

Drafting Receivables Purchase Documents: Avoiding Contracting Pitfalls for Sellers and Purchasers

Key Provisions, UCC Requirements, Bankruptcy Principles

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The RPA Market

1. Traditional factoring is conducted under a factoring agreement under which the receivables Seller appoints a financial institution as its “factor” and often delegates administration of its receivables to the factor.
2. The “Receivables Purchase Agreement” (RPA) market involves commercial banks more typically than commercial factors, and uses some of the techniques used in the securitization market for accounts receivable. These include a focus on balance sheet relief, true sale analysis and legal opinions, and negotiation over recourse events. These programs are often conducted over online platforms which enable processing of very large numbers of invoices, in electronic format. This program will focus on the RPA market.



Key U.S. Legal Aspects Involve the Confluence of Two Statutory Regimes:

1. The commercial law, i.e. the Uniform Commercial Code. This is State law, drafted and proposed by the Commission on Uniform State Laws and enacted by State legislatures. Covers all key areas, e.g. Sales, Commercial Paper (checks, etc.), Bank Deposits and Collections, Wire Transfers, Letters of Credit, Documents of Title, Securities Transfer and Accounts, and Secured Transactions (Article 9). Originally enacted in the 1950s and heavily revised in key areas in 2001 and subsequently.
2. The bankruptcy law, embodied in the Federal Bankruptcy Code of 1978 provides for liquidation (Ch. 7) or reorganization (Ch. 11) of bankrupt entities. Bankruptcy proceedings are the key testing ground for consensual security interests created under UCC Article 9.
3. These codes do not dovetail with precision.



Article 9 UCC

1. UCC Article 9 provides a framework for the creation, perfection, priority and enforcement of consensual (contractual) security interests in personal property. (Real estate and some other categories are excluded.) Security interests are created when the secured party gives value, the debtor has rights to the collateral, and a security agreement containing a grant of a security interest is signed. The UCC sets forth the familiar categories of collateral, e.g. equipment, inventory, goods (i.e. movables), accounts, general intangibles (a “basket” category for intangibles). We will focus on accounts. (Note – not “receivables” or “accounts receivable”, though those terms have other uses.)
2. Definition of “Accounts” in UCC 9-102(a)(2) (emphasis added):
(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract



Article 9 UCC (Cont'd)

2. Definition of “Accounts” in UCC 9-102(a)(2) (cont'd):

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

3. Related Definition of “Account Debtor” (we usually call “Obligor”) follows in UCC 9-102(a)(3).

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper



Purchaser vs. Creditor

UCC Article 9 is clear that the interest of a purchaser of accounts is within Article 9 rules on creation, perfection, and priority:

1. UCC 9-109, “General Scope of Article”, states that “this article applies to...(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes...”
2. The Code’s general definitions, in 1-201(35), provides that “ ‘security interest’ means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9.”
3. The specific definitions in Article 9, 9-102(a)(72), define “secured party” as including “...a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold.”
4. The effect of these provisions, and others, is that the purchaser must follow the Article 9 provisions on validity and perfection of its interest, however characterized, in order to have the level of protection against a bankruptcy trustee that is equivalent to a creditor secured by the same asset. Official Comment 4 to 9-109 explains that there



Purchaser vs. Creditor

have been “difficult problems of distinguishing between transactions in which a receivable secures an obligation and those in which the receivable has been sold outright. In many commercial finance transactions the distinction is blurred...Although this Article occasionally distinguishes between outright sales of receivables and sales that secure an obligation, neither this Article nor the definition of “security interest” (Section 1-201(36)) delineates how a particular transaction is to be classified. That issue is left to the courts.”

5. The requirement in our RPAs for the filing of a UCC-1 covering the purchased accounts is not merely “precautionary” because in either case (sale vs. loan), the purchaser’s interest must be perfected by filing in order to withstand defeat by the bankruptcy trustee.
6. So why do we want to be a purchaser, not a creditor? See infra.
7. Purchases of portfolios of credit card receivables are within UCC 9-109. To file or not to file? File an HSR notification?



More on “Accounts”

Pressure from securitization market during the 1990s resulted in changes to the “Accounts” provisions in 2001 that provide legal support for including a wider range of transactions as creating “accounts.” Examples:

1. No longer tied solely to sales of goods or services. (See Official Comment 5 (a) to 9-102). Notably, addition of “licensed” makes possible transactions in which payments arise from an IP license.
2. Also, a payment claim against a party that guarantees or supports payment of an account is also an account.
3. Why helpful that an asset qualify as “account”? Because accounts are favored collateral. UCC 9-406 invalidates a term in an account (or a contract underlying the account) that requires the consent of the account debtor to the assignment. This rule is less supportive if the assigned right is a “payment intangible” rather than an “account”. (See next slide for more on UCC 9-406.)
4. Important to remember that accounts are commercial claims. Unlike financial claims, they are inherently subject to contract defenses. See discussion of UCC 9-406 infra. Bank ability to acquire and deal in such claims is not unlimited. RPAs play a critical role in “cleansing” accounts of defenses.



Bank Powers and Regulatory Issues – a Primer

- Factoring is a long-established bank activity. It is grouped with lending as the first listed activity determined by the Federal Reserve to be “closely related to banking” in the Fed’s Regulation Y “laundry list”, 12 C.F.R. §225.28(b). No specific qualifications or restrictions are indicated.
- For New York state-chartered banks and state-licensed offices of foreign banks, Subdivision (1) of Section 96 of the New York Banking Law, titled “General Powers” (i.e. of State-chartered banks) includes “purchase of accounts receivable, whether or not they are obligations in writing.” However, a proviso to this clause states that “for purposes of this subdivision, the term “accounts receivable” shall not include the right to receive payment for property to be sold at a future date or services to be rendered at a future date”. Thus, the elements of the account must be in place at the time of the bank’s purchase. The proviso is intended to protect banks’ asset quality.
- Revised UCC 9-102(2) contains a number of future-looking characteristics of “accounts”. They include: rights to payment for property that has been or is to be sold, leased, etc.; a payment obligation whether or not earned by performance; services rendered or to be rendered, etc. The UCC, however, would not expand the bank powers law.



The Not Entirely Uniform Uniform Commercial Code

1. UCC Section 9-406 contains a statutory nullification of contract clauses requiring an account debtor's consent to assignment or sale by the purchaser. UCC 9-406(d). This is a fundamental principle of receivables finance.
2. The predecessor provision in pre-amendment UCC 9-406 contained a similar clause and was limited to contractual restrictions on assignment. However, the Official Text of the Revised Article 9 contains a new provision, 9-406(f), that goes further – it invalidates a “rule of law, statute or regulation” that restricts or requires an account debtor that is a “government, government body or official” to assignment of the account to a purchaser.
3. New York did not include 9-406(f) in its enactment of UCC 9-406. The Official Comment 6 to 9-406 includes a brief explanation of the (self-evident) purpose of the provision. The inclusion of Official Comment (6) appears to be an error in New York's Official Comments since the language in question, 9-406(f), is not a part of the statute.
4. Counsel to both purchasers and account debtors should be especially aware of this legal background if an account debtor is a governmental entity. If the purchase agreement is governed by New York law, is a statutory restriction on assignment of accounts overruled? Does not the law of organization of a governmental entity determine its rights and powers?



Recent Case Law under UCC 9-406

1. Two recent unreported Federal District Court decisions illustrate how the statutory override in UCC 9-406 operates and what remedies are available to the account debtor who may have been relying on transfer restrictions in the underlying sale contract. Durham Commercial Capital Corp. v. Ocwen Loan Servicing LLC, 92 UCC Rep.Serv. 2d 367 (U.S. District Court, D. Fla, Case No. 15-80200 – CIV)(2017) and Santander Bank N.A. v. Durham Commercial Capital Corp. (Civ. 14-13133, U.S. District Court, D. Mass., 2016) both arose out of the sale of accounts receivable representing legal fees owing to a law firm, Connolly Geany, Ablitt & Willard P.C. In the former case, Ocwen was the client/account debtor, and in Santander, that role was filled by Banco Santander. In both cases, the account debtor resisted payment to the assignee on the grounds, among others, that the assignment of claims for legal fees would inevitably violate rules of professional conduct by exposing clients' confidential files to assignees.
2. UCC 9-406 nullifies transfer restrictions affecting an account, but it does not affect confidentiality provisions often found in commercial agreements. The strict rules of client confidentiality gave additional force to the confidentiality concerns in these two matters. However, both courts found that the Code embodies a public policy favoring assignment of accounts, and that the sale of accounts representing legal fees was not intrinsically invalid as contrary to public policy. The account debtor therefore was required to pay the assignee upon demand.



Recent Case Law under UCC 9-406 (continued)

3. However, in the Santander case, the court also found that Santander retained its right under UCC 9-404 to assert a claim of recoupment against the law firm for violation of the confidentiality provisions of its retainer agreement. Confidentiality provisions should therefore continue to be reviewed as part of the account purchaser's due diligence.
4. UCC 9-404 states principle that assignee takes subject to contract defenses.



Perfection by Filing; Notice to the Account Debtor

1. What is “perfection”? In relation to a security interest, it is the statutorily-mandated step that gives the secured party priority over the bankruptcy trustee and the debtor’s judgment creditors. (The trustee has other “avoidance” powers, as we shall see.) Perfection usually involves some form of identifying or segregating the asset to signify the creditor’s rights. Pledges have traditionally been perfected by possession by the secured party.
2. UCC Article 9 provides for “perfection” of a security interest by various methods, depending on the collateral category. There is a bias towards public filing of a UCC-1 financing statement containing a description of the collateral, and that is the sole permitted method of perfection for accounts. [Include a sample UCC-1].
3. Thus notice solely to the account debtor does not “perfect” the security interest. Filing is notice to the world. The U.S. legal system generally favors public disclosure and availability of information in a number of contexts.
4. Notice of the purchaser’s/creditor’s interest to the account debtor does have an important benefit: the account debtor is not discharged by paying the original creditor (seller) after it receives notice of the transfer. See UCC 9-406(a). There is therefore a correlative risk in non-notification transactions.



Priority

1. As between two or more secured creditors, each of whom perfected by filing, the first to file has absolute priority. This is why we do searches of the UCC filing records before the transaction closes.
2. Searches must consider broad collateral descriptions such as “all personal property” or “accounts”. Broadly written collateral descriptions that comprise all of a debtor’s assets within the collateral class will have priority.
3. Notably, a prior perfected security interest inventory and proceeds will trump a later security interest in accounts generated by sale of the inventory.
4. Priority typically not covered in closing opinions.



Cross Border Elements

1. If the Seller and the Account Debtor are U.S. entities, and the Supply Agreement is governed by U.S. law, the Purchaser can generally be confident that a U.S. court will apply U.S. law to the Purchaser's interests.
2. But what if one or more of the parties are not U.S. entities? Or if the underlying contract giving rise to the accounts is governed by foreign law? This leads to a conflict of laws issue.
3. If the Seller is a non-U.S. entity, the possibility must be entertained that it will seek insolvency protection under non U.S. law. This would make the application of foreign law more likely.
4. If the account debtor is a non-U.S. entity, the validity of the purchased claim against it under its own applicable law must be considered.
5. If there are sufficient non-U.S. contacts, the possibility must be entertained that non U.S. law will affect the validity of the sale, the status of the Purchaser's security, and other issues e.g. the applicability of the freedom from transfer restrictions provided by UCC 9-406. Compliance with more than one legal system's requirements may therefore be necessary in cross-border situations.



The Advantages of a “True Sale”

Even a perfected, prior security interest in accounts faces obstacles at the commencement of a bankruptcy case, such as the following:

1. Enforcement of the security is temporarily halted by the automatic stay under Section 362 of the Code.
2. The validity of the security may be challenged by the exercise by the trustee of “strong arm” powers. These include fraudulent conveyance attack if the grantor of the security was insolvent at the time of transfer and received less than reasonably equivalent value for the grant. (Upstream and affiliate guaranties and security are typically challenged on this basis.)
3. If the grant of the security or the perfection steps were taken too close to the filing date, they may be challenged as voidable preferences.
4. The debtor may apply for a “cash collateral order”, which would permit the debtor to use incoming cash to maintain the operation of its business as debtor in possession. Secured creditors are entitled to adequate protection of their lien, in the form of substitute collateral having at least equivalent value. However, secured creditors may not be satisfied with the quality of the substitute.



The Advantages of a “True Sale” (cont’d)

Theoretically, at least, none of these attacks will be sustained if the accounts in question were already removed from the debtor’s estate at the time of filing – because they had been sold. Whether or not property was sold is a matter of state law. This would include the U.C.C., which as we have seen does not contain standards for determining “true sale”.

Applicability of Article 9 to sales of accounts does not mean that a seller always retains some ownership post-sale. Octagon Gas overruled by 9-318(a).



True Sale Opinions: a Primer

1. Legal opinions of Seller's counsel as to the "true sale" of the accounts are now common, though not universal, in the RPA market. True sale opinions were originally a requirement of rating agencies in rated securitizations. Most recently, Sellers' accountants have required true sale opinions to bolster the accountants' determination to remove the sold accounts from the Sellers' balance sheet in unrated receivables purchase facilities.
2. True sale opinions are always "reasoned", meaning that the conclusions as to removal of the accounts from the Seller's bankruptcy estate is explained by reference to case authority and bankruptcy/commercial law. This is viewed by the legal profession as a weaker opinion than the normal "flat" closing opinion (the subject agreement is the 'legal, valid and binding obligation of') because it places a burden on the opinion recipient to review and concur (or dispute) the legal arguments. The absence of stare decisis in bankruptcy courts, among other factors, makes lawyers unwilling to give flat opinions in this area. The conclusion of true sale opinions is typically that "a court should rule, in a well-presented case," that the purportedly sold accounts are not includible in the Seller's bankruptcy estate.



True Sale Opinions: a Primer (cont'd)

3. True sale opinions include an analysis of legal principles and a discussion of how they apply to the particular transaction. Some opinions, however, do not include case citations. Such opinions are less useful to purchasers because there is less opportunity to evaluate counsel's view on, and identification of, the relevant authorities.
4. Many of the cases discussed in true sale opinions are old and/or were decided in a very different context than would likely apply to an RPA of the type discussed here. Notably, in a number of cases, the inquiry as to true sale was at bottom one into whether an extension of credit was the economic reality of the transaction. If so, the usury laws would apply and there was therefore a chance that the entire amount extended – purchase price included – could be non-recoverable. Courts were probably reluctant to require such a result and this may have influenced how the courts handled the true sale issue. Usury is a much less significant issue today (at least in the RPA market).
5. True sale opinions typically stress that the conclusion as to inclusion in the debtor's estate depends on an evaluation of each relevant factor in the light of all of them. No doubt the central concern is the extent of recourse by the Purchaser



True Sale Opinions: a Primer (cont'd)

to the Seller. Fundamentally, the Purchaser is expected to bear the risk of non-payment due to a decline in creditworthiness of the obligor; if the Seller retains this risk, that may preclude a satisfactory true sale opinion. Some other factors typically considered are: whether the RPA as a whole resembles a credit extension or a purchase of assets; whether the Purchaser has dominion over the asset after purchase; whether third parties (such as other finance providers to Seller, searchers of the UCC records, etc.) are notified of the sale; and whether the Purchaser has the risks and benefits of ownership of the asset following sale.



Frequent “Hot Buttons” for Negotiation between Purchaser and Seller

1. Notification to Obligor – prior to enforcement of the account
2. Consequences of Obligor non-payment when reasons aren’t clear, i.e. no obvious sign of insolvency.
3. Level of segregation of proceeds of payment by Obligors – has consequences for Purchaser security
4. Identification of Seller entities (i.e. which are debtors for UCC purposes)

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TRUE SALE TEST

- Intent: parties intend the transaction to be a absolute sale and not a loan
- Non-Recourse: The Purchase is without recourse by the transferee to the transferor for non-payment of the transferred asset. Who bears the risk of non-payment.
- Identification of sold receivables: The receivables must be clearly identified. Notification to the account debtor is strongly encouraged.
- Fair Value Paid: The consideration paid must be fair in light of the value of the asset sold.
- Irrevocability. For example a guaranteed rate of return is indicia that the sale was not true.

FACTORING

- Non-Recourse
 - Maturity/Collection
 - Wholesale/Retail
 - Loans pending the average maturity date
 - Disputes
- Full-Recourse
 - Usurious loan?

RECOURSE – NON-RECOURSE

- Is the receivable purchase with or without recourse?
- Except as hereinafter set forth, we agree to purchase your Receivables without recourse to you, provided that the sale of the merchandise represented by the Receivables and the terms thereof have first been approved by us in writing and provided further that the merchandise represented by the Receivables is duly delivered to and finally accepted and retained by your customer **without dispute, whether bona fide or not**, as to price, terms of sale, delivery, quantity, quality or otherwise

PURCHASE PRICE & COMMISSIONS

- The purchase price ("Purchase Price") which we shall pay to you for Receivables accepted by us, as aforesaid, shall be the "**Net Face Amount**" thereof, calculated at our option on any terms offered by you, less our factoring commission, as set forth below. "Net Face Amount" shall be deemed to mean the gross amount of the Receivable less all discounts. The Purchase Price (less (a) any reserves which we may in our sole discretion determine to hold; (b) any monies remitted, paid, or otherwise advanced by us to you or for your account including any amounts which we may be obligated to pay in the future; and (c) any other of our charges to your account as provided for in this Agreement) shall be payable by us to you **on the monthly average due date** of the Receivables so purchased, as calculated by us on the terms given to your customer plus ten (10) working days for collection. We may, in our sole discretion, advance to you from time to time sums up to _____ (___ %) per cent of the Purchase Price on Receivables purchased by us (each an "Advance").
-
- You shall pay us a **factoring commission** for our services hereunder which commission shall be and become due and payable to us on the 15th day of each month in which we purchase your Receivables, such factoring commission to be in an amount equal to _____ (___ %) per cent of the amount of your gross sales. The minimum factoring commission on each invoice in respect of any Receivable shall be \$5.00.
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PURCHASE PRICE & COMMISSIONS (2)

- DISCOUNT. Purchaser's purchase of the Accounts from Seller shall be at a discount fee which is deducted from the face value of each Account upon collection. **The discount fee, which shall be based on the number of days an Account is outstanding from the date of the Down Payment**, shall be as follows: If paid within 30 days a discount fee of X%; if paid within 40 days a discount fee of X%; if paid within 50 days a discount fee of X%; if paid within 60 days a discount fee of X%; if paid within 70 days a discount fee of X%; if paid within 80 days a discount fee of X%; if paid within 90 days a discount fee of X% and an additional X% for each 10 day period thereafter until the Account is paid in full.

CAVEAT EMPTOR

Buyer

- Assumes the Credit Risk
- Does not assume “quality” risks

But – can you recover?

CREDIT RISK

- Is the account debtor credit worthy?
 - Risk of bankruptcy?
 - Slow payer?
 - Character issues?

DISPUTES

- We agree to purchase your Receivables without recourse to you, provided that the sale of the merchandise represented by the Receivables and the terms thereof have first been approved by us in writing, and provided further that the merchandise represented by the Receivables is duly delivered to and finally accepted and retained by your customer **without dispute, whether bona fide** or not, as to price, terms of sale, delivery, quantity, quality or otherwise.
- All disputes, claims or controversies relating to any Receivable must be settled by you at your sole cost and expense. We shall have no responsibility or liability of any kind or nature whatsoever with respect to any Receivable, payment of which is refused or withheld **by reason of any dispute, bona fide** or not, and whether before or after maturity date, as to price, terms, delivery, quantity, quality or otherwise, nor where the customer claims release from liability or inability to pay because of any act of God or a public enemy or war or because of the requirements of law or of rules, orders or regulations having the force of law.. Upon our receipt of notice of the existence of a Dispute, **we shall have the right to immediately charge your account** for the entire amount of any Receivable subject to such Dispute whether such Dispute regards that Receivable or any other Receivable and whether due or not due, and you agree to immediately pay the entire amount of all such disputed Receivables to us upon our demand.

VERIFICATION

- As protection against fraudulent assignments it is recommended that at least a sampling of assigned receivables be verified.
 - Purchaser is authorized to communicate directly with Seller's Account Debtors to verify the amount and validity of any Account created by Seller

DOMINION

Dominion may be:

- by payment to a lockbox under the control of the Purchaser
- By direct payment to the Purchaser:
 - THIS ACCOUNT HAS BEEN SOLD AND ASSIGNED TO, IS OWNED BY AND IS PAYABLE IN U.S. DOLLARS ONLY TO **[name and address of purchaser]** TO WHOM PROMPT NOTICE MUST BE GIVEN OF ANY OBJECTIONS TO PAYMENT OF THIS INVOICE AS RENDERED. GOODS RETURNABLE FOR ANY REASON SHALL BE RETURNED ONLY UPON WRITTEN NOTICE TO **[purchaser]**.
- By notification to the account debtor under UCC 9-406 and 9-607

FACTORING BENEFITS

- Shifting Risk of Loss
- Outsource collection
- Outsource trial balance accounting
- Optional “lending” pending average maturity date
- Off Balance Sheet

MCA_s

- Merchant Cash Advance
 - Purchase of future Receivables
 - Same true sale test as in factoring
 - But --- can there be a true sale of something that is not yet in existence?
 - New York Consolidated Laws, Banking Law - BNK § 96. General powers
 - Every bank and every trust company shall, subject to the restrictions and limitations contained in this chapter, have the following powers:
 - purchase accounts receivable, whether or not they are obligations in writing; lend money on real or personal security; borrow money and secure such borrowings by pledging assets; buy and sell exchange, coin and bullion; and receive deposits of moneys, securities or other personal property upon such terms as the bank or trust company shall prescribe; and exercise all such incidental powers as shall be necessary to carry on the business of banking. For purposes of this subdivision, the term “accounts receivable” shall not include the right to receive payment for property to be sold at a future date or services to be rendered at a future date.

BANKRUPTCY IMPLICATIONS

- Automatic Stay
 - Who owns the receivable?
 - Who collects the receivable?
- Can you continue to purchase receivables?

DEBTOR-IN POSSESSION

- Use of Cash Collateral?
- Sale of Receivables
- Secured Financing

11 U.S. Code § 362. Automatic Stay

- a petition operates as a stay, applicable to all entities, of—
 - any act to obtain possession of **property of the estate** or of **property from the estate** or to exercise control over property of the estate;
 - any act to create, perfect, or **enforce any lien** against property of the estate;
 - any act to create, perfect, or **enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case**;
 - any act to **collect**, assess, or **recover a claim** against the debtor that arose before the commencement of the case under this title;

11 U.S. Code § 363. Use, Sale, or Lease of Property

- “cash collateral” means **cash**, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest **and includes the proceeds**, products, offspring, rents, or profits of property and the fees, charges, **accounts** whether **existing before or after the commencement of a case**
- The trustee, **after notice and a hearing**, may use, sell, or lease, other than in the ordinary course of business, property of the estate,
- The trustee **may not use, sell, or lease cash collateral** unless each entity that has an interest in such cash collateral consents; or the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S. Code § 364. Obtaining Credit

- The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt as an administrative expense.
- If the trustee is unable to obtain unsecured credit, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt with priority over any or all administrative expenses; secured by a lien on property of the estate that is not otherwise subject to a lien; or secured by a junior lien on property of the estate that is subject to a lien.

Speakers



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