

## **Part 2**

### **Effectiveness of Security Agreement - Attachment of Security Interest - Rights of Parties to Security Agreement**

#### **70A-9a-201 General effectiveness of security agreement.**

- (1) Except as otherwise provided in this title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.
- (2) A transaction subject to this chapter is subject to:
  - (a) any applicable rule of law which establishes a different rule for consumers; and
  - (b) Title 70C, Utah Consumer Credit Code.
- (3) In case of conflict between this chapter and a rule of law, statute, or regulation described in Subsection (2), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in Subsection (2) has only the effect the statute or regulation specifies.
- (4) This chapter does not:
  - (a) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in Subsection (2); or
  - (b) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Enacted by Chapter 252, 2000 General Session

#### **70A-9a-202 Title to collateral immaterial.**

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

Enacted by Chapter 252, 2000 General Session

#### **70A-9a-203 Attachment and enforceability of security interest -- Proceeds -- Supporting obligations -- Formal requisites.**

- (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
- (2) Except as otherwise provided in Subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
  - (a) value has been given;
  - (b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
  - (c) one of the following conditions is met:
    - (i) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
    - (ii) the collateral is not a certificated security and is in the possession of the secured party under Section 70A-9a-313 pursuant to the debtor's security agreement;
    - (iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 70A-8-301 pursuant to the debtor's security agreement; or

- (iv) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, or electronic documents, and the secured party has control under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107 pursuant to the debtor's security agreement.
- (3) Subsection (2) is subject to Section 70A-4-210 on the security interest of a collecting bank, Section 70A-5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 70A-9a-110 on a security interest arising under Chapter 2, Uniform Commercial Code - Sales or Chapter 2a, Uniform Commercial Code - Leases, and Section 70A-9a-206 on security interests in investment property.
- (4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:
  - (a) the security agreement becomes effective to create a security interest in the person's property; or
  - (b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
- (5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:
  - (a) the agreement satisfies Subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
  - (b) another agreement is not necessary to make a security interest in the property enforceable.
- (6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 70A-9a-315 and is also attachment of a security interest in a supporting obligation for the collateral.
- (7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
- (9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Amended by Chapter 42, 2006 General Session

**70A-9a-204 After-acquired property -- Future advances.**

- (1) Except as otherwise provided in Subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.
- (2) A security interest does not attach under a term constituting an after-acquired property clause to:
  - (a) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
  - (b) a commercial tort claim.
- (3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Enacted by Chapter 252, 2000 General Session

**70A-9a-205 Use or disposition of collateral permissible.**

- (1) A security interest is not invalid or fraudulent against creditors solely because:
  - (a) the debtor has the right or ability to:
    - (i) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
    - (ii) collect, compromise, enforce, or otherwise deal with collateral;
    - (iii) accept the return of collateral or make repossessions; or
    - (iv) use, commingle, or dispose of proceeds; or
  - (b) the secured party fails to require the debtor to account for proceeds or replace collateral.
- (2) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

Enacted by Chapter 252, 2000 General Session

**70A-9a-206 Security interest arising in purchase or delivery of financial asset.**

- (1) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:
  - (a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
  - (b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.
- (2) The security interest described in Subsection (1) secures the person's obligation to pay for the financial asset.
- (3) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:
  - (a) the security or other financial asset:
    - (i) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
    - (ii) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
  - (b) the agreement calls for delivery against payment.
- (4) The security interest described in Subsection (3) secures the obligation to make payment for the delivery.

Enacted by Chapter 252, 2000 General Session

**70A-9a-207 Rights and duties of secured party having possession or control of collateral.**

- (1) Except as otherwise provided in Subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (2) Except as otherwise provided in Subsection (4), if a secured party has possession of collateral:
  - (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

- (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
- (c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (d) the secured party may use or operate the collateral:
  - (i) for the purpose of preserving the collateral or its value;
  - (ii) as permitted by an order of a court having competent jurisdiction; or
  - (iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
- (3) Except as otherwise provided in Subsection (4), a secured party having possession of collateral or control of collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107:
  - (a) may hold as additional security any proceeds, except money or funds, received from the collateral;
  - (b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
  - (c) may create a security interest in the collateral.
- (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
  - (a) Subsection (1) does not apply unless the secured party is entitled under an agreement:
    - (i) to charge back uncollected collateral; or
    - (ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
  - (b) Subsections (2) and (3) do not apply.

Amended by Chapter 42, 2006 General Session

**70A-9a-208 Additional duties of secured party having control of collateral.**

- (1) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (2) Within 10 days after receiving an authenticated demand by the debtor:
  - (a) a secured party having control of a deposit account under Subsection 70A-9a-104(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
  - (b) a secured party having control of a deposit account under Subsection 70A-9a-104(1)(c) shall:
    - (i) pay the debtor the balance on deposit in the deposit account; or
    - (ii) transfer the balance on deposit into a deposit account in the debtor's name;
  - (c) a secured party, other than a buyer, having control of electronic chattel paper under Section 70A-9a-105 shall:
    - (i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
    - (ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

- (iii) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- (d) a secured party having control of investment property under Subsection 70A-8-105(4)(b) or 70A-9a-106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;
- (e) a secured party having control of a letter-of-credit right under Section 70A-9a-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and
- (f) a secured party having control of an electronic document shall:
  - (i) give control of the electronic document to the debtor or the debtor's designated custodian;
  - (ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
  - (iii) take appropriate action to enable to the debtor or its designated custodian to make copies of or revisions to the authoritative copy without the consent of the secured party.

Amended by Chapter 42, 2006 General Session

**70A-9a-209 Duties of secured party if account debtor has been notified of assignment.**

- (1) Except as otherwise provided in Subsection (3), this section applies if:
  - (a) there is no outstanding secured obligation; and
  - (b) the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (2) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Subsection 70A-9a-406(1) an authenticated record that releases the account debtor from any further obligation to the secured party.
- (3) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Enacted by Chapter 252, 2000 General Session

**70A-9a-210 Request for accounting -- Request regarding list of collateral or statement of account.**

- (1) In this section:
  - (a) "Request" means a record of a type described in Subsection (1)(b), (c), or (d).
  - (b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
  - (c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral

securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

- (d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.
- (2) Subject to Subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:
  - (a) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
  - (b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.
- (3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.
- (4) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
  - (a) disclaiming any interest in the collateral; and
  - (b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.
- (5) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
  - (a) disclaiming any interest in the obligations; and
  - (b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.
- (6) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

Enacted by Chapter 252, 2000 General Session