

# Strict Foreclosure: When A Creditor May Retain Collateral In Full Satisfaction

The Uniform Commercial Code (UCC) does not always require that a creditor which has repossessed collateral consisting of personal property such as equipment and inventory go forward with a commercially reasonable sale. In certain circumstances, a secured party may wish to retain the collateral in full satisfaction of the debt, and the UCC allows a creditor to do so as long as certain conditions are met.

If the debtor has paid sixty percent of the cash price and the secured party holds a purchase-money security interest in consumer goods, or if a debtor has paid sixty percent of a loan in the case of any other security interest in consumer goods, absent a signed statement from the debtor after his default wherein he renounces or modifies his rights, the secured party has no choice. It must dispose of the consumer goods held as collateral under UCC 9-504 by public or private sale within 90 days after repossession. Otherwise, its debtor can sue the creditor for conversion.

In any other case, however, a secured party may propose to retain the collateral in satisfaction of the debtor's obligation to it. If the secured party so wishes to retain its collateral in satisfaction of the debt, it should send a written notice of its intent to the debtor, if it has not already received a post-default written statement from the debtor modifying or renouncing his rights. In addition, the creditor should also send notice to

any other secured party from whom the creditor has received written notice of a claim of an interest in the collateral prior to its notice to the debtor or receipt of the debtor's renunciation of rights.

If there is an objection in writing from a debtor who has not waived his rights or any other secured party entitled to notice within 21 days after the foreclosing creditor sends notice, then no UCC sale is necessary and the secured party may retain its collateral in full satisfaction of the obligation. In the event of an objection, the usual disposition through a private or public sale is required.

One additional caution to the foreclosing creditor is probably in order. The Internal Revenue Service (IRS) has its own lien rules and its own special rights, and a creditor planning to retain collateral in satisfaction of the debt had better be sure there are no liens claimed by the IRS on its collateral, or else obtain the written consent of the IRS to its intended use of strict foreclosure. ◆

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