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In the Ditch: Remedies and Enforcement upon Default under the UCC

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Written by **Christopher H. Oldham**

The relationship between borrower and lender is not unlike many others in that both participants enter with the intent and expectation that the future will unfold smoothly—along with the cognizance that, whether the chance is realistic or remote, it may not. Savvy borrowers, going in, should have an understanding of their rights in the event that they are unable to fulfill their obligations to the lender (due to inability to pay or other reasons). Likewise, sophisticated lenders will take steps at the outset, before dollars change hands, to ensure that their interests are maximally protected. One way lenders accomplish this is through the taking of security interests in collateral under Article 9 of the Uniform Commercial Code (“UCC”). (Although the UCC has been adopted in some form by all fifty states, references to the UCC herein are to the North Carolina statute, codified in chapter 25 of the General Statutes of North Carolina, unless otherwise stated.) If the “debtor” has granted a security interest in collateral and the security interest has been properly perfected under Article 9 of the UCC, then upon a default under the applicable security agreement the “secured party” may enforce its rights and exercise its remedies (in accordance, in each case, with Article 9 and the terms of the agreement itself) by taking action against the collateral. This article discusses some of those rights and remedies.

Related People



Christopher H. Oldham

t 336.607.7423

coldham@ktslaw.com