

Chapter 38—Secured Transactions and Suretyship

Goods

Consumer goods—those goods purchased primarily for personal, family, or household uses

Farm products—crops or livestock or supplies used or produced in farming operations

Inventory—goods held for sale or lease including raw materials and work in progress

Equipment—goods used primarily in business, including farming or the professions

Fixtures—goods that are firmly attached to real estate so as to be considered part of the real property under state law

Accession—goods installed in or firmly affixed to personal property

Attachment

Describes a security interest which is enforceable against the debtor (or other parties) because the interest has “attached to” the collateral. A security interest attaches to collateral when: 1) the secured party has given value; 2) the debtor has acquired rights in the collateral; and 3) a security agreement has been formed.

Security Agreement

A security agreement provides the creditor a security interest and must (with certain exceptions) be authenticated by the debtor and contain a reasonable description of the collateral.

Authenticating record—authentication can occur in one of two ways. First, the debtor can sign a written security agreement. Second, revised article 9 provides that a debtor can authenticate a security agreement by executing or otherwise adopting a symbol, or by encrypting or similarly processing a record in whole or in part, with the present intent of the authenticating party to adopt or accept the record.

Authenticating Record Not Required—the security agreement does not require an authenticating record when the collateral is pledged or in the possession of the secured party pursuant to an agreement. A pledge is a delivery of personal property to a creditor.

Perfection

What to File—the revised UCC continues to adopt a system of “notice filing”: it indicates merely that a person may have a security interest in the collateral. It also authorizes and encourages filing financing statements electronically. Though it need not be highly detailed, the financing statement must include the name of the debtor, the name of the secured party, and an indication of the collateral. If the financing statement substantially complies with these requirements, minor errors will not render the financing statement ineffective. The revised act no longer requires the debtor’s signature on the financing statement in order to facilitate paperless filing.

Subsequent Change of Debtor's Location—if the debtor moves to another state after the initial filing, the security interest remains perfected until the earliest of the time the security interest would have terminated in the state in which perfection occurred, four months after the debtor moved to the new state, or the expiration of one year after the debtor transfers the collateral to a person, who becomes the debtor, in another state.

Control—may be used to perfect a security interest in electronic chattel paper, investment property, non-consumer deposit accounts and letter of credit rights.

Suretyship

Reimbursement—a surety who pays the creditor has a right to recover payment from the principal debtor.

Defenses of Surety and Principal Debtor

Personal defenses of principal debtor

- **the incapacity of the principal debtor**
- **discharge of the principal debtor's obligation in bankruptcy**
- **any setoff (claim outside the transaction in question) that the principal debtor has against the creditor**

Personal defenses of surety

- **the incapacity of the surety**
- **noncompliance with the statute of frauds in the surety's contract**
- **the absence of mutual assent or consideration to support the surety's obligation**
- **setoff by surety**

- **modification of the contract between the creditor and the debtor**
- **creditor's release of security or a cosurety**

Defenses of both surety and principal debtor

- **the principal debtor's signature is forged**
- **fraud or duress exerted by the creditor on the principal debtor**
- **fraudulent and material alteration of the contract by the creditor**
- **the absence of mutual assent or consideration to support the principal debtor's obligation**
- **the illegality or impossibility of performance of the principal debtor's contract**

Performance by the principal debtor discharges both the principal debtor and the surety. The creditor's refusal to accept payment or performance by either the principal debtor or the surety completely

discharges the surety but not the principal debtor.