

Table of Contents

Volume 1

PART I. GENERAL ISSUES AND STRUCTURE OF FINANCING

CHAPTER 1. OVERVIEW OF COMMERCIAL ASSET-BASED FINANCING

I. INTRODUCTION

- § 1:1 Scope of treatise
- § 1:2 Sources of law, generally
- § 1:3 Revised Article 9
- § 1:4 —Transition to Revised Article 9
- § 1:4.50 2010 Amendments to Article 9

II. KEY CONCEPTS

- § 1:5 “Security”
- § 1:6 “Secured credit” versus “unsecured credit”

III. MAJOR PLANNING ISSUES IN ASSET FINANCE

- § 1:7 Transaction planning, generally
- § 1:8 The debtor-creditor relationship
- § 1:9 Secured loans and priorities
- § 1:10 Bankruptcy considerations
- § 1:11 Tax and subsidy considerations

IV. PERSPECTIVES OF KEY PARTIES

- § 1:12 Debtor
- § 1:13 Creditor
- § 1:14 Counsel

V. COMMERCIAL ASSET-BASED FINANCING CHECKLIST

- § 1:15 General checklist

SUBPART A. DEBTOR-CREDITOR RELATIONSHIP

CHAPTER 2. CREATING A SECURED TRANSACTION

- § 2:1 Overview
- § 2:2 Rules governing secured transactions, generally
- § 2:3 —FDIC and informal agreements
- § 2:3.50 — —Cases applying D'Oench Duhme doctrine

I. DEBTOR'S AUTHORITY TO ACT

- § 2:4 Generally
- § 2:5 Opinions of counsel
- § 2:6 Sole proprietorships
- § 2:7 Partnerships and joint ventures
- § 2:8 Trusts, fiduciaries, and estates
- § 2:9 Corporations, generally
- § 2:10 —Authority of signatories

II. CREATING THE INDEBTEDNESS

A. LENDING CONSIDERATIONS

- § 2:11 Debtor-creditor negotiation interests
- § 2:12 Effect of third party interests
- § 2:12.50 —Actions by third party (breach of contract)

B. LENDING COMMITMENTS

- § 2:13 Preliminary commitments, generally
- § 2:14 Effect of open terms
- § 2:15 Effect of failure to bargain
- § 2:16 Promissory estoppel of lender

III. CREATING AN ENFORCEABLE INTEREST

A. GENERAL REQUIREMENTS

- § 2:17 Enforceability, generally
- § 2:18 Transfer of value
- § 2:19 Debtor's rights in collateral
- § 2:19.50 —Cases finding existence of rights
- § 2:20 Security agreement requirement, generally
- § 2:20.50 Security agreement requirement; generally—Distinguishing from lease
- § 2:21 Security agreement requirement, generally—Sufficiency of financing statement alone
- § 2:22 Deferred attachment
- § 2:23 Licenses and privileges

TABLE OF CONTENTS

B. DEFINING SCOPE OF INTEREST

1. Rules of Construction and Description

- § 2:24 Generally
- § 2:25 Reasonableness standard
- § 2:26 Security agreement versus financing statement description
- § 2:27 Extrinsic evidence of intent
- § 2:28 General versus specific description
- § 2:29 Selection from group
- § 2:30 Generic U.C.C. classifications or descriptions
- § 2:30.50 Sufficiency of description of collateral
- § 2:31 Effect of list and serial number errors
- § 2:31.50 Case applications of reasonableness standard
- § 2:32 After-acquired property
- § 2:32.50 —Sufficiency of description

2. “All” Asset or Debt Descriptions

- § 2:33 Generally
- § 2:34 Omnibus and dragnet clauses

3. Proceeds and Products of Collateral

- § 2:35 Generally
- § 2:36 Insurance proceeds
- § 2:37 Farm subsidy payments
- § 2:38 Rents and royalties
- § 2:39 Accounts receivable

CHAPTER 3. COVENANTS AND EVENTS OF DEFAULT

I. FUNCTIONS OF COVENANTS AND EVENTS OF DEFAULT

- § 3:1 Introduction
- § 3:2 Defining default
- § 3:3 Defining performance expectations
- § 3:4 Defining the link between performance and default

II. GENERAL CIRCUMSTANCES AFFECTING ENFORCEABILITY

- § 3:5 Waiver and estoppel
- § 3:5.50 —Case illustrations
- § 3:6 Bankruptcy
- § 3:7 Creditor insecurity

III. SPECIFIC DEBTOR-IN-POSSESSION RESTRAINTS AND OBLIGATIONS

A. FINANCIAL RESTRAINTS AND OBLIGATIONS

- § 3:8 Use of loan funds
- § 3:9 Other liens

B. USE AND CARE OF COLLATERAL

- § 3:10 Nonfinancial defaults, generally
- § 3:11 Location and inspection clauses
- § 3:12 Classification and use
- § 3:13 Insurance clauses
- § 3:14 Maintenance or repair clauses

C. SALE AND DISPOSITION RESTRAINTS

- § 3:15 Generally
- § 3:16 Authorization requirement
- § 3:17 Written consent requirement
- § 3:18 Condition requiring transfer of proceeds
- § 3:19 Ordinary course sales

IV. SPECIFIC CREDITOR-IN-POSSESSION RESTRAINTS AND OBLIGATIONS

A. TRANSACTIONAL CONTEXT

- § 3:20 Appropriate creditor-in-possession circumstances
- § 3:21 Allocation of costs and risks

B. CARE OF COLLATERAL

- § 3:22 General standard of reasonable care
- § 3:23 Preservation of market value by sale
- § 3:24 Protection of rights against third parties

CHAPTER 4. PAYMENTS AND THE SECURED OBLIGATION

I. SCOPE AND AMOUNT OF OBLIGATION

- § 4:1 Introduction
- § 4:2 Included debts
 - Current and prior debts
- § 4:4 Future advances
 - Secured future advances
 - Priority dates and perfection
 - 45-Day priorities
- § 4:8 Obligation to continue lending

TABLE OF CONTENTS

- § 4:9 —Agreement for future funding
- § 4:10 —The right to terminate lending
- § 4:10.50 Multiple mortgages

II. INTEREST RATE ISSUES

- § 4:11 Amortization, interest and installment debt
- § 4:12 —Simple or compound interest
- § 4:13 —Rate computation
- § 4:14 — —Add-on interest
- § 4:15 — —Declining balance or actuarial computation; United States Rule computation
- § 4:16 —Discounted notes
- § 4:17 Floating and fixed rates
- § 4:18 —Timing and calculation
- § 4:19 —Rate specification
- § 4:20 —Installments and basis
- § 4:21 —Floating rates and usury
- § 4:22 Interest rates and other disclosures

III. USURY LIMITATIONS

- § 4:23 Usury and rate limitations
- § 4:24 General and special usury laws
- § 4:25 —Exempt transactions—Business loans
- § 4:26 — —Types of transfer
- § 4:27 —Federal usury law
- § 4:28 Rates and defining “interest”
- § 4:29 —Front end fees and charges
- § 4:30 —Secondary benefits and risks
- § 4:31 — —Adjustments to principal
- § 4:32 Choice of law
- § 4:32.50 —Caselaw illustrations

IV. ENFORCING THE NOTE

- § 4:33 The FTC’s “holder rule”
- § 4:34 Notes: Negotiability and content
- § 4:35 Demand or installment notes
- § 4:36 Payment grace periods and timing
- § 4:37 Lock box payments
- § 4:38 Waiver and estoppel of collection
- § 4:39 —No waiver and related clauses
- § 4:40 Prepayment rights and penalties
- § 4:40.50 —Application of states’ laws
- § 4:41 Acceleration clauses
- § 4:42 —Optional or automatic acceleration
- § 4:43 —Bases for acceleration
- § 4:44 —Notice and demand issues
- § 4:45 Demand notes and implied conditions

- § 4:46 Rebates of unearned interest and costs
- § 4:47 —Pro rata rebates
- § 4:48 —Actuarial rebating
- § 4:49 —Rule of 78's (sum of digits)

SUBPART B. DEFAULT AND FORECLOSURE

CHAPTER 5. FORECLOSURE PROCESS: WORKOUTS AND TAKING POSSESSION

I. INTRODUCTION

- § 5:1 Generally
- § 5:2 Overview of management of the foreclosure and default process

II. WORKOUTS AND PREFORECLOSURE

- § 5:3 Constraints and creditor choices
- § 5:4 Adjusting the note
- § 5:5 Creditor control and liability issues
- § 5:6 —Good faith obligations
- § 5:7 —Customs and usages; courses of dealing
- § 5:8 —Tortious leverage and control
- § 5:9 —Direct liability for debts; taxes
- § 5:10 —Direct liability for environmental debts
- § 5:11 —Equitable subordination
- § 5:11.50 — —Case application
- § 5:12 Deepening insolvency
- § 5:13 —As an independent cause of action
- § 5:14 —Not an independent cause of action
- § 5:15 —As a theory of damages
- § 5:16 Reversible and avoidable transfers: preferences and fraudulent conveyances
- § 5:17 —New security agreements
- § 5:18 —Debt consolidation and operating loans
- § 5:19 The earmarking doctrine
- § 5:20 Reversible and avoidable transfers: preferences and fraudulent conveyances—Payments
- § 5:21 —Guarantees and letters of credit
- § 5:22 Deeds in lieu of foreclosure
- § 5:23 —As deed or mortgage; merger

III. TAKING POSSESSION

- § 5:24 General considerations and options
- § 5:25 Judicial foreclosure proceedings
- § 5:26 Nonjudicial and self-help repossession
- § 5:27 —Voluntary surrender and post-default agreements

TABLE OF CONTENTS

- § 5:28 —Intangibles and setoff rights
- § 5:29 —Tangibles and breach of peace
- § 5:30 Drafting repossession clauses
- § 5:31 —Assemble and deliver obligations
- § 5:32 —Consent to entry
- § 5:33 —Handling other property
- § 5:34 Repossession and third parties

IV. AUTOMATIC STAY AND ADEQUATE PROTECTION

- § 5:35 General policy, effect and duration
- § 5:36 Cause and adequate protection
- § 5:37 Recoverable value and equity cushions
- § 5:38 —Reinvestment opportunity value
- § 5:39 —Equipment cases
- § 5:40 —Floating liens
- § 5:41 Lack of equity and necessity
- § 5:42 Continuous review and finality of adequate protection
- § 5:43 Timing of protection
- § 5:44 Failed protection and superpriority
- § 5:45 —Timing issues
- § 5:46 —Stipulations and agreements
- § 5:47 —Subordinating the claim
- § 5:48 Valuation and adequate protection
- § 5:49 —When valuation not required
- § 5:50 —Elements of valuation
- § 5:51 —Timing for valuation
- § 5:52 Expiration of case
- § 5:53 Secured creditor in possession
- § 5:54 Cash, setoff and frozen accounts

CHAPTER 6. FORECLOSURE SALES AND DISPOSITION

I. REDEMPTION FROM SALE

- § 6:1 Introduction
- § 6:2 Overview
- § 6:3 Timing and notice
- § 6:4 Tender of all obligations

II. STRICT FORECLOSURE: RETAINING COLLATERAL IN PARTIAL OR FULL SATISFACTION OF THE DEBT

- § 6:5 Strict foreclosure under Article 9
- § 6:6 Creditor's purpose
- § 6:7 Effect of creditor's delay in selling good
- § 6:8 Consumer cases

§ 6:9 Notice and objection

III. FORECLOSURE SALES

- § 6:10 Sale process
- § 6:11 Private or public sale
- § 6:12 Commercial reasonableness and good faith
- § 6:12.50 —Application of UCC requirement
- § 6:13 Price—Proceeds or procedures test
- § 6:14 —Price and value comparisons: market choice
- § 6:15 —Quick resale for profit
- § 6:16 —Minimum bid or reserve auctions
- § 6:17 —Fraudulent conveyance liability
- § 6:18 Focus, content and amount of advertisement
- § 6:19 Private solicitation
- § 6:20 Reasonably preparing the collateral for sale
- § 6:21 Notice requirements
- § 6:22 —Content issues
- § 6:23 —Form and transmission of notice
- § 6:23.50 — —Caselaw illustrations
- § 6:24 —Timing and receipt issues
- § 6:25 —When notice not required
- § 6:25.50 — —Caselaw illustrations
- § 6:26 —Parties entitled to notice
- § 6:27 Timing and delay

IV. POST-SALE RIGHTS

- § 6:28 Purchasers' rights and discharge of liens
- § 6:29 Distributing proceeds and any surplus
- § 6:30 Debtor's remedies
- § 6:31 Deficiency claims
- § 6:32 —Statute of limitations
- § 6:32.25 Debtor's remedies—Statute of limitations—Application of state laws
- § 6:32.50 Deficiency claims—Application of section 9-626

V. CONTRACTS AND AGREEMENTS

- § 6:33 Overview of contract issues
- § 6:34 General pre-default agreements
- § 6:35 Post-default agreements and waivers

SUBPART C. THIRD-PARTY ISSUES

CHAPTER 7. RECORDING AND PERFECTING A SECURITY INTEREST

I. IN GENERAL

- § 7:1 Introduction

TABLE OF CONTENTS

- § 7:2 Filing and perfection
- § 7:2.50 —Caselaw illustrations
- § 7:3 Recording data
- § 7:4 Record and priority review—Precautionary law
- § 7:5 — —File and other searches
- § 7:6 — —Data inquiries
- § 7:7 Liabilities in failed perfection and faulty searches

II. LOCATION ISSUES

- § 7:8 Location and choice of law
- § 7:9 Intrastate filing choices—Real estate and farm-related property
- § 7:10 —Interests requiring no filing
- § 7:11 Multistate issues
- § 7:12 —Certificate of title goods
- § 7:13 —Article 9 collateral
- § 7:14 Federal filing systems
- § 7:15 Misfiling and knowledge

III. CONTENT OF FILING

- § 7:16 Standards of review
- § 7:17 Collateral descriptions
- § 7:17.50 —Cases finding adequate descriptions
- § 7:17.70 —Cases finding inadequate descriptions
- § 7:18 Amount of indebtedness
- § 7:19 Debtor's address and correct name
- § 7:19.50 —Cases concerning debtor's name
- § 7:20 Seriously misleading financing statements
- § 7:21 Debtor's identity and location—Use of diminutives and nicknames
- § 7:22 —Hispanic naming convention
- § 7:23 —Organization names
- § 7:24 —Trade names
- § 7:25 Partnerships
- § 7:26 Creditor name and location
- § 7:27 Signature requirements

IV. POSTFILING EVENTS

- § 7:28 Name and organization change
- § 7:29 Change of use
- § 7:30 Change of location
- § 7:31 Termination, lapse, and continuation
- § 7:31.50 —Caselaw illustrations
- § 7:32 Assignment of interest

CHAPTER 8. PRIORITIES AND AFTER-ACQUIRED PROPERTY MANAGEMENT

I. DEALING WITH ORIGINAL COLLATERAL

- § 8:1 Introduction
- § 8:2 Character of priority issues
- § 8:3 Basic intercreditor priorities
- § 8:4 —Relocating collateral or business
- § 8:5 —Commingled and produced goods
- § 8:6 Fixtures and real-estate priorities
- § 8:6.50 Mechanic's and materialmen's liens
- § 8:7 Possessory interests and intangibles
- § 8:8 Subsequent advances
- § 8:9 Buyers of collateral
- § 8:10 —Ordinary course sales
- § 8:11 — —Incomplete sales
- § 8:12 — —Collateral sales activity
- § 8:13 — —Additional limitations
- § 8:13.50 — —Illustrations of ordinary course sales
- § 8:13.60 — —Illustrations of sales deemed not in ordinary course
- § 8:14 —Buyers from consumers
- § 8:15 Dual debtors
- § 8:15.50 Transferee of money or funds and collusion claims
- § 8:16 Altering priority rules by equity
- § 8:17 —Estoppel and subrogation
- § 8:18 —Equitable marshalling of assets

II. AFTER-ACQUIRED PROPERTY MANAGEMENT

- § 8:19 Basic principles and concerns
- § 8:20 Purchase-money priority
- § 8:20.50 Purchase money priority—Caselaw illustrations
- § 8:20.60 Production-money priority
- § 8:20.70 —Application
- § 8:21 Proceeds interests and establishment of claim
- § 8:22 —Perfecting proceeds interests
- § 8:23 Priorities in proceeds
- § 8:24 —Sales agents and auctioneers
- § 8:25 Accessions
- § 8:26 Federal tax lien priorities
- § 8:27 —Commercial finance security
- § 8:28 —Future advances
- § 8:29 Bankruptcy and avoidance powers
- § 8:30 Voidable preferences
- § 8:31 —Elements of preference
- § 8:31.10 — —Debtor solvent when transfer made
- § 8:31.20 — —Enables creditor to receive more (§ 547(b)(5))
- § 8:32 —Contemporaneous exchanges

TABLE OF CONTENTS

- § 8:33 —Enabling loans
- § 8:34 —Inventory, receivables and farm products
- § 8:35 —Payments
- § 8:36 Setoff rules

III. DELAYED AND FAILED PERFECTION

- § 8:37 Unperfected security interests
- § 8:38 Delayed perfection

IV. SUBORDINATION AGREEMENTS

- § 8:39 In general
- § 8:40 Enforceability of agreement
- § 8:41 Debts and claims covered
- § 8:42 Terms and timing of subordination
- § 8:43 Effect in bankruptcy

CHAPTER 9. MULTIPLE CREDITOR LOANS

I. INTRODUCTION

- § 9:1 Generally
- § 9:2 Definitions
- § 9:3 Reasons for choosing a multiple lender relationship rather than relying on a single lender
- § 9:4 Advantages and risks of various multiple lender relationships
- § 9:5 —Joint loans
- § 9:6 —Loan participations and syndicated loans

II. DISTINGUISHING JOINT LOANS AND LOAN PARTICIPATIONS

- § 9:7 Structural characteristics, generally
- § 9:8 Single or multiple advances
- § 9:9 “True” loan participations
- § 9:10 Documenting the parties’ agreement, generally
- § 9:11 Use of terms sheet
- § 9:12 Master credit agreement; control of management of advances and default
- § 9:13 Drafting and legal issues
- § 9:14 Purposes and their effect on structure
- § 9:15 —Lending limit issues
- § 9:16 —Separate independent loans

III. CREDITOR-DEBTOR RELATIONSHIP; SYNDICATIONS

- § 9:17 Generally
- § 9:18 Creditors’ contract and debtor’s contract distinguished

- § 9:19 —Indirect impact on debtor of multiple creditor involvement
- § 9:20 Security interests in debtor's collateral
- § 9:21 —Perfection
- § 9:22 Rights of direct action
- § 9:23 —New York restriction on individual lender's power
- § 9:24 Rights of setoff
- § 9:25 Fiduciary duties
- § 9:26 Loan administration, generally
- § 9:27 Excess or nonparticipated loan

IV. INTERCREDITOR RELATIONSHIP; LOAN PARTICIPATIONS

A. LEAD AND PARTICIPANTS

- § 9:28 Generally
- § 9:29 Investment of participant as sale or loan
- § 9:30 —Distinguishing features
- § 9:31 Secured or unsecured credit
- § 9:32 —Intangible collateral
- § 9:33 —Cash proceeds collateral
- § 9:34 Sales and resulting rights
- § 9:35 —Lead's liability
- § 9:36 Recourse or buyout transactions

B. CONTROL OF DEBT RELATIONSHIP

- § 9:37 Generally
- § 9:38 Maximum loan and exposure limits
- § 9:39 —Excess loans; revolving loans
- § 9:40 —Advances outside participation agreement
- § 9:41 Independent loans
- § 9:42 Dealing with default and workouts
- § 9:43 Lending into default; revolving credit
- § 9:44 Modifying and servicing loan

C. TERMINATION OF PARTICIPATION ARRANGEMENT

- § 9:45 Generally
- § 9:46 Revolving credit

D. INSOLVENCY OF LEAD

- § 9:47 Generally
- § 9:48 Bankruptcy of lead
- § 9:49 —Bankruptcy estate
- § 9:50 —Cash proceeds
- § 9:51 Bank insolvency
- § 9:52 —Setoff

TABLE OF CONTENTS

E. OBLIGATIONS OF LEAD TO PARTICIPANTS

- § 9:53 Generally
- § 9:54 Conflicts of interest
- § 9:55 Performance obligations, generally
- § 9:56 Disclaimer
- § 9:57 Fiduciary and ordinary care duties
- § 9:58 Disclosures and fraud
- § 9:59 —Securities liability
- § 9:60 — —Investment contracts
- § 9:61 —Misrepresentation

CHAPTER 10. MULTIPLE OBLIGOR TRANSACTIONS

I. CHARACTER OF CONTRACT

- § 10:1 Purposes and risk assessment
- § 10:2 Primary debt obligations—Comakers
- § 10:3 Secondary liability
- § 10:4 —Indemnity, performance and hold harmless
- § 10:5 —Contracts of indorsement
- § 10:6 Source of law—Federal-related notes and guaranties
- § 10:7 Letters of credit—Overview

II. SURETY AND GUARANTY CONTRACTS

- § 10:8 Definition and governing law
- § 10:9 Primary debt and subrogation
- § 10:10 Scope and limits on guaranty
 - § 10:10.25 —Cases interpreting scope and extent of liability
- § 10:10.50 Primary debt and subrogation—Carve-out provisions
- § 10:11 Preconditions for enforcement
 - § 10:11.50 Standing to enforce
- § 10:12 Enforceability and defenses
- § 10:13 —Waivers
 - § 10:13.50 —Waiver—Cases interpreting extent of waiver
- § 10:14 —Guarantor authority
- § 10:15 —Discharge from dealing with debt
- § 10:16 — —Notice of default and dishonor
- § 10:17 — —Modifying or altering agreement
- § 10:18 — —Creditor's handling of collateral
- § 10:19 — —Mishandling foreclosure
- § 10:20 —Lack of consideration to guarantor
- § 10:21 —Asserting debtor's defenses
- § 10:21.50 Assignment
- § 10:22 Postdefault agreements
- § 10:23 Inter-affiliate guaranties
- § 10:24 Completion guaranty

- § 10:25 Bankruptcy effects—Debtor as bankrupt
- § 10:26 —Guarantor as bankrupt

III. LETTERS OF CREDIT

- § 10:27 Nature of transaction
- § 10:28 Uses, labels and functions
- § 10:29 —Commercial sales letters
- § 10:30 —Standby letters and guaranties
- § 10:31 —Banks and standby letters
- § 10:32 Governing law—Statutes and practices
- § 10:33 Formalities
- § 10:34 —Case law
- § 10:35 Establishment, revocability and modification
- § 10:36 Relationship between issuer and beneficiary
- § 10:37 —Right to payment and wrongful dishonor
- § 10:38 —Relationship to other contracts
- § 10:39 — —Case law
- § 10:40 —Recovery of payment
- § 10:41 Secondary uses by beneficiary
- § 10:42 Relationship between issuer and customer
- § 10:43 —Reimbursement rights
- § 10:44 —Issuer's duties in payment
- § 10:45 —Preventing payment
- § 10:46 Bankruptcy effects
- § 10:47 Letter of credit rights under Revised Article 9

IV. LEVERAGED BUYOUTS (LBO'S)

- § 10:48 Overview and defining characteristics
- § 10:49 —Acquiring company and subsidiary
- § 10:50 —Leverage and credit elements
- § 10:51 —Target assets
- § 10:52 Purposes and applications
- § 10:53 Structural variations—Hypothetical
- § 10:54 —Asset sale and liquidating dividend
- § 10:55 —Stock acquisitions
- § 10:56 — —Dividend and stock redemption
- § 10:57 — —Acquisition loan and dividend
- § 10:58 — —Employee plan acquisitions
- § 10:59 — —Financed stock purchase and guaranty
- § 10:60 — —Merger approaches
- § 10:61 Lenders and multiple debtors
- § 10:62 —Bulk sales law
- § 10:63 —Fraudulent conveyance law
- § 10:64 — —Debtor's insolvency
- § 10:65 —Prohibited corporate distributions
- § 10:66 Equitable subordination in bankruptcy

SUBPART D. BANKRUPTCY ISSUES

CHAPTER 11. REPRESENTATION IN BUSINESS REORGANIZATIONS

I. GENERALLY

- § 11:1 Introduction
- § 11:2 Continuing evolution of bankruptcy law
- § 11:3 —Summary of 2005 changes

II. REPRESENTATION ISSUES

- § 11:4 Bankruptcy proceedings and rationale
- § 11:5 Objectives of representation
- § 11:6 —Debtor's decision to file
- § 11:7 —Creditors' risks
- § 11:8 Chapter 11 overview
- § 11:9 —Special protections regarding vessels and aircraft equipment
- § 11:10 Small business bankruptcies
- § 11:10.50 Chapter 11 bankruptcy—Subchapter V

III. PRECONFIRMATION ISSUES

- § 11:11 Preconfirmation environment
- § 11:12 Dismissal and conversion
- § 11:13 —Bad faith filing
- § 11:14 — —Cases finding no bad faith
- § 11:15 —Delay and value deterioration
- § 11:16 Trustee and examiners
- § 11:17 —Postpetition sales of property
- § 11:18 Use of cash collateral
- § 11:19 —What constitutes cash collateral
- § 11:20 —Adequate protection—Segregating and accounting for cash collateral
- § 11:21 —Court approval for use of cash collateral
- § 11:22 Postpetition financing
- § 11:23 —Cross-collateralization
- § 11:24 —Superpriority priming liens
- § 11:25 —Financing order issues
- § 11:26 —Status on appeal
- § 11:27 Postpetition effect of security
- § 11:28 —Postpetition interest

IV. PLANS AND CONFIRMATION STANDARDS

- § 11:29 Plan environment and leverage
- § 11:30 Secured claims—Filing, allowance and recourse
- § 11:31 Classification of claims

- § 11:32 —Claims properly classified
- § 11:33 —Claims not properly classified
- § 11:34 Rights to propose a plan
- § 11:35 —Exclusivity issues
- § 11:36 *[Reserved]*
- § 11:37 Rights to propose a plan—Creditor plans
- § 11:38 Modes of cram down for secured debt
- § 11:39 —Nonimpairment of debt
- § 11:39.50 —Impairment of debt
- § 11:40 —Sale and lien on proceeds
- § 11:41 —Appraised value cram down
- § 11:42 — —Property and claim valuation
- § 11:42.50 — — —Caselaw illustrations
- § 11:43 — — —Valuation timing
- § 11:44 — —Interest and discount rate
- § 11:45 — —Dealing with deficiency claims
- § 11:46 — —Negative amortization
- § 11:47 — —Balloon payments
- § 11:48 — —Length of repayment term
- § 11:49 —Section 1111(b) election
- § 11:49.50 —Section 1111(b)(2) election—Caselaw application
- § 11:50 —Indubitable equivalent
- § 11:51 —Courts’ application of factors and finding of “fair and equitable”
- § 11:52 —Courts’ application of factors and finding of not “fair and equitable”
- § 11:52.50 Cram down and determination of interest rate
- § 11:53 Unsecured claims and ownership interests
- § 11:54 Feasibility
- § 11:55 —Plans deemed feasible
- § 11:56 —Plans deemed not feasible
- § 11:57 Good faith
- § 11:58 Plans and related matters in small business bankruptcies
- § 11:59 Discharge or release of nondebtors
- § 11:60 —Case law application of section 524(e)
- § 11:61 Lift of automatic stay

CHAPTER 12. CHAPTER 7 AND CHAPTER 13 BANKRUPTCY

I. GENERALLY

- § 12:1 Introduction
- § 12:2 Nature of proceedings

II. CHAPTER 7 LIQUIDATION CASES

- § 12:3 Planning for bankruptcy

TABLE OF CONTENTS

| | |
|---------|--|
| § 12:4 | Debtor's retention of property |
| § 12:5 | —Abandonment of assets |
| § 12:6 | — —Case applications |
| § 12:7 | —Exempt property |
| § 12:8 | —Lien continuation and personal recourse |
| § 12:9 | Bankruptcy redemption rights |
| § 12:10 | —Cash or installment redemption |
| § 12:11 | —Valuation of collateral |
| § 12:12 | —Property not covered |
| § 12:13 | —Timing of redemption |
| § 12:14 | Reaffirmations and retaining collateral |
| § 12:15 | —Changing face of the law |
| § 12:16 | —Timing of agreement and rescission |
| § 12:17 | —Review standards |
| § 12:18 | —Real estate reaffirmation |
| § 12:19 | Beyond redemption, reaffirmation, and surrender; a fourth option |
| § 12:20 | Constraints on the use or abuse of Chapter 7 |
| § 12:21 | —Dismissal for “cause” |
| § 12:22 | —Dismissal or conversion for “abuse” |
| § 12:23 | — —The “means test” |

III. CHAPTER 13 CASES

| | |
|---------|--|
| § 12:24 | Overview |
| § 12:25 | Delays and uncompensated use |
| § 12:26 | —Automatic stay |
| § 12:27 | — —Codebtor stay |
| § 12:28 | —Abusive filing and dismissal |
| § 12:29 | — —Multiple filing |
| § 12:30 | — —Filing for secured creditors alone |
| § 12:31 | — —Delayed plan and early payment |
| § 12:32 | Chapter 13 plans and secured claims |
| § 12:33 | —Plan confirmation—Good faith requirement |
| § 12:34 | — —Feasibility requirement |
| § 12:35 | — —Illustrations of plans not confirmed |
| § 12:36 | — —Illustrations of plans confirmed |
| § 12:37 | General secured creditors |
| § 12:38 | —Surrender of collateral |
| § 12:39 | —Reinstatement or retention of long-term debt |
| § 12:40 | —Cram down and present value |
| § 12:41 | — —The “hanging paragraph” |
| § 12:42 | — — —Predominate use test |
| § 12:43 | — — —Constitutionality |
| § 12:44 | — — —Surrender of collateral; the majority rule |
| § 12:45 | — — —Surrender of collateral; the minority rule |
| § 12:46 | — — —Surrender of collateral; the minority rule's possible transformation into majority status |
| § 12:47 | — — —Negative equity |

- § 12:48 — — —Interest
- § 12:49 — —Secured claims and collateral valuation
- § 12:50 — — —Market reference
- § 12:51 — — —Valuation timing
- § 12:52 — — —Valuation evidence
- § 12:53 — —Present value and interest rate
- § 12:54 — —Deficiency claims and disposable income
- § 12:55 —Residential real estate mortgages
- § 12:56 — —Previously accelerated debt
- § 12:57 — —Reasonable cure
- § 12:58 Postconfirmation status

PART II. SELECTED FINANCING TRANSACTIONS

SUBPART A. FIXED ASSET FINANCING

CHAPTER 13. EQUIPMENT LOAN FINANCING

I. IN GENERAL

- § 13:1 Introduction
- § 13:2 Selecting financing format
- § 13:3 Purchase and general loans
- § 13:4 Documents list

II. SCOPE AND PERFECTION

A. CLASSIFICATION AND DESCRIPTION

- § 13:5 Generally
- § 13:6 Classification and description—Serial number and selective descriptions
- § 13:7 —Descriptions in bulk or by type

B. MULTIPHASE LENDING

- § 13:8 Introduction
- § 13:9 Cross-collateral and release provisions
- § 13:10 Cross-collateral and purchase loans
- § 13:11 Cross-collateral and multiple debtors
- § 13:12 Future advances
- § 13:13 Cross-default clauses

III. THIRD PARTY ISSUES

- § 13:14 Choice of law and equipment
- § 13:15 —Federal or state preemption
- § 13:16 —Ordinary equipment

TABLE OF CONTENTS

- § 13:17 —Mobile equipment
- § 13:18 Fixtures and real estate issues
- § 13:19 —Records search and fixture filing
- § 13:20 —Waivers and special priority
- § 13:21 —Covenants on use and intent
- § 13:22 Purchase and general loans

IV. ADDITIONAL COVENANTS AND REPRESENTATIONS

- § 13:23 Documenting ownership
- § 13:24 —Representations and tracing ownership
- § 13:25 —Seller's claims and consents
- § 13:26 Proceeds and rents
- § 13:27 Repairs and accessions
- § 13:28 Insurance and risk of loss
- § 13:29 Debtor's right to sell
- § 13:30 Use and location covenants

V. ACQUISITION FINANCE

A. IN GENERAL

- § 13:31 General purchase money issues
- § 13:32 Replacement financing and trade-ins
- § 13:33 Prior lenders
- § 13:34 Bankruptcy and insolvency risks

B. DELIVERY AND ACCEPTANCE

- § 13:35 Delivery
- § 13:36 Acceptance
- § 13:37 Use of goods
- § 13:38 Conformity of goods to contract
- § 13:39 Revocation of acceptance
- § 13:40 Rejection of goods
- § 13:41 Certificates

C. SUBSTANTIVE WARRANTIES AND DEBTS

- § 13:42 Generally
- § 13:43 Substantive warranties and debts—Defense waivers and sellers
- § 13:44 —Third party lenders

VI. DEFAULT AND FORECLOSURE

- § 13:45 Sale and repossession issues
- § 13:45.50 —Commercially reasonable
- § 13:46 Immobilization and use of premises

Volume 2

CHAPTER 14. EQUIPMENT LEASING

I. GENERALLY

- § 14:1 Introduction
- § 14:2 Purpose of leases
- § 14:3 Documents list

II. STRUCTURE AND TYPES OF LEASES

- § 14:4 Ordinary, finance and security leases
- § 14:5 True leases and security leases distinguished
- § 14:6 —Federal tax standards

III. TAX ISSUES

- § 14:7 Tax considerations in leasing
- § 14:8 —Depreciation
- § 14:9 —Passive loss rules
- § 14:10 —Lease stripping
- § 14:11 —Leveraged leases

IV. LESSOR LIABILITY ISSUES

- § 14:12 Lessor warranties
- § 14:13 Third-party beneficiaries of lessor's warranties
- § 14:14 Tort and product liability
- § 14:15 Indemnification clauses

V. FINANCE LEASES

- § 14:16 Basic structure
- § 14:17 Lessor warranties
- § 14:18 Finance lessee as beneficiary of supply contract
- § 14:19 Lessee's irrevocable promises in a finance lease

VI. THIRD PARTY INTERESTS

- § 14:20 Perfection, filing and priority
- § 14:21 Repairs and accessions
- § 14:22 Real estate interests
- § 14:23 Sale and leaseback transactions
- § 14:24 Creditors of lessor
- § 14:25 Bankruptcy representation and drafting issues
- § 14:26 —Bankruptcy assignments

VII. ADDITIONAL COVENANTS AND TERMS

- § 14:27 Firm offers, delivery and acceptance

TABLE OF CONTENTS

- § 14:28 Insurance clauses and risk of loss
- § 14:29 Obsolete equipment and upgrades
- § 14:30 Tax indemnity
- § 14:31 Proceeds and secondary rentals
- § 14:32 Secondary security interests
- § 14:33 Assignability

VIII. REMEDIES ON DEFAULT

- § 14:34 Article 2A remedies generally
- § 14:35 Liquidated damage rules
- § 14:36 Lessor's remedies on default
 - § 14:37 —Rental acceleration
 - § 14:38 —Re-lease of equipment
 - § 14:39 —Market rent recovery
- § 14:40 Lessee's remedies on default

CHAPTER 15. TRANSPORTATION EQUIPMENT: VESSELS

I. GENERALLY

- § 15:1 Introduction

II. PRIORITY MARITIME LIENS

- § 15:2 Priority over preferred mortgage
- § 15:3 No maritime lien for owner
- § 15:4 Seamen wages
- § 15:5 Marine salvage

III. TRANSPORTATION EQUIPMENT

- § 15:6 Registration
- § 15:7 Choice of law
- § 15:8 Federal-state conflicts
- § 15:9 State law: certificates of title

IV. VESSELS AND SHIPS: PRELIMINARY ISSUES

- § 15:10 Types of transactions
- § 15:11 Documents list

V. DOCUMENTED VESSELS

- § 15:12 Historical background
- § 15:13 Vessels of the United States
- § 15:14 Defining a “nonvessel”
- § 15:15 Definitions
- § 15:16 Vessel eligible for documentation
- § 15:17 Vessel requiring documentation

- § 15:18 Vessel exempt from documentation
- § 15:19 Marking a vessel
- § 15:20 Benefits of documentation

VI. SHIP MORTGAGES AND SCOPE ISSUES

- § 15:21 General liens and legal coverage
- § 15:22 Preferred ship mortgages and the U.C.C.
- § 15:23 Case study: Problems of dual state and federal recordation
- § 15:24 Balancing federal and state law
- § 15:25 Scope of commercial instruments and Maritime Liens Act
- § 15:26 —Covered vessels
- § 15:27 —Earnings and related assets
- § 15:28 Preferred mortgages and maritime liens
- § 15:29 Securing a preferred mortgage
- § 15:30 Preferred mortgage requirements
- § 15:31 —Recording requirements
- § 15:32 —Coast guard endorsement
- § 15:33 —Coverage of related assets
- § 15:34 —Fleet mortgages
- § 15:35 Future advances and maturity date
- § 15:36 Restrictions on recording mortgages
- § 15:37 Assignments, assumptions and amendments to mortgages
- § 15:38 Instruments subordinating mortgages
- § 15:39 Interlender agreements

VII. THIRD PARTY ISSUES

- § 15:40 General liens and Ship Mortgage Act
- § 15:41 Supplier of necessities
- § 15:42 Prohibition of lien
- § 15:43 Waiver of maritime liens

VIII. REPRESENTATIONS AND COVENANTS

- § 15:44 General mortgage covenants
- § 15:45 Notice of mortgage
- § 15:46 Insurance provisions
- § 15:47 Charter earnings as collateral
- § 15:48 Intercompany liens and accounts
- § 15:49 Federal guaranties

IX. DEFAULT AND FORECLOSURE

- § 15:50 General issues
- § 15:51 Self-help repossession and resale upon default
- § 15:52 Private foreclosure actions
- § 15:53 Judicial foreclosures and deficiencies
- § 15:54 Equitable subordination
- § 15:55 Defense of laches

TABLE OF CONTENTS

- § 15:56 Prejudgment interest
- § 15:57 Attorney's fees
- § 15:58 Bankruptcy rules

X. ARBITRATION AS AN ALTERNATIVE

- § 15:59 Arbitration alternative
- § 15:60 Admiralty jurisdiction
- § 15:61 Suits in admiralty
- § 15:62 Discovery
- § 15:63 Jurisdiction over vessel
- § 15:64 Alternative to admiralty

CHAPTER 16. TRANSPORTATION EQUIPMENT: AIRCRAFT

I. GENERALLY

- § 16:1 Introduction
- § 16:2 Aircraft finance transactions
- § 16:3 Documents list

II. AIRCRAFT REGISTRATION AND RECORDATION

A. FEDERAL RECORDATION

- § 16:4 The Federal Aviation Administration Authorization Act
- § 16:5 Purpose
- § 16:6 Instruments covered
- § 16:7 —What is a conveyance?
- § 16:8 Eligibility for recording
- § 16:9 Signatures and acknowledgments
- § 16:10 —Conveyances executed for security purposes and assignments
- § 16:11 Description required
- § 16:12 Releases, cancellations, discharges and satisfactions
- § 16:13 Recording fees
- § 16:14 Mailing address and effective date of filing
- § 16:15 Return of original conveyance
- § 16:16 Relevance of recordation
- § 16:17 Reliance on record title
- § 16:18 Validity of conveyances, leases and security instruments
- § 16:19 —Actual notice
- § 16:20 —Period of validity

B. FEDERAL REGISTRATION

- § 16:21 Applicability
- § 16:22 Denial of registration for controlled substance violations
- § 16:23 Evidentiary value of certificates

- § 16:24 Availability of certificates for inspection

C. CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

- § 16:25 The Cape Town Convention and Aircraft Protocol
 § 16:26 Applicability of the Cape Town Convention and Aircraft Protocol
 § 16:27 The International Registry
 § 16:28 International interests under the Cape Town Convention
 § 16:29 —Outright sales
 § 16:30 Formal requirements for international interests under the Cape Town Convention
 § 16:31 Effect of registration on the International Registry
 § 16:32 Nonconsensual interests under the Cape Town Convention
 § 16:33 Interests that pre-date the Cape Town Convention

III. PERFECTING THE INTEREST

- § 16:34 Filing and priority issues
 § 16:35 Recordings regarding aircraft
 § 16:36 —Covered aircraft and registration rules
 § 16:37 —Engines, propellers and related equipment
 § 16:38 Effect of failure to register
 § 16:39 Federal indexing
 § 16:40 Purchase options
 § 16:41 Conditional sales, leases and rentals
 § 16:42 Possession and perfection

IV. AIRCRAFT PRIORITY PROBLEMS

- § 16:43 Extent of federal preemption
 § 16:44 Priority rules
 § 16:45 Artisan's or mechanic's lien
 § 16:46 Storage charges lien
 § 16:47 First to file and notice
 § 16:48 —Unperfected interests
 § 16:49 —First to file and relation back
 § 16:50 Previous buyers and ownership
 § 16:51 —Buyers in ordinary course
 § 16:52 —Buyers not in ordinary course
 § 16:53 Repairmen and mechanics

V. LOAN COVENANTS AND REPRESENTATIONS

- § 16:54 General enforceability and terms
 § 16:55 Choice of law
 § 16:56 Ownership and title issues
 § 16:57 Use restrictions
 § 16:58 Maintenance practices

TABLE OF CONTENTS

- § 16:59 Replacement parts
- § 16:60 Insurance and indemnity
- § 16:61 FAA truth in leasing compliance

VI. ENFORCING THE INTEREST

- § 16:62 Default and foreclosure
- § 16:63 —Inspection of property
- § 16:64 —Advertising and brokerage
- § 16:65 —Foreclosure title transfers
- § 16:66 Bankruptcy rules

VII. ARBITRATION AS AN ALTERNATIVE

- § 16:67 Arbitration alternative

CHAPTER 17. TRANSPORTATION EQUIPMENT: MOTOR VEHICLES

- § 17:1 Introduction
- § 17:2 Types of transactions
- § 17:3 Documents list

I. PERFECTION AND GOVERNING LAW

- § 17:4 Certificate of title laws
- § 17:5 Exempt transactions: Inventory and others
- § 17:6 Perfection rules
- § 17:7 —Mechanics of perfection
- § 17:8 —Filing and possession
- § 17:9 —Where to certificate
- § 17:10 —Timing of perfection
- § 17:11 Bankruptcy, perfection and precautions
- § 17:12 Priorities in after-acquired vehicles

II. THIRD PARTY ISSUES

- § 17:13 Title and sales
- § 17:14 —Right to sell and convey title
- § 17:15 —Sales at foreclosure
- § 17:16 —Buyers and certificates
- § 17:17 Multistate vehicles and conflicts
- § 17:18 —Surrender of certificate
- § 17:19 —Second certificate issues
- § 17:20 —Registration without certificate

III. ADDITIONAL COVENANTS AND REPRESENTATIONS

- § 17:21 Use and sales
- § 17:22 Interstate movement and registration

- § 17:23 Handling certificate
- § 17:24 Cooperation in perfecting interest
- § 17:25 Insurance and maintenance
- § 17:26 Rents and transportation contracts

IV. MOTOR VEHICLE LEASES

- § 17:27 General types of transactions
- § 17:28 Open-end and TRAC leases
- § 17:29 Tax issues
- § 17:30 Perfecting “lease”
- § 17:31 Financing “lessor”

V. DEFAULT AND FORECLOSURE ISSUES

- § 17:32 Conveying title
- § 17:33 Auction markets and notice

SUBPART B. FLOATING LIENS AND INTANGIBLES

CHAPTER 18. INVENTORY FINANCING

- § 18:1 Introduction
- § 18:2 Nature of transactions
- § 18:3 —Wholesale, retail and manufacturing
- § 18:4 —Acquisition or general lending
- § 18:5 —Possessory and other special arrangements
- § 18:6 Documents list

I. SCOPE AND PERFECTION

- § 18:7 Cross-collateralization and advances
- § 18:8 Scope of interest: Related and intangible rights
- § 18:9 After-acquired property
- § 18:10 —Interstate shipments
- § 18:11 —Interstate exchanges
- § 18:12 —Custom orders
- § 18:13 —Returned goods
- § 18:14 Dealer reserve accounts
- § 18:15 Inventory leased to others
- § 18:16 Proceeds generally
- § 18:17 —Noninventory lenders—Accounts
- § 18:18 — —Chattel paper
- § 18:19 —Cash and separate accounts
- § 18:20 — —Commingling
- § 18:21 — —Bank’s right to setoff
- § 18:22 —Lock box issues
- § 18:23 Perfecting interest

II. THIRD PARTY ISSUES

- § 18:24 Secondary financing

TABLE OF CONTENTS

- § 18:25 —Purchase money loans
- § 18:26 Consignments
- § 18:27 —Definition
- § 18:28 —Perfection
- § 18:29 —Sale of return
- § 18:30 —Statutory elements in definition of “consignment”—
Merchant status
- § 18:31 — —Delivery for sale
- § 18:32 — —Dealing in goods of that kind
- § 18:33 — —Dealing under a name other than that of person
making delivery
- § 18:34 — —Requirement that merchant not be an auctioneer
- § 18:35 — —Merchant not generally known
- § 18:36 — —Not consumer goods
- § 18:37 — —No creation of security interest
- § 18:38 Secondary financing—Cash sellers
- § 18:39 —Open account suppliers
- § 18:40 Debtor’s right to sell
- § 18:41 Handling cash and competing claims

III. ADDITIONAL COVENANTS AND REPRESENTATIONS

- § 18:42 Debt-collateral ratios
- § 18:43 Tax lien monitoring
- § 18:44 Bankruptcy preference monitoring
- § 18:45 Monitoring and inspections for fraud
- § 18:46 Property handling
- § 18:47 Secondary liens
- § 18:48 Infringement issues
- § 18:49 Perfecting the paper
- § 18:50 Accessions

IV. MANUFACTURING AND WHOLESALE DEALERS

- § 18:51 Products, accessions and suppliers
- § 18:52 Goods fabricated for supplier
- § 18:53 Financing and bulk buyers

V. FLOOR PLANNING

- § 18:54 Basic structure
- § 18:55 Documenting property receipt
- § 18:56 Handling certificates
- § 18:57 Curtailments and payments
- § 18:58 Risks of fraud
- § 18:59 —False acquisitions
- § 18:60 —Sales out of trust
- § 18:61 Acquisition of chattel paper
- § 18:62 —Recourse arrangements

- § 18:63 —Buy back obligations
- § 18:64 —Dealer reserve accounts

VI. DEFAULT

- § 18:65 Right to terminate and notice
- § 18:66 —Initial steps of closure
- § 18:67 —Wind-down procedures
- § 18:68 Methods of sale
- § 18:69 Automatic stay

CHAPTER 19. ACCOUNTS AND CONTRACT FINANCING

- § 19:1 Introduction
- § 19:2 Types of transactions
- § 19:3 —Fixed term loans
- § 19:4 —Revolving loans
- § 19:5 —Sales of accounts
- § 19:6 —Factoring agreements
- § 19:7 Other contracts as collateral
- § 19:8 Documents list

I. BASIC COVERAGE AND PERFECTION

- § 19:9 Sale or security
- § 19:10 Defining covered property
- § 19:11 —Notes and security
- § 19:12 —Assigning customer security
- § 19:13 —Eligibility criteria
- § 19:14 Multiple entity transactions
- § 19:15 Perfection
- § 19:16 Choice of law and filing location

II. THIRD PARTY ISSUES

- § 19:17 Intangibles and accounts
- § 19:18 Priority among accounts parties
- § 19:19 Inventory and other liens in goods
- § 19:20 Returned goods
- § 19:21 Bankruptcy preferences
- § 19:22 Postbankruptcy accounts
- § 19:23 Federal tax liens
- § 19:24 Underlying contract claims and defenses
- § 19:25 —Defenses and cutoff clauses
- § 19:26 —Customer claims and repayment
- § 19:27 —Setoff rights

III. EXECUTORY CONTRACT RIGHTS

- § 19:28 Executory contracts and performance risk

TABLE OF CONTENTS

- § 19:29 Assignability issues
- § 19:30 Government contracts
- § 19:31 Third party claims: Sureties
- § 19:32 Bankruptcy performance risks

IV. REPRESENTATIONS, COVENANTS AND CONDITIONS

- § 19:33 Dealer control of settlements
- § 19:34 Allocating recourse rights
- § 19:35 —Credit failure and collection effort
- § 19:36 —Dealer's reserve account
- § 19:37 Chargeback and spurious claims
- § 19:38 Information and document requirements
- § 19:39 Handling proceeds and payments
- § 19:40 Notification to account debtors
- § 19:41 Compliance with law: Consumer accounts
- § 19:42 Events of termination

V. DEFAULT ISSUES

- § 19:43 Events of default and deficiencies
- § 19:44 Lender liability and notice
- § 19:45 Postdefault collections
- § 19:46 —Bulk sale of accounts
- § 19:47 Bankruptcy and cash collateral

CHAPTER 20. CHATTEL PAPER, NOTES AND CERTIFICATES OF DEPOSIT

- § 20:1 Introduction

I. CHATTEL PAPER TRANSACTIONS

- § 20:2 Basic types of transactions
- § 20:3 Sales or security agreements
- § 20:4 Documents list

II. CHATTEL PAPER: PERFECTION ISSUES

- § 20:5 Double perfection issues
- § 20:6 Choice of law issues
- § 20:7 Personal property leases

III. CHATTEL PAPER: THIRD PARTY ISSUES

- § 20:8 Other chattel paper lenders
- § 20:9 Inventory liens
- § 20:10 —Priority in paper
- § 20:11 —Returned property
- § 20:12 Cash receipts and third parties

- § 20:13 Customer bankruptcy
- § 20:14 Dealer bankruptcy—Automatic stay
- § 20:15 —Preferences
- § 20:16 Customer defenses—Nonnegotiable paper
- § 20:17 —Negotiable paper

IV. CHATTEL PAPER: COVENANTS AND PERFORMANCE

- § 20:18 Chargeback and spurious claims
- § 20:19 Dealer's control of settlements
- § 20:20 Allocating recourse rights
- § 20:21 —Dealing with collateral
- § 20:22 —Reserve accounts
- § 20:23 Lender in possession of original paper
- § 20:24 Pricing paper and eligibility
- § 20:25 Information flow to lender
- § 20:26 Dealer actions creating collateral
- § 20:27 Collection and handling proceeds
- § 20:28 —Lock box arrangements
- § 20:29 Surety and guarantor
- § 20:30 —Negotiating adjustments
- § 20:31 —Perfecting interest
- § 20:32 —Consumer sureties

V. CHATTEL PAPER: DEFAULT ISSUES

- § 20:33 Customer default
- § 20:34 —Sales by paper holder: Recourse rights
- § 20:35 —Reselling through dealer
- § 20:36 Dealer default and termination

VI. NOTES AND CERTIFICATES

- § 20:37 Character of transaction
- § 20:38 Defining instrument

VII. NOTES AND CERTIFICATES: PERFECTION ISSUES

- § 20:39 Instruments, intangibles and possession
- § 20:40 —Secondary party possession
- § 20:41 —Second liens and notification
- § 20:42 Certificates and deposit accounts
- § 20:43 —Changes under revised Article 9
- § 20:44 —Changes under Revised Article 9—Cases discussing perfection issues

VIII. NOTES AND CERTIFICATES: THIRD PARTY CLAIMS

- § 20:45 Other creditors

TABLE OF CONTENTS

- § 20:46 —Negotiable instruments
- § 20:47 —Nonnegotiable instruments and certificates
- § 20:48 Defenses of maker
- § 20:49 Issuer setoff rights

IX. NOTES AND CERTIFICATES: COVENANTS AND PERFORMANCE

- § 20:50 Recourse issues
- § 20:51 Chargeback and ownership
- § 20:52 Temporary release provisions
- § 20:53 Obligations to preserve value
- § 20:54 Originality of documents

X. NOTES AND CERTIFICATES: DEFAULT

- § 20:55 Default and promissory notes
- § 20:56 Default and certificates of deposit
- § 20:57 Default and deposit accounts

XI. CONTRACTS AND PAPERS ASSOCIATED WITH REAL ESTATE

- § 20:58 Generally
- § 20:59 Mortgages and contracts for sale
- § 20:60 Leases and the like
- § 20:61 Room fees, licenses to use and the like
- § 20:62 —Rents in bankruptcy

CHAPTER 21. INVESTMENT SECURITIES

- § 21:1 Introduction
- § 21:2 Types of transactions
- § 21:3 Documents list

I. PERFECTION AND SCOPE ISSUES

- § 21:4 Definitions and classifications
- § 21:5 —Securities and general intangibles
- § 21:6 —Uncertificated and certificated securities
- § 21:7 —Restricted and registered securities
- § 21:8 —Security entitlements
- § 21:9 Perfecting certificated securities
- § 21:10 —Third party possession
- § 21:11 —Perfection under 1977 Code
- § 21:12 —Uncertificated securities
- § 21:13 —Security entitlements
- § 21:14 Coverage of dividends and splits
- § 21:15 Conversions of uncertificated securities
- § 21:16 Governmental book entry securities
- § 21:17 Choice-of-law rules

II. THIRD PARTY ISSUES

- § 21:18 Conflicting security interests
- § 21:19 Citation to discover assets
- § 21:20 Conflicting ownership claims

III. COVENANTS AND SPECIAL PROVISIONS

- § 21:21 Delayed and current attachment
- § 21:22 Securities law representations and disclosures
- § 21:23 Predefault ownership and control
- § 21:24 —Voting rights and control
- § 21:25 —Stock powers and sale rights
- § 21:26 —Dividends and distributions
- § 21:27 Verifying ownership and pledge status
- § 21:28 Secondary claims
- § 21:29 Creditor custodial obligations
- § 21:30 —Temporary release of possession
- § 21:31 —Duty to sell
- § 21:32 —Duty to convert or notify
- § 21:33 Right to repledge
- § 21:34 Antifraud provisions of securities law

IV. DEFAULT AND FORECLOSURE RULES

- § 21:35 Defining default
- § 21:36 Notice and acceleration
- § 21:37 Postdefault exercise of control
- § 21:38 Sales in changing market
- § 21:39 Warranties on sale of securities
- § 21:40 Securities registration issues

CHAPTER 22. INTELLECTUAL PROPERTY RIGHTS FINANCING

- § 22:1 Introduction
- § 22:2 Rights-based financing
- § 22:3 Definitions and source of law
- § 22:4 Contracts: License and assignments
- § 22:5 Form of transaction: Collateral assignment
- § 22:6 Documents list

I. FILING AND ENFORCEABILITY

- § 22:7 Filing issues: Article 9 preemption
- § 22:8 —Patent rights
- § 22:9 —Copyright interests
- § 22:10 —Trademarks
- § 22:11 Filing for trade secrets and technical data
- § 22:12 License contracts

TABLE OF CONTENTS

II. ENFORCEABILITY AND SCOPE

- § 22:13 Changing condition, status and enforceable rights
- § 22:14 —After-developed property
- § 22:15 —Multiple property coverage
- § 22:16 Rights governed
- § 22:17 Domain names
- § 22:18 —Intangible property right in domain name
- § 22:19 —Tangible property right in domain name
- § 22:20 —Domain name registration as creating contract for services
- § 22:21 —Use of old, current, or new law
- § 22:22 Trade secrets and underlying confidences
- § 22:23 Trademarks and special protections
- § 22:24 Identifiable property
- § 22:25 Nonexclusive license rights as collateral
- § 22:26 License contracts and bankruptcy risk

III. PRIORITY ISSUES

- § 22:27 Third-party priority issues
- § 22:28 Preemption and priority
- § 22:29 —Copyright rules
- § 22:30 —Patent rules
- § 22:31 —Federal trademark rules
- § 22:32 Priority and nonexclusive licenses
- § 22:33 Substantive claims: Ownership and infringement
- § 22:34 —Blocking patents and copyrights
- § 22:35 —Coauthorship and coinvention

IV. COVENANTS AND REPRESENTATIONS

- § 22:36 Agreements with employees and contractors
- § 22:37 Maintenance and enforcement of rights
- § 22:38 Monitoring after-acquired rights
- § 22:39 Validity and competing rights
- § 22:40 Subsequent licenses
- § 22:41 Data preservation, access and submission

V. DEFAULT AND FORECLOSURE ISSUES

- § 22:42 Termination and license default
- § 22:43 Sale methodology
- § 22:44 —Collateral assignments and sales
- § 22:45 —Secrecy in reselling

SUBPART C. REAL ESTATE RELATED FINANCING

CHAPTER 23. OIL AND GAS FINANCING

- § 23:1 Introduction

I. OVERVIEW

- § 23:2 Types of interests
- § 23:3 —Lease and mineral rights
- § 23:4 —Nonoperating interests
- § 23:5 —Variable or reversionary interests
- § 23:6 — —Operating agreements and farmouts
- § 23:7 Personal property aspects
- § 23:8 Types of transactions
- § 23:9 Documents list

II. SCOPE AND PERFECTION ISSUES

- § 23:10 Real estate interests
- § 23:11 Contract rights and produced minerals
- § 23:12 —Multi-state issues
- § 23:13 —Filing location in state
- § 23:14 Equipment and fixtures

III. THIRD PARTY ISSUES

- § 23:15 Buyers and users of production
- § 23:16 Lenders to first purchasers
- § 23:17 Joint operating liens
- § 23:18 Statutory liens
- § 23:19 Bankruptcy and unrecorded interests
- § 23:20 Executory agreements and third parties

IV. TERMS, CONDITIONS AND COVENANTS

- § 23:21 General considerations
- § 23:22 Multi-state issues
- § 23:23 Mineral interest descriptions
- § 23:24 Personal property descriptions
- § 23:25 Representations and covenants of operation
- § 23:26 Exercise of rights under operating agreements
- § 23:27 Warranty and protection of title
- § 23:28 Information and data
- § 23:29 Assignment of production
- § 23:30 Title opinions

V. DEFAULT AND FORECLOSURE

- § 23:31 General default issues
- § 23:32 Cash collateral

CHAPTER 23A. THE UCC REGIME FOR PERFECTION OF INTERESTS IN CONTROLLABLE ELECTRONIC RECORDS

- § 23A:1 Introduction

TABLE OF CONTENTS

- § 23A:2 Nature of the assets and transaction
- § 23A:3 Definitions
- § 23A:4 Shared control and control on behalf of another
- § 23A:5 Perfection and priority
- § 23A:6 —Applicable law
- § 23A:7 —Multiple persons with control

CHAPTER 24. AGRICULTURAL FINANCING

- § 24:1 Introduction
- § 24:2 Types of transactions
- § 24:3 Documents list
- § 24:4 Nature of issues: Farm products
- § 24:5 Article 9 Revisions involving filing of financing statements
- § 24:6 General issues related to the classification of farm products
- § 24:7 General issues related to the classification of farm equipment
- § 24:8 Other financing statement errors
- § 24:9 Issues concerning accounts or general intangibles
- § 24:10 General issues with the classification of livestock
- § 24:11 Livestock issues—Products and unborn young
- § 24:12 —Feedlots, slaughterhouses and packers
- § 24:13 Crops and conflicting coverage
- § 24:14 —Growing crops and real estate description
- § 24:15 —Crops in storage
- § 24:16 Federal and other payments
- § 24:17 —Co-op payments and certificates
- § 24:18 —Federal subsidy payments
- § 24:19 Federal law involvement
- § 24:20 Real estate interests
- § 24:21 Buyers and federal law preemption
- § 24:22 Bankruptcy avoidance powers
- § 24:23 Postpetition property: Subsidy rights
- § 24:24 Purchase-money interests: Livestock, supplies, and equipment
- § 24:25 Crop production loans
- § 24:26 Grain storage conflicts
- § 24:27 Feedlots and commingled property
- § 24:28 Statutory trusts: Suppliers and sellers
- § 24:29 Lender liability issues
- § 24:30 Restricting sales
- § 24:31 Auctioneers and sales agents
- § 24:32 List of prospective buyers
- § 24:33 Statements about use and residence
- § 24:34 Subsidy participation
- § 24:35 Storage, feeding and removal rights
- § 24:36 Handling certificates
- § 24:37 Waivers and ownership issues

- § 24:38 Secondary liens
- § 24:39 Margin and other accounts
- § 24:40 Chapter 12 eligibility
- § 24:41 Automatic stay issues
- § 24:42 Codebtor rights and automatic stay
- § 24:43 Debtor control
- § 24:44 Time limitations
- § 24:45 Confirmation rules
- § 24:46 —Valuation and debt extension
- § 24:47 —Disposable income issues
- § 24:48 General rights and farm property
- § 24:49 —Right to enter and operate
- § 24:50 —Wrapping up contract rights
- § 24:51 —Selling perishable property
- § 24:52 Automatic stay and Chapter 11

PART III. SELECTED FINANCING FORMS

CHAPTER 25. BASIC COMMERCIAL FORMS

- § 25:1 General checklist
- § 25:2 Agreement to make secured loan
- § 25:3 General commercial security agreement
- § 25:4 —As part of credit application
- § 25:4.50 —In connection with senior secured convertible debenture
- § 25:5 —Computer software
- § 25:6 —Patents
- § 25:7 —Deposit accounts
- § 25:8 —Extension of security agreement
- § 25:9 —On business or real estate sold by secured party to debtor
- § 25:9.10 —In connection with credit agreement, note purchase agreement, and intercreditor and collateral agency agreement
- § 25:9.20 —Clause for collateral agent appointed attorney-in-fact
- § 25:9.50 Assignment of interest in purchase money security agreement
- § 25:9.55 Definitions—Goods—Including computer programs
- § 25:9.60 Assignment of security agreement with guaranty by assignor
- § 25:9.70 Assignment of security interest and note, with recourse
- § 25:10 Checklist of matters to be considered in drafting security agreement on behalf of depository of public funds
- § 25:11 Installment note—Fixed rate
- § 25:12 —Unsecured
- § 25:13 —Prime rate

TABLE OF CONTENTS

| | |
|------------|---|
| § 25:14 | —Variable, fixed base |
| § 25:15 | Joint Note |
| § 25:16 | Corporate note with prepayment provisions |
| § 25:17 | Demand note with variable rate |
| § 25:18 | Revolving credit note |
| § 25:18.50 | Secured Note Purchase Agreement |
| § 25:19 | Financing statement form (UCC1) |
| § 25:20 | Addendum to financing statement form (UCC1AD) |
| § 25:21 | Purchase money security agreement for motor vehicle |
| § 25:22 | —Affidavit of secured party; Security interest in seized motor vehicle |
| § 25:22.50 | Application for Certificate of Title |
| § 25:23 | Request for information statement form (UCC11) |
| § 25:23.50 | Information statement form (UCC5) |
| § 25:24 | Notice of default and repossession |
| § 25:25 | —With redemption provision |
| § 25:26 | Notice of proposal to retain collateral in satisfaction of debt |
| § 25:27 | —Proposal to retain collateral in full satisfaction of debt under Revised Article 9 |
| § 25:28 | —Partial satisfaction under Revised Article 9 |
| § 25:29 | —Notice to additional creditors under Revised Article 9 |
| § 25:30 | Notice of foreclosure—Public sale |
| § 25:31 | —Private sale |
| § 25:32 | —Creditors |
| § 25:33 | —Guarantors |
| § 25:34 | —IRS |
| § 25:35 | Postdefault waiver of right to notice of sale |
| § 25:36 | Record of disposition of collateral |
| § 25:37 | Demand for account statement |
| § 25:38 | Notice to account debtors |
| § 25:39 | Notice to bailee |
| § 25:40 | Security agreement |
| § 25:40.50 | —Wholesale lease line and security agreement |
| § 25:41 | Loan agreement |
| § 25:41.50 | —Between corporate borrower and several banks |
| § 25:41.60 | —Term loan and revolving credit agreement |
| § 25:41.70 | —Construction and development of race track |
| § 25:42 | Loan and security agreement |
| § 25:42.10 | Pledge, assignment and security agreement |
| § 25:42.20 | Loan and security agreement—Increase agreement |
| § 25:42.30 | Term loan and security agreement, lender affiliate of borrower |
| § 25:42.40 | Deed of trust, assignment of rent, security agreement, fixture filing |
| § 25:42.50 | Intercreditor agreement—Mezzanine loan |
| § 25:42.60 | —Granting second priority representative junior security interests in common collateral |

- § 25:42.70 Agreement to contribute additional capital by owner—
In connection with start-up involved in dairy farming
business
- § 25:43 Lock box agreement
- § 25:44 Temporary release agreement
- § 25:45 Prenegotiation letter to modify loan
- § 25:46 Forbearance agreement
- § 25:46.50 Forbearance in connection with indenture
- § 25:47 Notice of change of use of collateral
- § 25:48 Arbitration clause
- § 25:48.50 Arbitration clause—Provision to preclude class relief
- § 25:49 Acceleration clause—Decline in market value of
collateral
- § 25:50 Notice of acceleration
- § 25:51 Composition agreement with creditors—Creditors’
committee to carry on debtor’s business
- § 25:52 —Debtor to carry on business under inspection by
creditors’ committee
- § 25:52.50 —Formation of corporation controlled by creditors’
committee
- § 25:53 Agreement to extend security interest
- § 25:54 Financing statement amendment form (UCC3)
- § 25:54.50 Addendum to financing statement amendment form
(UCC3AD)
- § 25:55 Debtor’s request for termination statement
- § 25:55.50 Asset representations review agreement
- § 25:56 Debtor’s request for termination statement—Secured
party to file statement
- § 25:57 —Specification of consequential damages
- § 25:58 Termination statement
- § 25:59 Combined termination statement and assignment
statement
- § 25:60 Financing statement covering consigned goods
- § 25:61 Financing statement covering leased goods

CHAPTER 26. PRELIMINARY COMMITMENTS AND AUTHORITY

- § 26:1 Letter of intent
- § 26:2 —Interim contract
- § 26:3 —No interim contract
- § 26:4 Commitment letter
- § 26:5 —Acquisition transaction
- § 26:5.50 —Construction loan
- § 26:6 Opinion of counsel
- § 26:7 Opinion of special counsel
- § 26:8 General consent of shareholder to encumber
- § 26:9 Shareholder consent to specific transaction
- § 26:10 Resolution of shareholders
- § 26:11 Authorizing resolutions—Deposit and signature

TABLE OF CONTENTS

- § 26:12 —General borrowing and liens
- § 26:13 —Authority to deal with instruments
- § 26:14 —Authority to secure debts
- § 26:15 —Authority for specific transaction
- § 26:16 Secretary's certificate
- § 26:17 Checklist of matters to be considered in making abstract or opinion of title

CHAPTER 27. THIRD PARTY FORMS

I. SUBORDINATION AGREEMENTS AND RELATED MATTERS

- § 27:1 General subordination agreement agreement
- § 27:2 Short form of subordination agreement
- § 27:3 Agreement including future indebtedness to secured party
- § 27:4 Fixtures and attachments and accessions to collateral
- § 27:5 Inventory and accounts
- § 27:6 Interest-only payments to subordinated creditor
- § 27:7 Lienholder and lender extending credit to owner
- § 27:8 Substitution of collateral
- § 27:9 Subordinated note
- § 27:10 Demand to share in proceeds of sale of collateral
- § 27:11 Waiver or subordination regarding real estate claims

II. GUARANTY; “KEEP-WELL” AGREEMENTS

- § 27:12 Payment guaranteed
- § 27:13 —Particular contract
- § 27:13.50 —With confession of judgment
- § 27:14 Collection guaranteed
- § 27:15 Liquidation agreement among lender, debtor, and guarantor
- § 27:16 Keep-well agreement—Letter agreement
- § 27:17 —Maintenance of net worth and liquidity
- § 27:18 —Funding for product research
- § 27:19 —Provision—Breach of keep-well as breach of credit agreement
- § 27:20 — —Preservation of status quo
- § 27:21 — —Agreement not executory contract assumable or rejectable in bankruptcy
- § 27:21.50 Security agreement between guarantor and secured party

III. LOAN PARTICIPATIONS AND RELATED MATTERS

- § 27:22 Participation agreement—Revolving loan
- § 27:23 —Term loan
- § 27:24 —Provision—Sales of shares by participants
- § 27:25 — —Arbitration clause

- § 27:26 Inter-creditor agreement regulating priority of security interests in debtor's collateral
- § 27:26.50 Intercreditor and collateral agency agreement
- § 27:27 Participation certificate—Secured
- § 27:28 —Unsecured
- § 27:29 —Multiple loans
- § 27:30 Agreement ranking respective security interests of secured creditors with common debtor and collateral

IV. ASSIGNMENT

- § 27:31 Prohibition of modification after assignment
- § 27:32 Modification of contract as breach
- § 27:33 Notice to account debtors of assignment of account
- § 27:34 Statement of assignment

V. MISCELLANEOUS

- § 27:35 Pledge of property—Letter to trust company
- § 27:36 —Letter to bank
- § 27:37 Agreement covering loans to third party
- § 27:38 Subsidiary guarantee agreement

CHAPTER 28. BANKRUPTCY FORMS

- § 28:1 Means test for use in Chapter 11 cases [Official Bankruptcy Form No. B 122B]
- § 28:1.50 Means test for use in Chapter 7 cases [Official Bankruptcy Forms Nos. B 122A-1 and 122-A-2]
- § 28:1.60 Means test for use in Chapter 13 cases [Official Bankruptcy Form Nos. B 122C-1 and 122C-2]
- § 28:2 Reorganization plan—Individual debtors
- § 28:3 —Corporation
- § 28:4 —Liquidating Plan
- § 28:5 —Partnership
- § 28:6 —Creditor's plan
- § 28:6.10 Plan of reorganization in small business case under Chapter 11 (Official Bankruptcy Form No. B 425A)
- § 28:6.50 Exit commitment letter with exit term sheet
- § 28:7 Cash collateral and financing order
- § 28:8 Mortgage, pledge, and security agreement executed by debtor in possession authorized to use cash collateral
- § 28:9 *[Reserved]*
- § 28:10 List of creditors—20 largest unsecured claims [Official Bankruptcy Form No. B 204]
- § 28:11 Statement of financial affairs [Official Bankruptcy Form No. B 207]
- § 28:12 Notice of filing, meeting of creditors, and fixing of dates [Official Bankruptcy Form Nos. B 309A through B 309I]
- § 28:13 Disclosure statement

TABLE OF CONTENTS

| | |
|------------|---|
| § 28:13.10 | Disclosure statement in small business case under Chapter 11 (Official Bankruptcy Form No. B 425B) |
| § 28:13.20 | Small business monthly operating report (Official Bankruptcy Form No. B 425C) |
| § 28:13.30 | Periodic report regarding value, operations and profitability of entities in which the debtor's estate holds a substantial or controlling interest (Official Bankruptcy Form No. B 426) |
| § 28:14 | Proof of claim [Official Bankruptcy Form Nos. B 410 through Form B 410S2] |
| § 28:14.10 | Reaffirmation agreement cover sheet [Official Bankruptcy Form No. B 427] |
| § 28:15 | Notice of motion or objection [Bankruptcy Form No. B420A] |
| § 28:16 | Notice of objection to claim [Official Bankruptcy Form No. B420B] |
| § 28:17 | Final report and application for final decree |
| § 28:18 | General power of attorney [Official Bankruptcy Form No. 411A] |
| § 28:19 | Special power of attorney [Official Bankruptcy Form No. 411B] |
| § 28:20 | Postpetition DIP loan |
| § 28:21 | Master termination agreement (Chapter 11 voluntary bankruptcy) |

Volume 3

CHAPTER 29. EQUIPMENT FINANCING FORMS

I. LEASING AGREEMENTS

| | |
|-----------|--|
| § 29:1 | Financing lease |
| § 29:2 | —Equipment lease—Substitution of different equipment |
| § 29:3 | —Personal property lease |
| § 29:4 | —Lease of computer system |
| § 29:5 | —Lease of computer software |
| § 29:6 | —Purchase option |
| § 29:7 | — —Motor vehicles |
| § 29:7.50 | —Equipment lease—Commercial vehicle TRAC agreement |
| § 29:8 | —Purchase option—Lease of taxicab |
| § 29:9 | Purchase order |
| § 29:10 | Assignment of rents |
| § 29:11 | Acceptance certificate |
| § 29:12 | Promissory note |
| § 29:13 | Transferee agreement |
| § 29:14 | Security agreement and assignment of lease |
| § 29:15 | Consent to assignment—Lessee |

- § 29:16 Guaranty
- § 29:17 Lessor certificate and resolution
- § 29:18 Provisions for multiple item leases
- § 29:19 Equipment schedule
- § 29:20 Fair market value purchase option
- § 29:21 Disclaimer of warranties
- § 29:21.50 Master lease funding guidance line agreement

II. SECURED LENDING

- § 29:22 Security agreement—Equipment
- § 29:23 Collateral control agreement
- § 29:24 Cross-collateral and cross-default agreement

CHAPTER 30. TRANSPORTATION EQUIPMENT FORMS

I. AIRCRAFT

- § 30:1 Aircraft security agreement
- § 30:2 —Installment sale
- § 30:3 —Security interest assignment agreement
- § 30:4 Aircraft lease
- § 30:5 —Short form
- § 30:6 —Equipment and airworthiness
- § 30:7 —Extension of lease
- § 30:8 —Alternative default provisions
- § 30:9 —Flight hours
- § 30:10 —Insurance—Lessee's obligations
- § 30:11 — —Lessor's obligations
- § 30:12 —Alternative maintenance provisions—Lessee to pay for routine maintenance
- § 30:13 — —Lessor to pay for routine maintenance
- § 30:14 —Restrictions on use
- § 30:15 —Sale and leaseback agreement
- § 30:16 Aircraft time-share agreement
- § 30:17 Lease acceptance
- § 30:18 Insurance requirements
- § 30:19 Truth-in-leasing clause
- § 30:20 Certificate of repossession
- § 30:21 AC Form 8050-1 (Aircraft Registration Application)
- § 30:22 AC Form 8050-2 (Aircraft Bill of Sale)
- § 30:23 AC Form 8050-4 (Certificate of Repossession of Encumbered Aircraft)
- § 30:24 AC Form 8050-5 (Dealer's Aircraft Registration Certificate Application)
- § 30:25 AC Form 8050-135 (FAA Entry Point Filing Form—International Registry)

II. VESSELS

- § 30:26 Ship mortgage

TABLE OF CONTENTS

- § 30:27 Preferred ship mortgage
- § 30:28 Affidavit of good faith
- § 30:29 Corporate acknowledgement
- § 30:30 Declaration of citizenship
- § 30:31 Negotiable promissory note
- § 30:32 Performance bond
- § 30:33 Bill of sale—Vessel or small craft

CHAPTER 31. INVENTORY AND BORROWING BASE LOANS

I. COMPREHENSIVE LOANS

- § 31:1 Comprehensive revolving credit line—Borrowing base
- § 31:2 —Short form
- § 31:3 —Computation of borrowing base
- § 31:4 —Definition of eligible accounts
- § 31:5 —Definition of eligible inventory
- § 31:6 —Definition of eligible equipment
- § 31:7 Letter of credit tied to base
- § 31:8 Commercial letter of credit—Security agreement
- § 31:9 Application for inventory financing—By retailer
- § 31:10 —By wholesaler

II. INVENTORY LOANS

- § 31:11 Inventory security agreement
- § 31:12 —Inventory and accounts receivable
- § 31:13 —Future advances
- § 31:13.50 Application for floor plan financing
- § 31:13.60 Wholesale financing agreement with security interest in
accounts and general intangibles
- § 31:13.70 Inventory and accounts receivable—Line of credit
- § 31:14 Inventory—Floor planning agreement
- § 31:15 —Replacement of collateral sold
- § 31:16 —Trust receipt
- § 31:17 — —Automobiles
- § 31:18 —Import financing
- § 31:19 —Future advance clause under trust receipts security
agreement
- § 31:20 Promissory note and curtailment schedule
- § 31:21 Schedule of merchandise subject to security agreement
- § 31:22 Notice of intended acquisition of security interest in
inventory
- § 31:23 Credit contract purchase agreement
- § 31:24 —Holdback provisions
- § 31:25 —Recourse provisions

CHAPTER 32. INTANGIBLE COLLATERAL FORMS

I. ACCOUNTS RECEIVABLE AND CHATTEL PAPER

- § 32:1 Bulk purchase of accounts and chattel paper
- § 32:2 Merchant revolving purchase agreement
- § 32:3 Security agreement for accounts receivable
- § 32:4 —Accounts receivable and chattel paper
- § 32:5 —Inventory rider
- § 32:6 Security agreement for contract rights; borrowing from lenders other than secured party prohibited
- § 32:7 Schedule of accounts receivable
- § 32:8 Security agreement involving assignment of specific accounts
- § 32:9 Assignment of security agreement
- § 32:10 Factoring agreement
- § 32:11 Joint factoring agreement
- § 32:12 Receivables purchase agreement
- § 32:13 Certificate of loan value

II. INVESTMENT SECURITIES AND NOTES

- § 32:14 Pledge—Instruments or documents
- § 32:15 —As part of promissory note
- § 32:16 —Investment securities
- § 32:17 —Stock pledge agreement
- § 32:18 —Investment property in brokerage account
- § 32:19 —Special custody and pledge agreement
- § 32:20 Financial assets security agreement
- § 32:21 Default terms—Private, control stock
- § 32:22 Assignment separate from certificate
- § 32:23 Option agreement
- § 32:24 Equity-for-debt exchange agreement
- § 32:25 Trust receipt
- § 32:26 Trust receipt and security agreement used with letter of credit
- § 32:27 —Documents turned over to bank's customer
- § 32:28 Owner's consent to repledge
- § 32:29 Statement of purpose for extension of credit secured by margin stock
- § 32:30 Collateral assignment
- § 32:31 Cash collateral security agreement, deposit accounts and certificates of deposit
- § 32:31.25 Convertible promissory note
- § 32:31.50 —Notice of conversion

III. MISCELLANEOUS

- § 32:32 Software license agreement

TABLE OF CONTENTS

- § 32:33 Security incidental to license
- § 32:34 Security agreement—Computer software
- § 32:35 Consent and estoppel certificate—Licensor to lender
- § 32:36 Assignment of software
- § 32:37 Agreement to assign patents
- § 32:38 Mortgage of a patent
- § 32:39 Patent security agreement
- § 32:40 Patent license agreement
- § 32:41 Assignment of rights under patent license agreement
- § 32:42 Copyright security agreement supplementing general security agreement
- § 32:43 Copyright mortgage and assignment
- § 32:44 Copyright security agreement
- § 32:45 —Television and related commercial programming
- § 32:46 Intellectual property security agreement—Motion picture
- § 32:47 Trademark security agreement
- § 32:48 Collateral assignment of trademarks
- § 32:49 Trademark license or assignment agreement—
Reassignment of trademark to secure performance by assignee
- § 32:50 Intellectual property security agreement—Covering copyrights, patents, trademarks, domain names, licenses
- § 32:51 Assignment of chose in action as collateral security for indebtedness
- § 32:52 Interest in trust as collateral
- § 32:53 Security agreement—Contract rights
- § 32:54 —Partnership interest
- § 32:55 Applicant's agreement with Letter of Credit issuer
- § 32:56 Collateral security provisions—Letter of credit
- § 32:57 Consolidated security agreement and appointment of collateral agent—chattel paper, general intangibles, letter of credit rights, securities and patents

CHAPTER 33. REAL ESTATE RELATED COLLATERAL FORMS

I. OIL AND GAS TRANSACTIONS

- § 33:1 Combined deed of trust, security agreement and assignment of production
- § 33:2 Assignment of production
- § 33:3 Oil and gas mortgage and security agreement
- § 33:3.50 Oil and gas unitization agreement
- § 33:3.60 —Unit operating agreement, with unit operator lien and security interest

II. AGRICULTURAL FINANCE

- § 33:4 Loan Agreement
- § 33:5 Security agreement

- § 33:6 —Short form
- § 33:7 Dairy assignment
- § 33:8 Subordination agreement
- § 33:9 —Another form
- § 33:10 Security agreement and assignment of hedging account
- § 33:11 Security agreement for crops and livestock
- § 33:12 —Farm products (including crops) and equipment
- § 33:12.50 Security agreement with crops, livestock, and equipment as collateral—Detailed provisions for types, amounts, care, and disposition
- § 33:13 Livestock addendum
- § 33:14 Permits, water rights, and ranch fixtures addendum
- § 33:15 Grant of right of entry in respect of security agreement covering crops on leased land
- § 33:16 Contract to create crop lien for advances to grower
- § 33:17 Crop mortgage as additional security for agricultural property purchase price
- § 33:17.50 Security agreement in aquacultural goods

CHAPTER 34. LITIGATED CONTRACT CLAUSES

I. SECURITY AGREEMENTS

A. DEFINING COLLATERAL

- § 34:1 “Accounts receivable, contract rights”; trade marks and trade names not covered
- § 34:2 “Additions”; after-acquired equipment not covered
- § 34:3 “All inventory”; limited to inventory sold to debtor by creditor
- § 34:4 “General intangibles”; liquor license not covered
- § 34:5 “General intangibles”; investment securities not covered
- § 34:5.50 “General intangibles”; Settlement proceeds
- § 34:6 “Present and future accounts”; proceeds of network accounts receivable covered
- § 34:6.50 “Equipment”
- § 34:7 “Additional collateral”; guaranty not covered
- § 34:8 “Proceeds of collateral”; collection action on promissory note covered
- § 34:9 “Inventory held for sale presently and in future”; coverage not limited to financed inventory

B. OTHER PROVISIONS

- § 34:10 Dragnet provision; preexisting debts covered
- § 34:10.50 Dragnet provision; credit card and line of credit indebtedness
- § 34:11 “No waiver” provision; enforced
- § 34:12 Assignment provision; enforced
- § 34:12.50 Assignment of hotel revenues

TABLE OF CONTENTS

- § 34:13 Trust account provision; not enforced
- § 34:14 Requirement of acceptance by secured party; priority unaffected
- § 34:15 Default provision; enforced in part
- § 34:15.50 Default provision; marshalling
- § 34:16 Grant to creditor of authority to file financing statement; enforced
- § 34:17 Grant to creditor of authority to trade pledged securities; fiduciary relationship not created

II. FINANCING STATEMENTS

- § 34:18 “All personal property”; insufficient as to settlement proceeds
- § 34:19 “Goods and accounts”; sufficient as to inventory and accounts receivable
- § 34:20 “Inventory, chattel paper, accounts, equipment, and general intangibles”; sufficient as to farm equipment
- § 34:21 “Accounts, equipment, and other collateral”; insufficient as to litigation recovery
- § 34:22 “General business security agreement now owned or hereafter acquired”; insufficient as to specific collateral
- § 34:23 “Property and/or the equipment and all other types of collateral as described in attached agreement and any schedule attached thereto”; sufficient notice of blanket security interest
- § 34:24 “All assets at [specific address] and any other location where business is transacted”; sufficient
- § 34:25 “All inventory . . . together with . . . CUT TIMBER LOCATED AT . . . [specific address]”; sufficient as to cut timber plus other collateral wherever located
- § 34:26 Purchase money financed property “together with any other property”; insufficient as to inventory
- § 34:27 Failure to check “proceeds” box, where financing statement exhibit mentions proceeds; sufficient as to proceeds

III. OTHER COMMERCIAL ASSET-BASED FINANCING DOCUMENTS OR INSTRUMENTS

A. GUARANTEES

- § 34:28 Percentage of “amount due” limitation; construed as percentage of original face value
- § 34:29 Waiver of notice; ineffective as to post-default sale notice
- § 34:30 Absolute and unconditional guaranty; ineffective as waiver of commercial reasonableness
- § 34:31 Waiver of reasonable disposition of collateral; ineffective
- § 34:31.50 Waiver of jury trial
- § 34:32 Any sums owed “now or at any time hereafter”; guaranty extended to loan in excess of security agreement cap

§ 34:32.50 Manner for resolving disputes—“Judicial Reference”

B. NOTES

§ 34:33 Waiver of notice; ineffective as to impairment of collateral defense

§ 34:34 Consent to extension; ineffective for more than one extension

§ 34:35 Collateral clause incorporating financing statement description; sufficient as to after-acquired property

§ 34:36 Security clause; note and financing statement sufficient as authenticated security agreement

C. CONTRACTUAL WORKOUTS; STIPULATIONS IN PROCEEDINGS

§ 34:37 Stipulated order; ineffective as waiver of right to reasonable notice of sale

§ 34:38 Stipulation of settlement; required appraisal and protective bid

§ 34:39 Restructure of obligations; held not to be subordination or release agreement

§ 34:39.50 Restructure of obligations; effect of ambiguous language

D. PLEDGE AGREEMENTS

§ 34:40 General pledge agreement; re-registration of pledged stock appropriate

E. LOAN COMMITMENTS AND AGREEMENTS

§ 34:41 Financing commitment; held to be letter of credit

§ 34:42 Credit line termination clause; upheld

§ 34:43 Listing of collateral

Table of Laws and Rules

Table of Cases

Index