

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 28, 2009

EXTRACT FOR QUESTIONS 3 AND 4

THIS EXTRACT IS TO BE USED FOR QUESTIONS 3 AND 4 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, MARYLAND RULES, TITLE 2. CIVIL PROCEDURE—CIRCUIT COURT AND TITLE 4. CRIMINAL CAUSES; AND COURTS & JUDICIAL PROCEEDINGS, TITLE 5. LIMITATIONS, PROHIBITED ACTIONS, AND IMMUNITIES.

Note: Asterisks (* * * *) indicate places where material contained in the Annotated Code has been omitted from this extract.

ANNOTATED CODE OF MARYLAND
MARYLAND RULES

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**TITLE 2. CIVIL PROCEDURE – CIRCUIT COURT
CHAPTER 100. COMMENCEMENT OF ACTION AND PROCESS**

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RULE 2-121. PROCESS--SERVICE--IN PERSONAM

(a) **Generally.** Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery - show to whom, date, address of delivery." Service by certified mail under this Rule is complete upon delivery. Service outside of the State may also be made in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice.

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(d) **Methods not exclusive.** The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

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CHAPTER 300. PLEADINGS AND MOTIONS

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RULE 2-322. PRELIMINARY MOTIONS

(a) **Mandatory.** The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) **Permissive.** The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) **Disposition.** A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

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CHAPTER 400. DISCOVERY.

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RULE 2-432. MOTIONS UPON FAILURE TO PROVIDE DISCOVERY

(a) **Immediate sanctions for certain failures of discovery.** A discovering party may move for sanctions under Rule 2-433 (a), without first obtaining an order compelling discovery under section (b) of this Rule, if a party or any officer, director, or managing agent of a party or a person designated under Rule 2-412 (d) to testify on behalf of a party, fails to appear before the officer who is to take that person's deposition, after proper notice, or if a party fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service. Any such failure may not be excused on the ground that the discovery sought is objectionable unless a protective order has been obtained under Rule 2-403.

(b) **For order compelling discovery.** (1) **When Available.** A discovering party, upon reasonable notice to other parties and all persons affected, may move for an order compelling discovery if

- (A) there is a failure of discovery as described in section (a) of this Rule,
- (B) a deponent fails to answer a question asked in an oral or written deposition,
- (C) a corporation or other entity fails to make a designation under Rule 2-412 (d),
- (D) a party fails to answer an interrogatory submitted under Rule 2-421,
- (E) a party fails to comply with a request for production or inspection under Rule 2-422,
- (F) a party fails to supplement a response under Rule 2-401 (e), or
- (G) a nonparty deponent fails to produce tangible evidence without having filed written objection under Rule 2-510 (f).

(2) **Contents of Motion.** A motion for an order compelling discovery shall set forth: the question, interrogatory, or request; and the answer or objection; and the reasons why discovery should be compelled. Instead of setting forth the questions and the answers or objections from a deposition, the relevant part of the transcript may be attached to the motion. The motion need not set forth the set of interrogatories or requests when no response has been served. If the court denies the motion in whole or in part, it may enter any protective order it could have entered on a motion pursuant to Rule 2-403. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

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(d) **Time for filing.** A motion for an order compelling discovery or for sanctions shall be filed with reasonable promptness.

(e) **Appropriate court.** A motion for an order compelling discovery or for sanctions shall be filed with the court in which the action is pending, except that on matters relating to a deposition, the motion may be filed either with the court in which the action is pending or with the court in the county in which the deposition is being taken.

RULE 2-433. SANCTIONS

(a) **For certain failures of discovery.** Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

(1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim

of the party obtaining the order;

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.

Instead of any order or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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(d) **Award of expenses.** If a motion filed under Rule 2-432 or under Rule 2-403 is granted, the court, after opportunity for hearing, shall require the party or deponent whose conduct necessitated the motion or the party or the attorney advising the conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court, after opportunity for hearing, shall require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

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Title 4. Criminal Causes

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Chapter 200. Pretrial Procedures

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RULE 4-252. MOTIONS IN CIRCUIT COURT

(a) **Mandatory motions.** In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

(4) An unlawfully obtained admission, statement, or confession; and

(5) A request for joint or separate trial of defendants or offenses.

(b) **Time for filing mandatory motions.** A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

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(d) **Other motions.** A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

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RULE 4-263. DISCOVERY IN CIRCUIT COURT

(a) **Applicability.** This Rule governs discovery and inspection in a circuit court.

(b) **Definitions.** In this Rule, the following definitions apply:

(1) **Defense.** "Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) **Defense Witness.** "Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) **Oral Statement.** "Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) **State's Witness.** "State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

(5) **Written Statement.** "Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

(c) **Obligations of the Parties.**

(1) **Due Diligence.** The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) **Scope of Obligations.** The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

(d) **Disclosure by the State's Attorney.** Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) **Statements.** All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including

documents and recordings, that relate to the acquisition of such statements;

(2) **Criminal Record.** Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) **State's Witnesses.** The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

(4) **Prior Conduct.** All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) **Exculpatory Information.** All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) **Impeachment Information.** All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

(7) **Searches, Seizures, Surveillance, and Pretrial Identification.** All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

(8) **Reports or Statements of Experts.** As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each

opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) **Evidence for Use at Trial.** The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) **Property of the Defendant.** The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

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(h) **Time for Discovery.** Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

(i) **Motion to Compel Discovery.**

(1) **Time.** A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) **Content.** A motion shall specifically describe the information or material that has not been provided.

(3) **Response.** A response may be filed within five days after service of the motion.

(4) **Certificate.** The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) **Continuing Duty to Disclose.** Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

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(n) **Sanctions.** If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is

within the discretion of the court.

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COURTS & JUDICIAL PROCEEDINGS

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TITLE 5. LIMITATIONS, PROHIBITED ACTIONS, AND IMMUNITIES

Subtitle 1—Limitations

§5-101. Three-year limitation in general.

A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

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Subtitle 2—Computing Time

§5-201. Persons under a disability.

(a) *Extension of time.* When a cause of action subject to a limitation under Subtitle 1 of this title or Title 3, Subtitle 9 of this article accrues in favor of a minor or mental incompetent, that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed.

(b) *Exception.* This section does not apply if the statute of limitations has more than three years to run when the disability is removed.

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TITLE 6. PERSONAL JURISDICTION, VENUE, PROCESS AND PRACTICE

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Subtitle 2. Venue.

§6-201. General rule.

(a) *Civil actions.* Subject to the provisions of §§ 6-202 and 6-203 of this subtitle and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

(b) *Multiple defendants.* If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a), all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

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(END OF EXTRACT)

MARYLAND BAR EXAMINATION

BOARD'S WRITTEN TEST

July 28, 2009

EXTRACT for QUESTION 9

THIS EXTRACT IS TO BE USED FOR QUESTION 9 OF THE BOARD'S WRITTEN TEST. THIS EXTRACT CONTAINS SELECTED PROVISIONS OF THE ANNOTATED CODE OF MARYLAND, COMMERCIAL LAW, TITLE 3. NEGOTIABLE INSTRUMENTS AND TITLE 9. SECURED TRANSACTIONS.

Note: Asterisks (* * * *) indicate places where material contained in the Annotated Code has been omitted from this extract.

ANNOTATED CODE OF MARYLAND
COMMERCIAL LAW ARTICLE

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TITLE 3. NEGOTIABLE INSTRUMENTS

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SUBTITLE 3. ENFORCEMENT OF INSTRUMENTS

§ 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 § 3-309 or § 3-418 (d). 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.

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TITLE 9. SECURED TRANSACTIONS

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SUBTITLE 3. PERFECTION AND PRIORITY

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§ 9-310. When Filing Required to Perfect Security Interests or Agricultural Lien; Security Interests and Agriculture Liens to Which Filing Do Not Apply

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(b) The filing of a financing statement is not necessary to perfect a security interest:

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(6) In collateral in the secured party's possession under § 9-313;

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§ 9-312. Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter of Credit Rights and Money Perfection by Permissive Filing, Temporary Perfection Without Filing or Transfer of Possession

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in § 9-315(c) and (d) for proceeds:

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(3) A security interest in money may be perfected only by the secured party's taking possession under § 9-313.

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§ 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing

(a) 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.

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(d) 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.

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§ 9-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus

(a) 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 § 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.

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(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

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§ 9-609. Secured Party's Right to Take Possession After Default

- (a) 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 § 9-610.
- (b) 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) 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.

§ 9-610. Disposition of Collateral After Default

- (a) 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) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.

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(END OF EXTRACT)