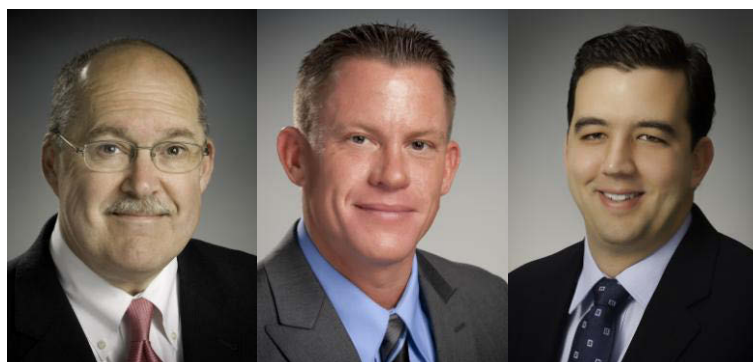


A Primer On UCC Article 9 Sales



Law360, New York (April 30, 2014, 2:27 PM ET) -- Article 9 of the Uniform Commercial Code sets forth a statutory scheme for both creating and enforcing security interests in personal property. Pursuant to Article 9, a lender seeking to collateralize an advance on the personal property of its debtor may negotiate and memorialize its security interest in an agreement, perfect its position as a secured lender relative to other interests in the property, and enforce its security interest by repossessing and disposing of the property securing its loan if its debtor defaults on the loan.

Like the rest of the UCC, Article 9 is intended to create a uniform system across the country for creating and enforcing security interests. It must be noted, however, that while Article 9 has been adopted by every state, some states have made minor modifications to the law or have adopted the most recent version of the law. Accordingly, it is important to consult local law whenever conducting a sale under Article 9.

Similarly, because each state has incorporated Article 9 into its own state statutory schemes, the number of the sections of Article 9 may vary from state to state. All section references contained herein are to Article 9 of the New York state iteration of the UCC.

The Article 9 Sale Timeline

A secured creditor must take several steps to properly effectuate the sale of its collateral pursuant to Article 9 following a debtor's default. Although repossessions and collateral sales can differ individually, all repossessions and sales will follow the same basic timeline.

First, a secured creditor must properly repossess the collateral. A secured creditor generally has several options for repossessing collateral, as well as the option to forego repossession. Certain types of collateral require employment of different methods of repossession.

Second, a secured creditor must give reasonable notice of its intent to sell its collateral to the debtor and other parties with interests in the collateral. What constitutes reasonable notice will vary depending on the type of collateral and the circumstances surrounding the sale of the collateral.

However, a secured creditor will generally be deemed to have given reasonable notice if the secured creditor gives the debtor and other interested parties notice of the sale at least 10 days before the sale. A secured creditor with a security interest in perishable collateral does not have to give notice of the sale.

Third, the sale of collateral by a secured creditor must be “commercially reasonable.” Article 9 does not specifically define this term but, generally speaking, a secured creditor can protect itself by using reasonable efforts to maximize the proceeds of a collateral sale.

A lender should seek to sell its collateral on the most recognized market for the collateral, in the manner that the collateral is normally sold, and should take steps like rehabilitating or maintaining the collateral if these steps will garner a larger profit.

Fourth, a secured creditor must properly apply the proceeds of the sale of the collateral. The creditor may first apply the proceeds to any costs and legal fees associated with the sale, and then apply the proceeds to the secured obligation. The creditor must then distribute the proceeds to junior interests in the collateral and return any excess sale proceeds to the debtor.

Repossession of Collateral

Article 9 provides a secured creditor with the advantage of taking possession of its collateral immediately upon a debtor’s default. It should be noted that certain remedies allowed by Article 9 must be provided for in the security agreement between the secured creditor and the debtor but, in general, a secured creditor has the right to repossess collateral unless the parties have expressly agreed otherwise.

A secured creditor has three options for repossessing collateral under Article 9. A secured creditor may: (1) exercise its right to self-help repossession; (2) require its debtor to assemble and deliver the collateral; and (3) resort to a traditional judicial foreclosure. However, a secured creditor must also be aware that certain categories of collateral require certain actions for repossession.

Self-Help Repossession

Inventory and Equipment

A secured creditor may repossess a piece of collateral or render a piece of equipment unusable on the debtor’s premises through self-help and without judicial process pursuant to Section 9-609(b)(2) of the Uniform Commercial Code. Self-help repossession is the easiest, quickest and most cost-effective means of repossessing collateral as it does not require the time and expense of obtaining a court order.

However, self-help repossession poses risks because the creditor must ensure that there is no breach of the peace when self-help is exercised. If the creditor or its agent causes a breach of the peace or otherwise wrongly repossesses the collateral, the creditor may be liable for conversion damages and possibly punitive damages.

Unfortunately for practitioners, the phrase “breach of the peace” is not specifically defined. Furthermore, the prohibition cannot be waived by agreement between the parties, and the parties may not determine by agreement what constitutes a “breach of the peace.” Accordingly, the issue of what is deemed such a “breach of the peace” has been the subject of much litigation and case law is the only guidance that secured creditors have.

Courts have generally defined “breach of the peace” rather broadly to mean “a disturbance of public order by an act of violence, or by any act likely to produce violence, or which by causing consternation and alarm, disturbs the peace and quiet of the community.” *People v. Most*, 171 N.Y. 423, 64 N.E. 175 (1902).

Hence, the secured creditor is well-advised to consider discontinuing a self-help repossession attempt upon the least bit of resistance from a debtor or third party, as repossessions over mere oral protests have been found to breach the peace. Below is a list of actions that have been deemed by courts to have breached the peace:

Breaches of the peace have included:

- being accompanied by a uniformed police officer without a court order during a repossession;
- being told to stop by a representative of the debtor;
- involving a nearby police officer;
- cutting a chain securing a gate and leaving the debtor’s other property unprotected;
- breaking a window; and
- breaking into a closed garage.

Acceptable means of repossession have included:

- tricking the debtor;
- entering onto property that is not locked; and
- taking a vehicle from an open garage.

A secured creditor may also disable a piece of equipment and then dispose of the equipment through a sale with the equipment remaining on the debtor’s premises. In fact, a secured creditor may be able to preserve the value of the equipment by disabling the equipment.

It is important to note that this remedy is only available to secured creditors that have a security interest in equipment. For example, a secured creditor can disable and dispose of a forklift used in warehouse operations, on the debtor’s property, but not a forklift held for resale, and thus constituting inventory, of an equipment sales business.

Accounts

Under Section 9-607 of the Uniform Commercial Code, when a debtor that pledges its accounts as collateral defaults, the secured creditor has the right to collect payment directly from those accounts. A secured creditor that knows the identity of the account debtor may simply provide written, authenticated direction to the account debtor to pay the secured creditor directly.

Once a secured creditor has provided that notice, the secured creditor must be repaid by the account debtor. An account debtor that does not repay the secured creditor directly remains liable for its debt to the secured creditor, even if the account debtor repays the debtor.

A secured creditor should be ready to provide proof of the debtor's assignment, as Section 9-406(c) of the Uniform Commercial Code provides that an account debtor may request proof of assignment of its account by the debtor to the secured creditor. The proof of assignment need only be reasonable and could consist simply of a copy of the security agreement signed by the debtor.

Even though accounts are easily convertible to cash and their collection cannot conceivably result in a breach of the peace, a secured creditor does face some risk in sending out notices to account debtors. Most notably, account debtors might not feel obligated to repay the secured creditor.

Account debtors often have a valued business relationship with their own creditors. Furthermore, account debtors might worry that the secured creditor will not honor warranties made by the debtor. Therefore, account debtors might withhold payments from the secured creditor to protect itself from bearing the cost of defective goods.

Account debtors might also not believe that the secured creditor will pursue payment. A secured creditor is wise to protect itself by requiring the debtor to maintain accurate records that can be used to pursue account debtors that refuse to pay. These records should include purchase orders, invoices and signed contracts, as well as any other records that the debtor might keep in order to prove the account debtor's obligation.

Alternatively, a secured creditor can choose to refrain from pursuing self-help repossession of accounts by permitting account debtors to continue paying the debtor and by then requiring the debtor to remit the funds to the creditor. In this situation, however, the secured creditor runs the risk of the debtor misappropriating account proceeds to fund its operations.

A lockbox arrangement is advisable when dealing with accounts. A lockbox agreement generally provides that the account debtor will make payments to a location only accessible by the secured party.

Pursuant to the lockbox arrangement, the secured creditor first pays itself and then remits the surplus to the debtor. Accordingly, a secured creditor does not need to worry about the debtor misappropriating funds that the secured creditor is entitled to and does not have to notify account debtors to change payment locations. Lockbox arrangements typically must be negotiated in connection with the security agreement.

Right to Make Debtor Assemble Collateral

A secured creditor may require a debtor to assemble the collateral under Section 9-609(c) of the Uniform Commercial Code if the security agreement signed by the debtor grants the secured creditor the right or at any time after the debtor defaults. If the debtor is willing to assemble equipment, this is the preferred method of repossession under Article 9.

However, debtors will often not comply with this requirement and a secured creditor will have to resort to self-help or judicial intervention. One risk in demanding that a debtor assemble collateral is that doing so may give the debtor the opportunity to secrete or transfer collateral.

Judicial Foreclosure

The UCC does not prevent a secured creditor from resorting to the courts to obtain an order requiring a debtor to turn over collateral and authorizing a sheriff or officer of the law to repossess the collateral on its behalf. One advantage to this method of repossession is that the secured creditor does not have to worry about liability for conversion or breach of the peace during a court-ordered repossession. Judicial foreclosures, however, tend to be slow and expensive. In addition, as judicial foreclosures are not governed by the UCC, the process differs from state to state.

Repossession Method	Positives	Negatives
Self-Help	Quick and cheap	Potential to breach the peace or improperly repossess property, which can result in significant liability
Requesting Debtor Assemble Collateral	Quick, cheap and no risk of breaching the peace	Must notify debtor of an intent to repossess
Disable Collateral	Quick and cheap	Possession remains with the debtor. Only available for equipment
Notify Account Debtors	Quick, cheap and no risk of breaching the peace	Risk of nonpayment from account debtors
Judicial Foreclosure	No risk of breaching the peace. Allowed to employ police or marshals to repossess collateral	Slow and expensive

Notice Requirements

Under Section 9-611 of the Uniform Commercial Code, a secured creditor is required, in most circumstances, to “send a reasonable authenticated notification of disposition.” The notice is intended to provide the debtor, and other interested parties, an opportunity to monitor the disposition of the collateral, purchase the collateral and/or demand any surplus proceeds recovered from the sale.

Accordingly, a secured creditor must send notice that is reasonable as to manner, content and time. Since the notice must be authenticated, a secured creditor may not give verbal notice to the debtor. A secured creditor’s notice must be made either electronically or in writing. A creditor that fails to provide this reasonable notice can potentially be held liable for any loss created by its failure to give notice properly.

To Whom a Secured Creditor Must Send Notice

A secured creditor must notice the debtor, any secondary obligor and any other party with an interest in the collateral. A secured creditor must generally be aware of three types of parties with interests in the collateral.

First, a secured creditor must notice any party that sends an authenticated notice of its interest in the collateral. Second, a secured creditor must notice other secured creditors and lien holders. However, a secured creditor must only notice those secured creditors and lien holders who, as of 10 days before the sale, have a security interest perfected by a filing statement that identifies the collateral. This means that a secured creditor must only notice those parties that can be found in a UCC search of the debtor's home state's secretary of state's website.

Third, a secured creditor must notify secured creditors perfected according to Section 9-311 of the Uniform Commercial Code in the same collateral as of the date that the secured creditor sends notification to the debtor. A secured creditor should look to the law of the debtor's home state and the state where the collateral is located to determine whether any other parties hold an interest perfected according to Section 9-311 of the Uniform Commercial Code.

Although this burden seems substantial, under Section 9-611(e) of the Uniform Commercial Code, a secured creditor is deemed to have satisfied all notice requirements if it performs a financing statement search between 20 and 30 days before the sale of the collateral. As such, it is extremely important that a secured creditor both perform and memorialize a search of the records of the proper filing state before disposing of its collateral. A financing statement search is usually performed on the secretary of state's website in the state where the debtor is a resident.

A secured creditor cannot rely on a pre-default waiver of notification. Section 9-611 of the Uniform Commercial Code provides that a debtor, secondary obligor or other party holding an interest in the collateral only validly waives notice post-default.

Exceptions to the Notification Requirement

A secured creditor is exempt by Section 9-611 of the Uniform Commercial Code from providing reasonable notice when secured by collateral that: (1) is perishable; (2) threatens to rapidly decline in value; and (3) is sold on a recognized market.

A secured creditor does not have to send notification to an unknown debtor or secured creditor. A secured creditor has completed its obligations to discover creditors if it performs a search of appropriate public records between 20 and 30 days before providing notice.

Examples of collateral that can be sold without notice to other creditors include:

- Fruits, vegetables and dairy (perishable);
- Publicly traded stocks and bonds (sold on a recognized market);
- Seasonal products that will lose value if sold too late in season (threatens to rapidly decline in value).

Form of Notice That Must Be Sent

A secured creditor's notice is required to be "reasonable." Whether notice is reasonable is determined by the timing, contents and manner of notice.

Generally, a secured creditor sends timely notice when the notice is not sent so near the disposition that a person could not act on the notice. Under Section 9-612(b) of the Uniform Commercial Code, in a nonconsumer goods transaction, a secured creditor sends notice in a reasonable time frame if the notice is sent after default and at least 10 days before disposition.

Section 9-613 of the Uniform Commercial Code and Section 9-614 of the Uniform Commercial Code establish the information that a secured creditor must include in a notice in order for it to be reasonable and provide a safe harbor for secured creditors. A secured creditor is wise to follow the sections' safe harbor requirements.

In order to remain in the safe harbor, a secured creditor must send notice that includes a description of the debtor and the secured party, describes the collateral, states the method of intended disposition, and informs the debtor that it is entitled to an accounting of the unpaid debt along with any charge for the accounting. For a public sale, a secured creditor must inform its debtor of the time and place for the disposition. A secured creditor must only include the date after which the collateral will be sold for a private disposition.

A secured creditor's notice can still be sufficient even if the notice does not meet the safe harbor requirements. However, the determination of whether a notice sent by a secured creditor sufficiently meets the safe harbor requirements is a question of fact.

A secured creditor's notice may contain minor errors so long as the errors are not misleading. Furthermore, a secured creditor's notice that contains extraneous information is not invalid. A secured creditor must only provide substantially the information required by the safe harbor. In order to determine whether a notice contains sufficient information, a creditor may wish to review the form of notice as provided in Article 9.

Notice of Accounting

In its notice, a secured creditor is required to inform its debtor that it has a right to an accounting of its debts and the costs of providing the accounting. If the debtor requests an accounting of its debts to the secured creditor, the secured creditor must produce an accounting of the entirety of the debtor's obligations. The debtor must pay the costs that the secured creditor provides in its notice of accounting.

Commercial Reasonableness

A secured creditor is required to make a "commercially reasonable" sale of the debtor's collateral. Unfortunately, Article 9 does not expressly define what constitutes a "commercially reasonable" sale. Rather, Article 9 demands that a secured creditor's sale must be reasonable in every aspect, including time, manner, place and any other terms. Furthermore, a secured creditor is required to provide reasonable notification of the sale to the debtor, secondary obligors, holders of interest in the collateral, and in the case of a public sale, the public at large.

The parties to a security agreement cannot waive the requirement of a commercially reasonable disposition. A debtor or secondary obligor may, however, agree that a disposition was reasonable.

Parties may agree on what standard constitutes a commercially reasonable sale prior to the sale. Even with such an agreement, a secured creditor's sale may not be completed, based on standards that are "manifestly unreasonable."

Along with not providing a definition for "commercially reasonable," Article 9 provides a secured creditor with an incredible amount of freedom in determining how to dispose of collateral. A secured creditor may decide to sell the collateral in a public or private sale and in aggregate or in single units. A secured creditor may also choose the time, place and manner of its disposition.

A secured creditor may choose to sell the collateral "as is" or may repair the collateral and apply the proceeds of the sale to the repairs before the sale. Given all of these freedoms by the statute, a secured creditor should focus on ensuring that it maximizes the proceeds of the disposition.

Important Factors in Determining Whether Sale Was Commercially Reasonable

Courts will generally consider numerous factors to be important in determining whether a sale was commercially reasonable. These factors include:

Price

The price at which a secured creditor sells its collateral is not determinative of whether the secured creditor makes a commercially reasonable sale. Because most secured creditor sales result in below fair market value returns, a secured creditor should not worry that its sale does not meet market standards. However, a secured creditor should be wary that a very low disposition price will cause the court to scrutinize the sale and the sale procedures more closely.

Manner of Disposition

A secured creditor may choose to dispose of its collateral in either a public or private sale as long as every aspect of the disposal is commercially reasonable. Courts will generally find a public sale commercially reasonable if the secured creditor gives sufficient notice to the public. Accordingly, because a secured creditor cannot necessarily control the price at a sale but can control the notice of the sale that it is conducting, a secured creditor can often protect itself by holding a public sale, providing at least 10 days' notice, and advertising the sale in appropriate media.

A secured creditor's sale will be considered a public sale if "there is a meaningful opportunity for competitive bidding," there is some form of advertising preceding the sale notifying the public, and there is access granted to the public. Courts generally find that a sale is not truly a public sale if only a section of the public, such as "dealers only," are allowed to attend.

Courts will scrutinize private sales more closely than public sales. Specifically, courts are generally interested in determining how well a secured creditor marketed the collateral before the private sale. Accordingly, a secured creditor should be able to demonstrate that it solicited multiple offers for the collateral before making a sale.

Time of Disposition

A secured creditor should also be careful to ensure, when disposing of collateral, that the length of time that it holds the collateral after the repossession and the economic conditions at the time of the sale are

both reasonable. A secured creditor must also ensure that its actions are reasonable specifically with respect to the type of collateral that it is selling.

For example, it is not commercially reasonable for a secured creditor to let produce rot before disposing of it. Similarly, a secured creditor would act reasonably if it sold seasonal products shortly before those products would be used for the season.

Other Considerations

Because every aspect of a collateral disposition must be commercially reasonable, a secured creditor should be careful to consider whether all of its choices with regard to the sale are reasonable and focused toward maximizing the proceeds of the sale. An important example of such considerations is whether the creditor should repair the collateral or sell it as is.

While Article 9 does not require a secured creditor to repair collateral, a secured creditor does not act to maximize proceeds, and therefore does not act in a commercially reasonable manner, when it fails to make inexpensive repairs that would significantly increase the value of the collateral sale. Similarly, a creditor does not act in a commercially reasonable manner when it fails to clean the collateral before an auction or inspection by a potential buyer.

Deficiency and Failure to Make a Commercially Reasonable Sale

A secured creditor's failure to follow all of the sale requirements of Article 9, including giving proper notice and making a commercially reasonable sale, will affect a creditor's ability to recover a deficiency claim. Under Section 9-626(a)(3) of the Uniform Commercial Code, a secured creditor who fails to comply with the requirements of Article 9 faces a rebuttable presumption that the amount of proceeds that should have been produced by the sale is equal to the secured obligation plus costs.

Furthermore, Section 9-626(a)(3) of the Uniform Commercial Code requires that a secured creditor's deficiency be calculated using the amount of the rebuttable presumption, leaving the secured creditor without a deficiency claim. A secured creditor is wise to follow the provisions of Article 9 to prevent from having to spend time and money attempting to rebut the Section 9-626(a)(3) presumption.

Disposition of Proceeds

Sale by Senior Secured Creditor

A secured creditor is required to distribute proceeds of a collateral sale according to Section 9-615(a) of the Uniform Commercial Code. Under the statute, a secured creditor must first apply the proceeds of the sale to any reasonable expenses of retaking, holding, preparing the collateral for disposition, disposing of the collateral, and any other reasonable expenses associated with the repossession and disposition of the collateral.

A secured party must be careful when including attorneys' fees and legal expenses in costs, as they may only be included if they are provided for in the security agreement and are not otherwise prohibited by law.

After paying reasonable costs, a secured party must apply the proceeds of the sale of the collateral to the debt or obligation secured by the security interest. In the absence of a "cross-collateralization" or

other similar clause, a secured party foreclosing under several different security agreements must be careful to apply the proceeds of a piece of collateral only to the specific debt secured in the security agreement covering that piece of collateral. A secured creditor may not apply the proceeds of the distribution to a debt not specifically secured by a security agreement.

Next, a secured party must apply any remaining cash proceeds to any lower priority security interests or liens on the property. But a secured creditor may only apply those proceeds to holders of subordinate interests or liens who make an authenticated demand before the secured creditor has completed its distribution of the collateral.

A secured creditor may, and should, make a request of any potential subordinate interest or lien holder who has made an authenticated demand to provide reasonable proof of the security interest or lien being asserted. This proof should consist of the security agreement entered into between the junior interest or lien holder and the debtor or some other documents evidencing the creation of a lien, such as a judgment from a court of competent jurisdiction.

A secured creditor may make this request either verbally or in writing. By making the request, a secured creditor can receive some assurances of the validity of the interest and protect itself against a debtor that disputes the subordinate interest or the amount of the interest.

Article 9 does not require the subordinate interest to provide this reasonable assurance. This often leads to questions as to the ability of foreclosing creditors to fully protect themselves. However, a secured party need not make a distribution until it receives reasonable proof.

A secured creditor is liable for any unpaid security interest if it does not make a distribution to a subordinate interest that properly makes an authenticated demand and provides reasonable proof of its interest. Thus, a secured creditor must perform a search of records before making a disposition.

Accounts

A foreclosing creditor should also be vigilant of co-signers. Article 9 requires a foreclosing creditor to distribute proceeds to co-signers before holders of security interests and liens subordinate to the co-signer. A co-signer's distribution follows only those interests to which the co-signer is subordinate.

Sale by Junior Secured Creditor

There is one notable exception to the rule that a debtor must receive the excess proceeds of a disposition. In most cases, a secured party must remit any surplus proceeds to the debtor. A notable exception to this rule is that a secured creditor need not remit to the debtor any proceeds if the underlying secured transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes.

A secured creditor with an interest that is subordinate to another interest in the collateral may foreclose on a piece of collateral without participation from the senior creditor. Furthermore, Article 9 does not require a secured creditor to make a distribution to a senior security interest. A secured creditor with a senior interest need not worry about the sale because a foreclosure sale only has the effect of discharging interests junior to the foreclosing creditor.

Receipt of Proceeds by Junior Creditor

A junior secured creditor that erroneously, but in good faith, receives proceeds from a sale of collateral is protected by Section 9-615(g) of the Uniform Commercial Code.

Specifically, under Section 9-615(g), a junior secured party that receives a disposition of cash proceeds in good faith and without knowledge of the violation of the senior party's rights is not obligated to return or account to the senior party. Accordingly, junior secured creditors should be comforted that cash distributions received from collateral sales conducted without knowledge of violations of a senior creditor's rights will not be disgorged.

Deficiency

Because rights under the Uniform Commercial Code are cumulative with state law rights, a secured creditor is free to pursue a debtor for any deficiency in state court pursuant to Section 9-615(d)(2) of the Uniform Commercial Code. Simply, if the proceeds of a collateral sale are not sufficient to completely satisfy a debtor's outstanding obligations to a secured creditor, the secured creditor may pursue the debtor for the remaining amount through the judicial system. However, a secured creditor's deficiency claim may be reduced according to Section 9-626 of the Uniform Commercial Code due to failure to comply with Article 9's requirements of a sale.

Collateral Repurchase by a Secured Creditor

Secured Creditor Repurchase Through Sale

A secured creditor that wishes to repurchase the collateral securing a loan transaction must follow specific rules under Article 9 and does not have the same flexibility in selling collateral to itself as it does in a disposition to a third party. Most significantly, a secured creditor may only purchase its own collateral through a private sale if the collateral is of the type that is customarily sold on a recognized market or subject to widely distributed price quotations. Otherwise, the secured creditor must conduct a public sale.

A secured creditor must meet certain conditions in order to hold a "public sale." First, the secured creditor must advertise or give public notice of the sale. Second, the general public must have access to the sale. For example, "dealers only" sales are not generally considered public sales. Third, the price of the collateral must be "determined after the public has had a meaningful opportunity for competitive bidding."

Danger to Secured Creditor of Related-Party Repurchase

A secured creditor should be aware that Section 9-615(f) of the Uniform Commercial Code contains an anti-deficiency provision when a secured creditor purchases its own collateral and when a party related to the secured creditor purchases collateral. Section 9-615(f) is triggered when the collateral is sold to the secured creditor or a related party at a price that is significantly below the range of proceeds that would have been produced at a sale to a third party.

In such circumstances, the creditor is forced to calculate its deficiency or surplus based on what a properly conducted sale to a third party would have produced. This rule protects the debtor from excessive deficiency claims resulting from artificially low-priced sales.

Due to Section 9-615(f), a secured creditor either buying its own collateral or selling collateral to a related party must be careful to sell the collateral at a reasonable price. The secured creditor should be able to demonstrate to a court the price that the collateral would have sold for to a third party and that the price that the secured creditor or related party purchased the collateral for was not significantly below the price that the third party would have paid. Otherwise, the secured creditor risks its ability to collect a deficiency.

Acceptance of Collateral in Full or Partial Satisfaction

Section 9-620 of the Uniform Commercial Code gives a secured creditor the option to accept its collateral in full or in partial satisfaction of its debt. In a nonconsumer goods transaction, the creditor need only obtain the debtor's consent, as long as the creditor did not receive a timely notification of objection from another party having an interest in the collateral.

Generally, the debtor must consent through an authenticated record accepting the secured creditor's proposal. A secured creditor usually must receive an affirmative acceptance of its proposal. A debtor, however, may be deemed to have accepted a secured creditor's offer if three conditions are met.

First, the creditor must send the debtor a proposal to accept the offer in satisfaction of the debt after default. Second, the proposal can be conditioned only upon the creditor's receipt of all of its collateral in exchange for the debt relief. Third, the debtor cannot have sent an authenticated, as opposed to an oral, notice of objection to the creditor.

Two groups of parties that have an interest in the collateral have a right to object to a secured creditor's acceptance of collateral in satisfaction under Section 9-621(a) of the Uniform Commercial Code.

The first group consists of: (1) any person from whom the secured creditor has received authenticated notice of a claim of interest in the collateral; (2) any secured party or lien holder that has perfected by filing a financing statement within the 10 days prior to when the debtor consented to acceptance; and (3) any secured party or lien holder that has perfected under Section 9-311(a) of the Uniform Commercial Code.

Generally, a secured creditor can be sure to notice these parties by performing a UCC financing statement search after the debtor consents and then sending the proposal to any party that was perfected in the 10 days prior. The second group consists of any person who is a secondary obligor.

To prevent acceptance in satisfaction, the parties listed above must send an authenticated notification of objection within 20 days after the secured creditor sends its proposal.

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