

**2005 AMENDMENTS TO ARTICLES 8 AND 9 OF THE
DELAWARE UNIFORM COMMERCIAL CODE**

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No amendments to Article 8 of the Delaware Uniform Commercial Code, 6 *Del. C.* § 8-101 *et seq.*, have been enacted in 2005, but several changes have been made to Article 9 of the Delaware Uniform Commercial Code, 6 *Del. C.* § 9-101 *et seq.* ("Delaware Article 9"). These amendments were contained in Delaware State House Bill No. 238, and became effective June 28, 2005. *See* 75 Del. Laws, c. 66. Among such amendments:

Section 9-111 has been added to Delaware Article 9. This new Section confirms and clarifies choice of law rules. Subsection (a) of Section 9-111 makes clear that if Delaware law governs a security agreement, then Delaware law also governs the classification of collateral subject to that agreement and the creation, attachment, validity, and enforcement of a security interest thereunder. Subsection (b) provides that when Delaware law governs an agreement, Delaware law also governs whether a transaction that is subject to that agreement is characterized as a security interest or as a sale, lease, bailment, or consignment, or as a securitization transaction for purposes of the Delaware Asset-Backed Securities Facilitation Act, 6 *Del. C.* c. 27A.

A new sentence has been added to Section 9-502(c) of Delaware Article 9, clarifying that a record of a mortgage, while effective as a financing statement in certain circumstances, is not a financing statement. Accordingly, it is not subject to certain requirements of Delaware Article 9 applicable to financing statements, such as provisions dealing with amendments and continuations of financing statements.

Other 2005 amendments to Delaware Article 9 provide guidance regarding filings made in real property records, confirm requirements applicable to an initial financing statement in lieu of a continuation statement under Section 9-706, and make technical corrections.