

SECURED CREDITOR CHECKLIST

When a Debtor defaults on its obligation, the Creditor may repossess and dispose of the collateral. There are, however, **a few rules** that the Creditor must follow. **Article 9 of New York's Uniform Commercial Code** contains the rules that govern these types of secured transactions.

*The following checklist functions as a general guide for a sale, but is **not exhaustive and should not replace the counsel of an attorney.***

A creditor can sell collateral in a public auction or private sale as long as **notice is given** and the disposition is **commercially reasonable**: → →

- **§9-611** Before disposition, creditor **must send notice** to:
 - Debtor
 - Secondary obligors (guarantors)
 - Secondary secured parties (if an authenticated claim is given to the creditor)
- **§9-612** Notice must be sent in a timely manner; a reasonable time is **ten or more days** before the earliest time of disposition.
- **§ 9-613** The notice must include:
 - Description of debtor and secured party
 - Description of the collateral
 - The method of intended disposition
 - Statement that debtor is entitled to an "explanation" if there are unpaid debts/charges
 - Time and place of public sale or date of other dispositions
 - Description of liability for deficiency
- **§9-627(b)** A disposition is **commercially reasonable** if it is made:
 - In the usual manner in the recognized market
 - At the current price in the recognized market at the time of disposition; or
 - Otherwise in conformity with reasonable practices among dealers in the type of property at the disposition.
- **§9-627(a)** A disposition is still commercially reasonable even if the amount actually obtained differs from what could have been obtained at a different time or with a different method.
- **§9-615(a)** If collateral is sold, proceeds are given in this order:
 - Cost of the sale and repossession, administrative costs
 - Principle and interest of the secured debt
 - If there is surplus, to the secondary secured parties (if any)
 - If there is still surplus, debtor will receive remaining \$\$
 - If there is deficiency, the obligor is liable
 - If debtor does not pay, creditor may sue to recover after giving debtor credit for sums received upon sale
- **§9-610** A secured party may **purchase** the collateral at the sale.
 - For a public sale, there are no restrictions.
 - For a private sale, the collateral must be of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

