

NOTICE

To participants of our program:

If you purchased your program prior to 9-10-02 you will need to replace your Section 2 pages with the following pages. The following pages should be printed and inserted into your Certified Asset Recovery Specialist, National Certification Program, within Section 2.

If you would like us to send the pages on the same linen paper as in your program, please email us and we'll be happy to mail you out the pages for your program.

PLEASE NOTE: ALL TESTING WILL BE ON THIS NEW UCC CODE EFFECTIVE 01-01-03. PLEASE UPDATE YOUR PROGRAMS ACCORDINGLY.

Thank you!

Elizabeth Taylor
Director

UNIFORM COMMERCIAL CODE... WHAT IS IT?

ARTICLES 9-609 THRU 9-628

Contrary to popular belief, the **Uniform Commercial Code** is **NOT A LAW**. Again, we turn to history to better understand where it came from, what it is, and what it does. And since we are interested in the act of “self-help” repossession, we will examine the UCC from that perspective.

The National Conference of Commissioners on Uniform State Laws (NCCUSL), has been in existence for over 100 years. The organization is comprised of more than 300 lawyers, judges and law professors appointed by the states, as well as the District of Columbia, Puerto Rico, and the Virgin Islands. Their purpose is to draft **proposals** for uniform and model laws, and work toward their enactment in legislatures. Since its inception in 1892, this group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the **Uniform Commercial Code**.

The UCC is a **MODEL** of recommendations for state laws and, by itself, has no authority. **The individual states are not required to adopt any part of the UCC, but all states have adopted parts of it.** Whatever parts of the UCC a states adopts into law, then that part of the UCC becomes law within that individual state.

For our purposes, we will explore only **Article 9**, in its entirety, which addresses the repossession process.

CHANGES TO THE UCC

You should be aware that, as of July 1st, 2001, a new version of UCC, Article 9 was adopted, in part by all 50 states. Keep in mind that Louisiana and Wisconsin still do not allow self-help repossession as described in the new UCC, Article 9-609.

As states write legislation, or adopt newly developed legislation such as parts of the UCC, each states actual “language” (statutes), may differ. For this reason, we urge you to contact the individual state(s) where you operate and obtain a complete copy of the new Article 9.

One of the most important aspects of recovering defaulted collateral is to verify that the creditor’s lien has been properly filed and perfected. This can be done by requesting that the creditor furnish you a copy of the Certificate of Title on collateral requiring title, or a copy of the UCC filing on collateral that does not require a Certificate of Title.

Another method of verification is to contact your local tag office, or state department of motor vehicles on Certificates of Title. On UCC verifications, contact the agency of your state where UCC filings are required.

If you recover collateral where the creditor has not properly filed and perfected their lien, you could be held liable, along with the creditor with **wrongful repossession**.

Be forewarned, you, as a collateral recovery specialist are a representative of the secured party. Therefore, **you may be subject to any litigation by the debtor against the secured party**. For this reason it is very important that you become familiar with **all** aspects of the debtors rights **during, and after the repossession**.

THE NEW UNIFORM COMMERCIAL CODE, SECTION 9

Section 9-609: Secured Party's Right To Take Possession After Default

Unless other wise agreed, under this Section a secured party has the right to take possession of the collateral. In taking possession of collateral, a secured party or its agents or assigns may proceed without judicial process (self-help repossession), if this process can be accomplished without breach of the peace, or the secured party may take possession by judicial action (Replevin, Claim and Delivery, Detinue, Revendication, etc.). Further, 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. However, the location where the collateral is to be assembled must be reasonably convenient to **both** parties, and disposal must comply with Section 9-610.

Section 9-610: Disposition Of Collateral After Default

After default, the secured party may dispose of the collateral in its present condition or after any commercially reasonable preparation or processing.

Every aspect of the disposition of collateral, including the method, manner, time, place and other terms must be **commercially reasonable**. If such disposition meets this criteria, the disposition of collateral may be by **public or private** proceedings. The definition of **commercially reasonable** is covered in **Section 9-627**.

Section 9-611: Notification Before Disposal of Collateral

This Section provides the perimeters by which the secured party must notify the debtor or any secondary obligor before disposition of the collateral. The date of such Notification is the earlier of the date on which:

- (a) The secured party sends to the **debtor and any secondary obligor** an **authenticated Notification of disposition** ; or
- (b) The **debtor and any obligor** waives the right to Notification.

This means that the secured party must send Notification to both the **primary debtor and any secondary obligor** unless both the primary debtor and any secondary obligor waives their rights to such Notification. Your particular state(s) statute provides specific requirements for compliance.

Section 9-612: Timeliness of Notification Before Disposition of Collateral

The Section defines what is a **reasonable** time in which Notification must be sent by the secured party prior to disposition in non-consumer transactions.

Section 9-613: Contents and Form of Notification Before Disposition of Collateral: General

This Section provides the general language and requirements to be contained in the Notification for disposition except in a consumer-goods transaction. This Section also provides an accepted form for such Notification.

Section 9-614: Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction

This Section provides the language and rules for Notification before disposal of consumer-goods. The language of the Notification must meet the requirements of this Section, as well as the information specified in paragraph (1) of Section 9-613.

Section 9-615: Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus

This Section provides for the specific order of how and where the proceeds of a disposition may be applied in a consumer-goods transaction. After the secured party meets the requirements of this Section, the secured party shall account to, and pay a debtor any surplus proceeds; and the obligor is liable for any deficiency. This Section also provides for the calculation of surplus or deficiency.

Section 9-616: Explanation of Calculation of Surplus or Deficiency

Under this Section, the secured party is required to provide the obligor(s) with specific information explaining the procedures for calculation of proceeds from the disposition; accounts to the debtor for any surplus or makes demand for any deficiency.

Section 9-617: Rights of Transfer of Collateral

This Section pertains to the rights of the secured party to transfer rights in the collateral to another as part of the final disposition.

Section 9-618: Rights and Duties of Certain Secondary Obligors

This Section pertains to the rights and duties of any secondary (co-signors) to the Security Agreement.

Section 9-619: Transfer of Record of Legal Title

This Section pertains to the effects of a **Transfer Statement**. This **Statement**, which is **authenticated** by a secured party, states that the debtor has defaulted in connection with an obligation secured by specified collateral. Further, that the secured party has met its obligation in order for a **transferee** to take legal ownership to the collateral.

Section 9-620: Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral

Under this Section, a secured party may accept certain collateral in full or partial satisfaction of the obligation if certain conditions are met by the secured party and the debtor.

Section 9-621: Notification of Proposal to Accept Collateral

This Section provides for requirements the secured party must meet, and to whom Notification must be sent when the secured party is accepting collateral in full or partial payment of the obligation.

Section 9-622: Effects of Acceptance of Collateral

This Section pertains to the effects an acceptance of full or partial acceptance will have on the secured party and obligors.

Section 9-623: Right to Redeem Collateral

A very important part of Section 9, this Section sets the perimeters and responsibilities for a secured party and obligor(s), when the obligor(s) wish to redeem the collateral which the secured party has taken.

Section 9-624: Waiver

Under this Section, a debtor or secondary obligor may waive the right to any **Notification of Disposition** of collateral required by **Section 9-611**. Further, a debtor may waive the right to **require** disposition of collateral as required under **Subsection (e)** of **Section 9-620**. Either of these agreements must be **authenticated**. In addition, except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral as outlined in **Section 9-623**. This Waiver, also, must be **authenticated**.

Section 9-625: Remedies for Secured Party's Failure to Comply With Article

This Section sets the perimeters and amounts of damages recoverable by a debtor or obligor for a secured party's failure to comply with **Article 9**.

Section 9-626: Action in Which Deficiency or Surplus is an Issue

Sets the rules where the amount of deficiency becomes an issue regarding the disposition of collateral other than a consumer-goods transaction.

Section 9-627: Determination of Whether Conduct was Commercially Reasonable

Sets the perimeters as to the determination of whether disposition of collateral meets the requirements of a **commercially reasonable** disposition.

Section 9-628: Non-liability and Limitation on Liability of Secured Party; Liability of a Secondary Obligor

Establishes the perimeters for the non-liability or limits of liability of a secured party as to **Notification**. This Section also state, in part, that a secured party is not liable to any person, a persons liability for a deficiency is not affected due to any act or omission arising out of the secured party's **reasonable** belief that a transaction is not a consumer-goods transaction or a consumer transaction, or that goods are not consumer-goods, if the secured party's belief is based on it's reliance of certain criteria.

Again, we urge the student to obtain a complete copy of this new version of **Article 9** in its entirety in an effort to understand, and comply with the requirements of these regulations.