

Secured Transactions and Suretyship

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- Essentials
- Collateral
- Attachment
- Perfection
- Priorities
- Default
- Suretyship

Essential I

- Debtor
 - Borrower
- Secured Party
 - Lender
- Collateral
 - Property

Essential II

- Security Agreement
 - Evidence of consent to create lien
- Security Interest
 - Lien (qualified interest in property)

Liens not covered by UCC

- Real Estate
- Statutory Liens
- Judgment Liens

Classification of Collateral

- Goods
- Consumer Goods
- Inventory
- Equipment

Attachment v. Perfection

- Rights of Debtor vs. Creditor
 - Security Agreement
- Rights of One creditor to Another
 - Financing Statement

Attachment

- Value
 - Credit
 - Antecedent Debt
- Debtor's Rights in Collateral

Security Agreement

- Consumer Goods
- After Acquired Property
- Proceeds (Inventory)
- Future Advances

Terms of Security Agreement

- Writing or Possession of Collateral
- Terms
 - Signed by Debtor
 - Description of Collateral
 - Intent to Give Creditor Rights

Optional Terms of Security Agreement

- Future Advances, After Acquired Property, Proceeds
- Due on Sale Clause
- Insurance Provisions
- Terms of Repayment

Perfection

- Establishes the Rights of One Creditor to Another
- Generally Established by either Possession or by Filing a Financing Statement

Possession

- Perfection is Complete Anytime the Creditor has Possession of the Goods

Filing a Financing Statement

- Contents of Financing Statement
 - Names and addresses of parties
 - Description of collateral
 - Signature of debtor
 - Information must be exact
- Duration-5 Years
- File with State and County

Automatic Perfection

- Consumer Purchase Money Security Interests
- Sales proceeds-10 Days

Priorities Among Competing Interests

- Secured Creditors vs. Unsecured
- Perfected Secured vs. Unperfected
- Two creditors with Perfected Security Interests: First to Perfect or to File
- Secured Creditor vs. Lien Creditor: First to File

PMSI vs. Perfected Security Interest: Section 9-312

- Collateral other than Inventory
 - PMSI takes priority if perfected within 10 days of debtor's receipt of collateral
 - Consumer-PMSI (Automatic)
 - Otherwise-PMSI must file
- Inventory
 - PMSI takes priority if perfected at time of debtor's receipt of collateral and notice is given to all secured creditors who have filed

Secured Party v. Purchaser I

- Buyer in Ordinary Course
 - From Merchant (buyers of inventory)
 - Takes free of security interest created by seller, even they knew about it, as long as acting in good faith
- Farm Products-special rules

Secured Party v. Purchaser II

- Buyers of Consumer Goods
 - Takes free of liens unless they knew about them
 - Held to constructive knowledge of those which have been filed
 - Need to file PMSI of consumer goods even though not necessary for perfection

Default

- Repossession
 - Taking property without judicial interference
 - Must be no breach of peace

Post Repossession

- Sales of Collateral
- Sale must be Public or Private
- Commercially Reasonable
- Debtor entitled to Notice
- Proceeds
 - Expenses of sale and repossession, debt, subsequent lienholders, excess or deficiency

Effect of Sale

- Subordinate liens are Extinguished
- Superior Security Interests Remain in Effect
- Purchaser takes Good Title if acting in Good Faith

Retention of Collateral

- General Rule:
- Creditor sends Notice that he intends to Retain the Collateral in Satisfaction of Debt
- No objection within 21 days, Creditor may Retain
- Objection, then Collateral Sold

Rights of Debtor

- Right of Redemption
- Frequently waived

Remedies other than Repossession

- Sue on Underlying Debt
- Judicial Foreclosure

Suretyship

- Surety: Co-signer
- Absolute: May be held Liable as soon as Debtor Defaults
- Conditional: May be held liable only if creditor obtains, but does not collect, a judgment against the Principal

Defenses of the Surety

- Personal Defenses of the Principal
- Personal Defenses of Surety
- Defenses of Both Surety and Principal

Rights of Suretyship

- Exoneration: Force Principal to Pay
- Reimbursement: For Partial Payment
- Subrogation: For the Whole Debt
- Contribution: From other co-sureties
