

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962
Part 4
RIGHTS OF THIRD PARTIES

440.9401 Alienability of debtor's rights.

Sec. 9401.

(1) Except as otherwise provided in subsection (2) and sections 9406, 9407, 9408, and 9409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(2) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1964, Act 250, Eff. Aug. 28, 1964 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980 ;-- Am. 1990, Act 288, Imd. Eff. Dec. 14, 1990 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9402 Secured party not obligated on contract of debtor or in tort.

Sec. 9402.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 1989, Act 216, Imd. Eff. Nov. 27, 1989 ;-- Am. 1998, Act 489, Imd. Eff. Jan. 4, 1999 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9403 Agreement not to assert defenses against assignee.

Sec. 9403.

(1) As used in this section, "value" has the meaning provided in section 3303(1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment for value, in good faith, without notice of a claim of a property or possessory right to the property assigned, and without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3305(1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3305(2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement, all of the following apply:

(a) The record has the same effect as if the record included such a statement.

(b) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(5) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(6) Except as otherwise provided in subsection (4), this section does not displace law other than this article that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1964, Act 250, Eff. Aug. 28, 1964 ;-- Am. 1969, Act 74, Imd. Eff. July 21, 1969 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 186, Imd. Eff. Oct. 5, 1992 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9404 Rights acquired by assignee; claims and defenses against assignee.

Sec. 9404.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) through (5), the rights of an assignee are subject to all of the following:

(a) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(b) Any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 186, Imd. Eff. Oct. 5, 1992 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9405 Modification of assigned contract.

Sec. 9405.

(1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) through (4).

(2) Subsection (1) applies to the extent that the right to payment or a part thereof under an assigned contract has not been fully earned by performance, or to the extent that the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9406(1).

(3) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) This section does not apply to an assignment of a health-care-insurance receivable.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1980, Act 53, Imd. Eff. Mar. 27, 1980 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes

ineffective.

Sec. 9406.

(1) Subject to subsections (2) through (9), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection (8), notification is ineffective under subsection (1) if 1 or more of the following apply:

(a) If notification does not reasonably identify the rights assigned.

(b) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article.

(c) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if 1 or more of the following occur:

(i) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee.

(ii) A portion has been assigned to another assignee.

(iii) The account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection (8), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in subsection (5) and sections 2A303 and 9407, and subject to subsection (8), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to the following:

(a) A claim or right to receive an amount that would be excluded from gross income under section 104(a)(1) or (2) of the internal revenue code, 26 USC 104.

(b) A claim or right to receive benefits from a special needs trust. For purposes of this subdivision, a "special needs trust" is a trust described in section 1917(d)(4)(A), (B), or (C) of title XIX of the social security act, 42 USC 1396p.

(c) The sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 9610 or an acceptance of collateral under section 9620.

(6) Except as otherwise provided in sections 2A303 and 9407 and subject to subsections (8) and (9), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(7) Subject to subsection (8), an account debtor may not waive or vary its option under subsection (2)(c).

(8) This section is subject to law other than this article that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(9) This section does not apply to an assignment of a health-care-insurance receivable.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 1989, Act 216, Imd. Eff. Nov. 27, 1989 ;-- Am. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2012, Act 88, Eff. July 1, 2013

440.9407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

Sec. 9407.

(1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it does 1 or more of the following:

(a) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods.

(b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in section 2A303(7), a term described in subsection (1)(b) is effective to the extent that there is 1 or more of the following:

(a) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term.

(b) A delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 2A303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

History: 1962, Act 174, Eff. Jan. 1, 1964 ;-- Am. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 1978, Act 369, Eff. Jan. 1, 1979 ;-- Am. 1988, Act 130, Eff. Sept. 1, 1988 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

Sec. 9408.

(1) Except as otherwise provided in subsection (2) or (4), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 9610 or an acceptance of collateral under section 9620.

(3) Except as otherwise provided in subsection (4), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

(b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) would be effective under law other than this article but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance

receivable, or general intangible is not or does not do all of the following:

- (a) Is not enforceable against the person obligated on the promissory note or the account debtor.
 - (b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.
 - (c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.
 - (d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible.
 - (e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.
 - (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (5) Subsections (1) and (3) do not apply to either of the following:
- (a) A claim or right to receive an amount that would be excluded from gross income under section 104(a)(1) or (2) of the internal revenue code, 26 USC 104.
 - (b) A claim or right to receive benefits from a special needs trust. For purposes of this subdivision, a "special needs trust" is a trust described in section 1917(d)(4)(A), (B), or (C) of title XIX of the social security act, 42 USC 1396p.

History: Add. 1963, Act 223, Eff. Sept. 6, 1963 ;-- Am. 2000, Act 348, Eff. July 1, 2001 ;-- Am. 2012, Act 88, Eff. July 1, 2013

440.9408a Repealed. 2000, Act 348, Eff. July 1, 2001.

Compiler's Notes: The repealed section pertained to financing statement of consignor or lessor of goods.

440.9409 Restrictions on assignment of letter-of-credit rights ineffective.

Sec. 9409.

(1) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice does 1 or more of the following:

- (a) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right.
- (b) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right, the term is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary, imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary, and does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

History: Add. 1976, Act 27, Imd. Eff. Mar. 4, 1976 ;-- Am. 2000, Act 348, Eff. July 1, 2001

440.9410 Repealed. 2000, Act 348, Eff. July 1, 2001.

Compiler's Notes: The repealed section pertained to establishment of subscription service.