

355.9-207 Rights and duties of secured party having possession or control of collateral. (Effective until January 1, 2025)

- (1) Except as otherwise provided in subsection (4) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (2) Except as otherwise provided in subsection (4) of this section, if a secured party has possession of collateral:
 - (a) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
 - (b) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
 - (c) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
 - (d) The secured party may use or operate the collateral:
 1. For the purpose of preserving the collateral or its value;
 2. As permitted by an order of a court having competent jurisdiction; or
 3. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
- (3) Except as otherwise provided in subsection (4) of this section, a secured party having possession of collateral or control of collateral under KRS 355.7-106, 355.9-104, 355.9-105, 355.9-106, or 355.9-107:
 - (a) May hold as additional security any proceeds, except money or funds, received from the collateral;
 - (b) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - (c) May create a security interest in the collateral.
- (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
 - (a) Subsection (1) of this section does not apply unless the secured party is entitled under an agreement:
 1. To charge back uncollected collateral; or
 2. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
 - (b) Subsections (2) and (3) of this section do not apply.

Effective: July 1, 2013

History: Amended 2012 Ky. Acts ch. 132, sec. 63, effective July 1, 2013. -- Repealed and reenacted 2000 Ky. Acts ch. 408, sec. 37, effective July 1, 2001. -- Amended 1962 Ky. Acts ch. 83, sec. 5. -- Created 1958 Ky. Acts ch. 77, sec. 9-207.

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.