

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962
Part 6
DEFAULT
Subpart 1.
DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

440.9601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Sec. 9601.

(1) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9602, those provided by agreement of the parties. A secured party may do 1 or more of the following:

(a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure.

(b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under section 7106, 9104, 9105, 9106, or 9107 has the rights and duties provided in section 9207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in subsection (7) and section 9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of the following:

(a) The date of perfection of the security interest or agricultural lien in the collateral.

(b) The date of filing a financing statement covering the collateral.

(c) Any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(7) Except as otherwise provided in section 9607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

History: Add. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2012, Act 87, Eff. July 1, 2013

440.9602 Waiver and variance of rights and duties.

Sec. 9602.

Except as otherwise provided in section 9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(a) Section 9207(2)(d)(iii), which deals with use and operation of the collateral by the secured party.

(b) Section 9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account.

(c) Section 9607(3), which deals with collection and enforcement of collateral.

(d) Sections 9608(1) and 9615(3) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition.

(e) Sections 9608(1) and 9615(4) to the extent that they require accounting for or payment of surplus proceeds of collateral.

(f) Section 9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace.

(g) Sections 9610(2), 9611, 9613, and 9614, which deal with disposition of collateral.

(h) Section 9615(6), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor.

(i) Section 9616, which deals with explanation of the calculation of a surplus or deficiency.

(j) Sections 9620, 9621, and 9622, which deal with acceptance of collateral in satisfaction of obligation.

- (k) Section 9623, which deals with redemption of collateral.
- (l) Section 9624, which deals with permissible waivers.
- (m) Sections 9625 and 9626, which deal with the secured party's liability for failure to comply with this article.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9603 Agreement on standards concerning rights and duties.

Sec. 9603.

(1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9602 if the standards are not manifestly unreasonable.

(2) Subsection (1) does not apply to the duty under section 9609 to refrain from breaching the peace.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9604 Procedure if security agreement covers real property or fixtures.

Sec. 9604.

(1) If a security agreement covers both personal and real property, a secured party may do either of the following:

(a) Proceed under this part as to the personal property without prejudicing any rights with respect to the real property.

(b) Proceed as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(2) Subject to subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may do either of the following:

(a) Proceed under this part.

(b) Proceed in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(3) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9605 Unknown debtor or secondary obligor.

Sec. 9605.

A secured party does not owe a duty based on its status as secured party to either of the following:

(a) To a person that is a debtor or obligor, unless the secured party knows all of the following:

- (i) That the person is a debtor or obligor.
- (ii) The identity of the person.
- (iii) How to communicate with the person.
- (b) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:
 - (i) That the person is a debtor.
 - (ii) The identity of the person.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9606 Time of default for agricultural lien.

Sec. 9606.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9607 Collection and enforcement by secured party.

Sec. 9607.

- (1) If so agreed, and in any event after default, a secured party may do 1 or more of the following:
 - (a) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party.
 - (b) Take any proceeds to which the secured party is entitled under section 9315.
 - (c) Enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.
 - (d) If it holds a security interest in a deposit account perfected by control under section 9104(1)(a), apply the balance of the deposit account to the obligation secured by the deposit account.
 - (e) If it holds a security interest in a deposit account perfected by control under section 9104(1)(b) or (c), instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
- (2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record both of the following in the office in which a record of the mortgage is recorded:
 - (a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage.
 - (b) The secured party's sworn affidavit in recordable form stating both of the following:
 - (i) That a default has occurred with respect to the obligation secured by the mortgage.
 - (ii) That the secured party is entitled to enforce the mortgage nonjudicially.
- (3) A secured party shall proceed in a commercially reasonable manner if the secured party meets both of the following:
 - (a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral.
 - (b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.
- (5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

History: Add. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2012, Act 88, Eff. July 1, 2013

440.9608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

Sec. 9608.

(1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9607 in the following order to:

(i) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party.

(ii) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made.

(iii) 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.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subdivision (a)(iii).

(c) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

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

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9609 Secured party's right to take possession after default.

Sec. 9609.

(1) After default, a secured party may do 1 or more of the following:

(a) Take possession of the collateral.

(b) Without removal, render equipment unusable and dispose of collateral on a debtor's premises under section 9610.

(2) A secured party may proceed under subsection (1) either pursuant to judicial process, or without judicial process if it proceeds without breach of the peace.

(3) 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 that is reasonably convenient to both parties.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9610 Disposition of collateral after default.

Sec. 9610.

(1) 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.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by 1 or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral either at a public disposition, or at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4) either in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition, or by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9611 Notification before disposition of collateral.

Sec. 9611.

(1) As used in this section, "notification date" means the earlier of the date on which 1 of the following occurs:

- (a) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition.
- (b) The debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under section 9610 shall send to the persons specified in subsection (3) a reasonable authenticated notification of disposition.

(3) To comply with subsection (2), the secured party shall send an authenticated notification of disposition to all of the following:

(a) The debtor.

(b) Any secondary obligor.

(c) If the collateral is other than consumer goods, all of the following, as applicable:

(i) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(ii) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that identified the collateral, was indexed under the debtor's name as of that date, and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(iii) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9311(1).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed by subsection (3)(c)(ii) if the secured party does both of the following:

(a) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(ii).

(b) Before the notification date, 1 of the following applies:

(i) The secured party did not receive a response to the request for information.

(ii) The secured party received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9612 Timeliness of notification before disposition of collateral.

Sec. 9612.

(1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9613 Contents and form of notification before disposition of collateral; generally.

Sec. 9613.

Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification does all of the following:

(i) Describes the debtor and the secured party.

(ii) Describes the collateral that is the subject of the intended disposition.

(iii) States the method of intended disposition.

(iv) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(v) States the time and place of a public disposition or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information specified in subdivision (a) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subdivision (a) are sufficient, even if the notification includes information not specified by that paragraph or minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(e) The following form of notification and the form appearing in section 9614(c), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: _____ [Name of debtor, obligor, or other person to which the
notification is sent]
From: _____ [Name, address, and telephone number of secured party]
Name of Debtor(s): _____ [Include only if debtor(s) are not an addressee]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number].

[End of Form]

440.9614 Contents and form of notification before disposition of collateral; consumer-goods transaction.

Sec. 9614.

In a consumer-goods transaction, the following rules apply:

(a) A notification of disposition must provide all of the following information:

(i) The information specified in section 9613(a).

(ii) A description of any liability for a deficiency of the person to which the notification is sent.

(iii) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 9623 is available.

(iv) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required.

(c) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject:

[Identification
of
Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last 6 months.]

If you need more information about the sale, call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement: [Names of all other debtors and obligors, if any].

[End of Form]

(d) A notification in the form of subdivision (c) is sufficient, even if additional information appears at the end of the form.

(e) A notification in the form of subdivision (c) is sufficient, even if it includes errors in information not required

by subdivision (a), unless the error is misleading with respect to rights arising under this article.

(f) If a notification under this section is not in the form of subdivision (c), law other than this article determines the effect of including information not required by subdivision (a).

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9615 Application of proceeds of disposition; liability for deficiency and right to surplus.

Sec. 9615.

(1) A secured party shall apply or pay over for application the cash proceeds of disposition under section 9610 in the following order:

(a) To the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party.

(b) To the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(c) To the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if both of the following, if applicable, are met:

(i) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed.

(ii) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(d) To a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under section 9610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3), both of the following apply:

(a) Unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus.

(b) The obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply:

(a) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(b) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) All of the following apply to a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) The secured party takes the cash proceeds free of the security interest or other lien.

(b) The secured party is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien.

(c) The secured party is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

440.9616 Explanation of calculation of surplus or deficiency.

Sec. 9616.

- (1) As used in this section:
 - (a) "Explanation" means a writing that does all of the following:
 - (i) States the amount of the surplus or deficiency.
 - (ii) Provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency.
 - (iii) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency.
 - (iv) Provides a telephone number or mailing address from which additional information concerning the transaction is available.
 - (b) "Request" means a record that meets all of the following:
 - (i) Authenticated by a debtor or consumer obligor.
 - (ii) Requesting that the recipient provide an explanation.
 - (iii) Sent after disposition of the collateral under section 9610.
- (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9615, the secured party shall do 1 or both of the following:
 - (a) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and in accordance with both of the following:
 - (i) Sent before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency.
 - (ii) Sent within 14 days after receipt of a request.
 - (b) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.
- (3) To comply with subsection (1)(a)(ii), a writing must provide the following information in the following order:
 - (a) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date, that is 1 of the following:
 - (i) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession.
 - (ii) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.
 - (b) The amount of proceeds of the disposition.
 - (c) The aggregate amount of the obligations after deducting the amount of proceeds.
 - (d) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney fees secured by the collateral that are known to the secured party and relate to the current disposition.
 - (e) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subdivision (a).
 - (f) The amount of the surplus or deficiency.
- (4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1) is sufficient, even if it includes minor errors that are not seriously misleading.
- (5) A debtor or consumer obligor is entitled without charge to 1 response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding \$25.00 for each additional response.

History: Add. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2001, Act 145, Eff. Jan. 1, 2002

440.9617 Rights of transferee of collateral.

Sec. 9617.

- (1) A secured party's disposition of collateral after default does all of the following:
 - (a) Transfers to a transferee for value all of the debtor's rights in the collateral.
 - (b) Discharges the security interest under which the disposition is made.
 - (c) Discharges any subordinate security interest or other subordinate lien.
- (2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.
- (3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to all of the following:
 - (a) The debtor's rights in the collateral.
 - (b) The security interest or agricultural lien under which the disposition is made.
 - (c) Any other security interest or other lien.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9618 Rights and duties of certain secondary obligors.

Sec. 9618.

- (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after all of the following:
 - (a) The secondary obligor receives an assignment of a secured obligation from the secured party.
 - (b) The secondary obligor receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party.
 - (c) The secondary obligor is subrogated to the rights of a secured party with respect to collateral.
- (2) An assignment, transfer, or subrogation described in subsection (1) results in both of the following:
 - (a) It is not a disposition of collateral under section 9610.
 - (b) It relieves the secured party of further duties under this article.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9619 Transfer of record or legal title.

Sec. 9619.

- (1) As used in this section, "transfer statement" means a record authenticated by a secured party stating all of the following:
 - (a) That the debtor has defaulted in connection with an obligation secured by specified collateral.
 - (b) That the secured party has exercised its postdefault remedies with respect to the collateral.
 - (c) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral.
 - (d) The name and mailing address of the secured party, debtor, and transferee.
- (2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall do all of the following:
 - (a) Accept the transfer statement.
 - (b) Promptly amend its records to reflect the transfer.
 - (c) If applicable, issue a new appropriate certificate of title in the name of the transferee.
- (3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

440.9620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

Sec. 9620.

(1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if all of the following are met:

- (a) The debtor consents to the acceptance under subsection (3).
- (b) The secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal authenticated by 1 of the following:
 - (i) A person to which the secured party was required to send a proposal under section 9621.
 - (ii) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal.
- (c) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(d) Subsection (5) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9624.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless both of the following occur:

- (a) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor.
- (b) The conditions of subsection (1) are met.
- (3) All of the following apply for purposes of this section:
 - (a) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default.
 - (b) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party meets all of the following requirements:
 - (i) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained.
 - (ii) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures.
 - (iii) Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b), a notification of objection must be received by the secured party within or before 1 of the following:

(a) In the case of a person to which the proposal was sent pursuant to section 9621, within 20 days after notification was sent to that person.

(b) In other cases, 1 of the following:

- (i) Within 20 days after the last notification was sent pursuant to section 9621.
- (ii) If a notification was not sent, before the debtor consents to the acceptance under subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 9610 within the time specified in subsection (6) if 1 of the following is met:

(a) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods.

(b) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral within 1 of the following:

- (a) Within 90 days after taking possession.
- (b) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

440.9621 Notification of proposal to accept collateral.

Sec. 9621.

(1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to all of the following:

(a) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral.

(b) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that met all of the following:

(i) Identified the collateral.

(ii) Was indexed under the debtor's name as of that date.

(iii) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date.

(c) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9311(1).

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1).

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9622 Effect of acceptance of collateral.

Sec. 9622.

(1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures does all of the following:

(a) Discharges the obligation to the extent consented to by the debtor.

(b) Transfers to the secured party all of a debtor's rights in the collateral.

(c) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien.

(d) Terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1), even if the secured party fails to comply with this article.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9623 Right to redeem collateral.

Sec. 9623.

(1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender both of the following:

(a) Fulfillment of all obligations secured by the collateral.

(b) The reasonable expenses and attorney fees described in section 9615(1)(a).

(3) A redemption may occur at any time before a secured party has done 1 of the following:

(a) Has collected collateral under section 9607.

(b) Has disposed of collateral or entered into a contract for its disposition under section 9610.

(c) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 9622.

History: Add. 2000, Act 348, Eff. July 1, 2001

440.9624 Waiver.

Sec. 9624.

(1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9611 only by an agreement to that effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under section 9620(5) only by an agreement to that effect entered into and authenticated after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9623 only by an agreement to that effect entered into and authenticated after default.

History: Add. 2000, Act 348, Eff. July 1, 2001

Subpart 2. NONCOMPLIANCE WITH ARTICLE

440.9625 Remedies for secured party's failure to comply with article.

Sec. 9625.

(1) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in section 9628, both of the following apply:

(a) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss.

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge paid plus 10% of the principal amount of the obligation or the time-price differential paid plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under section 9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9626 may not otherwise recover under subsection (2) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance. Regardless of whether the debtor's or secondary obligor's deficiency is eliminated or reduced under section 9626 or other applicable law, any damages recovered by the debtor or secondary obligor under subsection (3) shall be reduced by the amount that the sum of the secured obligation, expenses, and attorney's fees exceeds the proceeds of collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500.00 in each case from a person that does 1 or more of the following:

(a) Fails to comply with section 9208.

(b) Fails to comply with section 9209.

(c) Files a record that the person is not entitled to file under section 9509(1).

(d) Fails to cause the secured party of record to file or send a termination statement as required by section 9513(1) or (3).

(e) Fails to comply with section 9616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) Fails to comply with section 9616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, \$500.00 in each case from a person that, without reasonable cause, fails to comply with a request under section 9210. A recipient of a request under section 9210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

History: Add. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2014, Act 104, Imd. Eff. Apr. 10, 2014

440.9626 Action in which deficiency or surplus is in issue.

Sec. 9626.

In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in section 9628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney fees exceeds the greater of 1 of the following:

(i) The proceeds of the collection, enforcement, disposition, or acceptance.

(ii) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(d) For purposes of subdivision (c)(ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under section 9615(6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

History: Add. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2014, Act 104, Imd. Eff. Apr. 10, 2014

440.9627 Determination of whether conduct was commercially reasonable.

Sec. 9627.

(1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner on any recognized market, at the price current in any recognized market at the time of the disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved in a judicial proceeding, by a bona fide creditors' committee, by a representative of creditors, or by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

440.9628 Nonliability and limitation on liability of secured party; liability of secondary obligor.

Sec. 9628.

(1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person, both of the following apply:

(a) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article.

(b) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(2) A secured party is not liable because of its status as secured party to either of the following:

(a) To a person that is a debtor or obligor, unless the secured party knows all of the following:

(i) That the person is a debtor or obligor.

(ii) The identity of the person.

(iii) How to communicate with the person.

(b) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:

(i) That the person is a debtor.

(ii) The identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of 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 its reasonable reliance on 1 or more of the following:

(a) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held.

(b) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under section 9625(3)(b) for its failure to comply with section 9616.

(5) A secured party is not liable under section 9625(3)(b) more than once with respect to any 1 secured obligation.