

355.9-203 Attachment and enforceability of security interest -- Proceeds -- Supporting obligations -- Formal requisites.

- (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
- (2) Except as otherwise provided in subsections (3) to (9) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
 - (a) Value has been given;
 - (b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - (c) One (1) of the following conditions is met:
 1. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 2. The collateral is not a certificated security and is in the possession of the secured party under KRS 355.9-313 pursuant to the debtor's security agreement;
 3. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under KRS 355.8-301 pursuant to the debtor's security agreement; or
 4. The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under KRS 355.7-106, 355.9-104, 355.9-105, 355.9-106, or 355.9-107 pursuant to the debtor's security agreement.
- (3) Subsection (2) of this section is subject to KRS 355.4-210 on the security interest of a collecting bank, KRS 355.5-118 on the security interest of a letter-of-credit issuer or nominated person, KRS 355.9-110 on a security interest arising under Article 2 or 2A of this chapter, and KRS 355.9-206 on security interests in investment property.
- (4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:
 - (a) The security agreement becomes effective to create a security interest in the person's property; or
 - (b) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
- (5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:
 - (a) The agreement satisfies subsection (2)(c) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

- (b) Another agreement is not necessary to make a security interest in the property enforceable.
- (6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by KRS 355.9-315 and is also attachment of a security interest in a supporting obligation for the collateral.
- (7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
- (9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Effective: July 1, 2013

History: Amended 2012 Ky. Acts ch. 132, sec. 62, effective July 1, 2013. -- Repealed and reenacted 2001 Ky. Acts ch. 119, sec. 4, effective July 1, 2001. -- Repealed and reenacted 2000 Ky. Acts ch. 408, sec. 33, effective July 1, 2001. -- Amended 1996 Ky. Acts ch. 130, sec. 170, effective January 1, 1997. -- Amended 1986 Ky. Acts ch. 118, sec. 60, effective July 1, 1987. -- Created 1958 Ky. Acts ch. 77, sec. 9-203, effective July 1, 1960.

Legislative Research Commission Note (3/14/2013). 2013 Ky. Acts ch. 10, secs. 2 and 3 provide that the statutes in Article 9 of the Uniform Commercial Code that were amended or created in 2012 Ky. Acts ch. 132, secs. 60 to 99, are effective July 1, 2013. This statute was one of those sections. Since only the effective date of a prior Act was altered, and not the text of the affected statutes, reference to 2013 Ky. Acts ch. 10 does not appear in the history for this statute.

Legislative Research Commission Note (7/12/2012). In 2010, the National Conference of Commissioners on Uniform State Laws and the American Law Institute proposed a Uniform Act for adoption by the states that contained revisions to Article 9 of the Uniform Commercial Code. The effective date for all proposed Article 9 revisions was to be July 1, 2013. Those revisions were enacted in 2012 Ky. Acts Chapter 132, Sections 60 to 99. Sections 60 to 90 contained the substantive Article 9 revisions, and Sections 91 to 99 contained the transitional Article 9 revisions created to handle secured transactions made prior to July 1, 2013. Section 91 of that Act (codified as KRS 355.9-801) and Section 102 of that Act (a noncodified effective date provision) both stated, "Sections 91 to 99 of this Act take effect July 1, 2013." The normal effective date for legislation enacted at the 2012 Regular Session of the General Assembly is July 12, 2012. In Opinion of the Attorney General 12-010, issued July 3, 2012, Section 91 (codified as KRS 355.9-801) was determined to have contained a manifest clerical error, and should have instead read, "Sections 60 to 90 of this Act take effect July 1, 2013," thereby making the substantive Article 9 revisions effective on the same date as the transitional Article 9 provisions in conformity with the 2010 Uniform Act proposal and 2012 Ky. Acts Chapter 132, Section 102. This statute was one of the substantive provisions of Article 9 contained in 2012 Ky. Acts Chapter 132, Sections 60 to 90.

Legislative Research Commission Note (7/14/2000). Although 2000 Acts ch. 408, sec. 33, has a reference to "Section 170 of this Act" (which was codified as KRS 355.8-106) in subsection (2)(c)3. of this statute, that reference has been codified as KRS 355.8-301 (which was Section 172 of Chapter 408) in order to match the official text of Revised Article 9. Amendments to the introduced version of this bill in the Senate

inadvertently did not make the necessary adjustment to this internal reference; this failure was clearly a manifest typographical or clerical error and has been corrected in codification under KRS 7.136(1)(h).

Legislative Research Commission Note (7/14/2000). Although 2000 Acts ch. 408, sec. 33, has a reference to "Section 165 of this Act" (which was codified as KRS 355.2A-307) in subsection (3) of this statute, that reference has been codified as KRS 355.4-210 (which was Section 167 of Chapter 408) in order to match the official text of Revised Article 9. Amendments to the introduced version of this bill in the Senate inadvertently did not make the necessary adjustment to this internal reference; this failure was clearly a manifest typographical or clerical error and has been corrected in codification under KRS 7.136(1)(h).