irregularity or variance which does not affect substantial rights shall be disregarded.

**B.** Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the District Court sitting as the District Court.

[NCA 82-30, § 263; amended by NCA 01-88, § 1, eff. June 1, 2001.]

## Library References

Indians ↻547, 634.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**Rule 26. Indigent appeal**

**A. Petition:** Upon imposition of any sentence in a criminal case a defendant may file in the District Court a petition requesting that he or she be furnished with a transcript of the proceeding at his or her trial and that the filing fee for the notice of appeal, the transmission fee of the record on appeal and the transcript fee be waived because of the defendant's indigence.

**B. Verification:** The petition shall be verified by the defendant and shall state facts showing that he or she is at the time of the filing of the petition without financial means to pay the filing fees and the cost of the transcript. If the trial judge who imposed sentence or in his or her absence any judge of the District Court finds that the defendant is without financial means with which to pay the filing fees or the transcript fee, he shall order the Clerk of the District Court to produce the transcript and waive the filing fee for the notice of appeal and the transmission of the record on appeal.

**C. Appeal:** If the petition provided for the subsection "A" above is denied by the District Court, a petition so to proceed may be filed in the Supreme Court within ten (10) days after entry of the denial. The petition shall be accompanied by a copy of the verified petition filed in the District Court and of the statements of reasons for denial given by the District Court.

[NCA 82-30, § 266; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**Rule 27. Habeas corpus**

**A. Filing the writ:** A writ of habeas corpus may be filed by any person who is detained in the Nation's custody before any hearing on the merits of the charges against him or her. The writ may be made by the prisoner alone, or if requested by the prisoner, the Clerk of the District Court must make such a writ on behalf of the prisoner. The writ shall state the reasons why the prisoner feels he or she is being wrongfully detained and shall immediately be served upon the Chief Justice of the Supreme Court.

**B. Hearing:** The Chief Justice upon receipt of such writ must call a hearing on the writ within one (1) day after receipt thereof, unless on a weekend or holiday, in which case the hearing shall be called the next day after a weekend or holiday. Three justices must sit at the hearing and the prisoner and/or his counsel may be present to present oral arguments on the merits of the writ. The Supreme Court may also summon Tribal officials and request a record of the charge to be presented by the Clerk of the District Court. If the justices find that the prisoner has been unlawfully detained and jailed they may proceed affirmatively upon the writ of habeas corpus. The writ of habeas corpus in no way affects the charge against the defendant and the Tribe may proceed to charge the defendant under the legal methods and procedures provided under this Code.

[NCA 82-30, § 267; amended by NCA 01-88, § 1, eff. June 1, 2001.]

**RULES OF APPELLATE PROCEDURE      Title 27, App. 2, Rule 27**

**Library References**

Indians ↻538.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.





# TITLE 28. LANDS AND MINERALS

## EKVNV HVTVM NAKEKVNOFVOCVT

<b>Chapter</b>	<b>Section</b>
1.	SALE, TRANSFER, DISPOSITION OF TRIBAL LANDS. . . . . 1-101
2.	CONDEMNATION OF TRIBAL LANDS. . . . . 2-101
3.	LEASES. . . . . 3-101
4.	PERMISSION FOR USE OF TRIBAL LANDS. . . . . 4-101
5.	PHYSICAL PLANT MAINTENANCE AND CAPITAL IMPROVE- MENT POLICY. . . . . 5-101
6.	TRIBAL CAPITOL COMPLEX MASTER SITE PLAN. . . . . 6-101
7.	TRIBAL CONSTRUCTION ENGINEER. . . . . 7-101
8.	BUILDING CODE. . . . . 8-101

### Cross References

Protection and preservation of ceremonial sites, see Title 5, § 1-101 et seq.

## CHAPTER 1. SALE, TRANSFER, DISPOSITION OF TRIBAL LANDS

### Section

- 1-101. Alienation or encumbrance of Tribal lands.
- 1-102. Violations.
- 1-103. Nullity of alienation or encumbrance.
- 1-104. Property transfers by Executive Office of Principal Chief.

### § 1-101. Alienation or encumbrance of Tribal lands

No Tribal lands of the Muscogee (Creek) Nation of Indians in Oklahoma, whether held in trust by the United States, owned in fee simple by the Muscogee (Creek) Nation, or arising as any other property right (e.g., reversionary interest or escheat), may be sold, transferred, disposed of or encumbered in any way unless the following procedures are fully complied with:

A. Public hearing, advertised twice in the thirty (30) days prior to its being held in at least one newspaper of general circulation in each legislative district of the Muscogee (Creek) Nation, shall be called by law, and convened by the Principal Chief.

B. A law shall be required to approve the action discussed in the public hearing.

C. A public law of the United States shall be required to assure the Muscogee (Creek) Nation that the entity to which the property would be sold, transferred, disposed, or encumbered has legal authority to enter into said transaction with the Muscogee (Creek) Nation.

[NCA 82-19, § 101, approved March 3, 1982.]

### Library References

Indians ☞173.

Westlaw Topic No. 209.

## **Title 28, § 1–101**

## **LANDS AND MINERALS**

C.J.S. Indians §§ 37 to 38, 101 to 108, 110 to 111, 128.

### **§ 1–102. Violations**

A. Violation of Title 28, § 1–101 shall, upon conviction of the individual or group involved, be deemed a felony under Tribal law.

B. Persons convicted under subsection A of this section may be fined not less than \$500.

[NCA 82–19, §§ 102, 103, approved March 3, 1982.]

### **§ 1–103. Nullity of alienation or encumbrance**

Any action taken contrary to Title 28, § 1–101 shall be null and void under Tribal law, and said action shall be nullity for all purposes except Title 28, § 1–102.

[NCA 82–19, § 104, approved March 3, 1982.]

#### **Library References**

Indians ⇄173.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 101 to 108, 110 to 111, 128.

### **§ 1–104. Property transfers by Executive Office of Principal Chief**

The Executive Office is prohibited from selling, conveying, exchanging, transferring or otherwise disposing of real property or any interest therein, without the advice, consent and approval of the Muscogee (Creek) National Council.

[NCA 96–03, § 105, approved Feb. 24, 1996; amended by NCA 98–34, § 103, approved March 31, 1998; NCA 01–66, § 2, approved July 10, 2001.]

#### **Library References**

Indians ⇄173.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 37 to 38, 101 to 108, 110 to 111, 128.

## CHAPTER 2. CONDEMNATION OF TRIBAL LANDS

### Section

- 2-101. Waiver of sovereign immunity.
- 2-102. Authorization to seek flood easement.
- 2-103. Applications for flood easement.
- 2-104. Response to applications.
- 2-105. Prohibited defense; damages.
- 2-106. Title to Tribal lands.
- 2-107. Filing.
- 2-108. Parties other than Muscogee (Creek) Nation.
- 2-109. Rules and regulations.
- 2-110. Agreements and covenants.

### § 2-101. Waiver of sovereign immunity

The sovereign immunity of the Muscogee (Creek) Nation from suit is hereby waived for the purpose of permitting suit by the Director, Division of Tribal Affairs, Muscogee (Creek) Nation, against Tribal lands for the purpose of condemning a flood easement against the lands.

[NCA 82-20, § 101, approved April 5, 1982.]

#### Library References

Indians ⇄405.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 2-102. Authorization to seek flood easement

A. In order to enable and empower the Director of the Division of Tribal Affairs to carry out the authority conferred in this chapter, in the most economical and efficient manner, he is authorized and empowered in the exercise of the powers of management of Tribal lands to exercise the right of seeking a flood easement against any Tribal lands of the Muscogee (Creek) Nation which are subject to flood or inundation, whether by natural or man-made impoundment or cause.

B. The Director of the Division of Tribal Affairs is authorized to apply in any Court of the Muscogee (Creek) Nation having jurisdiction, to condemn Tribal lands which are subject to flooding or inundation, whether by natural or man-made impoundment or cause, and to request the approval of the Court to order the filing of an easement against said Tribal lands to govern future use and management of said Tribal lands.

[NCA 82-20, §§ 102, 103, approved April 5, 1982.]

#### Library References

Eminent Domain ⇄17.  
Indians ⇄187.  
Westlaw Topic Nos. 148, 209.  
C.J.S. Eminent Domain § 48.  
C.J.S. Indians §§ 36 to 38, 80 to 83, 85 to 92,  
101 to 108, 110 to 111, 128.

**§ 2–103. Applications for flood easement**

Applications for flood easement shall contain the following information:

- A. A legal description of the Tribal lands.
- B. A statement of the elevation (in feet above sea level) below which the easement is to be effective.
- C. A map or plan showing the relationship between the entire parcel of Tribal lands and the lands to be placed under easement.
- D. A statement of the estate or interest in said lands to be placed under easement if any estate or interest other than the Muscogee (Creek) Nation is involved.
- E. A statement of the sum of money estimated by the Director of the Division of Tribal Affairs to be just compensation for the easement against any estate or interest other than the Muscogee (Creek) Nation.

[NCA 82–20, § 104, approved April 5, 1982.]

**Library References**

Indians ☞187.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 36 to 38, 80 to 83, 85 to 92,  
101 to 108, 110 to 111, 128.

**§ 2–104. Response to applications**

The legal counsel of the Muscogee (Creek) Nation is authorized to respond to applications brought under subsection B of Title 28, § 2–102, and to inform the Court of any compelling reason that the easement should not be allowed.

[NCA 82–20, § 105, approved April 5, 1982.]

**§ 2–105. Prohibited defense; damages**

Legal counsel, in proceedings under this chapter, is prohibited from raising the defense of the sovereign immunity of the Muscogee (Creek) Nation, or from requesting damages against the Muscogee (Creek) Nation for the flood easement.

[NCA 82–20, § 106, approved April 5, 1982.]

**Library References**

Indians ☞405, 535.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 2–106. Title to Tribal lands**

Proceedings under this chapter shall not affect title to Tribal lands, whether held in trust by the United States or held in fee simple by the Nation. The effect of a flood easement shall be limited to purposes related to the management, use, and prevention of alienation of Tribal property.

[NCA 82–20, § 107, approved April 5, 1982.]

**Library References**

Indians ☞151, 187.

Westlaw Topic No. 209.

C.J.S. Indians §§ 36 to 38, 80 to 83, 85 to 92,  
101 to 108, 110 to 111, 128.

**§ 2-107. Filing**

Application for flood easement shall, upon approval by a Court of the Muscogee (Creek) Nation, be filed with:

- A. The Office of the Director of Tribal Affairs.
- B. The Okmulgee Agency, U.S. Bureau of Indian Affairs.
- C. The County Clerk of the county of the State of Oklahoma within which the property is located.

[NCA 82-20, § 108, approved April 5, 1982.]

**Library References**

Indians ☞187.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 36 to 38, 80 to 83, 85 to 92,  
101 to 108, 110 to 111, 128.

**§ 2-108. Parties other than Muscogee (Creek) Nation**

Application for flood easement which would affect the estate or interest of any party other than the Muscogee (Creek) Nation, unless acquired separately under Tribal law or condemned under a Tribal law providing for eminent domain, shall impose the same limitations and restrictions upon the estate or interest of the other parties as would bear upon the Muscogee (Creek) Nation under the terms of this chapter. Such other parties shall be served no fewer than fifteen (15) days prior to the first hearing of Tribal Court on the application and may:

- A. Request that the Director of the Division of Tribal Affairs post a bond with the Tribal Court equal to his estimate, or the Court's determination, of the compensation for the interest or estate condemned.
- B. Request that the Tribal Court, in a hearing, examine the Director of the Division of Tribal Affairs's estimate of the just compensation for the interest or estate condemned, and that the Court determine independently the just compensation for the interest or estate condemned.
- C. Request that the Tribal Court review, not less than every sixth (6th) month, the relations between the Muscogee (Creek) Nation and the interest or estate condemned on the subject of flood easement property management, until such time as the court, or the interest or estate condemned, is satisfied that such relations conform to the purpose and intent of this law.
- D. Request such injunctive, prohibitory, equitable, or mandatory relief as is necessary to protect the interest or estate condemned.

[NCA 82-20, § 109, approved April 5, 1982.]

**Library References**

Indians ☞187.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 36 to 38, 80 to 83, 85 to 92,  
101 to 108, 110 to 111, 128.

**§ 2-109. Rules and regulations**

The Director of the Division of Tribal Affairs is authorized to issue rules and regulations for the management of all property subject to flood easement, including but not limited to the following:

**Title 28, § 2-109**

**LANDS AND MINERALS**

- A. Run-off retardation.
- B. Water-flow retardation.
- C. Soil-erosion prevention.
- D. Protection of environment, migratory and predatory fowl, and endangered animal and plant species.
- E. Erection of permanent and temporary facilities.
- F. Erection of facilities on or in flooded or impounded waters.
- G. Flood easement area property management.

[NCA 82-20, § 110, approved April 5, 1982.]

**§ 2-110. Agreements and covenants**

Agreements and covenants as to the permanent use of all property subject to flood easement are authorized to be negotiated by the Principal Chief, the Director of Tribal Affairs, and legal counsel, provided that such agreements and covenants shall be of no force nor effect until their ratification by a Tribal Resolution of the Muscogee (Creek) Nation.

[NCA 82-20, § 111, approved April 5, 1982.]

## CHAPTER 3. LEASES

### Section

3-101. Agricultural leases.

3-102. Law enforcement authority and regulatory powers.

### § 3-101. Agricultural leases

The Principal Chief is hereby authorized to enter into agricultural leases for the purpose of generating revenue for land management and development of lands within the Hanna and Wetumka projects located in McIntosh and Hughes counties. All agricultural leases must meet or exceed approved fair market value appraisals. Any agricultural lease shall not exceed three (3) years without the consent and approval of the Muscogee (Creek) National Council.

[NCA 96-03, § 106, added by NCA 98-34, § 104, approved March 31, 1998.]

#### Cross References

Authorization of expenditures and sales, farm operations, see Title 1, § 1-101.

#### Library References

Indians ⇄178, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

### § 3-102. Law enforcement authority and regulatory powers

A. The Muscogee (Creek) Nation, as lessor, retains full jurisdiction over all Tribal lands and property leased to any lessee regardless of whether the lessee is a person or legal organization, Indian or non-Indian.

B. No lease of Tribal land, regardless of whether it was executed before or after the effective date of this section, shall divest or in any way limit the law enforcement authority of the Lighthorse Police to maintain the peace, law and order and to enforce the criminal laws of the Muscogee (Creek) Nation.

C. All leases of Tribal land shall be subject to the Nation's authority to allow and/or regulate the activities of hunting, fishing and gathering of native and/or medicinal plants by its citizens and other members of federally recognized Tribes, in a manner that such activities do not prevent the lessee from exercising his or her rights under the lease or deplete the land of its natural resources.

[NCA 98-116, § 103, approved Nov. 19, 1998.]

#### Library References

Indians ⇄180.  
Westlaw Topic No. 209.

## CHAPTER 4. PERMISSION FOR USE OF TRIBAL LANDS

### Subchapter

1. Festival Committee
2. Miscellaneous

### Cross References

Chartered Community use of tribal lands and buildings, see Title 11, § 4–101 et seq.

## SUBCHAPTER 1. FESTIVAL COMMITTEE

### Section

- 4–101. Authority to grant omniplex land use permits.
- 4–102. Vendors at the omniplex site.
- 4–103. Advertising; Indian preference.
- 4–104. Permit form.
- 4–105. Rental rates and concession fees.

### Cross References

Creek Nation Festival Account, see Title 37, § 2–212.  
Purchasing, Creek Nation Festival, see Title 15, § 3–101.

### § 4–101. Authority to grant omniplex land use permits

A. The Muscogee (Creek) Nation Festival Committee is hereby authorized to grant land use permits, up to a ninety day (90) day period for a piece of Tribal property known as the “omniplex”.

B. Any land use permits over the ninety day (90) day period must receive the approval of the Muscogee (Creek) National Council, by Tribal Resolution.

[NCA 89–52, §§ 102, 103, approved April 26, 1989.]

### Library References

Indians ⇨178.  
Westlaw Topic No. 209.

### § 4–102. Vendors at the omniplex site

All contracts with vendors wishing to do business at the omniplex site shall be submitted and approved by the Festival Committee.

[NCA 89–52, § 105, approved April 26, 1989.]

### Library References

Indians ⇨142(1), 180, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 11, 37 to 38, 76.



**PERMISSION TO USE TRIBAL LANDS**

**Title 28, § 4-201**

**§ 4-103. Advertising; Indian preference**

The Festival Committee shall advertise the availability of land use permits in the *Muscogee Nation News* and shall give Indian preference in granting land use permits.

[NCA 89-52, § 107, approved April 26, 1989.]

**Library References**

Indians ☞176, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 76, 109.

**§ 4-104. Permit form**

The Festival Committee shall devise a land use permit form that shall be signed and approved as to form by the Creek Nation Tribal Attorney.

[NCA 89-52, § 108, approved April 26, 1989.]

**Library References**

Indians ☞176, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 76, 109.

**§ 4-105. Rental rates and concession fees**

Rental rates and concession fees for land use permits shall be established by the Festival Committee.

[NCA 89-52, § 109, approved April 26, 1989.]

**Library References**

Indians ☞183, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians § 76.

**SUBCHAPTER 2. MISCELLANEOUS**

**Section**

4-201. Rodeo and festival lease exemption.

**§ 4-201. Rodeo and festival lease exemption**

The Creek Nation Rodeo and Festival Committees shall not be required to lease Tribal lands for the purpose of the annual rodeo and festival for Tribal members.

[NCA 86-31, § 101, veto overridden July 26, 1986; amended by NCA 09-228, eff. Dec. 28, 2009.]

## **CHAPTER 5. PHYSICAL PLANT MAINTENANCE AND CAPITAL IMPROVEMENT POLICY**

### **Section**

5-101. Policy.

5-102. Repealer.

### **§ 5-101. Policy**

Muscogee (Creek) Nation adopts the following policy statements for the physical facilities owned and operated by the Tribe.

A. Muscogee (Creek) Nation will make every effort possible to maintain the physical facilities owned by the Tribe in an operational and safe condition conducive to a quality work environment and client service delivery system.

B. Muscogee (Creek) Nation shall develop a preventive maintenance program to protect the Tribal capital investment and physical facilities.

C. Muscogee (Creek) Nation shall evaluate on an annual basis the energy usage of the physical facilities owned and operated by the Tribe and develop energy conservation techniques and processes to conserve energy.

D. Muscogee (Creek) Nation shall be conscious of the American Disabilities Act and design physical facilities in a manner that meets social responsibilities to be sensitive to employees and clients who have disabilities.

E. The Unit Manager responsible for maintenance shall develop on an annual basis, a schedule and work plan for the routine and non-routine maintenance tasks for physical property management. Routine tasks are herein defined as normal operating wears and supply usage. Non-routine tasks are herein defined as those tasks where a physical facility is in need of a major or minor repair. Non-routine tasks shall be identified and prioritized on an annual basis through a physical inventory check up report that will be conducted by the Division of Tribal Affairs.

F. Muscogee (Creek) Nation shall develop and program a landscaping plan for the beautification of Tribal grounds to enhance its appearance, as well as client and employee morale.

[NCA 92-109, § 103, approved July 27, 1992; amended by NCA 97-30, § 103, approved March 31, 1997; NCA 97-81, § 103, approved July 30, 1997; NCA 01-228, § 1, approved Dec. 4, 2001; NCA 03-148, § 1, eff. Nov. 3, 2003.]

### **Historical and Statutory Notes**

NCA 97-81, § 104, provides: “With the Enactment of this Act, the provisions outlined in Section 103. E., shall be retro-active beginning Fiscal Year 1997 and shall	exclude NCA 97-35 [relating to the acquisition of land for the child care development center in Holdenville].”
--	--

### **Cross References**

Budget, physical plant maintenance and capital improvements program, see Title 37, § 2-106.  
Maintenance and capital improvements sinking fund, see Title 37, § 2-207.

**PHYSICAL PLANT AND IMPROVEMENTS**

**Title 28, § 5–102**

**Library References**

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 5–102. Repealer**

NCA 97–81 and NCA 01–228 are hereby repealed.  
[Added by NCA 03–148, § 2, eff. Nov. 3, 2003.]

## CHAPTER 6. TRIBAL CAPITOL COMPLEX MASTER SITE PLAN

### Section

- 6-101. Definitions.
- 6-102. Adoption and review of Master Plan.
- 6-103. Capital Improvement Program to conform to Master Plan.
- 6-104. Physical development matters to be submitted for approval.
- 6-105. The Master Plan.
- 6-106. Principles and guidelines for future development; Building Code.
- 6-107. Funding applications and proposals.
- 6-108. Office assignments.

### Historical and Statutory Notes

NCA 93-151, § 101, provides:

“Findings.

“The Muscogee National Council finds that:

“A. The Office of the Principal Chief, Office of the Administration, and the Planning Department of the Muscogee Nation after careful study and after sponsoring a number of planning meetings involving administrative staff, members of the National Council, members representing the Judicial Branch, and members representing Independent Agencies has recommended to the National Council a Master Site Plan for the Muscogee Nation Tribal Capital Complex.

“B. The National Council has carefully considered the Master Site Plan and finds that said plan constitutes a suitable, logical, and timely plan for the future development of the Muscogee Nation Capital over the ensuing ten years.

“C. The Master Site Plan that was developed in 1978 was never officially adopted by the National Council.

“D. No official coordination for locating buildings at the tribal capital is in place.

“E. A building program is being initiated and needs official guidance and direction for locating each tribal facility on the Tribal Capital Complex Site.”

### § 6-101. Definitions

A. “Capital improvement”—shall mean any expenditure for physical facilities of the government, such as costs for acquisition of land; construction of roads or utility lines; installation of fixed equipment; landscaping and similar expenditures.

B. “Capital Improvement Program”—shall mean a schedule of projects with estimated costs over a period of five (5) years.

C. “Master Plan”—shall mean a layout of the Muscogee (Creek) Nation Tribal Capitol Complex showing existing and proposed buildings, streets, utility services, parking spaces, and open spaces.

D. “Minor changes”—shall mean a change in a specific building site plan or the name of a building.

E. “Substantial changes”—shall mean a major deviation from the overall design of the Master Plan.

[NCA 93-151, § 102, approved Nov. 8, 1993; amended by NCA 06-60, § 1, eff. Apr. 29, 2006.]

### § 6-102. Adoption and review of Master Plan

A. The document entitled “Muscogee (Creek) Nation-Tribal Capitol Complex-Master Plan,” shown in its entirety in § 6-105 of this Chapter, is hereby adopted as the Official Master Plan for the Tribal Capitol Complex of the Muscogee (Creek) Nation.

B. To ensure that the Master Plan is at all times current with the needs of the Tribal government, the Office of the Principal Chief and his designated staff shall annually review the Master Plan and recommend changes to the National Council. Should the Office of the Principal Chief find that no substantial changes to the Master Plan are necessary, this finding shall be reported to the Council. This review procedure shall be presented to the National Council no later than September 1st of each calendar year.

[NCA 93–151, § 104, approved Nov. 8, 1993; amended by NCA 06–60, § 1, eff. Apr. 29, 2006.]

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 6–103. Capital Improvement Program to conform to Master Plan**

The Master Plan shall guide the Capital Improvement Program for the Tribal Capitol Complex. The Office of the Principal Chief or his designated staff shall submit an annual report to the National Council regarding the Capital Improvement Program, which shall review each project for its conformity to the Master Plan; review the program in order to suggest any improvement in economy or efficiency which might be effected through the combining of various projects; and suggest any needed improvements which do not appear in the program.

[NCA 93–151, § 104, approved Nov. 8, 1993; amended by NCA 06–60, § 1, eff. Apr. 29, 2006.]

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 6–104. Physical development matters to be submitted for approval**

All matters affecting the physical development of the Tribal Capitol Complex shall be submitted to the Tribal Planner to ensure conformity to the Master Plan. The Tribal Planner shall submit his/her recommendations to the Principal Chief for approval.

[NCA 93–151, § 104, approved Nov. 8, 1993; amended by NCA 06–60, § 1, eff. Apr. 29, 2006.]

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 6–105. The Master Plan**

A. **MNM #1.—Muscogee (Creek) Nation Memorial Plaza (ES VKERRICKV TVCO)**— Reserved to add beauty, arts and memorial items to the Complex Site. This area is also being reserved to sponsor National cultural events, such as a “National Stickball Field.” Additionally, this area is a designated area for a sign structure incorporating a symbolic Creek Mound (Planned Project).

B. **EOB #2.—Executive Office Building (ENRVKRVKV CUKO)**— Programmed to house the Office of the Principal Chief, National Sovereignty Council, Office of the Administration, Office of Policy Development and associated activities connected with the Executive Branch of government. Existing facilities are approximately twenty thousand (20,000) sq. ft. with one hundred forty (140) parking spaces. Future improvements shall incorporate ADA Code requirements and remodeling. One hundred (100) extra parking spaces with existing parking lots resurfaced, and new sidewalks and landscaping. (Project Complete)

C. **DOJ #3.—Department of Justice Building (FVTCECKV CUKO)**— Programmed to house the Department of Justice and the Attorney General's Office. Future improvements shall incorporate ADA Code requirements and remodeling. (Project Planned)

D. **TOB #4.—Treasury Office Building (CVTOKNAWV VTEKV)**— Programmed to house the Office of the Treasury and the Controller's Office. Future improvements shall include an additional five thousand (5,000) sq. ft. and shall incorporate ADA Code requirements and remodeling. (Planned Project).

E. **CMB #5.—Capital Mound Building (MVSKOKE ETVLWV ENCUKO RAKKO)**— Programmed to house public meetings. Approximately fifteen thousand (15,000) sq. ft. Future planning to include solving water leaks, additional parking, and landscaping. (Project Complete)

F. **LCB #6.—Legislative (Council) Building (VHKV HAYALKE EN CUKO)**— Programmed to house the National Council. Planned for twenty thousand (20,000) sq. ft. and one hundred twenty-seven (127) parking spaces. (Planned Project)

G. **JCB #7.—Judicial Court Building (FVTCECVLKE ENCUKO CULO)**— Programmed to house the Supreme Court, District Court and other Courts. Planned for twenty thousand (20,000) sq. ft. and one hundred fifteen (115) parking spaces. (Planned Project).

H. **GPA #8.—Garden Plaza Area (NAK AHOCKV TVCO)**— Proposed landscaped areas with center fountains to add beauty, arts and memorial items. (Planned Project).

I. **CHB #9.—Community and Health Administration Services Building (ESTE MAPOKV MOMEN—CVKFEKNETV VJVSTVLKE)**—Programmed to house the Division of Community Services, Division of Health Administration, and associated programs. Planned for approximately twenty thousand (20,000) sq. ft. building and one hundred thirty (130) parking spaces (Planned Project).

J. **HDB #10.—Human Development Building (ESTE MAYVYETV)**—Programmed to house the Division of Human Development and associated programs. Planned for approximately twenty thousand (20,000) sq. ft. and one hundred (100) parking spaces (Planned and Funded Project).

K. **IAB #11.—Independent Agency Building (ALVKVL KVLKE)**—Programmed to house the Citizenship Board, Election Board, Office of Public Gaming, Office of Taxation, Gaming Operations Authority, Lighthouse Commission, Industrial Development Authority Board, Farm Authority Board, and

other independent agencies. Existing facilities, including approximately five thousand (5,000) sq. ft. with forty-nine (49) parking spaces.

L. **TAB #12.—Tribal Affairs Building (ETVLWV ESAHECVLKE)**—Programmed to house the Division of Tribal Affairs and associated programs. Planned for approximately twenty thousand (20,000) sq. ft. with seventy-two (72) parking spaces (Planned Project).

M. **HAP #13.—Housing Authority Programs—(CUKO HECKECALKE ESKERKKVT)**—Programmed to house the Housing Authority and associated programs, i.e., Planned for ten thousand (10,000) sq. ft. building with total ninety (90) shared parking units. (Planned Project)

N. **HAM #14.—Housing Authority Management—(CUKO HECKECALKE EMAKERRICVLKE)**—Programmed to house the Housing Authority Management and associated programs. Planned for five thousand (5,000) sq. ft. building with total ninety (90) shared parking units. (Planned Project)

O. **HAA #15.—Housing Authority Administration—(CUKO HECKECALKE VVSTVLKE)**—Programmed to house the Housing Authority Administration and associated activities. Planned for five thousand (5,000) sq. ft. building with total ninety (90) shared parking units. (Planned Project).

P. **GPA #16.—Garden Plaza Area (WE MOLE)**—Proposed landscape area with a fountain to add beauty, arts, and memorial items. (Planned Project).

R. **TAB #17.—Tribal Archives Building (ETVLWV SKERKV)**—Programmed to serve as a depository and storage of official records of the Tribe. Planned remodel of existing facility. (Planned Project)

S. **HSB #18.—Head-Start Building (HVTECESKV COKV HECKV)**—Programmed to house the Head-Start Program. Existing five thousand, one hundred (5,100) sq. ft. facility with fifteen (15) parking spaces. (Completed Project)

T. **GSF #19.—General Storage Facility (NAK HELACKV CUKO)**—General storage facility. (Project Complete).

U. **GSA #20.—General Services Administration Building (WVCENV MVFSTVLKE ENCUKO)**—Programmed to house the General Services Administration Program and associated activities. (Completed Project)

V. **FMB #21.—Facility Maintenance Building (NAK MAHELACKV CUKO)**—Programmed to house the Facility Maintenance Program and associated activities. (Planned Project)

W. **HAW #22.—Housing Authority Warehouse Building (CUKO HECKECALKE NAK APOYETV)**—Programmed to serve as a warehouse and maintenance facility for the Housing Authority. (Planned Project)

X. **CDB #23.—Civil Defense Building (ETVLWV VKETECVLKE)**—Programmed to house Emergency Operational Response Program and equipment. (Planned Project)

Y. **LAB #24.—Lighthouse Administration Building (ESTECATE ESTE WVNAYV)**—Programmed to house the Lighthouse Administration and associated activities. (Planned Project)

**Z. FPB #25.—Fire Protection Building (TOTKV SENTACKVLKE)**—Programmed to house the Rural Fire Protection Program. (Planned Project)

**AA. FDC #26.—Food Distribution Center Building (HOMPETV AWWLETV)**—Programmed to house the Food Distribution Program. (Completed Project)

**BB. MVP #27.—Motor Vehicle Pool Area (ATOMO MAPOKETV)**—Programmed to house Tribal motor vehicles. (Planned Project)

**CC. EHB #28.—Environmental Health Service Building (ARETV AKE-TECVLKE)**—Programmed to house the Department of Environmental Services Administration and Environmental Health Services. (Planned Project)

**DD. CRC #29.—Cultural Resource Center and Museum Building (NAK VCAKE HELVCKV CUKO)**—Programmed to house a Tribal library, cultural materials and collected artifacts. (Planned Project)

**EE. RPA #30.—Recreation Pond Area (AKHVSSE)**—Programmed to provide a pleasant environment. (Planned Project).

**FF. GBF #31.—Gaming Bingo Building and Commercial Property (PEN-KO AKOPANETV CUKO)**—Programmed to house the Okmulgee Bingo Hall and associated gaming activities. (Completed Project)

**GG. TRC #32.—Technology Resource Center Building (NAKESKERRET V CUKO)**—Programmed to house research and development activities. (Planned Project)

**HH. CPA #33.—Commercial Property Area (NESKV CUKO RAKKO EKVNV)**—Reserved for commercial and gaming activities. (Planned Project).

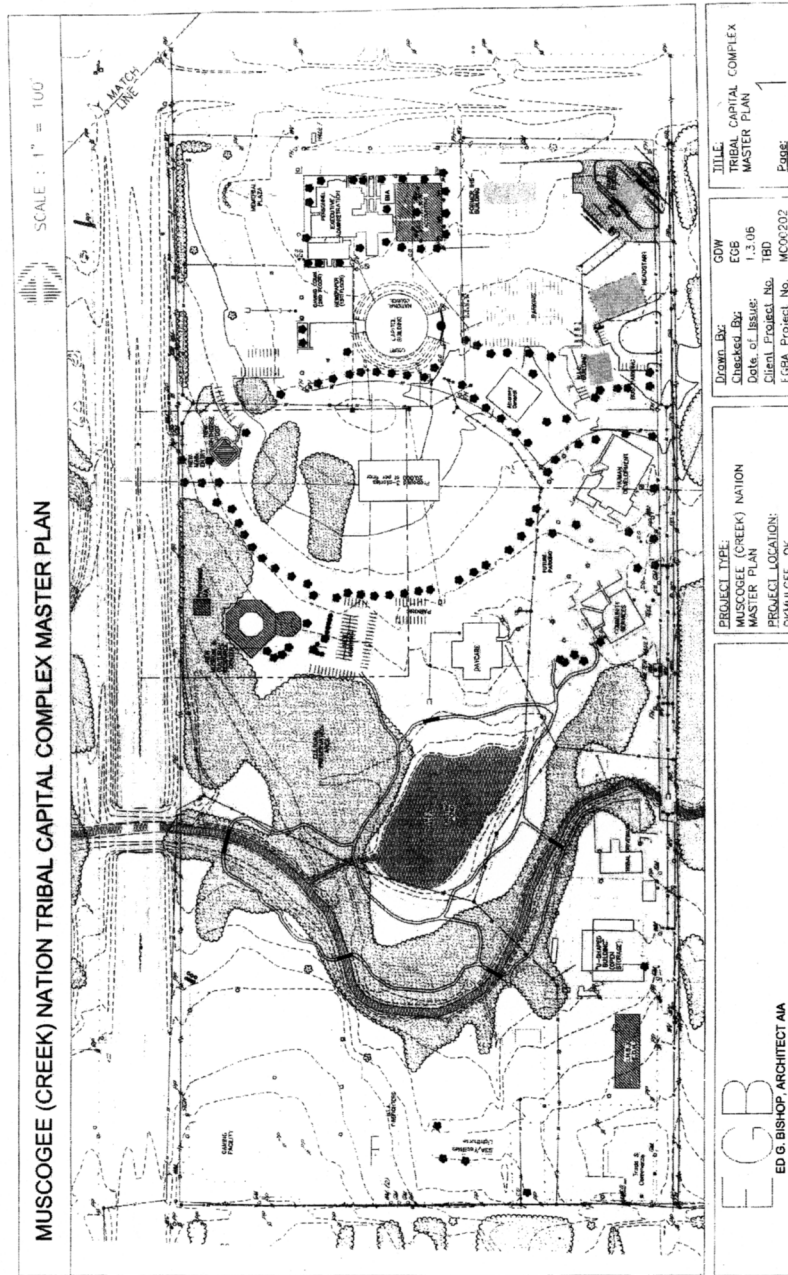
**II. CPA #34.—Cultural Preservation Area (ENFOLETV ACAYECKV EKVNV)**—Programmed to house outside cultural activities. (Planned Project)

**JJ. CDP #35.—Child Development Parking Lot**—Parking lots located west of the Child Development Center. Plans include a projection of approximately twenty (20) parking spaces.

**KK. CMP #37.—Capitol Mound Building Parking Lot**—Parking lots located east of the Capitol Mound Building. Plans include a projection of approximately one hundred (100) parking spaces.

**LL. WIC #38.—Women, Infants and Children Clinic**—Programmed to serve low-income expectant mothers and children up to the age of five (5).





[NCA 93-151, § 105, approved Nov. 8, 1993; amended by NCA 01-225, § 1, approved Dec. 26, 2001; NCA 06-60, § 1, eff. Apr. 29, 2006.]

**Library References**

- Indians ☞ 210.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 57 to 59, 66 to 72.

**Title 28, § 6-106**

**LANDS AND MINERALS**

**§ 6-106. Principles and guidelines for future development; Building Code**

A. All buildings shall be constructed and/or renovated in accordance with the Building Code adopted in MCNCA Title 28, Chapter 8.

B. All buildings shall be designed and built to complement each other.

C. All landscape designs, sidewalks, and plazas shall be designed to unify facilities.

D. Every effort possible shall be made to keep and protect native trees.

[NCA 93-151, § 106, approved Nov. 8, 1993; amended by NCA 06-60, § 1, eff. Apr. 29, 2006.]

**Library References**

Indians ⇄210, 227.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 76.

**§ 6-107. Funding applications and proposals**

The Office of the Principal Chief is authorized to submit applications, grants and proposals to various federal and private funding sources to help the Nation achieve its short-range and long-range goals and objectives of the Capital Improvement Program.

[NCA 93-151, § 107, approved Nov. 8, 1993; amended by NCA 06-60, § 1, eff. Apr. 29, 2006.]

**§ 6-108. Office assignments**

The Office of the Principal Chief shall make office space assignments to the various branches, entities, agencies departments, programs and service functions of the Muscogee (Creek) Nation Tribal Government.

[NCA 93-151, § 107, approved Nov. 8, 1993; amended by NCA 06-60, § 1, eff. Apr. 29, 2006.]

## CHAPTER 7. TRIBAL CONSTRUCTION ENGINEER

### Section

- 7-101. Findings.
- 7-102. Purpose.
- 7-103. Oversight.
- 7-104. Reports.
- 7-105. Legal review of contracts below \$10,000.00.
- 7-106. Legal review and National Council approval of contracts above \$10,000.00.
- 7-107. Exceptions.

### § 7-101. Findings

A. The Muscogee (Creek) Nation continues to increase the value of its assets through the constructing and renovating of buildings located on the Nation's property.

B. The Muscogee (Creek) Nation employs a Tribal Construction Engineer whose duties include the oversight of construction and renovation on the Nation's properties.

C. There is a need to insure that construction or renovation is aesthetically and architecturally sound; that it is in compliance with construction standards, including applicable building codes, and that the construction or renovations comply with the Nation's Master Plan.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

### § 7-102. Purpose

The purpose of this chapter is to require oversight by the Muscogee (Creek) Nation Tribal Construction Engineer on all construction or renovations that occur on the Nation's property and to insure that all construction or renovations occur in a uniform manner throughout the Nation's property.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

#### Library References

Indians ⇌227.  
Westlaw Topic No. 209.  
C.J.S. Indians § 76.

### § 7-103. Oversight

If any branch of the Nation's government, independent agency, board, entity or chartered community plans, seeks or requests new construction or renovations on the Nation's property, it shall first submit a request for construction support services to the Tribal Construction Engineer, utilizing a form provided by the Tribal Construction Engineer.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

#### Library References

Indians ⇌227.  
Westlaw Topic No. 209.  
C.J.S. Indians § 76.

**§ 7-104. Reports**

On a quarterly basis, the Tribal Construction Engineer shall provide to the National Council and the Principal Chief a written summary of all projects that have been submitted to the Tribal Construction Engineer. The report shall contain, at a minimum, the location of the project, the estimated or actual cost of the project and the party requesting the construction or renovation.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

**Library References**

Indians ☞227.  
Westlaw Topic No. 209.  
C.J.S. Indians § 76.

**§ 7-105. Legal review of contracts below \$10,000.00**

All contracts for construction or renovation below ten thousand dollars (\$10,000.00) for projects located on the Nation's property shall be reviewed by the Attorney General's Office prior to execution by the Principal Chief to ensure that the Nation's sovereign immunity is protected.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

**Library References**

Indians ☞142, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 11, 37 to 38, 76.

**§ 7-106. Legal review and National Council approval of contracts above \$10,000.00**

All contracts for construction or renovation in excess of ten thousand dollars (\$10,000.00) for projects located on the Nation's property shall be reviewed by the Attorney General's office. All contracts for new construction shall be approved by the National Council by way of duly adopted Tribal Resolution.

[Added by NCA 05-084, § 1, approved May 6, 2005; amended by NCA 07-268, § 1, eff. Jan. 2, 2008.]

**Library References**

Indians ☞142(1), 210, 227.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 11, 37 to 38, 57 to 59, 66 to 72, 76.

**§ 7-107. Exceptions**

All projects under the control of the Mound Building Oversight Committee shall be exempt from the requirements in § 7-103 through § 7-106; all projects under the control of the Gaming Operations Authority Board shall be exempt from the requirements in § 7-103 through § 7-106 as said projects are addressed in the Nation's Gaming Code; and all projects under the Division of Housing shall be exempt from the requirements in § 7-103 through § 7-106 as said projects are addressed in the Nation's Housing Code.

[Added by NCA 05-084, § 1, approved May 6, 2005.]

## CHAPTER 8. BUILDING CODE

### Section

- 8-101. Purpose.
- 8-102. Building Code.
- 8-103. Applicability.
- 8-104. Building Inspector.

### § 8-101. Purpose

The purpose of this chapter is to adopt construction codes for all construction or renovation projects of the Nation that occur on the Nation's property and to ensure that all construction projects or renovations occur in a uniform manner throughout the Nation's property.

[Added by NCA 05-162, § 1, eff. Sept. 2, 2005.]

#### Library References

Health ☞392.	C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.
Indians ☞227.	C.J.S. Indians § 76.
Westlaw Topic Nos. 198H, 209.	

### § 8-102. Building Code

The Muscogee (Creek) National Council hereby adopts the International Building Code, International Existing Building Code, International Fire Code, International Mechanical Code, International Plumbing Code, International Electrical Code, and the International Fuel Gas Code as thereafter amended.

[Added by NCA 05-162, § 1, eff. Sept. 2, 2005.]

#### Library References

Health ☞392.	C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.
Indians ☞227.	C.J.S. Indians § 76.
Westlaw Topic Nos. 198H, 209.	

### § 8-103. Applicability

The construction codes shall apply to all construction of any size, cost, type or purpose, regardless of whether it is new construction, addition, or renovation.

A. This chapter shall not apply to the mere repair or maintenance of an existing commercial building or accessory structure.

B. This chapter shall not apply to residential structures.

[Added by NCA 05-162, § 1, eff. Sept. 2, 2005.]

#### Library References

Health ☞392.	C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.
Indians ☞227.	C.J.S. Indians § 76.
Westlaw Topic Nos. 198H, 209.	

**Title 28, § 8-104**

**LANDS AND MINERALS**

**§ 8-104. Building Inspector**

The Tribal Construction Engineer is hereby appointed as the “Building Official” as designated in the construction codes.

[Added by NCA 05-162, § 1, eff. Sept. 2, 2005.]

**Library References**

Health ☞392.

Indians ☞227.

Westlaw Topic Nos. 198H, 209.

C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.

C.J.S. Indians § 76.

**TITLE 29. LIBRARY [RESERVED]**

**NAKCOKV CUKO**

*(Reserved for Future Use)*

# TITLE 30. NATIONAL COUNCIL/LEGISLATIVE BRANCH ETVLWVLKE NAKAFTVLKE/VHAKV HAYVLKE

<b>Chapter</b>		<b>Section</b>
1.	LEGISLATION; CODIFICATION OF LAWS. ....	1-101
2.	LEGISLATIVE DISTRICTS. ....	2-101
3.	MEETINGS OF NATIONAL COUNCIL. ....	3-101
4.	COMPENSATION OF NATIONAL COUNCIL. ....	4-101
5.	SPEAKER. ....	5-101
6.	SECRETARY OF NATIONAL COUNCIL. ....	6-101
7.	PARLIAMENTARIAN TO NATIONAL COUNCIL. ....	7-101
8.	CONTEMPT OF NATIONAL COUNCIL. ....	8-101

### Cross References

Special appropriations guidelines, see Title 35, § 9-101 et seq.

## CHAPTER 1. LEGISLATION; CODIFICATION OF LAWS

<b>Section</b>	
1-101.	Title and codification.
1-102.	Definitions.
1-103.	Purpose.
1-104.	Codification Committee.
1-105.	Codification of laws.
1-106.	Constitution; classification of laws by title.
1-107.	Codification of prior laws.
1-108.	Codification of new laws.
1-109.	Legislative history and annotations.
1-110.	Code of Laws updates.
1-111.	Publication of Code of Laws.
1-112.	Form of bills, laws and Tribal Resolutions; amendments.
1-113.	Session laws.
1-114.	Maintenance of minutes, bills, laws and resolutions.
1-115.	Appropriations and establishment of restricted account.
1-116.	Sales and distribution.
1-117.	Mvskoke Law Reporter.
1-118.	Sales and distribution of the Mvskoke Law Reporter.
	Appendix 1.
	Appendix 2.
	Appendix 3.

### § 1-101. Title and codification

This Act (NCA 01-12) shall be entitled “Chapter One. Legislation; Codification of Laws,” and shall be placed in Title 30, “National Council/Legislative Branch,” of the Code of Laws of the Muscogee (Creek) Nation.

[NCA 01-12, § 1-101, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 1–102. Definitions**

A. “Annotation” means comments, explanations, notes, and citations of case law relevant to interpretation of a law.

B. “Code of Laws” shall mean the Code of Laws of the Muscogee (Creek) Nation.

C. “Codification” means to establish, compile, arrange, group, sort, catalog, list, categorize, place, and index a published document containing the Constitution, Ordinances, and Rules of Procedure of the Muscogee (Creek) Nation.

D. “Law” means the written law of the Muscogee (Creek) Nation intended to permanently direct and control matters applying to persons or things in general, including all general and special appropriations, adopted by vote of the National Council following a duly seconded motion to approve such law. An ordinance enacted prior to the effective date of enactment of this chapter shall be deemed a “law” only if it meets the definition contained herein; if it does not meet this definition, it shall be deemed a “Tribal Resolution” as defined in this chapter. Any Tribal Resolution enacted prior to the effective date of enactment of this chapter which meets the definition of a law shall be treated as a law only when expressly designated as a law by enactment of the National Council.

E. “Motion” means a verbal statement by a member of the National Council by which such member submits a proposed measure for consideration and action by the National Council.

F. “National Council” means the National Council of the Muscogee (Creek) Nation.

G. “National Council Resolution” means the formal expression of the opinion or will of the National Council relating to the internal operations of the National Council. National Council Resolutions shall be maintained in accordance with the Rules of Procedure. Legislation designated as an “Ordinance,” “Act” or “Tribal Resolution” which was enacted prior to the effective date of enactment of this chapter shall be deemed a “National Council Resolution” for codification purposes if it meets the definition contained herein.

H. “Rules of Procedure” means the Rules of Procedure of the Muscogee (Creek) Nation National Council adopted on May 20, 2000 or any duly approved amendment or amendment of said Rules of Procedure.

I. “Tribal Resolution” means the formal expression of the policy, opinion or will of the Muscogee (Creek) Nation relating to some specific matter or thing of significance to the Muscogee (Creek) Nation government and citizens, adopted by vote following a duly seconded motion to approve such Tribal resolution. Legislation designated as an “Ordinance,” “Act” or “National Council Resolution” which was enacted prior to the effective date of enactment of this chapter



shall be deemed a “Tribal Resolution” for codification purposes if it meets the definition contained herein.

[NCA 01–12, § 1–102, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

### § 1–103. Purpose

The purpose of this chapter is to have all the Nation’s laws, Tribal Resolutions and National Council Rules of Procedure thoroughly examined and documented so as to have them placed in an appropriate document for professional publication. In order to assemble the necessary material for publication the three (3) branches of the Nation shall cooperate in the collection, provision and distribution of any and all relevant material necessary to accomplish the goal of this chapter. Each branch shall make available personnel and materials needed to accomplish the purpose of this chapter.

[NCA 01–12, § 1–103, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

#### Library References

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1–104. Codification Committee

A Codification Committee made up of at least five (5) persons shall be established. The Committee members shall consist of the Principal Chief or his/her designee, the Speaker or his/her designee, the District Court Judge of the Muscogee (Creek) Nation or his/her designee, the Attorney General or his/her designee, and one (1) member from the Business and Government Committee. The District Court Judge or his/her designee shall be the Chairman of the Codification Committee. The Codification Committee shall have the authority to effect the codification of the laws of the Muscogee (Creek) Nation, including update of the Code on an annual basis, and shall have such other authority as granted by this chapter.

[NCA 01–12, § 1–104, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

#### Library References

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1–105. Codification of laws

A. The Code of Laws of the Muscogee (Creek) Nation is hereby established and shall be based on all unrepealed laws and any amendments thereto enacted by the Muscogee (Creek) Nation before or after enactment of this chapter and placed in a code form in accordance with the codification procedures established by this chapter; provided that appropriations laws shall not be codified, except for any substantive provisions contained therein.

B. Tribal Resolutions and National Council Resolutions shall not be codified, and the codification of laws shall have no effect upon the validity of any

## Title 30, § 1–105

## LEGISLATIVE BRANCH

Tribal or National Council Resolution. No Tribal or National Council Resolution shall be construed to be controlling over any inconsistent law.

[NCA 01–12, § 1–105, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

### Library References

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1–106. Constitution; classification of laws by title

**A. Constitution.** The Constitution of the Muscogee (Creek) Nation, and all amendments submitted to the people for referendum vote and the results thereof, shall be placed at the beginning of the Code of Laws.

**B. Classification of laws.** The laws of the Muscogee (Creek) Nation shall be classified by subject matter and codified in the appropriate titles of the Code of Laws of the Muscogee (Creek) Nation, in accordance with the following classification system, provided that additional titles may be added by law duly enacted by the National Council when deemed necessary:

TITLE 1 Agriculture  
TITLE 2 Attorneys and Tribal Bar  
TITLE 3 Corporations  
TITLE 4 Burial/Cemeteries  
TITLE 5 Ceremonial Grounds/Churches  
TITLE 6 Children and Family Relations  
TITLE 7 Citizenship/Census  
TITLE 8 Banking  
TITLE 9 Bureau of Indian Affairs  
TITLE 10 Definitions and General Provisions  
TITLE 11 Communities  
TITLE 12 Garnishment  
TITLE 13 Federal Claims  
TITLE 14 Crimes and Punishments  
TITLE 15 Cultural Affairs/History/Museum  
TITLE 16 Executive Branch  
TITLE 17 Economic Development  
TITLE 18 Education  
TITLE 19 Elections  
TITLE 20 Elderly Services  
TITLE 21 Gaming  
TITLE 22 Health and Safety  
TITLE 23 Hunting and Fishing

- TITLE 24 Housing
- TITLE 25 Inter–Government and Inter–Tribal Relations
- TITLE 26 Judicial Branch/Courts
- TITLE 27 Judicial Procedures
- TITLE 28 Lands and Minerals
- TITLE 29 Library
- TITLE 30 National Council/Legislative Branch
- TITLE 31 Tribal Officers
- TITLE 32 Procurement
- TITLE 33 Uniform Commercial Code
- TITLE 34 Prisons
- TITLE 35 Social Services—Public Assistance
- TITLE 36 Taxation and Revenue
- TITLE 37 Tribal Government
- TITLE 38 Tribal Entities
- TITLE 39 Tribal towns
- TITLE 40 Reserved
- TITLE 41 Animals
- TITLE 42 Motor Vehicles
- TITLE 43 Oil and Gas
- TITLE 44 Railroads
- TITLE 45 United States
- TITLE 46 Water Rights
- TITLE 47 Probate
- TITLE 48 Workers’ Compensation

[NCA 01–12, § 1–106, approved Feb. 6, 2001, eff. Feb. 1, 2001; amended by NCA 08–133, § 1, approved Sept. 2, 2008.]

**Library References**

Indians ⇄214.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

**§ 1–107. Codification of prior laws**

The Codification Committee or its designee is hereby authorized to cause the organization of laws enacted prior to the effective date of this chapter so that they may be placed within titles in the Code of Laws and is further authorized to make minor changes in the wording of said laws, including minor grammatical corrections; changes in section numbers; the addition of headings in sections; the addition of title numbers and the addition of chapter numbers within titles; the merging of laws addressing the same subject matter in a

manner consistent with amendments and express and implied repeals; and any other minor amendments which do not affect the substance of the original law; provided that the Codification Committee shall submit each resulting Code of Laws title or chapter to the National Council for final approval.

[NCA 01–12, § 1–107, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 1–108. Codification of new laws**

All bills proposing enactment of a law shall identify the Muscogee (Creek) Nation Code of Laws official title number and title name in which the enactment is to be codified, regardless of whether prior laws have been codified. If feasible, such bills shall also designate the appropriate Code of Laws chapter and section numbers. Any Code designations may be changed by the Codification Committee or its designee, if such change is required for purposes of consistency or clarity within the Code system.

[NCA 01–12, § 1–108, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 1–109. Legislative history and annotations**

The Code of Laws shall include a legislative history after each section in the Code of Laws. The legislative history shall appear in brackets and shall contain citation to each law and section number upon which said section is or was based, including the date of enactment, amendment or repeal of the law. Annotations may also be placed after Code sections.

[NCA 01–12, § 1–109, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 1–110. Code of Laws updates**

An updated version of any title, chapter or section affected by the final enactment of a law after the effective date of this Act shall be prepared by the Speaker’s designee for placement in an updated Code of Laws. The updated Code of Laws shall at a minimum be maintained at all times in the Office of the National Council, the Office of the Principal Chief, the Office of the Attorney General, the Office of the Muscogee (Creek) Nation Court Clerk, and any library of the Muscogee (Creek) Nation. Updated electronic copies of the Code of Laws shall be maintained by the Office of the National Council and shall be used to prepare an updated Code of Laws or pocket parts which shall be provided to

National Council members on an annual basis if funds are available for printing expenses.

[NCA 01–12, § 1–110, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

#### Library References

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1–111. Publication of Code of Laws

The Code of Laws may be published by a publisher selected by the Codification Committee and approved by the National Council, or may be published in any other manner approved by the National Council; provided that any agreement related to publication of the Code of Laws shall be approved by the National Council and executed by the Principal Chief.

[NCA 01–12, § 1–111, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

#### Library References

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1–112. Form of bills, laws and Tribal Resolutions; amendments

**A. Bills; general requirements.** Each law and Tribal Resolution introduced in the National Council of the Muscogee (Creek) Nation shall be in the form of a written bill, using letter size paper. The words “Bill Number” shall appear at the top of each bill, followed by the bill number. Following the bill number shall be the title of the law or Tribal Resolution, which title shall set forth the purpose and content of the proposed law or Tribal Resolution. Bills shall contain the names of sponsors and such other information as required by the Rules of Procedure.

**B. Bills for laws.** The bill number for a proposed law shall consist of the letters “NCA”, followed by the last two (2) digits of the year in which the proposed law is introduced, followed by a dash, followed by a number. The first law introduced in a given year shall be assigned the number “1” for placement after the last two (2) digits of the year in the bill number, and each successive law introduced during the year shall be assigned a consecutive ascending number. Following the title of each bill for a proposed law shall appear the enacting clause, in the following words, “Be it enacted by the National Council of the Muscogee (Creek) Nation:”. The text of the law shall then follow, in appropriately designated sections as needed. The format to be used for bills for laws shall be the same as appears in Appendix 1 of this chapter.

**C. Bills for Tribal Resolutions.** The bill number for a proposed Tribal Resolution shall consist of the letters “TR” for proposed Tribal Resolutions, followed by the last two (2) digits of the year in which the proposed Tribal Resolution is introduced, followed by a dash, followed by a number. The first Tribal Resolution introduced in a given year shall be assigned the number “1” for placement after the last two digits of the year in the bill number, and each

successive Tribal Resolution introduced during the year shall be assigned a consecutive ascending number. Following the title of each bill for a proposed Tribal Resolution shall appear the following words, "Be it resolved by the National Council of the Muscogee (Creek) Nation:". The findings related to said Tribal Resolution shall then be set forth, immediately followed in turn by the text of the action resolved by the National Council. The format to be used for bills for resolutions shall be the same as appears in Appendix 2 of this chapter.

**D. Amendments of Tribal Resolutions, uncodified laws, and the Code of Laws.** Any bill which proposes amendment of a Tribal Resolution, uncodified law or any title, chapter or section in the Code of Laws, shall contain numbered sections in the same format as appears in Appendix 3 of this chapter, which identify the specific resolution, law or code, or specific portion thereof to be amended, and which state that said law, resolution, title, chapter or section is to be amended as set forth below said numbered sections. Each such numbered section shall set forth the text of that portion of the resolution, uncodified law or code to be amended, with strike-outs to designate any text to be omitted and underlining to designate any text to be added. Two versions of an amendment of a law shall be prepared for execution by Tribal officials. The text with strike-outs shall be deleted and the underlining on the new text shall be removed from the first version, which shall be referred to as the "codification law" and shall be used for placement of the law in the Code of Laws where codification is appropriate. The strike-outs and underlining used to reflect the changes on the law that was amended shall not be removed from the second version, which shall be referred to as the "session law" and shall be placed in the session laws in order to document the legislative history. The title and findings in any law which amends an existing law shall not be placed in the codified text of the amended law, but may appear in the legislative history provisions immediately following the amended Code section.

**E. Approval information.** Laws and resolutions which are enacted by the National Council shall reflect the date of passage, the number of votes for, against or abstaining, the number of Council members constituting a quorum, together with a statement that the law or Tribal Resolution was passed by the National Council of the Muscogee (Creek) Nation, and shall contain such other information related to approval of the legislation required by the Rules of Procedure.

**F. Execution and attestation.** All laws and resolutions shall be finalized, executed, and attested in accordance with the Muscogee (Creek) Nation Constitution and in accordance with this chapter and the Rules of Procedure.

**G. Number upon enactment.** Each law and Tribal Resolution, upon enactment and approval as herein set forth, shall bear at the top the words, "Law No." or "Tribal Resolution No.", followed by the bill number originally assigned to the bill for said law or resolution.

[NCA 01-12, § 1-112, approved Feb. 6, 2001, eff. Feb. 1, 2001; amended by NCA 02-015, § 1, eff. March 1, 2002.]

#### Library References

Indians ☞210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1-113. Session laws

Copies of enacted laws shall be placed in session law volumes, which shall be entitled “Session Laws of the Muscogee (Creek) Nation” followed by the year of enactment of the laws contained therein. Copies of enacted Tribal Resolutions shall be placed in a separate volume entitled “Session Resolutions of the Muscogee (Creek) Nation,” followed by the year of enactment of the resolutions contained therein. The volumes may be simple binders containing copies of the laws or may be re-printed bound volumes. The volumes shall be prepared in accordance with the Rules of Procedure.

[NCA 01-12, § 1-113, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

#### Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 1-114. Maintenance of minutes, bills, laws and resolutions

**A. Original copies of laws and Tribal Resolutions.** Three (3) original copies of all laws and resolutions shall be prepared by the National Council Secretary. One (1) original copy shall be distributed to the Office of the Principal Chief, one (1) original copy shall be distributed to the Bureau of Indian Affairs, and one (1) original copy shall be retained by the National Council.

**B. Certified copies of laws and Tribal Resolutions.** At the time of attestation to an original law or resolution, the Council Secretary shall prepare a certified copy of such law or Tribal Resolution enacted, and shall provide one (1) copy to the Muscogee (Creek) Nation District Court and one (1) copy to the Attorney General. Additional certified copies shall be prepared by the Secretary or his or her designee as needed upon request.

**C. Maintenance of original documents.** The original copies of all meeting minutes for the National Council and each of its Committees and the original copies of all bills, laws and resolutions shall be maintained in a secure location designated by the Rules of Procedure or otherwise approved by the Speaker of the National Council in a manner consistent with the requirements of this Act and the Rules of Procedure. Such records shall be the property of the Muscogee (Creek) Nation. The Council Secretary shall serve as the official custodian of said original records.

**D. Electronic copies.** Electronic copies of all laws and Tribal Resolutions shall be maintained by the National Council Secretary and the District Court Clerk in accordance with the Rules of Procedure or other internal procedures of the National Council approved by the Speaker of the National Council.

**E. Certification of authenticity.** Certification of laws, resolutions and National Council meeting minutes shall be accomplished by placing the seal of the Muscogee (Creek) Nation on the document, along with the following verification of authenticity upon the document: “I certify that I am the duly appointed, qualified, and acting Secretary of the National Council of the Muscogee (Creek) Nation. I further certify that this document is a true and correct copy of the

## **Title 30, § 1–114**

## **LEGISLATIVE BRANCH**

original Law/Tribal Resolution [designate one] No. \_\_\_\_\_. Executed this \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_. [Signature]” The same or similar certification language shall be printed as a preface to the Code of Laws and updates to the Code of Laws for purposes of authentication.

[NCA 01–12, § 1–114, approved Feb. 6, 2001, eff. Feb. 1, 2001.]

### **Cross References**

Great seal and official flag, see Title 37, § 1–101 et seq.

Official seal, see Const. Art. I, § 3.

Unauthorized use of the Great Seal of the Muscogee (Creek) Nation, see Title 14, § 2–504.

### **Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 1–115. Appropriations and establishment of restricted account**

The Muscogee (Creek) Nation District Court shall be responsible for the ongoing maintenance to the Muscogee (Creek) Nation Code Annotated. Maintenance shall include, but not be limited to, the publication of annual pocket parts, publication of comprehensive supplements, and re-publication of the Code of Laws. The accumulated funds in the Muscogee (Creek) Nation Restricted Account (108568 CODIFICATION) shall be transferred to the District Court Clerk Code of Laws Revolving Fund. Revenues from the sale of volumes of the Code of Laws, pocket parts, and comprehensive supplements shall be deposited in the District Court Clerk Code of Laws Revolving Fund and shall remain available for the ongoing maintenance of the Code of Laws.

[NCA 01–12, § 1–115, approved Feb. 6, 2001, eff. Feb. 1, 2001; amended by NCA 03–192, § 1, eff. Nov. 3, 2003; amended by NCA 04–159, § 2, eff. Sept. 30, 2004; NCA 07–018, § 3, eff. Feb. 1, 2008.]

### **Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 1–116. Sales and distribution**

The District Court Clerk shall be responsible for all record keeping, distribution, and sales of volumes of the code of laws, pocket parts, and comprehensive supplements. Each code book set, pocket part, and comprehensive supplement shall be sold at a price no greater than twenty percent (20%) above cost. Code book sets, including annual pocket part updates and comprehensive supplements, shall be distributed at no cost to the following Muscogee (Creek) Nation elected officials, employees, programs, chartered communities, entities and Officials of the United States of America and State of Oklahoma, subject to the following requirements and limitations:

1. The Judicial Branch shall receive a sufficient number of sets, not to exceed eleven (11), for distribution of ownership of one (1) set to each District Judge and each Supreme Court Justice; placement and public use of one (1) set



in the Judicial Branch Law Library and one (1) set in the Court Clerk's Office, and distribution of two (2) sets for use by Judicial Branch employees;

2. The Muscogee (Creek) Nation Legislative Branch shall receive a sufficient number of sets for distribution of one (1) set to each National Council Representative for ownership; one (1) set for on-site public use; and six (6) sets for use by National Council employees with a set to be provided to each newly elected National Council Representative;

3. The Principal Chief and Second Chief shall receive one (1) set for ownership and the Office of the Principal Chief shall receive an additional two (2) sets for use by its employees with a set to be provided to each newly elected Principal Chief and Second Chief;

4. The Office of Administration shall receive a sufficient number of sets not to exceed thirty (30) for use by the Executive Director and each Director of a Division of the Muscogee (Creek) Nation; Executive Office shall receive one (1) set for his or her use, and each Manager of a program within a Division shall receive one (1) set for his or her use;

5. The Office of the Treasury shall receive a sufficient number of sets not to exceed five (5) for use by the Controller and use by the Manager of each Department within the Office of the Treasury;

6. The Tribal Trade and Commerce Authority and the Enterprise Board shall each receive one (1) set for their use;

7. The Department of Justice shall receive a sufficient number of sets not to exceed ten (10) for use by the Attorney General and each Assistant Attorney General, plus one (1) additional set for the Department of Justice Law Library and one (1) set for use by the Lighthorse Chief;

8. Each independent agency of the Muscogee (Creek) Nation identified in the Executive Office Reorganization Act, NCA 96-18, as amended, shall receive one (1) set for that agency's use;

9. Each chartered community shall receive one (1) set for the community's retention and use;

10. The President of the United States;

11. The Supreme Court of the United States; Chief Justice and Associate Justices;

12. The United States Court of Appeals for the Tenth Circuit; Chief Judge and Oklahoma's member judges;

13. The United States District Court Judges for the Northern and Eastern Districts of Oklahoma;

14. The United States Bankruptcy Court Judges for the Northern and Eastern Districts of Oklahoma;

15. The United States Senators elected from Oklahoma;

16. The United States Senate Committee on Indian Affairs.

17. Members of the United States Congress from Oklahoma whose district includes the Muscogee (Creek) Nation or a part thereof;

## **Title 30, § 1-116**

## **LEGISLATIVE BRANCH**

18. The United States House of Representatives Sub-committee on Interior and Related Agencies;
19. The United States Secretary of the Interior;
20. The United States Department of Interior Assistant Secretary of Indian Affairs;
21. The National Indian Gaming Commission;
22. The Governor of the State of Oklahoma;
23. The President Pro-Tempore of the Oklahoma State Senate;
24. The Speaker of the Oklahoma House of Representatives;
25. The Oklahoma Supreme Court Library;
26. Members of the Muscogee (Creek) Nation Gaming Operations Authority Board and Attorney;
27. Members of the College of the Muscogee (Creek) Nation Board of Regents.
28. The College of the Muscogee (Creek) Nation Library;
29. Alabama Quassarte Tribal Town, Kialegee Town and Thlopthlocco Tribal Town.

Replacement copies will be charged at cost to the elected official, employee or entity, respective programs or individual.

[NCA 01-12, § 1-116, approved Feb. 6, 2001, eff. Feb. 1, 2001; amended by NCA 03-192, § 2, eff. Nov. 3, 2003; NCA 06-108, § 2, eff. May 30, 2006; NCA 07-018, § 4, eff. Feb. 1, 2007; NCA 09-172, § 3, eff. Oct. 8, 2009.]

### **Historical and Statutory Notes**

NCA 09-172, § 2, provides: by NCA 07-018 and to amend the selling price of the code of laws to allow for flexibility in future price fluctuations.”

“Section Two. Purpose. The purpose of this law is to clarify MCNCA Title 30, § 1-116 by adding language that was erroneously stricken

### **Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 1-117. Mvskoke Law Reporter**

A. The Muscogee (Creek) Nation District Court shall be responsible for the maintenance of the Mvskoke Law Reporter. Maintenance shall include, but not limited to, the publication of annual pocket parts, publication of comprehensive supplements, and re-publication of the Reporter. Revenues from the sale of volumes of the Reporter, pocket parts, and comprehensive supplements shall be deposited in the District Court Clerk Code of Laws Revolving Fund and shall remain available for the ongoing maintenance of the Reporter. Each set of Reporters, pocket parts, and comprehensive supplements shall be set at a market price to be determined by the District Court.

B. The Muscogee (Creek) Nation District Court is hereby authorized to purchase OCW Press for a purchase price of forty thousand, four hundred

twenty-five dollars (\$40,425.00). The following assets shall be transferred to the District Court upon completion of the sale:

1. Five hundred eighty-five (585) sets of the Mvskoke Law Reporter;
2. Comprehensive database containing a mailing list of libraries, Tribal Courts, and attorneys who may be interested in purchasing the Reporter;
3. Indexing and digesting copyright used in the Mvskoke Law Reporter.

C. The Muscogee (Creek) Nation is hereby authorized to contract with Professor Melissa Tatum, University of Tulsa College of Law, to produce a comprehensive pocket part to the Mvskoke Law Reporter covering July 1, 2005 - January 1, 2008. The District Court will pay Professor Tatum a one (1) time fee of twelve thousand dollars (\$12,000.00) to bring the Reporter up to date and all future updates will be handled by the District Court on a case by case basis.

[Added by NCA 08-062, § 5, approved May 1, 2008, eff. May 1, 2008.]

#### Historical and Statutory Notes

NCA 08-062, § 2, provides:

“Section Two. Purpose. The purpose of this Act is to authorize a special appropriation to the District Court for the purchase of OCW Press and to contract with Professor Melissa L. Tatum to produce Volume 8 of the MVSKOKE LAW REPORTER. This Act will also amend MCNCA Title 30, 1-111 Publication of the Code of Laws to establish The Mvskoke Press as publisher for The Muscogee (Creek) Nation Code Annotated,

Mvskoke Law Reporter, other publications of the District Court and Supreme Court and Muscogee (Creek) Nation as required and amend 1-117 to delegate all responsibility to the District Court for the maintenance and sale of the Mvskoke Law Reporter, publications of the District Court and Supreme Court and other Muscogee (Creek) Nation publications as required. Add to MCNCA Title 26, § 5-110. The Mvskoke Press Revolving Fund.”

### § 1-118. Sales and distribution of the Mvskoke Law Reporter

The District Court Clerk shall be responsible for all record keeping, distribution, and sales of volumes of the Mvskoke Law Reporter, pocket parts, and comprehensive supplements. Each Reporter set, pocket part, and comprehensive supplement shall be sold at a price no greater than twenty percent (20%) above cost. Reporter sets, including annual pocket part updates and comprehensive supplements, shall be distributed at no cost to the following Muscogee (Creek) Nation elected officials, programs, and entities:

Subject to the following requirements and limitations:

1. The Judicial Branch shall receive a sufficient number of sets of the Mvskoke Law Reporter for distribution to the following: District Court Judge, each Supreme Court Justice; placement and public use of one (1) set in the Judicial Branch law library, one (1) set in the District Court Clerk’s Office, and one (1) set in the Supreme Court Clerk’s office;
2. The Muscogee (Creek) Nation Legislative Branch shall receive a sufficient number of sets for distribution of one (1) set to each National Council Representative for ownership; one (1) set for on-site public use; and three (3) sets for use by National Council employees with a set to be provided to each newly elected National Council Representative;
3. The Principal Chief and Second Chief shall receive one (1) set for ownership and the Office of the Principal Chief shall receive an additional set

**Title 30, § 1-118**

**LEGISLATIVE BRANCH**

for use by its employees with a set to be provided to each newly elected Principal Chief and Second Chief.

4. The Office of the Treasury shall receive one (1) set for use by the Controller and one (1) set for use by employees of the department;

5. The Department of Justice shall receive two (2) sets for use by the Attorney General and Assistant Attorney Generals, plus one (1) additional set for the Department of Justice law library;

6. Replacement copies will be available at cost to each department, elected official, or governmental branch listed in this section.

[Added by NCA 09-172, § 4, eff. Oct. 8, 2009.]

**Historical and Statutory Notes**

NCA 09-172, § 2, provides: "Section 2. Purpose. The purpose of this law is to clarify MCNCA Title 30, § 1-116 by adding language that was erroneously stricken by NCA 07-018 and to amend the selling price of the code of laws to allow for flexibility in future price fluctuations."

**Appendix 1.**

**BILL NUMBER NCA** \_\_-\_\_\_\_

TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL

(DATE OF INTRODUCTION)

INTRODUCED BY: \_\_\_\_\_

SPONSOR(S): \_\_\_\_\_

COMMITTEE ON: \_\_\_\_\_

**A LAW OF THE MUSCOGEE (CREEK) NATION [GENERAL PURPOSE AND CONTENT DESCRIBED BY PHRASE OR PHRASES HERE]**

**Be it enacted by the National Council of the Muscogee (Creek) Nation:**

**Appendix 2.**

**BILL NUMBER TR** \_\_-\_\_\_\_

TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL

(DATE OF INTRODUCTION)

INTRODUCED BY: \_\_\_\_\_

SPONSOR(S): \_\_\_\_\_

COMMITTEE ON: \_\_\_\_\_

**A TRIBAL RESOLUTION OF THE MUSCOGEE (CREEK) NATION [GENERAL PURPOSE AND CONTENT DESCRIBED BY PHRASE OR PHRASES HERE]**

**Be it resolved by the National Council of the Muscogee (Creek) Nation:**

**LEGISLATION; CODIFICATION OF LAWS      Title 30, Ch. 1, App. 3**

**Appendix 3.**

**BILL NUMBER NCA** \_\_-\_\_

TO BE INTRODUCED INTO THE MUSCOGEE (CREEK) NATIONAL COUNCIL

(DATE OF INTRODUCTION)

INTRODUCED BY: \_\_\_\_\_

SPONSOR(S): \_\_\_\_\_

COMMITTEE ON: \_\_\_\_\_

**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING TITLE \_\_\_ OF THE CODE OF LAWS OF THE MUSCOGEE (CREEK) NATION TO [GENERAL PURPOSE AND CONTENT DESCRIBED BY PHRASE OR PHRASES HERE]**

**Be it enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE. AMENDMENT.** TITLE \_\_, § \_\_ OF THE CODE OF LAWS OF THE MUSCOGEE (CREEK) NATION IS HEREBY AMENDED TO READ AS FOLLOWS:

**SECTION TWO. NEW LAW.** TITLE \_\_, CHAPTER \_\_ OF THE CODE OF LAWS OF THE MUSCOGEE (CREEK) NATION IS HEREBY AMENDED TO ADD THE FOLLOWING NEW SECTION(S) \_\_\_\_\_:

## CHAPTER 2. LEGISLATIVE DISTRICTS

### Subchapter

#### 1. Tukvpvtce District

### SUBCHAPTER 1. TUKVPTCE DISTRICT

#### Section

2-101. Purpose.

2-102. North boundary.

2-103. Applicability.

#### Historical and Statutory Notes

NCA 95-06, § 101, provides:

“Findings:

“The National Council finds that:

“A. The adoption of the 1979 Muscogee (Creek) Nation Constitution, herein referred to as the Constitution, Article VI, Section 1, did not name the districts, but established the district boundaries with corresponding Oklahoma counties in which the area of district jurisdiction is located in whole or portions thereof; thus, Hughes/Seminole boundary.

“B. The Constitution extends to the National Council the power to legislate on any subject limited only by restrictions contained in the Constitution and laws of the United States of America and the Muscogee Constitution both contain no prohibition to name a district.

“C. Two legal opinions (attachments) reaffirm that the Muscogee Constitution did not name the districts, and that it is certainly proper for the Muscogee National Council to name its districts.

“D. Hughes/Seminole, the former, is not significant to the Muscogee Nation, historically or

otherwise, the latter is more identified with the adjoining Seminole Nation.

“E. The name Tukvpvtce is more significant historically, being the Mother Town of numerous Muscogee Tribal Towns, also, being a model of the present Muscogee government.

“F. The tribal town and remains of the ceremonial ground of Tukvpvtce is permanently located within the district area.

“G. That tribal citizens met in scheduled public meetings as documented by minutes and a resolution (attachments):

“1) Tukvpvtce Tribal Town, November 5, 1994

“2) Wetumka Indian Community, November 7, 1994

“3) Holdenville Creek Community, November 15, 1994

“4) Dustin Indian Community, March 14, 1994

“5) Kialegee Tribal Town, December 8, 1994

“6) Alabama/Quassarte Tribal Town, January 12, 1995.

“All support the designated name ‘Tukvpvtce District’ by ordinance.”

#### § 2-101. Purpose

The purpose of this subchapter is to adopt, by law, a district name for the Hughes/Seminole boundary jurisdiction, which shall hereafter be known as “Tukvpvtce District”.

[NCA 95-06, § 102, approved Feb. 7, 1995.]

#### § 2-102. North boundary

The north boundary line of the district is to be specifically defined as the common boundary line of Hughes and Okfuskee counties and extending west into Seminole County to the west boundary line of the Muscogee (Creek) Nation.

[NCA 95-06, § 103, approved Feb. 7, 1995.]

**LEGISLATIVE DISTRICTS**

**Title 30, § 2-103**

**§ 2-103. Applicability**

This name designation is solely intended for the Muscogee (Creek) Nation, and not to change county boundaries nor names for the State of Oklahoma.  
[NCA 95-06, § 104, approved Feb. 7, 1995.]

## CHAPTER 3. MEETINGS OF NATIONAL COUNCIL

### Section

- 3-101. Meeting schedule.
- 3-102. Pre-Agenda Session.
- 3-103. Time and place of meetings.
- 3-104. Repealed.

### Cross References

Open meetings, see Title 37, § 5-101 et seq.

### § 3-101. Meeting schedule

Regular and quarterly meetings of the National Council are hereby scheduled for the last Saturday of each month unless otherwise ordered by the National Council.

Last Saturday in January	Quarterly Meeting
Last Saturday in February	Regular Meeting
Last Saturday in March	Regular Meeting
Last Saturday in April	Quarterly Meeting
Third Saturday in May	Regular Meeting
Last Saturday in June	Regular Meeting
Last Saturday in July	Quarterly Meeting
Last Saturday in August	Regular Meeting
Last Saturday in September	Regular Meeting
Last Saturday in October	Quarterly Meeting
Third Saturday in November	Regular Meeting
Third Saturday in December	Regular Meeting

[NCA 93-114, § 101, approved Aug. 13, 1993.]

### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 3-102. Pre-Agenda Session

The National Council Pre-Agenda Session shall commence at 9:00 A.M. in the Council Chambers of the Mound Building.

[NCA 93-114, § 102, approved Aug. 13, 1993.]

### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 3-103. Time and place of meetings

All regular and quarterly meetings shall commence at 10:00 A.M. in the Auditorium of the Mound Building at the Tribal Capitol Complex in Okmulgee, Muscogee (Creek) Nation.

[NCA 93-114, § 103, approved Aug. 13, 1993.]



**MEETINGS OF NATIONAL COUNCIL**

**Title 30, § 3-104  
Repealed**

**Library References**

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 3-104. Repealed by NCA 07-191, § 3, eff. Aug. 6, 2007**

## CHAPTER 4. COMPENSATION OF NATIONAL COUNCIL

### Section

- 4-101. National Council compensation classification structure and salary schedule.  
4-102. Expense reimbursements.

### Historical and Statutory Notes

NCA 92-193, § 101, provides: in the tribal legislature through the provisions  
“Policy: of a compensation program.”  
“It shall be the policy of the Muscogee Nation  
to encourage tribal leadership and participation

### § 4-101. National Council compensation classification structure and salary schedule

A. Effective October 1, 2005 the National Council compensation classification structure and salary schedule is hereby established as follows:

POSITION	ANNUAL SALARY
Speaker	\$65,000.00

The compensation for the Speaker of the National Council shall be established at a salary range of sixty-five thousand dollars (\$65,000.00) per year during the term for which he/she shall serve with specific and defined duties. The individual holding this position shall not be employed in any full-time position outside the Legislative Branch of the Muscogee (Creek) Nation.

1. Effective October 1, 2005 the compensation for National Council members including the Second Speaker shall be thirty five thousand and no/100 dollars (\$35,000.00).

Second Speaker	\$35,000.00 Annually
Members	\$35,000.00 Annually

B. The salary indicated in Section 4-101A is considered to be compensation for services rendered by National Council members including legislative work, meetings of the National Council, committee meetings of the National Council, attendance at workshops and conferences, and any or other services provided by members of the National Council.

C. Any individual member of the National Council may elect to accept a smaller amount provided in the compensation salary schedule by submitting a written notification to the Speaker of the National Council.

D. All individual members of the National Council shall be required to complete a federal W-4 form to comply with the necessary federal tax reporting requirements and shall be issued a W-2 form for each calendar tax year they receive compensation from the Muscogee (Creek) Nation.

E. The compensation paid to the members of the National Council shall become a part of the Comprehensive Annual Budget annually thereafter, beginning with Fiscal Year 2006.

[NCA 92-193, § 104, approved Dec. 19, 1992; amended by NCA 00-58, § 108, approved June 30, 2000; NCA 03-205, § 1, eff. January 1, 2004; NCA 04-166, § 1, eff. Oct. 01, 2004; NCA 05-271, § 1, eff. Oct. 1, 2005.]

**Cross References**

Budget, National Council Speaker compensation, see Title 37, § 2-126.

**Library References**

Indians ⇄210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 4-102. Expense reimbursements**

A. Members of the National Council are hereby authorized to receive expense reimbursements for travel expenses associated with performing services and duties as National Council representatives. The mileage rate shall be consistent with the mileage rate established by operating policies of the Muscogee (Creek) Nation. Other travel expenses such as lodging, per diem, etc. shall also be consistent with established operating policies of the Muscogee (Creek) Nation.

B. Reimbursement documentation—Reimbursement vouchers shall be signed by individual Council members, approved by the Speaker of the National Council, forwarded to the Controller for payment and file copies shall be retained for a period of two (2) years.

[NCA 92-193, § 105, approved Dec. 19, 1992.]

## CHAPTER 5. SPEAKER

### Section

5-101. Compensation.

5-102. Duties.

### Cross References

Budget, Office of National Council Speaker, technical equipment/software maintenance, see Title 37, § 2-127.

### § 5-101. Superceded

#### Historical and Statutory Notes

This section, relating to the compensation of the Speaker, was superceded. See Title 30, § 4-101.

### § 5-102. Duties

The duties of the Speaker shall be in accordance with the “RULES OF PROCEDURES OF THE NATIONAL COUNCIL” adopted by the National Council in Session.

[NCA 00-58, § 105, approved June 30, 2000.]

### Library References

Indians ⇄216.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

## **CHAPTER 6. SECRETARY OF NATIONAL COUNCIL**

### **Section**

6-101. Compensation.

6-102. Annual evaluation.

### **§ 6-101. Compensation**

A. The position of the Secretary of the National Council shall be classified in the Personnel Policy guidelines of the Muscogee (Creek) Nation as a salaried position, Grade 9, Step 1.

B. The salary of the Secretary shall be paid from Tribal funds or other available funds.

C. The Secretary of the National Council shall receive fringe benefits at a rate equal to other full time employees of the Muscogee (Creek) Nation payable from Tribal funds or other available funds.

D. The salary increase of the Secretary of the National Council is hereby established according to the "Salary and Wage Schedule" of the Muscogee (Creek) Nation. The criteria for step increases are as follows:

No Increase—Non-Meritorious Performance

One-Step—Satisfactory Performance

Two-Step—Excellent Performance

Three-Step—Superior Performance

E. The salary of the Secretary of the National Council shall be automatically increased whenever the salaries of the employees of the Office of the Principal Chief are adjusted for "Cost of Living" adjustments.

[NCA 88-97, § 103, approved Jan. 3, 1989.]

#### **Library References**

Indians ☞216.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

### **§ 6-102. Annual evaluation**

The Speaker of the National Council shall, annually, evaluate the performance of the Secretary of the National Council, and may recommend a salary increase which shall be consistent with the Personnel Policy of the Muscogee (Creek) Nation.

[NCA 88-97, § 104, approved Jan. 3, 1989.]

#### **Library References**

Indians ☞216.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

## **CHAPTER 7. PARLIAMENTARIAN TO NATIONAL COUNCIL**

### **Section**

- 7-101. Establishment of position.
- 7-102. Citizenship required.
- 7-103. Terms of office.
- 7-104. Duties.
- 7-105. Vacancy.
- 7-106. Method of appointment.
- 7-107. Stipend.
- 7-108. Mileage.
- 7-109. Vouchers.

### **§ 7-101. Establishment of position**

The position of Parliamentarian to the National Council is hereby established.  
[NCA 81-29, § 101, approved Feb. 5, 1981; amended by NCA 84-05, § 101, approved March 9, 1984.]

### **§ 7-102. Citizenship required**

The Parliamentarian shall be a citizen of the Muscogee (Creek) Nation.  
[NCA 84-05, § 102, approved March 9, 1984.]

### **Library References**

Indians ⇄222.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.

### **§ 7-103. Terms of office**

The terms of office shall be for not more than two (2) years and shall terminate on December 31, of all odd numbered years.  
[NCA 81-29, § 101, approved Feb. 5, 1981; NCA 84-32, § 102, approved July 6, 1984.]

### **§ 7-104. Duties**

The Parliamentarian must attend regularly-scheduled, special and extraordinary sessions of the National Council, and upon request attend Committee meetings, and:

A. Shall advise the Speaker(s) and representatives of the National Council of proper procedures for consideration of Tribal business legally, efficiently, and impartially in accordance with the 1979 Muscogee (Creek) Constitution, the Rules of Procedure of the National Council, and Robert's Rules of Orders.

B. Upon request may assist in drafting by-laws, laws, resolutions, and minutes of the National Council.

[NCA 81-29, § 104, approved Feb. 5, 1981; NCA 84-32, § 103 approved July 6, 1984.]

### **§ 7-105. Vacancy**

In the event of a vacancy in the position of Parliamentarian, the Speaker may appoint a Temporary Parliamentarian for the unexpired term of office.

[NCA 81-29, § 106, approved Feb. 5, 1981; NCA 84-32, § 104, approved July 6, 1984.]

**§ 7-106. Method of appointment**

The Parliamentarian shall be appointed by the Speaker and approved by a majority vote of the National Council.

[NCA 81-29, § 101, approved Feb. 5, 1981; NCA 84-32, § 105, approved July 6, 1984.]

**§ 7-107. Stipend**

The Parliamentarian shall be paid a stipend of thirty-five dollars (\$35.00), in addition to mileage, for attendance at all regularly scheduled, special and extraordinary sessions of the National Council.

[NCA 81-29, § 102, approved Feb. 5, 1981; NCA 84-32, § 106, approved July 6, 1984.]

**§ 7-108. Mileage**

The Parliamentarian shall be paid mileage at Tribal reimbursement rates.

[NCA 84-32, § 108, approved July 6, 1984.]

**§ 7-109. Vouchers**

Mileage reimbursements and stipends shall be expended by the voucher system. The vouchers shall be approved (signed) by the Speaker and forwarded to the Office of the Controller for payment.

[NCA 81-29, § 103, approved Feb. 5, 1981; NCA 84-32, § 109, approved July 6, 1984.]

## CHAPTER 8. CONTEMPT OF NATIONAL COUNCIL

### Section

- 8-101. Attendance and production of records.
- 8-102. Issuance of subpoenas.
- 8-103. Contempt of subpoenas or subpoenas duces tecum.
- 8-104. Obligation of officers and employees upon proper service.
- 8-105. Service.
- 8-106. Protection of person, corporation, or legal entity subject to subpoenas.
- 8-107. Duties in responding to a subpoena.
- 8-108. Contempt.
- 8-109. Contempt by contractors.
- 8-110. Recognition of executive immunity.
- 8-111. Sovereign immunity not applicable to individuals of the Muscogee (Creek) Nation Government to avoid subpoena and/or contempt proceedings.

### § 8-101. Attendance and production of records

Require by subpoena the attendance and testimony of witnesses and the production of books, records, correspondence, memorandum, papers and documents as it deems necessary.

[Added by NCA 07-191, § 4, eff. Aug. 6, 2007.]

#### Validity

*This section was held unconstitutional by the Muscogee (Creek) Nation Supreme Court in Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05 (Muscogee (Creek) 2006).*

#### Historical and Statutory Notes

##### Derivation:

Title 30, § 8-101, added by NCA 89-74, § 102.

### § 8-102. Issuance of subpoenas

The power to issue subpoenas may only be exercised by the Speaker of the National Council or the Committee Chair of the National Council Committee from which the subpoena is issued. Authorized subpoenas shall be signed by the Speaker or the Committee Chair.

[Added by NCA 07-191, § 4, eff. Aug. 6, 2007.]

#### Validity

*This section was held unconstitutional in Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05 (Muscogee (Creek) 2006).*

#### Historical and Statutory Notes

##### Derivation:

Title 30, § 8-102, added by NCA 89-74, §§ 103, 104, 106, 107.

#### Library References

Indians ⇄210, 216.

Westlaw Topic No. 209.



C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 8–103. Contempt of subpoenas or subpoenas duces tecum

A subpoena shall identify the name of the legislative body issuing the subpoena, the date, time, place of meeting or hearing a witness is to attend and shall specify with particularity the subject of the testimony or information sought so that a reasonable person would know the subject they are expected to testify upon and a subpoena duces tecum shall identify the name of the legislative body issuing the subpoena, the date, time, place of meeting or hearing a witness is to appear with the particular kind of documents sought so that a reasonable person would likely understand what documents have been demanded.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

#### Historical and Statutory Notes

##### Derivation:

Title 30, § 8–103, added by NCA 89–74, §§ 105, 108.

#### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 8–104. Obligation of officers and employees upon proper service

All Muscogee (Creek) Nation officers and employees shall be obligated upon service of a validly issued subpoena to attend the meeting or hearings and produce all documents as directed.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

#### Library References

Indians ⇌210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 8–105. Service

Service of a subpoena upon a person, corporation, or legal entity named therein shall be made by delivering or mailing by certified mail (restricted to the person, corporation, or legal entity named in the subpoena) a copy thereof to such person, corporation, or legal entity at least five (5) days prior to the meeting or hearing (excluding weekends and Tribal holidays). Service of a subpoena may be accomplished by any Lighthorse Officer or process server recognized by the Courts of the Muscogee (Creek) Nation.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

#### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–106. Protection of person, corporation, or legal entity subject to subpoenas**

1. The National Council or its committee responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person, corporation, or legal entity subject to that subpoena.

2. The affected party may plead to the District Court to hear the party's right to contest the subpoena and the District Court shall quash or modify the subpoena if it:

(a) fails to provide five (5) days notice for compliance;

(b) requires disclosure of matters of executive privilege on confidential communications between the Principal Chief and/or the Second Chief, and no exception or waiver applies;

(c) subjects a person, corporation, or legal entity to undue burden or hardship;

(d) requires the production of documents or things outside the scope of the affected party's access or possession or outside the scope of the authority to possess or gain access to.

(e) is a confidential record in which disclosure is protected by law.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

**Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–107. Duties in responding to a subpoena**

1. A person, corporation, or legal entity responding to a subpoena to appear before the National Council or a Committee of the National Council must personally appear before the National Council or the Committee of the National Council issuing the subpoena at the time and on the date stated in the subpoena or that person, corporation, or legal entity may be held in contempt of the National Council.

2. A person, corporation, or legal entity responding to a subpoena to produce documents (subpoena duces tecum) shall produce them as they are kept in the usual course of business or shall organize them to correspond to the categories requested in the subpoena to produce documents.

3. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the National Council or the Committee of the National Council thereof to either recognize or deny the claim.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

## Library References

Indians ↔210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8-108. Contempt**

1. Failure by any person, corporation, or legal entity without adequate excuse as set forth herein to obey a subpoena served upon him or her may be deemed a contempt of the National Council.

2. A finding of contempt may be made:

(a) when by the full National Council, a majority vote of a quorum of the National Council to issue a citation of contempt.

(b) when by a Committee of the National Council, a majority vote of a quorum of the Committee of the National Council shall recommend to the full National Council that a contempt citation issue which shall be promptly considered by the full National Council. A majority vote of a quorum of the National Council shall be required to issue a citation of contempt based on the recommendation of the Committee.

3. Contempt of the National Council by Officers of the Muscogee (Creek) Nation shall be deemed misuse of government information and is to be handled in accordance with the provisions of Title 31, § 1-101 et seq.

4. Contempt of the National Council by employees of the Muscogee (Creek) Nation shall result in suspension, without pay, for five (5) working days or by termination. The punishment imposed upon the employee shall be approved by the concurrence of three-fourths (3/4) of the National Council present.

5. Any person, corporation, or legal entity who fails to cooperate with a subpoena may, in addition to the penalties described above for Officers and employees of the Muscogee (Creek) Nation may also be fined up to five hundred dollars (\$500) and imprisoned up to thirty (30) days for each contempt violation. Failure to appear or produce documents in response to a subpoena or subpoena duces tecum may be deemed a separate contempt violation for each day where compliance with the subpoena or subpoena duces tecum has not occurred.

6. Any person, corporation, or legal entity who believes they have good cause to contest the subpoena or subpoena duces tecum shall so notify the National Council Secretary by written document at least twenty-four (24) hours before the time and date shown for appearance by the person, corporation, or legal entity or production of documents as shown in the subpoena or subpoena duces tecum and then appear or cause a legal representative to appear at the designated time and place on the date so stated in the subpoena or subpoena duces tecum to state their objection. Only after such appearance may the person, corporation, or legal entity who believes they have good cause to contest the subpoena or subpoena duces tecum file with the District Court of the Muscogee (Creek) Nation a Petition for a Protective Order requesting the quashing or modification of the subpoena or subpoena duces tecum. The person, corporation, or legal entity filing the Petition for a Protective Order shall have the burden of proof by a clear and convincing evidence standard to

show the Court that a subpoena or subpoena duces tecum should be quashed or modified. Upon filing of a Petition for a Protective Order the District Court of the Muscogee (Creek) Nation shall provide notice to the National Council Secretary of the filing within twenty-four (24) hours of the filing and set the date for hearing on the Petition within fifteen (15) business days from the date of filing the Petition. In all other respects the Petition shall be treated as any other civil case.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–109. Contempt by contractors**

A. Persons who have entered into contracts to do business with the Muscogee (Creek) Nation who are subpoenaed to appear before the National Council, or any Committee thereof, to provide information and fail to do so shall be deemed to be in contempt of the National Council.

B. Persons who have entered into a contract to do business with Muscogee (Creek) Nation who are in contempt of the National Council shall have their contracts canceled immediately and shall not be permitted to enter into contracts with the Nation at any time in the future.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

**Historical and Statutory Notes**

**Derivation:**

Title 30, § 8–103, NCA 89–74, §§ 105, 108,  
veto overridden June 24, 1989.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–110. Recognition of executive immunity**

The immunity of the Principal Chief and the Second Chief by virtue of their elected positions to the Executive Branch of the Muscogee (Creek) Nation Government and accordingly, they are not subject to this law.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

**Library References**

Indians ☞210, 216, 404.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

**§ 8–111. Sovereign immunity not applicable to individuals of the Muscogee (Creek) Nation Government to avoid subpoena and/or contempt proceedings**

The sovereign immunity of the Muscogee (Creek) Nation shall not be abused by any officer or employee of the Nation and shall not be used as a purported

**CONTEMPT OF NATIONAL COUNCIL**

**Title 30, § 8–111**

defense or to allow avoidance of National Council or Committee of the National Council Subpoena and/or contempt of the National Council or Committee of the National Council.

[Added by NCA 07–191, § 4, eff. Aug. 6, 2007.]

**Library References**

Indians ☞210, 216, 405.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to  
179.



# TITLE 31. TRIBAL OFFICERS

## ETVLWV SEVPAYVLKE

Chapter	Section
1. REMOVAL OF OFFICERS.....	1-101
2. HOMAGE TO DECEASED OFFICIALS.....	2-101
3. COMPENSATION OF TRIBAL OFFICERS AND EMPLOYEES.....	3-101

### CHAPTER 1. REMOVAL OF OFFICERS

Subchapter
1. General Provisions
2. Petition to Remove a Public Officer
3. Impeachment Investigation
4. Court of Impeachment
5. Conviction
6. Construction

#### SUBCHAPTER 1. GENERAL PROVISIONS

Section
1-101. Short title.
1-102. Declaration of policy.
1-103. Definitions.
1-104. Cause for removal.
1-105. Principles of procedure.

#### § 1-101. Short title

This chapter may be cited as the “Officer Removal Act of 1989.”  
[NCA 89-75, § 101, veto overridden June 24, 1989.]

#### Cross References

Public Gaming Commissioner, removal from office, see Title 21, § 2-104.

#### Library References

Indians ⇄218.  
Westlaw Topic No. 209.

#### § 1-102. Declaration of policy

A. The National Council declares its commitment to the principles of justice, to preserve our basic rights, and to strengthen and preserve self and local government.

B. The National Council hereby recognizes the Constitutional obligations of the Muscogee (Creek) Nation:

1. To provide a statutory basis to implement the Constitutional power and responsibility of the National Council outlining procedures and causes for removal of public officials of the Muscogee (Creek) Nation.

## **Title 31, § 1-102**

## **TRIBAL OFFICERS**

2. To provide registered voters clear standards of conduct for the affairs of the public trust.

3. To provide processes guaranteeing the Constitutional right to petition to show cause to consider removal of a public official.

C. The National Council hereby declares that it is Muscogee (Creek) Nation public policy that:

1. Impeachment and conviction of officers of the Muscogee (Creek) Nation is an exclusive function of the National Council.

2. The Principal Chief, along with other civil officers of the Muscogee (Creek) Nation may be impeached, and if convicted by the National Council, removed from office.

3. The National Council shall have the sole power to try all impeachments. When sitting for that purpose, they shall be under oath or affirmation. When the Principal Chief is tried, the Chief Justice shall preside. The Principal Chief, Second Chief, and/or any member of the Supreme Court shall not be convicted without the concurrence of three-fourths (3/4) of the National Council present.

4. The National Council in exercising its power to approve, advise and consent, either Constitutionally or Legislatively, hereby exercises its power to remove those Civil Officers who require the advice and consent or approval of the National Council to hold office and perform the official duties and responsibilities of that Office.

5. Judgment in cases of impeachment shall not extend further than to remove from office, and disqualification to hold and enjoy any office of honor, trust, election, or profit under the Muscogee (Creek) Nation; but the party convicted shall nevertheless be liable and subject to indictment, trial judgment, and punishment according to law.

[NCA 89-75, § 105, veto overridden June 24, 1989.]

### **Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

## **§ 1-103. Definitions**

For the purposes of this chapter:

A. "Attorney General" means the Attorney General of the Muscogee (Creek) Nation as defined by law.

B. "Chief Justice of the Supreme Court" means the Supreme Court Justice chosen to preside over the Supreme Court chosen from their own members as defined in Article VII, Section 4 of the Constitution of the Muscogee (Creek) Nation.

C. "Civil Officer" means:

1. A member of the Constitutional Boards defined in the Constitution:

a. Citizenship Board: Article III, Section 1. One of five (5) citizens who have been appointed to the Citizenship Board by the Principal Chief and received majority approval of the Muscogee (Creek) National Council.



## REMOVAL OF OFFICERS

## Title 31, § 1-104

b. Election Board: Article IV, Section 1. One of five (5) citizens who have been appointed to the Election Board by the Principal Chief and received majority approval of the Muscogee (Creek) National Council; or

2. Any person who serves as an officeholder by appointment of the Principal Chief with advice and consent or approval of the Muscogee (Creek) National Council to carry out the duties and functions of that office; or

3. Any person who serves as an officeholder by appointment by of the National Council.

D. "Financial interest" is any interest of monetary value which may be directly and predictable affected by the official action of an officer. There is no minimum amount of value or control that constitutes a financial interest.

E. "Impeachment" means to charge a public official before the National Council with a crime in the exercise of the duties of his office.

F. "Member of the Supreme Court" means one of the six (6) members of the Supreme Court as defined in Article VII, Section 2 of the Constitution of the Muscogee (Creek) Nation.

G. "Officer" means the Principal Chief, Second Chief, member of the Supreme Court, civil officer, or member of the National Council.

H. "Principal Chief" means Principal Chief as defined in Article V, Section 1(a) of the Constitution of the Muscogee (Creek) Nation.

I. "Second Chief" means Second Chief as defined in Article V, Section 1(c) of the Constitution of the Muscogee (Creek) Nation.

J. "Secretary" is the Secretary of the National Council as defined in Article VI, Section 5(b).

[NCA 89-75, § 106, veto overridden June 24, 1989.]

### § 1-104. Cause for removal

There are hereby established causes for removal which are:

A. **Treason**, which shall include conspiracy to violate the Constitution of the Muscogee (Creek) Nation;

B. **Bribery**, which shall include the receipt of bribes; and

C. **High crimes and misdemeanors:**

1. A crime committed in the exercise of the duties of the office, to include but not limited to, theft, embezzlement, fraud, conspiracy, perjury; and also to include a felony conviction in a court of competent jurisdiction.

2. The violation of any law setting forth removal from office as a penalty; incompetence; mismanagement; conflict of interest between official duties resulting in personal gain, directly or indirectly; misrepresentation of office for personal gain; abuse of power; giving of false information with intent; to benefit materially from misuse of funds, directly and indirectly.

3. Misuse of government funds, property, and information:

a. Use of government funds:

i. An officer shall not:

- (A) Improperly use official travel;
  - (B) Improperly use payroll and other vouchers and documents on which government payments are based;
  - (C) Take or fail to account for funds with which the officer is entrusted in his or her official position; or
  - (D) Take other government funds for personal use.
- ii. An officer shall avoid wasteful actions or behavior in the performance of their assigned duties.

b. Use of government property:

An officer shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for other than officially approved activities in the performance of a governmental function.

c. Use of official information:

The public interest requires that certain information in the possession of the government may involve private, personal, or business information which has been furnished the government in confidence. In addition, information in the possession of the government and not generally available may not be used for private gain. Government employees are sometimes able to obtain information about some action the government is about to take or some matter which is not generally known. Information of this kind shall not be used by the officer to further his, her or someone else's private financial or other interest. Such use of official information is clearly a violation of the public trust. An officer shall not, directly or indirectly, make use of or permit others to make use of, for the purpose of furthering any private interest, official information not made available to the general public.

4. Illegal gifts, entertainment and favors:

a. Prohibited acceptance of gifts, entertainment, and favors:

i. An officer shall not directly or indirectly solicit or accept anything of monetary value, including gifts, gratuities, favors, entertainment or loans from a person or entity who, the officer knows because of the nature of official duties:

(A) Has, or is seeking to obtain, contractual or other business or financial relations with the officer's principal operating component, or sub-unit thereof; or with a component of the Tribal Government with respect to which the officer has official duties;

(B) Conducts operations or activities that are regulated by the officer's principal operating component, or subunit thereof or by a component of the Tribal Government with respect to which the officer has official duties; or

(C) Has interest that may be substantially affected by the performance or non-performance of the officer's official duties.

ii. An officer may not designate a person or organization, including charitable or nonprofit organizations, to accept any gift which an officer is prohibited from accepting directly.

## REMOVAL OF OFFICERS

## Title 31, § 1-104

iii. An officer shall not:

(A) Receive or accept anything of value for or because of any official act the officer has performed or will perform ; or

(B) Give, offer or promise anything of value for the performance of an official act or to influence the performance of an official act.

b. Gifts to official superiors:

An Officer shall not solicit a contribution from an employee for a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself; except that a voluntary gift of a nominal value or donation in an nominal amount made on special occasion such as marriage, illness, retirement, birthdays or recognition of meritorious public contribution or achievement.

c. Gifts and decorations from another government:

i. An officer may not request or otherwise encourage the tender of gifts or decorations from another government or official thereof.

ii. An officer may accept:

(A) a gift in the nature of medical treatment or an educational scholarship;

(B) a tangible gift not to exceed one hundred dollars (\$100);

(C) a tangible gift of more than one hundred dollars (\$100) on behalf of the Muscogee (Creek) Nation.

d. Acceptance of travel and subsistence:

Officers may not accept accommodations, subsistence, or travel, in cash or in kind, in connection with official travel from a non-governmental source with which they or the government have official dealings unless government or commercial travel and/or accommodations are not available; if accepted under these circumstances, the justification and basis must be reported in writing to the Attorney General.

5. Abuse of power; profiting from office, position, and knowledge:

a. An officer who is an appointee covered by this chapter shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, program or operations of his or her official duties, or draws substantially official data or ideas which have not or will not on request become public information.

b. An officer may not, with or without compensation, represent another before any government agency, court, or commission in connection with the proceedings, application, request for a ruling, contract, claim or other particular matter in which the Muscogee (Creek) Nation is a party or has a direct and substantial interest.

6. Financial interest:

a. Participation in matters affecting a personal financial interest:

## **Title 31, § 1-104**

## **TRIBAL OFFICERS**

An officer shall not participate personally and substantially as a government officer in a matter in which any of the following individuals or organizations has a financial interest:

- i. The officer;
  - ii. The officer's spouse;
  - iii. The officer's minor child;
  - iv. An organization in which the officer serves as an officer, director, trustee, partner, or employee; or
  - v. A person or organization with which the officer is negotiating for prospective employment or has an arrangement for prospective employment.
- b. The prohibition shall apply to personal and substantial involvement by an officer in a matter, exercised through decision, approval, disapproval, recommendation, investigation, giving of advice, or other significant effort regarding the matter.
- c. The prohibition against negotiation for prospective employment shall include both an indication of interest on the part of the officer in working for an organization and an affirmative action on the part of the officer in working for an organization and an affirmative action on the part of the organization to show consideration of the employee.

### **7. Misuse of public office:**

Prohibition against involvement in financial transactions based on information obtained through Muscogee (Creek) Nation employment:

An officer shall not engage in, directly or indirectly, a financial transaction as a result of, or in primary reliance upon, any information gained through his or official duties. Information gained through official duties are those facts and other data that relate to the employee's official duties or to the functions of the employing component and would not be available to the employee were he or she not an officer of the Muscogee (Creek) Government.

### **8. Electioneering:**

- a. An officer shall not solicit, promise, threat, coerce or make a contribution of value to any employee, directly or indirectly, of the government to influence the outcome of an election.
- b. An officer shall not make a contribution of monetary value to any candidate for office which will influence the outcome of an election.
- c. An officer shall not electioneer on Muscogee (Creek) Nation property, in or on buildings, or use any agency or subsidiary of the government thereof, or utilize assets to influence or gain advantage for a candidate or group of candidates; except that if by Muscogee (Creek) Nation public policy, property and assets shall be made available for such specific use.

### **9. Conflict of business interest:**

An officer of the Muscogee (Creek) Nation shall not engage in any business of whatever nature, directly or indirectly, with the Muscogee (Creek) Nation, nor shall an officer solicit, participate, profit, benefit, or conspire to gain advantage over others; except that business transactions may be allowed which are

nominal in nature and the government transacts business in the same nature as does the general public, freely and openly.

[NCA 89–75, § 110, veto overridden June 24, 1989.]

**Library References**

Indians ↻218.  
Westlaw Topic No. 209.

**§ 1–105. Principles of procedure**

A. There are hereby established fundamental principles of procedure for the removal of officers of the Muscogee (Creek) Nation:

1. The National Council recognizes the Constitutional right of the people to petition for removal of public officials and the National Council obligation to give consideration as to cause of removal. The petitions are to be presented to the National Council and in open court with a District Court Judge presiding, the National Council together with the petitioners, and Election Board validate or invalidate each and every name and signature on the petition, determine that the cause or causes for removal are clearly legible upon the petition, determine that the petition has the required number of valid signatures, and if the above conditions are met, the presiding judge shall certify the petition as valid. The National Council shall consider the cause for removal as stated in the petition(s).

2. The National Council initiates impeachment proceedings by majority vote authorizing a National Council Directive instructing a Special Prosecutor, chosen by the National Council, to convene a Special Impeachment Committee consisting of seven (7) members of the National Council, selected at random, whose purpose shall be to examine charges, investigate activities, and examine evidence for cause of removal as the Directive shall state. If evidence warrants it, the Special Impeachment Committee shall vote by majority vote and direct the Special Prosecutor to prepare formal written statements as Articles of Impeachment charging the officer with a formal charge, with each charge being a separate and individual Article of Impeachment. The Special Prosecutor presents the Articles of Impeachment to the National Council.

3. The National Council convenes as a Court of Impeachment with the Chief Justice of the Supreme Court presiding in the case of a trial of the Principal Chief, or a lesser Supreme Court Judge, if a lesser officer.

4. The Special Prosecutor appointed by the National Council prosecutes the accused Principal Chief or other defendant on trial before the National Council sitting as a Court of Impeachment when the Principal Chief is on trial. The Principal Chief may not be present in person but is defended by his personal legal counsel.

5. A conviction on the charges of impeachment requires three-fourths (3/4) vote of the National Council for removal of the Principal Chief, Second Chief, and/or any member of the Supreme Court; removal of a civil officer may be less than three-fourths (3/4) vote.

6. The only penalty that the National Council can impose is removal from office.

7. A conviction on charges of impeachment is irrevocable.

8. The transition of power upon conviction of the Principal Chief shall pass to the Second Chief, and the presiding Supreme Court Justice shall administer the oath of office.

[NCA 89-75, § 107, veto overridden June 24, 1989.]

**Library References**

Indians ↻218.  
Westlaw Topic No. 209.

**SUBCHAPTER 2. PETITION TO REMOVE  
A PUBLIC OFFICER**

**Section**

1-201. Petition process.  
1-202. Contents of petition.

**Cross References**

Petition for removal of Principal Chief, Second Chief or Supreme Court Justice, see Const. Art. VIII, § 3.  
Petition for removal of Representative, see Const. Art. VIII, § 2.

**§ 1-201. Petition process**

A. The National Council shall recognize the constitutional right of the people to petition for removal of public officials and the National Council obligation to give consideration as to cause of removal which may be accomplished through public hearing.

B. 1. Petitioners shall file with the Secretary of the Election Board a Notice of Petition to Remove a Public Official which shall contain the alleged statutory violation, the office of the office holder, and the name of an individual who is acting in an official Petitioner capacity. The Election Board shall furnish a certified list of registered voters within three (3) days of the filing of Notice of Petition. A fee of two dollars (\$2.00) per district which shall include absentee voters shall be charged for the Registered Voter List to defray the cost of materials and processing.

2. Failure to furnish a certified list of registered voters to the Petitioners within three (3) days shall be punishable by fine of one hundred dollars (\$100) per day per Election Board member; and failure to pay such fine shall be punishable by removal from office and subject to other remedies at law.

C. The Petitioners shall have sixty (60) days from the date of receipt of the certified list of registered voters to file the Removal Petition; the Petitioners shall file the Petition with the Secretary of the National Council.

D. The Secretary of the National Council, acting in the capacity of an agent for the National Council, shall exercise all care and diligence to protect the Petition, provide a certified copy to the Petitioners, and notify the Speaker in writing of the official receipt that the Petition has been filed with the National Council.

## REMOVAL OF OFFICERS

## Title 31, § 1-301

E. The Secretary shall file with the District Court a request to validate a Removal of Public Official Petition, and in open court with a District Court Judge presiding, the National Council, together with the petitioners and Election Board, shall validate or invalidate each and every name and signature on the petition, determine that the cause or causes for removal are clearly legible upon the petition and meet the criteria as provided by Title 31, § 1-202, determine that the petition has the required number of valid signatures; and

F. If the above conditions are met, the presiding Judge shall certify the petition as valid.

[NCA 89-75, § 108, veto overridden June 24, 1989.]

### Library References

Indians ⇌218.  
Westlaw Topic No. 209.

### § 1-202. Contents of petition

A. The Petition to Remove a Public Official showing cause for removal shall (1) specify the statutory or regulatory provision alleged to have been violated; and (2) state the allegation(s) in common and concise language. The Petition shall not consist merely of allegations stated in statutory or regulatory language.

B. The National Council shall consider the cause(s) for removal as stated on the Petition to Remove Public Officials.

[NCA 89-75, § 109, veto overridden June 24, 1989.]

### Library References

Indians ⇌218.  
Westlaw Topic No. 209.

## SUBCHAPTER 3. IMPEACHMENT INVESTIGATION

### Section

- 1-301. Convening of Impeachment Session.
- 1-302. Special Prosecutor.
- 1-303. Special Impeachment Committee.
- 1-304. Articles of Impeachment.
- 1-305. Failure to find cause.
- 1-306. Subpoena and deposition powers.
- 1-307. Confidentiality.
- 1-308. Criminal investigations.
- 1-309. Scope of investigative power.

### § 1-301. Convening of Impeachment Session

A. The Speaker of the National Council shall poll Representatives of the National Council to determine if an Impeachment Session shall be convened. If the Speaker determines that a majority of the Representatives desire an Impeachment Session be convened, the Speaker shall issue a call in writing to the Representatives as to time and place to convene an Impeachment Session; or if the Speaker fails to convene an Impeachment Session, a Letter of Petition

## **Title 31, § 1-301**

## **TRIBAL OFFICERS**

to convene an Impeachment Session, including time and place, signed by a majority of the Representatives, shall be sufficient to call an Impeachment Session.

B. The Speaker, presiding, shall upon call to order of the Impeachment Session in open assembly inquire of each Representative of the National Council present whether the Representative cast a vote to convene an Impeachment Session.

C. Each Representative shall stand, state his name, and answer yea or nay to the question of whether to convene an Impeachment Session.

D. The Secretary shall record and read the tally of votes in open assembly. The Speaker shall declare the National Council in Impeachment Session, if a majority present so votes, or declare the failure to receive a majority of those voting, and dismiss the Representatives.

E. The National Council shall, as a tribunal of the whole with the membership present voting, convene in Impeachment Session.

F. The National Council shall initiate impeachment proceedings by majority vote authorizing a National Council Directive which shall state the purpose, probable cause for removal, and other such allegations, and facts, which may be probable cause for removal and authorize a Special Impeachment Committee and the appointment of Special Prosecutor.

[NCA 89-75, § 111, veto overridden June 24, 1989.]

### **Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

## **§ 1-302. Special Prosecutor**

The National Council shall choose a Special Prosecutor whose responsibility and duty it is to investigate and prepare information, and present evidence to the Special Impeachment Committee.

[NCA 89-75, § 111, veto overridden June 24, 1989.]

### **Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

## **§ 1-303. Special Impeachment Committee**

A. A Special Impeachment Committee shall be convened consisting of seven (7) members of the National Council, and one (1) member to serve as an alternate Committee member, selected at random, shall be chosen.

B. The Committee members shall be chosen by drawing of lots.

C. The purpose of the Special Impeachment Committee shall be to examine charges, investigate activities, and examine evidence for cause for removal as the Directive shall state and report its findings to the National Council.

[NCA 89-75, § 111, veto overridden June 24, 1989.]



**Library References**

Indians ↻218.  
Westlaw Topic No. 209.

**§ 1–304. Articles of Impeachment**

A. If evidence warrants it, the Special Impeachment Committee shall vote by majority vote and direct the Special Prosecutor to prepare formal written statements as Articles of Impeachment charging the Officer with a formal charge with each charge being a separate and individual Article of Impeachment; such charges to reflect “treason, bribery, or other high crimes and misdemeanors”.

B. The charge(s) cited in the Article of Impeachment showing cause for removal shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

[NCA 89–75, § 111, veto overridden June 24, 1989.]

**Library References**

Indians ↻218.  
Westlaw Topic No. 209.

**§ 1–305. Failure to find cause**

If the Special Impeachment Committee fails to find cause or evidence to warrant a trial, it shall vote for dismissal and the Special Prosecutor shall notify the National Council of the results of the inquiry. Thereupon the Impeachment Session may be dismissed, or another Special Impeachment Committee chosen if a new Impeachment Directive is so ordered. The Impeachment Session may recess and convene as necessary.

[NCA 89–75, § 111, veto overridden June 24, 1989.]

**Library References**

Indians ↻218.  
Westlaw Topic No. 209.

**§ 1–306. Subpoena and deposition powers**

A. The Special Impeachment Committee shall have the power to require by subpoena the attendance and testimony of witnesses, under oath, and the production of all books, papers, and documents relating to any matter under consideration or investigation.

B. The attendance of witnesses and the production of books, papers, and documents, may be required from any place of hearing. The Special Impeachment Committee may request the Attorney General to bring an action to enforce any subpoena under this section; the action of the Attorney General notwithstanding, the Attorney General may instruct and compel the Tribal Attorney, representing the Muscogee (Creek) Nation as a government-in-total, to take appropriate action in a court of competent jurisdiction to compel the attendance of witnesses and the production of books, papers, and documents.

## **Title 31, § 1–306**

## **TRIBAL OFFICERS**

C. Any court of the Muscogee (Creek) Nation within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such persons to appear before the Special Impeachment Committee and produce books, papers, or documents as so ordered and give evidence concerning the matter in question and any failure to obey such order of the Court may be punished by such Court as a contempt thereof.

[NCA 89–75, § 112, veto overridden June 24, 1989.]

### **Cross References**

Court of Impeachment, investigative powers, see Title 31, § 1–404.

### **Library References**

Indians ⇌218.  
Westlaw Topic No. 209.

## **§ 1–307. Confidentiality**

A. Except as provided in subsection B of this section, the Special Impeachment Committee shall preserve any and all information received pursuant to this chapter as confidential.

B. The Special Impeachment Committee shall when such information indicates a violation of federal, state, or Tribal law or resolutions provide such information to the Attorney General who shall in turn provide such information to the appropriate law enforcement officials.

[NCA 89–75, § 113, veto overridden June 24, 1989.]

### **Cross References**

Court of Impeachment, investigative powers, see Title 31, § 1–404.

### **Library References**

Indians ⇌218.  
Westlaw Topic No. 209.

## **§ 1–308. Criminal investigations**

The Attorney General shall at the direction of the Special Prosecutor investigate activities associated with causes for removal as authorized by this chapter which may be a violation of Tribal law.

[NCA 89–75, § 113, veto overridden June 24, 1989.]

### **Cross References**

Court of Impeachment, investigative powers, see Title 31, § 1–404.

### **Library References**

Indians ⇌218.  
Westlaw Topic No. 209.

## **§ 1–309. Scope of investigative power**

The review of laws, contracts, activities, official duties, and violations prior to the enactment of this chapter shall be within the review authority of this

## REMOVAL OF OFFICERS

## Title 31, § 1-403

chapter and within the constitutional authority of the National Council as defined in Article VIII Section 1.

[NCA 89-75, § 113, veto overridden June 24, 1989.]

### Cross References

Court of Impeachment, investigative powers, see Title 31, § 1-404.

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

## SUBCHAPTER 4. COURT OF IMPEACHMENT

### Section

- 1-401. Notice to Convene.
- 1-402. Convening of Court.
- 1-403. Presiding Judge.
- 1-404. Investigative powers of Court.
- 1-405. Administration of oath or affirmation.
- 1-406. Hearings.

### § 1-401. Notice to Convene

The National Council acting through the Speaker, upon receipt of the Articles of Impeachment shall provide Notice to Convene the Court of Impeachment within thirty (30) days. Such notices shall be provided to the parties involved to hear and answer charges, the Supreme Court of the Muscogee (Creek) Nation, and the Representatives of the National Council.

[NCA 89-75, § 114, veto overridden June 24, 1989.]

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

### § 1-402. Convening of Court

The National Council shall convene as a Court of Impeachment, acting as a tribunal of the whole with the members of the National Council present voting. As a Court of Impeachment, the National Council is not in legislative session.

[NCA 89-75, § 115, veto overridden June 24, 1989.]

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

### § 1-403. Presiding Judge

The National Council convenes as a Court of Impeachment with the Chief Justice of the Supreme Court presiding in the case of a trial of the Principal Chief, or a lesser Supreme Court Judge, if a lesser officer or the Chief Justice of the Supreme Court is on trial.

[NCA 89-75, § 115, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-404. Investigative powers of Court**

The Court of the Impeachment shall have the powers outlined as provided in Title 31, §§ 1-306 to 1-309.

[NCA 89-75, § 116, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-405. Administration of oath or affirmation**

The Presiding Judge shall administer an oath or affirmation to each Representative, who shall stand, state their name, and give a public oath or affirmation to administer justice under and uphold the Constitution of the Muscogee (Creek) Nation.

[NCA 89-75, § 117, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-406. Hearings**

A. The Presiding Judge shall ensure that an impartial hearing is conducted providing Rules of Conduct to the Special Prosecutor and the party charged.

B. The Special Prosecutor appointed by the National Council shall prosecute the accused Principal Chief or other defendant on trial before the National Council, sitting as a Court of Impeachment, with the Chief Justice of the Supreme Court presiding when the Principal Chief is on trial. The Principal Chief may not be present in person but is defended by his personal legal counsel.

[NCA 89-75, § 118, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**SUBCHAPTER 5. CONVICTION**

**Section**

- 1-501. Vote for conviction.
- 1-502. Judgment.
- 1-503. Conviction not subject to judicial review.
- 1-504. Transition of power.

**§ 1-501. Vote for conviction**

A conviction on the charges of impeachment requires three-fourths (3/4) vote of the National Council for removal of the Principal Chief, Second Chief, and/or any member of the Supreme Court; removal of civil officers shall require a majority vote of those present.

[NCA 89-75, § 118, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-502. Judgment**

A. Judgment in cases of impeachment shall not extend further than:

1. Removal from office; and
2. Disqualification to hold and enjoy any office of honor, trust, election or profit under the Muscogee (Creek) Nation; but

B. The party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

[NCA 89-75, § 119, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-503. Conviction not subject to judicial review**

A conviction on charges of impeachment shall be irrevocable and not subject to review by the Courts of the Muscogee (Creek) Nation.

[NCA 89-75, § 120, veto overridden June 24, 1989.]

**Library References**

Indians ⇄218.  
Westlaw Topic No. 209.

**§ 1-504. Transition of power**

A. Upon conviction of the Principal Chief, the Chief Justice of the Supreme Court shall administer the Oath of Office to the Second Chief, who shall assume office immediately.

B. In the event the Office of the Second Chief is vacant, it being within the last six (6) months of the term, an election shall be held for the office of Principal Chief within twenty (20) calendar days from the date of conviction. During the interim, there being no Principal Chief, the Speaker of the National Council shall perform ministerial and routine administrative functions, and shall be prohibited from employment of personnel, approving of legislation, and otherwise performing functions which are reserved for the Office of Principal Chief; except that funds required for the conduct of the Special Election and other necessary and required expenditures authorized by law, and to safeguard the health and safety of an emergency nature may be expended.

[NCA 89-75, §§ 121, 122, veto overridden June 24, 1989.]

**Library References**

Indians ⇨218.  
Westlaw Topic No. 209.

**SUBCHAPTER 6. CONSTRUCTION**

**Section**

- 1-601. Severability.
- 1-602. Rules of construction.
- 1-603. Scope of judicial review.
- 1-604. Supersession of other Acts.
- 1-605. Finality of convictions.

**§ 1-601. Severability**

In the event that any section or provision of this Act,<sup>1</sup> or amendment made by this Act, is held invalid, it is the intent of the National Council that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.

[NCA 89-75, § 125, veto overridden June 24, 1989.]

<sup>1</sup> NCA 89-75.

**Library References**

Indians ⇨218.  
Westlaw Topic No. 209.

**§ 1-602. Rules of construction**

Nothing in this Act,<sup>1</sup> or in any amendment made by this Act, shall be construed:

A. To constitute authority to the Executive Branch of the Muscogee (Creek) Nation other than has been specifically authorized by this Act.

B. To authorize any agency to perform any function of the Executive Branch of the Muscogee (Creek) Nation other than has been specifically authorized by this Act.

C. To expand the exercise of judicial review of the removal of officers by the Courts of the Muscogee (Creek) Nation.

[NCA 89-75, § 126, veto overridden June 24, 1989.]

<sup>1</sup> NCA 89-75.

**Library References**

Indians ⇨218.  
Westlaw Topic No. 209.

**§ 1-603. Scope of judicial review**

Where constitutional provisions are clear and precise, the supremacy of the Constitution as construed makes little difficulty. But where language is used that is not capable of precise definition, the Court may in fact determine not only the constitutionality but also the wisdom of legislative action.

[NCA 89-75, § 127, veto overridden June 24, 1989.]

## REMOVAL OF OFFICERS

## Title 31, § 1-605

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

### § 1-604. Supersession of other Acts

This Act <sup>1</sup> shall supersede any Act or amendments and where conflicts may occur this Act shall supersede.

[NCA 89-75, § 128, veto overridden June 24, 1989.]

<sup>1</sup> NCA 89-75.

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

### § 1-605. Finality of convictions

Convictions rendered by the National Council are final and are not subject to review by any Court of the Muscogee (Creek) Nation.

[NCA 89-75, § 129, veto overridden June 24, 1989.]

### Library References

Indians ↻218.  
Westlaw Topic No. 209.

## CHAPTER 2. HOMAGE TO DECEASED OFFICIALS

### Section

- 2-101. Purpose.
- 2-102. Authorization.
- 2-103. Responsibility for flag inventory maintenance.
- 2-104. Procedures for flag and certificate presentation.

### Historical and Statutory Notes

- NCA 94-93, § 101, provides:
- “Findings:  
“The National Council finds that:  
“A. The 1979 Constitution of the Muscogee Nation specifies elected officials and members of the Supreme Court.  
“B. These officials are specifically identified as the Principal Chief, Second Chief and mem-
- bers of the National Council and Supreme Court.  
“C. These officials have served the Muscogee Nation with utmost dignity during their term or terms.  
“D. To extend honor and respect to these late officials of the Nation, a flag of the Nation should be presented to the family as well as a certificate of service.”

### § 2-101. Purpose

The purpose of this chapter is to extend respect to deceased honorable servants of the Muscogee (Creek) Nation, (with the exception of officials removed from office), by presentation of a Tribal flag and certificate of service; and to provide for appropriations for the purchase of these flags to be placed in stock.

[NCA 94-93, § 102, approved Feb. 7, 1995.]

### § 2-102. Authorization

The Principal Chief is hereby authorized to expend the amount of eight hundred sixty-four dollars (\$864.00) from the National Council budget, Travel Line Item, for the purpose of purchasing a stock of twelve (12) outdoor Creek Nation flags at a cost of seventy-two dollars (\$72.00 each). These monies will be paid after the completion of the 1995 Comprehensive Budget.

[NCA 94-93, § 103, approved Feb. 7, 1995.]

### § 2-103. Responsibility for flag inventory maintenance

The Tribal flags will be maintained by the Speaker and Second Speaker in the Council office. These flags will be made available for wake and funeral purposes as specified within this chapter.

[NCA 94-93, § 104, approved Feb. 7, 1995.]

### § 2-104. Procedures for flag and certificate presentation

The Tribal flags and certificates of service shall be presented by an elected official from the deceased's district, and/or representative from the National Council, to the surviving spouse or children of the deceased official, at the site of interment.

[NCA 94-93, § 105, approved Feb. 7, 1995.]



## **CHAPTER 3. COMPENSATION OF TRIBAL OFFICERS AND EMPLOYEES**

### **Section**

3-101. Compensation for certain officers or employees of the Muscogee (Creek) Nation.

### **Cross References**

Board of Regents, College of the Muscogee, see Title 18, § 4-108.

### **§ 3-101. Compensation for certain officers or employees of the Muscogee (Creek) Nation**

With the exception of doctors, dentists, lawyers, professional engineers, mid-level health professionals, the Director of the Division of Health Administration, the General Manager of the Muscogee (Creek) Nation Business Enterprise, the General Manager of the Tribal Trade and Commerce Authority and the Controller employed within the Muscogee (Creek) Nation, no other person who receives compensation with funds owned by or under the jurisdiction of the Muscogee (Creek) Nation shall be compensated in an amount which exceeds compensation established by ordinance for the Principal Chief of the Muscogee (Creek) Nation.

[NCA 99-83, § 102, approved July 1, 1999; amended by NCA 02-096, § 2; amended by NCA 03-053, § 1, eff. March 28, 2003]

### **Cross References**

Controller, compensation, see Title 37, § 2-719.

Principal Chief, compensation, see Title 16, § 2-101.

### **Library References**

Indians ⇨216, 222, 224.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59, 62, 67, 180.



# TITLE 32. PROCUREMENT

## NAKHECKUECETV

Chapter	Section
1. BUY CREEK ACT. ....	1-101
2. LOCAL HIRE ACT. ....	2-101
3. SURPLUS TRIBAL PROPERTY; PROCEDURES FOR DISPOS- AL. ....	3-101
4. GOVERNMENT DISCOUNT AIRFARE AND CHARGE AC- COUNT PROGRAM. ....	4-101

### CHAPTER 1. BUY CREEK ACT

Section
1-101. Creek preference.
1-102. Definition of Creek vendors.
1-103. Directories of Creek-owned businesses.
1-104. Distribution of list of purchased goods and services.
1-105. Creek vendor bids.

#### Historical and Statutory Notes

<p>NCA 86-36, § 101, provides:          “The National council finds:          “A. That there is a need to create a relation-          ship between Creek owned businesses and the          Nation for the purposes of promoting an eco-          nomic system.</p>	<p>“B. That it is in the best interests of the          Muscogee (Creek) Government to promote and          support Creek owned businesses.          “C. That Creek businesses that grow and          prosper help reduce the unemployment rate in          the Nation.”</p>
--	--

#### Cross References

Tribal employees, Indian preference, see Title 38, § 3-201 et seq.

#### § 1-101. Creek preference

The Muscogee (Creek) Nation and any agency and every person acting as purchasing agent for the Nation or any of its agencies shall prefer, in all purchases of goods and services, vendors of Creek citizenry ownership; provided, that such preference shall not be for goods or services of inferior quality to those offered from other vendors, but a differential of not to exceed five percent (5%) may be allowed in the cost of Creek vendors or services.

[NCA 86-36, § 102, passed July 26, 1986, unsigned.]

#### § 1-102. Definition of Creek vendors

For the purposes of this chapter, Creek vendors shall be defined as businesses which possess fifty-one (51%) percent of Creek citizenship ownership, and who are registered with the Muscogee (Creek) Nation as a Creek vendor.

[NCA 86-36, § 103, passed July 26, 1986, unsigned; amended by NCA 04-025, § 3, approved Mar. 4, 2004.]

**§ 1–103. Directories of Creek-owned businesses**

The Executive Branch of the Muscogee (Creek) Nation shall publish annually a directory of Creek-owned businesses and shall distribute this directory to agencies of the Nation and shall distribute upon request to outside agencies who are desiring to do business with minority vendors.

[NCA 86–36, § 104, passed July 26, 1986, unsigned.]

**§ 1–104. Distribution of list of purchased goods and services**

At least every two (2) years, the Nation shall publish a list of the type of goods and services that are purchased by the Nation and shall distribute this list to Creek-owned businesses.

[NCA 86–36, § 105, passed July 26, 1986, unsigned.]

**§ 1–105. Creek vendor bids**

Creek vendors who are registered with the Nation shall be invited to bid on procurement contracts offered by the Nation and shall distribute this list to Creek-owned businesses.

[NCA 86–36, § 106, passed July 26, 1986, unsigned; amended by NCA 04–025, § 4, approved Mar. 4, 2004.]

**Historical and Statutory Notes**

NCA 07–107, § 2, provides:

“Findings: There is a compelling need for establishment of a Uniform Commercial Code (UCC) within the Muscogee (Creek) Nation to promote sustainable and diversified economic development. This UCC helps create an environment that encourages lenders and non-tribal businesses to do business, not only with the Nation, but also with tribal citizens and non-tribally owned Indian businesses, while protecting the interests of all parties engaged in business and financial transactions. This UCC is key to establishment of a governing legal infrastructure that not only supports and strengthens

the effective exercise of tribal sovereignty, but also satisfies the fears that are often expressed by prospective lenders, business people and investors. Lacking a UCC, lenders are less likely to lend, businesses are less inclined to do business, and investors are less likely to invest. This comprehensive UCC, carefully drafted to incorporate important elements which protect tribal sovereign immunity while encouraging business, will provide the certainty and predictability the business and lending community require to invest in the future of the Muscogee (Creek) Nation.”

**Cross References**

Office of Secretary of Nation, duties and responsibilities, see Title 16, § 8–103.

**Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## CHAPTER 2. LOCAL HIRE ACT

### Section

- 2-101. Employment opportunities.
- 2-102. Mandatory clause.
- 2-103. Indian owners.
- 2-104. List of available, qualified Indians.

### Historical and Statutory Notes

NCA 89-80, § 101, provides:

“Findings:

“A. Many construction, renovation and repair contracts and jobs are let by the Muscogee (Creek) Nation to various contractors.

“B. Many of these projects have no Creek citizens or American Indians employed on them.

“C. Many Creek citizens and American Indians can provide the skilled or unskilled labor required in the performance of these contracts.

“D. In many instances Creek tribal funds are utilized in funding these projects, either in total or on a matching funds basis.

“E. Many of the Native Americans within the boundaries of the Creek Nation are unemployed and in need of employment.”

### Cross References

Tribal employees, Indian preference, see Title 38, § 3-201 et seq.

### § 2-101. Employment opportunities

To ensure employment opportunities for Creek citizens and American Indians residing within the boundaries of the Creek Nation, all future construction contracts which utilize Creek Nation funds or Bureau of Indian Affairs funds shall require the contractors to employ a minimum of twenty-five percent (25%) Creek citizens or American Indians who reside within the boundaries of the Creek Nation as a part of the work force for the contracted project/projects.

[NCA 89-80, § 102, passed June 28, 1989, unsigned.]

### Library References

Indians ⇄213.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59 to 61.

### § 2-102. Mandatory clause

A “local hire” clause shall be a mandatory part of any Creek Nation construction contract with the provisions that failure by the contractor to comply shall void the contract. This includes community and organization projects funded in whole or in part by Creek Nation.

[NCA 89-80, § 103, passed June 28, 1989, unsigned.]

### Library References

Indians ⇄213.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59 to 61.

### § 2-103. Indian owners

Contracting company owners who are Creek citizens or American Indian shall not be included in the twenty-five percent (25%) work force requirement.

[NCA 89-80, § 104, passed June 28, 1989, unsigned.]

**Library References**

Indians ↻213.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59 to 61.

**§ 2-104. List of available, qualified Indians**

The Division of Community Services shall establish and maintain a list of available qualified Creek citizens and American Indians residing within the boundaries of the Creek Nation.

[NCA 89-80, § 105, passed June 28, 1989, unsigned.]

**Library References**

Indians ↻213.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59 to 61.

## **CHAPTER 3. SURPLUS TRIBAL PROPERTY; PROCEDURES FOR DISPOSAL**

### **Section**

- 3-101. Disposal of property.
- 3-102. Certification of property as surplus to needs of program; use of property.
- 3-103. Opportunity to acquire property surplus to needs of the Nation by communities, churches and ceremonial grounds.
- 3-104. Public sale of property surplus to needs of the Nation.

### **Historical and Statutory Notes**

NCA 88-37, § 101, provides: “Findings: “The National Council finds that: “A. These items considered as surplus property could be used by the Chartered Indian Community for their Community needs.	“B. The Community should delegate a representative of that Community with verification, to come to the Tribal Complex and pick these items up on a first come, first serve basis.”
---	--

### **Cross References**

Procedures for unclaimed property in possession of Lighthorse Police, see Title 14, § 1-901.

### **§ 3-101. Disposal of property**

**A. Property subject to federal rules.** Property acquired by the Muscogee (Creek) Nation that is subject to federal rules and regulations for the disposal of property, shall be disposed of in accordance with those federal rules and regulations.

**B. Disposal of other property.** Disposal of surplus property that is not subject to federal rules and regulations shall be disposed of in accordance with Title 32, §§ 3-103 and 32-3-104, subject to the following exceptions:

1. Property belonging to the Farm shall be disposed of in accordance with procedures in Title 1 of the Muscogee (Creek) Nation Code of Laws.
2. Vehicles determined to be surplus property may be traded in for cash value towards the purchase of a new or used vehicle or sold for parts or scrap.
3. Surplus property that is determined by the Program or Department Supervisor and the Manager of General Services Administration to have a value of less than fifty dollars (\$50) shall not be subject to the requirements of public sale and shall be disposed of by the Program Supervisor with the approval of the Manager of General Services Administration.

[NCA 83-17, § 101, approved April 30, 1983; amended by NCA 02-017, § 1, approved Feb. 28, 2002.]

### **Cross References**

Sale of farm property, see Title 1, § 1-101.

### **Library References**

United States ⇌58(4).  
Westlaw Topic No. 393.  
C.J.S. United States §§ 101 to 106.

**§ 3-102. Certification of property as surplus to needs of program; use of property**

**A. Certification of property as surplus to needs of program.** Prior to disposal or sale, all Tribal personal property, except property belonging to the Farm, shall not be subject to disposition until it is certified by the program or Department Supervisor and the Manager of General Services Administration to be surplus to the needs of the program to which the property was assigned.

**B. Disposition of property surplus to needs of program.** Upon issuance of certification that property is surplus to the needs of the program pursuant to subsection A of this section, the Manager of General Services Administration shall take possession of the property and make it available for use by other Muscogee (Creek) Nation governmental programs, departments or agencies in accordance with the policies and procedures of the General Services Administration, unless it is certified as surplus to the needs of the Nation pursuant to subsection C of this section.

**C. Certification of property as surplus to needs of Nation; disposition.** If the Manager of General Services Administration determines at any time that property in the possession of the General Services Administration is surplus to the needs of the Nation, then the Manager shall seek certification that the property is surplus to the needs of the Nation by the Executive Director and the Principal Chief. Upon the issuance of such certification, the property shall be disposed of in accordance with Title 32, §§ 3-103 and 3-104.

[NCA 83-17, § 102, approved April 30, 1983; amended by NCA 02-017, § 2, approved Feb. 28, 2002.]

**Library References**

United States ⇌58(4).  
Westlaw Topic No. 393.  
C.J.S. United States §§ 101 to 106.

**§ 3-103. Opportunity to acquire property surplus to needs of the Nation by communities, churches and ceremonial grounds**

**A. Right to acquire property.** Subject to the limitations in Title 32, § 3-101, Muscogee (Creek) Nation Indian communities, churches and ceremonial grounds shall have the opportunity to acquire property that has been certified as surplus to the needs of the Nation.

**B. Maintenance of list and acquisition.** The Manager of General Services Administration shall maintain and make available for inspection a list of such property on an ongoing basis and will donate such property to a Muscogee (Creek) Nation Indian community, church or ceremonial grounds on a first come first serve basis.

**C. Publication of list and acquisition.** At least annually, and at such other times as deemed prudent, the Manager of General Services Administration shall send notice that property certified as surplus to the needs of the Nation is available for acquisition, together with a list of the surplus property, to all Muscogee (Creek) Indian communities, churches or ceremonial grounds. The notice shall state that a full description of each item may be obtained from the Manager of General Services Administration, that the notified entities shall



have thirty (30) days from the date of the notice to request property on the list, and that they will be granted property from this surplus property list on a first come, first serve basis.

**D. Affidavit.** An officer or recognized leader of the community, church or ceremonial ground receiving the property shall sign an affidavit that the property is to be used only for official business.

[NCA 83-17, § 105, approved April 30, 1983; amended by NCA 88-37, § 102, approved July 14, 1988; renumbered NCA 83-17, § 103 and amended by NCA 02-017, § 3, approved Feb. 28, 2002.]

#### Cross References

Farm operations, authorization of expenditures and sales, see Title 1, § 1-101.

#### Library References

United States Ⓒ58(4).  
Westlaw Topic No. 393.  
C.J.S. United States §§ 101 to 106.

### § 3-104. Public sale of property surplus to needs of the Nation

**A. Publication.** After affording communities, churches and ceremonial grounds the opportunity to acquire surplus property pursuant to Title 32, § 3-103, and at such time as the Manager of General Services Administration determines that sufficient property has accumulated for the cost efficient conduct of a public sale, publication notice of the sale shall be given. The notice shall be posted at least five days prior to a public sale, the Manager shall cause notice to be published in the Muscogee Nation News and at least two other newspapers with a circulation in the Muscogee (Creek) Nation's jurisdictional boundaries, notifying interested persons of a date, place, and time a public sale will be held to dispose of surplus property. The publication shall include a statement that persons may write to request the Manager of General Services Administration, Muscogee (Creek) Nation, for to provide a full description of each item.

**B. Expenses; conduct of sale.** Expenses, including the expense of publication, shall be paid from the proceeds of the sale. All items shall be sold on a first come first serve basis and no property shall be held for an individual. Property shall be priced according to value as determined by the Manager of General Services Administration.

**C. Return of sale.** Within thirty (30) days from the date of the sale, an itemized list of property sold, including the amount it sold for and to whom it was sold, shall be given to the Controller. This list shall be available to the public upon written request.

**D. Proceeds.** All proceeds from public sale shall be deposited in the Tribal Treasury.

[NCA 83-17, §§ 103, 104, approved April 30, 1983; amended by NCA 89-12, § 101, approved Feb. 17, 1989; renumbered NCA 83-17, § 104 and amended by NCA 02-017, § 4, approved Feb. 28, 2002.]

**Title 32, § 3-104**

**PROCUREMENT**

**Library References**

United States Ⓒ58(4).  
Westlaw Topic No. 393.  
C.J.S. United States §§ 101 to 106.

## CHAPTER 4. GOVERNMENT DISCOUNT AIRFARE AND CHARGE ACCOUNT PROGRAM

### Section

- 4-101. Definitions.
- 4-102. Participation in Government Discount Airfare and Charge Account Program.
- 4-103. Development of procedures.
- 4-104. Limited waiver of immunity.
- 4-105. Authority of Principal Chief.

### Historical and Statutory Notes

NCA 98-06, § 101, provides:

“Findings: The National Council finds that:

“A. The Muscogee (Creek) Nation is a federally recognized tribal government exercising its power of self-governance.

“B. The Muscogee (Creek) Nation has a current compact and/or Self Determination and Education Assistance Act contract, grant, or cooperative agreement with the United States Department of Interior and the Department of Health and Human Services.

“C. The Indian Self-Determination Act Amendments of 1994 (P.L. 103-413), at 25 U.S.C. § 450j(k), give tribal entities access to Government sources of supplies and services, including the Government discount airfare and charge account programs.

“D. By participating in this program, the Nation will expend substantially less money on travel fares by receiving the Government’s discounted airfare rates for Official Government Travel, as hereinafter defined.

“E. In FY 1997, the Nation spent approximately \$124, 630.85 on Official Government Travel.

“F. Currently, in order to receive the Government discount, eligible Indian tribes are required to execute a limited waiver of immunity from suit for the Government and one of the

following in favor of the billing contractor: (1) execute a limited waiver of immunity from suit; or (2) post a cash or surety bond comparable to one-half of the Nation’s annual airfare expenditures for Official Government Travel; or (3) prepayment in an amount equivalent to six months of the Nation’s annual airfare expenditures for Official Government Travel.

“G. According to the U.S. General Services Administration, the approximate average savings for an airline ticket purchased with the Government discount is sixty percent (60%).

“H. Should the Nation choose to post a bond or prepay the billing contractor, said funds will be returned to the Nation after November 29, 1998, provided that the Nation is current on its obligations under the Contract. Thereafter, only the limited waiver of immunity from suit by Government will be required to take advantage of the Government discount airfare and charge account program.

“I. Section 12 of the Nation’s FY 1998 Annual Funding Agreement adopts and incorporates into said Annual Funding Agreement section 450j(k) of the 1994 Self-Determination Act Amendments, which authorizes the Nation to participate the Government discount airfare and charge account program.”

### § 4-101. Definitions

Wherever used in this chapter, the following definitions shall apply:

- A. “Government” shall mean the federal government.
- B. “Government Discount Airfare and Charge Account Program” shall mean the Government Discount Airfare and Travel and Transportation Payment and Expense Control System contracts.
- C. “Nation” shall mean the Muscogee (Creek) Nation.
- D. “Official government travel” shall mean any travel by an officer or employee of the Nation in connection with the performances of work or functions pursuant to the Nation’s compact of self-governance; annual funding agreement with the Department of Interior; contracts with the Indian Health Service; contracts, grants or cooperative agreements with the Bureau of Indian Affairs; other contracts, grants or cooperative agreements with the Government.

[NCA 98-06, § 103, approved March 4, 1998.]

**§ 4–102. Participation in Government Discount Airfare and Charge Account Program**

The Nation hereby elects to participate in the Government's Discount Airfare and Charge Account Program.

[NCA 98–06, § 104, approved March 4, 1998.]

**Library References**

Indians ☞139.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 54 to 55.

**§ 4–103. Development of procedures**

The Principal Chief or his designee and the Health System Board must develop and establish the proper forms and procedures to ensure that employees use the discount fares only when carrying out a compact, contract, grant or cooperative agreement in accordance with the limitations set forth in 25 U.S.C. § 450j(k) as added by Section 102(13) of Public Law 103–413.

[NCA 98–06, § 105, approved March 4, 1998.]

**Library References**

Indians ☞139.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 54 to 55.

**§ 4–104. Limited waiver of immunity**

The Muscogee (Creek) Nation (hereinafter "Nation") hereby consents to a limited waiver of its immunity from suit by the U.S. General Services Administration (hereinafter "Government") for the sole and limited purpose of enforcing the Nation's contractual obligation under the General Services Administration's Travel and Transportation Payment and Expense Control System Contract (hereinafter "Contract") and the Contracts Dispute Act to pay (i) the amount owed to the Government for the discounted travel fares; (ii) late interest penalties, if any; (iii) any additional late payment interest penalties assessed up to one hundred percent (100%) of the late interest penalty; and (iv) the Government's court costs incurred in bringing such suit, including any attorney fees awarded by the Court; provided, however, such limited waiver of immunity from suit is strictly limited to an enforcement action of said contractual obligations brought by the United States in its own name. For the purpose of this limited waiver of its immunity from suit allowing said enforcement action, the Nation consents to jurisdiction for such enforcement actions in the Courts of the Muscogee (Creek) Nation and the United States District Court wherein jurisdiction and venue lies, and/or the appropriate governmental administrative body of competent jurisdiction; and the corresponding appellate courts of each of the foregoing Courts or administrative bodies. For all other claims, causes of action, theories of relief, remedies, and losses or damages of any kind not expressly authorized herein, the Nation's immunity from suit is and shall be maintained and preserved. In the event of an award of monetary damages, the Government may obtain satisfaction of any assets of the Tribal organization (excluding real property and improvements by way of

**GOVERNMENT DISCOUNT PROGRAM**

**Title 32, § 4–105**

fixtures) for amounts due and owed the Government. In no event shall damages exceed the full amount payable under the contract with the Government.

[NCA 98–06, § 106, approved March 4, 1998.]

**Library References**

Indians ☞405.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 4–105. Authority of Principal Chief**

The Principal Chief is hereby authorized to execute a limited waiver of immunity from suit containing language identical to that set forth in Title 32, § 4–104, and to execute any other application, requests or other documents necessary for the Nation to participate in the Government Discount Airfare and Charge Account Program including the posting of a bond or the of cash prepayment in the amount comparable to six (6) months of the Nation’s annual airfare expenditures for official government travel.

[NCA 98–06, § 107, approved March 4, 1998.]

**Library References**

Indians ☞139, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 54 to 55, 59.



# TITLE 33. UNIFORM COMMERCIAL CODE

## MATVWV NESKV-WIKV VHAKA

Chapter	Section
1. GENERAL PROVISIONS.....	1-101
2. SALES.....	2-101
2A. LEASES.....	2A-101
3. NEGOTIABLE INSTRUMENTS.....	3-101
4. BANK DEPOSITS AND COLLECTIONS.....	4-101
4A. FUNDS TRANSFERS.....	4A-101
5. LETTERS OF CREDIT.....	5-101
6. BULK SALES [RESERVED]	
7. WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE.....	7-101
8. INVESTMENT SECURITIES.....	8-101
9. SECURED TRANSACTIONS.....	9-101
10 to 14. RESERVED	
15. UNIFORM ELECTRONIC TRANSACTIONS ACT.....	15-101

### Historical and Statutory Notes

NCA 07-107, § 2, provides:

“Findings: There is a compelling need for establishment of a Uniform Commercial Code (UCC) within the Muscogee (Creek) Nation to promote sustainable and diversified economic development. This UCC helps create an environment that encourages lenders and non-tribal businesses to do business, not only with the Nation, but also with tribal citizens and non-tribally owned Indian businesses, while protecting the interests of all parties engaged in business and financial transactions. This UCC is key to establishment of a governing legal infrastructure that not only supports and strengthens

the effective exercise of tribal sovereignty, but also satisfies the fears that are often expressed by prospective lenders, business people and investors. Lacking a UCC, lenders are less likely to lend, businesses are less inclined to do business, and investors are less likely to invest. This comprehensive UCC, carefully drafted to incorporate important elements which protect tribal sovereign immunity while encouraging business, will provide the certainty and predictability the business and lending community require to invest in the future of the Muscogee (Creek) Nation.”

### Cross References

Office of Secretary of Nation, duties and responsibilities, see Title 16, § 8-103.

## CHAPTER 1. GENERAL PROVISIONS

### Subchapter

1. Titles, Construction, Application, and Subject Matter of Act
2. General Definitions and Principles of Interpretation
3. Territorial Applicability and General Rules

### SUBCHAPTER 1. TITLES, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER OF ACT

#### Section

1-101. Short titles.

## Title 33, § 1–101

## UNIFORM COMMERCIAL CODE

### Section

- 1–102. Scope of chapter.
- 1–103. Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.
- 1–104. Construction against implicit repeal.
- 1–105. Severability.
- 1–106. Use of singular and plural; gender.
- 1–107. Section captions.
- 1–108. Electronic signatures in Global and National Commerce Act superseded, modified, and limited.

### § 1–101. Short titles

(a) The sovereign immunity of neither this Nation or any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Title, absent a recorded, properly ratified, express waiver of sovereign immunity.

(b) This Title does not apply to any property interest that is subject to federal restrictions regarding its sale, transfer or encumbrance.

(c) Sections 1–101 through 11–107 of this Title shall be known and may be cited as the “Uniform Commercial Code”. With the exception of Title 33, Section 1–301, and Chapter 9 (Secured Transactions), this Title is coextensive with Title 12A, Sections 1–101 through 11–107 of the Oklahoma Statutes Annotated and interpretation of this Title shall generally comport with Oklahoma cases interpreting those statutes, except those that conflict with Muscogee (Creek) Nation law, but not unwritten Mvskoke traditional law and customs.

(d) Chapters, subchapters, section numbers and subject matter of this Title shall generally correspond to articles, parts and section numbers appearing in the Oklahoma Statutes Annotated in order to facilitate ease of use and cross-reference of notes, official comments and pertinent case law, except as indicated in paragraph (c) of this section.

(e) This chapter shall be known and may be cited as “Uniform Commercial Code—General Provisions”.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Statutes ☞116.  
Westlaw Topic No. 361.  
C.J.S. Statutes §§ 217 to 220, 238, 240, 242.

### § 1–102. Scope of chapter

This chapter applies to a transaction to the extent that it is governed by another chapter of the Uniform Commercial Code.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Statutes ☞179.  
Westlaw Topic No. 361.  
C.J.S. Statutes §§ 306, 308 to 309.



**§ 1–103. Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law**

(a) The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) to simplify, clarify and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
- (3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Statutes ⇨179, 226.  
Westlaw Topic No. 361.  
C.J.S. Statutes §§ 306, 308 to 309, 358 to 361.

**§ 1–104. Construction against implicit repeal**

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Statutes ⇨159.  
Westlaw Topic No. 361.  
C.J.S. Statutes § 287.

**§ 1–105. Severability**

If any provision or clause of this Commercial Code, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Commercial Code are severable.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Statutes ⇨64(2).  
Westlaw Topic No. 361.

C.J.S. Statutes §§ 83, 87, 89 to 90, 94 to 97,  
99, 102 to 104, 107.

**§ 1–106. Use of singular and plural; gender**

In the Uniform Commercial Code, unless the statutory context otherwise requires:

- (1) words in the singular number include the plural, and in the plural include the singular; and
- (2) words of any gender include any other gender.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Statutes ☞188.  
Westlaw Topic No. 361.

C.J.S. Statutes §§ 306, 321, 324 to 326, 330,  
334.

**§ 1–107. Section captions**

Section captions are part of the Commercial Code.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Uniform Electronic Transactions Act, applicability of this section, see Title 33, § 15–103.

**Library References**

Statutes ☞211.  
Westlaw Topic No. 361.  
C.J.S. Statutes § 306.

**§ 1–108. Electronic signatures in Global and National Commerce Act superseded, modified, and limited**

Chapter 1 of the Uniform Commercial Code modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001 *et seq.*, except that nothing in this article modifies, limits or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Contracts ☞35.  
Signatures ☞1.  
Westlaw Topic Nos. 95, 355.

C.J.S. Contracts § 75.  
C.J.S. Signatures §§ 1 to 16.

## SUBCHAPTER 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

**Section**

- 1–201. General definitions and principles of interpretation.
- 1–202. Notice; knowledge.
- 1–203. Lease distinguished from security interest.
- 1–204. Value.
- 1–205. Reasonable time; seasonableness.
- 1–206. Presumptions.

**§ 1-201. General definitions and principles of interpretation**

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

(1) “Action” in the sense of a judicial proceeding includes a recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact as found in their language or inferred from other circumstances including course of performance, course of dealing, or usage of trade as provided in Section 1-303 of this Title.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of an instrument, negotiable tangible document of title, or certificated security payable to bearer or endorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term means so written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by the provisions of the Uniform Commercial Code as supplemented by any other applicable laws.

(13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

(14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) “Delivery” with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16) “Document of title” means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

## GENERAL PROVISIONS

## Title 33, § 1-201

(20) “Good faith”, except as otherwise provided in Chapter 5 of this Title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) “Insolvency proceeding” includes any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of the federal bankruptcy law.

(24) “Money” means a medium of exchange authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) “Nation” means the Muscogee (Creek) Nation

(26) “Organization” means a person other than an individual.

(27) “Party”, as distinguished from “third party”, means a person who has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(28) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(29) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(30) “Purchase” means taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(31) “Purchaser” means a person who takes by purchase.

(32) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(33) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(35) “Right” includes remedy.

(36) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9 of this Title. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2–401 of this Title, but a buyer may also acquire a “security interest” by complying with the provisions of Chapter 9 of this Title. Except as otherwise provided in Section 2–505 of this Title, the right of a seller or lessor of goods under Chapter 2 or 2A of this Title to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Chapter 9 of this Title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 2–401 of this Title is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates security interest is determined pursuant to Section 1–203 of this Title.

(37) “Send” in connection with any writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time at which it would have arrived if properly sent.

(38) “Signed” includes any symbol executed or adopted with present intention to adopt or accept a writing.

(39) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(40) “Surety” includes guarantor or other secondary obligor.

(41) “Term” means a portion of an agreement which relates to a particular matter.

(42) “Unauthorized signature” means a signature made without actual, implied or apparent authority. The term includes a forgery.

(43) “Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.

(44) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

Prove defined, see Title 33, § 4A–105.

Uniform Electronic Transactions Act, transferable records, see Title 33, § 15–116.

**Library References**

Statutes ⇔179.

Westlaw Topic No. 361.

C.J.S. Statutes §§ 306, 308 to 309.

**§ 1–202. Notice; knowledge**

A. Subject to subsection F, a person has “notice” of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it exists.

B. “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

C. “Discover”, learn or words of similar import refer to knowledge rather than to reason to know.

D. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

E. Subject to subsection F, a person “receives” a notice or notification when:

- (1) it comes to that persons attention; or
- (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

F. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individuals attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individuals regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

[Added by NCA 07–251, § 1, eff. Oct. 10, 2007.]

**Cross References**

Time payment order is received, see Title 33, § 4A–106.

**Library References**

Notice  $\S$  1 to 12.

Westlaw Topic No. 277.

C.J.S. Notice  $\S\S$  2 to 10, 12 to 34.

**§ 1–203. Lease distinguished from security interest**

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:



## GENERAL PROVISIONS

## Title 33, § 1–205

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The “remaining economic life of the goods” and “reasonably predictable” fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Secured Transactions ⌘10.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 2, 6, 20 to 27.

## § 1–204. Value

Except as otherwise provided in Chapters 3, 4 and 5 of the Uniform Commercial Code, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Contracts ⌘49.  
Sales ⌘19.  
Secured Transactions ⌘22.  
Westlaw Topic Nos. 95, 343, 349A.  
C.J.S. Contracts §§ 87 to 88, 90.  
C.J.S. Sales §§ 31 to 34.  
C.J.S. Secured Transactions § 29.

## § 1–205. Reasonable time; seasonableness

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Contracts ⌘212.  
Westlaw Topic No. 95.  
C.J.S. Contracts §§ 581 to 582.

**§ 1-206. Presumptions**

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Uniform Electronic Transactions Act, applicability of this section, see Title 33, § 15-103.

**Library References**

Evidence ⇄87.  
Westlaw Topic No. 157.

C.J.S. Evidence §§ 201, 206 to 210, 212 to 214, 234 to 237, 239, 263.

### SUBCHAPTER 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

**Section**

- 1-301. Territorial applicability; parties power to choose applicable law.
- 1-302. Variation by agreement.
- 1-303. Course of performance, course of dealing, and usage of trade.
- 1-304. Obligation of good faith.
- 1-305. Remedies to be liberally administered.
- 1-306. Waiver or renunciation of claim or right after breach.
- 1-307. Prima facie evidence by third party documents.
- 1-308. Performance or acceptance under reservation of rights.
- 1-309. Option to accelerate at will.
- 1-310. Subordination of obligations.

**§ 1-301. Territorial applicability; parties power to choose applicable law**

(a) In this section:

(1) “Domestic transaction” means a transaction other than an international transaction.

(2) “International transaction” means a transaction that bears a reasonable relation to a country other than the United States.

(b) This section applies to a transaction to the extent that it is governed by another chapter of the Commercial Code.

(c) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this Nation and also to another state, Indian Tribe or country, the parties may agree that the law either of this Nation or of such other state, Indian Tribe or country shall govern their rights and duties. In the absence of such agreement and except as provided in subsections (e), (f) and (g), the rights and obligations of the parties are determined by the law that would be selected by this Nations conflict of laws principles.

(d) An agreement by parties to a domestic or international transaction that any or all of their rights and obligations are to be determined by the laws of the Nation, another Indian Tribe, state or country is effective, whether or not the

transaction bears a relation to the Nation, Indian Tribe, state or country designated.

(e) If one of the parties to a transaction is a consumer, the following rules apply:

(1) An agreement referred to in subsection (d) is not effective unless the transaction bears a reasonable relation to the Nation, another Indian Tribe, state or country designated.

(2) Application of the law of the Nation, another Indian Tribe, state or country under subsections (d) and (g) may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which is both protective of consumers and may not be varied by agreement:

(i) of the Nation, another Indian Tribe, state or country in which the consumer principally resides, unless paragraph (c) applies; or

(ii) if the transaction is a sale of goods, and the Nation, another Indian Tribe, state or country in which the consumer both makes the contract and takes delivery of those goods, is not the Nation, another Indian Tribe, state or country in which the consumer principally resides.

(f) An agreement otherwise effective under subsection (d) is not effective to the extent that application of the law of the Nation, another Indian Tribe, state or country designated would be contrary to a fundamental policy of the Nation, another Indian Tribe, state or country whose law would govern in the absence of such an agreement .

(g) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 2–402 of this Title;
- (2) Sections 2A–105 and 2A–106 of this Title;
- (3) Section 4–102 of this Title;
- (4) Section 4A–507 of this Title;
- (5) Section 5–116 of this Title;
- (6) Section 8–110 of this Title; and
- (7) Sections 9–301 through 9–307 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### **Library References**

Action $\S$ 17.	to 87, 91 to 93, 96 to 97, 100, 102, 105 to 107.
Contracts $\S$ 2, 101(1), 129(1), 144, 206.	C.J.S. Contracts $\S$ § 13 to 23, 25, 229 to 230, 238 to 240, 359.
Westlaw Topic Nos. 13, 95.	C.J.S. Federal Civil Procedure $\S$ 306.
C.J.S. Actions $\S$ § 41 to 53.	C.J.S. Joint Ventures $\S$ 10.
C.J.S. Conflict of Laws $\S$ § 2 to 3, 12, 15, 20, 23, 27 to 32, 34 to 40, 42 to 48, 50 to 65, 86	

**§ 1–302. Variation by agreement**

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in the Uniform Commercial Code, the effect of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under this section.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Contracts  $\S$  1, 7, 103, 210.  
Westlaw Topic No. 95.

C.J.S. Contracts  $\S\S$  2 to 3, 9, 12, 34, 195 to  
200, 213 to 214, 374, 376.

**§ 1–303. Course of performance, course of dealing, and usage of trade**

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the agreement of the parties, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

## GENERAL PROVISIONS

## Title 33, § 1–305

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 2–209 of Title 33 of the Muscogee (Creek) Nation Code, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Cross References

Agreement defined, see Title 33, § 1–201.

### Library References

Contracts ⇨170.

Customs and Usages ⇨1, 9.

Westlaw Topic Nos. 95, 113.

C.J.S. Contracts §§ 338 to 340.

C.J.S. Customs and Usages §§ 1, 7 to 11, 15 to 41.

## § 1–304. Obligation of good faith

Every contract of duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Contracts ⇨168.

Westlaw Topic No. 95.

C.J.S. Contracts §§ 346 to 347.

## § 1–305. Remedies to be liberally administered

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

## Title 33, § 1–305

## UNIFORM COMMERCIAL CODE

### Library References

Action ☞3, 34.  
Westlaw Topic No. 13.

C.J.S. Actions §§ 30, 56 to 57, 62 to 64, 67.  
C.J.S. Railroads § 1080.

### § 1–306. Waiver or renunciation of claim or right after breach

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Contracts ☞316.  
Westlaw Topic No. 95.  
C.J.S. Contracts §§ 557 to 560, 596 to 597.

### § 1–307. Prima facie evidence by third party documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Evidence ☞370, 383.  
Westlaw Topic No. 157.  
C.J.S. Evidence §§ 1083 to 1084, 1086 to 1089, 1092 to 1093, 1095, 1181 to 1193,  
1198, 1202, 1205 to 1207, 1213 to 1214,  
1219, 1286 to 1305.  
C.J.S. Patents § 179.

### § 1–308. Performance or acceptance under reservation of rights

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Accord and Satisfaction ☞11(1).  
Contracts ☞305, 316.  
Estoppel ☞90.  
Westlaw Topic Nos. 8, 95, 156.  
C.J.S. Accord and Satisfaction §§ 32, 51 to 55, 58, 60.  
C.J.S. Contracts §§ 557 to 560, 587 to 588, 596 to 597.  
C.J.S. Estoppel and Waiver §§ 88 to 89, 175 to 180.

### § 1–309. Option to accelerate at will

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure”, or in words of similar import, means that the party shall have power to do so only if that party in

**GENERAL PROVISIONS**

**Title 33, § 1–310**

good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇨129.

Contracts ⇨213, 214.

Secured Transactions ⇨221.

Westlaw Topic Nos. 56, 95, 349A.

C.J.S. Bills and Notes; Letters of Credit §§ 97, 117 to 138.

C.J.S. Contracts §§ 578 to 579, 581, 584.

C.J.S. Secured Transactions §§ 179, 181 to 183, 190.

**§ 1–310. Subordination of obligations**

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Secured Transactions ⇨147.

Westlaw Topic No. 349A.

C.J.S. Secured Transactions § 116.

## CHAPTER 2. SALES

### Subchapter

1. Short Title, General Construction, and Subject Matter
2. Form, Formation, and Readjustment of Contract
3. General Obligation and Construction of Contract
4. Creditors, Title, and Good Faith Purchasers
5. Performance
6. Breach, Repudiation, and Excuse
7. Remedies

### SUBCHAPTER 1. SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

#### Section

- 2-101. Short title.
- 2-102. Scope; certain security and other transactions excluded from this article.
- 2-103. Definitions and index of definitions.
- 2-104. Definitions: “Merchant”; “financing agency”; “between merchants”.
- 2-105. Definitions: Transferability; “goods”; “future goods”; “lot”; “commercial unit”.
- 2-106. Definitions: “Contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming to contract”; “termination”; “cancellation”.
- 2-107. Goods to be severed from realty; recording.

#### § 2-101. Short title

This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Statutes ☞116.  
Westlaw Topic No. 361.  
C.J.S. Statutes §§ 217 to 220, 238, 240, 242.

#### § 2-102. Scope; certain security and other transactions excluded from this article

Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ☞3.  
Westlaw Topic No. 343.  
C.J.S. Agency § 15.  
C.J.S. Bailments §§ 9 to 12.  
C.J.S. Sales §§ 6 to 9, 12 to 14.



**§ 2-103. Definitions and index of definitions**

(1) In this chapter unless the context otherwise requires:

- (a) “Buyer” means a person who buys or contracts to buy goods.
- (b) “Receipt” of goods means taking physical possession of them.
- (c) “Seller” means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

- “Acceptance”. Section 2-606 of this Title.
  - “Banker’s credit”. Section 2-325 of this Title.
  - “Between merchants”. Section 2-104 of this Title.
  - “Cancellation”. Section 2-106 of this Title.
  - “Commercial unit”. Section 2-105 of this Title.
  - “Confirmed credit”. Section 2-325 of this Title.
  - “Conforming to contract”. Section 2-106 of this Title.
  - “Contract for sale”. Section 2-106 of this Title.
  - “Cover”. Section 2-712 of this Title.
  - “Entrusting”. Section 2-403 of this Title.
  - “Financing agency”. Section 2-104 of this Title.
  - “Future goods”. Section 2-105 of this Title.
  - “Goods”. Section 2-105 of this Title.
  - “Identification”. Section 2-501 of this Title.
  - “Installment contract”. Section 2-612 of this Title.
  - “Letter of credit”. Section 2-325 of this Title.
  - “Lot”. Section 2-105 of this Title.
  - “Merchant”. Section 2-104 of this Title.
  - “Overseas”. Section 2-323 of this Title.
  - “Person in position of seller”. Section 2-707 of this Title.
  - “Present sale”. Section 2-106 of this Title.
  - “Sale”. Section 2-106 of this Title.
  - “Sale on approval”. Section 2-326 of this Title.
  - “Sale or return”. Section 2-326 of this Title.
  - “Termination”. Section 2-106 of this Title.
- (3) “Control” as provided in Section 7-106 of this Title and the following definitions in other articles apply to this article:
- “Check”. Section 3-104 of this Title.
  - “Consignee”. Section 7-102 of this Title.
  - “Consignor”. Section 7-102 of this Title.

“Consumer goods”. Section 9–106 of this Title.

“Dishonor”. Section 3–502 of this Title.

“Draft”. Section 3–104 of this Title.

(4) In addition, Chapter 1 of this Title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞1, 54.	C.J.S. Sales §§ 1 to 2, 26 to 27, 35, 38 to 39,
Statutes ☞179.	76, 115 to 117, 130 to 145, 149 to 152, 259.
Westlaw Topic Nos. 343, 361.	C.J.S. Statutes §§ 306, 308 to 309.

**§ 2–104. Definitions: “Merchant”; “financing agency”; “between merchants”**

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2–707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞1, 15.1.	C.J.S. Sales §§ 1 to 2, 5, 26 to 28, 35, 38 to
Statutes ☞179.	39, 76, 115 to 117, 259.
Westlaw Topic Nos. 343, 361.	C.J.S. Statutes §§ 306, 308 to 309.

**§ 2–105. Definitions: Transferability; “goods”; “future goods”; “lot”; “commercial unit”**

(1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2–107) but does not include information.

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller’s interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) “Lot” means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Sales ⇨9.

Statutes ⇨179.

Westlaw Topic Nos. 343, 361.

C.J.S. Sales §§ 3 to 4, 11 to 12, 15 to 17, 29 to 30.

C.J.S. Statutes §§ 306, 308 to 309.

### § 2–106. Definitions: “Contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming to contract”; “termination”; “cancellation”

(1) In this article unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time but does not include a license of information. A “sale” consists in the passing of title from the seller to the buyer for a price (Section 2–401). A “present sale” means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

(3) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ3, 84.  
Westlaw Topic No. 343.  
C.J.S. Agency § 15.

C.J.S. Bailments §§ 9 to 12.  
C.J.S. Sales §§ 6 to 9, 12 to 14, 145, 182 to  
184.

**§ 2–107. Goods to be severed from realty; recording**

(1) A contract for the sale of minerals or the like, including oil and gas, or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance, a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale, apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto, but not described in subsection (1) of this section or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ10, 11.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 3 to 4, 11 to 12, 15 to 17, 29.

## SUBCHAPTER 2. FORM, FORMATION, AND READJUSTMENT OF CONTRACT

**Section**

- 2–201. Formal requirements; statute of frauds.
- 2–202. Final written expression; parol or extrinsic evidence.
- 2–203. Seals inoperative.
- 2–204. Formation in general.
- 2–205. Firm offers.
- 2–206. Offer and acceptance in formation of contract.
- 2–207. Additional terms in acceptance or confirmation.
- 2–208. Course of performance or practical construction.
- 2–209. Modification, rescission and waiver.
- 2–210. Delegation of performance; assignment of rights.

**§ 2–201. Formal requirements; statute of frauds**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars (\$500.00) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate

that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten (10) days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2-606).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Cross References**

Sale on approval and sale or return, see Title 33, § 2-326.

#### **Library References**

Frauds, Statute Of ⚖81 to 96.  
Westlaw Topic No. 185.  
C.J.S. Sales §§ 106 to 108, 111.

### **§ 2-202. Final written expression; parol or extrinsic evidence**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing or usage of trade and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Exclusion or modification of warranties, negation or limitation, see Title 33, § 2–316.  
Sale on approval and sale or return, see Title 33, § 2–326.

**Library References**

Evidence ⇨384 to 469.  
Westlaw Topic No. 157.  
C.J.S. Evidence §§ 1401 to 1614.

**§ 2–203. Seals inoperative**

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨28. C.J.S. Sales §§ 106 to 108, 112 to 114.  
Seals ⇨1. C.J.S. Seals §§ 1 to 2.  
Westlaw Topic Nos. 343, 347.

**§ 2–204. Formation in general**

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Options and cooperation respecting performance, see Title 33, § 2–311.

**Library References**

Sales ⇨1, 22, 23. C.J.S. Sales §§ 1 to 2, 26 to 27, 35, 38 to 39,  
Westlaw Topic No. 343. 42 to 65, 69, 76, 115 to 117, 259.

**§ 2–205. Firm offers**

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨22(2), 22(5), 23(2), 23(5).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 46 to 49, 53, 61, 63, 69.

**§ 2–206. Offer and acceptance in formation of contract**

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨22, 23.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 42 to 65, 69.

**§ 2–207. Additional terms in acceptance or confirmation**

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales  $\Leftrightarrow$ 22(4), 23(4).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 59 to 65, 69.

**§ 2–208. Course of performance or practical construction**

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade.

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales  $\Leftrightarrow$ 54.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 130 to 145, 149 to 152.

**§ 2–209. Modification, rescission and waiver**

(1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Chapter (Section 2–201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Course of performance, relevance to show waiver or modification of inconsistent terms, see Title 33, § 1–303.



## Library References

Frauds, Statute Of ⇨131(1).  
Sales ⇨89.  
Westlaw Topic Nos. 185, 343.

C.J.S. Frauds, Statute Of §§ 181 to 183.  
C.J.S. Sales §§ 162 to 174, 179.

**§ 2–210. Delegation of performance; assignment of rights**

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Chapter 9 of this Title, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of paragraph (2) of this section unless, and then only to the extent that enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but

(i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2–609).

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

## Library References

Sales Ⓒ86, 220.  
 Westlaw Topic No. 343.  
 C.J.S. Sales §§ 139 to 140, 409.

### SUBCHAPTER 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

**Section**

- 2-301. General obligations of parties.
- 2-302. Reserved.
- 2-303. Allocation or division of risks.
- 2-304. Price payable in money, goods, realty, or otherwise.
- 2-305. Reserved.
- 2-306. Output, requirements and exclusive dealings.
- 2-307. Delivery in single lot or several lots.
- 2-308. Absence of specified place for delivery.
- 2-309. Absence of specific time provisions; notice of termination.
- 2-310. Open time for payment or running of credit; authority to ship under reservation.
- 2-311. Options and cooperation respecting performance.
- 2-312. Warranty of title and against infringement; buyer's obligation against infringement.
- 2-313. Express warranties by affirmation, promise, description, sample.
- 2-314. Implied warranty: merchantability; usage of trade.
- 2-315. Implied warranty: fitness for particular purpose.
- 2-316. Exclusion or modification of warranties.
- 2-317. Cumulation and conflict of warranties express or implied.
- 2-318. Third party beneficiaries of warranties express or implied.
- 2-319. F.O.B. and F.A.S. terms.
- 2-320. C.I.F. and C. and F. terms.
- 2-321. C.I.F. or C. and F.
- 2-322. Delivery.
- 2-323. Form of bill of lading required in overseas shipment.
- 2-324. Provisions for "no arrival, no sale".
- 2-325. Letter of credit.
- 2-326. Sale on approval and sale or return; consignment sales and rights of creditors.
- 2-327. Special incidents of sale on approval and sale or return.
- 2-328. Sale by auction.

**§ 2-301. General obligations of parties**

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Sales Ⓒ150, 177, 183.  
 Westlaw Topic No. 343.  
 C.J.S. Sales §§ 236 to 237, 259 to 260, 279 to 282, 324 to 325, 327 to 328, 344 to 347, 349 to 351, 368, 371.

**§ 2–302. Reserved****§ 2–303. Allocation or division of risks**

Where this chapter allocates a risk or a burden as between the parties “unless otherwise agreed”, the agreement may not only shift the allocation but may also divide the risk or burden.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ217.  
Westlaw Topic No. 343.

**§ 2–304. Price payable in money, goods, realty, or otherwise**

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller’s obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor’s obligations in connection therewith.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ189.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 370 to 371.

**§ 2–305. Reserved****§ 2–306. Output, requirements and exclusive dealings**

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ71(4).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 303 to 307.



(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2–513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received

(i) at the time and place at which the buyer is to receive delivery of the tangible documents or

(ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Sales Ⓒ82.  
Westlaw Topic No. 343.  
C.J.S. Sales § 369.

### § 2–311. Options and cooperation respecting performance

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 2–204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of Section 2–319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's co-operation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Sales Ⓒ1(4), 64, 83, 154.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 115 to 117, 130, 259.

**§ 2-312. Warranty of title and against infringement; buyer's obligation against infringement**

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Effect of acceptance of tender, notice of claim or litigation to person answerable over, see Title 33, § 2-607.

**Library References**

Sales ⇌263.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 457, 472.

**§ 2-313. Express warranties by affirmation, promise, description, sample**

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⌘259.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 430 to 437, 464.

**§ 2–314. Implied warranty: merchantability; usage of trade**

(1) Unless excluded or modified (Section 2–316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2–316) other implied warranties may arise from course of dealing or usage of trade.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⌘272.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 444 to 450.

**§ 2–315. Implied warranty: fitness for particular purpose**

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⌘273.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 453 to 456.

**§ 2–316. Exclusion or modification of warranties**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed

wherever reasonable as consistent with each other; but, subject to the provisions of this chapter on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) the implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties of merchantability and fitness shall apply to the sale or barter of horses.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2-718 and 2-719).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales  $\Leftrightarrow$  260, 267.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 424, 430, 435 to 437, 459 to 469.

### § 2-317. Cumulation and conflict of warranties express or implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.



(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Sales ⇨277.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 424, 427 to 429, 438 to 439.

### § 2–318. Third party beneficiaries of warranties express or implied

(1) A seller’s warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty.

(2) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a buyer to other persons.

(3) The operation of this section may not be excluded, modified, or limited by a seller, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the buyer is also effective against any beneficiary designated under this section.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Contracts ⇨187.  
Sales ⇨255, 278.  
Westlaw Topic Nos. 95, 343.  
C.J.S. Contracts §§ 602, 610 to 629.  
C.J.S. Sales §§ 426 to 429, 439.

### § 2–319. F.O.B. and F.A.S. terms

(1) Unless otherwise agreed the term F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (Section 2–504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (Section 2–503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (Section 2–323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means “free alongside”) at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (Section 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales §§ 77, 79, 83, 161, 201(4).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 155 to 156, 259, 275, 279 to  
280, 288, 290 to 291, 404.

#### § 2-320. C.I.F. and C. and F. terms

(1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. and F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. and F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. and F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Sales Ⓒ77(2).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 155 to 156.

### § 2–321. C.I.F. or C. and F.

Under a contract containing a term C.I.F. or C. and F.

(1) Where the price is based on or is to be adjusted according to “net landed weights”, “delivered weights”, “out turn” quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Buyer’s right to inspection of goods, see Title 33, § 2–513.

#### Library References

Sales Ⓒ168, 183, 201(4).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 316 to 317, 319 to 322, 344 to 347, 349 to 351, 368, 371, 404.

### § 2–322. Delivery

(1) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ◊77(2), 83, 161, 201(4).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 155 to 156, 259, 275, 288, 290  
to 291, 404.

### § 2-323. Form of bill of lading required in overseas shipment

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. and F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. and F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set.

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of Section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Tender of documents by seller in correct form, exception, see Title 33, § 2-503.

#### Library References

Sales ◊161, 162, 201(4).  
Shipping ◊106.  
Westlaw Topic Nos. 343, 354.

C.J.S. Sales §§ 275, 288 to 291, 404.  
C.J.S. Shipping §§ 256 to 265.

### § 2-324. Provisions for "no arrival, no sale"

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed.

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract

time, the buyer may proceed as if there had been casualty to identified goods (Section 2–613 ).

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Casualty to identified goods, see Title 33, § 2–613.

#### Library References

Sales ⌘83, 150, 197, 217, 224.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 259 to 260, 279 to 282, 382 to 383, 385 to 387, 393, 396, 403 to 404.

### § 2–325. Letter of credit

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term “letter of credit” or “banker’s credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller’s financial market.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⌘191.  
Sales ⌘191.  
Westlaw Topic Nos. 52, 343.

C.J.S. Bills and Notes; Letters of Credit §§ 377 to 415.  
C.J.S. Sales § 370.

### § 2–326. Sale on approval and sale or return; consignment sales and rights of creditors

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

- (a) a “sale on approval” if the goods are delivered primarily for use, and
- (b) a “sale or return” if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.

(3) Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (Section 2–201 of this Title) and as contradicting the sale aspect of the contract within the provisions of this chapter on parole or extrinsic evidence (Section 2–202 of this Title).

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Factors ☞1, 64, 65.

Sales ☞8, 168.5, 204 to 206, 222.

Westlaw Topic Nos. 167, 343.

C.J.S. Agriculture §§ 198, 202 to 203.

C.J.S. Bailments § 11.

C.J.S. Factors §§ 1 to 5, 85 to 87, 91, 96.

C.J.S. Sales §§ 9, 276 to 278, 390 to 392, 395, 406.

**§ 2–327. Special incidents of sale on approval and sale or return**

(1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably, and

(b) the return is at the buyer's risk and expense.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Risk of loss in the absence of breach, see Title 33, § 2–509.

**Library References**

Sales ☞168.5, 204, 205.

Westlaw Topic No. 343.

C.J.S. Sales §§ 276 to 278, 390 to 391, 406.

**§ 2–328. Sale by auction**

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.


(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Auctions and Auctioneers  7, 8.  
Westlaw Topic No. 47.

C.J.S. Auctions and Auctioneers §§ 1, 12, 16  
to 55.

### SUBCHAPTER 4. CREDITORS, TITLE, AND GOOD FAITH PURCHASERS

#### Section

- 2-401. Passing of title; reservation for security; limited application of this section.  
2-402. Rights of seller's creditors against sold goods.  
2-403. Power to transfer; good faith purchase of goods.

#### **§ 2-401. Passing of title; reservation for security; limited application of this section**

Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Sale defined, see Title 33, § 2-106.

Secured party defined, see Title 33, § 9-106.

Secured transactions,

Application to security interest arising under this chapter, see Title 33, § 9-121.

Scope of chapter, see Title 33, § 9-110.

Security interest perfected upon attachment, see Title 33, § 9-309.

Security interest defined, see Title 33, § 1-201.

#### Library References

Sales  $\approx$  197 to 218.5.

Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 394, 397 to 400, 403 to 408.

### § 2-402. Rights of seller's creditors against sold goods

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (Sections 2-502 and 2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing this chapter shall be deemed to impair the rights of creditors of the seller.

(a) under the provisions of the chapter on Secured Transactions (Chapter 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

**Library References**

Fraudulent Conveyances ⇨139.  
Sales ⇨230.

Westlaw Topic Nos. 186, 343.  
C.J.S. Sales § 402.

**§ 2-403. Power to transfer; good faith purchase of goods**

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a “cash sale”, or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on Secured Transactions (Chapter 9) and Documents of Title (Chapter 7).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Document of title to goods defeated in certain cases, see Title 33, § 7-503.

Rights acquired in absence of due negotiation, effect of diversion, see Title 33, § 7-504.

Secured transactions, secured party’s rights on disposition of collateral and in proceeds, see Title 33, § 9-315.

Seller’s right to reclaim on discovery of buyer’s insolvency, see Title 33, § 2-702.

**Library References**

Estoppel ⇨75.  
Sales ⇨234.

Westlaw Topic Nos. 156, 343.

C.J.S. Estoppel and Waiver §§ 141, 143 to 145, 202.

C.J.S. Sales §§ 411 to 417, 419.

## SUBCHAPTER 5. PERFORMANCE

**Section**

- 2-501. Insurable interest in goods; manner of identification of goods.
- 2-502. Buyer's right to goods on seller's insolvency.
- 2-503. Manner of seller's tender of delivery.
- 2-504. Shipment by seller.
- 2-505. Seller's shipment under reservation.
- 2-506. Rights of financing agency.
- 2-507. Effect of seller's tender; delivery on condition.
- 2-508. Cure by seller of improper tender or delivery; replacement.
- 2-509. Risk of loss in the absence of breach.
- 2-510. Effect of breach on risk of loss.
- 2-511. Tender of payment by buyer; payment by check.
- 2-512. Payment by buyer before inspection.
- 2-513. Buyer's right to inspection of goods.
- 2-514. When documents deliverable on acceptance; when on payment.
- 2-515. Preserving evidence of goods in dispute.

**§ 2-501. Insurable interest in goods; manner of identification of goods**

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the sale of crops to be harvested within twelve (12) months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Passing of title to goods, see Title 33, § 2-401.

**Library References**

Insurance ⇄ 1779, 1790.

Sales ⇄ 208.

Westlaw Topic Nos. 217, 343.  
C.J.S. Insurance §§ 317 to 321, 324 to 346,  
379 to 386.

C.J.S. Sales §§ 397 to 400.

### § 2-502. Buyer's right to goods on seller's insolvency

(1) Subject to paragraphs (2) and (3) of this section and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of Section 2-501 of this Title may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in all cases, the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subparagraph (a) of paragraph (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Buyer's remedies, security interest in rejected goods, see Title 33, § 2-711.  
Rights of seller's creditors against sold goods, see Title 33, § 2-402.

#### Library References

Sales ⇌ 399.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 586, 594.

### § 2-503. Manner of seller's tender of delivery

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved.

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of Section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

F.O.B. and F.A.S. terms, see Title 33, § 2-319.

**Library References**

Sales ⇌ 153.

Westlaw Topic No. 343.

C.J.S. Sales §§ 263 to 275, 308 to 311.

**§ 2-504. Shipment by seller**

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must,

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (d) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

F.O.B. and F.A.S. terms, see Title 33, § 2–319.

**Library References**

Sales Ⓒ83, 161.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 259, 275, 288, 290 to 291.

**§ 2–505. Seller’s shipment under reservation**

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller’s expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 2–507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Secured party defined, see Title 33, § 9–106.  
Secured transactions,  
Application to security interests arising under this chapter, see Title 33, § 9–121.  
Scope of chapter, see Title 33, § 9–110.  
Security interest defined, see Title 33, § 1–201.  
Security interest perfected upon attachment, see Title 33, § 9–309.

**Library References**

Carriers Ⓒ54.1 to 59.	C.J.S. Carriers §§ 375 to 378, 384 to 390.
Sales Ⓒ300, 316.	C.J.S. Sales §§ 536 to 538, 540, 549 to 554.
Shipping Ⓒ106(3).	C.J.S. Shipping §§ 256 to 257, 260 to 265.
Westlaw Topic Nos. 70, 343, 354.	

**§ 2–506. Rights of financing agency**

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper’s right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the

buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ292, 309.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 540, 544.

**§ 2-507. Effect of seller's tender; delivery on condition**

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ153.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 263 to 275, 308 to 311.

**§ 2-508. Cure by seller of improper tender or delivery; replacement**

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Form of bill of lading required in overseas shipment, due tender, see Title 33, § 2-323.

**Library References**

Sales Ⓒ153, 165. C.J.S. Sales §§ 263 to 275, 293 to 296, 308 to 311.  
Westlaw Topic No. 343.

**§ 2-509. Risk of loss in the absence of breach**

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of

loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

- (a) on his receipt of a negotiable document of title covering the goods; or
- (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or
- (c) after his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (Section 2-327) and on effect of breach on risk of loss (Section 2-510).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ☞ 197, 201(4), 217, 224, 232.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 383, 385 to 387, 393,  
396, 403 to 404.

### § 2-510. Effect of breach on risk of loss

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ☞ 197, 217, 224, 232.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 382 to 383, 385 to 387, 393,  
396, 403 to 404.

### § 2-511. Tender of payment by buyer; payment by check

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation (Section 3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞185, 191.  
Westlaw Topic No. 343.  
C.J.S. Sales § 370.

**§ 2-512. Payment by buyer before inspection**

(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (subsection (b) of Section 5-109 of this Title).

(2) Payment pursuant to subsection (1) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞195.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 372, 375, 377 to 381.

**§ 2-513. Buyer's right to inspection of goods**

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of Section 2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the



## SALES

## Title 33, § 2–515

place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Cross References

Shipment of goods under reservation, inspection by buyer, see Title 33, § 2–310.

### Library References

Sales  $\Leftrightarrow$ 168(1) to 168(6).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 316 to 317, 319 to 322, 344 to 347, 349 to 351.

### § 2–514. When documents deliverable on acceptance; when on payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Sales  $\Leftrightarrow$ 146, 191, 202.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 370, 389, 403 to 405.

### § 2–515. Preserving evidence of goods in dispute

In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Sales  $\Leftrightarrow$ 168.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 316 to 317, 319 to 322, 344 to 347, 349 to 351.

## SUBCHAPTER 6. BREACH, REPUDIATION, AND EXCUSE

### Section

- 2–601. Buyer's rights on improper delivery.
- 2–602. Manner and effect of rightful rejection.
- 2–603. Merchant buyer's duties as to rightfully rejected goods.
- 2–604. Buyer's options as to salvage of rightfully rejected goods.
- 2–605. Waiver of buyer's objections by failure to particularize.
- 2–606. What constitutes acceptance of goods.
- 2–607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
- 2–608. Revocation of acceptance in whole or in part.

**Section**

- 2-609. Right to adequate assurance of performance.
- 2-610. Anticipatory repudiation.
- 2-611. Retraction of anticipatory repudiation.
- 2-612. Installment contracts.
- 2-613. Casualty to identified goods.
- 2-614. Substituted performance.
- 2-615. Excuse by failure of presupposed conditions.
- 2-616. Procedure on notice claiming excuse.

**§ 2-601. Buyer's rights on improper delivery**

Subject to the provisions of this chapter on breach in installment contracts (Section 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (a) reject the whole; or
- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞ 177, 180.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 260, 324 to 325,  
327 to 328, 336 to 337, 344 to 347, 349 to  
351.

**§ 2-602. Manner and effect of rightful rejection**

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (Section 2-703).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞ 177, 179(6).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 236 to 237, 324 to 325, 327 to  
328, 338 to 351.

**§ 2-603. Merchant buyer's duties as to rightfully rejected goods**

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ179(6).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 338 to 351.

**§ 2-604. Buyer's options as to salvage of rightfully rejected goods**

Subject to the provisions of the immediately preceding section on perishables if the seller gives on instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales Ⓒ179(6).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 338 to 351.

**§ 2-605. Waiver of buyer's objections by failure to particularize**

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

- (a) where the seller could have cured it if stated seasonably; or
- (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨176, 179(6).  
Westlaw Topic No. 343.

C.J.S. Sales §§ 261, 286, 297, 302, 316, 323,  
338 to 351.

**§ 2-606. What constitutes acceptance of goods**

- (1) Acceptance of goods occurs when the buyer
  - (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or
  - (b) fails to make an effective rejection (subsection (1) of Section 2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
  - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Enforceability of contract not meeting formal requirements of statute of frauds, see Title 33, § 2-201.

**Library References**

Sales ⇨178.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 326, 329 to 334.

**§ 2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over**

- (1) The buyer must pay at the contract rate for any goods accepted.
- (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.
- (3) Where a tender has been accepted
  - (a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
  - (b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
- (4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of Section 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3)(b) of Section 2-312).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Buyer's damages for breach in regard to accepted goods, see Title 33, § 2-714.

#### Library References

Indemnity *§* 40, 79.

Sales *§* 179, 285.

Westlaw Topic Nos. 208, 343.

C.J.S. Indemnity *§§* 29, 48.

C.J.S. Sales *§§* 335, 338 to 351, 473 to 477.

### § 2-608. Revocation of acceptance in whole or in part

(1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales *§* 112.

Westlaw Topic No. 343.

C.J.S. Sales *§§* 186 to 194, 199 to 202, 206 to 208, 352 to 357.

**§ 2-609. Right to adequate assurance of performance**

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Assignment of rights which delegates performance, see Title 33, § 2-210.

**Library References**

Sales Ⓔ152, 184.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 246 to 253, 274, 338 to 343.

**§ 2-610. Anticipatory repudiation**

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Action for the price, buyer who has wrongfully rejected or revoked acceptance or failed to make payment or repudiated, see Title 33, § 2-709.

**Library References**

Sales Ⓔ151, 194. Westlaw Topic No. 343.

C.J.S. Sales §§ 254 to 258.

### § 2-611. Retraction of anticipatory repudiation

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (Section 2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales §§ 11, 151, 170, 194.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 29, 254 to 258, 281 to 282,  
286, 403.

### § 2-612. Installment contracts

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Buyer's remedies, security interest in rejected goods, see Title 33, § 2-711.

#### Library References

Sales §§ 82(4), 163, 180.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 260, 298, 336 to 337.

### § 2-613. Casualty to identified goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party

before the risk of loss passes to the buyer, or in a proper case under a “no arrival, no sale” term (Section 2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

“No arrival, no sale” provisions, see Title 33, § 2-324.

#### Library References

Sales ⇨150(2), 172, 217.

Westlaw Topic No. 343.

C.J.S. Sales §§ 375 to 378, 380 to 381.

### § 2-614. Substituted performance

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer’s obligation unless the regulation is discriminatory, oppressive or predatory.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ⇨83, 190.

Westlaw Topic No. 343.

C.J.S. Sales §§ 259, 371.

### § 2-615. Excuse by failure of presupposed conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.



(b) Where the clauses mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales  $\S$ 85(2), 172.  
Westlaw Topic No. 343.  
C.J.S. Sales  $\S\S$  375 to 378, 380 to 381.

### § 2-616. Procedure on notice claiming excuse

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (Section 2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty (30) days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales  $\S\S$  89, 116.  
Westlaw Topic No. 343.  
C.J.S. Sales  $\S\S$  162 to 174, 179, 186 to 189,  
193 to 194, 199 to 202, 352 to 353, 355 to  
357.

## SUBCHAPTER 7. REMEDIES

### Section

- 2-701. Remedies for breach of collateral contracts not impaired.
- 2-702. Seller's remedies on discovery of buyer's insolvency.
- 2-703. Seller's remedies in general.
- 2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
- 2-705. Seller's stoppage of delivery in transit or otherwise.

**Section**

- 2-706. Seller's resale including contract for resale.
- 2-707. Person in position of the seller.
- 2-708. Seller's damages for nonacceptance or repudiation.
- 2-709. Action for the price.
- 2-710. Seller's incidental damages.
- 2-711. Buyer's remedies in general; buyer's security interest in rejected goods.
- 2-712. Cover; buyer's procurement of substitute goods.
- 2-713. Buyer's damages for nondelivery or repudiation.
- 2-714. Buyer's damages for breach in regard to accepted goods.
- 2-715. Buyer's incidental and consequential damages.
- 2-716. Buyer's right to specific performance or replevin.
- 2-717. Deduction of damages from the price.
- 2-718. Liquidation or limitation of damages; deposit.
- 2-719. Contractual modification or limitation of remedy.
- 2-720. Effect of cancellation or rescission on claims for antecedent breach.
- 2-721. Remedies for fraud.
- 2-722. Who can sue third parties for injury to goods.
- 2-723. Proof of market price; time and place.
- 2-724. Admissibility of market quotations.
- 2-725. Statute of limitations in contracts for sale.

**§ 2-701. Remedies for breach of collateral contracts not impaired**

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞369, 404, 425.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 423, 480 to 482, 486 to 488,  
536 to 538, 574 to 575, 586 to 588, 600.

**§ 2-702. Seller's remedies on discovery of buyer's insolvency**

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (Section 2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten (10) days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three (3) months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ☞291, 316.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 536 to 538, 549 to 554.

**§ 2-703. Seller's remedies in general**

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (Section 2-705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (Section 2-706);
- (e) recover damages for nonacceptance (Section 2-708) or in a proper case the price (Section 2-709);
- (f) cancel.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

Anticipatory repudiation, see Title 33, § 2-610.

Manner and effect of rightful rejection, see Title 33, § 2-602.

**Library References**

Sales §§ 289, 300, 316, 332, 340, 369.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 536 to 538, 540, 543, 549 to  
555, 559, 574 to 575.

**§ 2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods**

- (1) An aggrieved seller under the preceding section may
  - (a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
  - (b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
- (2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Anticipatory repudiation, see Title 33, § 2-610.

**Library References**

Sales § 332.  
Westlaw Topic No. 343.  
C.J.S. Sales § 555.

**§ 2-705. Seller's stoppage of delivery in transit or otherwise**

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Obligation of bailee to deliver, excuse, see Title 33, § 7-403.

Rights acquired in absence of due negotiation, effect of diversion, see Title 33, § 7-504.

**Library References**

Sales ⇌289.

Westlaw Topic No. 343.

C.J.S. Sales §§ 536 to 538, 543.

**§ 2-706. Seller's resale including contract for resale**

(1) Under the conditions stated in Section 2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more

contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 2-711).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ⇄332.

Westlaw Topic No. 343.

C.J.S. Sales § 555.

#### § 2-707. Person in position of the seller

(1) A “person in the position of a seller” includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (Section 2-705) and resell (Section 2-706) and recover incidental damages (Section 2-710).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Financing agency defined, see Title 33, § 2-104.

**Library References**

Sales ~~§~~292, 332, 370.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 544, 555, 574 to 575.

**§ 2-708. Seller's damages for nonacceptance or repudiation**

(1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (Section 2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (Section 2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.  
[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ~~§~~384.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 574, 576 to 577.

**§ 2-709. Action for the price**

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and the payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨340.  
 Westlaw Topic No. 343.  
 C.J.S. Sales §§ 536 to 538, 559.

**§ 2-710. Seller's incidental damages**

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨384.  
 Westlaw Topic No. 343.  
 C.J.S. Sales §§ 574, 576 to 577.

**§ 2-711. Buyer's remedies in general; buyer's security interest in rejected goods**

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (Section 2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this chapter (Section 2-502 ); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this chapter (Section 2-716).

(3) On rightful rejection or justifiable revocation of acceptance of buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2-706).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Anticipatory repudiation, see Title 33, § 2-610.

Manner and effect of rightful rejection, see Title 33, § 2-602.

Secured party defined, see Title 33, § 9-106.

Secured transactions,

Application to security interests arising under this chapter, see Title 33, § 9-121.

Priority of security interests in transferred collateral, see Title 33, § 9-325.

Scope of chapter, see Title 33, § 9-110.

## Title 33, § 2-711

## UNIFORM COMMERCIAL CODE

Secured transactions—Cont'd

Security interest perfected upon attachment, see Title 33, § 9-309.

### Library References

Sales §§ 113, 390, 399, 404, 425.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 186 to 188, 192 to 194, 201 to 202, 352 to 353, 355 to 357, 423, 480 to 482, 486 to 488, 586 to 588, 591, 594, 600.

### § 2-712. Cover; buyer's procurement of substitute goods

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Sales §§ 418(7).  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 596 to 598, 608.

### § 2-713. Buyer's damages for nondelivery or repudiation

(1) Subject to the provisions of this chapter with respect to proof of market price (Section 2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Sales §§ 418.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

### § 2-714. Buyer's damages for breach in regard to accepted goods

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the



value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales Ⓒ418.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

### § 2-715. Buyer's incidental and consequential damages

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales Ⓒ418.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 588, 596 to 598, 601 to 609.

### § 2-716. Buyer's right to specific performance or replevin

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Rights of seller's creditors against sold goods, see Title 33, § 2-402.

**Library References**

Sales ⌘399.  
Specific Performance ⌘67.  
Westlaw Topic Nos. 343, 358.

C.J.S. Sales §§ 585 to 586, 594.  
C.J.S. Specific Performance §§ 58 to 62.

**§ 2-717. Deduction of damages from the price**

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⌘188, 348.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 374, 562.

**§ 2-718. Liquidation or limitation of damages; deposit**

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty percent (20%) of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars (\$500.00), whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this chapter other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (Section 2-706).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Buyer's rights on improper delivery, see Title 33, § 2–601.

**Library References**

Damages ⇨78(6).  
Westlaw Topic No. 115.

C.J.S. Damages §§ 178 to 179, 186 to 190,  
193 to 194.

**§ 2–719. Contractual modification or limitation of remedy**

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Buyer's rights on improper delivery, see Title 33, § 2–601.

**Library References**

Sales ⇨418(6), 426.  
Westlaw Topic No. 343.  
C.J.S. Sales §§ 483 to 485, 588, 607.

**§ 2–720. Effect of cancellation or rescission on claims for antecedent breach**

Unless the contrary intention clearly appears, expressions of “cancellation” or “rescission” of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨94, 111, 131, 370, 405.  
Westlaw Topic No. 343.

C.J.S. Sales §§ 173 to 174, 191, 231 to 234,  
361 to 362, 574 to 575, 600.

**§ 2–721. Remedies for fraud**

Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a

claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Fraud ☞31, 32.

Sales ☞37.

Westlaw Topic Nos. 184, 343.

C.J.S. Fraud §§ 16, 109 to 113.

C.J.S. Sales §§ 78 to 89.

### § 2-722. Who can sue third parties for injury to goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Sales ☞224, 232.

Westlaw Topic No. 343.

C.J.S. Sales § 396.

### § 2-723. Proof of market price; time and place

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2-708 or Section 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Sales ⇨384(2), 418(2).  
 Westlaw Topic No. 343.  
 C.J.S. Sales §§ 574, 601 to 603.

**§ 2–724. Admissibility of market quotations**

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report, may be shown to affect its weight but not its admissibility.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Evidence ⇨323(4), 361.  
 Westlaw Topic No. 157.

C.J.S. Evidence §§ 323 to 324, 1260 to 1261,  
 1266.

**§ 2–725. Statute of limitations in contracts for sale**

(1) An action for breach of any contract for sale must be commenced within five (5) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within one (1) year after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

**Library References**

Limitation of Actions ⇨24(4), 46(9).  
 Sales ⇨350, 374, 394, 409, 431.  
 Westlaw Topic Nos. 241, 343.

C.J.S. Limitations of Actions §§ 88, 185.  
 C.J.S. Sales §§ 493 to 494, 539, 589.

## CHAPTER 2A. LEASES

### Section

- 2A-101. Short title.
- 2A-102. Scope.
- 2A-103. Definitions and index of definitions.
- 2A-104. Leases subject to other law.
- 2A-105. Territorial application of article to goods covered by certificate of title.
- 2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.
- 2A-107. Waiver or renunciation of claim or right after default.
- 2A-108. Unconscionability.
- 2A-109. Option to accelerate at will.
- 2A-201. Statute of frauds.
- 2A-202. Final written expression; parol or extrinsic evidence.
- 2A-203. Seals inoperative.
- 2A-204. Formation in general.
- 2A-205. Firm offers.
- 2A-206. Offer and acceptance in formation of lease contract.
- 2A-207. Reserved.
- 2A-208. Modification, rescission, and waiver.
- 2A-209. Lessee under finance lease as beneficiary of supply contract.
- 2A-210. Express warranties.
- 2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.
- 2A-212. Implied warranty of merchantability.
- 2A-213. Implied warranty of fitness for particular purpose.
- 2A-214. Exclusion or modification of warranties.
- 2A-215. Cumulation and conflict of warranties express or implied.
- 2A-216. Third party beneficiaries of express and implied warranties.
- 2A-217. Identification.
- 2A-218. Insurance and proceeds.
- 2A-219. Risk of loss.
- 2A-220. Effect of default on risk of loss.
- 2A-221. Casualty to identified goods.
- 2A-222 to 2A-300. Reserved.
- 2A-301. Enforceability of lease contract.
- 2A-302. Title to and possession of goods.
- 2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.
- 2A-304. Subsequent lease of goods by lessor.
- 2A-305. Sale or sublease of goods by lessee.
- 2A-306. Priority of certain liens arising by operation of law.
- 2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.
- 2A-308. Special rights of creditors.
- 2A-309. Lessor's and lessee's rights when goods become fixtures.
- 2A-310. Lessor's and lessee's rights when goods become accessions.
- 2A-311. Priority subject to subordination.
- 2A-401. Insecurity; adequate assurance of performance.
- 2A-402. Anticipatory repudiation.
- 2A-403. Retraction of anticipatory repudiation.
- 2A-404. Substituted performance.
- 2A-405. Excused performance.
- 2A-406. Procedure on excused performance.
- 2A-407. Irrevocable promises; finance leases.
- 2A-501. Default; procedure.

## LEASES

## Title 33, § 2A–103

### Section

- 2A–502. Notice after default.
- 2A–503. Modification or impairment of rights and remedies.
- 2A–504. Liquidation of damages.
- 2A–505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.
- 2A–506. Statute of limitations.
- 2A–507. Proof of market rent; time and place.
- 2A–508. Lessee's remedies.
- 2A–509. Lessee's rights on improper delivery; rightful rejection.
- 2A–510. Installment lease contracts; rejection and default.
- 2A–511. Merchant lessee's duties as to rightfully rejected goods.
- 2A–512. Lessee's duties as to rightfully rejected goods.
- 2A–513. Cure by lessor of improper tender or delivery; replacement.
- 2A–514. Waiver of lessee's objections.
- 2A–515. Acceptance of goods.
- 2A–516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.
- 2A–517. Revocation of acceptance of goods.
- 2A–518. Cover; substitute goods.
- 2A–519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.
- 2A–520. Reserved.
- 2A–521. Lessee's right to specific performance or replevin.
- 2A–522. Lessee's right to goods on lessor's insolvency.
- 2A–523. Lessor's remedies.
- 2A–524. Lessor's right to identify goods to lease contract.
- 2A–525. Lessor's right to possession of goods.
- 2A–526. Lessor's stoppage of delivery in transit or otherwise.
- 2A–527. Lessor's rights to dispose of goods.
- 2A–528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.
- 2A–529. Lessor's action for the rent.
- 2A–530. Lessor's incidental damages.
- 2A–531. Standing to sue third parties for injury to goods.
- 2A–532. Lessor's right to residual interest.

### § 2A–101. Short title

This chapter shall be known and may be cited as the Uniform Commercial Code—Leases.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### § 2A–102. Scope

This chapter applies to any transaction, regardless of form, that creates a lease of goods.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

- Bailment ⇄2.
- Westlaw Topic No. 50.
- C.J.S. Bailments §§ 4 to 6, 13 to 17.

### § 2A–103. Definitions and index of definitions

- (1) In this chapter unless the context otherwise requires:

(a) “Buyer in the ordinary course of business” means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in the ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

(c) “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed forty-five thousand dollars (\$45,000.00).

(f) “Fault” means wrongful act, omission, breach, or default.

(g) “Finance lease” means a lease with respect to which:

(i) the lessor does not select, manufacture or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or



## LEASES

## Title 33, § 2A-103

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing

(a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person,

(b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and

(c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 2A-309 of this Title). The term includes future goods, specially manufactured goods, and the unborn young of animals. The term does not include information, the money in which the price is to be paid, investment securities under Chapter 8 of the Uniform Commercial Code, minerals or the like, including oil and gas, before extraction, or choses in action.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest or license of information is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in the ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the

ownership rights or security interest or leasehold interest of a third party in the goods leases in the ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions". Subsection (1) of Section 2A-310 of this Title.

"Construction mortgage". Paragraph (d) of subsection (1) of Section 2A-309 of this Title.

"Encumbrance". Paragraph (e) of subsection (1) of Section 2A-309 of this Title.

## LEASES

## Title 33, § 2A-104

“Fixtures”. Paragraph (a) of subsection (1) of Section 2A-309 of this Title.

“Fixture filing”. Paragraph (b) of subsection (1) of Section 2A-309 of this Title.

“Purchase money lease”. Paragraph (c) of subsection (1) of Section 2A-309 of this Title.

(3) The following definitions in other chapters apply to this chapter:

“Account”. Chapter 9 of this Title.

“Between merchants”. Subsection (3) of Section 2-104 of this Title.

“Buyer”. Paragraph (a) of subsection (1) of Section 2-103 of this Title.

“Chattel paper”. Chapter 9 of this Title.

“Consumer goods”. Chapter 9 of this Title.

“Document”. Chapter 9 of this Title.

“Entrusting”. Paragraph (3) of Section 2-403 of this Title.

“General intangible”. Chapter 9 of this Title.

“Instrument”. Chapter 9 of this Title.

“Merchant”. Subsection (1) of Section 2-104 of this Title.

“Mortgage”. Paragraph (55) of Chapter 9 of this Title.

“Pursuant to commitment”. Chapter 9 of this Title.

“Receipt”. Subsection (c) of paragraph (1) of Section 2-103 of this Title.

“Sale”. Paragraph (1) of Section 2-106 of this Title.

“Sale on approval”. Section 2-326 of this Title.

“Sale or return”. Section 2-326 of this Title.

“Seller”. Subparagraph (d) of paragraph (1) of Section 2-103 of this Title.

(4) In addition, Chapter 1 of this Title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### § 2A-104. Leases subject to other law

(1) A lease, although subject to this chapter, is also subject to any applicable:

(a) certificate of title statute of this Nation;

(b) certificate of title statute of another jurisdiction (Section 2A-105 of this Title); or

(c) consumer protection statute of this Nation, or final consumer protection decision of a court of this Nation.

(2) In case of conflict between this chapter, other than Section 2A-105, subsection (3) of Section 2A-304, and subsection (3) of Section 2A-305 of this Title, and a statute or decision referred to in subsection (1) of this section, the statute or decision controls.

## Title 33, § 2A-104

## UNIFORM COMMERCIAL CODE

(3) Failure to comply with an applicable law has only the effect specified therein.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment ☞1, 2.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 1 to 18, 20 to 23, 25, 27  
to 28, 35 to 37.

## § 2A-105. Territorial application of article to goods covered by certificate of title

With respect to goods covered by a certificate of title issued under a statute of this Nation or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until the earlier of:

- (a) surrender of the certificate, or
- (b) four (4) months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

### Library References

Bailment ☞1.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 1 to 12, 14, 18, 20 to 23,  
25, 27 to 28, 35 to 37.

## § 2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty (30) days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

### Library References

Contracts ☞127(4).  
Westlaw Topic No. 95.  
C.J.S. Contracts §§ 236 to 237.

**§ 2A-107. Waiver or renunciation of claim or right after default**

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

**§ 2A-108. Unconscionability**

(1) If the Court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the Court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the Court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the Court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2) of this section, the Court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the Court finds unconscionability under subsection (1) or (2) of this section, the court shall award reasonable attorney's fees to the lessee.

(b) If the Court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the Court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) of this section is not controlling.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨3.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 3, 18, 24, 26 to 31.

**§ 2A-109. Option to accelerate at will**

(1) A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must

be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) of this section is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇄20, 31.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 87 to 89, 133 to 140.

**§ 2A-201. Statute of frauds**

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars (\$1,000.00); or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies paragraph (b) of subsection (1) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under paragraph (b) of subsection (1) of this section beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in Court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

## LEASES

## Title 33, § 2A–204

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in Court a lease term, the term so admitted; or

(c) a reasonable lease term.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Frauds, Statute Of ⅈ84.  
Westlaw Topic No. 185.

### § 2A–202. Final written expression; parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) by evidence of consistent additional terms unless the Court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Evidence ⅈ384 to 469.  
Westlaw Topic No. 157.  
C.J.S. Evidence §§ 1401 to 1614.

### § 2A–203. Seals inoperative

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### § 2A–204. Formation in general

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻1 to 5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 1 to 31, 35 to 37.

**§ 2A-205. Firm offers**

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three (3) months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻1 to 5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 1 to 31, 35 to 37.

**§ 2A-206. Offer and acceptance in formation of lease contract**

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻1 to 5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 1 to 31, 35 to 37.

**§ 2A-207. Reserved**

**§ 2A-208. Modification, rescission, and waiver**

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the



retraction would be unjust in view of a material change of position in reliance on the waiver.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ2, 22.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 4 to 6, 13 to 17, 118 to 122.

### § 2A–209. Lessee under finance lease as beneficiary of supply contract

(1) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (subsection (1) of this section) does not:

- (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or
- (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ21.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 111 to 117.

### § 2A–210. Express warranties

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as “warrant” or “guarantee”, or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor’s opinion or commendation of the goods does not create a warranty.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ◊9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

### § 2A-211. Warranties against interference and against infringement; lessee’s obligation against infringement

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee’s enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Effect of acceptance of goods, notice of claim or litigation to person answerable over, see Title 33, § 2A-516.

#### Library References

Bailment ◊9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

### § 2A-212. Implied warranty of merchantability

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

## LEASES

## Title 33, § 2A-214

- (a) pass without objection in the trade under the description in the lease agreement;
  - (b) in the case of fungible goods, are of fair average quality within the description;
  - (c) are fit for the ordinary purposes for which goods of that type are used;
  - (d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
  - (e) are adequately contained, packaged, and labeled as the lease agreement may require; and
  - (f) conform to any promises or affirmations of fact made on the container or label.
- (3) Other implied warranties may arise from course of dealing or usage of trade.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment ↻9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

### § 2A-213. Implied warranty of fitness for particular purpose

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Waiver of lessee's objections in rejecting goods, see Title 33, § 2A-514.

### Library References

Bailment ↻9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

### § 2A-214. Exclusion or modification of warranties

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of this act on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all

implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, “There is no warranty that the goods will be fit for a particular purpose.”

(3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, or “with all faults”, or by other language that in common understanding calls the lessee’s attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ⇨9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

### § 2A–215. Cumulation and conflict of warranties express or implied

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ⇨9.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53.

**§ 2A-216. Third party beneficiaries of express and implied warranties**

(1) A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty.

(2) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons.

(3) The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨9, 21.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 44 to 53, 111 to 117.

**§ 2A-217. Identification**

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(c) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨4.  
Westlaw Topic No. 50.  
C.J.S. Bailments § 19.

**§ 2A-218. Insurance and proceeds**

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ◊7, 11.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 32 to 33, 35 to 39, 54 to 64.

### § 2A-219. Risk of loss

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this article on the effect of default on risk of loss, if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within paragraph (a) or (b) of this subsection, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ◊11.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 54 to 64.

### § 2A-220. Effect of default on risk of loss

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### **Library References**

Bailment ⇌ 11.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 54 to 64.

### **§ 2A–221. Casualty to identified goods**

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement then:

(a) if the loss is total, the lease contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### **Library References**

Bailment ⇌ 11.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 54 to 64.

### **§§ 2A–222 to 2A–300. Reserved**

### **§ 2A–301. Enforceability of lease contract**

Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### **Library References**

Bailment ⇌ 3, 21.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 3, 18, 24, 26 to 31, 111 to 117.

**§ 2A-302. Title to and possession of goods**

Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇄ 7 to 8.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 32 to 39.

**§ 2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights**

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter 9 of this Title, Secured Transactions.

(2) Except as provided in Chapter 9 of this Title, a provision in a lease agreement which

(i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or

(ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which

(i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or

(ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and Chapter 9 of this Title:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (2) of Section 2A-501 of this Title; or

(b) if paragraph (a) of this subsection is not applicable and if a transfer is made that




- (i) is prohibited under a lease agreement or
- (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract,
  - (a) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and
  - (b) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.
- (5) A transfer of “the lease” or of “all my rights under the lease”, or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.
- (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.
- (7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Secured transactions, term in agreement restricting assignment generally ineffective, see Title 33, §§ 9-406, 9-407.

#### Library References

Bailment  3, 21 to 34.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 3, 18, 24, 26 to 31, 100 to 151.

### § 2A-304. Subsequent lease of goods by lessor

(1) Subject to Section 2A-303 of this Title, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and subsection (4) of Section 2A-527 of this Title, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

- (a) the lessor’s transferor was deceived as to the identity of the lessor;
- (b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a “cash sale”; or  
(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor’s and the existing lessee’s rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Document of title to goods defeated in certain cases, see Title 33, § 7-503.  
Leases subject to other law, conflicts, see Title 33, § 2A-104.

**Library References**

Bailment ¶7, 21.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 32 to 33, 35 to 39, 111 to 117.

**§ 2A-305. Sale or sublease of goods by lessee**

(1) Subject to the provisions this title, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) of this section, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent provided for a buyer or sublessee from the lessee of goods under an existing lease contract. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) the lessor was deceived as to the identity of the lessee;  
(b) the delivery was in exchange for a check which is later dishonored; or  
(c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sub-lessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor’s and lessee’s rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a

statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Document of title to goods defeated in certain cases, see Title 33, § 7-503.

Leases subject to other law, conflicts, see Title 33, § 2A-104.

#### Library References

Bailment Ⓒ7, 21.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 32 to 33, 35 to 39, 111 to 117.

### § 2A-306. Priority of certain liens arising by operation of law

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ21.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 111 to 117.

### § 2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods

(1) Except as otherwise provided in Section 2A-306 of this Title, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in Sections 2A-306 and 2A-308 of this Title, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in Chapter 9 of this Title, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ21.  
Secured Transactions Ⓒ138 to 147.  
Westlaw Topic Nos. 50, 349A.

C.J.S. Bailments §§ 111 to 117.  
C.J.S. Secured Transactions §§ 11 to 12, 104, 106 to 136.

### § 2A-308. Special rights of creditors

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but

retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and

(b) is made under circumstances which under any statute or rule of law apart from this chapter would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Cross References**

Rights acquired in absence of due negotiation, effect of diversion, see Title 33, § 7-504.

#### **Library References**

Bailment ⇄21.

Westlaw Topic No. 50.

C.J.S. Bailments §§ 111 to 117.

### **§ 2A-309. Lessor's and lessee's rights when goods become fixtures**

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Chapter 9 of this Title, as applicable;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

## LEASES

## Title 33, § 2A-309

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases other than those described in subsections (1) through (6) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may

(i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter, or

(ii) if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee 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 party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Uniform Commercial Code—Secured Transactions.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Goods defined, see Title 33, § 2A-103.

#### Library References

Fixtures ☞ 1 to 18.

Secured Transactions ☞ 85.

Westlaw Topic Nos. 177, 349A.

C.J.S. Fixtures §§ 1 to 8, 10 to 20, 22 to 23,  
26 to 47, 57 to 59.

### § 2A-310. Lessor's and lessee's rights when goods become accessions

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

## LEASES

## Title 33, § 2A–401

(5) When under subsections (2) or (3), and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee :

(a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter, or

(b) if necessary to enforce his other rights and remedies under this chapter, may remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee 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 party seeking removal gives adequate security for the performance of this obligation.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Accession ⇨2.  
Westlaw Topic No. 7.  
C.J.S. Accession §§ 13 to 16.

### § 2A–311. Priority subject to subordination

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

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Bailment ⇨21.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 111 to 117.

### § 2A–401. Insecurity; adequate assurance of performance

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty (30) days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ☞22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-402. Anticipatory repudiation**

(1) If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) make demand and await assurance of future performance adequate under the circumstances of the particular case; or

(c) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.

(2) In addition, whether or not the aggrieved party is pursuing one of the remedies provided for in subsection (1) of this section, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ☞22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-403. Retraction of anticipatory repudiation**

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Library References**

Bailment ⇨22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-404. Substituted performance**

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-405. Excused performance**

On substituted or excused performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b) of this section, of the estimated quota thus made available for the lessee.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-406. Procedure on excused performance**

(1) If the lessee receives notification of a material or indefinite delay or an allocation, the lessee, by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired may:

(a) terminate the lease contract; or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract lapses with respect to any deliveries affected.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-407. Irrevocable promises; finance leases**

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨22.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 122.

**§ 2A-501. Default; procedure**

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this subchapter as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this subchapter does not apply.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Alienability of party's interest under lease contract or of lessor's residual interest in goods, transfer of rights, see Title 33, § 2A-303.

**Library References**

Bailment Ⓒ22, 24.1 to 34.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 151.

**§ 2A-502. Notice after default**

Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment Ⓒ22 to 26.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 100 to 110, 118 to 124,  
131 to 132.

**§ 2A-503. Modification or impairment of rights and remedies**

(1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circum-

stances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under Section 2A-504 of this Title, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ⇐24.1 to 34.  
 Damages ⇐78(6).  
 Westlaw Topic Nos. 50, 115.

C.J.S. Bailments §§ 123 to 151.  
 C.J.S. Damages §§ 178 to 179, 186 to 190,  
 193 to 194.

### § 2A-504. Liquidation of damages

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency, the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1) of this section; or

(b) in the absence of those terms, twenty percent (20%) of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars (\$500.00).

(4) A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount of value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Damages ⇨74 to 86.  
Westlaw Topic No. 115.  
C.J.S. Damages §§ 175 to 182, 184 to 194.

**§ 2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies**

(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of “cancellation”, “rescission”, or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇨22, 24.1 to 34.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 118 to 151.

**§ 2A-506. Statute of limitations**

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one (1) year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this chapter becomes effective.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ28.

Limitation of Actions Ⓒ46(6), 95(9).

Westlaw Topic Nos. 50, 241.

C.J.S. Bailments § 125.

C.J.S. Limitations of Actions §§ 163 to 167,  
169, 186, 190.

### § 2A-507. Proof of market rent; time and place

(1) Damages based on market rent (Section 2A-519 or 2A-528 of this Title) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 2A-519 and 2A-528 of this Title.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment Ⓒ32.

Westlaw Topic No. 50.

C.J.S. Bailments §§ 146 to 151.

### § 2A-508. Lessee's remedies

(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A-509 of this Title) or repudiates the lease contract (Section 2A-402 of this Title), or a lessee rightfully rejects the goods (Section 2A-509 of this Title) or justifiably revokes acceptance of the goods (Section 2A-517 of this Title), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510 of this Title), the lessor is in default under the lease contract and the lessee may:

## LEASES

## Title 33, § 2A-508

- (a) cancel the lease contract (subsection (1) of Section 2A-505 of this Title);
  - (b) recover so much of the rent and security as has been paid and is just under the circumstances;
  - (c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 2A-518 and 2A-520 of this Title), or recover damages for nondelivery (Sections 2A-519 and 2A-520 of this Title);
  - (d) exercise any other rights or pursue any other remedies provided in the lease contract.
- (2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:
- (a) if the goods have been identified, recover them (Section 2A-522 of this Title); or
  - (b) in a proper case, obtain specific performance or replevy the goods (Section 2A-521 of this Title).
- (3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in subsection (3) of Section 2A-519 of this Title.
- (4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection (4) of Section 2A-519 of this Title).
- (5) On rightful rejection or justifiable revocation or acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to subsection (5) of Section 2A-527 of this Title.
- (6) Subject to the provisions of Section 2A-407 of this Title, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Secured party defined, see Title 33, § 9-106.

Secured transactions,

Application to security interests arising under this chapter, see Title 33, § 9-121.

Priority of security interests in transferred collateral, see Title 33, § 9-325.

scope of chapter, see Title 33, § 9-110.

Security interest perfected upon attachment, see Title 33, § 9-309.

### Library References

Bailment ⇄ 5, 22, 24.1 to 34.

Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 118 to 151.

**§ 2A-509. Lessee's rights on improper delivery; rightful rejection**

(1) Subject to the provisions of Section 2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇐5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-510. Installment lease contracts; rejection and default**

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ⇐5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-511. Merchant lessee's duties as to rightfully rejected goods**

(1) Subject to any security interest of a lessee, if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission,



## LEASES

## Title 33, § 2A-513

to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.

(3) In complying with this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment ⚡5, 14, 16, 19.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 38 to 39, 41  
to 43, 65 to 77, 86, 102, 110, 117.

### § 2A-512. Lessee's duties as to rightfully rejected goods

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily and subject to any security interest of a lessee:

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in this article; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment ⚡5, 14, 16, 19.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 38 to 39, 41  
to 43, 65 to 77, 86, 102, 110, 117.

### § 2A-513. Cure by lessor of improper tender or delivery; replacement

(1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-514. Waiver of lessee's objections**

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 2A-213 of this Title); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-515. Acceptance of goods**

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ↻5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over**

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity,

acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 2A-211 of this Title) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) the lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after reasonable receipt of the notice does come in and defend that person is so bound.

(b) the lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A-211 of this Title) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A-211 of this Title).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ◊5, 9, 26, 31.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 44 to 53,  
131 to 140.

### § 2A-517. Revocation of acceptance of goods

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ↻5.

Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23.

### § 2A-518. Cover; substitute goods

(1) After a default by a lessor under the lease contract of the type described in subsection (1) of Section 2A-508 of this Title, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this Title) or otherwise determined pursuant to agreement of the parties, if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and

(ii) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A-519 of this Title governs.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Bailment ⇨9, 32.  
 Westlaw Topic No. 50.  
 C.J.S. Bailments §§ 44 to 53, 146 to 151.

**§ 2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this Title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this Title), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section 2A-518 of this Title, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (subsection (3) of Section 2A-516 of this Title), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Bailment ⇨5, 9, 32.  
 Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 44 to 53,  
 146 to 151.

**§ 2A-520. Reserved**

**§ 2A-521. Lessee's right to specific performance or replevin**

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ☞25.	C.J.S. Sales § 585.
Specific Performance ☞68, 69, 125.1 to 129.	C.J.S. Specific Performance §§ 58 to 60, 62, 144 to 159.
Westlaw Topic Nos. 50, 358.	
C.J.S. Bailments §§ 123 to 124.	

### § 2A-522. Lessee's right to goods on lessor's insolvency

(1) Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten (10) days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bailment ☞5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

### § 2A-523. Lessor's remedies

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510 of this Title), the lessee is in default under the lease contract and the lessor may:

- (a) cancel the lease contract (subsection (1) of Section 2A-505 of this Title);
- (b) proceed respecting goods not identified to the lease contract (Section 2A-524 of this Title);
- (c) withhold delivery of the goods and take possession of goods previously delivered (Section 2A-525 of this Title);
- (d) stop delivery of the goods by any bailee (Section 2A-526 of this Title);
- (e) dispose of the goods and recover damages (Section 2A-527 of this Title), or retain the goods and recover damages (Section 2A-528 of this Title), or in a proper case recover rent (Section 2A-529 of this Title); or
- (f) exercise any other rights or pursue any other remedies provided in the lease contract.

## LEASES

## Title 33, § 2A-525

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment Ⓒ5, 22 to 34.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 100 to 110,  
118 to 151.

### § 2A-524. Lessor's right to identify goods to lease contract

(1) After default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this Title or paragraph (a) of subsection (3) of Section 2A-523 of this Title, or, if agreed, after other default by the lessee, the lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (subsection (1) of Section 2A-527 of this Title) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment Ⓒ5, 22 to 34.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 100 to 110,  
118 to 151.

### § 2A-525. Lessor's right to possession of goods

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this Title or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 2A-527 of this Title).

(3) The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ¶5, 23.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23, 100 to 110.

**§ 2A-526. Lessor's stoppage of delivery in transit or otherwise**

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:

- (a) receipt of the goods by the lessee;
- (b) acknowledgement to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Obligation of bailee to deliver, excuse, see Title 33, § 7-403.



**Cross References**

Rights acquired in absence of due negotiation, effect of diversion, see Title 33, § 7-504.

**Library References**

Bailment ⇐5.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 14, 20 to 23.

**§ 2A-527. Lessor's rights to dispose of goods**

(1) After a default by a lessee under the lease contract of the type described in subsection (1) of Section 2A-523 of this Title or paragraph (a) of subsection (3) of Section 2A-523 of this Title or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526 of this Title), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this Title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this Title), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement,

(ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and

(iii) any incidental damages allowed under Section 2A-530 of this Title, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 2A-528 of this Title governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (5) of Section 2A-508 of this Title).

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Subsequent lease of goods by lessor, see Title 33, § 2A-304.

## Library References

Bailment ◊5, 22, 32.  
Westlaw Topic No. 50.

C.J.S. Bailments §§ 14, 20 to 23, 118 to 122,  
146 to 151.

**§ 2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this Title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this Title), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section 2A-527 of this Title, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523, or, if agreed, for other default of the lessee:

(i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor,

(ii) the present value as of the date determined under clause (i) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and

(iii) any incidental damages allowed under Section 2A-530 of this Title, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A-530 of this Title, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Bailment ◊32.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 146 to 151.

**§ 2A-529. Lessor's action for the rent**

(1) After default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this Title, or, if agreed, after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially

## LEASES

## Title 33, § 2A-529

reasonable time after risk of loss passes to the lessee (Section 2A-219 of this Title):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and

(iii) any incidental damages allowed under Section 2A-530 of this Title, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and

(iii) any incidental damages allowed under Section 2A-530 of this Title, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 2A-527 or 2A-528 of this Title, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528 of this Title.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this Title or paragraph (a) of subsection (3) of Section 2A-523 of this Title or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 2A-527 or 2A-528 of this Title.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bailment ⇄ 20, 24.1 to 34.

Westlaw Topic No. 50.

C.J.S. Bailments §§ 87 to 89, 123 to 151.

**§ 2A-530. Lessor's incidental damages**

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ◊32.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 146 to 151.

**§ 2A-531. Standing to sue third parties for injury to goods**

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

- (a) the lessor has a right of action against the third party, and
- (b) the lessee also has a right of action against the third party if the lessee:
  - (i) has a security interest in the goods;
  - (ii) has an insurable interest in the goods; or
  - (iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bailment ◊35.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 152 to 158.

**§ 2A-532. Lessor's right to residual interest**

In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

**Library References**

Bailment ◊32.  
Westlaw Topic No. 50.  
C.J.S. Bailments §§ 146 to 151.

## CHAPTER 3. NEGOTIABLE INSTRUMENTS

### Subchapter

1. Short Title, Form and Interpretation
2. Transfer and Negotiation
3. Enforcement of Instruments
4. Liability of Parties
5. Dishonor
6. Discharge and Payment
7. Advice of International Sight Draft—Reserved
8. Miscellaneous—Reserved

### SUBCHAPTER 1. SHORT TITLE, FORM AND INTERPRETATION

#### Section

- 3-101. Short title.
- 3-102. Subject matter.
- 3-103. Definitions.
- 3-104. Negotiable instrument.
- 3-105. Issue of instrument.
- 3-106. Unconditional promise or order.
- 3-107. Instrument payable in foreign money.
- 3-108. Payable on demand or at definite time.
- 3-109. Payable to bearer or to order.
- 3-110. Identification of person to whom instrument is payable.
- 3-111. Place of payment.
- 3-112. Reserved.
- 3-113. Date of instrument.
- 3-114. Contradictory terms of instrument.
- 3-115. Reserved.
- 3-116. Joint and several liability; contribution.
- 3-117. Other agreements affecting instrument.
- 3-118. Statute of limitations.
- 3-119. Notice of right to defend action.

#### § 3-101. Short title

This Chapter may be cited as Uniform Commercial Code—Negotiable Instruments.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### § 3-102. Subject matter

(a) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by Chapter 4A of this Title, or to securities governed by Chapter 8 of this Title.

(b) If there is conflict between this chapter and Chapter 4 or 9, Chapters 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supercede any inconsistent provision of this chapter to the extent of the inconsistency.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Bills and Notes ⇔2, 29.  
Westlaw Topic No. 56.  
C.J.S. Bills and Notes; Letters of Credit § 8.

**§ 3-103. Definitions**

(a) In this chapter:

- (1) “Acceptor” means a drawee who has accepted a draft;
- (2) “Drawee” means a person ordered in a draft to make payment;
- (3) “Drawer” means a person who signs or is identified in a draft as a person ordering payment;
- (4) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing;
- (5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay;
- (6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;
- (7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this chapter or Chapter 4 of this Title;
- (8) “Party” means a party to an instrument;
- (9) “Promise” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;
- (10) “Prove” with respect to a fact means to meet the burden of establishing the fact (subsection (8) of Section 1-201, Title 33); and
- (11) “Remitter” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this chapter and the sections in which they appear in this title are:

- “Acceptance” Section 3-409
- “Accommodated party” Section 3-419
- “Accommodation party” Section 3-419
- “Alteration” Section 3-407
- “Anomalous indorsement” Section 3-205

## NEGOTIABLE INSTRUMENTS

## Title 33, § 3-103

“Blank indorsement” Section 3-205  
“Cashier’s check” Section 3-104  
“Certificate of deposit” Section 3-104  
“Certified check” Section 3-409  
“Check” Section 3-104  
“Consideration” Section 3-303  
“Draft” Section 3-104  
“Holder in due course” Section 3-302  
“Incomplete instrument” Section 3-115  
“Indorsement” Section 3-204  
“Indorser” Section 3-204  
“Instrument” Section 3-104  
“Issue” Section 3-105  
“Issuer” Section 3-105  
“Negotiable instrument” Section 3-104  
“Negotiation” Section 3-201  
“Note” Section 3-104  
“Payable at a definite time” Section 3-108  
“Payable on demand” Section 3-108  
“Payable to bearer” Section 3-109  
“Payable to order” Section 3-109  
“Payment” Section 3-602  
“Person entitled to enforce” Section 3-301  
“Presentment” Section 3-501  
“Reacquisition” Section 3-207  
“Special indorsement” Section 3-205  
“Teller’s check” Section 3-104  
“Transfer of instrument” Section 3-203  
“Traveler’s check” Section 3-104  
“Value” Section 3-303

(c) The following definitions in other chapters of this Title apply to this chapter:

“Bank” Section 4-105  
“Banking day” Section 4-104  
“Clearing house” Section 4-104  
“Collecting bank” Section 4-105  
“Depository bank” Section 4-105

“Documentary draft” Section 4-104

“Intermediary bank” Section 4-105

“Item” Section 4-104

“Payor bank” Section 4-105

“Suspends payments” Section 4-104

In addition, Chapter 1 of the Uniform Commercial Code, this Title, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**§ 3-104. Negotiable instrument**

(a) Except as provided in subsections (c) and (d) of this section, “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain

(i) an undertaking or power to give, maintain, or protect collateral to secure payment,

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or

(iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of “check” in subsection (f) of this section is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank or

(ii) a cashier’s check or teller’s check. An instrument may be a check even though it is described on its face by another term, such as “money order”.



(g) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller’s check” means a draft drawn by a bank

(i) on another bank, or

(ii) payable at or through a bank.

(i) “Traveler’s check” means an instrument that

(i) is payable on demand,

(ii) is drawn on or payable at or through a bank,

(iii) is designated by the term “traveler’s check” or by a substantially similar term, and

(iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Draft defined, see Title 33, § 4–104.

#### Library References

Bills and Notes ⇨144 to 175.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8,  
158 to 169.

### § 3–105. Issue of instrument

(a) “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) “Issuer” applies to issued and unissued instruments and means a maker or drawer of an instrument.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨62.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 47  
to 49.

### § 3–106. Unconditional promise or order

(a) Except as provided in this section, for the purposes of subsection (a) of Section 3–104 of this Title, a promise or order is unconditional unless it states

(i) an express condition to payment,  
 (ii) that the promise or order is subject to or governed by another writing, or  
 (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional

(i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or

(ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection (a) of Section 3–104 of this Title. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection (a) of Section 3–104 of this Title; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Holder in due course, enforcement of instruments, see Title 33, § 3–302.

**Library References**

Bills and Notes ⇨134, 148, 164.  
 Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
 §§ 107 to 110, 158 to 162, 164, 169.

**§ 3–107. Instrument payable in foreign money**

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇨131.  
 Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
 § 260.

**§ 3–108. Payable on demand or at definite time**

(a) A promise or order is “payable on demand” if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is “payable at a definite time” if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of

- (i) prepayment,
- (ii) acceleration,
- (iii) extension at the option of the holder, or

(iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇨129(3).  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 117 to 131, 133 to 138.

**§ 3–109. Payable to bearer or to order**

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to subsection (a) of Section 3–205 of this Title. An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to subsection (b) of Section 3–205 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

## Library References

Bills and Notes §§ 6, 32, 118, 152 to 153.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 13,  
26 to 29, 38 to 40, 112 to 116, 159, 161,  
169, 258 to 259.

**§ 3-110. Identification of person to whom instrument is payable**

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Impostors, fictitious payees, see Title 33, § 3-404.  
 Special, blank or anomalous indorsement, see Title 33, § 3-205.

**Library References**

Bills and Notes ☞6, 32, 118, 152 to 153.	C.J.S. Bills and Notes; Letters of Credit §§ 13,
Westlaw Topic No. 56.	26 to 29, 38 to 40, 112 to 116, 159, 161,
	169, 258 to 259.

**§ 3-111. Place of payment**

Except as otherwise provided for items in Chapter 4 of this Title, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ☞128.	C.J.S. Bills and Notes; Letters of Credit
Westlaw Topic No. 56.	§ 104.

**§ 3-112. Reserved****§ 3-113. Date of instrument**

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in subsection (c) of Section 4-401 of this Title, an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ☞8, 34, 127, 129.	C.J.S. Bills and Notes; Letters of Credit §§ 14,
Westlaw Topic No. 56.	97, 99 to 102, 117 to 138.

**§ 3-114. Contradictory terms of instrument**

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

(a) “Incomplete instrument” means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c) of this section, if an incomplete instrument is an instrument under Section 3-104 of this Title, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3-104 of this Title, but, after completion, the requirements of Section 3-104 of this Title, are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3-407 of this Title.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨116.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 99  
to 102.

### § 3-115. Reserved

### § 3-116. Joint and several liability; contribution

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in subsection (e) of Section 3-419 of this Title or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨118, 236, 253, 264, 266,  
309.  
Contribution ⇨4.  
Westlaw Topic Nos. 56, 96.

C.J.S. Bills and Notes; Letters of Credit §§ 26  
to 29, 38 to 40, 68, 112 to 116, 197, 258 to  
259.  
C.J.S. Contribution §§ 5, 10 to 11.

### § 3-117. Other agreements affecting instrument

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement

or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇄ 133 to 135.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 106 to 111.

### § 3-118. Statute of limitations

(a) Except as provided in subsection (e) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.

(b) Except as provided in subsection (d) or (e) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.

(c) Except as provided in subsection (d) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three (3) years after dishonor of the draft or ten (10) years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three (3) years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six (6) years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced

(i) within six (6) years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or

(ii) within six (6) years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action

(i) for conversion of an instrument, for money had and received, or like action based on conversion,

(ii) for breach of warranty, or

(iii) to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three (3) years after the claim for relief accrues.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Limitation of Actions ☞25, 48.	C.J.S. Limitations of Actions §§ 86 to 87, 90,
Westlaw Topic No. 241.	174 to 176.
C.J.S. Bills and Notes; Letters of Credit	
§§ 286 to 287.	

### § 3-119. Notice of right to defend action

In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Chapter 4 of this Title, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states

(i) that the person notified may come in and defend and

(ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ☞444, 460.	C.J.S. Bills and Notes; Letters of Credit
Judgment ☞698.	§§ 275, 279 to 283.
Westlaw Topic Nos. 56, 228.	C.J.S. Judgments § 1150.

## SUBCHAPTER 2. TRANSFER AND NEGOTIATION

### Section

- 3-201. Negotiation.
- 3-202. Negotiation subject to rescission.
- 3-203. Transfer of instrument; rights acquired by transfer.
- 3-204. Indorsement.
- 3-205. Special indorsement; blank indorsement; anomalous indorsement.
- 3-206. Restrictive indorsement.
- 3-207. Reacquisition.

### § 3-201. Negotiation

(a) “Negotiation” means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Library References**

Bills and Notes ⇨176, 208, 267.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 170, 172, 175 to 176, 184 to 185, 191,  
195.

**§ 3–202. Negotiation subject to rescission**

- (a) Negotiation is effective even if obtained
- (i) from an infant, a corporation exceeding its powers, or a person without capacity,
  - (ii) by fraud, duress, or mistake, or
  - (iii) in breach of duty or as part of an illegal transaction.
- (b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇨182, 239, 364, 452(4).  
Westlaw Topic No. 56.  
C.J.S. Bills and Notes; Letters of Credit §§ 26  
to 28, 34 to 35, 38 to 46, 49, 81, 83 to 84,

95, 105, 177, 187 to 189, 195, 204, 232 to  
233, 235 to 244, 264 to 265, 288, 291, 294.

**§ 3–203. Transfer of instrument; rights acquired by transfer**

- (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.
- (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- (d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇨223 to 384.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8,  
26 to 29, 34 to 35, 38 to 46, 68, 81, 170,

175, 177 to 182, 184, 187 to 188, 190 to  
191, 193 to 244, 246, 264 to 268, 271 to  
272.

### § 3-204. Indorsement

(a) “Indorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of

- (i) negotiating the instrument,
- (ii) restricting payment of the instrument, or

(iii) incurring indorsers’s liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) “Indorser” means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder’s name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇄ 176 to 202.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 8,  
41 to 44, 173 to 174, 176 to 192, 194.

### § 3-205. Special indorsement; blank indorsement; anomalous indorsement

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a “special indorsement”. When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 of this Title apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a “blank indorsement”. When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the

indorser, words identifying the person to whom the instrument is made payable.

(d) “Anomalous indorsement” means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Instrument payable to bearer or to order, see Title 33, § 3–109.

#### Library References

Bills and Notes ⇄188 to 191.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 190 to 192, 194.

### § 3–206. Restrictive indorsement

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement

(i) described in subsection (b) of Section 4–201 of this Title, or

(ii) in blank or to a particular bank using the words “for deposit”, “for collection”, or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement;

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement;

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement; and

(4) Except as otherwise provided in paragraph (3) of this subsection, a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c) of this section, if an instrument bears an indorsement using words to the effect that payment is to be

## Title 33, § 3-206

## UNIFORM COMMERCIAL CODE

made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in Section 3-307 of this Title, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser; and

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (d) of this section.

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Bank deposits and collections, effect of instructions, see Title 33, § 4-203.

### Library References

Bills and Notes ⇄190.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§ 192.

## § 3-207. Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Bills and Notes ⇄193.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§ 183.

## SUBCHAPTER 3. ENFORCEMENT OF INSTRUMENTS

### Section

3-301. Person entitled to enforce instrument.

**Section**

- 3-302. Holder in due course.
- 3-303. Value and consideration.
- 3-304. Overdue instrument.
- 3-305. Defenses and claims in recoupment.
- 3-306. Claims to an instrument.
- 3-307. Notice of breach of fiduciary.
- 3-308. Proof of signatures and status as holder in due course.
- 3-309. Enforcement of lost, destroyed, or stolen instrument.
- 3-310. Effect of instrument on obligation for which taken.
- 3-311. Accord and satisfaction by use of instrument.
- 3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

**§ 3-301. Person entitled to enforce instrument**

“Person entitled to enforce” an instrument means

- (i) the holder of the instrument,
- (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or subsection (d) of Section 3-418 of this Title.

A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ◊443, 455.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 275, 277 to 278.

**§ 3-302. Holder in due course**

(a) Subject to subsection (c) of this section and subsection (d) of Section 3-106 of this Title, “holder in due course” means the holder of an instrument if:

- (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
- (2) the holder took the instrument
  - (i) for value,
  - (ii) in good faith,
  - (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series,
  - (iv) without notice that the instrument contains an unauthorized signature or has been altered,
  - (v) without notice of any claim to the instrument described in Section 3-306 of this Title, and
  - (vi) without notice that any party has a defense or claim in recoupment described in subsection (a) of Section 3-305 of this Title.

## Title 33, § 3-302

## UNIFORM COMMERCIAL CODE

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken

(i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding,

(ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or

(iii) as the successor in interest to an estate or other organization.

(d) If, under paragraph (1) of subsection (a) of Section 3-303 of this Title, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If

(i) the person entitled to enforce an instrument has only a security interest in the instrument and

(ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Cross References

Depository bank holder of unindorsed item, see Title 33, § 4-205.

Uniform Electronic Transactions Act, transferable records, see Title 33, § 15-116.

When bank gives value for purposes of holder in due course, see Title 33, § 4-211.

### Library References

Bills and Notes  $\S\S$  327 to 384.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  $\S\S$  8, 26 to 28, 34 to 35, 38 to 40, 45 to 46, 81, 207 to 244.

## § 3-303. Value and consideration

(a) An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) the instrument is issued or transferred in exchange for a negotiable instrument; or

(5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) “Consideration” means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a) of this section, the instrument is also issued for consideration.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Secured transactions, rights of agreement not to assert defenses against assignee, see Title 33, § 9–403.

Value defined, letters of credit, see Title 33, § 5–102.

#### Library References

Bills and Notes  $\Leftrightarrow$ 352, 357 to 359, 452(3).

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 49, 55, 68, 80 to 81, 95, 105, 204, 211, 215, 228 to 231, 264 to 265, 288, 291 to 292.

### § 3–304. Overdue instrument

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) on the day after the day demand for payment is duly made;

(2) if the instrument is a check, ninety (90) days after its date; or

(3) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured;

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date; and

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇄ 129, 347.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 97,  
117 to 138, 227.

### § 3-305. Defenses and claims in recoupment

(a) Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on

(i) infancy of the obligor to the extent it is a defense to a simple contract,

(ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor,

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or

(iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection (a) of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection (a) of this section or claims in recoupment stated in paragraph (3) of subsection (a) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306 of this Title) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.



(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Secured transactions, rights of agreement not to assert defenses against assignee, see Title 33, § 9–403.  
Transfer warranties, see Title 33, § 4–207.

#### Library References

Bills and Notes	§§ 364, 450.	68, 80 to 81, 83 to 84, 95, 105, 204, 232 to
Westlaw Topic No. 56.		233, 235 to 244, 264 to 268, 288 to 295.
C.J.S. Bills and Notes; Letters of Credit	§§ 26	
to 28, 34 to 35, 38 to 40, 45 to 46, 49, 55,		

### § 3–306. Claims to an instrument

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Payment of instrument, see Title 33, § 3–602.

#### Library References

Bills and Notes	§§ 314, 363, 450.	C.J.S. Bills and Notes; Letters of Credit
Westlaw Topic No. 56.		§§ 49, 55, 68, 80 to 81, 83 to 84, 95, 105, 203 to
		206, 234, 236, 264 to 268, 288 to 295.

### § 3–307. Notice of breach of fiduciary

(a) In this section:

(1) “Fiduciary” means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and

(2) “Represented person” means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of this subsection is owed.

(b) If,

(i) an instrument is taken from a fiduciary for payment or collection or for value,

(ii) the taker has knowledge of the fiduciary status of the fiduciary, and

(iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary,

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person;

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty; and

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary,

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Restrictive indorsement, see Title 33, § 3-206.

**Library References**

Bills and Notes ⇄ 333, 336.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 209 to 211, 213 to 214, 218, 220 to 222,  
224 to 227.

**§ 3-308. Proof of signatures and status as holder in due course**

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under this act.

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under this act, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨492, 497, 517, 525.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 315 to 319, 324, 333 to 334.

### § 3–309. Enforcement of lost, destroyed, or stolen instrument

(a) A person not in possession of an instrument is entitled to enforce the instrument if

(i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred,

(ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and

(iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, this act applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨441.  
Lost Instruments ⇨16.  
Westlaw Topic Nos. 56, 246.

C.J.S. Bills and Notes; Letters of Credit  
§§ 275, 277, 281 to 285.  
C.J.S. Lost Instruments § 21.

### § 3–310. Effect of instrument on obligation for which taken

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check;

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment;

(3) Except as provided in paragraph (4) of this subsection, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation; and

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) of this section is taken for an obligation, the effect is (i) that stated in subsection (a) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) of this section in any other case.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Sales, tender of payment by buyer, payment by check, see Title 33, § 2-511.

#### Library References

Bills and Notes ◊428.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 132, 151, 256, 260 to 263.

### § 3-311. Accord and satisfaction by use of instrument

(a) If a person against whom a claim is asserted proves that

(i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim,

(ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an

accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section if either of the following applies:

(1) The claimant, if an organization, proves that

(i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and

(ii) the instrument or accompanying communication was not received by that designated person, office or place; or

(2) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with subparagraph (i) of paragraph (1) of this subsection.

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Accord and Satisfaction ◊6.  
Westlaw Topic No. 8.  
C.J.S. Accord and Satisfaction §§ 32 to 60.

### § 3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check;

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that

(i) the declarer lost possession of a check,

(ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's or teller's check,

(iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and

(iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the

wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or a teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if

(i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check,

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check,

(iii) the communication is received at a time and in a manner affording the bank reasonable time to act on it before the check is paid, and

(iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(c) The claim becomes enforceable at the later of

(i) the time the claim is asserted, or

(ii) the ninetieth (90th) day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth (90th) day following the date of the acceptance, in the case of a certified check;

(d) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(e) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and

(f) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to this act, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(g) If the obligated bank pays the amount of a check to a claimant under paragraph (iv) of subsection (b) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to

(i) refund the payment to the obligated bank if the check is paid, or

(ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(h) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert

rights with respect to the check either under this section other sections of this act.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ146.  
Westlaw Topic No. 52.

### SUBCHAPTER 4. LIABILITY OF PARTIES

#### Section

- 3-401. Signature.
- 3-402. Signature by representative.
- 3-403. Unauthorized signature.
- 3-404. Impostors; fictitious payees.
- 3-405. Employer's responsibility for fraudulent indorsement by employee.
- 3-406. Negligence contributing to forged signature or alteration of instrument.
- 3-407. Alteration.
- 3-408. Drawee not liable on unaccepted draft.
- 3-409. Acceptance of draft; certified check.
- 3-410. Acceptance varying draft.
- 3-411. Refusal to pay cashier's checks, teller's checks, and certified checks.
- 3-412. Obligation of issuer of note or cashier's check.
- 3-413. Obligation of acceptor.
- 3-414. Obligation of drawer.
- 3-415. Obligation of indorser.
- 3-416. Transfer warranties.
- 3-417. Presentment warranties.
- 3-418. Payment or acceptance by mistake.
- 3-419. Instruments signed for accommodation.
- 3-420. Conversion of instrument.

#### § 3-401. Signature

- (a) A person is not liable on an instrument unless
  - (i) the person signed the instrument, or
  - (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3-402 of this Title.
- (b) A signature may be made
  - (i) manually or by means of a device or machine, and
  - (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes Ⓒ54, 452. 105, 204, 264 to 268, 288 to 289, 291 to 294.  
Westlaw Topic No. 56.  
C.J.S. Bills and Notes; Letters of Credit §§ 30, 36 to 46, 49, 55, 68, 80 to 81, 83 to 84, 95,

**§ 3-402. Signature by representative**

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the “authorized signature of the represented person” and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument; and

(2) Subject to subsection (c) of this section, if

(i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or

(ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇄54, 123.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 30,  
36 to 46, 112 to 113, 115.

**§ 3-403. Unauthorized signature**

(a) Unless otherwise provided in this chapter or Chapter 4 of this Title, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter which makes the unauthorized signature effective for the purposes of this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Library References**

Bills and Notes ⇨54, 123, 452.  
 Westlaw Topic No. 56.  
 C.J.S. Bills and Notes; Letters of Credit §§ 30,  
 36 to 46, 49, 55, 68, 80 to 81, 83 to 84, 95,  
 105, 112 to 113, 115, 204, 264 to 268, 288  
 to 289, 291 to 294.

**§ 3-404. Impostors; fictitious payees**

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If

(i) a person whose intent determines to whom an instrument is payable (subsection (a) or (b) of Section 3-110 of this Title) does not intend the person identified as payee to have any interest in the instrument, or

(ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder; and

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b) of this section, an indorsement is made in the name of a payee if

(i) it is made in a name substantially similar to that of the payee or

(ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Presentment warranties, see Title 33, § 4-208.

**Library References**

Banks and Banking ⇨148, 174.  
 Bills and Notes ⇨201, 279.  
 Westlaw Topic Nos. 52, 56.  
 C.J.S. Banks and Banking §§ 347, 440 to 455,  
 457 to 468.  
 C.J.S. Bills and Notes; Letters of Credit §§ 41  
 to 44, 173, 184, 187 to 188, 195.

**§ 3-405. Employer's responsibility for fraudulent indorsement by employee**

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer;

(2) "Fraudulent indorsement" means

(i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or

(ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee; and

(3) "Responsibility" with respect to instruments means authority

(i) to sign or indorse instruments on behalf of the employer,

(ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition,

(iii) to prepare or process instruments for issue in the name of the employer,

(iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer,

(v) to control the disposition of instruments to be issued in the name of the employer, or

(vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b) of this section, an indorsement is made in the name of the person to whom an instrument is payable if

(i) it is made in a name substantially similar to the name of that person or

(ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Presentment warranties, see Title 33, § 4–208.

**Library References**

Banks and Banking ☞148, 174.

Bills and Notes ☞201, 279.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 347, 440 to 455,  
457 to 468.

C.J.S. Bills and Notes; Letters of Credit §§ 41  
to 44, 173, 184, 187 to 188, 195.

**§ 3–406. Negligence contributing to forged signature or alteration of instrument**

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Presentment warranties, see Title 33, § 4–208.

**Library References**

Banks and Banking ☞148(3).

Bills and Notes ☞279.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 461 to 466.

C.J.S. Bills and Notes; Letters of Credit §§ 41  
to 44, 184, 187 to 188, 195.

**§ 3–407. Alteration**

(a) “Alteration” means

(i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or

(ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument

- (i) according to its original terms, or
- (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Contradictory terms of instrument, words or numbers added to incomplete instrument without signer's authority, see Title 33, § 3-114.  
 Transfer warranties, see Title 33, § 4-207.

**Library References**

Alteration of Instruments ¶1 to 30.	C.J.S. Bills and Notes; Letters of Credit §§ 34
Bills and Notes ¶378, 452.	to 35, 49, 55, 68, 80 to 81, 83 to 84, 95, 105,
Westlaw Topic Nos. 25, 56.	204, 242, 264 to 268, 288 to 289, 291 to
C.J.S. Alteration of Instruments §§ 1 to 151,	294.
158 to 175.	

**§ 3-408. Drawee not liable on unaccepted draft**

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ¶140(3).	C.J.S. Bills and Notes; Letters of Credit §§ 8,
Bills and Notes ¶66 to 70.	19, 22, 50.
Westlaw Topic Nos. 52, 56.	
C.J.S. Banks and Banking §§ 351, 380 to 381,	
391 to 396, 399 to 401.	

**§ 3-409. Acceptance of draft; certified check**

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Accept or acceptance defined, letters of credit, see Title 33, § 5-102.

**Library References**

Banks and Banking ☞145.  
 Bills and Notes ☞66, 189.  
 Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 384 to 387.  
 C.J.S. Bills and Notes; Letters of Credit §§ 19,  
 22, 50, 190.

**§ 3-410. Acceptance varying draft**

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞140.  
 Bills and Notes ☞83, 256, 301.  
 Westlaw Topic Nos. 52, 56.  
 C.J.S. Banks and Banking §§ 345 to 352, 378  
 to 381, 391 to 396, 399 to 401, 444 to 449.

C.J.S. Bills and Notes; Letters of Credit §§ 51,  
 195, 264 to 268, 271 to 272.

**§ 3-411. Refusal to pay cashier's checks, teller's checks, and certified checks**

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully;

(i) refuses to pay a cashier's check or certified check,

(ii) stops payment of a teller's check, or

(iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) of this section are not recoverable if the refusal of the obligated bank to pay occurs because;

(i) the bank suspends payments,

(ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument,

(iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or

(iv) payment is prohibited by law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞145, 189.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 384 to 387, 482  
to 493.

**§ 3–412. Obligation of issuer of note or cashier’s check**

The issuer of a note or cashier’s check or other draft drawn on the drawer is obliged to pay the instrument;

(i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or

(ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Section 3–407 of this Title. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3–415 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞189.  
Bills and Notes ☞23, 48.  
Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 482 to 493.  
C.J.S. Bills and Notes; Letters of Credit §§ 9,  
18, 20 to 22, 24 to 29, 253, 264 to 268, 293.

**§ 3–413. Obligation of acceptor**

(a) The acceptor of a draft is obliged to pay the draft

(i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable “as originally drawn” or equivalent terms,

(ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or

(iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Section 3–407 of this Title. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3–414 or 3–415 of this Title.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If;

(i) the certification or acceptance does not state an amount,

(ii) the amount of the instrument is subsequently raised, and

(iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞189.  
 Bills and Notes ☞73.  
 Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 482 to 493.  
 C.J.S. Bills and Notes; Letters of Credit §§ 26  
 to 28, 52 to 53.

**§ 3-414. Obligation of drawer**

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft;

(i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or

(ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Section 3-407 of this Title. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3-415 of this Title.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under subsections (a) and (c) of Section 3-415 of this Title.

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) of this section is not effective if the draft is a check.

(f) If

(i) a check is not presented for payment or given to a depository bank for collection within thirty (30) days after its date,

(ii) the drawee suspends payments after expiration of the thirty-day period without paying the check, and

(iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Discharge of indorsers, accommodation, and other parties, see Title 33, § 3-605.  
 Letters of credit, issuer's rights and obligations, see Title 33, § 5-108.  
 Notice of dishonor, see Title 33, § 3-503.

**Library References**

Bills and Notes ☞23, 26.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 9,  
18 to 22, 246.

### § 3-415. Obligation of indorser

(a) Subject to subsections (b), (c), (d), and (e) of this section and to subsection (d) of Section 3-419 of this Title, if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument;

(i) according to the terms of the instrument at the time it was indorsed, or

(ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Section 3-407 of this Title. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made “without recourse” or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) of this section to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 3-503 of this Title and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) of this section is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) of this section is discharged.

(e) If an indorser of a check is liable under subsection (a) of this section and the check is not presented for payment, or given to a depository bank for collection, within thirty (30) days after the day the indorsement was made, the liability of the indorser under subsection (a) of this section is discharged.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Letters of credit, issuer’s rights and obligations, see Title 33, § 5-108.  
Notice of dishonor, see Title 33, § 3-503.

#### Library References

Bills and Notes ⇄281.  
Westlaw Topic No. 56.

### § 3-416. Transfer warranties

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.



(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇄296, 326.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 199 to 202.

### § 3-417. Presentment warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft,

(i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 of this Title or the drawer is precluded

under Section 3-406 or 4-406 of this Title from asserting against the drawee the unauthorized indorsement or alteration.

(d) If;

(i) a dishonored draft is presented for payment to the drawer or an indorser or

(ii) any other instrument is presented for payment to a party obliged to pay the instrument, and

(iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument; and

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ149, 175.

Bills and Notes Ⓒ296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 447, 450 to 461,

467 to 469, 473 to 475.

C.J.S. Bills and Notes; Letters of Credit

§§ 199 to 202.

### § 3-418. Payment or acceptance by mistake

(a) Except as provided in subsection (c) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that

(i) payment of the draft had not been stopped pursuant to Section 4-403 of this Title or

(ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a)

of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution,

(i) recover the payment from the person to whom or for whose benefit payment was made or

(ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3-417 or 4-407 of this Title.

(d) Notwithstanding Section 4-215 of this Title, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Person entitled to enforce instrument, see Title 33, § 3-301.

#### Library References

Banks and Banking ⇨137, 147.

Bills and Notes ⇨72, 434.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 328, 331, 335 to 336, 340 to 354, 357 to 358, 367 to 371,

374, 376 to 383, 391 to 396, 399 to 401, 404 to 406, 425, 439 to 471, 473 to 475, 483.

C.J.S. Bills and Notes; Letters of Credit §§ 54, 257.

### § 3-419. Instruments signed for accommodation

(a) If an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation”.

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 3-605 of this Title, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when

the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if

- (i) execution of judgment against the other party has been returned unsatisfied,
- (ii) the other party is insolvent or in an insolvency proceeding,
- (iii) the other party cannot be served with process, or
- (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Joint and several liability, contribution, see Title 33, § 3-116.

#### Library References

Bills and Notes ⇄49, 96, 236, 371.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit §§ 24  
to 29, 68, 244.

### § 3-420. Conversion of instrument

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by

- (i) the issuer or acceptor of the instrument or
- (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

- |                          |  |  |
|--------------------------|--|--|
| Banks and Banking        | ⊖100, 138, 148, 156 to 175.                                    | 347, 354, 357 to 358, 367 to 370, 374, 391 to 403, 407 to 438, 440 to 455, 457 to 469, 473 to 475. |
| Trover and Conversion    | ⊖13.   | C.J.S. Trover and Conversion §§ 2 to 4.  |
| Westlaw Topic Nos.       | 52, 389.   |  |
| C.J.S. Banks and Banking | §§ 231 to 233, 248 to 250, 328, 330 to 334, 336 to 343, 346 to |  |

## SUBCHAPTER 5. DISHONOR

## Section

- 3–501. Presentment.  
 3–502. Dishonor.  
 3–503. Notice of dishonor.  
 3–504. Excused presentment and notice of dishonor.  
 3–505. Evidence of dishonor.

## § 3–501. Presentment

(a) “Presentment” means a demand made by or on behalf of a person entitled to enforce an instrument;

(i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or

(ii) to accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4 of this Title, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to anyone of two or more makers, acceptors, drawees, or other payors;

(2) Upon demand of the person to whom presentment is made, the person making presentment must

(i) exhibit the instrument,

(ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and

(iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made;

(3) Without dishonoring the instrument, the party to whom presentment is made may

(i) return the instrument for lack of a necessary indorsement, or

(ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier the 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Presentment by notice of item not payable by, through, or at bank, liability of drawer or indorser, see Title 33, § 4-212.

**Library References**

Bills and Notes ⇄388, 399.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 245 to 247.

**§ 3-502. Dishonor**

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument

(i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or

(ii) to accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4 of this Title, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to anyone of two or more makers, acceptors, drawees, or other payors;

(2) Upon demand of the person to whom presentment is made, the person making presentment must

(i) exhibit the instrument,

(ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and

(iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made;

(3) Without dishonoring the instrument, the party to whom presentment is made may

(i) return the instrument for lack of a necessary indorsement, or

(ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier the 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞140(3), 189.	C.J.S. Bills and Notes; Letters of Credit §§ 19
Bills and Notes ☞24, 393 to 421.	to 21, 131, 245 to 250, 284.
Westlaw Topic Nos. 52, 56.	
C.J.S. Banks and Banking §§ 351, 380 to 381,	
391 to 396, 399 to 401, 482 to 493.	

### § 3–503. Notice of dishonor

(a) The obligation of an indorser stated in subsection (a) of Section 3–415 of this Title and the obligation of a drawer stated in subsection (d) of Section 3–414 of this Title may not be enforced unless;

(i) the indorsers or drawer is given notice of dishonor of the instrument complying with this section or

(ii) notice of dishonor is excused under subsection (b) of Section 3–504 of this Title.

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to subsection (c) of Section 3–504 of this Title, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given

(i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or

(ii) by any other person within thirty (30) days following the day on which the person receives notice of dishonor.

With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞140(3).	C.J.S. Bills and Notes; Letters of Credit
Bills and Notes ☞393 to 421.	§§ 131, 245 to 250, 284.
Westlaw Topic Nos. 52, 56.	
C.J.S. Banks and Banking §§ 351, 380 to 381,	
391 to 396, 399 to 401.	

### § 3–504. Excused presentment and notice of dishonor

(a) Presentment for payment or acceptance of an instrument is excused if;

- (i) the person entitled to present the instrument cannot with reasonable diligence make presentment,
- (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings,
- (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer,
- (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or
- (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if;

- (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or
- (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.
- (iii) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking	374, 376 to 383, 391 to 396, 399 to 401, 404
Bills and Notes	to 406, 425, 444 to 449, 469 to 471, 473 to
Westlaw Topic Nos. 52, 56.	475, 483.
C.J.S. Banks and Banking §§ 328, 331, 335 to	C.J.S. Bills and Notes; Letters of Credit
336, 340 to 354, 357 to 358, 367 to 371,	§§ 131, 245 to 252, 284.

**§ 3-505. Evidence of dishonor**

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

- (1) A document regular in form as provided in subsection (b) of this section which purports to be a protest;
- (2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and
- (3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the



reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨410, 498, 510.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 315, 319, 326, 330 to 332.

## SUBCHAPTER 6. DISCHARGE AND PAYMENT

### Section

- 3-601. Discharge and effect of discharge.
- 3-602. Payment.
- 3-603. Tender of payment.
- 3-604. Discharge by cancellation or renunciation.
- 3-605. Discharge of endorsers, accommodation, and other parties.

### § 3-601. Discharge and effect of discharge

(a) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bills and Notes ⇨425, 436 to 440.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 253 to 254, 258 to 259, 264 to 271.

### § 3-602. Payment

(a) Subject to subsection (b) of this section, an instrument is paid to the extent payment is made

(i) by or on behalf of a party obliged to pay the instrument, and

(ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3-306 of this Title by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:

(1) A claim to the instrument under Section 3-306 of this Title is enforceable against the party receiving payment and

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having

a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ◊426 to 435, 440.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 132, 151, 253 to 263, 270.

**§ 3-603. Tender of payment**

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ◊428.  
Tender ◊19.  
Westlaw Topic Nos. 56, 374.

C.J.S. Bills and Notes; Letters of Credit  
§§ 132, 151, 256, 260 to 263.  
C.J.S. Tender §§ 37 to 38, 40.

**§ 3-604. Discharge by cancellation or renunciation**

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument;

(i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or

(ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Bills and Notes ⇄438.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 264 to 265, 269 to 270.

**§ 3-605. Discharge of endorsers, accommodation, and other parties**

(a) In this section, the term “indorser” includes a drawer having the obligation described in subsection (d) of Section 3-414 of this Title.

(b) Discharge, under Section 3-604 of this Title, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent

(i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or

(ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsec-

tion (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes

(i) failure to obtain or maintain perfection or recordation of the interest in collateral,

(ii) release of collateral without substitution of collateral of equal value,

(iii) failure to perform a duty to preserve the value of collateral owed, under Chapter 9 of this Title or other law, to a debtor or surety or other person secondarily liable, or

(iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under subsection (c) of Section 3-419 of this Title that the instrument was signed for accommodation.

(i) A party is not discharged under this section if

(i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or

(ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bills and Notes ⇄256, 301.  
Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit  
§§ 195, 264 to 268, 271 to 272.

**SUBCHAPTER 7. ADVICE OF INTERNATIONAL  
SIGHT DRAFT [RESERVED]**

**SUBCHAPTER 8. MISCELLANEOUS [RESERVED]**

## CHAPTER 4. BANK DEPOSITS AND COLLECTIONS

### Subchapter

1. General Provisions and Definitions
2. Collection of Item—Depositary and Collecting Banks
3. Collection of Items—Payor Banks
4. Relationship Between Payor and Its Customer
5. Collections of Documentary Drafts

### SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

#### Section

- 4-101. Short title.
- 4-102. Applicability.
- 4-103. Variation by agreement; measure of damages; certain action constituting ordinary care.
- 4-104. Definitions and index of definitions.
- 4-105. Bank; depositary bank; payor bank; intermediary bank; collecting bank; presenting bank.
- 4-106. Payable through or payable at bank; collecting bank.
- 4-107. Separate office of bank.
- 4-108. Time of receipt of items.
- 4-109. Delays.
- 4-110. Electronic presentment.
- 4-111. Statute of limitations.

#### § 4-101. Short title

This chapter may be cited as Uniform Commercial Code—Bank Deposits and Collections.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### § 4-102. Applicability

(a) To the extent that items within this chapter are also within Chapters 3 and 8 of this Title, they are subject to those chapters. If there is conflict, this chapter governs Chapter 3, but Chapter 8 governs this chapter.

(b) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

#### Library References

Banks and Banking ⇌ 119 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to  
250, 268 to 325, 327 to 328, 330 to 475,  
483.

**§ 4–103. Variation by agreement; measure of damages; certain action constituting ordinary care**

(a) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure; however, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a) of this section, whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this chapter or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this chapter, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this chapter is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking  $\S\S$  119 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking  $\S\S$  187, 232, 248 to  
250, 268 to 325, 327 to 328, 330 to 475,  
483.

**§ 4–104. Definitions and index of definitions**

(a) In this chapter unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8–102 of this Title)

or instructions for uncertificated securities (Section 8-102 of this Title) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in Section 3-104 of this Title or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 4A of this Title or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this chapter and the sections of this Title in which they appear are:

"Agreement for electronic presentment" Section 4-110.

"Bank" Section 4-105.

"Collecting bank" Section 4-105.

"Depository bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment Notice" Section 4-110.

(c) "Control" as provided in Section 7-106 of this Title and the following definitions in other chapters of this Title apply to this chapter:

"Acceptance" Section 3-409.

"Alteration" Section 3-407.

"Cashier's check" Section 3-104.

"Certificate of deposit" Section 3-104.

"Certified check" Section 3-409.

"Check" Section 3-104.

"Draft" Section 3-104.

"Good faith" Section 3-103.

"Holder in due course" Section 3-302.

**Title 33, § 4–104**

**UNIFORM COMMERCIAL CODE**

- “Instrument” Section 3–104.
- “Notice of dishonor” Section 3–503.
- “Order” Section 3–103.
- “Ordinary care” Section 3–103.
- “Person entitled to enforce” Section 3–301.
- “Presentment” Section 3–501.
- “Promise” Section 3–103.
- “Prove” Section 3–103.
- “Teller’s check” Section 3–104.
- “Unauthorized signature” Section 3–403.

(d) In addition, Chapter 1 of this Title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌ 119 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to  
250, 268 to 325, 327 to 328, 330 to 475,  
483.

**§ 4–105. Bank; depositary bank; payor bank; intermediary bank; collecting bank; presenting bank**

In this chapter:

- (1) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;
- (2) “Depositary bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;
- (3) “Payor bank” means a bank that is the drawee of a draft;
- (4) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depositary or payor bank;
- (5) “Collecting bank” means a bank handling an item for collection except the payor bank; and
- (6) “Presenting bank” means a bank presenting an item except a payor bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**§ 4–106. Payable through or payable at bank; collecting bank**

- (a) If an item states that it is “payable through” a bank identified in the item,
  - (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and
  - (ii) the item may be presented for payment only by or through the bank.
- (b) If an item states that it is “payable at” a bank identified in the item,



(i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and

(ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ156 to 158.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 332 to 333, 337,  
407 to 408, 412 to 413, 417 to 418, 427 to  
429, 433.

**§ 4–107. Separate office of bank**

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or orders must be given under this chapter and under Chapter 3 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**§ 4–108. Time of receipt of items**

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ119 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 187, 232, 248 to  
250, 268 to 325, 327 to 328, 330 to 475,  
483.

**§ 4–109. Delays**

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not exceeding two (2) additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if

(i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and

(ii) the bank exercises such diligence as the circumstances require.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞171(4).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 338 to 339, 397,  
435.

### § 4–110. Electronic presentment

(a) “Agreement for electronic presentment” means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item (“presentment notice”) rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to “item” or “check” in this chapter means the presentment notice unless the context otherwise indicates.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞158 to 160.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336 to  
337, 409 to 414, 417 to 427, 429 to 431,  
433, 436 to 437.

### § 4–111. Statute of limitations

An action to enforce an obligation, duty, or right arising under this chapter must be commenced within three (3) years after the claim for relief accrues.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞154(2), 155, 175, 219.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 445, 447, 458 to  
459, 464 to 465, 469 to 471, 473 to 475.

## SUBCHAPTER 2. COLLECTION OF ITEMS— DEPOSITARY AND COLLECTING BANKS

#### Section

- 4–201. Status of collecting bank as agent and provisional status of credits; applicability of chapter; item endorsed pay any bank.
- 4–202. Responsibility for collection or return; when action timely.
- 4–203. Effect of instructions.
- 4–204. Methods of sending and presenting; sending directly to payor bank.
- 4–205. Depositary bank holder of unindorsed item.
- 4–206. Transfer between banks.
- 4–207. Transfer warranties.
- 4–208. Presentment warranties.

**Section**

- 4-209. Encoding and retention warranties.
- 4-210. Security interest of collecting bank in items, accompanying documents and proceeds.
- 4-211. When bank gives value for purposes of holder in due course.
- 4-212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.
- 4-213. Medium and time of settlement by bank.
- 4-214. Right of charge-back or refund; liability of collecting bank; return of item.
- 4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- 4-216. Insolvency and preference.

**§ 4-201. Status of collecting bank as agent and provisional status of credits; applicability of chapter; item endorsed pay any bank**

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder until the item has been:

- (1) returned to the customer initiating collection; or
- (2) specially indorsed by bank to a person who is not a bank.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Restrictive indorsement, see Title 33, § 3-206.

**Library References**

Banks and Banking ⇌ 149, 156 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 334,  
336 to 339, 391 to 403, 407 to 438, 440, 444  
to 461, 467 to 469, 473 to 475.

**§ 4-202. Responsibility for collection or return; when action timely**

- (a) A collecting bank must exercise ordinary care in:
  - (1) Presenting an item or sending it for presentment;
  - (2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank’s transferor after learning that the item has not been paid or accepted, as the case may be;
  - (3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to paragraph (1) of subsection (a) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓔ149, 171(5).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 338 to 339, 392 to 396, 401 to 403, 432, 435, 438, 450 to 461, 467 to 468.

**§ 4–203. Effect of instructions**

Subject to Chapter 3 of this Title concerning conversion of instruments (Section 3–420 of this Title) and restrictive indorsements (Section 3–206 of this Title), only a collecting bank’s transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓔ156 to 175.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 334, 336 to 339, 391 to 403, 407 to 438, 440, 444 to 455, 457 to 461, 467 to 469, 473 to 475.

**§ 4–204. Methods of sending and presenting; sending directly to payor bank**

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a nonbank payor if authorized by its transferor; and

(3) An item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞160 to 171. to 416, 418, 420 to 426, 428, 430 to 438,  
Westlaw Topic No. 52. 445, 447 to 449.  
C.J.S. Banks and Banking §§ 328, 330 to 331,  
334, 336, 338 to 339, 391 to 403, 407, 409

**§ 4–205. Depository bank holder of unindorsed item**

If a customer delivers an item to a depository bank for collection:

(1) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3–302 of this Title, it is a holder in due course; and

(2) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞140(2), 156 to 167, to 437, 440, 444 to 455, 457 to 461, 467 to  
174. 468.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 328, 330 to 333,  
336 to 337, 407 to 414, 416 to 431, 433, 436

**§ 4–206. Transfer between banks**

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞149, 164. C.J.S. Banks and Banking §§ 409, 414, 416,  
Westlaw Topic No. 52. 428, 445, 450 to 461, 467 to 468.

**§ 4–207. Transfer warranties**

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (subsection (a) of Section 3–305 of this Title) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item

(i) according to the terms of the item at the time it was transferred, or

(ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Section 3–407 of this Title. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made “without recourse” or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞149, 164, 175.

Bills and Notes ☞296, 326.

Westlaw Topic Nos. 52, 56.

C.J.S. Banks and Banking §§ 409, 414, 416,  
428, 445, 447, 450 to 461, 467 to 469, 473  
to 475.

C.J.S. Bills and Notes; Letters of Credit  
§§ 199 to 202.

#### § 4–208. Presentment warranties

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft,

(i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the

drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft;

(i) breach of warranty is a defense to the obligation of the acceptor, and

(ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3–404 or 3–405 of this Title or the drawer is precluded under Section 3–406 or 4–406 of this Title from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Payor bank's responsibility for late return of item, see Title 33, § 4–302.

#### Library References

Banks and Banking	⊕149, 160 to 175.	to 416, 418, 420 to 426, 428, 430 to 438,
Bills and Notes	⊕296, 326.	440, 444 to 461, 467 to 469, 473 to 475.
Westlaw Topic Nos.	52, 56.	C.J.S. Bills and Notes; Letters of Credit
C.J.S. Banks and Banking	§§ 328, 330 to 331,	§§ 199 to 202.
	334, 336, 338 to 339, 391 to 403, 407, 409	

### § 4–209. Encoding and retention warranties

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking	§§ 149, 160 to 175.	to 416, 418, 420 to 426, 428, 430 to 438,
Bills and Notes	§§ 296, 326.	440, 444 to 461, 467 to 469, 473 to 475.
Westlaw Topic Nos.	52, 56.	C.J.S. Bills and Notes; Letters of Credit
C.J.S. Banks and Banking	§§ 328, 330 to 331,	§§ 199 to 202.
	334, 336, 338 to 339, 391 to 403, 407, 409	

### § 4–210. Security interest of collecting bank in items, accompanying documents and proceeds

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9 of this Title, but:

(1) No security agreement is necessary to make the security interest enforceable;

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]



## BANK DEPOSITS AND COLLECTIONS

## Title 33, § 4–212

### Cross References

Secured party defined, see Title 33, § 9–106.

Secured transactions,

    Enforceability of security interest, see Title 33, § 9–203.

    Priorities among conflicting security interests in and agricultural liens on same collateral, see Title 33, § 9–322.

    Scope of chapter, see Title 33, § 9–110.

    Security interest perfected upon attachment, see Title 33, § 9–309.

### Library References

Banks and Banking ⇌159.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 409, 418 to 419.

### § 4–211. When bank gives value for purposes of holder in due course

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3–302 of this Title on what constitutes a holder in due course.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

Value defined, letters of credit, see Title 33, § 5–102.

### Library References

Bills and Notes ⇌352.

Westlaw Topic No. 56.

C.J.S. Bills and Notes; Letters of Credit

§§ 211, 228 to 231.

### § 4–212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3–501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3–501 of this Title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Banks and Banking ⇌160 to 175.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331,

334, 336, 338 to 339, 391 to 403, 407, 409

to 416, 418, 420 to 426, 428, 430 to 438,

440, 444 to 455, 457 to 461, 467 to 469, 473

to 475.

**§ 4-213. Medium and time of settlement by bank**

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to subsection (a) of Section 4A-406 of this Title to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a) of this section, no settlement occurs until the tender or settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking  $\S$  160.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking  $\S\S$  328, 330, 336,  
410 to 411, 414, 418, 420 to 426, 430 to  
431, 433, 436 to 437.

**§ 4-214. Right of charge-back or refund; liability of collecting bank; return of item**

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer,

whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depository bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301 of this Title).

(d) The right to charge back is not affected by:

- (1) Previous use of a credit given for the item; or
- (2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking  $\S$  158, 171(5).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking  $\S\S$  337 to 339, 392 to 396, 401 to 403, 412 to 413, 417, 427, 429, 432 to 433, 435, 438.

### **§ 4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal**

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

- (1) Paid the item in cash;
- (2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or
- (3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to

(i) applicable law stating a time for availability of funds and

(ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or

(2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Transfer warranties, see Title 33, § 3-418.

#### Library References

Banks and Banking  $\Leftrightarrow$  158, 168.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 334,  
336 to 337, 412 to 413, 417, 420 to 421,  
427, 429, 431, 433, 445, 447 to 449.

### § 4-216. Insolvency and preference

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does

not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌ 166.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 414, 416.

### SUBCHAPTER 3. COLLECTION OF ITEMS—PAYOR BANKS

#### Section

- 4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.  
4-302. Payor bank's responsibility for late return of item.  
4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

#### § 4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

- (1) Returns the item; or
- (2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

- (1) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Right of charge-back or refund, liability of collecting bank, see Title 33, § 4-214.

#### Library References

Banks and Banking ⇨140(3), 171(5).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 338 to 339, 351,  
380 to 381, 391 to 396, 399 to 403, 432,  
435, 438.

### § 4-302. Payor bank's responsibility for late return of item

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of presentment warranty (Section 4-208 of this Title) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇨137 to 149, 168 to 171.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330 to 331,  
334 to 336, 338 to 354, 357 to 358, 367 to

371, 374, 376 to 387, 391 to 406, 412 to  
413, 415, 420 to 421, 425, 431 to 432, 434  
to 435, 438 to 471, 473 to 475, 483.

### § 4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under Section 4-302 of this Title dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) of this section, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Cross References**

Customer's right to stop payments, burden of proof of loss, see Title 33, § 4-403.

#### **Library References**

Banks and Banking ⇌ 139.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 335, 348 to 349,  
376 to 377, 483.

## **SUBCHAPTER 4. RELATIONSHIP BETWEEN PAYOR AND ITS CUSTOMER**

### **Section**

- 4-401. When bank may charge customer's account.
- 4-402. Bank's liability to customer for wrongful dishonor; time for determining insufficiency of account.
- 4-403. Customer's right to stop payment; burden of proof of loss.
- 4-404. Bank not obligated to pay check more than six months old.
- 4-405. Death or incompetence of customer.
- 4-406. Customer's duty to discover and report unauthorized signature or alteration.
- 4-407. Payor bank's right to subrogation on improper payment.

### **§ 4-401. When bank may charge customer's account**

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in subsection (b) of Section 4-403 of this Title for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4-303 of this Title. If a bank charges against the account of a customer a check before the date stated

in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor or subsequent items under Section 4-402 of this Title.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

- (1) The original terms of the altered item; or
- (2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞126, 142, 158.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 337, 353, 382 to  
383, 412 to 413, 417, 427, 429, 433.

### § 4-402. Bank's liability to customer for wrongful dishonor; time for determining insufficiency of account

(a) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based and may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one (1) determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞143.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 404 to 406, 469  
to 471, 473 to 475.

### § 4-403. Customer's right to stop payment; burden of proof of loss

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that



affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4-303 of this Title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402 of this Title.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ139, 154(6).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 298, 335, 348 to  
349, 376 to 377, 474, 483.

### § 4-404. Bank not obligated to pay check more than six months old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six (6) months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ137, 145.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 328, 331, 335 to  
336, 340 to 354, 357 to 358, 367 to 371,

374, 376 to 387, 391 to 396, 399 to 401, 404  
to 406, 425, 444 to 449, 469 to 471, 473 to  
475, 483.

### § 4-405. Death or incompetence of customer

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Banks and Banking	≈137, 160.	371, 374, 376 to 383, 391 to 396, 399 to
Westlaw Topic No.	52.	401, 404 to 406, 410 to 411, 414, 418, 420
C.J.S. Banks and Banking	§§ 328, 330 to 331,	to 426, 430 to 431, 433, 436 to 437, 444 to
	335 to 336, 340 to 354, 357 to 358, 367 to	449, 469 to 471, 473 to 475, 483.

**§ 4-406. Customer's duty to discover and report unauthorized signature or alteration**

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven (7) years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c) of this section, the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) of this section does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year after the statement or items are made available to the customer (subsection (a) of this section) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4-208 of this Title with respect to the unauthorized signature or alteration to which the preclusion applies.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ148(4), 151.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 268 to 273, 277  
to 279, 464 to 466.

### § 4-407. Payor bank's right to subrogation on improper payment

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

- (1) Of any holder in due course on the item against the drawer or maker;
- (2) Of the payee or any other holder of the item against the drawer or maker either on the item or under transaction out of which the item arose; and
- (3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction of which the item arose.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Transfer warranties, see Title 33, § 3-418.

#### Library References

Banks and Banking Ⓒ128.  
Subrogation Ⓒ4.  
Westlaw Topic Nos. 52, 366.

C.J.S. Banks and Banking §§ 285, 291 to 295,  
302 to 304, 336, 343, 355 to 366.  
C.J.S. Subrogation §§ 29 to 30.

## SUBCHAPTER 5. COLLECTION OF DOCUMENTARY DRAFTS

### Section

- 4-501. Handling of documentary drafts; duty to send for presentment and to notify.  
4-502. Presentment of on arrival drafts.  
4-503. Responsibility of presenting bank for documents and goods; report of reasons.  
4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

### § 4-501. Handling of documentary drafts; duty to send for presentment and to notify

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that

the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞161(1), 171(4), 171(5).	411, 414, 418, 420 to 424, 426, 430, 432 to
Westlaw Topic No. 52.	433, 435 to 438.
C.J.S. Banks and Banking §§ 328, 330, 336,	
338 to 339, 392 to 397, 401 to 403, 410 to	

### § 4–502. Presentment of on arrival drafts

If a draft or the relevant instructions require presentment “on arrival”, “when goods arrive” or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞161(1), 171(4), 171(5).	411, 414, 418, 420 to 424, 426, 430, 432 to
Westlaw Topic No. 52.	433, 435 to 438.
C.J.S. Banks and Banking §§ 328, 330, 336,	
338 to 339, 392 to 397, 401 to 403, 410 to	

### § 4–503. Responsibility of presenting bank for documents and goods; report of reasons

Unless otherwise instructed and except as provided in Chapter 5 of this Title, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee’s services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞161(1), 171(4), 171(5).	C.J.S. Banks and Banking §§ 328, 330, 336,
Westlaw Topic No. 52.	338 to 339, 392 to 397, 401 to 403, 410 to

411, 414, 418, 420 to 424, 426, 430, 432 to  
433, 435 to 438.

**§ 4-504. Privilege of presenting bank to deal with goods; security interest  
for expenses**

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking  $\Leftrightarrow$ 161(1).  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 328, 330, 336,  
410 to 411, 414, 418, 420 to 424, 426, 430,  
433, 436 to 437.

## CHAPTER 4A. FUNDS TRANSFERS

### Subchapter

1. Subject Matter and Definitions
2. Issue and Acceptance of Payment Orders
3. Execution of Sender's Payment Order by Receiving Bank
4. Payment
5. Miscellaneous Provisions

### SUBCHAPTER 1. SUBJECT MATTER AND DEFINITIONS

#### Section

- 4A-101. Short title.  
4A-102. Subject matter.  
4A-103. Payment order; definitions.  
4A-104. Funds transfer; definitions.  
4A-105. Other definitions.  
4A-106. Time payment order is received.  
4A-107. Federal Reserve regulations and operating circulars.  
4A-108. Exclusion of consumer transactions governed by federal law.

#### § 4A-101. Short title

This Chapter, Sections 1 through 38, shall be known and may be cited as the Uniform Commercial Code—Funds Transfers.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### § 4A-102. Subject matter

Except as otherwise provided in Chapter 8 of this Title, this chapter applies to funds transfers defined in this title.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

#### § 4A-103. Payment order; definitions

(a) In this Chapter:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) “Beneficiary” means the person to be paid by the beneficiary’s bank.

(3) “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) “Receiving bank” means the bank to which the sender’s instruction is addressed.

(5) “Sender” means the person giving the instruction to the receiving bank.

(b) If an instruction complying with paragraph (1) of subsection (a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A–104. Funds transfer; definitions**

In this Chapter:

(a) “Funds transfer” means the series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A fund transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order.

(b) “Intermediary bank” means a receiving bank other than the originator’s bank or the beneficiary’s bank.

(c) “Originator” means the sender of the first payment order in a funds transfer.

(d) “Originator’s bank” means

(i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or

(ii) the originator if the originator is a bank.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A–105. Other definitions**

a) In this Chapter:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact as provided in paragraph 8 of Section 1-201 of this Title.

(a) Other definitions applying to this Chapter and the sections in which they appear are:

"Acceptance" Section 4A-209

"Beneficiary" Section 4A-103

"Beneficiary's bank" Section 4A-103

"Executed" Section 4A-301

"Execution date" Section 4A-301

"Funds transfer" Section 4A-104

"Funds-transfer system rule" Section 4A-501

"Intermediary bank" Section 4A-104

"Originator" Section 4A-104

"Originator's bank" Section 4A-104

"Payment by beneficiary's bank to beneficiary" Section 4A-405

"Payment by originator to beneficiary" Section 4A-406

"Payment by sender to receiving bank" Section 4A-403

"Payment date" Section 4A-401

"Payment order" Section 4A-103



“Receiving bank” Section 4A-103

“Security procedure” Section 4A-201

“Sender” Section 4A-103

b) The following definitions in Chapter 4 of this Title 33 apply to this chapter:

“Clearing house” Section 4-104

“Item” Section 4-104

“Suspends payments” Section 4-104

c) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-106. Time payment order is received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-202 of this Title. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-107. Federal Reserve regulations and operating circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-108. Exclusion of consumer transactions governed by federal law**

This chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Section 1693 et seq.) as amended from time to time.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking §§ 476 to 481.

## SUBCHAPTER 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDERS

**Section**

- 4A-201. Security procedure.
- 4A-202. Authorized and verified payment orders.
- 4A-203. Unenforceability of certain verified payment orders.
- 4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.
- 4A-205. Erroneous payment orders.
- 4A-206. Transmission of payment order through funds-transfer or other communication system.
- 4A-207. Misdescription of beneficiary.
- 4A-208. Misdescription of intermediary bank or beneficiary's bank.
- 4A-209. Acceptance of payment order.
- 4A-210. Rejection of payment order.
- 4A-211. Cancellation and amendment of payment order.
- 4A-212. Liability and duty of receiving bank regarding unaccepted payment.

**§ 4A-201. Security procedure**

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of

- (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or
- (ii) detecting error in the transmission or the content of the payment order or communication.

A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparisons of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-202. Authorized and verified payment orders**

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if

(i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and

(ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if

(i) the security procedure was chosen by the customer after the bank offered, and he customer refused, a security procedure that was commercially reasonable for that customer, and

(ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term “sender” in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-203. Unenforceability of certain verified payment orders**

(a) If an accepted payment order is not an authorized order of a customer identified as sender, but is effective as an order of the customer of this act, the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person

(i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or

(ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order**

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is

(i) not authorized and not effective as the order of the customer under Section 4A-202 of this Title, or

(ii) not enforceable, in whole or in part, against the customer under Section 4A-203 of this Title, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Banks and Banking ☞ 188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-205. Erroneous payment orders**

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order

(i) erroneously instructed payment to a beneficiary not intended by the sender,

(ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or

(iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3) of this subsection.

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a) of this section, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a) of this section, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If

(i) the sender of an erroneous payment order described in subsection (a) of this section is not obliged to pay all or part of the order, and

(ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety (90) days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-206. Transmission of payment order through funds-transfer or other communication system**

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-207. Misdescription of beneficiary**

(a) Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If

(i) a payment order described in subsection (b) of this section is accepted,

(ii) the originator's payment order described the beneficiary inconsistently by name and number, and

(iii) the beneficiary's bank pays the person identified by number as permitted by paragraph (1) of subsection (b) of this section, the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by paragraph (1) of subsection (b) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c) of this section, the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-208. Misdescription of intermediary bank or beneficiary's bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number

refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph (1) of subsection (b) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the bank's obligation under this title.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-209. Acceptance of payment order

(a) Subject to subsection (d) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank

(i) pays the beneficiary

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's; or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within



(i) one hour after that time, or

(ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under paragraph (2) or (3) of subsection (b) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-210. Rejection of payment order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order,

(i) any means complying with the agreement is reasonable and

(ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender

sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled, or the day the sender receives notice, or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking  $\S$  188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking  $\S\S$  476 to 481.

### § 4A-211. Cancellation and amendment of payment order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order

(i) that is a duplicate of a payment order previously issued by the sender,

(ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or

(iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with paragraph (2) of subsection (c) of this section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-212. Liability and duty of receiving bank regarding unaccepted payment

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking §§ 476 to 481.

### SUBCHAPTER 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

**Section**

- 4A-301. Execution and execution date.  
 4A-302. Reserved.  
 4A-303. Erroneous execution of payment order.  
 4A-304. Duty of sender to report erroneously executed payment order.  
 4A-305. Liability for late or improper execution or failure to execute payment.

**§ 4A-301. Execution and execution date**

(a) A payment order is “executed” by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary’s bank can be accepted but cannot be executed.

(b) “Execution date” of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender’s order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender’s instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-302. Reserved****§ 4A-303. Erroneous execution of payment order**

- (a) A receiving bank that
- (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender’s order, or
  - (ii) issues a payment order in execution of the sender’s order and then issues a duplicate order, is entitled to payment of the amount of the sender’s order if this chapter otherwise complied with. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender’s order is entitled to payment of the amount of the sender’s order if

(i) that subsection is otherwise satisfied and

(ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-304. Duty of sender to report erroneously executed payment order

If the sender of a payment order that is erroneously executed receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under this title for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

### § 4A-305. Liability for late or improper execution or failure to execute payment

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of this Title results in delay in payment to the

beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of this Title results in

(i) noncompletion of the funds transfer,

(ii) failure to use an intermediary bank designated by the originator, or

(iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a) of this section, resulting from the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) of this section is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Library References**

Banks and Banking  $\S$  188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking  $\S\S$  476 to 481.

### **SUBCHAPTER 4. PAYMENT**

#### **Section**

4A-401. Payment date.

4A-402. Obligation of sender to pay receiving bank.

4A-403. Payment by sender to receiving bank.

4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

**Section**

4A-405. Payment by beneficiary's bank to beneficiary.

4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

**§ 4A-401. Payment date**

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⇌ 188.5.

Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-402. Obligation of sender to pay receiving bank**

(a) This section is subject to Chapter 15 of this Act.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject other provisions of this Title with respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) of this section and an intermediary bank is obliged to refund payment as stated in subsection (d) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) of this section may not be varied by agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## Library References

Banks and Banking ⇌188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-403. Payment by sender to receiving bank**

(a) Payment of the sender's obligation to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender

(i) credited an account of the receiving bank with the sender, or

(ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a) of this section, the time when payment of the sender's obligation under subsections (b) or (c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Library References**

Banks and Banking ⌘188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary**

(a) Subject to this title, if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) of this section may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⌘188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-405. Payment by beneficiary's bank to beneficiary**

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under this act occurs when and to the extent

(i) the beneficiary is notified of the right to withdraw the credit,  
(ii) the bank lawfully applies the credit to a debt of the beneficiary, or  
(iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under this act occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e) of this section, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated,

(ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under this act.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that

(i) nets obligations multilaterally among participants, and

(ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer,

(1) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance,

(2) the beneficiary's bank is entitled to recover payment from the beneficiary,

(3) no payment by the originator to the beneficiary occurs under this act, and

(4) each sender in the funds transfer is excused from its obligation to pay its payment order under this act because the funds transfer has not been completed.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-406. Payment by originator to beneficiary; discharge of underlying obligation**

(a) The originator of a funds transfer pays the beneficiary of the originator's payment order

(i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and

(ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless

(i) the payment under subsection (a) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation,

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment,

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank.

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Medium and time of settlement by bank, see Title 33, § 4-213.

**Library References**

Banks and Banking ☞188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

## SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

**Section**

- 4A-501. Variation by agreement and effect of funds.  
 4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank.  
 4A-503. Injunction or restraining order with respect to funds transfer.  
 4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.  
 4A-505. Preclusion of objection to debit of customer's account.  
 4A-506. Rate of interest.  
 4A-507. Choice of law.  
 4A-508 to 4A-550. Reserved.  
 4A-551. Validity of prior transactions.

**§ 4A-501. Variation by agreement and effect of funds**

(a) Except as otherwise provided in this chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ188.5.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-502. Creditor process served on receiving bank; setoff by beneficiary's bank**

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the

bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary’s bank has received a payment order for payment to the beneficiary’s account in the bank, the following rules apply:

(1) The bank may credit the beneficiary’s account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary’s account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary’s account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary’s bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ134, 188.5.  
Westlaw Topic No. 52.

C.J.S. Banks and Banking §§ 312 to 325, 327,  
476 to 481.

**§ 4A-503. Injunction or restraining order with respect to funds transfer**

For proper cause and in compliance with applicable law, a court may restrain

- (i) a person from issuing a payment order to initiate a funds transfer,
- (ii) an originator’s bank from executing the payment order of the originator,  
or
- (iii) the beneficiary’s bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Attachment Ⓒ49.  
Banks and Banking Ⓒ188.5.  
Injunction Ⓒ43.  
Westlaw Topic Nos. 44, 52, 212.

C.J.S. Attachment §§ 64 to 69, 71 to 72, 76.  
C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Injunctions § 123.

**§ 4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account**

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ188.5.  
Westlaw Topic No. 52.  
C.J.S. Banks and Banking §§ 476 to 481.

**§ 4A-505. Preclusion of objection to debit of customer's account**

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within (1) one year after the notification was received by the customer.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking Ⓒ129, 133, 188.5.                      C.J.S. Banks and Banking §§ 285, 291 to 295,  
Westlaw Topic No. 52.    335 to 336, 340 to 343, 354 to 358, 370 to  
371, 476 to 481.

**§ 4A-506. Rate of interest**

(a) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined

(i) by agreement of the sender and receiving bank, or


(ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a) of this section, the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by three hundred sixty (360). The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required

to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Interest 31, 56.  
Westlaw Topic No. 219.

C.J.S. Interest and Usury; Consumer Credit  
§§ 84 to 86, 129, 132 to 133.

### § 4A-507. Choice of law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) of this section applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern

(i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

**Title 33, § 4A-507**

**UNIFORM COMMERCIAL CODE**

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c) of this section, the agreement under subsection (b) of this section prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

**Library References**

Banks and Banking ☞188.5, 216.  
Contracts ☞129(1), 206.  
Westlaw Topic Nos. 52, 95.

C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Contracts §§ 229 to 230, 238 to 240,  
359.

**§§ 4A-508 to 4A-550. Reserved**

**§ 4A-551. Validity of prior transactions**

Transactions validly entered into before the effective date of this act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment has not occurred.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



## CHAPTER 5. LETTERS OF CREDIT

### Section

- 5-101. Short title.
- 5-102. Definitions.
- 5-103. Scope.
- 5-104. Formal requirements.
- 5-105. Consideration.
- 5-106. Issuance, amendment, cancellation, and duration.
- 5-107. Confirmer, nominated person, and adviser.
- 5-108. Issuer's rights and obligations.
- 5-109. Fraud and forgery.
- 5-110. Warranties.
- 5-111. Remedies.
- 5-112. Transfer of letter of credit.
- 5-113. Transfer by operation of law.
- 5-114. Assignment of proceeds.
- 5-115. Statute of limitations.
- 5-116. Choice of law and forum.
- 5-117. Subrogation of issuer, applicant, and nominated person.
- 5-118. Applicability.
- 5-118.1. Security interest of issuer or nominated person.
- 5-119. Savings clause.

### § 5-101. Short title

This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### § 5-102. Definitions

(a) In this chapter:

(1) “Adviser” means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;

(2) “Applicant” means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;

(3) “Beneficiary” means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit;

(4) “Confirmer” means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another;

(5) “Dishonor” of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;

(6) “Document” means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

(i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection (e) of Section 5-108 of this Title; and

(ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral;

(7) “Good faith” means honesty in fact in the conduct or transaction concerned;

(8) “Honor” of a letter of credit means performance of the issuer’s undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, “honor” occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance;

(9) “Issuer” means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes;

(10) “Letter of credit” means a definite undertaking that satisfies the requirements of Section 5-104 of this Title by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value;

(11) “Nominated person” means a person whom the issuer:

(i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and

(ii) undertakes by agreement or custom and practice to reimburse;

(12) “Presentation” means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit;

(13) “Presenter” means a person making a presentation as or on behalf of a beneficiary or nominated person;

(14) “Record” means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(15) “Successor of a beneficiary” means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other chapters of this Title applying to this chapter and the sections in which they appear are: “Accept” or “Acceptance” Section 3–409. “Value” Sections 3–303 and 4–211.

(c) Chapter 1 of this Title contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⌘191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–103. Scope**

(a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(c) With the exception of this subsection, subsections (a) and (d) of this section, paragraphs (9) and (10) of subsection (a) of Section 5–102 of this Title, subsection (d) of Section 5–106 of this Title, and subsection (d) of Section 5–114 of this Title, and except to the extent prohibited in Section 15 of this act and subsection (d) of Section 5–117 of this Title, the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⌘191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–104. Formal requirements**

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

(1) By a signature; or

(2) In accordance with the agreement of the parties or the standard practice referred to in subsection (e) of Section 5–108 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–105. Consideration**

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–106. Issuance, amendment, cancellation, and duration**

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one (1) year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five (5) years after its stated date of issuance, or if none is stated, after the date on which it is issued.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–107. Confirmer, nominated person, and adviser**

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice

received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

### § 5–108. Issuer's rights and obligations

(a) Except as otherwise provided in Section 5–109 of this Title, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5–113 of this Title and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) To honor;

(2) If the letter of credit provides for honor to be completed more than seven (7) business days after presentation, to accept a draft or incur a deferred obligation; or

(3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in subsection (a) of Section 5–109 of this Title or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

- (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;
  - (2) An act or omission of others; or
  - (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.
- (g) If an undertaking constituting a letter of credit under paragraph (10) of subsection (a) of Section 5–102 of this Title contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.
- (h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.
- (i) An issuer that has honored a presentation as permitted or required by this article:
- (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
  - (2) Takes the documents free of claims of the beneficiary or presenter;
  - (3) Is precluded from asserting a right of recourse on a draft under Sections 3–414 and 3–415 of this Title;
  - (4) Except as otherwise provided in Sections 5–110 and 5–117 of this Title, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
  - (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

### § 5–109. Fraud and forgery

- (a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:
- (1) The issuer shall honor the presentation, if honor is demanded by:
    - (i) a nominated person who has given value in good faith and without notice of forgery or material fraud;
    - (ii) a confirmer who has honored its confirmation in good faith;
    - (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or
    - (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under paragraph (1) of subsection (a) of this section.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Sales, payment by buyer before inspection, see Title 33, § 2–512.

**Library References**

Banks and Banking ⌘191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–110. Warranties**

(a) If its presentation is honored, the beneficiary warrants:

(1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection (a) of Section 5–109 of this Title; and

(2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) of this section are in addition to warranties arising under Chapters 3, 4, 7 and 8 of this Title because of the presentation or transfer of documents covered by any of those chapters.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⌘191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5-111. Remedies**

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5-112. Transfer of letter of credit**

(a) Except as otherwise provided in Section 5-113 of this Title, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.



(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) The transfer would violate applicable law; or

(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection (e) of Section 5-108 of this Title or is otherwise reasonable under the circumstances

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

### § 5-113. Transfer by operation of law

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection (e) of Section 5-108 of this Title or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obligated to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in subsection (i) of Section 5-108 of this Title even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5-109 of this Title.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b) of this section.

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–114. Assignment of proceeds**

(a) In this section, “proceeds of a letter of credit” means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary’s drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary’s assignment of the proceeds of a letter of credit and are superior to the assignee’s right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer’s or nominated person’s payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary’s rights to proceeds is governed by Chapter 9 of this Title or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary’s right to proceeds and its perfection are governed by Chapter 9 of this Title or other law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Control of letter of credit right, see Title 33, § 9–120.

**Library References**

Banks and Banking ☞191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**§ 5–115. Statute of limitations**

An action to enforce a right or obligation arising under this article must be commenced within one (1) year after the expiration date of the relevant letter of credit or one (1) year after the cause of action accrues, whichever occurs later.

A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking  $\S$ 191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
 $\S\S$  377 to 415.

### § 5–116. Choice of law and forum

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5–104 of this Title or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:

(1) This chapter would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section;

(2) The relevant undertaking incorporates rules of custom or practice; and

(3) There is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection (c) of Section 5–103 of this Title.

(d) If there is conflict between this chapter and Chapter 3, 4, 4A, or 9 of this Title, this chapter governs.

(e) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Secured transactions, law governing perfection and priority of security interests in letter of credit rights, see Title 33, § 9–306.

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

**Library References**

Banks and Banking ⌘191.	C.J.S. Contracts §§ 229 to 230, 236 to 240,
Contracts ⌘127(4), 129(1), 206.	359.
Westlaw Topic Nos. 52, 95.	
C.J.S. Bills and Notes; Letters of Credit	
§§ 377 to 415.	

**§ 5–117. Subrogation of issuer, applicant, and nominated person**

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ⌘191.	C.J.S. Bills and Notes; Letters of Credit
Westlaw Topic No. 52.	§§ 377 to 415.

**§ 5–118. Applicability**

This Act applies to a letter of credit that is issued after passage of this Act. This Act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before this Act's passage.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

## LETTERS OF CREDIT

## Title 33, § 5-119

### Cross References

Secured party defined, see Title 33, § 9-106.  
Secured transactions,  
    Enforceability of security interest, see Title 33, § 9-203.  
    Priorities among conflicting security interests in and agricultural liens on same collateral, see Title 33, § 9-322.  
    Scope of chapter, see Title 33, § 9-110.  
    Security interest perfected upon attachment, see Title 33, § 9-309.

### Library References

Banks and Banking ☞191.  
Westlaw Topic No. 52.  
C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

### § 5-118.1. Security interest of issuer or nominated person

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) As long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Chapter 9 of this Title, but:

(1) a security agreement is not necessary to make the security interest enforceable;

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, so long as the debtor does not have possession of the document, the security is perfected and has priority over a conflicting security interest in the document.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### Library References

Banks and Banking ☞191.  
Secured Transactions ☞11.1, 22, 88, 89.  
Westlaw Topic Nos. 52, 349A.  
C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.  
C.J.S. Secured Transactions §§ 2, 7 to 8, 29,  
63 to 68.

### § 5-119. Savings clause

A transaction arising out of or associated with a letter of credit that was issued before the enactment of this Act, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Title 33, § 5-119**

**UNIFORM COMMERCIAL CODE**

**Library References**

Banks and Banking ⇨191.  
Westlaw Topic No. 52.

C.J.S. Bills and Notes; Letters of Credit  
§§ 377 to 415.

**CHAPTER 6. BULK SALES [RESERVED]**

# CHAPTER 7. WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

## Subchapter

1. General
2. Warehouse Receipts—Special Provisions
3. Bills of Lading—Special Provisions
4. Warehouse Receipts and Bills of Lading—General Obligations
5. Warehouse Receipts and Bills of Lading—Negotiations and Transfer
6. Warehouse Receipts and Bills of Lading—Miscellaneous Provisions
7. Savings Clause and Applicability

## SUBCHAPTER 1. GENERAL

### Section

- 7-101. Short title.  
7-102. Definitions and index of definitions.  
7-103. Relation of chapter to treaty or statute.  
7-104. Negotiable and nonnegotiable document of title.  
7-105. Reserved.  
7-105.1. Reissuance in alternative medium.  
7-106. Control of electronic document of title.

### § 7-101. Short title

This Chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### § 7-102. Definitions and index of definitions

(a) In this chapter, unless the context otherwise requires

(1) “Bailee” means a person that by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means the person named in a bill of lading as the person from whom the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract of storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) “Contract for sale”, Section 2–106.

(2) “Lessee in the ordinary course of business”, Section 2A–103.

(3) “Receipt” of goods, Section 2–103.

(c) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Carriers ⇨46 to 60.

Shipping ⇨106.

Warehousemen ⇨11.

Westlaw Topic Nos. 70, 354, 403.

C.J.S. Carriers §§ 372 to 380, 382, 384 to 390, 434.

C.J.S. Shipping §§ 256 to 265.

C.J.S. Warehousemen and Safe Depositaries §§ 23 to 55.

**§ 7–103. Relation of chapter to treaty or statute**

(a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this Nation to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a



bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C., Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C., Section 7001(c)) or authorize electronic delivery of the notices described in Section 103(b).

(d) To the extent there is a conflict between any law governing electronic transactions and this chapter, this chapter governs.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### § 7–104. Negotiable and nonnegotiable document of title

(a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌54.1 to 59.

Shipping ⇌106(5).

Warehousemen ⇌15.

Westlaw Topic Nos. 70, 354, 403.

C.J.S. Carriers §§ 375 to 378, 384 to 390.

C.J.S. Shipping §§ 256 to 257, 259.

C.J.S. Warehousemen and Safe Depositaries  
§§ 23, 36 to 40, 50 to 55.

### § 7–105. Reserved

#### § 7–105.1. Reissuance in alternative medium

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) the electronic document ceases to have any effect or validity; and

## Title 33, § 7–105.1

## UNIFORM COMMERCIAL CODE

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Cross References

Duplicate receipt or bill, overissue, see Title 33, § 7–402.

### Library References

Carriers ◊49.

Warehousemen ◊13.

Westlaw Topic Nos. 70, 403.

C.J.S. Carriers §§ 377 to 378.

C.J.S. Warehousemen and Safe Depositories  
§§ 23, 25 to 31.

## § 7–106. Control of electronic document of title

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇨50 to 59.

Warehousemen ⇨11.

Westlaw Topic Nos. 70, 403.

C.J.S. Carriers §§ 374 to 380, 382, 384 to 390, 434.

C.J.S. Warehousemen and Safe Depositaries

§§ 23 to 55.

## SUBCHAPTER 2. WAREHOUSE RECEIPTS— SPECIAL PROVISIONS

### Section

7–201. Persons that may issue a warehouse receipt; storage under bond.

7–202. Form of warehouse receipt; effect of omission.

7–203. Liability for nonreceipt or misdescription.

7–204. Duty of care; contractual limitation of warehouse's liability.

7–205. Title under warehouse receipt defeated in certain cases.

7–206. Termination of storage at warehouse's option.

7–207. Goods must be kept separate; fungible goods.

7–208. Altered warehouse receipts.

7–209. Lien of warehouse.

7–210. Enforcement of warehouseman's lien.

### § 7–201. Persons that may issue a warehouse receipt; storage under bond

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person who is the owner of the goods and is not a warehouse.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Document defined, secured transactions, see Title 33, § 9–106.

#### Library References

Warehousemen ⇨13.

Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries

§§ 23, 25 to 31.

### § 7–202. Form of warehouse receipt; effect of omission

(a) A warehouse receipt need not be in any particular form.


(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by the omission:

- (1) a statement of the location of the warehouse where the goods are stored;
- (2) the date of issue of the receipt;
- (3) the unique identification code of the receipt;
- (4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
- (5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
- (6) a description of the goods or of the packages containing them;
- (7) the signature of the warehouse or its agent;
- (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
- (9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of the Uniform Commercial Code and do not impair its obligation of delivery under Section 7-403 of this Title or its duty of care under Section 7-204 of this Title. Any contrary provisions are ineffective.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Warehousemen 12.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 23 to 24, 26 to 29.

### § 7-203. Liability for nonreceipt or misdescription

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain” or words of similar import, if such indication is true; or
- (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Warehousemen ⇨16, 17.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 23, 41 to 49.

**§ 7–204. Duty of care; contractual limitation of warehouse’s liability**

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods as a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse shall not be liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Warehousemen ⇨24.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 56 to 58, 60 to 79.

**§ 7–205. Title under warehouse receipt defeated in certain cases**

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Warehouse receipts and bills of lading, rights acquired by due negotiation, see Title 33, § 7–502.

**Library References**

Warehousemen ⇨16, 17.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 23, 41 to 49.

**§ 7–206. Termination of storage at warehouse’s option**

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if a period is not fixed, within a stated period not less than thirty (30) days after the

warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 7-210 of this Title.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and Section 7-210 of this Title, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Warehousemen  $\Leftrightarrow$  25, 29.1 to 33.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 80 to 98, 106 to 114.

### § 7-207. Goods must be kept separate; fungible goods

(a) Unless the warehouse receipt otherwise provides, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts which the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Warehousemen  $\Leftrightarrow$  19, 20.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 14 to 15, 59, 63.

**§ 7–208. Altered warehouse receipts**

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Warehousemen ⇄14.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 23, 32 to 35.

**§ 7–209. Lien of warehouse**

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Chapter 9.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document:

(1) delivers or entrusts the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7–403 of this Title; or

(C) power of disposition under Sections 2–403, 2A–304(2), 2A–305(2), and Chapter 9 of the Uniform Commercial Code or other statute or rule of law; or

(2) acquiesces in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Warehousemen ~~§~~29.1 to 33.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositories  
§§ 106 to 114.

### § 7–210. Enforcement of warehouseman's lien

(a) Except as provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a



newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) A warehouse may buy at any public sale pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business the lien may be enforced in accordance with subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Receipts, bills of lading, and documents of title, enforcement of a carrier's lien, see Title 33, § 7-308.

#### Library References

Warehousemen ⇄33.  
Westlaw Topic No. 403.

C.J.S. Warehousemen and Safe Depositaries  
§§ 113 to 114.

### SUBCHAPTER 3. BILLS OF LADING— SPECIAL PROVISIONS

#### Section

- 7-301. Liability for nonreceipt or misdescription; said to contain; shipper's load and count; improper handling.
- 7-302. Through bills of lading and similar documents of title.
- 7-303. Diversion; reconsignment; change of instructions.
- 7-304. Bills of lading in a set.
- 7-305. Destination bills.
- 7-306. Altered bills of lading.

**Section**

7-307. Lien of carrier.

7-308. Enforcement of carrier's lien.

7-309. Duty of care; contractual limitation of carrier's liability.

**§ 7-301. Liability for nonreceipt or misdescription; said to contain; shipper's load and count; improper handling**

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or words of similar import, if such indication is true.

(b) If goods are loaded by an issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk freight; and

(2) words such as "shipper's weight, load and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load and count" or words of similar import may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer shall not be liable for damages caused by the improper loading. However, omission of such words does not imply liability for such damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility and liability under the contract of carriage to any person other than the shipper.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Carriers Ⓒ50 to 59.

Shipping Ⓒ106.

Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 374 to 380, 382, 384 to 390, 434.

C.J.S. Shipping §§ 256 to 265.

**§ 7-302. Through bills of lading and similar documents of title**

(a) The issuer of a through bill of lading, or other document embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the connecting carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action by any person entitled to recover on the bill or other document for the breach.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Carriers ⇌50 to 59.

Shipping ⇌106.

Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 374 to 380, 382, 384 to 390, 434.

C.J.S. Shipping §§ 256 to 265.

**§ 7-303. Diversion; reconsignment; change of instructions**

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ☞51 to 53, 82 to 94.	C.J.S. Shipping §§ 256 to 265, 268 to 275,
Shipping ☞106, 113 to 118.	336 to 337.
Westlaw Topic Nos. 70, 354.	
C.J.S. Carriers §§ 374 to 376, 379 to 380,	
382, 396 to 410, 434.	

### § 7-304. Bills of lading in a set

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which has an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with subchapter 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ☞49.	C.J.S. Carriers §§ 377 to 378.
Shipping ☞106.	C.J.S. Shipping §§ 256 to 265.
Westlaw Topic Nos. 70, 354.	

### § 7-305. Destination bills

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of a person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding

bill of lading or other receipt covering the goods, the issuer, subject to Section 7-105 of this Title<sup>1</sup>, may procure a substitute bill to be issued at any place designated in the request.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

<sup>1</sup> Title 33, § 7-105 is reserved.

#### Library References

Carriers Ⓒ46.5.  
Shipping Ⓒ106.  
Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 372 to 373.  
C.J.S. Shipping §§ 256 to 265.

### § 7-306. Altered bills of lading

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers Ⓒ49.  
Shipping Ⓒ106.  
Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 377 to 378.  
C.J.S. Shipping §§ 256 to 265.

### § 7-307. Lien of carrier

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges subsequent to the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers Ⓒ197.  
Shipping Ⓒ154.  
Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 483 to 485.  
C.J.S. Shipping §§ 377 to 378.

### § 7-308. Enforcement of carrier's lien

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are

commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in subsection (b) of Section 7-210 of this Title.

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ☞197.  
Shipping ☞154.  
Westlaw Topic Nos. 70, 354.

C.J.S. Carriers §§ 483 to 485.  
C.J.S. Shipping §§ 377 to 378.

### § 7-309. Duty of care; contractual limitation of carrier's liability

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the

bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or transportation agreement.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌107 to 137, 147 to 168.	C.J.S. Shipping §§ 276 to 277, 279, 287, 291,
Shipping ⇌119.1 to 132, 140 to 142.	294, 298, 300 to 339, 341 to 366.
Westlaw Topic Nos. 70, 354.	
C.J.S. Carriers §§ 393, 411 to 426, 428 to	
436, 444 to 457.	

## SUBCHAPTER 4. WAREHOUSE RECEIPTS AND BILLS OF LADING—GENERAL OBLIGATIONS

### Section

- 7-401. Irregularities in issue of receipt or bill or conduct of issuer.
- 7-402. Duplicate receipt or bill; overissue.
- 7-403. Obligation of bailee to deliver; excuse.
- 7-404. No liability for good-faith delivery pursuant to document of title.

### § 7-401. Irregularities in issue of receipt or bill or conduct of issuer

The obligations imposed by this chapter on an issuer apply to a document of title even if:

- (1) the document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issue, form or content;
- (2) the issuer violated laws regulating the conduct of its business;
- (3) the goods covered by the document were owned by the bailee at the time the document was issued; or
- (4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌46.	C.J.S. Carriers §§ 372 to 373.
Shipping ⇌106.	C.J.S. Shipping §§ 256 to 265.
Warehousemen ⇌11.	C.J.S. Warehousemen and Safe Depositories
Westlaw Topic Nos. 70, 354, 403.	§§ 23 to 55.

### § 7-402. Duplicate receipt or bill; overissue

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost,

stolen, or destroyed documents, or substitute documents issued pursuant to Section 7-105.1 of this Title. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document as such by conspicuous notation.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers Ⓢ46 to 60.	C.J.S. Carriers §§ 372 to 380, 382, 384 to 390, 434.
Shipping Ⓢ106.	C.J.S. Shipping §§ 256 to 265.
Warehousemen Ⓢ11.	C.J.S. Warehousemen and Safe Depositaries §§ 23 to 55.
Westlaw Topic Nos. 70, 354, 403.	

### § 7-403. Obligation of bailee to deliver; excuse

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

- (1) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouse's lawful termination of storage;
- (4) the exercise by a seller of its right to stop delivery pursuant to Section 2-705 of this Title or by a lessor of its right to stop delivery pursuant to Section 2A-526 of this Title;
- (5) a diversion, reconsignment or other disposition pursuant to Section 7-303 of this Title;
- (6) release, satisfaction or any other personal defense against the claimant; or
- (7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless the person claiming the goods is a person against which the document of title does not confer a right under subsection (a) of Section 7-503 of this Title:

- (1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
- (2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



**Cross References**

Document of title to goods defeated in certain cases, see Title 33, § 7–503.  
 Form of warehouse receipt, effect of omission, see Title 33, § 7–202.

**Library References**

Carriers ⇨82 to 94.	C.J.S. Carriers §§ 396 to 410.
Shipping ⇨113 to 117.	C.J.S. Shipping §§ 268 to 275.
Warehousemen ⇨25.	C.J.S. Warehousemen and Safe Depositaries
Westlaw Topic Nos. 70, 354, 403.	§§ 80 to 98.

**§ 7–404. No liability for good-faith delivery pursuant to document of title**

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of the document of title or pursuant to this chapter is not liable even if:

- (1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
- (2) the person to which the bailee delivered the goods had no authority to receive the goods.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Carriers ⇨82 to 94.	C.J.S. Carriers §§ 396 to 410.
Shipping ⇨113 to 117.	C.J.S. Shipping §§ 268 to 275.
Warehousemen ⇨25.	C.J.S. Warehousemen and Safe Depositaries
Westlaw Topic Nos. 70, 354, 403.	§§ 80 to 98.

## SUBCHAPTER 5. WAREHOUSE RECEIPTS AND BILLS OF LADING—NEGOTIATION AND TRANSFER

**Section**

- 7–501. Form of negotiation and requirements of due negotiation.
- 7–502. Rights acquired by due negotiation.
- 7–503. Document of title to goods defeated in certain cases.
- 7–504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.
- 7–505. Endorser not a guarantor for other parties.
- 7–506. Delivery without indorsement; right to compel indorsement.
- 7–507. Warranties on negotiation or transfer of receipt or bill.
- 7–508. Warranties of collecting bank as to documents of title.
- 7–509. Adequate compliance with commercial contract.

**§ 7–501. Form of negotiation and requirements of due negotiation**

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's endorsement and delivery. After the named person's endorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been endorsed to a named person requires endorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser of the bill of any interest of that person in the goods.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Cross References**

Uniform Electronic Transactions Act, transferable records, see Title 33, § 15-116.

**Library References**

Carriers ⇨56.	C.J.S. Carriers §§ 384 to 386.
Shipping ⇨106(5).	C.J.S. Shipping §§ 256 to 257, 259.
Warehousemen ⇨15.	C.J.S. Warehousemen and Safe Depositaries
Westlaw Topic Nos. 70, 354, 403.	§§ 23, 36 to 40, 50 to 55.

**§ 7-502. Rights acquired by due negotiation**

(a) Subject to Sections 7-205 and 7-503 of this Title, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) title to the document;
- (2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(b) Subject to Section 7-503 of this Title, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌57 to 59.

Shipping ⇌106(5).

Warehousemen ⇌16, 17.

Westlaw Topic Nos. 70, 354, 403.

C.J.S. Carriers §§ 375 to 378, 384, 387 to 390.

C.J.S. Shipping §§ 256 to 257, 259.

C.J.S. Warehousemen and Safe Depositaries §§ 23, 41 to 49.

### § 7-503. Document of title to goods defeated in certain cases

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 7-403 of this Title; or

(C) power of disposition under Sections 2-403, 2A-304(2), 2A-305(2), and Chapter 9 of this Title or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 7-504 of this Title to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with subchapter 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ☞46 to 60.	C.J.S. Carriers §§ 372 to 380, 382, 384 to 390, 434.
Shipping ☞106.	C.J.S. Shipping §§ 256 to 265.
Warehousemen ☞11.	C.J.S. Warehousemen and Safe Depositaries §§ 23 to 55.
Westlaw Topic Nos. 70, 354, 403.	

### § 7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor who could treat the sale as void under Section 2-402 or 2A-308 of this Title;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery pursuant to a nonnegotiable document of title may be stopped by a seller under Section 2-705 of this Title or a lessor under Section 2A-526 of this Title, subject to the requirement of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ☞57 to 59.	Westlaw Topic Nos. 70, 354, 403.
Shipping ☞106(5).	C.J.S. Carriers §§ 375 to 378, 384, 387 to 390.
Warehousemen ☞16, 17.	

C.J.S. Shipping §§ 256 to 257, 259.  
 C.J.S. Warehousemen and Safe Depositories  
 §§ 23, 41 to 49.

### § 7–505. Endorser not a guarantor for other parties

The endorsement of a tangible document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌57 to 59.	C.J.S. Carriers §§ 375 to 378, 384, 387 to 390.
Shipping ⇌106(5).	C.J.S. Shipping §§ 256 to 257, 259.
Warehousemen ⇌16, 17.	C.J.S. Warehousemen and Safe Depositories §§ 23, 41 to 49.
Westlaw Topic Nos. 70, 354, 403.	

### § 7–506. Delivery without indorsement; right to compel indorsement

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌56.	C.J.S. Carriers §§ 384 to 386.
Shipping ⇌106(5).	C.J.S. Shipping §§ 256 to 257, 259.
Warehousemen ⇌15.	C.J.S. Warehousemen and Safe Depositories §§ 23, 36 to 40, 50 to 55.
Westlaw Topic Nos. 70, 354, 403.	

### § 7–507. Warranties on negotiation or transfer of receipt or bill

If a person negotiates or transfers a document of title for value, otherwise than as a mere intermediary under Section 7–508 of this Title, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Carriers ⇌57 to 59.	C.J.S. Carriers §§ 375 to 378, 384, 387 to 390.
Shipping ⇌106(5).	C.J.S. Shipping §§ 256 to 257, 259.
Warehousemen ⇌16, 17.	C.J.S. Warehousemen and Safe Depositories §§ 23, 41 to 49.
Westlaw Topic Nos. 70, 354, 403.	

### § 7–508. Warranties of collecting bank as to documents of title

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim

against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Cross References

Warranties on negotiation or transfer of receipt or bill, see Title 33, § 7-507.

### § 7-509. Adequate compliance with commercial contract

Whether a document is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Chapter 2, 2A, or 5.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## SUBCHAPTER 6. WAREHOUSE RECEIPTS AND BILLS OF LADING—MISCELLANEOUS PROVISIONS

### Section

7-601. Lost, stolen, or destroyed documents of title.

7-602. Judicial process against goods covered by negotiable document of title.

7-603. Conflicting claims; interpleader.

### § 7-601. Lost, stolen, or destroyed documents of title

(a) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this section.

(b) A bailee that, without court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Lost Instruments ⇌ 1 to 25.

Westlaw Topic No. 246.

C.J.S. Lost Instruments §§ 1 to 33.

**§ 7–602. Judicial process against goods covered by negotiable document of title**

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Carriers ☞57 to 59.	C.J.S. Carriers §§ 375 to 378, 384, 387 to 390.
Shipping ☞106(5).	C.J.S. Shipping §§ 256 to 257, 259.
Warehousemen ☞16, 17.	C.J.S. Warehousemen and Safe Depositaries §§ 23, 41 to 49.
Westlaw Topic Nos. 70, 354, 403.	

**§ 7–603. Conflicting claims; interpleader**

If more than one person claims title or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Carriers ☞99.	C.J.S. Interpleader §§ 1 to 48.
Interpleader ☞1 to 43.	C.J.S. Shipping §§ 336 to 337.
Shipping ☞118.	C.J.S. Warehousemen and Safe Depositaries § 92.
Warehousemen ☞25(8).	
Westlaw Topic Nos. 70, 222, 354, 403.	

**SUBCHAPTER 7. SAVINGS CLAUSE AND APPLICABILITY****Section**

7–701, 7–702. Reserved.  
7–703. Applicability.  
7–704. Savings clause.

**§§ 7–701, 7–702. Reserved****§ 7–703. Applicability**

This chapter applies to a document of title that is issued or a bailment that arises on or after January 1, 2007. This chapter does not apply to a document of title that is issued or a bailment that arises before January 1, 2007, even if the document of title or bailment would be subject to this chapter if the

**Title 33, § 7-703**

**UNIFORM COMMERCIAL CODE**

document of title had been issued or bailment had arisen on or after January 1, 2007. This chapter does not apply to a right of action that has accrued before January 1, 2007.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**§ 7-704. Savings clause**

A document of title issued or a bailment that arises before January 1, 2007, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]



## CHAPTER 8. INVESTMENT SECURITIES

### Subchapter

1. Short Title and General Matters
2. Issue and Issuer
3. Purchase
4. Registration
5. Default
6. Savings Clause

### SUBCHAPTER 1. SHORT TITLE AND GENERAL MATTERS

#### Section

- 8-101. Short title.
- 8-102. Definitions.
- 8-103. Rules for determining whether certain obligations and interests are securities or financial assets.
- 8-104. Acquisition of security on financial asset or interest therein.
- 8-105. Notice of adverse claim.
- 8-106. Control.
- 8-107. Whether indorsement, instruction, or entitlement order is effective.
- 8-108. Warranties in direct holding.
- 8-109. Warranties in indirect holding.
- 8-110. Applicability; choice of law.
- 8-111. Clearing corporation rules.
- 8-112. Creditor's legal process.
- 8-113. Statute of frauds inapplicable.
- 8-114. Evidentiary rules concerning certificated securities.
- 8-115. Securities intermediary and others not liable to adverse claimant.
- 8-116. Securities intermediary as purchaser for value.

#### § 8-101. Short title

This chapter may be cited as Uniform Commercial Code—Investment Securities

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### § 8-102. Definitions

(a) In this chapter:

(1) “Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset;

(2) “Bearer form”, as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its term but not by reason of an indorsement;

(3) “Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity;

(4) “Certificated security” means a security that is represented by a certificate;

(5) “Clearing corporation” means:

(i) a person that is registered as a “clearing agency” under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority;

(6) “Communicate” means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information;

(7) “Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of paragraph (2) or (3) of subsection (b) of Section 8-501 of this Title, that person is the entitlement holder;

(8) “Entitlement order” means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

(9) “Financial asset”, except as otherwise provided in Section 8-103 of this Title, means:

(i) a security;

(ii) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

As context requires, the term means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement;

(10) “Good faith”, for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(11) “Indorsement” means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer, or redeem it;

(12) “Instruction” means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed;

(13) “Registered form”, as applied to a certificate security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states;

(14) “Securities intermediary” means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

(15) “Security”, except as otherwise provided in Section 8–103 of this Title, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter;

(16) “Security certificate” means a certificate representing a security;

(17) “Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Subchapter 5 of this Chapter; and

(18) “Uncertificated security” means a security that is not represented by a certificate.

(b) Other definitions applying to this chapter and the sections in which they appear are:

“Appropriate person”. Section 8–107.

“Control”. Section 8–106.

“Delivery”. Section 8–301.

“Investment company security”. Section 8–103.

“Issuer”. Section 8–201.

“Overissue”. Section 8–210.

“Protected purchaser”. Section 8–303.

“Securities account”. Section 8–501.

(c) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(d) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Documentary draft defined, see Title 33, § 4–104.

**Library References**

Bonds ☞1.	C.J.S. Bonds §§ 1 to 3, 6.
Corporations ☞94, 468.	C.J.S. Corporations §§ 235, 241, 751 to 755.
Counties ☞172.	C.J.S. Counties §§ 349 to 353.
Municipal Corporations ☞906.	C.J.S. Municipal Corporations §§ 1645 to 1646, 1702.
States ☞146.	C.J.S. States §§ 437 to 455.
Towns ☞52.	C.J.S. Towns §§ 210 to 228.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**§ 8–103. Rules for determining whether certain obligations and interests are securities or financial assets**

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this chapter and not by Chapter 3 of this Title, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 3 of this Title is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Chapter 9, Subchapter 1, of Section 1–9–106 of this Title, is not a security or a financial asset.

(g) A document of title is not a financial asset unless subparagraph (iii) of paragraph (9) of subsection (a) of Section 8–102 of this Title applies.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞1, 6.	C.J.S. Bonds §§ 1 to 3, 6, 9 to 12.
Corporations ☞94, 95, 470, 471.	C.J.S. Corporations §§ 235, 237, 241, 751 to 752.
Counties ☞183(2).	C.J.S. Counties §§ 357 to 358.
Municipal Corporations ☞922.	C.J.S. Municipal Corporations §§ 1684 to 1693, 1697 to 1698.
States ☞154.	C.J.S. States §§ 438, 441, 446 to 447.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**§ 8–104. Acquisition of security on financial asset or interest therein**

(a) A person acquires a security or an interest therein, under this chapter, if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8–301 of this Title; or

(2) the person acquires a security entitlement to the security pursuant to Section 8–501 of this Title.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Subchapter 5 of this Chapter, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8–503 of this Title.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfied that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞61, 62.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞96, 473.	C.J.S. Bonds §§ 53, 57 to 58, 60 to 61.
Counties ☞184.	C.J.S. Corporations §§ 236, 755.
Municipal Corporations ☞937.	C.J.S. Counties §§ 363 to 364.
States ☞160.	C.J.S. Municipal Corporations §§ 1707, 1711.
	C.J.S. States § 440.

**§ 8–105. Notice of adverse claim**

(a) A person has notice of an adverse claim if:

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) one (1) year after a date set for presentment or surrender for redemption or exchange; or

(2) six (6) months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

(2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Chapter 9 of this Title is not notice of an adverse claim to a financial asset.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞92.	C.J.S. Corporations §§ 350 to 353, 755.
Corporations ☞149, 473.	C.J.S. Municipal Corporations §§ 1707, 1711 to 1724.
Municipal Corporations ☞939, 940.	C.J.S. States §§ 446 to 447.
States ☞162, 163.	
Westlaw Topic Nos. 58, 101, 268, 360.	

**§ 8–106. Control**

(a) A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has “control” of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has “control” of a security entitlement if:

(1) the purchaser becomes the entitlement holder; or

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder, or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

[Added by NCA 09–020, § 1, approved Jan. 31, 2009.]

#### **Cross References**

Rights of purchaser of security entitlement from entitlement holder, see Title 33, § 8–510.

Secured transactions,

Additional duties of certain secured parties, see Title 33, § 9–205.

Control of investment property, see Title 33, § 9–119.

Priority of security interests in investment property, see Title 33, § 9–328.

#### **§ 8–107. Whether indorsement, instruction, or entitlement order is effective**

(a) “Appropriate person” means:

(1) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) with respect to an entitlement order, the entitlement;

(3) with respect to an instruction, the registered owner of an uncertificated security holder;

(4) if the person designated in paragraph (1), (2) or (3) of this subsection is deceased, the designated person’s successor taking under other law or the

designated person’s personal representative acting for the estate of the decedent; or

(5) if the person designated in paragraph (1), (2) or (3) of this subsection lacks capacity, the designated person’s guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subsection (c) or paragraph (2) of subsection (d) of Section 8–106 of this Title; or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative’s action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Assurance that indorsement or instruction is effective, see Title 33, § 8–402.

**Library References**

Bonds ⇨86.

Corporations ⇨114, 125, 473.

Counties ⇨186.

Municipal Corporations ⇨939.

States ⇨162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 294 to 297, 301, 755.

C.J.S. Counties §§ 365 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711.

C.J.S. States §§ 446 to 447.



**§ 8-108. Warranties in direct holding**

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

- (1) the certificate is genuine and has not been materially altered;
- (2) the transferor or indorser does not know of any fact that might impair the validity of the security;
- (3) there is no adverse claim to the security;
- (4) the transfer does not violate any restriction on transfer;
- (5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (6) the transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

- (1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
- (2) the security is valid;
- (3) there is no adverse claim to the security; and
- (4) at the time the instruction is presented to the issuer:
  - (i) the purchaser will be entitled to the registration of transfer;
  - (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
  - (iii) the transfer will not violate any restriction on transfer; and
  - (iv) the requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

- (1) the uncertificated security is valid;
- (2) there is no adverse claim to the security;
- (3) the transfer does not violate any restriction on transfer; and
- (4) the transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

- (1) there is no adverse claim to the security; and
- (2) the indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

- (1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section.

(ii) A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Indorsement, see Title 33, § 8–304.  
Instruction, see Title 33, § 8–305.

#### Library References

Bonds ☞86, 87.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞143, 149, 473.	C.J.S. Corporations §§ 350 to 353, 755.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939, 940.	C.J.S. Municipal Corporations §§ 1707, 1711 to 1724.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–109. Warranties in indirect holding

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) there is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in subsection (a) or (b) of Section 8–108 of this Title.

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in subsection (a) or (b) of Section 8–108 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ⇨86, 87.

Corporations ⇨143, 473.

Counties ⇨186.

Municipal Corporations ⇨939.

States ⇨162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 350, 755.

C.J.S. Counties §§ 365 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711.

C.J.S. States §§ 446 to 447.

### § 8–110. Applicability; choice of law

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) “Issuer’s jurisdiction” means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection (a) of this section.

(e) The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary’s jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the securities intermediary’s jurisdiction;

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction;

(4) If none of the preceding paragraphs of this subsection applies, the securities intermediary’s jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder’s account is located; and;

(5) If none of the preceding paragraphs of this subsection applies, the securities intermediary’s jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary’s jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Secured transactions, law governing perfection and priority of security interests in investment property, see Title 33, § 9–305.

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

#### Library References

Bonds ⇨2, 49, 75.

Contracts ⇨129(1).

Corporations ⇨468.1.

Counties ⇨173.

Municipal Corporations ⇨906.

States ⇨147.

Towns ⇨52(1).

Westlaw Topic Nos. 58, 95, 101, 104, 268, 360, 381.

C.J.S. Bonds §§ 4 to 5.

C.J.S. Conflict of Laws § 75.

C.J.S. Contracts §§ 229 to 230, 238 to 240.

C.J.S. Corporations §§ 751, 753.  
 C.J.S. Counties §§ 349 to 350.  
 C.J.S. Municipal Corporations §§ 1645 to  
 1646, 1702.

C.J.S. States §§ 437, 443 to 445.  
 C.J.S. Towns §§ 210, 213 to 214, 216 to 217,  
 219.

### § 8–111. Clearing corporation rules

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this act and affects another party who does not consent to the rule.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇨319.  
 Westlaw Topic No. 52.  
 C.J.S. Banks and Banking § 682.

### § 8–112. Creditor’s legal process

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor’s securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Attachment ⇨56, 165, 166.  
 Bonds ⇨48, 86, 87, 92.  
 Corporations ⇨123(0.5), 136, 473.  
 Counties ⇨184, 186.

Municipal Corporations ⇨937, 939, 940.  
 States ⇨160, 162, 163.  
 Westlaw Topic Nos. 44, 58, 101, 104, 268,  
 360.

## Title 33, § 8–112

## UNIFORM COMMERCIAL CODE

C.J.S. Attachment §§ 64, 74, 210, 229 to 232.  
C.J.S. Bonds §§ 37 to 43, 45 to 46.  
C.J.S. Corporations §§ 320, 755.  
C.J.S. Counties §§ 363 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711 to 1724.  
C.J.S. States §§ 440, 446 to 447.

### § 8–113. Statute of frauds inapplicable

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one (1) year of its making.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ⚡74.  
Corporations ⚡472.  
Counties ⚡186.  
Frauds, Statute Of ⚡81, 82.  
Municipal Corporations ⚡938.  
States ⚡162.  
Westlaw Topic Nos. 58, 101, 104, 185, 268, 360.

C.J.S. Corporations § 751.  
C.J.S. Counties §§ 365 to 366.  
C.J.S. Municipal Corporations §§ 1701 to 1703.  
C.J.S. Sales §§ 106 to 108.  
C.J.S. States §§ 446 to 447.

### § 8–114. Evidentiary rules concerning certificated securities

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted;

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ⚡129.  
Corporations ⚡121(5), 473.  
Counties ⚡188.  
Municipal Corporations ⚡955(3).  
States ⚡168.

Westlaw Topic Nos. 58, 101, 104, 268, 360.  
C.J.S. Corporations §§ 316, 755.  
C.J.S. Counties § 367.  
C.J.S. States §§ 437, 443 to 445.

### § 8–115. Securities intermediary and others not liable to adverse claimant

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it has been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Brokers ⇨28.  
Westlaw Topic No. 65.  
C.J.S. Brokers § 133.

### § 8–116. Securities intermediary as purchaser for value

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Brokers ⇨28.  
Westlaw Topic No. 65.  
C.J.S. Brokers § 133.

## SUBCHAPTER 2. ISSUE AND ISSUER

### Section

- 8–201. Issuer.
- 8–202. Issuer’s responsibility and defenses; notice of defect or defense.
- 8–203. Staleness as notice of defects or defenses.
- 8–204. Effect of issuer’s restrictions on transfer.
- 8–205. Effect of unauthorized signature on security certificate.
- 8–206. Completion or alteration of security certificate.
- 8–207. Rights and duties of issuer with respect to registered owners.
- 8–208. Effect of signature of authenticating trustee, registrar, or transfer agent.
- 8–209. Issuer’s lien.
- 8–210. Overissue.

### § 8–201. Issuer

(a) With respect to an obligation on or a defense to a security, an “issuer” includes a person that:

(1) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence

a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### **§ 8–202. Issuer’s responsibility and defenses; notice of defect or defense**

(a) Even against a purchaser for value and without notice, the terms of a security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in Section 8–205 of this Title, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.



(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security “when, as and if issued” or “when distributed” in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞12.	C.J.S. Bonds §§ 13 to 14, 26.
Corporations ☞97, 472.	C.J.S. Corporations §§ 243, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928.	C.J.S. Municipal Corporations § 1699.
States ☞156.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

### § 8–203. Staleness as notice of defects or defenses

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one (1) year after that date; or

(2) is not covered by paragraph (1) of this subsection and the purchaser takes the security more than two (2) years after the date set for surrender or presentation or the date on which performance became due.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞12.	C.J.S. Bonds §§ 13 to 14, 26.
Corporations ☞98, 472.	C.J.S. Corporations §§ 237 to 239, 243, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928.	C.J.S. Municipal Corporations § 1699.
States ☞156.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**§ 8–204. Effect of issuer’s restrictions on transfer**

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Effect of guaranteeing signature, indorsement, or instruction, see Title 33, § 8–306.

**Library References**

Bonds ☞12, 21.	C.J.S. Bonds §§ 13 to 14, 26, 35.
Corporations ☞98, 100, 472.	C.J.S. Corporations §§ 188, 237 to 239, 243, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928, 932, 935.	C.J.S. Municipal Corporations §§ 1695 to 1696, 1699.
States ☞156, 164.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**§ 8–205. Effect of unauthorized signature on security certificate**

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in paragraph (1) of this section, entrusted with responsible handling of the security certificate.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞12, 21.	C.J.S. Bonds §§ 13 to 14, 26, 35.
Corporations ☞98, 100, 472.	C.J.S. Corporations §§ 188, 237 to 239, 243, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928, 932, 935.	C.J.S. Municipal Corporations §§ 1695 to 1696, 1699.
States ☞156, 164.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**§ 8–206. Completion or alteration of security certificate**

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and  
 (2) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞12, 21.	C.J.S. Bonds §§ 13 to 14, 26, 35.
Corporations ☞98, 100, 472.	C.J.S. Corporations §§ 188, 237 to 239, 243, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928, 932, 935.	C.J.S. Municipal Corporations §§ 1695 to 1696, 1699.
States ☞156, 164.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

### § 8–207. Rights and duties of issuer with respect to registered owners

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞113.	C.J.S. Bonds §§ 68 to 69, 71 to 72.
Corporations ☞154, 197, 473.	C.J.S. Corporations §§ 217 to 220, 360 to 361, 367 to 370, 456 to 459, 463 to 466, 481, 755.
Counties ☞207.	C.J.S. Counties § 400.
Municipal Corporations ☞952.	C.J.S. Municipal Corporations § 1706.
States ☞166.	C.J.S. States § 448.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

### § 8–208. Effect of signature of authenticating trustee, registrar, or transfer agent

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

- (1) the certificate is genuine;
- (2) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
- (3) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞86, 87, 92.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞143, 149, 472.	C.J.S. Corporations §§ 350 to 353, 751.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939, 940.	C.J.S. Municipal Corporations §§ 1707, 1711 to 1724.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–209. Issuer’s lien

A lien in favor of an issuer upon certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Cross References

Corporations, partly paid shares, compliance with this section, see Title 3, § 1–1037.

#### Library References

Bonds ☞86, 87, 92.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞143, 149, 472.	C.J.S. Corporations §§ 350 to 353, 751.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939, 940.	C.J.S. Municipal Corporations §§ 1707, 1711 to 1724.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–210. Overissue

(a) In this section, “overissue” means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person’s demand.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Replacement of lost, destroyed, or wrongfully taken security certificate, see Title 33, § 8–405.  
 Wrongful registration, see Title 33, § 8–404.

**Library References**

Bonds ☞12.	C.J.S. Bonds §§ 13 to 14, 26.
Corporations ☞102, 472.	C.J.S. Corporations §§ 190, 751.
Counties ☞183.	C.J.S. Counties §§ 357 to 359, 361 to 362.
Municipal Corporations ☞928.	C.J.S. Municipal Corporations § 1699.
States ☞156.	C.J.S. States § 441.
Towns ☞52(6).	C.J.S. Towns §§ 210, 215.
Westlaw Topic Nos. 58, 101, 104, 268, 360, 381.	

**SUBCHAPTER 3. PURCHASE****Section**

- 8–301. Delivery.
- 8–302. Rights of purchaser.
- 8–303. Protected purchaser.
- 8–304. Indorsement.
- 8–305. Instruction.
- 8–306. Effect of guaranteeing signature, indorsement, or instruction.
- 8–307. Purchaser's right to requisites for registration of transfer.

**§ 8–301. Delivery**

- (a) Delivery of a certificated security to a purchaser occurs when:
  - (1) the purchaser acquires possession of the security certificate;
  - (2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
  - (3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is
    - (i) registered in the name of the purchaser,
    - (ii) payable to the order of the purchaser, or
    - (iii) specially indorsed to the purchaser by an effective endorsement and has not been indorsed to the securities intermediary or in blank.
- (b) Delivery of an uncertificated security to a purchaser occurs when:
  - (1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
  - (2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Acquisition of security on financial asset or interest therein, see Title 33, § 8–104.  
 Secured transactions, possession by secured party perfects security interest without filing, see Title 33, § 9–313.

**Library References**

Bonds ☞74.	C.J.S. Corporations §§ 237 to 239, 243, 350, 751.
Corporations ☞98, 143, 472.	C.J.S. Counties §§ 365 to 366.
Counties ☞186.	C.J.S. Municipal Corporations §§ 1701 to 1703.
Municipal Corporations ☞938.	C.J.S. States §§ 446 to 447.
States ☞162.	
Westlaw Topic Nos. 58, 101, 104, 268, 360.	

**§ 8–302. Rights of purchaser**

(a) Except as otherwise provided in subsections (b) and (c) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞86, 87.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞98, 143, 473.	C.J.S. Corporations §§ 237 to 239, 243, 350, 755.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939.	C.J.S. Municipal Corporations §§ 1707, 1711.
States ☞162.	C.J.S. States §§ 446 to 447.

**§ 8–303. Protected purchaser**

(a) “Protected purchaser” means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (1) gives value;
- (2) does not have notice of any adverse claim to the security; and
- (3) obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞92.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞149, 472.	C.J.S. Corporations §§ 350 to 353, 751.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞940.	C.J.S. Municipal Corporations §§ 1712 to 1724.
States ☞163.	

**§ 8–304. Indorsement**

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in Section 8–108 of this Title and not an obligation that the security will be honored by the issuer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞81.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞472.	C.J.S. Corporations § 751.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞938.	C.J.S. Municipal Corporations §§ 1701 to 1703.
States ☞162.	C.J.S. States §§ 446 to 447.

**§ 8–305. Instruction**

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 8–108 of this Title and not an obligation that the security will be honored by the issuer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞74.	States ☞162.
Corporations ☞111, 124.1, 472.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Counties ☞186.	C.J.S. Corporations §§ 285, 297, 751.
Municipal Corporations ☞938.	

C.J.S. Counties §§ 365 to 366.  
C.J.S. Municipal Corporations §§ 1701 to  
1703.

C.J.S. States §§ 446 to 447.

**§ 8–306. Effect of guaranteeing signature, indorsement, or instruction**

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (1) the signature was genuine;
- (2) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
- (3) the signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (1) the signature was genuine;
- (2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
- (3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction make the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

- (1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
- (2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the



person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞74, 81.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞111, 473.	C.J.S. Corporations §§ 285, 755.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞938.	C.J.S. Municipal Corporations §§ 1701 to 1703.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–307. Purchaser’s right to requisites for registration of transfer

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞86, 87.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞128, 472.	C.J.S. Corporations §§ 339 to 349, 751.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939.	C.J.S. Municipal Corporations §§ 1707, 1711.
States ☞162.	C.J.S. States §§ 446 to 447.

## SUBCHAPTER 4. REGISTRATION

### Section

- 8–401. Duty of issuer to register transfer.
- 8–402. Assurance that indorsement or instruction is effective.
- 8–403. Demand that issuer not register transfer.
- 8–404. Wrongful registration.
- 8–405. Replacement of lost, destroyed, or wrongfully taken security certificate.
- 8–405.1. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.
- 8–406. Authenticating trustee, transfer agent, and registrar.

### § 8–401. Duty of issuer to register transfer

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

- (1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
- (2) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) reasonable assurance is given that the indorsement or instruction is genuine and authorized;

(4) any applicable law relating to the collection of taxes has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 8–204 of this Title;

(6) a demand that the issuer not register transfer has not become effective under Section 8–403 of this Title, or the issuer has complied with subsection (b) of Section 8–403 of this Title but no legal process or indemnity bond is obtained as provided in subsection (d) of Section 8–403 of this Title; and

(7) the transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person’s principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞74.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞128, 472.	C.J.S. Corporations §§ 339 to 349, 751.
Counties ☞185.	C.J.S. Counties § 360.
Municipal Corporations ☞936.	C.J.S. Municipal Corporations § 1700.
States ☞162.	C.J.S. States §§ 446 to 447.

**§ 8–402. Assurance that indorsement or instruction is effective**

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) if the indorsement is made or the instruction is originated by a fiduciary pursuant to paragraph (4) or (5) of subsection (a) of Section 8–107 of this Title, appropriate evidence of appointment or incumbency;

(4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) “Guaranty of the signature” means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may

adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) “Appropriate evidence of appointment or incumbency” means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty (60) days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞74.

Corporations ☞128, 472.

Counties ☞185.

Municipal Corporations ☞936.

States ☞162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 339 to 349, 751.

C.J.S. Counties § 360.

C.J.S. Municipal Corporations § 1700.

C.J.S. States §§ 446 to 447.

### § 8-403. Demand that issuer not register transfer

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to

(i) the person who initiated the demand at the address provided in the demand and

(ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or instruction for registration of transfer of the uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in paragraph (3) of subsection (b) of this section may not exceed thirty (30) days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞74.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞128, 472.	C.J.S. Corporations §§ 339 to 349, 751.
Counties ☞185.	C.J.S. Counties § 360.
Municipal Corporations ☞936.	C.J.S. Municipal Corporations § 1700.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8-404. Wrongful registration

(a) Except as otherwise provided in Section 8-406 of this Title, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under subsection (a) of Section 8-403 of this Title and the issuer did not comply with subsection (b) of Section 8-403 of this Title;

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 8-210 of this Title.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞74.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞128, 472.	C.J.S. Corporations §§ 339 to 349, 751.
Counties ☞185.	C.J.S. Counties § 360.
Municipal Corporations ☞936.	C.J.S. Municipal Corporations § 1700.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–405. Replacement of lost, destroyed, or wrongfully taken security certificate

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

- (1) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;
- (2) files with the issuer a sufficient indemnity bond; and
- (3) satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by Section 8–210 of this Title. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ☞74.	Westlaw Topic Nos. 58, 101, 104, 246, 268, 360.
Corporations ☞147, 473.	C.J.S. Corporations §§ 350, 755.
Counties ☞185.	C.J.S. Counties § 360.
Lost Instruments ☞1.	C.J.S. Lost Instruments §§ 1 to 7.
Municipal Corporations ☞936.	C.J.S. Municipal Corporations § 1700.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–405.1. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 8–404 of this Title or a claim to a new security certificate under Section 8–405 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

- |                              |  |
|------------------------------|--|
| Bonds ☞74.                   | Westlaw Topic Nos. 58, 101, 104, 246, 268,<br>360. |
| Corporations ☞134, 473.      | C.J.S. Corporations §§ 348 to 349, 755.            |
| Counties ☞185.               | C.J.S. Counties § 360.                             |
| Lost Instruments ☞1.         | C.J.S. Lost Instruments §§ 1 to 7.                 |
| Municipal Corporations ☞936. | C.J.S. Municipal Corporations § 1700.              |
| States ☞162.                 | C.J.S. States §§ 446 to 447.                       |

**§ 8–406. Authenticating trustee, transfer agent, and registrar**

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered: security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

**Library References**

- Brokers ☞28.  
Westlaw Topic No. 65.  
C.J.S. Brokers § 133.

**SUBCHAPTER 5. DEFAULT****Section**

- 8–501. Securities account; acquisition of security entitlement from securities intermediary.  
8–502. Assertion of adverse claim against entitlement holder.  
8–503. Property interest of entitlement holder in financial asset held by securities intermediary.  
8–504. Duty of securities intermediary to maintain financial asset.  
8–505. Duty of securities intermediary with respect to payments and distributions.  
8–506. Reserved.  
8–507. Duty of securities intermediary to comply with entitlement order.  
8–508. Duty of securities intermediary to change entitlement holder’s position to other forms of security holding.  
8–509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.  
8–510. Rights of purchaser of security entitlement from entitlement holder.  
8–511. Priority among security interests and entitlement holders.

**§ 8–501. Securities account; acquisition of security entitlement from securities intermediary**

(a) “Securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person’s securities account;

## INVESTMENT SECURITIES

## Title 33, § 8–503

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Cross References

Acquisition of security on financial asset or interest therein, see Title 33, § 8–104.  
Entitlement holder defined, see Title 33, § 8–102.

### Library References

Bonds ☞86, 87.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞111, 473.	C.J.S. Corporations §§ 285, 755.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939.	C.J.S. Municipal Corporations §§ 1707, 1711.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–502. Assertion of adverse claim against entitlement holder

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under Section 8–501 of this Title for value and without notice of the adverse claim.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### Library References

Bonds ☞86, 87.	Westlaw Topic Nos. 58, 101, 104, 268, 360.
Corporations ☞111, 473.	C.J.S. Corporations §§ 285, 755.
Counties ☞186.	C.J.S. Counties §§ 365 to 366.
Municipal Corporations ☞939.	C.J.S. Municipal Corporations §§ 1707, 1711.
States ☞162.	C.J.S. States §§ 446 to 447.

### § 8–503. Property interest of entitlement holder in financial asset held by securities intermediary

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities

intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8–511 of this Title.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 8–505 through 8–508 of this Title.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under Section 8–504 of this Title by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection (e) of this section. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8–504 of this Title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Bonds ⇨86, 87.

Corporations ⇨111, 473.

Counties ⇨186.

Municipal Corporations ⇨939.

States ⇨162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 285, 755.

C.J.S. Counties §§ 365 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711.

C.J.S. States §§ 446 to 447.



**§ 8–504. Duty of securities intermediary to maintain financial asset**

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Brokers ☞19, 28.  
Westlaw Topic No. 65.

C.J.S. Brokers §§ 11 to 12, 71 to 73, 110, 117  
to 119, 121, 133.

**§ 8–505. Duty of securities intermediary with respect to payments and distributions**

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Brokers ☞19, 28.  
Westlaw Topic No. 65.

C.J.S. Brokers §§ 11 to 12, 71 to 73, 110, 117  
to 119, 121, 133.

§ 8-506. Reserved

§ 8-507. Duty of securities intermediary to comply with entitlement order

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Brokers ☞19, 28.  
Westlaw Topic No. 65.

C.J.S. Brokers §§ 11 to 12, 71 to 73, 110, 117  
to 119, 121, 133.

§ 8-508. Duty of securities intermediary to change entitlement holder's position to other forms of security holding

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Brokers ☞19, 28.  
Westlaw Topic No. 65.

C.J.S. Brokers §§ 11 to 12, 71 to 73, 110, 117  
to 119, 121, 133.

**§ 8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder**

(a) If the substance of a duty imposed upon a securities intermediary by Sections 8-504 through 8-508 of this Title is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by Sections 8-504 through 8-508 of this Title is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 of this Title do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Brokers  $\S$ 19, 28.  
Westlaw Topic No. 65.

C.J.S. Brokers  $\S\S$  11 to 12, 71 to 73, 110, 117  
to 119, 121, 133.

**§ 8-510. Rights of purchaser of security entitlement from entitlement holder**

(a) In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gave value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8-502 of this Title, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Chapter 9 of this Title, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in

subsection (d) of this section, purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under paragraph (1) of subsection (d) of Section 8-106 of this Title;

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under paragraph (2) of subsection (d) of Section 8-106 of this Title; or

(3) if the purchaser obtained control through another person under paragraph (3) of subsection (d) of Section 8-106 of this Title, the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Bonds Ⓒ86, 87.

Corporations Ⓒ111, 143, 473.

Counties Ⓒ186.

Municipal Corporations Ⓒ939.

States Ⓒ162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 285, 350, 755.

C.J.S. Counties §§ 365 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711.

C.J.S. States §§ 446 to 447.

### § 8-511. Priority among security interests and entitlement holders

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Bonds ☞86, 87.

Corporations ☞111, 146, 473.

Counties ☞186.

Municipal Corporations ☞939.

States ☞162.

Westlaw Topic Nos. 58, 101, 104, 268, 360.

C.J.S. Corporations §§ 285, 350, 755.

C.J.S. Counties §§ 365 to 366.

C.J.S. Municipal Corporations §§ 1707, 1711.

C.J.S. States §§ 446 to 447.

**SUBCHAPTER 6. SAVINGS CLAUSE**

**Section**

8-601, 8-602. Reserved.

8-603. Savings clause.

**§§ 8-601, 8-602. Reserved**

**§ 8-603. Savings clause**

A. This act does not affect an action or proceeding commenced before this act takes effect.

B. If a security interest in a security is perfected before this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected before this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected before this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

## CHAPTER 9. SECURED TRANSACTIONS

### Subchapter

1. General Provisions
2. Effectiveness; Attachment; and Rights of Parties
3. Perfection and Priority
4. Rights of Third Parties
5. Filing
6. Default
7. Miscellaneous Provisions

### SUBCHAPTER 1. GENERAL PROVISIONS

#### Section

- 9-101. Short title.
- 9-102. No waiver of sovereign immunity.
- 9-103. Purpose.
- 9-104. No application to property not alienable.
- 9-105. Reserved.
- 9-106. General definitions.
- 9-107. Notice; knowledge.
- 9-108. Value.
- 9-109. Lease distinguished from security interest.
- 9-110. General scope.
- 9-111. Excluded transaction.
- 9-112. Administration of chapter; authority to promulgate regulations.
- 9-113. Obligation of good faith.
- 9-114. Course of performance, course of dealing and usage of trade.
- 9-115. Purchase-money security interest.
- 9-116. Sufficiency of description.
- 9-117. Control of deposit account.
- 9-118. Control of electronic chattel paper.
- 9-119. Control of investment property.
- 9-120. Control of letter of credit right.
- 9-121. Security interest arising under Chapter 2 or 2a.

#### § 9-101. Short title

This chapter may be cited as the Commercial Code—Secured Transactions.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Secured Transactions ⇄8.1.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 1, 4.

#### § 9-102. No waiver of sovereign immunity

The sovereign immunity of neither this Nation nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this chapter, absent a properly ratified, express waiver of sovereign immunity.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Indians ☞234.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

**§ 9–103. Purpose**

This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving this Nation.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**§ 9–104. No application to property not alienable**

This chapter does not apply to any property interest to the extent inconsistent with federal restrictions regarding sale, transfer or encumbrance.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ☞11.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 2, 7 to 9, 30.

**§ 9–105. Reserved****§ 9–106. General definitions**

A. In this chapter:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance,

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of,

(B) for services rendered or to be rendered,

(C) for a policy of insurance issued or to be issued,

(D) for a secondary obligation incurred or to be incurred,

(E) for energy provided or to be provided,

(F) for the use or hire of a vessel under a charter or other contract,

(G) arising out of the use of a credit or charge card or information contained on or for use with the card, or

(H) as winnings of a player in a lottery or other game of chance operated or sponsored by a Tribe, governmental unit of a Tribe, or person licensed or authorized to operate the game by a Tribe or governmental unit of a Tribe to operate the game, a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

- (I) The term does not include
  - (i) rights to payment evidenced by chattel paper or an instrument,
  - (ii) commercial tort claims,
  - (iii) deposit accounts,
  - (iv) investment property,
  - (v) letter-of-credit rights or letters of credit, or
  - (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.
- (3) “Account debtor” means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
- (4) “Accounting”, except as used in “accounting for”, means a record:
  - (A) authenticated by a secured party;
  - (B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and
  - (C) identifying the components of the obligations in reasonable detail.
- (5) “Agricultural lien” means an interest, other than a security interest, in farm products:
  - (A) which secures payment or performance of an obligation for:
    - (i) goods or services furnished in connection with a debtor’s farming operation; or
    - (ii) rent on real property leased by a debtor in connection with its farming operation;
  - (B) which is created by statute in favor of a person that:
    - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
    - (ii) leased real property to a debtor in connection with the debtor’s farming operation; and
  - (C) whose effectiveness does not depend on the person’s possession of the personal property.
- (6) “As-extracted collateral” means:
  - (A) oil, gas, or other minerals that are subject to a security interest that:
    - (i) is created by a debtor having an interest in the minerals before extraction; and
    - (ii) attaches to the minerals as extracted; or
  - (B) accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.
- (7) “Authenticate” means



(A) to sign; or

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

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:

(A) charters or other contracts involving the use or hire of a vessel or

(B) records that evidence a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$3,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

## SECURED TRANSACTIONS

## Title 33, § 9–106

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family or household purposes.

(20) “Consumer-goods transaction” means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in Section 7–201(2).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to Section 9–519(A).

(37) “Filing office” means an office designated in Section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to Section 9–526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying Section 9-502(A) and (B). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes

(A) fixtures,

(B) standing timber that is to be cut and removed under a conveyance or contract for sale

(C) the unborn young of animals,

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and

(E) manufactured homes.

The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or

(ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services to be provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) an investment property, (ii) letters of credit, or (iii) writings that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means any structure meeting the definitional requirements founds under 42 U.S.C. § 5402(6) (2004), as the same may be amended from time to time.

(54) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “Nation Party” means the Nation and any division, subdivision, branch, department, board, committee, commission, agency, enterprise, instrumentality, entity wholly-owned or wholly-controlled, directly or indirectly, by the Nation, along with the successors and assigns of each.

(57) “New debtor” means a person that becomes bound as debtor under Section 9–203(D) by a security agreement previously entered into by another person.

(58) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(59) “Noncash proceeds” means proceeds other than cash proceeds.

(60) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(61) “Original debtor”, except as used in Section 9-310(D), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 9–203(D).

(62) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(63) “Person related to”, with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual’s spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(64) “Person related to”, with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) the spouse of an individual described in subparagraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(65) “Pledged revenues” means all or a designated portion of a Nation Party’s money, earnings, income, and revenues (and any proceeds thereof), and all of the Nation Party’s rights to, and interest with respect to, receiving the foregoing before actual possession, whether in the form of money, accounts, chattel paper, deposit accounts, negotiable documents, instruments, investment property, letter-of-credit rights or other assets, and the proceeds thereof, in which a Nation Party has granted a security interest to a secured party in a writing signed by the Nation Party.

(66) “Proceeds”, except as used in Section 9-609(B), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(67) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(68) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

(69) “Public-finance transaction” means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(70) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(71) "Record", except as used in "for record," "of record," "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(72) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(73) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

(74) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(75) "Security agreement" means an agreement that creates or provides for a security interest.

(76) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).



(77) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(78) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(79) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(80) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(81) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(82) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(83) “Tribal business day” means a day on which the Nation’s governmental offices are open for conduct of their ordinary business.

B. Definitions in other chapters. The following definitions in other articles apply to this chapter:

“Applicant” Section 5–102

“Beneficiary” Section 5–102

“Broker” Section 8–102

“Certificated security” Section 8–102

“Check” Section 3–104

“Clearing corporation” Section 8–102

“Contract for sale” Section 2–106

“Customer” Section 4–104

“Entitlement holder” Section 8–102

“Financial asset” Section 8–102

“Holder in due course” Section 3–302

**Title 33, § 9–106**

**UNIFORM COMMERCIAL CODE**

“Issuer” (with respect to a letter of credit or letter-of-credit right) Section 5–102

“Issuer” (with respect to a security) Section 8–201

“Issuer” (with respect to documents of title) Section 7–102

“Lease” Section 2A–103

“Lease Agreement” Section 2A–103

“Lease contract” Section 2A–103

“Leasehold interest” Section 2A–103

“Lessee” Section 2A–103

“Lessee in ordinary course of business” Section 2A–103

“Lessor” Section 2A–103

“Lessor’s residual interest” Section 2A–102

“Letter of credit” Section 5–102

“Merchant” Section 2–104

“Negotiable instrument” Section 3–104

“Nominated person” Section 5–102

“Note” Section 3–104

“Proceeds of a letter of credit” Section 5–114

“Prove” Section 3–103

“Sale” Section 2–106

“Securities account” Section 8–501

“Securities intermediary” Section 8–102

“Security” Section 8–102

“Security certificate” Section 8–102

“Security entitlement” Section 8–102

“Uncertificated security” Section 8–102

C. Chapter 1 definitions and principles. Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Cross References**

Priority of security interests in investment property, see Title 33, § 9–328.  
Security interest defined, see Title 33, § 1–201.

**Library References**

Secured Transactions ¶¶14.1 to 18, 82.1 to 89, 138 to 147.      C.J.S. Secured Transactions §§ 11 to 17, 53, 55, 57 to 68, 70, 104, 106 to 136.  
Westlaw Topic No. 349A.

**§ 9–107. Notice; knowledge**

A. Subject to subsection F, a person has “notice” of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

B. “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

C. “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

D. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

E. Subject to subsection F, a person “receives” a notice or notification when:

- (1) it comes to that person’s attention; or
- (2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

F. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Notice ⇨ 1 to 6.  
Westlaw Topic No. 277.  
C.J.S. Notice §§ 2 to 9, 12 to 20.

**§ 9–108. Value**

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

- (A) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

- (B) as security for, or in total or partial satisfaction of, a preexisting claim;
- (C) by accepting delivery under a preexisting contract for purchase; or
- (D) in return for any consideration sufficient to support a simple contract.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

### § 9–109. Lease distinguished from security interest

**A. Basis test.** Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

**B. Transactions that create security interests.** A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee; and

- (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
- (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (3) the lessee has the option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
- (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

**C. Factors that do not create security interests.** A transaction in the form of a lease does not create a security interest merely because:

- (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and the use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (2) the lessee assumes the risk of loss of the goods;
- (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) the lessee has an option to renew the lease or to become the owner of the goods;
- (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Secured Transactions ⇌10.

Westlaw Topic No. 349A.

## SECURED TRANSACTIONS

## Title 33, § 9–111

C.J.S. Secured Transactions §§ 2, 6, 20 to 27.

### § 9–110. General scope

**A. General scope of chapter.** Except as otherwise provided in the section on excluded transactions, this chapter applies to the following:

- (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien;
- (3) a sale of accounts, chattel paper, payment intangibles or promissory notes;
- (4) a consignment;
- (5) a security interest arising under Section 2–401, 2–505, 2–711(3), or 2A–508(5), as provided in Section 9–121; and
- (6) a security interest arising under Section 4–210 or 5–118.

**B. Extent to which chapter does not apply.** Except as otherwise provided in subsection C, this chapter does not apply to the extent that:

- (1) a statute, regulation, or treaty of the United States preempts this chapter;
- (2) a statute of a state, a foreign country, or a governmental unit of a state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- (3) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under applicable law.

**C. Chapter applicable to Nation Parties.** This chapter governs the creation, perfection, priority, and enforcement of a security interest created by a Nation Party.

**D. Security interest in secured obligation.** The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Priorities among conflicting security interests in and agricultural liens on same collateral, see Title 33, § 9–322.

#### Library References

Secured Transactions ¶1 to 24.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 1 to 17, 20 to 27, 29 to 32.

### § 9–111. Excluded transaction

This chapter does not apply to:

- (A) a landlord’s lien, other than an agricultural lien;
- (B) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9–333 applies with respect to priority of the lien;

(C) an assignment of a claim for wages, salary, or other compensation of an employee;

(D) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(E) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(F) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(G) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(H) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(I) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(J) a right of recoupment or set-off, but

(1) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(2) Section 9-404 applies with respect to defenses or claims of an account debtor;

(K) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(1) liens on real property in Sections 9-203 and 9-308;

(2) fixtures in Section 9-334;

(3) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

(4) security agreements covering personal and real property in Section 9-604;

(L) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; or

(M) an assignment of a deposit account in a consumer transaction, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ¶1 to 20.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 1 to 17, 20 to  
27, 30 to 32.

**§ 9–112. Administration of chapter; authority to promulgate regulations**

The Secretary of the Nation is charged with the administration of this chapter. In accordance with applicable administrative and interpretive rules, the Secretary of the Nation may promulgate regulations necessary for the effective implementation and enforcement of this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–113. Obligation of good faith**

Every contract or duty within this chapter imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Contracts ⇌168.  
Westlaw Topic No. 95.  
C.J.S. Contracts §§ 346 to 347.

**§ 9–114. Course of performance, course of dealing and usage of trade**

**A. Course of performance defined.** A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) the agreement of the parties with respect to the transaction involves repeated occasions for payment by a party; and
- (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

**B. Course of dealing defined.** A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

**C. Usage of trade.** A “usage of trade” is any practice or method of dealing, including a local custom or tradition of this Nation, having such regularity of observance in a place, vocation, or trade as to justify an exception that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

**D. Effect.** A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specified terms of the agreement, and may supplement or qualify the terms of the agreement. #A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

**E. Practical construction; hierarchy.** Except as otherwise provided in subsection F, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (1) express terms prevail over course of performance, course of dealing and usage of trade;
- (2) course of performance prevails over course of dealing and usage of trade;
- (3) course of dealing prevails over usage of trade.

**F.** Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

**G.** Evidence of relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Contracts ⇨170.  
 Customs and Usages ⇨5.  
 Westlaw Topic Nos. 95, 113.

C.J.S. Contracts §§ 338 to 340.  
 C.J.S. Customs and Usages §§ 2, 6.

### § 9–115. Purchase-money security interest

**A.** In this section:

- (1) “purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and
- (2) “purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

**B. Purchase-money security interest in goods.** A security interest in goods is a purchase-money security interest:

- (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
- (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
- (3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

**C. Purchase-money security interest in software.** A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:



(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

**D. Consignor's inventory purchase-money security interest.** The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

**E. Application of payment in non-consumer-goods transaction.** In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

**F. No loss of status of purchase-money security interest in non-consumer-goods transaction.** In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated or restructured.

**G. Burden of proof in non-consumer-goods transaction.** In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Secured Transactions ¶1 to 18, 83.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 1 to 9, 11 to 17, 20 to 27, 30 to 32, 58.

### § 9–116. Sufficiency of description

**A. Sufficiency of description.** Except as otherwise provided in subsections B and C, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

**B. Examples of reasonable identification.** Except as otherwise provided in subsection D, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- (1) specific listing;
- (2) category;
- (3) except as otherwise provided in subsection E, a type of collateral defined in this chapter;
- (4) quantity;
- (5) computational or allocational formula or procedure; or
- (6) except as otherwise provided in subsection C, any other method, if the identity of the collateral is objectively determinable.

**C. Supergeneric description not sufficient.** A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

**D. Investment property.** Except as otherwise provided in subsection E, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- (1) the collateral by those terms or as investment property; or
- (2) the underlying financial asset or commodity contract.

**E. When description by type insufficient.** A description only by type of collateral defined in this chapter is an insufficient description of:

- (1) a commercial tort claim; or
- (2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Indication of collateral, see Title 33, § 9–504.

### § 9–117. Control of deposit account

**A. Requirements for control.** A secured party has control of a deposit account if:

- (1) the secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- (3) the secured party becomes the bank’s customer with respect to the deposit account.

**B. Debtor's right to direct disposition.** A secured party that has satisfied subsection A has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Historical and Statutory Notes

**Former section:** A former § 9–117, derived to choose applicable law in actions involving from NCA 07–107, § 3, related to parties' power transaction under this Title.

#### Cross References

Additional duties of certain secured parties, see Title 33, § 9–205.  
 Attachment and enforceability of security interest, formal requisites, see Title 33, § 9–203.  
 Bank's right to refuse to enter into or disclose existence of control agreement, see Title 33, § 9–342.  
 Collection and enforcement by secured party, see Title 33, § 9–607.  
 Effectiveness of right of recoupment or set-off against deposit account, see Title 33, § 9–340.  
 Perfection by control, see Title 33, § 9–314.  
 Priority of security interests in deposit account, see Title 33, § 9–327.  
 Rights after default, rights and duties of secured party in possession or control, see Title 33, § 9–601.  
 Rights and duties of secured party having possession or control of collateral, see Title 33, § 9–207.

#### Library References

Secured Transactions ⇄3.  
 Westlaw Topic No. 349A.  
 C.J.S. Secured Transactions §§ 1, 5.

### § 9–118. Control of electronic chattel paper

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) the authoritative copy identifies the secured party as the assignee of the record or records;
- (3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Additional duties of certain secured parties, see Title 33, § 9–205.  
 Attachment and enforceability of security interest, formal requisites, see Title 33, § 9–203.  
 Perfection by control, see Title 33, § 9–314.

Priority of purchaser of chattel paper or instrument, see Title 33, § 9–330.

Rights after default, rights and duties of secured party in possession or control, see Title 33, § 9–601.

Rights and duties of secured party having possession or control of collateral, see Title 33, § 9–207.

### § 9–119. Control of investment property

**A. Control under Section 8–106.** A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8–106.

**B. Control of commodity contract.** A secured party has control of a commodity contract if:

(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

**C. Effect of control of securities account or commodity account.** A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Additional duties of certain secured parties, see Title 33, § 9–205.

Attachment and enforceability of security interest, formal requisites, see Title 33, § 9–203.

Perfection by control, see Title 33, § 9–314.

Priority of security interests in deposit account, see Title 33, § 9–327.

Rights after default, rights and duties of secured party in possession or control, see Title 33, § 9–601.

Rights and duties of secured party having possession or control of collateral, see Title 33, § 9–207.

### § 9–120. Control of letter of credit right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5–114(c) or otherwise applicable law or practice.

[Added by NCA 09–101, § 2, approved Jan. 31, 2009.]

#### Cross References

Additional duties of certain secured parties, see Title 33, § 9–205.

Attachment and enforceability of security interest, formal requisites, see Title 33, § 9–203.

Perfection by control, see Title 33, § 9–314.

Priority of security interests in letter-of-credit-right, see Title 33, § 9–329.

Rights after default, rights and duties of secured party in possession or control, see Title 33, § 9–601.

Rights and duties of secured party having possession or control of collateral, see Title 33, § 9–207.

### § 9–121. Security interest arising under Chapter 2 or 2a

A security interest arising under Section 2–401, 2–505, 2–711(3), or 2A–508(5) is subject to this chapter. However, until the debtor obtains possession of the goods:

- (1) the security interest is enforceable, even if Section 9–203(B)(3) has not been satisfied;
- (2) filing is not required to perfect the security interest;
- (3) the rights of the secured party after default by the debtor are governed as provided by Chapter 2 or 2A; and
- (4) the security interest has priority over a conflicting security interest created by the debtor.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

## SUBCHAPTER 2. EFFECTIVENESS; ATTACHMENT; RIGHTS OF PARTIES

### Section

- 9–201. General effectiveness of security agreement.
- 9–202. Title to collateral immaterial.
- 9–203. Attachment and enforceability of security interest; proceeds; formal requisites.
- 9–204. After-acquired collateral; future advances.
- 9–205. Use or disposition of collateral permissible.
- 9–206. Security interest arising in purchase or delivery of financial asset.
- 9–207. Rights and duties of secured party having possession or control of collateral.
- 9–208. Additional duties of certain secured parties.
- 9–209. Duties of secured party if account debtor has been notified of assignment.
- 9–210. Request for accounting; request regarding list of collateral or statement of account.

### § 9–201. General effectiveness of security agreement

**A. General effectiveness.** Except as otherwise provided in this Chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.

**B. Applicable consumer laws and other law.** A transaction subject to this chapter is subject to any applicable rule of law which establishes a different rule for consumers and

(i) any other applicable Tribal, federal or state statute or regulation that regulates the rates, charges, agreements and practices for loans, credit sales or other extensions of credit; and

(ii) any applicable consumer-protection statute or regulation.

**C. Other applicable law controls.** In case of conflict between this chapter and a rule of law, statute or regulation described in subsection B, the rule of law, statute or regulation prevails. Failure to comply with a statute or regulation described in subsection B has only the effect the statute or regulation specifies.

**D. Further deference to other applicable law.** This chapter does not:

- (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection B; or
- (2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions §§ 3.1 to 7, 131, 161.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 1, 5, 104, 114,  
140.

**§ 9–202. Title to collateral immaterial**

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Historical and Statutory Notes****Former section:**

A former § 9–202, derived from NCA 07–107, § 3, related to attachment and enforceability of

security interests, proceeds, and formal requisites. See, now Title 33, § 9–203.

**Library References**

Secured Transactions §§ 11.1, 115.1, 133, 181  
to 191, 221.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 2, 7 to 8, 22,  
28, 98 to 100, 166 to 177, 179, 181 to 183,  
190.

**§ 9–203. Attachment and enforceability of security interest; proceeds; formal requisites**

**A. Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

**B. Enforceability.** Except as otherwise provided in subsections C through I, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
  - (A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
  - (B) the collateral is not a certificated security and is in the possession of the secured party under Section 9–313 pursuant to the debtor’s security agreement;
  - (C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8–301 pursuant to the debtor’s security agreement; or
  - (d) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9–117, 9–118, 9–119, or 9–120 pursuant to the debtor’s security agreement.

**C. Other applicable law.** Subsection B is subject to Section 4–210 on the security interest of a collecting bank, Section 5–118 on the security interest of a

letter-of-credit issuer or nominated person, Section 9–120 on a security interest arising as provided under Chapter 2 or 2A, and Section 9–206 on security interests in investment property.

**D. When person becomes bound by another person’s security agreement.**

A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Chapter or by contract:

(1) the security agreement becomes effective to create a security interest in the person’s property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

**E. When effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subsection B(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

**F. Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9–315 and is also attachment of a security interest in a supporting obligation for the collateral.

**G. Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

**H. Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the any security entitlements carried in the securities account.

**I. Commodity contract carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

[Added by NCA 07–107, § 3, eff. May 3, 2007; renumbered from Title 33, § 9–202 and amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Historical and Statutory Notes

**Derivation:**

Title 33, § 9–202, added by NCA 07–107, § 3.

**Former section:**

A former § 9–203, derived from NCA 07–107, § 3, related to after-acquired collateral and future advances. See, now, Title 33, § 9–204.

#### Cross References

Effectiveness of financing statement if new debtor becomes bound by security agreement, see Title 33, § 9–508.

Excluded transactions, see Title 33, § 9–111.

Interests that take priority over or take free of security interest or agricultural lien, see Title 33, § 9–317.

New debtor and original debtor defined, see Title 33, § 9–106.

**Library References**

Secured Transactions ⇨13, 20, 116.  
 Westlaw Topic No. 349A.  
 C.J.S. Secured Transactions §§ 9 to 10, 101.

**§ 9–204. After-acquired collateral; future advances**

**A. After-acquired collateral.** Except as otherwise provided in subsection B, a security agreement may create or provide for a security interest in after-acquired collateral.

**B. When after-acquired property clause not effective.** A security interest does not attach under a term constituting an after-acquired property clause to:

- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or
- (2) a commercial tort claim.

**C. Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

[Added by NCA 07–107, § 3, eff. May 3, 2007; renumbered from Title 33, § 9–203 and amended by NCA 09–202, § 2, approved Jan. 31, 2009.]

**Historical and Statutory Notes****Derivation:**

Title 33, § 9–203, as added by NCA 07–107,  
 § 3, eff. May 3, 2007.

**Library References**

Secured Transactions ⇨163, 165, 168, 221, 228 to 238.	C.J.S. Secured Transactions §§ 142 to 144, 147, 151 to 155, 179, 181 to 183, 190, 193 to 222.
Westlaw Topic No. 349A.	

**§ 9–205. Use or disposition of collateral permissible**

**A. When security interest not invalid or fraudulent.** A security interest is not invalid or fraudulent against creditors solely because:

- (1) the debtor has the right or ability to:
  - (A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
  - (B) collect, compromise, enforce, or otherwise deal with collateral;
  - (C) accept the return of collateral or make repossessions; or
  - (D) use, commingle, or dispose of proceeds; or
- (2) the secured party fails to require the debtor to account for proceeds or replace collateral.

**B. Requirements of possession not relaxed.** This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]



## Historical and Statutory Notes

**Former section:**

A former § 9–205, added by NCA 07–107, § 3, related to additional duties of certain secured parties. See, now, Title 33, § 9–208.

## Library References

Secured Transactions ⇌163.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 142, 147.

**§ 9–206. Security interest arising in purchase or delivery of financial asset**

**A. Security interest when person buys through securities intermediary.** A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

**B. Security interest secures obligation to pay for financial asset.** The security interest described in subsection A secures the person's obligation to pay for the financial asset.

**C. Security interest in payment against delivery transaction.** A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) the agreement calls for delivery against payment.

**D. Security interest secures obligation to pay for delivery.** The security interest described in subsection C secures the obligation to make payment for the delivery.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

## Cross References

Security interest perfected upon attachment, see Title 33, § 9–309.

**§ 9–207. Rights and duties of secured party having possession or control of collateral**

**A. Duty of care when secured party in possession.** Except as otherwise provided in subsection D, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the

case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

**B. Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection D, if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

**C. Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection D, a secured party having possession of collateral or control of collateral under Section 9–117, 9–118, 9–119, or 9–120:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

**D. Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee:

(1) subsection A does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections B and C do not apply.

[Added by NCA 07–107, § 3, eff. May 3, 2007; renumbered from Title 33, § 9–204 and amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Historical and Statutory Notes

**Derivation:**

Title 33, § 9–204, as added by NCA 07–107,  
§ 3.

**Cross References**

Rights after default, rights and duties of secured party in possession or control, see Title 33, § 9–601.

**Library References**

Secured Transactions §§ 163, 164.1.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 142, 145, 147  
to 150.

**§ 9–208. Additional duties of certain secured parties**

**A. Applicability of section.** This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

**B. Duties of secured party after receiving demand from debtor.** Within ten (10) days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Section 9–117(A)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9–117(A)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 9–118 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property as described under Section 8–106(d)(2) or Section 9–119(B) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9–120 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated

release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

[Added by NCA 07–107, § 3, eff. May 3, 2007; renumbered from Title 33, § 9–205 and amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Historical and Statutory Notes

##### Derivation:

Title 33, § 9–205, as added by NCA 07–107,  
§ 3.

#### Cross References

Statutory damages for noncompliance with specified provisions, see Title 33, § 9–625.

Waiver and variance of rights and duties, see Title 33, § 9–602.

### § 9–209. Duties of secured party if account debtor has been notified of assignment

**A. Applicability of section.** Except as otherwise provided in subsection C, this section applies if:

- (1) there is no outstanding secured obligation; and
- (2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

**B. Duties of secured party after receiving demand from debtor.** Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9–406(A) an authenticated record that releases the account debtor from any further obligation to the secured party.

**C. Inapplicability to sales.** This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Statutory damages for noncompliance with specified provisions, see Title 33, § 9–625.

### § 9–210. Request for accounting; request regarding list of collateral or statement of account

**A. Definitions.** In this section:

- (1) “Request” means a record of a type described in paragraph (2), (3), or (4).
- (2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
- (3) “Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

**B. Duty to respond to requests.** Subject to subsections C, D, E, and F, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen (14) days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

**C. Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen (14) days after receipt.

**D. Request regarding list of collateral; no interest claimed.** A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient’s interest in the collateral.

**E. Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient’s interest in the obligations.

**F. Charges for responses.** A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25.00) for each additional response.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Statutory damages for noncompliance with specified provisions, see Title 33, § 9–625.  
Waiver and variance of rights and duties, see Title 33, § 9–602.

## SUBCHAPTER 3. PERFECTION AND PRIORITY

**Part**

- I. Law Governing Perfection and Priority
- II. Perfection
- III. Priority
- IV. Rights of Bank

**PART I. LAW GOVERNING PERFECTION AND PRIORITY****Section**

- 9-301. Law governing perfection and priority of security interests.
- 9-302. Law governing perfection and priority of security interests and agricultural liens.
- 9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.
- 9-304. Law governing perfection and priority of security interests in deposit accounts.
- 9-305. Law governing perfection and priority of security interests in investment property.
- 9-306. Law governing perfection and priority of security interests in letter of credit rights.
- 9-307. Location of debtor.

**§ 9-301. Law governing perfection and priority of security interests**

Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

- (A) perfection of a security interest in the goods by filing a fixture filing;
- (B) perfection of a security interest in timber to be cut; and
- (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020., § 2, approved Jan. 31, 2009.]

**Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1-301.

**Library References**

Secured Transactions ⇨3.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 1, 5.

**§ 9–302. Law governing perfection and priority of security interests and agricultural liens**

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

**§ 9–303. Law governing perfection and priority of security interests in goods covered by a certificate of title**

**A. Applicability of section.** This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

**B. When goods covered by certificate of title.** Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

**C. Applicable law.** The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

**Library References**

Secured Transactions ⇨7.  
Westlaw Topic No. 349A.

**§ 9–304. Law governing perfection and priority of security interests in deposit accounts**

**A. Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

**B. Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part or this chapter, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### **Cross References**

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

### **§ 9–305. Law governing perfection and priority of security interests in investment property**

**A. Governing law; general rules.** Except as otherwise provided in subsection C, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in Section 8–110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in Section 8–110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

**B. Commodity intermediary's jurisdiction.** The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this



part or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

**C. When perfection governed by law of jurisdiction where debtor located.** The local law of the jurisdiction in which the debtor is located governs:

- (1) perfection of a security interest in investment property by filing;
- (2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
- (3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

### **§ 9–306. Law governing perfection and priority of security interests in letter of credit rights**

**A. Governing law; issuer's or nominated person's jurisdiction.** Subject to subsection C, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

**B. Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5–116.

**C. When section not applicable.** This section does not apply to a security interest that is perfected only under Section 9–308(D).

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

## Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

**§ 9–307. Location of debtor**

**A. “Place of business.”** In this section, “place of business” means a place where a debtor conducts its affairs.

**B. Debtor’s location: general rules.** Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) Except as provided in paragraph (4), a debtor that is an organization and has only one place of business is located at its place of business.

(3) Except as provided in paragraph (4), a debtor that is an organization and has more than one place of business is located at its chief executive office.

(4) A debtor that is a Nation Party is located within the jurisdiction of the Nation.

**C. Limitation of applicability of subsection B.** Subsection B applies only if a debtor’s residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection B does not apply, the debtor is located in the District of Columbia.

**D. Continuation of location; cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections B and C.

**E. Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

**F. Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection I, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

**G. Continuation of location: change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection E or F notwithstanding:

- (1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
- (2) the dissolution, winding up, or cancellation of the existence of the registered organization.

**H. Location of United States.** The United States is located in the District of Columbia.

**I. Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

**J. Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958<sup>1</sup>, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

**K. Section applies only to this part.** This section applies only for purposes of this part.

<sup>1</sup> See 49 U.S.C.A. § 40101 et seq.

[Added by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Uniform Commercial Code, applicable law provisions, see Title 33, § 1–301.

## PART II. PERFECTION

### Section

- 9–308. When security interest is perfected; continuity of perfection.
- 9–309. Security interest perfected upon attachment.
- 9–310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
- 9–311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.
- 9–312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, money and pledged revenues; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- 9–313. When possession by secured party perfects security interest without filing.
- 9–314. Perfection by control.
- 9–315. Secured party's rights on disposition of collateral and in proceeds.
- 9–316. Continued perfection of security interest following change in governing law.

### § 9–308. When security interest is perfected; continuity of perfection

**A. Perfection of security interest.** Except as otherwise provided in this section and Section 9–309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9–310 through 9–316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

**B. Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

**C. Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

**D. Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

**E. Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

**F. Security entitlement carried in securities account.** Perfection of a security interest in a securities account also perfects a security interest in security entitlements carried in the securities account.

**G. Commodity contract carried in commodity account.** Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9-111.

#### Library References

Secured Transactions §§ 81 to 102.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 48 to 49, 51 to 93, 135, 159.

### § 9-309. Security interest perfected upon attachment

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in Section 9-311(B) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(A);

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank under Section 4-210;

## SECURED TRANSACTIONS

## Title 33, § 9–310

- (8) a security interest of an issuer or nominated person under Section 5–118;
- (9) a security interest arising in the delivery of a financial asset under Section 9–206(C);
- (10) a security interest in investment property created by a broker or securities intermediary;
- (11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

### Library References

Secured Transactions §§ 82.1 to 89.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 53, 55, 57 to  
68, 70.

### § 9–310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply

**A. General rule: perfection by filing.** Except as otherwise provided in subsection B and Section 9–312(B), a financing statement must be filed to perfect all security interests and agricultural liens.

**B. Exceptions: filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under Section 9–308(D), (E), (F), or (G);
- (2) that is perfected under Section 9–309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in Section 9–311(A);
- (4) in goods in possession of a bailee which is perfected under Section 9–312(D)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under Section 9–312(E), (F), or (G);
- (6) in collateral in the secured party's possession under Section 9–313;
- (7) in a certificated security or an investment account which is perfected by delivery of the security certificate to the secured party under Section 9–313;
- (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 9–314;
- (9) in proceeds which is perfected under Section 9–315; or
- (10) that is perfected under Section 9–316.

**C. Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not

required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Original debtor defined, see Title 33, § 9–106.

#### Library References

Secured Transactions ¶82.1 to 89.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 53, 55, 57 to  
68, 70.

### § 9–311. Perfection of security interests in property subject to certain statutes, regulations, and treaties

**A. Security interest subject to other law.** Except as otherwise provided in subsection D, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9–310(A);

(2) MCNCA Title 36; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

**B. Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection A for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection D and Sections 9–313 and 9–316(D) and (E) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection A may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

**C. Duration and renewal of perfection.** Except as otherwise provided in subsection D and Section 9–316(D) and (E), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection A are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

**D. Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection A(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Cross References**

Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions, see Title 33, § 9-505.

Notification before disposition of collateral, see Title 33, § 9-611.

Notification of proposal to accept collateral, see Title 33, § 9-621.

**Library References**

Secured Transactions §§ 82.1 to 89.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 53, 55, 57 to  
68, 70.

**§ 9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, money and pledged revenues; perfection by permissive filing; temporary perfection without filing or transfer of possession**

**A. Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, investment property or pledged revenues may be perfected by filing.

**B. Control or possession of certain collateral.** Except as otherwise provided in Section 9-315(C) and (D) for proceeds and subsection I for pledged revenues:

(1) a security interest in a deposit account may be perfected only by control under Section 9-314;

(2) and except as otherwise provided in Section 9-308(D), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314;

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313.

**C. Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

**D. Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

**E. Temporary perfection: new value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

**F. Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

**G. Temporary perfection: delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

**H. Expiration of temporary perfection.** After the twenty (20) day period specified in subsection E, F, or G expires, perfection depends upon compliance with this chapter.

**I. Perfection of pledged revenues by filing.** Notwithstanding subsection B, a security interest in pledged revenues may be perfected by filing.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions §§ 82.1 to 89.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 53, 55, 57 to  
68, 70.

### § 9–313. When possession by secured party perfects security interest without filing

**A. Perfection by possession or delivery.** Except as otherwise provided in subsection B, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8–301.

**B. Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by the Nation, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9–316(D).

**C. Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor’s business, when:



(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

**D. Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

**E. Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 of and remains perfected by delivery until the debtor obtains possession of the security certificate.

**F. Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

**G. Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection C or Section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

**H. Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

**I. Effect of delivery under subsection H; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection H violates the rights of a debtor. A person to which collateral is delivered under subsection H does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Attachment and enforceability of security interest, formal requisites, see Title 33, § 9-203.

#### Library References

Secured Transactions ⇌89.

Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 63 to 68.

### § 9-314. Perfection by control

**A. Perfection by control.** A security interest in property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Section 9-117, 9-118, 9-119, or 9-120.

**B. Specified collateral: time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 9-117, 9-118, or 9-120 when the secured party obtains control and remains perfected by control only while the secured party retains control.

**C. Investment property: time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under Section 9-119 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions §§ 82.1, 84, 88, 102.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 53, 55, 57, 59  
to 60, 63 to 64.

### § 9-315. Secured party's rights on disposition of collateral and in proceeds

**A. Disposition of collateral: continuation of security interest or agricultural lien; proceeds.** Except as otherwise provided in this chapter and in Section 2-403(2):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

**B. When commingled proceeds identifiable.** Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by Section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equita-

ble principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

**C. Perfection of security interest in proceeds.** A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

**D. Continuation of perfection.** A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
  - (A) a filed financing statement covers the original collateral;
  - (B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
  - (C) the proceeds are not acquired with cash proceeds;
- (2) the proceeds are identifiable cash proceeds; or
- (3) the security interest in the proceeds is perfected other than under subsection C when the security interest attaches to the proceeds or within 20 days thereafter.

**E. When perfected security interest in proceeds becomes unperfected.** If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection D(1) becomes unperfected at the later of:

- (1) when the effectiveness of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or
- (2) the 21st day after the security interest attaches to the proceeds.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Collection and enforcement by secured party, see Title 33, § 9-607.  
 Excluded transactions, see Title 33, § 9-111.  
 Persons entitled to file a record, see Title 3, § 9-509.

#### Library References

Secured Transactions ⇌ 164.1, 168.                      C.J.S. Secured Transactions §§ 142, 145, 147  
 Westlaw Topic No. 349A.                                      to 155.

### § 9-316. Continued perfection of security interest following change in governing law

**A. General rule: effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(C) remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of (4) four months after a change of the debtor's location to another jurisdiction; or
- (3) expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and located in another jurisdiction.

**B. Security interest perfected or unperfected under law of new jurisdiction.**

If a security interest described in subsection A becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**C. Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

**D. Goods covered by certificate of title from the Nation.** Except as otherwise provided in subsection E, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Nation remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

**E. When subsection D security interest becomes unperfected against purchasers.** A security interest described in subsection D becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 9-311(B) or 9-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Nation; or
- (2) the expiration of four (4) months after the goods had become so covered.

**F. Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) the expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

**G. Subsection F security interest perfected or unperfected under law of new jurisdiction.**

If a security interest described in subsection F becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ¶98, 135.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 50, 92 to 93.

### PART III. PRIORITY

#### Section

- 9-317. Interests that take priority over or take free of security interest or agricultural lien.
- 9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.
- 9-319. Rights and title of consignee with respect to creditors and purchasers.
- 9-320. Buyer of goods.
- 9-321. Licensee of general intangible and lessee of goods in ordinary course of business.
- 9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.
- 9-323. Future advances.
- 9-324. Priority among purchase-money security interests.
- 9-325. Priority of security interests in transferred collateral.
- 9-326. priority of security interests created by new debtor.
- 9-327. Priority of security interests in deposit account.
- 9-328. Priority of security interests in investment property.
- 9-329. Priority of security interests in letter-of-credit right.
- 9-330. Priority of purchaser of chattel paper or instrument.
- 9-331. Priority of rights of purchasers of instruments, documents, and securities under other chapters; priority of interests in financial assets and security entitlements under Chapter 8.
- 9-332. Transfer of money; transfer of funds from deposit account.
- 9-333. Priority of certain liens arising by operation of law.
- 9-334. Priority of security interests in fixtures and crops.
- 9-335. Accessions.
- 9-336. Commingled goods.
- 9-337. Priority of security interests in goods covered by certificate of title.
- 9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.
- 9-339. Priority subject to subordination.

#### § 9-317. Interests that take priority over or take free of security interest or agricultural lien

**A. Conflicting security interest and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under Section 9-322; and
- (2) except as otherwise provided in subsection E, a person that becomes a lien creditor before the earlier of the time:
  - (A) the security interest or agricultural lien is perfected; or
  - (B) one of the conditions specified in Section 9-203(B)(3) is met and a financing statement covering the collateral is filed.

**B. Buyers that receive delivery.** Except as otherwise provided in subsection E, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

**C. Lessees that receive delivery.** Except as otherwise provided in subsection E, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

**D. Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

**E. Purchase-money security interest.** Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌ 138 to 150.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 11 to 12, 104,  
106 to 139.

### § 9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers

**A. Seller retains no interest.** A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

**B. Deemed rights of debtor if buyer's security interest unperfected.** For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ⇌138 to 147.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 11 to 12, 104,  
106 to 136.

**§ 9–319. Rights and title of consignee with respect to creditors and purchasers**

**A. Consignee has consignor’s rights.** Except as otherwise provided in subsection B, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

**B. Applicability of other law.** For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee’s possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ⇌17, 85, 138, 145.1.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 15, 104, 106  
to 107, 109 to 115, 130.

**§ 9–320. Buyer of goods**

**A. Buyer in ordinary course of business.** Except as otherwise provided in subsection E, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer’s seller, even if the security interest is perfected and the buyer knows of its existence.

**B. Buyer of consumer goods.** Except as otherwise provided in subsection E, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer’s personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

**C. Effectiveness of filing for subsection B.** To the extent that it affects the priority of a security interest over a buyer of goods under subsection B, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 9–316(A) and (B).

**D. Buyer in ordinary course of business at wellhead or minehead.** A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.





(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

**B. Time of perfection: proceeds and supporting obligations.** For the purposes of subsection A(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

**C. Special priority rules: proceeds and supporting obligations.** Except as otherwise provided in subsection F, a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

**D. First-to-file priority rule for certain collateral.** Subject to subsection E and except as otherwise provided in subsection F, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

**E. Applicability of subsection D.** Subsection D applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

**F. Limitations on subsections A through E.** Subsections A through E are subject to:

(1) Subsection G and the other provisions of this part;

(2) Section 4-210 with respect to a security interest of a collecting bank;

(3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9-110 with respect to a security interest arising under Chapter 2 or 2A.

**G. Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Cross References**

Excluded transactions, see Title 33, § 9-111.

**Library References**

Secured Transactions ⇌141.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 119 to 126,  
129.

**§ 9-323. Future advances**

**A. When priority based on time of advance.** Except as otherwise provided in subsection C, for purposes of determining the priority of a perfected security interest under Section 9-322(A)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under Section 9-309 when it attaches; or

(B) temporarily under Section 9-312(E), (F), or (G); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9-309 or 9-312(E), (F), or (G).

**B. Lien creditor.** Except as otherwise provided in subsection C, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

**C. Buyer of receivables.** Subsections A and B do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

**D. Buyer of goods.** Except as otherwise provided in subsection E, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) forty-five (45) days after the purchase.

**E. Advances made pursuant to commitment: priority of buyer of goods.** Subsection D does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

**F. Lessee of goods.** Except as otherwise provided in subsection G, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

**G. Advances made pursuant to commitment: priority of lessee of goods.** Subsection F does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌147.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions § 116.

### § 9–324. Priority among purchase-money security interests

**A. General rule: purchase-money priority.** Except as otherwise provided in subsection G, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9–327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days.

**B. Inventory purchase-money priority.** Subject to subsection C and except as otherwise provided in subsection G, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9–330, and, except as otherwise provided in Section 9–327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

**C. Holders of conflicting inventory security interests to be notified.** Subsections B(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9–312(F), before the beginning of the 20-day period thereunder.

**D. Livestock purchase-money priority.** Subject to subsection E and except as otherwise provided in subsection G, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

**E. Holders of conflicting livestock security interests to be notified.** Subsections D(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312F, before the beginning of the 20-day period thereunder.

**F. Software purchase-money priority.** Except as otherwise provided in subsection G, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

**G. Conflicting purchase-money security interests.** If more than one security interest qualifies for priority in the same collateral under subsection A, B, C, or F:

- (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (2) in all other cases, Section 9-322(A) applies to the qualifying security interests.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-325. Priority of security interests in transferred collateral

**A. Subordination of security interest in transferred collateral.** Except as otherwise provided in subsection B, a security interest created by a debtor is

subordinate to a security interest in the same collateral created by another person if:

- (1) the debtor acquired the collateral subject to the security interest created by the other person;
- (2) the security interest created by the other person was perfected when the debtor acquired the collateral; and
- (3) there is no period thereafter when the security interest is unperfected.

**B. Limitation of subsection A subordination.** Subsection A subordinates a security interest only if the security interest:

- (1) otherwise would have priority solely under Section 9-322(A) or 9-324; or
- (2) arose solely under Section 2-711(3) or 2A-508(5).

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-326. priority of security interests created by new debtor

**A. Subordination of security interest created by new debtor.** Subject to subsection B, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 9-508.

**B. Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-327. Priority of security interests in deposit account

The following rules govern priority among conflicting security interests in the same deposit account:

- (1) Except as otherwise provided in paragraph (5), a security interest held by a secured party having control of the deposit account under Section 9-117 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Section 9-117(A)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

(5) A security interest perfected by filing in pledged revenues has priority over a conflicting security interest perfected by control under Section 9-314.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-328. Priority of security interests in investment property

The following rules govern priority among conflicting security interests in the same investment property:

(1) Except as otherwise provided in paragraph (7), a security interest held by a secured party having control of investment property under Section 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under Section 9-119 rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under Section 8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under Section 8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under Section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 9-119(B)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under Section 9-313(A) and not by control under Section 9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 9-119 rank equally.

(7) A security interest perfected by filing in pledged revenues has priority over a conflicting security interest perfected by control under Section 9-314.

(8) In all other cases, priority among conflicting security interests in investment property is governed by Sections 9-322 and 9-323.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-329. Priority of security interests in letter-of-credit right

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) Except as otherwise provided in paragraph (3), a security interest held by a secured party having control of the letter-of-credit right under Section 9-120 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.

A security interest perfected by filing in pledged revenues has priority over a conflicting security interest by control under Section 9-314.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-330. Priority of purchaser of chattel paper or instrument

**A. Purchaser's priority: security interest claimed merely as proceeds.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-118; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

**B. Purchaser's priority: other security interests.** A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-118 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

**C. Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection A or B also has priority in proceeds of the chattel paper to the extent that:

- (1) Section 9–322 provides for priority in the proceeds; or
- (2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

**D. Instrument purchaser's priority.** Except as otherwise provided in Section 9–331(A), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

**E. Holder of purchase-money security interest gives new value.** For purposes of subsections A and B, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

**F. Indication of assignment gives knowledge.** For purposes of subsections B and D, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–331. Priority of rights of purchasers of instruments, documents, and securities under other chapters; priority of interests in financial assets and security entitlements under Chapter 8**

**A. Rights under Articles 3, 7, and 8 not limited.** This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.

**B. Protection under Article 8.** This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8.

**C. Filing not notice.** Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections A and B.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–332. Transfer of money; transfer of funds from deposit account**

**A. Transferee of money.** Except as otherwise provided in subsection C, a transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

**B. Transferee of funds from deposit account.** Except as provided in subsection C, a transferee of funds from a deposit account takes the funds free of a



security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

**C. Transferee of pledged revenues.** A transferee of money or funds from a deposit account which constitutes pledged revenues does not take the money or funds free of a security interest in pledged revenues perfected by filing.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-333. Priority of certain liens arising by operation of law

**A. “Possessory lien.”** In this section, “possessory lien” means an interest, other than a security interest or an agricultural lien:

(1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business;

(2) which is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person’s possession of the goods.

**B. Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9-111.

### § 9-334. Priority of security interests in fixtures and crops

**A. Security interest in fixtures under this chapter.** A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

**B. Security interest in fixtures under real-property law.** This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

**C. General rule: subordination of security interest in fixtures.** In cases not governed by subsections D through H, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

**D. Fixtures purchase-money priority.** Except as otherwise provided in subsection H, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

**E. Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Section 9-311(A)(2).

**F. Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

**G. Continuation of paragraph F(2) priority.** The priority of the security interest under paragraph F(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

**H. Priority of construction mortgage.** 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 cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections E and F, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

**I. Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encum-

brancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9-111.

### § 9-335. Accessions

**A. Creation of security interest in accession.** A security interest may be created in an accession and continues in collateral that becomes an accession.

**B. Perfection of security interest.** If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

**C. Priority of security interest.** Except as otherwise provided in subsection D, the other provisions of this part determine the priority of a security interest in an accession.

**D. Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 9-311(B).

**E. Removal of accession after default.** After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

**F. Reimbursement following removal.** A secured party that removes an accession from other goods under subsection E shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-336. Commingled goods

**A. “Commingled goods.”** In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

**B. No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

**C. Attachment of security interest to product or mass.** If collateral becomes commingled goods, a security interest attaches to the product or mass.

**D. Perfection of security interest.** If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection C is perfected.

**E. Priority of security interest.** Except as otherwise provided in subsection F, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection C.

**F. Conflicting security interests in product or mass.** If more than one security interest attaches to the product or mass under subsection C, the following rules determine priority:

(1) A security interest that is perfected under subsection D has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection D, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–337. Priority of security interests in goods covered by certificate of title**

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this Nation issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9–311(B), after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9–516(B)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-339. Priority subject to subordination

This chapter does not preclude subordination by agreement by a person entitled to priority.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

## PART IV. RIGHTS OF BANK

### Section

9-340. Effectiveness of right of recoupment or set-off against deposit account.

9-341. Bank's rights and duties with respect to deposit account.

9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

### § 9-340. Effectiveness of right of recoupment or set-off against deposit account

**A. Exercise of recoupment or set-off.** Except as otherwise provided in subsection C, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

**B. Recoupment or setoff not affected by security interest.** Except as otherwise provided in subsection C, the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

**C. When set-off ineffective.** The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 9-117(A)(3), if the set-off is based on a claim against the debtor.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### Cross References

Excluded transactions, see Title 33, § 9-111.

### § 9-341. Bank's rights and duties with respect to deposit account

Except as otherwise provided in Section 9-340(C), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**§ 9–342. Bank's right to refuse to enter into or disclose existence of control agreement**

This chapter does not require a bank to enter into an agreement of the kind described in Section 9–117(A)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

## SUBCHAPTER 4. RIGHTS OF THIRD PARTIES

**Section**

- 9–401. Alienability of debtor's rights.
- 9–402. Secured party not obligated on contract of debtor or in tort.
- 9–403. Rights of agreement not to assert defenses against assignee.
- 9–404. Rights acquired by assignee; claims and defenses against assignee.
- 9–405. Modification of assigned contract.
- 9–406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.
- 9–407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.
- 9–408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.
- 9–409. Restrictions on assignment of letter-of-credit rights ineffective.


**§ 9–401. Alienability of debtor's rights**

**A. Other law governs alienability; exceptions.** Except as otherwise provided in subsection B and Sections 9–406, 9–407, 9–408, and 9–409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Chapter.

**B. Agreement does not prevent transfer.** An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions  166.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 145, 147, 149  
to 150.

**§ 9-402. Secured party not obligated on contract of debtor or in tort**

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ⌘169.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions § 156.

**§ 9-403. Rights of agreement not to assert defenses against assignee**

**A. "Value."** In this section, "value" has the meaning provided in Section 3-303(a).

**B. Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith
- (3) without notice of a claim of a property or possessory right to the property assigned; and
- (4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 3-305(a).

**C. When subsection B not applicable.** Subsection B does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 3-305(b).

**D. Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) the record has the same effect as if the record included such a statement; and
- (2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

**E. Rule for individual under other law.** This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**F. Other law not displaced.** Except as otherwise provided in subsection D, this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌183 to 187.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 171 to 175.

### § 9–404. Rights acquired by assignee; claims and defenses against assignee

**A. Assignee’s rights subject to terms, claims, and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections B through E, the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor, and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

**B. Account debtor’s claim reduces amount owed to assignee.** Subject to subsection C and except as otherwise provided in subsection D, the claim of an account debtor against an assignor may be asserted against an assignee under subsection A only to reduce the amount the account debtor owes.

**C. Rule for individual under other law.** This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**D. Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor’s obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor’s recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

**E. Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9–111.



## Library References

Secured Transactions ⇌181 to 188.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 22, 166 to  
176.

**§ 9-405. Modification of assigned contract**

**A. Effect of modification on assignee.** A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections B through D.

**B. Applicability of subsection A.** Subsection A applies to the extent that:

- (1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
- (2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 9-406(A).

**C. Rule for individual under other law.** This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**D. Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective**

**A. Discharge of account debtor; effect of notification.** Subject to subsections B through I, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

**B. When notification ineffective.** Subject to subsection H, notification is ineffective under subsection A:

- (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 chapter; 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 E 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.

**F. Legal restrictions on assignment generally ineffective.** Except as otherwise provided in 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 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 chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**I. Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Duties of secured party if account debtor has been notified of assignment, see Title 33, § 9-209.

### § 9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest

**A. Term restricting assignment generally ineffective.** Except as otherwise provided in subsection B, a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; 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 lease.

**B. Effectiveness of certain terms.** Except as otherwise provided in Section 2A-303(7), a term described in subsection A(2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

**C. Security interest not material impairment.** The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective

**A. Term restricting assignment generally ineffective.** Except as otherwise provided in subsection B, a term in a promissory note or in an agreement

between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

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

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

**B. Applicability of subsection A to sales of certain rights to payment.** Subsection A applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

**C. Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

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

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

**D. Limitation on ineffectiveness under subsections A and C.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection C would be effective under law other than this chapter but is ineffective under subsection A or C, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

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

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

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

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

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-409. Restrictions on assignment of letter-of-credit rights ineffective

**A. Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

**B. Limitation on ineffectiveness under subsection A.** To the extent that a term in a letter of credit is ineffective under subsection A but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

## SUBCHAPTER 5. FILING

**Section**

- 9-501. Filing office.
- 9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.
- 9-503. Name of debtor and secured party.
- 9-504. Indication of collateral.
- 9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.
- 9-506. Effect of errors or omissions.
- 9-507. Effect of certain events on effectiveness of financing statement.
- 9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
- 9-509. Persons entitled to file a record.
- 9-510. Effectiveness of filed record.
- 9-511. Secured party of record.
- 9-512. Amendment of financing statement.
- 9-513. Termination statement.
- 9-514. Assignment of powers of secured party of record.
- 9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.
- 9-516. What constitutes filing; effectiveness of filing.
- 9-517. Effect of indexing errors.
- 9-518. Claim concerning inaccurate or wrongfully filed record.
- 9-519. Numbering, maintaining, and indexing records; communicating information provided in records.
- 9-520. Acceptance and refusal to accept record.
- 9-521. Uniform form of written financing statement and amendment.
- 9-522. Maintenance and destruction of records.
- 9-523. Information from filing office; sale or license of records.
- 9-524. Delay by filing office.
- 9-525. Fees.
- 9-526. Filing; office rules.

**§ 9-501. Filing office**

**A. Filing offices.** Except as otherwise provided in subsection B, if the local law of this Nation governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures

(2) the office of the Secretary of the Nation, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

**B. Filing office for transmitting utilities.** The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of the Nation. The

financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9–111.

#### Library References

Secured Transactions ¶¶90, 92.1, 96, 97, 98, 116, 168.      C.J.S. Secured Transactions §§ 54, 75 to 83, 87 to 93, 101, 151 to 155.  
Westlaw Topic No. 349A.

### § 9–502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement

**A. Sufficiency of financing statement.** Subject to subsection B, a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

**B. Real-property-related financing statements.** Except as otherwise provided in Section 9–501(B), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection A and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed in the real property records;
- (3) provide a description of the real property to which the collateral is related; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

**C. Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
- (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
- (4) the record is recorded.

**D. Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9–111.  
 Fixture filing defined, see Title 33, § 9–106.

#### Library References

Secured Transactions §§ 91, 92, 97, 98, 100. Westlaw Topic No. 349A.	C.J.S. Secured Transactions §§ 75 to 87, 90 to 93, 135, 159.
---	---

### § 9–503. Name of debtor and secured party

**A. Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

**B. Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection A is not rendered ineffective by the absence of:

(1) a trade name of the debtor; or

(2) unless required under subsection A(4)(B), names of partners, members, associates, or other persons comprising the debtor.

**C. Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.



**D. Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

**E. Multiple debtors and secured parties.** A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### § 9-504. Indication of collateral

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to Section 9-116; or
- (2) an indication that the financing statement covers all assets or all personal property.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### § 9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions

**A. Use of terms other than “debtor” and “secured party.”** A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9-311(A), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of similar import, instead of the terms “secured party” and “debtor”.

**B. Effect of financing statement under subsection A.** This part applies to the filing of a financing statement under subsection A and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-311(B), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### § 9-506. Effect of errors or omissions

**A. Minor errors and omissions.** A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

**B. Financing statement seriously misleading.** Except as otherwise provided in subsection C, a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(A) is seriously misleading.

**C. Financing statement not seriously misleading.** If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(A), the name provided does not make the financing statement seriously misleading.

**D. "Debtor's correct name."** For purposes of Section 9-508(B), the "debtor's correct name" in subsection C means the correct name of the new debtor.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-507. Effect of certain events on effectiveness of financing statement

**A. Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

**B. Information becoming seriously misleading.** Except as otherwise provided in subsection C and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9-506.

**C. Change debtor's name.** If a debtor so changes its name that a filed financing statement becomes seriously misleading, under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the change.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement

**A. Financing statement naming original debtor.** Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

**B. Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection A to be seriously misleading under Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under Section 9-203(D); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four (4) months after the new debtor becomes bound under Section 9-203(D) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

**C. When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-507(A).

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Priority of security interests created by new debtor, see Title 33, § 9-326.

### § 9-509. Persons entitled to file a record

**A. Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection B or C; or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

**B. Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under Section 9-315(A)(2), whether or not the security agreement expressly covers proceeds.

**C. Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under Section 9-315(A)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 9-315(A)(2).

**D. Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 9-513(A) or (C), the debtor authorizes the

filing, and the termination statement indicates that the debtor authorized it to be filed.

**E. Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection D.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Statutory damages for noncompliance with specified provisions, see Title 33, § 9-625.

### § 9-510. Effectiveness of filed record

**A. Filed record effective if authorized.** A filed record is effective only to the extent that it was filed by a person that may file it under Section 9-509.

**B. Authorization by one secured party of record.** A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

**C. Continuation statement not timely filed.** A continuation statement that is not filed within the six-month period prescribed by Section 9-515(D) is ineffective.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-511. Secured party of record

**A. Secured party of record.** A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 9-514(A), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

**B. Amendment naming secured party of record.** If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 9-514(B), the assignee named in the amendment is a secured party of record.

**C. Amendment deleting secured party of record.** A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-512. Amendment of financing statement

**A. Amendment of information in financing statement.** Subject to Section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection E, otherwise amend the information provided in, a financing statement by filing an amendment that:

## SECURED TRANSACTIONS

## Title 33 § 9-513

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed in a filing office described in Section 9-501(A)(1), provides the information specified in Section 9-502(B).

**B. Period of effectiveness not affected.** Except as otherwise provided in Section 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

**C. Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

**D. Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

**E. Certain amendments ineffective.** An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### Cross References

Excluded transactions, see Title 33, § 9-111.

### § 9-513. Termination statement

**A. Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

**B. Time for compliance with subsection A.** To comply with subsection A, a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.

**C. Other collateral.** In cases not governed by subsection A, within twenty (20) days after a secured party receives an authenticated demand from a

debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

- (1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;
- (2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;
- (3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
- (4) the debtor did not authorize the filing of the initial financing statement.

**D. Effect of filing termination statement.** Except as otherwise provided in Section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9-510, for purposes of Sections 9-519(G), 9-522(A), and 9-523(C), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Secured party's rights on disposition of collateral and in proceeds, see Title 33, § 9-315.  
Statutory damages for noncompliance with specified provisions, see Title 33, § 9-625.

### § 9-514. Assignment of powers of secured party of record

**A. Assignment reflected on initial financing statement.** Except as otherwise provided in subsection C, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

**B. Assignment of filed financing statement.** Except as otherwise provided in subsection C, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates;
- (2) provides the name of the assignor; and
- (3) provides the name and mailing address of the assignee.

**C. Assignment of record of mortgage.** An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 9-502(C) may be

made only by an assignment of record of the mortgage in the manner provided by law of this Nation other than Title 33.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement**

**A. Five-year effectiveness.** Except as otherwise provided in subsections B, E, F and G, a filed financing statement is effective for a period of five (5) years after the date of filing.

**B. Public-finance or manufactured-home transaction.** Except as otherwise provided in subsections E, F, and G, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

**C. Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection D. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

**D. When continuation statement may be filed.** A continuation statement may be filed only within six (6) months before the expiration of the five-year period specified in subsection A or the 30-year period specified in subsection B, whichever is applicable.

**E. Effect of filing continuation statement.** Except as otherwise provided in Section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection C, unless, before the lapse, another continuation statement is filed pursuant to subsection D. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

**F. Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

**G. Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 9-502(C) remains effective as a financing statement filed as a fixture filing until

the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Secured party's rights on disposition of collateral and in proceeds, see Title 33, § 9-315.

### § 9-516. What constitutes filing; effectiveness of filing

**A. What constitutes filing.** Except as otherwise provided in subsection B, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

**B. Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed in the filing office described in Section 9-501(A)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:



- (i) a type of organization for the debtor;
  - (ii) a jurisdiction of organization for the debtor; or
  - (iii) an organizational identification number for the debtor or indicate that the debtor has none;
- (6) in the case of an assignment reflected in an initial financing statement under Section 9-514(A) or an amendment filed under Section 9-514(B), the record does not provide a name and mailing address for the assignee; or
- (7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9-515(D).

**C. Rules applicable to subsection B.** For purposes of subsection B:

- (1) a record does not provide information if the filing office is unable to read or decipher the information; and
- (2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an initial financing statement.

**D. Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection B, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Cross References**

Excluded transactions, see Title 33, § 9-111.

Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information, see Title 33, § 9-338.

**§ 9-517. Effect of indexing errors**

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-518. Claim concerning inaccurate or wrongfully filed record**

**A. Correction statement.** A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

**B. Sufficiency of correction statement.** A correction statement must:

- (1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (2) indicate that it is a correction statement; and
- (3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amend-

ed to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

**C. Record not affected by correction statement.** The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-519. Numbering, maintaining, and indexing records; communicating information provided in records**

**A. Filing office duties.** For each record filed in a filing office, the filing office shall:

- (1) assign a unique number to the filed record;
- (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- (3) maintain the filed record for public inspection; and
- (4) index the filed record in accordance with subsections C, D, and E.

**B. Reserved.**

**C. Indexing: general.** Except as otherwise provided in subsections D and E, the filing office shall:

- (1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
- (2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

**D. Indexing: real-property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

- (1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and
- (2) to the extent that the law of this Nation provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

**E. Indexing: real-property-related assignment.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 9-514(A) or an amendment filed under Section 9-514(B):

- (1) under the name of the assignor as grantor; and

(2) to the extent that the law of this Nation provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

**F. Retrieval and association capability.** The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

**G. Removal of debtor's name.** The filing office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect to all secured parties of record.

**H. Timeliness of filing office performance.** The filing office shall perform the acts required by subsections A through E at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the record in question.

**I. Inapplicability to real-property-related filing office.** Subsection H do not apply to a filing office described in Section 9-501(A)(1).

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Excluded transactions, see Title 33, § 9-111.

File number, defined see Title 33, § 9-106.

### § 9-520. Acceptance and refusal to accept record

**A. Mandatory refusal to accept record.** A filing office shall refuse to accept a record for filing for a reason set forth in Section 9-516(B) and may refuse to accept a record for filing only for a reason set forth in Section 9-516(B).

**B. Communication concerning refusal.** If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in Section 9-501(A)(2), in no event more than two business days after the filing office receives the record.

**C. When filed financing statement effective.** A filed financing statement satisfying Section 9-502(A) and (B) is effective, even if the filing office is required to refuse to accept it for filing under subsection A. However, Section 9-338 applies to a filed financing statement providing information described in Section 9-516(B)(5) which is incorrect at the time the financing statement is filed.

**D. Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

§ 9-521. Uniform form of written financing statement and amendment

A. Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(B):

UCC FINANCING STATEMENT

(a) FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME AND PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME—insert only one debtor name (1a or 1b)—Do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID. NO. ADD'L INFO. RE 1e. TYPE OF ORGANIZATION SSN OR EIN ORGANIZATION DEBTOR

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID No., if any [ ] NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME—insert only one debtor name (2a or 2b)—do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID. NO. ADD'L INFO. RE

**SECURED TRANSACTIONS**

**Title 33 § 9-521**

2e. TYPE OF ORGANIZATION  
SSN OR EIN ORGANIZATION  
DEBTOR

---

2f. JURISDICTION OF ORGANIZATION  
2g. ORGANIZATIONAL ID No., if any  
\_\_\_\_\_ [ ] NONE

3. SECURED PARTY'S NAME (or name of total assignee of assignor S/P)—  
insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

---

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

---

4. This FINANCING STATEMENT covers the following collateral:

---

5. ALTERNATIVE DESIGNATION [if applicable]: [ ] LESSEE/LESSOR  
[ ] CONSIGNEE/CONSIGNOR [ ] BAILEE/BAILOR [ ] SELLER/BUYER  
[ ] AG. LIEN [ ] NON-UCC FILING

6. [ ] This FINANCING STATEMENT is to be filed against the tract index in  
the REAL ESTATE RECORDS.

Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)  
[ ] All Debtors [ ] Debtor 1 [ ] Debtor 2  
[ADDITIONAL FEE] [optional]

---

8. OPTIONAL FILER REFERENCE DATA

---

FILING OFFICE COPY—NATIONAL UCC FILING STATEMENT (FORM  
UCC 1)

[BACK OF FORM]

UCC FINANCING STATEMENT ADDENDUM  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING  
STATEMENT

---

9a. ORGANIZATION'S NAME

---

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

10. MISCELLANEOUS:

---

\_\_\_\_\_ THE ABOVE SPACE IS FOR  
\_\_\_\_\_ FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME—insert only one name (11a or 11b)—do not abbreviate or combine names

11a. ORGANIZATION'S NAME

---

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

---

11d. TAX ID. NO. ADD'L INFO. RE

11e. TYPE OF ORGANIZATION  
SSN OR EIN ORGANIZATION  
DEBTOR

---

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID No., if any  
\_\_\_\_\_ [ ] NONE

12. [ ] ADDITIONAL SECURED PARTY'S or [ ] ASSIGNOR S/P'S NAME—insert only one name (12a or 12b).

12a. ORGANIZATION'S NAME

---

OR

12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

---

13. This FINANCING STATEMENT covers [ ] timber to be cut or [ ] as-extracted collateral, or is filed as a [ ] fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of the above-described real estate (if Debtor does not have record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box:

Debtor is a  Trust or  Trustee acting with respect to property held in trust or

Decedent's Estate

18. Check only if applicable and check only one box:

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction—effective 30 years

Filed in connection with a Public-Finance Transaction—effective 30 years  
FILING OFFICE COPY—NATIONAL UCC FILING STATEMENT  
(FORM UCC 1Ad)

**B. Amendment form.** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(B):

UCC FINANCING STATEMENT AMENDMENT

(a) FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME AND PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

\_\_\_\_\_ THE ABOVE SPACE IS FOR  
\_\_\_\_\_ FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NO. \_\_\_\_\_

1b.  This FINANCING STATEMENT AMENDMENT is to be filed against the tract index in the REAL ESTATE RECORDS.

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this

Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

---

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.

DELETE name: Give record name to be deleted in item 6a or 6b.

ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

---

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

---

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

---

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

---

7d. TAX ID. NO. ADD'L INFO. RE

7e. TYPE OF ORGANIZATION

SSN OR EIN ORGANIZATION

DEBTOR

---

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID No., if any

\_\_\_\_\_  NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box



**SECURED TRANSACTIONS**

**Title 33 § 9-521**

Describe collateral [ ] deleted or [ ] added, or give entire [ ] restated collateral description, or describe collateral [ ] assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here [ ] and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION’S NAME

OR

9b. INDIVIDUAL’S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILE REFERENCE DATA

FILING OFFICE COPY—NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3)

[BACK OF FORM]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE NO. (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION’S NAME

OR

12b. INDIVIDUAL’S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

13. USE THIS SPACE FOR ADDITIONAL INFORMATION

\_\_\_\_\_ THE ABOVE SPACE IS FOR

\_\_\_\_\_ FILING OFFICE USE ONLY

FILING OFFICE COPY—NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad)

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-522. Maintenance and destruction of records**

**A. Post-lapse maintenance and retrieval of information.** The filing office shall maintain a record of the information provided in a filed financing statement for at least one (1) year after the effectiveness of the financing statement has lapsed under Section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

**B. Destruction of written records.** Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection A.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-523. Information from filing office; sale or license of records**

**A. Acknowledgment of filing written record.** If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 9-519(A)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (1) note upon the copy the number assigned to the record pursuant to Section 9-519(A)(1) and the date and time of the filing of the record; and
- (2) send the copy to the person.

**B. Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

- (1) the information in the record;
- (2) the number assigned to the record pursuant to Section 9-519(A)(1); and
- (3) the date and time of the filing of the record.

**C. Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three (3) business days before the filing office receives the request, any financing statement that:

- (A) designates a particular debtor;
- (B) has not lapsed under Section 9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under Section 9-515 and a record of which is maintained by the filing office under Section 9-522(A);

- (2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

**D. Medium for communicating information.** In complying with its duty under subsection C, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

**E. Timeliness of filing office performance.** The filing office shall perform the acts required by subsections A through D at the time and in the manner prescribed by filing-office rule, but not later than two (2) business days after the filing office receives the request.

**F. Public availability of records.** The filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### § 9-524. Delay by filing office

Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### § 9-525. Fees

**A. Initial financing statement or other record: general rule.** Except as otherwise provided in subsection E, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection B:

(1) Ten dollars (\$10) if the record is communicated in writing and consists of one or two pages;

(2) One dollar (\$1.00) for each additional page if the record is communicated in writing and consists of more than two (2) pages; and

(3) Ten dollars (\$10.00) for one (1) or two (2) pages plus a one dollar (\$1.00) for each additional page if the record is communicated by another medium authorized by filing-office rule.

**B. Initial financing statement: public-finance and manufactured-housing transactions.** Except as otherwise provided in subsection E, the fee for filing and indexing an initial financing statement of the following kind is:

(1) Ten dollars (\$10.00) if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten dollars (\$10.00) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

**C. Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections A and B.

**D. Response to information request.** The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

- (1) Ten dollars (\$10.00) if the request is communicated in writing; and
- (2) Ten dollars (\$10.00) if the request is communicated by another medium authorized by filing-office rule.

**E. Record of mortgage.** This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 9-502(C). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

### § 9-526. Filing; office rules

The Secretary of the Nation may adopt and publish rules to implement this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

## SUBCHAPTER 6. DEFAULT

### Part

- I. Default and Enforcement of Security Interest
- II. Noncompliance with Chapter

### PART I. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

#### Section

- 9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.
- 9-602. Waiver and variance of rights and duties.
- 9-603. Agreement on standards concerning rights and duties.
- 9-604. Procedure if security agreement covers real property or fixtures.
- 9-605. Unknown debtor or secondary obligor.
- 9-606. Time of default for agricultural lien.
- 9-607. Collection and enforcement by secured party.
- 9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.
- 9-609. Secured party's right to take possession after default.
- 9-610. Disposition of collateral after default.
- 9-611. Notification before disposition of collateral.
- 9-612. Timeliness of notification before disposition of collateral.
- 9-613. Contents and form of notification before disposition of collateral: general.
- 9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

**Section**

- 9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.
- 9-616. Explanation of calculation of surplus or deficiency.
- 9-617. Rights of transferee of collateral.
- 9-618. Rights and duties of certain secondary obligors.
- 9-619. Transfer of record or legal title.
- 9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.
- 9-621. Notification of proposal to accept collateral.
- 9-622. Effect of acceptance of collateral.
- 9-623. Right to redeem collateral.
- 9-624. Waiver.

**§ 9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes**

**A. Rights of secured party after default.** After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

**B. Rights and duties of secured party in possession or control.** A secured party in possession of collateral or control of collateral under Section 9-117, 9-118, 9-119, or 9-120 has the rights and duties provided in Section 9-207.

**C. Rights cumulative; simultaneous exercise.** The rights under subsections A and B are cumulative and may be exercised simultaneously.

**D. Rights of debtor and obligor.** Except as otherwise provided in subsection G and Section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

**E. Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

**F. Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

**G. Consignor or buyer of certain rights to payment.** Except as otherwise provided in Section 9-607(C), this part imposes no duties upon a secured party

that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions §§ 221, 223, 226, 229.1 C.J.S. Secured Transactions §§ 179, 181 to 238.  
Westlaw Topic No. 349A. 183, 186, 188 to 190, 201 to 221.

### § 9-602. Waiver and variance of rights and duties

Except as otherwise provided in Section 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Section 9-207(B)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Section 9-607(B), which deals with collection and enforcement of collateral;
- (4) Sections 9-608(A) and 9-615(C) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) Sections 9-608(A) and 9-615(D) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) Sections 9-610(B), 9-611, 9-613, and 9-614, which deal with disposition collateral;
- (8) Section 9-615(F), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) Section 9-623, which deals with redemption of collateral;
- (12) Section 9-624, which deals with permissible waivers; and
- (13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ⇨162, 164.1, 228, 239 to 243.      207, 209 to 210, 214, 216 to 217, 222 to 233.  
 Westlaw Topic No. 349A.  
 C.J.S. Secured Transactions §§ 141 to 142, 145, 147 to 150, 190, 193 to 200, 205 to

**§ 9–603. Agreement on standards concerning rights and duties**

**A. Agreed standards.** The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 9–602, if the standards are not manifestly unreasonable.

**B. Agreed standards inapplicable to breach of peace.** Subsection A does not apply to the duty under Section 9–609 to refrain from breaching the peace. [Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ⇨165, 228, 242.1.      C.J.S. Secured Transactions §§ 143 to 144, 190, 193 to 200, 222, 227 to 233.  
 Westlaw Topic No. 349A.

**§ 9–604. Procedure if security agreement covers real property or fixtures**

**A. Enforcement: personal and real property.** If a security agreement covers both personal and real property, a secured party may proceed:

- (1) under this part as to the personal property without prejudicing any rights with respect to the real property; or
- (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

**B. Enforcement: fixtures.** Subject to subsection C, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (1) under this part; or
- (2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

**C. Removal of fixtures.** Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

**D. Injury caused by removal.** A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property 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 assurance for the performance of the obligation to reimburse.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions § 228.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 190, 193 to  
200, 222.

**§ 9-605. Unknown debtor or secondary obligor**

A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Secured Transactions § 161 to 165.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 140 to 145,  
147 to 150.

**§ 9-606. Time of default for agricultural lien**

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-607. Collection and enforcement by secured party**

**A. Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 9-117(A)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and



(5) if it holds a security interest in a deposit account perfected by control under Section 9-117(A)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

**B. Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise under subsection A(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

**C. Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

**D. Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection C reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

**E. Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions §§ 227, 228, 231, 237, 240.	C.J.S. Secured Transactions §§ 190 to 191, 193 to 200, 205 to 207, 209 to 211, 213 to 217, 220 to 225.
Westlaw Topic No. 349A.	

### § 9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus

**A. Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9–607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency. No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ¶237, 240.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 205 to 207,  
209 to 210, 214, 216 to 217, 220 to 225.

### § 9–609. Secured party's right to take possession after default

**A. Possession; rendering equipment unusable; disposition on debtor's premises.** After default, a secured party:

- (1) may take possession of the collateral; and
- (2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 9–610.

**B. Judicial and nonjudicial process.** A secured party may proceed under subsection A:

- (1) pursuant to judicial process; or
- (2) without judicial process, if it proceeds without breach of the peace.

**C. Assembly of collateral.** If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Proceeds defined, see Title 33, § 9–106.

## Library References

Secured Transactions §§ 228, 242.1 to 243.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 190, 193 to  
200, 222, 227 to 233.

**§ 9-610. Disposition of collateral after default**

**A. Disposition after default.** After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

**B. Commercially reasonable disposition.** Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

**C. Purchase by secured party.** A secured party may purchase collateral:

- (1) at a public disposition; or
- (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

**D. Warranties on disposition.** A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

**E. Disclaimer of warranties.** A secured party may disclaim or modify warranties under subsection D:

- (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
- (2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

**F. Record sufficient to disclaim warranties.** A record is sufficient to disclaim warranties under subsection E if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

## Library References

Secured Transactions §§ 229.1 to 238.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 190, 201 to  
221.

**§ 9-611. Notification before disposition of collateral**

**A. Notification date.** In this section, “notification date” means the earlier of the date on which:

- (1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

**B. Notification of disposition required.** Except as otherwise provided in subsection D, a secured party that disposes of collateral under Section 9–610 shall send to the persons specified in subsection D a reasonable authenticated notification of disposition.

**C. Persons to be notified.** To comply with subsection B, the secured party shall send an authenticated notification of disposition to:

- (1) the debtor;
- (2) any secondary obligor; and
- (3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, ten (10) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

- (i) identified the collateral;
- (ii) was indexed under the debtor’s name as of that date; and
- (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9–311(A).

**D. Subsection B inapplicable: perishable collateral; recognized market.** subsection B does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

**E. Compliance with subsection (C)(3)(B).** A secured party complies with the requirement for notification prescribed by subsection (C)(3)(B) if:

(1) not later than twenty (20) days or earlier than thirty (30) calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor’s name in the office indicated in subsection (C)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ¶230.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 203 to 209,  
212.

**§ 9-612. Timeliness of notification before disposition of collateral**

**A. Reasonable time is question of fact.** Except as otherwise provided in subsection B, whether a notification is sent within a reasonable time is a question of fact.

**B. 10-day period sufficient in non-consumer transaction.** In a transaction other than a consumer transaction, a notification of disposition is sent after default and ten (10) days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

(1) in a consumer transaction, twenty (20) calendar days or more before the earliest time of disposition set forth in the notification; or

(2) in all other transactions, ten (10) calendar days or more before the earliest time of disposition set forth in the notification.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ¶230.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 203 to 209,  
212.

**§ 9-613. Contents and form of notification before disposition of collateral: general**

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made;

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required

(5) The following form of notification and the form appearing in Section (3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: [Name of debtor, obligor, or other person to which the notification is sent]

**Title 33, § 9-613**

**UNIFORM COMMERCIAL CODE**

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition under :]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$\_\_\_\_\_].

You may request an accounting by calling us at [telephone number]

[End of Form]

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions  $\Leftrightarrow$ 230.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 203 to 209,  
212.

**§ 9-614. Contents and form of notification before disposition of collateral:  
consumer-goods transaction**

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9-613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

**NOTICE OF OUR PLAN TO SELL PROPERTY**

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

**SECURED TRANSACTIONS**

**Title 33, § 9-614**

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

You may attend the sale and bring bidders if you want.

[For a private disposition: ]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at “[telephone number]” [or write us at [secured party’s address]] and request a written explanation. [We will charge you \$\_\_\_\_\_ for the explanation if we sent you another written explanation of the amount you owe us within the last six (6) months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party’s address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this Chapter.

(6) If a notification under this section is not in the form of paragraph (3), law other than this chapter determines the effect of including information not required by paragraph (1).

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

**§ 9-615. Application of proceeds of disposition; liability for deficiency and right to surplus**

**A. Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured or agricultural lien under which the disposition is made

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

**B. Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection A(3).

**C. Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

**D. Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection A and permitted by subsection C:

(1) unless subsection A(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

**E. No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.



**F. Calculation of surplus or deficiency in disposition to person related to secured party.** The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

**G. Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ¶237, 240.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 205 to 207,  
209 to 210, 214, 216 to 217, 220 to 225.

### § 9-616. Explanation of calculation of surplus or deficiency

**A. Definitions.** In this section:

(1) “Explanation” means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection C of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) “Request” means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9-610.

**B. Explanation of calculation.** In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

**C. Required information.** To comply with subsection A(1)(B), a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

**D. Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection A is sufficient, even if it includes minor errors that are not seriously misleading.

**E. Charges for responses.** A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer

obligor an explanation pursuant to subsection B(1). The secured party may require payment of a charge not exceeding \$25 for each additional response. [Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌240.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 205 to 207,  
209 to 210, 214, 216 to 217, 222 to 225.

### § 9-617. Rights of transferee of collateral

**A. Effects of disposition.** A secured party's disposition of collateral after default:

- (1) transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) discharges the security interest under which the disposition is made; and
- (3) discharges any subordinate security interest or other subordinate lien.

**B. Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection A, even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.

**C. Rights of other transferee.** If a transferee does not take free of the rights and interests described in subsection A, the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest or agricultural lien under which the disposition is made; and
- (3) any other security interest or other lien.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌235.  
Westlaw Topic No. 349A.

### § 9-618. Rights and duties of certain secondary obligors

**A. Rights and duties of secondary obligor.** A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

**B. Effect of assignment, transfer, or subrogation.** An assignment, transfer, or subrogation described in subsection A:

- (1) is not a disposition of collateral under Section 9-610; and

(2) relieves the secured party of further duties under this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌184.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions § 172.

### § 9–619. Transfer of record or legal title

**A. “Transfer statement.”** In this section, “transfer statement” means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) the name and mailing address of the secured party, debtor, and transferee.

**B. Effect of transfer statement.** A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer; and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

**C. Transfer not a disposition; no relief of secured party’s duties.** A transfer of the record or legal title to collateral to a secured party under subsection B or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⇌235.  
Westlaw Topic No. 349A.

### § 9–620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral

**A. Conditions to acceptance in satisfaction.** Except as otherwise provided in subsection G, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

## SECURED TRANSACTIONS

## Title 33, § 9-620

- (1) the debtor consents to the acceptance under subsection C;
- (2) the secured party does not receive, within the time set forth in subsection D, a notification of objection to the proposal authenticated by:
  - (A) a person to which the secured party was required to send a proposal under Section 9-621; or
  - (B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (4) subsection E does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9-624.

**B. Purported acceptance ineffective.** A purported or apparent acceptance of collateral under this section is ineffective unless:

- (1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
- (2) the conditions of subsection A are met.

**C. Debtor's consent.** For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within twenty (20) days after the proposal is sent.

**D. Effectiveness of notification.** To be effective under subsection A(2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 9-621, within twenty (20) days after notification was sent to that person; and

(2) in other cases:

(A) within 20 days after the last notification was sent pursuant to Section 9-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection C.

**E. Mandatory disposition of consumer goods.** A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 9–610 within the time specified in subsection F if:

- (1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
- (2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

**F. Compliance with mandatory disposition requirement.** To comply with subsection E, the secured party shall dispose of the collateral:

- (1) within ninety (90) days after taking possession; or
- (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

**G. No partial satisfaction in consumer transaction.** In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

#### Cross References

Proposal defined, see Title 33, § 9–106.

#### Library References

Secured Transactions ⇌238, 239.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions § 222.

### § 9–621. Notification of proposal to accept collateral

**A. Persons to which proposal to be sent.** A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

- (1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
- (2) any other secured party or lienholder that, ten (10) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
  - (A) identified the collateral;
  - (B) was indexed under the debtor’s name as of that date; and
  - (C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
- (3) any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9–311(A).

**B. Proposal to be sent to secondary obligor in partial satisfaction.** A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection A.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Proposal defined, see Title 33, § 9-106.

### § 9-622. Effect of acceptance of collateral

**A. Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (1) discharges the obligation to the extent consented to by the debtor;
- (2) transfers to the secured party all of a debtor's rights in the collateral;
- (3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) terminates any other subordinate interest.

**B. Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection A, even if the secured party fails to comply with this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Cross References

Proposal defined, see Title 33, § 9-106.

### § 9-623. Right to redeem collateral

**A. Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

**B. Requirements for redemption.** To redeem collateral, a person shall tender:

- (1) fulfillment of all obligations secured by the collateral; and
- (2) the reasonable expenses and attorney's fees described in Section 9-615(A)(1).

**C. When redemption may occur.** A redemption may occur at any time before a secured party:

- (1) has collected collateral under Section 9-607;
- (2) has disposed of collateral or entered into a contract for its disposition under Section 9-610; or
- (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9-622.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]





(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

**D. Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under Section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9-626 may not otherwise recover under subsection B for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

**E. Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection B, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:

- (1) fails to comply with Section 9-208;
- (2) fails to comply with Section 9-209;
- (3) files a record that the person is not entitled to file under Section 9-509(A);
- (4) fails to cause the secured party of record to file or send a termination statement as required by Section 9-513(A) or (C);
- (5) fails to comply with Section 9-616(B)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
- (6) fails to comply with Section 9-616(B)(2).

**F. Statutory damages: noncompliance with Section 9-210.** A debtor or consumer obligor may recover damages under subsection B and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 9-210. A recipient of a request under Section 9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

**G. Limitation of security interest: noncompliance with Section 9-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ¶¶242.1 to 243.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 227 to 233.

**§ 9–626. Action in which deficiency or surplus is in issue**

**A. Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in Section 9–628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under Section 9–615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

**B. Non-consumer transactions; no inference.** The limitation of the rules in subsection A to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

[Added by NCA 07–107, § 3, eff. May 3, 2007; amended by NCA 09–020, § 2, approved Jan. 31, 2009.]

**Library References**

Secured Transactions ¶¶240, 242.1 to 243.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 205 to 207,  
209 to 210, 214, 216 to 217, 222 to 225, 227  
to 233.

**§ 9–627. Determination of whether conduct was commercially reasonable**

**A. Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.** The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different

time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

**B. Dispositions that are commercially reasonable.** A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
- (2) at the price current in any recognized market at the time of the disposition; or
- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

**C. Approval by court or on behalf of creditors.** A collection, enforcement, disposition or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
- (2) by a bona fide creditors' committee;
- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.

**D. Approval under subsection C not necessary; absence of approval has no effect.** Approval under subsection C need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions Ⓒ231.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 190, 210 to  
211, 213 to 217.

### § 9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor

**A. Limitation of liability of secured party for noncompliance with chapter.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and
- (2) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

**B. Limitation of liability based on status as secured party.** A secured party is not liable because of its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
  - (A) that the person is a debtor or obligor;
  - (B) the identity of the person; and
  - (C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) that the person is a debtor; and
- (B) the identity of the person.

**C. Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

**D. Limitation of liability for statutory damages.** A secured party is not liable to any person under Section 9-625(C)(2) for its failure to comply with Section 9-616.

**E. Limitation of multiple liability for statutory damages.** A secured party is not liable under Section 9-625(C)(2) more than once with respect to any one secured obligation.

[Added by NCA 07-107, § 3, eff. May 3, 2007; amended by NCA 09-020, § 2, approved Jan. 31, 2009.]

#### Library References

Secured Transactions ⅈ240, 242.1 to 243.  
Westlaw Topic No. 349A.

C.J.S. Secured Transactions §§ 205 to 207,  
209 to 210, 214, 216 to 217, 222 to 225, 227  
to 233.

### § 9-629. Attorney's fees in consumer transactions

If the secured party's compliance with this chapter is placed in issue in an action with respect to a consumer transaction, the following rules apply:

(1) If the secured party would have been entitled to attorney's fees as the prevailing party, a consumer debtor or consumer obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

(2) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(3) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### Library References

Antitrust and Trade Regulation ⅈ395.  
Costs ⅈ194.25, 194.32 to 194.38.

Westlaw Topic Nos. 29T, 102.

C.J.S. Costs §§ 140 to 141.  
C.J.S. Credit Reporting Agencies; Consumer  
Protection §§ 121 to 123.

## SUBCHAPTER 7. MISCELLANEOUS PROVISIONS

### **Section**

9-701. Effective date.  
9-702. Applicability.  
9-703. Savings clause.  
9-704. Severability.

### **§ 9-701. Effective date**

This chapter shall become effective on January 1, 2008.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Library References**

Secured Transactions ⇔8.1.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 1, 4.

### **§ 9-702. Applicability**

This chapter applies to a transaction within its scope that is entered into on or after the effective date of this chapter. This chapter does not apply to a transaction that is entered into before the effective date of this chapter even if the transaction would be subject to this chapter if it had been entered into after the effective date of this chapter. This chapter does not apply to a right of action that accrued before the effective date of this chapter.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Library References**

Secured Transactions ⇔3, 8, 92, 98, 135. C.J.S. Secured Transactions §§ 1, 3 to 5, 50,  
Westlaw Topic No. 349A. 75 to 86, 92 to 93.

### **§ 9-703. Savings clause**

A transaction entered into before the effective date of this chapter, and the rights, obligations, and interests flowing from that transaction, are governed by any statute or other law amended or repealed by this chapter as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

#### **Library References**

Secured Transactions ⇔8.  
Westlaw Topic No. 349A.  
C.J.S. Secured Transactions §§ 1, 3 to 4.

### **§ 9-704. Severability**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applica-

**Title 33, § 9-704**

**UNIFORM COMMERCIAL CODE**

tions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

**Library References**

Statutes  $\S$ 64(2).

Westlaw Topic No. 361.

C.J.S. Statutes  $\S\S$  83, 87, 89 to 90, 94 to 97,  
99, 102 to 104, 107.

**CHAPTERS 10 to 14. RESERVED**

## **CHAPTER 15. UNIFORM ELECTRONIC TRANSACTIONS ACT**

### **Section**

- 15-101. Short title.
- 15-102. Definitions.
- 15-103. Scope.
- 15-104. Prospective application.
- 15-105. Use of electronic records and electronic signatures; variation by agreement.
- 15-106. Construction and application.
- 15-107. Legal recognition of electronic records, electronic signatures, and electronic contracts.
- 15-108. Provision of information in writing; presentation of records.
- 15-109. Attribution and effect of electronic record and electronic signature.
- 15-110. Effect of change or error.
- 15-111. Notarization and acknowledgment.
- 15-112. Retention of electronic records; originals.
- 15-113. Admissibility in evidence.
- 15-114. Automated transaction.
- 15-115. Time and place of sending and receipt.
- 15-116. Transferable records.
- 15-117. Creation and retention of electronic records and conversion of written records by governmental agencies.
- 15-118. Acceptance and distribution of electronic records by governmental agencies.
- 15-119. Interoperability.
- 15-120. Waiver of information transaction laws by governmental agencies.
- 15-121. Acting as registered certification authority.

### **§ 15-101. Short title**

This chapter shall be known and may be cited as the Uniform Electronic Transactions Act.

[Added by NCA 07-107, § 3, eff. May 3, 2007.]

### **§ 15-102. Definitions**

In this chapter:

(1) “Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) “Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) “Certification authority” means a person who issues a certificate for a digital signature.

(4) “Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(5) “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this act and other applicable law.

(6) “Digital signature” means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer’s public key can accurately determine whether:

(A) The transformation was created using the private key that corresponds to the signer’s public key; and

(B) The initial message has not been altered since the transformation was made.

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(9) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(10) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(11) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(12) “Information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(13) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(14) “Message” means a digital representation of information.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(16) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Registered certification authority” means a certification authority who is registered with the Secretary and has been certified by the Secretary as meeting the standards set forth by regulation.

(18) “Secretary” means the Muscogee (Creek) Nation Secretary of State.

(19) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an



electronic record. The term “security procedure” includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian Tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(21) “Transaction” means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Contracts ⇌33.	C.J.S. Contracts § 70.
Signatures ⇌1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ⇌1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 95, 355, 372.	

### § 15–103. Scope

(a) Except as provided in subsection (b) of this section or as otherwise provided by law, this act applies to electronic records and electronic signatures relating to a transaction.

(b) This act does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) the Uniform Commercial Code, other than Sections 1–107 and 1–206 of Title 33 of the Muscogee (Creek) Code Annotated and Chapter 2, and Chapter 2A of Title 33 of the Muscogee (Creek) Code Annotated;

(3) Reserved

(4) a consumer protection law of this Nation necessary to conform to existing federal requirements or to preserve existing consumer protection requirements.

(c) This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.

(d) A transaction subject to this act is also subject to other applicable substantive law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ⇌188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ⇌1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ⇌1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

**§ 15–104. Prospective application**

This act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this act.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**§ 15–105. Use of electronic records and electronic signatures; variation by agreement**

(a) This act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words unless otherwise agreed, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

**§ 15–106. Construction and application**

This act must be construed and applied:

- (1) to facilitate electronic transactions consistent with other applicable law;
- (2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

**§ 15–107. Legal recognition of electronic records, electronic signatures, and electronic contracts**

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Library References**

Banks and Banking ☞188.5.

Signatures ☞1.

Telecommunications ☞1400.

Westlaw Topic Nos. 52, 355, 372.

C.J.S. Banks and Banking §§ 476 to 481.

C.J.S. Signatures §§ 1 to 16.

C.J.S. Telecommunications §§ 200 to 201.

**§ 15–108. Provision of information in writing; presentation of records**

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this act requires a record

(i) to be posted or displayed in a certain manner,

(ii) to be sent, communicated, or transmitted by a specified method, or

(iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in paragraph (2) of subsection (d) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than this act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than this act to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail, may be varied by agreement to the extent permitted by the other law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

### § 15–109. Attribution and effect of electronic record and electronic signature

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

### § 15–110. Effect of change or error

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the

other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) of this section may not be varied by agreement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 52, 355, 372.	

### § 15–111. Notarization and acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Acknowledgment ☞4.	C.J.S. Acknowledgments §§ 5 to 8.
Banks and Banking ☞188.5.	C.J.S. Banks and Banking §§ 476 to 481.
Signatures ☞1.	C.J.S. Signatures §§ 1 to 16.
Telecommunications ☞1400.	C.J.S. Telecommunications §§ 200 to 201.
Westlaw Topic Nos. 12, 52, 355, 372.	

### § 15–112. Retention of electronic records; originals

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Telecommunications ☞1400.  
Westlaw Topic Nos. 52, 372.

C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Telecommunications §§ 200 to 201.

### § 15–113. Admissibility in evidence

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Signatures ☞1.  
Telecommunications ☞1400.  
Westlaw Topic Nos. 52, 355, 372.

C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Signatures §§ 1 to 16.  
C.J.S. Telecommunications §§ 200 to 201.

### § 15–114. Automated transaction

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking ☞188.5.  
Signatures ☞1.  
Telecommunications ☞1400.

Westlaw Topic Nos. 52, 355, 372.  
C.J.S. Banks and Banking §§ 476 to 481.

C.J.S. Signatures §§ 1 to 16.  
C.J.S. Telecommunications §§ 200 to 201.

**§ 15–115. Time and place of sending and receipt**

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted

by the other law, the requirements of this subsection may not be varied by agreement.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Banks and Banking Ⓒ188.5.  
Telecommunications Ⓒ1400.  
Westlaw Topic Nos. 52, 372.

C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Telecommunications §§ 200 to 201.

### § 15–116. Transferable records

(a) In this section, “transferable record” means an electronic record that:

(1) would be a note under Chapter 3 of the Uniform Commercial Code or a document under Chapter 7 of the Uniform Commercial Code if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued, or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in paragraph 20 of Section 1–201 of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under



subsection (a) of Section 3–302, Section 7–501, or Section 9–308<sup>1</sup> of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

<sup>1</sup> This section has not yet been adopted by the Muscogee (Creek) Nation.

#### Library References

Banks and Banking ☞188.5.  
Telecommunications ☞1400.  
Westlaw Topic Nos. 52, 372.

C.J.S. Banks and Banking §§ 476 to 481.  
C.J.S. Telecommunications §§ 200 to 201.

### § 15–117. Creation and retention of electronic records and conversion of written records by governmental agencies

Each governmental agency of this Nation, shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Records ☞3, 13.  
Westlaw Topic No. 326.  
C.J.S. Records §§ 37 to 39.

### § 15–118. Acceptance and distribution of electronic records by governmental agencies

(a) Except as otherwise provided in this chapter, each governmental agency of this Nation shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a) of this section, the governmental agency, giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in this chapter, this chapter does not require a governmental agency of this Nation to use or permit the use of electronic records or electronic signatures.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Records ☞3, 13.  
Westlaw Topic No. 326.  
C.J.S. Records §§ 37 to 39.

### § 15–119. Interoperability

A governmental agency of this Nation which adopts standards pursuant to this chapter may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this Nation and other Indian Tribes, states and the federal government and nongovernmental persons interacting with governmental agencies of this Nation. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this Nation may choose in implementing the most appropriate standard for a particular application.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

#### Library References

Records ☞3, 13.  
Westlaw Topic No. 326.  
C.J.S. Records §§ 37 to 39.

### § 15–120. Waiver of information transaction laws by governmental agencies

Notwithstanding this chapter, a governmental agency may waive the requirements of Muscogee (Creek) law governing

- (i) the method of posting or display of a record or information,
- (ii) the manner of communication or transmittal of a record or information, including but not limited to, first class or other United States mail requirements, or
- (iii) formatting requirements of a record or information, with respect to the matters over which the agency has jurisdiction.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

## Library References

Statutes  $\Rightarrow$ 64(2).  
Westlaw Topic No. 361.

C.J.S. Statutes §§ 83, 87, 89 to 90, 94 to 97,  
99, 102 to 104, 107.

**§ 15–121. Acting as registered certification authority**

(a) No person, other than a national agency, board, or commission, shall act as a registered certification authority in this Nation until such person:

(1) Registers with the Secretary of the Nation, or other Muscogee (Creek) Nation authority appointed by the Principal Chief, on forms approved and provided by that officer or;

(2) Files with the official designated at subparagraph (a)(1) of this section, a good and sufficient surety bond, certificate of insurance, or other evidence of financial security in the amount of two hundred fifty thousand dollars (\$250,000.00); and

(3) Meets the requirements of any rules promulgated by the official designated at subparagraph (a)(1) of this section.

(b) Real estate transactions and district and appellate court filings shall require the use of a registered certification authority.

(c) If a registered certification authority fails to maintain any of the qualifications listed in subsection (a) of this section, the registration of the certification authority shall be deemed lapsed.

(d) Any person who knowingly acts as a registered certification authority who has not met the requirements set forth in subsection (a) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00) or up to thirty (30) days in jail, or both, for each violation. Each violation shall be a separate offense under this section.

(e) Notwithstanding any contractual provisions to the contrary, a certification authority shall be liable for damages suffered by any person injured as a result of the fraudulent or unauthorized acts of the certification authority.

(f) In addition to any civil or criminal actions, the official indicated at subparagraph (a)(1) of this section, or the Attorney General may apply to the district court when a violation of this section has allegedly occurred for an order enjoining or restraining the person from continuing the acts specified in the complaint. The court may grant a temporary or permanent injunction or restraining order, with or without bond, as it deems just and proper.

(g) The official indicated at subparagraph (a)(1) of this section is authorized to adopt rules to implement the provisions of this section, and related provisions.

**Title 33, § 15–121**

**UNIFORM COMMERCIAL CODE**

(h) The official indicated at subparagraph (a)(1) of this section shall have the authority to establish reciprocity with other Indian Tribes, states and foreign nations for purposes of this section, and related provisions.

[Added by NCA 07–107, § 3, eff. May 3, 2007.]

**Index to  
Muscogee (Creek) Nation Code Annotated**

**See Volume 5**

END OF VOLUME