CADWALADER

Defaults and Remedies: The Interaction Between Security Documents and the UCC

March 13, 2026

By **Jeffrey Nagle**
Partner | Finance

By **David Crampton**
Associate

Almost all deals in the fund finance market have historically performed as expected, albeit with occasional bumps in the road. However, in the back of most parties' minds is planning for the "what-if" a relationship or a credit takes a serious downturn. Ultimately, what many lenders view as the last line of defense is the ability to realize on, or monetize, the collateral that has been pledged to secure the loan.

If your transaction involves a grantor organized under state law in the United States or collateral located in the United States, you will be dealing with the Uniform Commercial Code (the "UCC"). The UCC is a set of model statutes that have been adopted – with minor deviations – by all 50 states, the District of Columbia and some U.S. territories. A key benefit and innovation of the UCC is that basic commercial law has been standardized across the entire U.S. The UCC establishes, among other things, the legal framework for security interests in personal property (which is the type of property relevant to most fund finance transactions), including rights and obligations associated with defaults and exercise of remedies on collateral.

Our assumptions for this article include that (i) the model UCC applies (and not the UCC enacted in any specific state), (ii) there exists a valid, authenticated security agreement, (iii) a security interest has properly attached and (iv) the security interest has been properly perfected. References in this article are to the model UCC, unless otherwise noted. Although generally uniform, the UCC as enacted in the relevant jurisdiction, along with the relevant case law, should be consulted as certain provisions of the UCC, and their interpretations by courts, can vary from state to state.

Interaction of UCC and Contract Law

It is important to understand the role and scope of the UCC as it relates to the contract provisions in the parties' security document. The UCC can, in places, (i) be supplemented by clear contractual terms agreed between the parties, (ii) provide for rights and obligations of the borrower or the lender where the contract is silent and (iii) establish nonwaivable provisions that override certain contractual terms. As this article will further explore, this nuanced interrelationship is key to how the realization of collateral proceeds in a defaulted deal.

Is There a Default?

The first question – do we have a default? For contractual purposes under the loan documents, whether or not an event has occurred that gives the lender the right to exercise remedies will be carefully negotiated and defined (typically under the definition "Event of Default"). For purposes of the UCC, § 9-601 defines "default" by reference to the security agreement between the lender and the borrower. Whatever rises to the level of a default under the security agreement is deemed a default under the UCC, with a few exceptions that should be inapplicable to almost all fund finance transactions.

Remedies

If there is a default, what happens next? The first and most important place to look is the security agreement itself. Most security documents would (or should) contain clear, precise and enforceable agreements between the borrower and the lender establishing the agreement between the parties on the scope and process for exercising remedies on the collateral. For the most part, these contractual provisions will furnish the parties with the relevant framework. However, the UCC provides both (i) rights and obligations available to both parties (primarily focusing on secured creditors) in the event that the security documents are silent and (ii) nonwaivable provisions that apply regardless of any contractual agreements to the contrary.

Realization

Article 9 of the UCC provides various remedies that may be pursued by secured creditors, with the specifics for such remedies depending largely on the type or category of collateral. For example, a lender may (i) notify the obligor on an account receivable or other type of payment intangible to make payment directly to the lender (§ 9-607), (ii) apply funds on deposit in deposit accounts to offset obligations (§ 9-607(a)), (iii) take possession and dispose of the collateral (§§ 9-609 and 9-610) or (iv) accept collateral in full or partial satisfaction of the related obligation (§§ 9-620, 9-621 and 9-622). Most of these remedies will also be further agreed in the security document and the lender must take care to comply with the contractual bargain. In addition, any remedies remain subject to the nonwaivable provisions discussed further below.

Accounts and Payment Intangibles. A lender may collect on rights to payment, such as accounts receivable, by requiring the account debtor to pay the lender instead of the borrower (§ 9-607(a)). The lender may step into the shoes of the borrower to enforce rights that the borrower has against the underlying obligor, including proceeding against collateral securing the underlying obligation (§ 9-607(a)(3)). If payment had already been made, the lender may instead look to the proceeds of such payment to the extent allowed by § 9-315.

Deposit Accounts. A lender with a perfected secured interest in a deposit account may apply the balance of deposits in the account to satisfy the secured obligations (§ 9-607(a)(4) and (5)).

Possession and Disposition of the Collateral. The lender may take possession of tangible collateral (e.g., equipment) after default in accordance with § 9-609 by using judicial process, which requires involving the courts, or through non-judicial means (so-called “self-help”). When using non-judicial means, the lender must take care not to “breach the peace,” which generally entails avoiding forcible repossession or actions that would produce violent resistance or disturb peace and order.

After a default, the lender may sell, lease, license or otherwise dispose of any or all of the collateral (§ 9-610). Importantly, “every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable” (§ 9-610(b)). The UCC does not define “commercially reasonable” with specificity, however, it does provide guidance for determining commercial reasonableness (§ 9-627), which is both useful as a setting a baseline and can be read, by implication, as a warning about what may be unreasonable.

Section 9-627 provides a safe harbor for dispositions that are made “(1) in the usual manner on any recognized market, (2) at the price current in any recognized market at the time of disposition; or (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was subject of the disposition” (§ 9-627(b)). Of note, most collateral in the fund finance space is unlikely to be of a type that is processed on a recognized market. Notice timing and content guidelines in connection with a disposition are set forth in §§ 9-612, 9-613 and 9-614.

Accepting Collateral in Full or Partial Satisfaction. Where a lender instead prefers to take the collateral, which can include equity interests, in full or partial satisfaction of the borrower’s obligations, §§ 9-620, 9-621 and 9-622 apply. This process requires borrower consent and is referred to as a “strict foreclosure” (similar to offering a secured lender a “deed in lieu” with respect to real property). The UCC seeks to encourage an alternative path to seizure and disposition. These provisions of the UCC set forth the methodology for parties to agree (or be deemed to agree) to a strict foreclosure, requirement for notification to third-party creditors and effect of acceptance of the collateral.

Correctly Applying the Proceeds of Disposition and Collection. The rules governing the application of proceeds received by the lender, either by disposing of the collateral or by collecting on a right to payment, are set forth in §§ 9-607, 9-608, 9-615, and 9-616, depending on the type of collateral and manner of receipt. These rules can include paying for expenses the lender incurred, paying other subordinated secured parties or lienholders who have made an authenticated demand, or returning a surplus to the borrower.

Additional Non-UCC Remedies

Section 9-601(c) makes clear that non-UCC remedies set forth in the security agreement can generally be used cumulatively with remedies under the UCC. The lender may also make simultaneous use of UCC and non-UCC remedies. Non-UCC remedies could include suing on the unpaid debt and obtaining a judgment or utilizing applicable foreclosure statutes under the relevant state law. For example, the lender may file suit on the debt while still proceeding with a repossession of the collateral under the UCC but must still comply with the nonwaivable provisions of the UCC with respect to that repossession (e.g., notice, commercially reasonable disposition, etc.).

Nonwaivable Provisions

Although relevant state law in the U.S. generally favors the right of competent, informed parties to mutually agree on rights and obligations by contract, the UCC provides that some standards are nonwaivable. Apart from general contractual baselines (e.g., good faith, diligence, reasonableness and care), laws pertaining to secured transactions also seek to protect the rights of third parties who may be impacted (e.g., other creditors of the borrower).

The following is a non-exclusive list of the nonwaivable rights and duties: (i) the duty to collect and enforce on collateral in a commercially reasonable manner (§ 9-607(c)), (ii) the duty to apply non-cash proceeds of collection or disposition in a commercially reasonable manner (§§ 9-608 and 9-615), (iii) the duty to proceed without a "breach of the peace" with respect to the lender's right after default to use non-judicial means (often referred to as "self-help") to take possession of the collateral or, without removing the collateral, to render equipment unusable and dispose of it on the borrower's premises (§ 9-609), (iv) specific rules about the disposition of collateral (§§ 9-610(b), 9-611, 9-613 and 9-614), (v) the right to a special method of calculating a surplus or deficiency in certain dispositions (§ 9-615) and the duty to give an explanation of the calculation thereof (§ 9-616), (vi) strict foreclosure rules (§§ 9-620, 9-621 and 9-622), (vii) the right of certain parties to redeem collateral (§ 9-623), (viii) rules about permissible waivers (§ 9-624) and (ix) consequences for non-compliance (§§ 9-625 and 9-626).

Bankruptcy

The UCC is state (or district or territorial) law. If the borrower files for bankruptcy protection in the U.S., the provisions of the federal bankruptcy code will come into effect and, in many cases, may override the UCC. For example, the automatic stay (*see* 11 U.S.C. § 362) will prevent any creditor from enforcing their rights, including under the UCC, without taking further action or getting court permission. Creditors must then look to the rules and procedures codified in bankruptcy law for their rights and remedies during (and in many cases, after) the bankruptcy case. The penalties for violating the automatic stay can include paying damages, costs and attorney's fees to the borrower.

Conclusion

The states of the United States are generally considered fairly creditor-friendly jurisdictions, and deference is generally given to negotiated agreements between parties. The security document for a transaction will set forth the rights and duties of the lender and the borrower, subject to the nonwaivable rights and duties under the UCC. Generally, remedies under the UCC are cumulative with non-UCC remedies and may be pursued simultaneously, unless the borrower has filed for bankruptcy. Both borrowers and lenders should proceed thoughtfully in the event of a default to ensure the value they are attempting to realize or preserve is done so in a manner efficient to all stakeholders unencumbered by unnecessary disputes or claims.