

UCC Article 9: Purchase Money Security Interests and Blanket Asset Lien Exclusions

Documenting and Perfecting a PMSI; Statutory, Contractual and Other Exclusions

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UCC Article 9 Blanket Asset Lien Exclusions and Purchase Money Security Interests

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Topics

- Introduction
- Blanket security interests
- Non-assignable assets
- Collateral descriptions
- Statutory exclusions from Article 9
- Negative pledge clauses
- Purchase money security interests
- Proceeds
- Commingled collateral and accessions



Introduction

- Is a 'blanket' security interest as warm as it looks?
- Where is the blanket torn?
- Where might the blanket fall off the bed?
- Where might the blanket be pulled off the bed?
- How to keep the blanket tucked in



Scope of Article 9

- General rule – all personal property
 - UCC § 9-109(a)(1)

Non-assignable assets

- What is ‘property’?
 - UCC § 9-401(a)
- Examples
 - Liquor licenses
 - Lottery winnings
 - LLC interests (depending on LLC Act)
 - IP (some interests)

Non-assignable assets

- Contractual restrictions
- Effect of UCC overrides – UCC §§ 9-406 and 9-408
 - Scope
 - Creation
 - Perfection
 - Enforcement
- Effect on LPs, GPs, and LLCs

Collateral description

- Security agreement: cannot use ‘all assets’
 - OK to use ‘types’ and ‘categories’
- Financing statement: can use “all assets’
- UCC §§ 9-108 and 9-504

Statutory exclusions

- UCC § 9-109
 - Effect of federal law
 - Many tort claims
 - Most judgments
 - Isolated sales of receivables
 - Effect of change in category or type

Contractual negative pledge clauses

- Limits in other agreements, such as other credit agreements
- Effect of negative pledge on effectiveness of new grant of security interest – UCC § 9-401(b)
- Possible risk of tort of interference with contract

What is a PMSI?

- Purchase Money Security Interest—A security interest in goods is a purchase-money security interest:
 - to the extent that the goods are purchase-money collateral with respect to that security interest;
 - if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest
- UCC §§ 9-103 & 9-324
- Consignments UCC § 9-319

PMSI Overview

- To have an effective, prior PMSI:
 - Execute a security agreement, relating to the goods to be transferred to the customer;
 - Perfect the PMSI;
 - Follow special timing and notice rules if relates to perfecting interests in inventory

Benefits of PMSI

- Superior status over previously perfected liens
- Extended grace period for achieving perfection
- Protection from bankruptcy, in some assets
 - Debtor can defeat security interests, in certain assets, unless the interest is possessory or PMSI
 - Bankruptcy Code § 522(f)

When to Consider a PMSI?

- Sale of a large piece of equipment
 - Especially when financing to buyer on credit terms
- Sale of goods, on credit, that buyer will hold for some period of time in inventory
 - Items not immediately converted to finished goods
- Inventory broadly defined. Goods, not farm products, that:
 - Are leased by a person to a lessor;
 - Held for sale or lease or to be furnished under a contract of service;
 - Furnished by a person under a contract of service; or
 - Raw materials, work in process, or materials used or consumed in a business.
 - UCC § 9-102(b)(48)

Perfection Requirements

- Perfection is vital to obtain an effective PMSI and to gain priority.
- Proper perfection depends on type of collateral used to secure the loan.
- Generally, the secured party must:
 - perfect your security interest in the collateral (by filing a UCC-1 financing statement) before the debtor receives possession of the goods or within 20 days thereafter; or
 - in the case of inventory, you must
 - perfect the PMSI before the seller receives the goods and,
 - if a conflicting security interest exists,
 - ✓ you must also send an authenticated notification to the holder of the conflicting security interest,
 - ✓ the holder of the conflicting security interest must receive the notification within five years before the debtor receives possession of the inventory, and
 - ✓ the notification must state that you have or expect to acquire a PMSI in the inventory and must describe the inventory. UCC § 9-324.

Superior Lien Status

- When perfected timely and properly and required notices are given, a PMSI takes priority over a competing interest in the purchase money collateral even if another secured party has a security interest covering that same collateral that was perfected under a previously filed financing statement (such as a senior secured lender with an all asset filing).
- The concept of a PMSI arose to encourage borrowers to acquire new items financed by the vendor or a third-party lender that makes the acquisition possible
 - The theory is that the existing lender is not “hurt” in any way by granting priority to the PMSI lender because, if it weren’t for the loan made by the PMSI lender, the purchase money collateral wouldn’t be owned by the debtor in the first place.
 - However, an existing lender may receive some comfort from property, which it mistakenly believes the debtor owns free and clear of liens and, as such, Article 9 places certain burdens on the PMSI lender to evidence its lien in a timely fashion.



Competing PMSIs

- When seller and lender possess PMSI in the same goods UCC § 9-324(g) governs:
 - a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
 - in all other cases, UCC § 9-322(a) applies to the qualifying security interests.
- First-to-file-or-perfect applies to PMSIs securing enabling loans

Proceeds

- Definition – UCC § 9-102(a)(64)
 - Disposition of collateral
 - Collection on collateral
 - ‘Use’ of collateral?



Proceeds

- Attachment
- Perfection
- Priority



Commingled assets and accessions

- Meaning – UCC §§ 9-335 and 9-336
- Commingled assets
 - Cake example
- Accessions
 - Laptop example



Commingled assets and accessions

- Perfection
- Commingled assets
- Accessions



Commingled assets and accessions

- Priority
 - Commingled assets
 - Accessions



Conclusions

- Monitor assets
- Enforce rights



Thank You

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