

SECURITY INTERESTS AND LIENS IN COLLATERAL

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John H. Wink is a shareholder in Reinhart's Banking and Finance and Corporate Law practices who serves a wide variety of clients including financial institutions and asset-based lenders as well as privately held and public companies with varying aspects of financing transactions. Prior to becoming an attorney, John studied accounting, passed the CPA exam, and worked for a large public institution on accounting matters.

This background experience provides John with a dual perspective on financing since he understands both the legal components as well as the business aspects of a transaction. With over 15 years of legal experience, John possesses the necessary skills and knowledge needed to understand the financing challenges facing his clients and to devise customized solutions.

Webinar Housekeeping

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Information

This webinar provides general information about legal issues. It should not be construed as legal advice or a legal opinion. Attendees should seek legal counsel concerning specific factual situations confronting them.

2

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Collateral—Perfection by Filing

- Filing a UCC financing statement
 - Perfect most types of collateral
 - General intangibles
 - Inventory and equipment
 - Commercial tort claims
 - Accounts receivable
 - Exceptions if control or possession is mandatory or permissive
 - Investment property
 - Deposit accounts

3

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UCC Financing Statement Reminders

- Debtor name
 - Certified articles
 - Individuals
- Collateral description
 - "All assets" generally works
 - Commercial tort claims (specificity)
- Location, forms, fees
 - Fixture filings
 - E.g., Florida, Tennessee

4

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Perfecting Security Interest in Investment Property

- Uncertificated securities
 - File financing statement
- Certificated securities
 - Deliver certificated security to lender
 - Deliver signed, blank stock power (allows transfer of ownership of certificated securities)
 - Usually file financing statement as well
- Securities account
 - Securities account control agreement

5

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Issues in Perfecting LLC Interest

- Review organizational documents for:
 - Reference to Article 8 as governing
 - Restrictions on transfer
 - Anti-assignment rules in the UCC can override these provisions
 - Some states do not have standard anti-assignment rules (Delaware)
 - Consent from other members

6

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Perfecting Security Interests in Deposit Accounts

- Lender is the bank that maintains deposit account
- Control agreement if lender is not the bank that maintains deposit account
- Deposit account is in the name of the lender

7

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Intellectual Property

- Copyrights
 - U.S. Copyright Act preempts UCC for perfection and priority
 - For copyright registrations and applications, but not unregistered copyrights
 - File Notice of Security Interest in Copyrights with U.S. Copyright Office
 - Specify the specific copyrights covered
- Trade secrets
 - No federal preemption

8

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Intellectual Property (cont.)

- Trademarks and patents
 - Filings under the UCC are sufficient for perfection
 - Recording in U.S. Patent and Trademark Office provides protection against subsequent bona fide purchasers
- Common practice for all intellectual property
 - File UCC Financing Statement
 - Record Notice of Security Interest in appropriate office

9

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Vehicles (Certificates of Title)

- Electronic filing with DOT
 - Listing lender as lien holder
 - Can search electronic filings online
- Filing alone not enough
 - Need underlying security agreement

10

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Aircraft

- FAA
- International Registry

11

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Collateral Not Covered by UCC

- Real estate (excluding fixture filings)
- Life insurance

12

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Life Insurance

- Not governed by UCC
 - Filing is not effective for perfection
- Collateral assignment
 - Generally on insurer's form
 - Needs insurer's acknowledgement of assignment
 - Must be assigned by policy owner
- In-force ledger
 - From insurance company prior to closing
 - Shows other liens that may exist, current status of policy

13

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Special Lien Issues for Agricultural and Food and Beverage Lenders

- Food Security Act of 1985
- Perishable Agricultural Commodities Act
- Packers and Stockyards Act
- State law issues

14

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Questions?



THANK YOU!

15

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