

MARKS & WEINBERG, P.C.

In re Nygaard 2001 WL 1740003 (U.S. Bankr. D. Wyo.)

This case analyzes which default notices must be given to debtors under the prior version of Article 9 of the Uniform Commercial Code ("Old Article 9") and provides a nice framework for understanding the wording changes under the revised version of Article 9 ("Revised Article 9"). The key point to remember is that *guarantors are entitled to the same notices as a lessee when it comes to disposing of collateral.*

In re Nygaard involves Old Article Nine (Section 9-504) and its requirement that "debtor" receive notice prior to disposition of collateral. General Electric Capital Corporation ("GECC") had entered into a lease agreement with N.A. Corporation (the "Lessee") and the credit package included an individual guaranty. When the Lessee defaulted, GECC sent, only to the Lessee, a "Notice of Private sale of Collateral Under Section 9-504 of the Uniform Commercial Code." GECC subsequently disposed of the collateral. When GECC proceeded against the Guarantor for a deficiency judgment, the guarantor successfully argued that the deficiency claim was barred since GECC failed to provide Notice of Private Sale to the Guarantor.

As noted in this case, there was a split amongst the courts interpreting Old Article 9 as to whether guarantors and other secondary obligors were entitled to such notices. Revised



Article Nine (Section 9-611(c)(2)) eliminates this split by taking the majority approach expressed by the court in Nygaard.

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