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## Procedures for Disposition of Collateral Under Revised Article 9 of the Uniform Commercial Code

By Beverly L. Edwards, Esq.

This article addresses the procedures for disposition of a secured lender's collateral under Revised Article 9 of the Uniform Commercial Code in a non consumer transaction. Revised Article 9 became effective on July 1, 2001. The new Article 9 establishes additional rights and responsibilities and new procedures for a secured creditor after default by a debtor.

The following article is intended to provide an overview of Revised Article 9 as it relates to disposition of collateral after default by a debtor. Secured lenders are advised to seek advice of legal counsel.

### Disposition of Collateral

Section 9-610 of Revised Article 9 addresses the disposition of collateral after default by a debtor. After default the Secured Creditor may sell, lease, license or otherwise dispose of any or all of its collateral. This disposition can occur with the collateral in its present condition or following any commercially reasonable preparation or processing.

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

Section 9-627 of Revised Article 9 provides guidance for determining the circumstances un-

der which disposition is "commercially reasonable". The fact that a greater amount could have been obtained at a different time or by a different method from that selected by the Secured Creditor will not in and of itself be sufficient to find that the disposition was *not* made in a commercially reasonable manner. The statute specifically states that disposition of collateral is made in a commercially reasonable manner if the disposition is made:

1. In the usual manner on any recognized market;
2. At the price current in any recognized market at the time of the disposition; or
3. Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

Revised Article 9 does not specify a period within which the Secured Creditor must dispose of collateral. However, if the Secured Creditor holds collateral for a long period of time without disposing of it, and if there is no good reason for not making a prompt disposition, the Secured Creditor may be determined not to have acted in a "commercially reasonable" manner.

It should be noted that disposition rights under this section of the statute are not limited to first priority security interests. Rather, any Secured Creditor as to whom there has been a default has the right to dispose of collateral under this section of Revised Article 9. The disposition



of collateral after default by a junior lienholder does not affect the rights of any senior secured parties.

## Notification of Disposition of Collateral

Under Section 9-611, the Secured Creditor is required to send notification of the disposition of collateral. The form for Notification of Disposition of Collateral is set out in revised Article 9.

The following persons must receive the notice of disposition of collateral:

1. The debtor;
2. Any secondary obligors (such as guarantors);
3. Any other person from whom the Secured Creditor has received, before sending out the Notice, an authenticated (e.g., signed) notification of a claim of an interest in the collateral;
4. Any other secured party that, ten days before sending out the notice, held a security interest in the collateral perfected by the filing of a financing statement. This is limited to those financing statements that identify the collateral, were indexed under the debtor's name as of that date and were filed in the proper filing office for that type of collateral.

These notification provisions are a major change in secured lending. The Secured Creditor now has a duty to notify (and the corresponding burden of searching the files to discover) certain competing secured parties.

## Time for Notification

Section 9-612 addresses the timeliness of the notification. That statute provides that a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is deemed to be sent within a reasonable time before the disposition.

## Application of Proceeds of Disposition

Revised Article 9, under 9-615 sets forth the order for application of the cash proceeds of disposition as follows:

1. First to the reasonable expenses of retaking, holding, preparing for disposition and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the Secured Creditor.
2. The satisfaction of obligations secured by the Secured Creditor's security interest, and
3. The satisfaction of obligations secured by any junior security interests, if the Secured Creditor receives a signed demand for proceeds before distribution of the proceeds is completed.

If requested by the Secured Creditor, the holder of a junior security interest is required to furnish reasonable proof of the lien within a reasonable time. If the junior lienholder does not comply, the Secured Creditor need not comply with the junior lienholder's demand for distribution of proceeds from the sale of the collateral. The Debtor is entitled to receive any surplus from the disposition, and is liable for any deficiency.

## Debtor's Right To Redeem

Section 9-623 of Revised Article 9 gives the debtor a right to redeem the collateral. In order to redeem the collateral, the debtor (or any other person having a right to redeem) must pay all the obligations secured by the collateral and the reasonable expenses and attorney's fees incurred by the Secured Creditor. The redemption may occur at any time before the Secured Creditor has disposed of the collateral or entered into a contract for its disposition or has accepted collateral in full or partial satisfaction of the obligation pursuant to the provisions of Revised Article 9. ❖

Procedures  
for Disposition  
of Collateral  
Under Revised  
Article 9 of  
the Uniform  
Commercial  
Code