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DEFAULT AND ENFORCEMENT

I. INTRODUCTION

No matter how carefully a secured party chooses its credit risks, there are bound to be times when the debtor is unable to satisfy its obligations to the secured party. The rules outlined under Part 6 of Revised Article 9 set forth various rights and remedies that a secured party has to enforce its security interest in the event the debtor defaults. These rules also require that the secured party proceed to enforce its security interest in ways that give minimum protections to the debtor and certain other interested parties. These rules carry forward many of the same principles applied under the previous version of Article 9.

II. PRELIMINARY DETERMINATIONS

Before exercising any remedies under Revised Article 9, a prudent secured party will make the following preliminary determinations.

A. Is The Debtor In Default?

Neither Revised Article Nine or its predecessor statute define what constitutes a "default" and both anticipate that the term be defined in the applicable security agreement. Common default



provisions contained in loan agreements, security agreements and other agreements typically include the debtor's nonpayment, misrepresentations, failure to comply with covenants, cross-defaults and the debtor's bankruptcy. A "default" occurs with respect to an agricultural lien when the secured party has the right to enforce the lien. Ala. Code §7-9A-606.

After an event of default occurs but prior to enforcing its rights and remedies under a security agreement, it is common for secured parties to accelerate all of the debtor's obligations owed to the secured party pursuant to an "acceleration clause." Such clauses are specifically authorized by the UCC but a secured party can only accelerate in good faith. Ala. Code §7-1-208. As such, secured parties should be careful to avoid accelerating secured debt for trivial or inconsequential defaults.

B. Does Article 9 Apply To The Transaction?

Revised Article 9 has been expanded to cover more types of collateral than the previous version of Article 9. The scope of revised Article 9 is set forth in Ala. Code §7-9A-109. Revised Article 9 now applies to: (1) Any transaction that creates a contractual security interest in personal property or fixtures (same as former Article 9); (2) An agricultural lien (a major change in law , since the lien is created by statute rather than by a consensual agreement between the parties); (3) Deposit Accounts; (4) A sale of accounts or chattel paper (same as former Article 9); and (5) A sale of payment intangibles or promissory notes (new under Revised Article 9).

C. Do You Have A Security Interest?

In order to have rights to the collateral, the secured party must first have a security interest that collateral. Ala. Code §7-9A-203. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral. Absent certain exceptions contained in Ala. Code §7-9A-203(c) through §7-9A-203(i), a security interest attaches and is enforceable



against the debtor and third parties when each of the following elements have been met: (1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to the secured party; and (3) the debtor has authenticated a security agreement that provides a description of the collateral.

D. Is This A Consumer Or Non-Consumer Transaction?

As will be discussed throughout this article, the enforcement provisions in Revised Article 9 often distinguish a consumer transaction from a non-consumer transaction at it is therefore helpful to determine early on which type of transaction is at issue.

Revised Article 9 defines a "consumer transaction" as one in which: (1) an individual incurred an obligation primarily for personal, family or household purposes; (2) a security interest secures the obligation, and (3) any of the collateral is held primarily for personal, family or household purposes. Some of the consumer rules apply only to "consumer-goods transactions," which are consumer transactions where the collateral is consumer goods.

Since it is sometimes difficult to determine the primary purpose of the obligation or how the collateral is primarily used, it can be difficult to determine whether a transaction is a consumer transaction. If there is any doubt, a prudent secured party will proceed on the assumption that it is a consumer transaction.

In order to assist the secured parties in this area, Ala. Code §7-9A-628(c) contains a safe harbor, that allows you to rely on your reasonable belief that a transaction is or is not a consumer transaction, if your reasonable belief is based on the debtor's or obligor's representations concerning the purpose the collateral will be used for or the obligation was incurred for. As such, it is helpful to include within your documentation a provision that the transaction is or is



not a consumer transaction so that you can rely on the safe harbor provisions of Ala. Code §7-9A-628(c)

III. REMEDIES

Revised Article 9 grants a secured party several basic remedies: (1) Collection and Enforcement; (2) Repossession and Disposition of Collateral; (3) Retention of Collateral; or (4) an action for the Debt. Each of these remedies is discussed in more detail below.

A. Remedies Are Cumulative

Like its predecessor, the remedies that Revised Article 9 provides to secured parties which can only be exercised *after* a default by the debtor. Ala. Code §7-9A-601(b). These remedies are in addition to those granted by the underlying agreement and all remedies are "cumulative." Revised Article 9 differs from its predecessor and clarifies that these cumulative remedies may be exercised simultaneously. Ala. Code §7-9A-601(b). It is worth noting that this provision does not override non-UCC law (including common law tort laws or statutes regulating the collection of debts) under which the simultaneous exercise of remedies in a particular case may constitute abusive behavior or harassment giving rise to liability. Ala. Code §7-9A-601, Comment 5.

B. Collection And Enforcement

B1. Payment Directly To Secured Party:



After default, a secured party may notify an "account debtor or other person obligated on the collateral" to make payment directly to the secured party. Ala. Code §7-9A-607(a). If the underlying agreement permits, a secured party may exercise these rights prior to a default by the debtor. Ala. Code §7-9A-607, comment 4.

An "account debtor" means any person obligated on an account, chattel paper or general intangible. The term does not include a person who is obligated to pay on a negotiable instrument (*e.g.* a promissory note) even if the instrument is part of chattel paper. Ala. Code §7-9A-102(3). Rights with respect negotiable instruments continue to be governed by Article 3 of the UCC.

B2. Render Performance For The Benefit Of The Secured Party

A secured party may also notify an "account debtor or other person obligated on the collateral" to render performance for the benefit of the secured party. Ala. Code §7-9A-607(a).

The rights granted to a secured party under this section are broader than those previously granted under former Article 9-502 which only allowed collection from "the account debtor or the obligor on an instrument." §9-502. For example, the Revised Article allows the secured party to enforce a breach-of-warranty claim arising out of a defect in equipment that serves as collateral. Similarly, the Revised Article allows the secured party to enforce a claim against a person who infringes a patent that serves as collateral. Ala. Code §7-9A-607, Comment 3. The term "other persons obligated on the collateral" also includes persons providing collateral to secure the obligations of an account debtor.

B3. Commercial Reasonableness



Where there is credit recourse to the debtor (as in the case of a full recourse loan to the debtor secured by a security interest in the debtor's accounts), the collection must be made in a commercially reasonable manner. Ala. Code §7-9A-607(c).

B4. Rights And Duties Of Account Debtors And Other Persons Obligated On Collateral

Section 9A-607 of the Alabama Code, discussed above, only relates to the secured party's rights as against the debtor. It does not create, regulate, or otherwise the duties or rights of the account debtor or other person obligated on the collateral. Ala. Code §9-607(e) and Comment 6. For example, other sections of the Revised Article set forth the offset and defense rights of account debtors offset. Ala. Code §7-9A-403 to Ala. Code §7-9A-409.

B5. Specialized Kinds Of Collection

Deposit Accounts

Security interests in Deposit Accounts as original collateral are now within the scope of Revised Article 9 and must be perfected by "control." Control is automatic if the secured party is the bank at which the deposit account is maintained. In that case, the secured party can enforce that security interest after a default by applying the balance of the deposit account to the obligation that secured it. Ala. Code §9-607(4).

If the bank at which the deposit account is maintained is not the secured party, the secured party who has properly perfected by control (i.e. entering into a control agreement with the bank) may instruct the bank to pay the balance of the account to or for the benefit of the secured party. The bank only has to obey these instructions if either: (i) the secured party is the bank's customer; or



(ii) the bank has agreed to follow the secured party's instructions in a control agreement or other authenticated record. Ala. Code §9-607, Comment 7.

Mortgages

The secured party that is an assignee of an obligation secured by a real estate mortgage has the right to become the mortgagee of record upon the debtor's default in order to conduct a non-judicial foreclosure of the mortgage, Ala. Code §7-9A-607(b).

Expenses

Revised Article 9 permits a secured party to deduct the secured party's collection expenses from collections made by it in a commercially reasonable manner. Ala. Code §7-9A-607(d).

C. Repossession and Disposition of Collateral

Although it repeats many of the provisions contained in the former version of Article 9 with respect to repossessing and disposing of collateral, Revised Article 9 provides much more detail. For example, it contains provisions detailing to whom and when notice of disposition should be sent and the contents of the notification.

C1. Repossession And Assembly Of The Collateral

Following a default, the secured party may repossess collateral. A secured party can use judicial process to obtain possession of the collateral. Ala. Code §7-9A-609(b)(1).



As under the earlier version of Article 9, a secured party may also proceed without judicial process *but only if* doing so will not result in a breach of the peace. Ala. Code §7-9A-609(b)(2). What constitutes a "breach of the peace" is left to the courts to determine. The official comments recommend that courts "hold the secured party responsible for the actions of others taken on the secured party's behalf, including independent contractors engaged by the secured party to take possession of the collateral."

As was the case under the earlier version of Article 9, Revised Article 9 validates an agreement by the debtor to assemble the collateral and make it available to the secured party prior to a default. Regardless of whether such right is specified in the agreement, a secured party can, *after default by the debtor*, require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Ala. Code §7-9A-604 carries forward the same obligations of secured parties as to the owner of the real estate upon which the fixture is attached. In connection with the removal of the fixture, the secured party must reimburse any non-obligor or non-debtor for the cost of any physical injury caused by the fixture removal (but not the cost of any diminution in value).

C2. Notification

Revised Article 9 allows this disposition to take the form of a lease, license or sale. Ala. Code §7-9A-610(a). However, prior to any such disposition, "reasonable authenticated notices of disposition" must be sent to certain persons in a timely manner and must contain specified information. Ala. Code §7-9A-611.



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No notification is required if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market (*e.g.* marketable securities). Ala. Code §7-9A-611(d).

Parties To Be Notified

Notification must be sent to the debtor, any "secondary obligors" and certain lienholders or other parties who have an interest in the collateral in accordance with Ala. Code §7-9A-611. A "debtor" includes any person who has an interest in the collateral securing the debt, whether or not that person is obligated on the debt. Ala. Code §7-9A-102(59). A "secondary obligor" includes: (x) any obligor whose obligations are secondary or (y) who has a right of recourse against a debtor, any other obligor or the property of either (*e.g.* a guarantor). Ala. Code §7-9A-102(70). These definitions do not include a person who is primarily liable for the debt but who did not provide any collateral. The rationale is that any such person is not entitled to any notice because that person will not be prejudiced by the lack of notice--i.e. the person will be liable in any event for the full amount of the obligation, has no interest in the collateral and has no right of recourse against any debtor or other obligor. Nonetheless, secured parties may continue to provide notice to all debtors and obligors as a matter of habit and business prudence.

The debtor and/or the secondary obligor may waive its right to receive this notice but only after default. Ala. Code §7-9A-624(a). A secured party is not, however, liable for failure to provide disposition notification to a guarantor or other secondary obligor unknown to the secured party. Ala. Code §7-9A-628(a) and (b).

If the collateral is other than consumer goods, Revised Article 9 also requires notice to be given to any other person from which the secured party has received, before the date it sends out



notifications, an authenticated notification of a claim of interest in the collateral. Ala. Code §7-9A-611(3)(A). This requirement is the same as under the prior version of Article 9.

One major change is that notice must *also* be given to all secured parties (senior and junior) who, ten days before the date the secured party sends out notifications, have perfected their security interests by filing a financing statement or complying with other applicable law (e.g. a certificate of title statute) as long as the filing statement identifies the collateral, is indexed under the name of the debtor as of that date and was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date. Ala. Code §7-9A-611(B). The foreclosing secured party generally need not worry about effective financing statements that are more difficult to locate because of a change in the debtor's name or location or because of rules relating to proceeds. Ala. Code §7-9A-611, Comment 4.

There is also a safe harbor provision that protects secured parties from delays of the filing office. A secured party is deemed to have complied with the foregoing requirements if it runs a search with the filing office not more than 30 nor less than 20 days before the date on which it sends the notifications and it either: (i) does not receive a response for the request of information or (ii) receives an incomplete response and sends notice to all lienholders listed on that incomplete response.

Timeliness Of Notification

The notification must be sent sufficiently in advance of the date the disposition is to be made that the person notified has time to react. That time period is a question of fact answered on a case by case basis. However, there is a safe harbor for commercial transactions and 10 days notice is considered reasonable. Ala. Code §7-9A-612(b). The courts are left to determine what is and what is not reasonable with respect to consumer transactions. Ala. Code §7-9A-612(b).



Second Try

Revised Article 9 also leaves to judicial resolution, based on the facts of each case, the question whether a "second try" is required when the secured party learns or has knowledge that the debtor or other party entitled to notice did not receive the initial notice. Ala. Code §7-9A-611, Comment 6.

Contents Of Notice

The notice of sale being sent must indicate basic identifying information, what type of disposition is anticipated (sale, lease or license), whether the sale being conducted is to be a private or public sale and other pertinent information. Ala. Code §7-9A-613 and Ala. Code §7-9A-614. Additional terms other than those required by the statute can be included. The Revised Article sets forth in detail what information must be included in the notice of sale in a non-consumer transaction (Ala. Code §7-9A-613) as well as a sample form which is statutorily sufficient. Ala. Code §7-9A-613(5). The Revised Article also sets forth in detail what information must be included in the notice of sale in a consumer transaction (Ala. Code §7-9A-614) as well as a sample form which is statutorily sufficient. Ala. Code §7-9A-614(3) Each of these forms are attached to the end of this Article. If you are unsure whether a transaction is a consumer or non-consumer transaction, you should send the more detailed notice used for consumer transactions.

The differences between the consumer and non-consumer forms are outlined in the following table:



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	Non-Consumer	Consumer
Description of Debtor and Secured Party	Required Alabama Code §7-9A-613(1)(A)	Required Alabama Code §7-9A-614(a)(A)
Description of Collateral	Required Alabama Code §7-9A-613(1)(B)	Required Alabama Code §7-9A-614(1)(A)
Method of Intended Disposition (i.e. sale, lease or License, and public or private disposition)	Required Alabama Code §7-9A-613(1)(B)	Required Alabama Code §7-9A-614(1)(A)
Statement as to Debtor's rights to an accounting	Required Alabama Code §7-9A-613(1)(C)	Required Alabama Code §7-9A-614(1)(A)
Time and place of public disposition or time after which private disposition will occur	Required Alabama Code §7-9A-613(1)(D)	Required Alabama Code §7-9A-614(1)(A)
Description of Debtors liability as to a deficiency (if any)	Not required	Required Alabama Code §7-9A-614(1)(B)
Telephone Number from which a payoff is obtainable	Not required	Required Alabama Code §7-9A-614(1)(C)
Telephone Number and Mailing Address for which additional information is available	Not required	Required Alabama Code §7-9A-614(1)(D)



C3. Reasonable Disposition

As did its predecessor, Revised Article 9 requires that every "aspect" of the disposition be commercially reasonable. Ala. Code §79A-610(b). The debtor cannot waive this requirement but can agree in advance upon what standards will be considered by the parties to be commercially reasonable. See Ala. Code §7-9A-603(a).

Form and Type Of Disposition

Revised Article 9 allows this disposition to take the form of a lease, license or sale. Ala. Code §7-9A-610(a). The sale may be a private sale or a public sale (i.e. auction) provided that it is commercially reasonable to dispose of the collateral in that manner.

The timing of the sale must also be commercially reasonable and any delay in selling items of collateral that are subject to fast depreciation in value may be commercially unreasonable. See *Solfanelli v. Corestates Bank N.A.*, 203 F.3d 197, 40 UCC Rep. Serv. 2d 914 (3rd Cir.2000) (The decline in value of securities held by secured party for 11 months after repossession, is commercially unreasonable).

Preparation Of Collateral Prior To Disposition

Section 7-9A-610(a) allows the secured party to dispose of collateral "in its present condition or following any commercially reasonable preparation or processing." This language is identical to that used in the prior version of Article 9 which often resulted in litigation. The official comments to this section of the Revised Article clarify the landscape somewhat stating: "[a]lthough courts should not be quick to impose an affirmative duty on the secured party to process or prepare the collateral, [this section] does not grant the secured party the right to



dispose of the collateral in 'its then current condition' in all circumstances [and the secured party should take into account] the costs and probable benefits of preparation or processing and the fact that the secured party would be advancing the costs at its risk í "

Low Price; Who Can Purchase The Collateral

There has been much debate over the years on whether the requirement that all "terms" of the disposition be commercially reasonable means that the sale price itself be commercially reasonable. Revised Article 9 indicates that a low price "of itself" will not make a disposition sale commercially unreasonable. Ala. Code §7-9A-627(a). However a low price obtained at the disposition sale "suggests that the court should scrutinize carefully all aspects of a disposition." Ala. Code §7-9A-610, Official Comment 10.

The secured party can purchase the collateral at a public sale, but may not purchase collateral at a private sale unless the collateral is of a kind customarily sold on a recognized market or is the subject of standard price quotations. Ala. Code §7-9A610(c). Unfortunately the revised Act does not specifically determine what is a "public" or "private" sale, leaving that determination to the courts. See Official Comment 7, Ala. Code §7-9A-610.

In addition, the Revised Article looks closely at any disposition where the collateral is purchased by the secured party, a person related to the secured party, or a guarantor of the secured debt. In those cases, if the purchase price is "significantly below the range of proceeds that a complying disposition to a person [other than one of those persons] would have brought," the amount of any surplus or deficiency shall be based on the amount that the disposition sale would have brought had some other person purchased the collateral at the sale. Ala. Code §7-9A-615(f). This provision helps protect the debtor in connection with sales to persons who do not have the economic incentive to bid for the collateral at prices that approximate its fair value. Indeed, the



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incentive to these parties is actually to the contrary: the lower the bid, the greater the deficiency claim against the debtor.

Warranties

Revised Article 9 provides that any sale of collateral includes implied warranties of title, possession and quiet enjoyment unless specifically disclaimed. Ala. Code §7-9A-610(d) and (e). All other warranties which by operation of law accompany voluntary transactions are also made in connection with a disposition sale, such as implied warranties of merchantability and, if applicable, fitness for a particular purpose.

The extent to which a secured party can disclaim these warranties will depend upon whether it is commercially reasonable to sell the collateral without such warranties. For example, if the secured party is a dealer in the goods in question and regularly sells such goods with full warranties, it would almost certainly be commercially unreasonable for such a secured party to disclaim warranties in connection with the disposition sale.

Application of Disposition Sale Proceeds

Cash proceeds received from a disposition must be applied first to the reasonable expenses of sale (and if provided for by agreement, reasonable attorney fees), then to the satisfaction of the obligations secured, then to the satisfaction of any subordinate obligations or interest of a consignor (if the secured party has received an authenticated demand for such proceeds from such subordinate obligation holder or such consignor). Ala. Code §7-9A-608 and §7-9A-615(a). Any remaining amounts will be given to the debtor. The debtor will be liable for any deficiency.

A secured party may sometimes receive something other than cash at a disposition sale. For example, if the secured party finances the acquisition of the collateral by the purchaser, it may



receive a promissory note from the buyer. The secured party only has to apply the noncash proceeds to the debt if it would be commercially unreasonable not to do so. If the noncash proceeds "are of the type that the secured party regularly generates in the ordinary course of its financing business in nonforeclosure transactions," it may be commercially unreasonable to fail to apply the noncash proceeds at that time. Ala. Code §7-9A-615, Comment 3. The rationale is that it is unfair for the original debtor to bear the risk of the secured party's credit judgment with respect to the new debtor.

There is an exception for "secured transactions" which are actually sales of accounts, chattel paper, payment intangibles or promissory notes (all covered by Revised Article 9). Unless otherwise agreed, the debtor is not entitled to a surplus or liable for a deficiency. Ala. Code §7-9A-608(b) and Ala. Code §7-9A-615(e).

Rights Of Transferee Of Collateral

A secured party's disposition of collateral following default transfers to a transferee for value all of the debtor's rights in the collateral; discharges the security interest under which the disposition is made; and discharges most subordinate security interest or other subordinate liens Ala. Code §7-9A-617. Revised Article 9 provides for a title clearing mechanism to effect a transfer of record title to the disposition or foreclosure purchaser of that collateral. Ala. Code §7-9A-619.

Notice Of And Explanation Of Deficiency

A secured party must, following disposition of collateral, provide a consumer debtor with an explanation of the calculation of any deficiency claim before making demand upon the debtor for payment of that deficiency. Ala. Code §7-9A-616. A sample form is contained at the end of this Article. If you are unsure whether the transaction is or is not a consumer transaction, then you



should send this explanation in order to protect your client from any claims of failure to comply with Article 9.

Burden Of Proof In Deficiency Actions

Revised Article 9 officially adopts the "rebuttable presumption" rule for commercial transactions. That rule has already been adopted by Alabama courts. If a secured party improperly disposes of collateral and thereafter brings a deficiency action against the debtor or a guarantor who disputes the action, the value of the collateral will be presumed to have equaled the entire secured debt unless the secured party is able to show otherwise.

In consumer transactions, however, the "rebuttable presumption" rule is not effective and the courts are left to fashion an appropriate damage rule in such cases. A specific penalty, may be imposed, regardless of any damages being shown, on a non-complying secured party where the collateral is consumer goods. Ala. Code §7-9A-625(c)(2).

Actual Damages

A secured party who does not comply with Article 9 is liable for damages in the amount of any loss caused such failure, including losses resulting from debtor's inability to obtain, or the increased costs of, alternative financing. Ala. Code §7-9A-625(b). If the debtor is liable to secured party on any deficiency, then the damages the debtor is due from the secured party for any non-compliance can be offset from the deficiency claim. Ala. Code §7-9A-625(d).

The determination of whether a transaction is a consumer or a non-consumer transaction bears greatly on the damages that can be assessed for failure to follow the mandates of Article 9. If the transaction is a consumer transaction, and all of the obligations pertaining to disposition in regards to consumer transaction are not followed, then damages for failure to comply with Part 6



of Article 9 will be assessed in the amount of credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price. Ala. Code §7-9A-625(c) (These damages are identical to the damages assessable under current Ala. Code §7-9A-5070), however do to the special steps that must now be taken in regards to consumer transactions, these damages will be more evident and pronounced.)

Redemption

The debtor may redeem the collateral by paying off the secured debt any time before the secured party has disposed or contractually committed to dispose of the collateral or has retained the collateral in satisfaction of the secured debt. Ala. Code §7-9A-623. The debtor may waive its right of redemption in a commercial transaction, but only after default. Ala. Code §7-9A-624(c).

D. Accepting Collateral In Full Or Partial Settlement

This method of enforcement, sometimes called "strict foreclosure," has been significantly changed and expanded by Revised Article 9.

D1. Full Or Partial Satisfaction; Possession Of Collateral; Commercial Versus Consumer Transactions

Under the prior version of Article, collateral could only be retained by the secured party in full satisfaction of the debt. Under Revised Article 9 a secured party in a commercial transaction can retain collateral in partial satisfaction of the debt. Ala. Code §7-9A-620. The remedy of retention in partial satisfaction is not available to the secured party in a consumer transaction. Ala. Code §7-9A-620(g).



In a commercial transaction, a secured party may retain collateral in satisfaction of the debt even if the secured party is not in possession of the collateral. In a consumer transaction, however, a secured party may not retain collateral that is not in the possession of the secured party.

D2. Required Notice

In order to take collateral in satisfaction of a debt, a secured party must notify the following persons: (a) any person from which the secured party has received, before the debtor consented to the retention of the collateral, an authenticated notification of a claim or interest in the collateral; and (b) any other secured party or lienholder that 10 days before the debtor consented to the retention of the collateral, filed a financing statement which identifies the collateral, was indexed under the name of the debtor on that date and was filed in the appropriate office for filing against the debtor on that date.

These persons are very similar to those who are entitled to receive notice of disposition *but* for the fact that there is no safe harbor which protects the secured party from the errors or delays of the filing office.

If the secured party intends to accept the collateral in partial satisfaction, instead of full satisfaction, it must also notify all secondary obligors.

D3. Acceptance Of Secured Party's Offer

Debtor can only accept the secured party's offer to retain the collateral in *partial satisfaction* of the debt by agreeing to the terms of the retention in a record authenticated after the default. On the contrary, if the secured party sends notification to the debtor of the secured party's intent to retain the collateral in *full satisfaction* of the debt and the debtor doesn't object within 20 days, the secured party can treat the debtor's silence as an acceptance of the secured party's offer.



Any secured party or other person who is not a debtor and to whom the secured party sent notice, must object within 20 days from the date the secured party sent the notice or that person will be deemed to have consented to the retention of the collateral.

Any person who was not sent notice but who has the right to object (because they have an interest in the collateral), can object within 20 days of the date the last notice was sent by the secured party to any other person. If a secured party receives an objection from the debtor, any other person entitled to notice or any person having an interest in the collateral, the debtor cannot retain the collateral in satisfaction of the secured debt.

D4. No Retention As Satisfaction Can Be Implied

Under revised Article 9 a secured party will not be deemed to have retained collateral in satisfaction of the debt unless the secured party takes the affirmative statutory steps required in Ala. Code §7-9A-620 to retain the collateral in satisfaction. Ala. Code §7-9A-620(b). However, a secured party may be penalized for holding on to collateral such a long time that it is commercially unreasonable.

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