

Report of the Permanent Editorial Board for the Uniform Commercial Code*

The Provisions of UCC Article 9 Relating to Assignments for Benefit of Creditors (April 21, 2026)

Preface

The Permanent Editorial Board for the Uniform Commercial Code (PEB) acts under the authority of the American Law Institute and the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). The PEB has resolved to issue supplemental commentary on the Uniform Commercial Code (UCC) from time to time. The supplemental commentary of the PEB generally will be known as a PEB Commentary, to distinguish it from the Official Comments to the UCC. A PEB Commentary may be denominated a commentary, a report, or otherwise as determined by the PEB.

The Resolution states that:

The underlying purposes and policies of the PEB Commentary are those specified in Section 1-103(a). A PEB Commentary should come within one or more of the following specific purposes, which should be made apparent at the beginning of the Commentary: (1) to resolve an ambiguity in the UCC by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the UCC where the statute and/or the Official Comment leaves doubt as to the inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with Section 1-103(a)(2), to apply the principles of the UCC to new or changed circumstances; (5) to clarify or elaborate upon the operation of the UCC as it relates to other statutes (such as the Bankruptcy Code and federal and state consumer protection statutes) and general principles of law and equity pursuant to Section 1-103(b); or (6) to otherwise improve the operation of the UCC.

For more information about the Permanent Editorial Board for the Uniform Commercial Code, visit www.ali.org or www.uniformlaws.org.

Introduction

The Permanent Editorial Board for the Uniform Commercial Code is issuing this Report on the provisions of UCC Article 9 relating to an assignment for benefit of creditors (an “ABC”). This Report is timely given the recent promulgation by the Uniform Law Commission of the Uniform Assignment for Benefit of Creditors Act (the “Uniform ABC Act”). This Report may also be useful for issues discussed in this Report relating to ABCs governed by other state statutes or conducted under common-law principles.

After providing some general background, this Report discusses (a) the assignee’s status under Article 9 as a “lien creditor” with respect to the assigned assets; (b) where applicable, the assignee’s status under Article 9 as a secured party; (c) when the assignee is a secured party, the assignee’s enforcement of its security interest; and (d) the assignee’s approval of another secured party’s enforcement of a security interest in assigned assets.

Background

An ABC is a voluntary procedure, governed by state law, for a business to be wound up. It is an alternative to other procedures for winding up a business, such as bankruptcy, receivership, or entity law dissolution. Depending on the state law, the ABC may be governed by the common law or a statute of the state.¹

In an ABC, an assignor (the business winding up) voluntarily assigns its assets to an assignee who in exchange undertakes, as a fiduciary for the assignor’s creditors, to liquidate the assets and to distribute the proceeds to the creditors. The assets transferred often include assets in which a creditor of the assignor has a security interest. As a result, the assignment is typically made with the approval of the assignor’s secured creditors, who otherwise would be entitled to exercise their state-law remedies against their collateral. Creditors who do not wish to participate in the assignment may pursue their federal- and state-law remedies against their obligors or their collateral, now in the hands of the assignee, notwithstanding the participation of other creditors in the assignment.²

¹ Whether the ABC is governed by a state’s statute or common law, it is considered to be an “insolvency proceeding” under the UCC. *See* U.C.C. § 1-201(b)(22) (defining “insolvency proceeding”). The term “insolvency proceeding” is used in Articles 3 and 4 but not in Article 9. *See* U.C.C. §§ 3-302(b), 3-305(a)(1)(iv), 3-416(a)(5), and 4-207(a)(5).

² *See generally* the Uniform ABC Act, Preface; GEOFFREY L. BERMAN & ROBERT M. SAUNDERS, *GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS: THE ABCS OF ABCS* (American Bankruptcy Institute 2025) [hereinafter BERMAN & SAUNDERS].

Assignee as a Lien Creditor

An assignee in an ABC has the status under Article 9 of a “lien creditor” whether or not, under applicable state law, the assignee has a lien on the former assets of the assignor for purposes other than Article 9.³ The assignee’s status under Article 9 refers to the rights in the assigned assets the assignee obtains as a result of the assignment. Notwithstanding Article 9 labeling the assignee as a “lien creditor,” Article 9 itself does not create a lien for the assignee. Rather, any lien in favor of the assignee would be created under other law.⁴ Thus, the result of the Article 9 definition of “lien creditor” is to give the assignee the benefit of Article 9 provisions that establish rights of lien creditors in Article 9 regardless of whether the assignee has such rights under other law.

As a result of the assignee’s Article 9 status as a lien creditor, the assignment made in the ABC generally will be senior to an unperfected or later perfected security interest in the assigned assets but junior to a security interest in the assigned assets perfected before the assignment is effective.⁵

The assignee’s status as a lien creditor makes it more likely that the ABC will be successful. If an unsecured creditor of the assignor does not participate in the ABC, the creditor may be less inclined to pursue collection actions against the assignor. The creditor would not, on account of the assignee’s status as a lien creditor under Article 9, be able to acquire a claim against the assignor or its former assets that is superior to the interest of the assignee in the assigned assets by, for example, the creditor seeking to obtain a post-assignment security interest in the assets of the assignor.⁶

Assignee as a Secured Party

It would not be unusual for the assets assigned in an ABC to include accounts, chattel paper, payment intangibles, or promissory notes. Because the assignment is a voluntary transfer of the assignor’s assets in consideration for the assignee’s undertaking to liquidate the assets and pay the

³ See U.C.C. § 9-102(a)(52) (defining a “lien creditor” to include an assignee for the benefit of creditors); *accord* Uniform ABC Act § 10(d)(1). Although Article 9 does not specify whether an assignee’s status as a lien creditor extends to real property, because Article 9 applies to security interests only in personal property and fixtures, U.C.C. § 9-109(a), the assignee’s status as a lien creditor *under Article 9* is not relevant to real property other than fixtures.

⁴ For example, the Uniform ABC Act provides for the assignee to have, for purposes beyond Article 9, the status of a lien creditor on assigned assets consisting of personal property and fixtures and of a bona fide purchaser on assigned assets consisting of non-fixture real estate. See Uniform ABC Act § 10(d). However, it is not necessary for other law to create a lien in favor of the assignee for the assignee to attain lien creditor status under Article 9.

⁵ U.C.C. § 9-317(a)(2)(A). However, the rights of an assignee would be junior to a secured party’s security interest if, before the assignment becomes effective, one of the conditions specified in Section 9-203(b)(3) was met and a financing statement covering the collateral had been filed. U.C.C. § 9-317(a)(2)(B). The right of an assignee would also be junior to a perfected security interest to the extent that the security interest secures advances made within 45 days after the ABC becomes effective, without knowledge of the assignment, or pursuant to a commitment made without knowledge of it. U.C.C. § 9-323(b). Section 5(f) of the Uniform ABC Act states when an ABC becomes effective.

⁶ This Report does not address whether the interest of the assignee in the assigned assets has priority over a subsequently created lien of a lien creditor. However, historically this would be the case. See *Reed v. McIntyre*, 98 U.S. 507, 512 (1878) (“the appellant would not have acquired priority over other creditors by the sheriff’s levy, for the obvious reasons that the right of property in the goods seized under the execution had previously passed” to the assignee under the ABC).

proceeds of the liquidation to the assignor’s creditors, the assignment is a “sale” of those assets. A sale of accounts, chattel paper, payment intangibles, or promissory notes creates a security interest under Article 9.⁷ The assignee, then, in addition to having the status of a lien creditor under Article 9, would be a secured party with a security interest in those assets under Article 9.⁸ To the extent that the ABC creates a security interest under Article 9, the security interest is automatically perfected.⁹

None of the exclusions in Sections 9-109(c) and (d) from the scope of Article 9 apply to the assignment of accounts, chattel paper, payment intangibles, or promissory notes as part of an ABC. In particular, a claim that the assignment is excluded under Section 9-109(d)(4) as an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is “part of a sale of the business out of which they arose” or under Section 9-109(d)(5) as an assignment “for the purpose of collection only” should fail for both textual and policy reasons.

As a textual matter, it would be anomalous for an assignment of accounts, chattel paper, payment intangibles, or promissory notes as part of an ABC to be excluded from the scope of Article 9 under the noted provisions when Article 9 expressly provides in Section 9-309(12) for any security interest in assigned assets resulting from an ABC to be automatically perfected, and likewise provides in Section 9-309(12) for any subsequent transfer of the assigned assets by the assignee to be automatically perfected. Such an exclusion would make irrelevant the provisions in Section 9-309(12) for automatic perfection of a security interest in the assigned assets and of any subsequent transfer by the assignee of the assigned assets.

As a policy matter, these transactions—the sale of an entire business usually as a going concern or an assignment of payment rights to a collection agency—are excluded from the scope of Article 9 because they do not raise relevant commercial finance issues addressed in Article 9.¹⁰ However, any priority competition between an assignee under an ABC and a secured party with a security interest in accounts, chattel paper, payment intangibles, or promissory notes assigned under the ABC would be issues addressed under Article 9’s detailed priority rules. It would make little sense, if the exclusions applied, for that priority to be determined under other law.

The drafting history of Article 9 provides additional evidence supporting the conclusion that the exclusion of assignments “for the purpose of collection only” does not apply to an assignment as part of an ABC. Homer Kripke, the principal drafter of the 1972 amendments to Article 9,¹¹ explicitly so stated:

⁷ U.C.C. § 9-109(a)(3). The term “security interest” in this context means the ownership interest in the sold rights to payment. U.C.C. § 1-201(b)(35) (second sentence).

⁸ U.C.C. § 9-102(a)(73)(D).

⁹ U.C.C. § 9-309(12).

¹⁰ U.C.C. § 9-109, cmt. 12.

¹¹ For Kripke’s role as principal drafter of the 1972 amendments, see Homer Kripke, *Reflections of a Drafter*, 43 OHIO ST. L.J. 577, 582 & n.19 (1982). For the 1972 amendments Kripke’s title was “Associate Reporter” and the nominal “Reporter” was Robert Braucher, but as Kripke said, Braucher “was also at that time Reporter for the RESTATEMENT (SECOND) OF CONTRACTS, and it was recognized from the beginning that he could not carry the laboring oar on both projects, and that I would do so on the UCC project, under his supervision.” The other panelist in the quoted passage, Robert Haydock, Jr., was also on the drafting committee for the 1972 amendments (formally titled the “Article 9 Review Committee”).

MR. HAYDOCK: Homer, is an assignment for the benefit of creditors an assignment of an account for collection (see Sec. 9.302(1)(e)) or is it something different? I see that we have removed that kind of transaction from the filing requirements.

PROF. KRIPKE: I would think that the assignee has a legal title and it's not merely a collection assignment for convenience. It would not fall within the other language, so we made an express exception here.¹²

The “express exception” made by the 1972 drafters was, of course, the automatic perfection rule of Section 9-302(1)(g) (1972) [currently Section 9-309(12) (2023)].¹³

Professor Kripke did not, in the above-quoted passage, mention the exclusion from Article 9 of an assignment of receivables “as part of a sale of the business out of which they arose” per Section 9-104(f) (1962) [currently Section 9-109(d)(4) (2023)]. But it is highly unlikely that the speakers would have considered that exclusion to apply to an assignment of receivables in an ABC, for that exclusion was in the same provision—Section 9-104(f) (1962)—as the exclusion of an assignment of receivables for collection only.

Enforcement of the Assignee’s Security Interest Consisting of an Ownership Interest

To the extent that an ABC involves assignment to the assignee of accounts, chattel paper, payment intangibles, or promissory notes, the assignee’s ownership interest in such an item is a “security interest” as defined in Article 9, as previously noted. The assignee, as a secured party with an ownership interest, is not bound by the otherwise applicable provisions of Part 6 of Article 9 unless the assignee has recourse back to the assignor if the assigned assets are not collectible.¹⁴ In a typical ABC, the assignee does not have such recourse. As a result, any collection on or disposition of accounts, chattel paper, payment intangibles, or promissory notes would not be subject to the secured party’s otherwise applicable duty to collect on or dispose of collateral in a commercially reasonable manner or any other duties of a secured party under Part 6 of Article 9. Nevertheless, the assignee would, under other law relating to the ABC, presumably remain bound in its collection and disposition efforts by the assignee’s fiduciary duties.¹⁵

Enforcement of a Security Interest by Another Secured Party

A secured party with a pre-assignment perfected security interest, superior to the lien status or security interest of the assignee, may elect to enforce its security interest by collecting on or disposing of collateral consisting of all or a portion of the assigned assets. If the assignee approves

¹² Robert Haydock, Jr. et al., *A Second Look at the Amendments to Article 9 of the Uniform Commercial Code*, 29 BUS. LAW. 973, 998 (1974). The remarks, as reported in the article, were made in a program of the American Bar Association Business Law Section’s Committee on the Uniform Commercial Code in Washington, D.C., on August 8, 1973.

¹³ In the above-quoted passage the citation to “Sec. 9.302(1)(e)” may have been an error in the transcript of the program. Section 9-302(1)(e) (1962) [currently Section 9-309(2) (2023)] has nothing to do with an assignment for collection; it provides for automatic perfection of an assignment of certain receivables if less than a “significant part” of the assignor’s total outstanding receivables of that type are assigned. It is clear that the parties were speaking of an assignment for collection, which is excluded from Article 9 by Section 9-104(f) (1962) [currently Section 9-109(d)(5) (2023)].

¹⁴ U.C.C. § 9-601(g); see U.C.C. § 9-607(c).

¹⁵ See Uniform ABC Act § 9(a); BERMAN & SAUNDERS, p. 4, 25. For collections by the assignee as a junior secured party, see U.C.C. § 9-331, cmt. 5.

of the secured party's method of collection or disposition, the method is *per se* commercially reasonable under Article 9.¹⁶ The rationale for this *per se* rule is that the assignee's approval is governed by other law protecting the interests of the assignor's creditors. In particular, the approval must presumably be consistent with the assignee's fiduciary duties to the assignment estate and its creditors.¹⁷

¹⁶ U.C.C. § 9-627(c)(4).

¹⁷ See Uniform ABC Act § 9(a); BERMAN & SAUNDERS, p. 4, 25. However, if there were no equity in the assigned assets for the assignment estate, it would be anomalous for the assignee's approval of the method of collection or disposition by a senior secured party to bind a junior secured party to which the senior secured party owes a duty to collect on or dispose of collateral in a commercially reasonable manner.