

Misc.
Drafting
Materials

99-1446
↓
Into
01-0028

UCC 9 Wis. laws impacted?

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....

April 28, 2000

***NOTE: Here are Wisconsin Statutes outside of **ch. 409** (UCC Art 9) that refer to **ch. 409**. I need to know if a substantive change is occurring in Article 9 that, by cross-reference, is also occurring in these sections. I note the issue raised in the enactment guide regarding "accounts", which have different meanings under Revised Article 9 than under former Article 9. From the perspective solely of the UCC, nothing needs to be changed, but from the perspective of other Wisconsin law, something may need to be changed.

Statutes Assuming the Scope of or Definitions in Former Article 9. The legislature should consider whether provisions of other laws affected by the expansion of the scope of Revised Article 9 from that in former Article 9, or the change in definitions in Revised Article 9 from those in former Article 9, will necessitate changes in other statutes of the jurisdiction. For example, a statute in the jurisdiction may address the assignment of certain payment rights (e.g. health-care-insurance receivables or commercial tort claims) that are not within the scope of former Article 9 but are within the scope of Revised Article 9. A statute of the jurisdiction might also use former Article 9 terms (e.g. accounts) which have different meanings under Revised Article 9 than under former Article 9. Amendments to these statutes should be considered so that the statutes, as amended, are consistent with or are subject to Revised Article 9. Indeed, in some cases the best solution would be to repeal the statute if the matters addressed in the statute would be fully addressed in Revised Article 9.

SECTION 1. 30.53 (4) (c) of the statutes is amended to read:

30.53 (4) (c) A security interest in a boat created by a manufacturer or dealer who holds the boat for sale, which shall be governed by the applicable provisions of **ch. 409**.

***NOTE: Has the definition of goods been changed so as to make a substantive difference in Wisconsin boat certificate of title law?

History: 1987 a. 397.

SECTION 2. 30.57 (2) (c) of the statutes is amended to read:

30.57 (2) (c) A security interest governed by **ch. 409** that is created by a manufacturer or dealer who holds the boat for sale.

***NOTE: Has the definition of goods been changed so as to make a substantive difference in Wisconsin boat certificate of title law?

History: 1991 a. 39.

SECTION 3. 101.9202 (3) of the statutes is amended to read:

101.9202 (3) A security interest in a mobile home created by a mobile home dealer or manufacturer who holds the mobile home for sale, which shall be governed by the applicable provisions of ch. 409.

***NOTE: Has the definition of goods been changed so as to make a substantive difference in Wisconsin mobile home certificate of title law?

NOTE: NOTE: This section is created eff. 7-1-00 by 1999 Wis. Act 9.NOTE:

History: 1999 a. 9.

SECTION 4. 241.03 of the statutes is amended to read:

241.03 Croppers' contracts; filing, security interest. (1) No landowner-cropper contract is valid, except between the parties to the contract, unless the contract, subscribed by the parties, describing the premises and containing the entire agreement between the parties, or a copy of the contract, has been filed with the register of deeds of the county where the premises are located. The register of deeds shall file, endorse, enter and index croppers' contracts filed with the register of deeds in substantially the same manner as provided for financing statements covering security interests in fixtures.

(2) In case such cropper contract is not filed then, except between the parties thereto, the cropper shall be conclusively presumed to have title and possession to an undivided one-half interest in all crops covered by such contract and the relationship between the landowner and cropper to be that of landlord and tenant.

(3) Such cropper contract is not subject to **ch. 409** unless the contract expressly creates a security interest.

***NOTE: Has the definition of goods been changed so as to make a substantive difference in Wisconsin fraudulent contract law?

History: 1991 a. 316; 1993 a. 301; 1997 a. 254.

SECTION 5. 292.21 (1) (d) of the statutes is amended to read:

292.21 (1) (d) *Personal property and fixtures.* A lender that enforces a security interest in personal property or fixtures at a particular location, filed under **ch. 409**,

and that does not acquire title to, or possession or control of, the real property at that location, except for purposes of protecting and removing personal property or fixtures, is not subject to s. 292.11 (3), (4) and (7) (b) and (c) and is not liable under this chapter for a discharge of a hazardous substance on that real property if all of the following conditions are satisfied:

1. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender notifies the department and the borrower of any decision not to accept specific personal property or fixtures.

2. Not more than 30 days after entry onto the real property where the personal property or fixtures are located, the lender provides the department with a written general description of the personal property or fixtures, the location of the personal property or fixtures on the real property and the location of the real property by street address.

3. The lender, within its ability to do so, permits reasonable access to the personal property or fixtures to the department or the borrower or others acting on the borrower's behalf.

4. The lender does not engage in the operation of a business at the location of the personal property or fixtures, completion of work in progress or other actions associated with conducting the conclusion of the borrower's business except for actions that are undertaken to protect the property and are approved by the department in writing.

****NOTE: Has the definition of goods been changed so as to make a substantive difference in Wisconsin environmental remediation law?

History: 1995 a. 227 s. 708, 709, 993; 1997 a. 27; 1999 a. 9.

SECTION 6. 342.02 (3) of the statutes is amended to read:

342.02 (3) A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for sale, which shall be governed by the applicable provisions of **ch. 409**.

SECTION 7. 342.03 of the statutes is amended to read:

342.03 Motor vehicle, trailer or semitrailer leases. Notwithstanding s. 401.201 (37) or **ch. 409**, a transaction involving a motor vehicle, trailer or semitrailer does not create a conditional sale or a security interest merely because it includes a provision that permits or requires the rental price to be adjusted under the agreement by reference to the amount realized upon the sale or other disposition of the motor vehicle, trailer or semitrailer.

History: 1991 a. 148

SECTION 8. 421.301 (21) of the statutes is amended to read:

421.301 (21) "Goods" has the meaning given in s. 409.102 (1) and includes goods (s. 409.105) not in existence at the time the transaction is entered into and goods which are or are to become fixtures.

***NOTE: Has the definition of goods been changed so as to make a substantive difference in the Wisconsin Consumer Act?

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302.

SECTION 9. 421.301 (40) of the statutes is amended to read:

421.301 (40) "Security interest" means a real property mortgage, deed of trust, seller's interest in real estate under a land contract, any interest in property which secures payment or performance of an obligation under **ch. 409** or any other consensual or confessed lien whether or not recorded.

***NOTE: Has UCC Art. 9 been changed so as to make a substantive difference in the Wisconsin Consumer Act?

History: 1971 c. 239; 1973 c. 3; 1975 c. 407; 1979 c. 10, 89; 1983 a. 7; 1991 a. 148, 316; 1993 a. 111, 112; 1995 a. 329; 1997 a. 302.

SECTION 10. 700.01 (3) of the statutes is amended to read:

700.01 (3) "Instrument of transfer" means an instrument which is effective to transfer an interest in property; it includes but is not limited to a will, a deed, a contract to transfer, a real estate mortgage and an instrument creating a security interest in personal property under **ch. 409**.

****NOTE: Has the UCC Art. 9 been changed so as to make a substantive difference in Wisconsin real property law?

History: 1983 a. 189; 1991 a. 316.

SECTION 11. 700.01 (3) of the statutes is amended to read:

700.01 (3) "Instrument of transfer" means an instrument which is effective to transfer an interest in property; it includes but is not limited to a will, a deed, a contract to transfer, a real estate mortgage and an instrument creating a security interest in personal property under **ch. 409**.

****NOTE: Has the definition of security interest been changed so as to make a substantive difference in Wisconsin real property law?

History: 1983 a. 189; 1991 a. 316.

SECTION 12. 700.24 of the statutes is amended to read:

700.24 Death of a joint tenant; effect of liens. A real estate mortgage, a security interest under **ch. 409**, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5) (b), ch. 49 or 779 or rules promulgated under s. 46.286 (7) on or against the interest of a joint tenant does not defeat the right of survivorship in the event of the death of such joint tenant, but the surviving joint tenant or tenants take the interest such deceased joint tenant could have transferred prior to death subject to such mortgage, security interest or statutory lien.

****NOTE: Has the definition of security interest been changed so as to make a substantive difference in Wisconsin real property law?

History: 1971 c. 307 s. 118; 1975 c. 39; 1979 c. 32 s. 92 (9); 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1999 a. 9.

SECTION 13. 766.60 (5) (b) of the statutes is amended to read:

766.60 (5) (b) A real estate mortgage, a security interest under **ch. 409** or a lien under s. 71.91 (5) (b) or ch. 49 or 779 on or against the interest of a spouse in

survivorship marital property does not defeat the right of survivorship on the death of the spouse. The surviving spouse takes the interest of the deceased spouse subject to the mortgage, security interest or lien.

****NOTE: Has the definition of security interest been changed so as to make a substantive difference in the Wisconsin Marital Property Act?

History: 1983 a. 186; 1985 a. 37; 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1991 a. 301.

SECTION 14. 801.05 (7) of the statutes is amended to read:

801.05 (7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

- (a) In an action in this state to foreclose upon real property situated in this state; or
 - (b) Following sale of real property in this state by the plaintiff under ch. 846;
- or
- (c) Following resale of tangible property in this state by the plaintiff under **ch. 409.**

History: Sup. Ct. Order, 67 Wis. 2d 585, 592 (1975); 1975 c. 218; 1977 c. 105, 203, 418; 1979 c. 196; 1979 c. 352 s. 39; 1993 a. 112, 326, 486.

SECTION 15. 818.02 of the statutes is amended to read:

818.02 When arrests may be made. The defendant may be arrested as hereinafter prescribed in the following cases:

- (1) In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for seduction, or for criminal conversation, or for injuring, or for wrongfully taking, detaining or converting property, and in actions to recover damages for the value of property obtained by the defendant under false pretenses or false tokens.

(2) In an action for fine or penalty, or for money received, or for property embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor or counsel, or by an officer or agent of a corporation or banking association, in the course of his or her employment as such, or by any factor, agent, broker or any person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

(3) In an action to recover possession of personal property unjustly detained where the property or any part thereof has been concealed, removed or disposed of so that it cannot be found or taken by the sheriff.

(4) Subsections (1) and (3) do not apply to any security agreement under which the plaintiff claims a purchase money security interest as defined in **ch. 409**.

(5) In a proceeding to enforce the duty of child support or maintenance.

(6) In a proceeding to determine paternity or to establish or revise a child support or maintenance obligation, if the court or family court commissioner finds that the petitioner cannot effect service of process upon the respondent despite due diligence on the part of the petitioner or after the respondent is personally served but fails to appear on the return date, on the date set for the pretrial hearing or on the date set for the trial.

(7) In an action for a forfeiture under s. 961.573 (2), 961.574 (2) or 961.575 (2), or a local ordinance strictly conforming to one of those statutes.

History: Sup. Ct. Order, 07 Wis. 2d 383, 738 (1975); Stats. 1975 s. 809.02; Sup. Ct. Order, 83 Wis. 2d xliiv ((1978); Stats. 1977 s. 818.02; 1979 c. 352; 1983 a. 447; 1985 a. 29; 1989 a. 121; 1993 a. 481, 486; 1995 a. 448.

SECTION 16. 818.02 (4) of the statutes is amended to read:

818.02 (4) Subsections (1) and (3) do not apply to any security agreement under which the plaintiff claims a purchase money security interest as defined in **ch. 409**.

***NOTE: Has the definition of purchase money security been changed so as to make a substantive difference in Wisconsin law regarding when a debtor may be arrested?

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.02; Sup. Ct. Order, 83 Wis. 2d xiiiiv ((1978); Stats. 1977 s. 818.02; 1979 c. 352; 1983 a. 447; 1985 a. 29; 1989 a. 121; 1993 a. 481, 486; 1995 a. 448.