

355.9-607 Collection and enforcement by secured party.

- (1) If so agreed, and in any event after default, a secured party:
 - (a) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - (b) May take any proceeds to which the secured party is entitled under KRS 355.9-315;
 - (c) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
 - (d) If it holds a security interest in a deposit account perfected by control under KRS 355.9-104(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and
 - (e) If it holds a security interest in a deposit account perfected by control under KRS 355.9-104(1)(b) or (c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
- (2) If necessary to enable a secured party to exercise under subsection (1)(c) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
 - (a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
 - (b) The secured party's sworn affidavit in recordable form stating that:
 1. A default has occurred with respect to the obligation secured by the mortgage; and
 2. The secured party is entitled to enforce the mortgage nonjudicially.
- (3) A secured party shall proceed in a commercially reasonable manner if the secured party:
 - (a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
 - (b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (4) A secured party may deduct from the collections made pursuant to subsection (3) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Effective: July 1, 2013

History: Amended 2012 Ky. Acts ch. 132, sec. 90, effective July 1, 2013. -- Created 2000 Ky. Acts ch. 408, sec. 125, effective July 1, 2001.

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.