

South Dakota Codified Laws

Title 57a. Uniform Commercial Code

Chapter 57A-9. Secured Transactions (Refs & Annos)

Part 2. Effectiveness of Security Agreement--Attachment of Security Interest--Rights of Parties to Security Agreement

SDCL § 57A-9-204

57A-9-204. Interest in after-acquired collateral

Currentness

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Credits

Source: [SL 2000, ch 231](#).

Editors' Notes

UNIFORM COMMERCIAL CODE COMMENT

1. **Source.** Former Section 9-204.

2. **After-Acquired Property; Continuing General Lien.** Subsection (a) makes clear that a security interest arising by virtue

of an after-acquired property clause is no less valid than a security interest in collateral in which the debtor has rights at the time value is given. A security interest in after-acquired property is not merely an “equitable” interest; no further action by the secured party—such as a supplemental agreement covering the new collateral—is required. This section adopts the principle of a “continuing general lien” or “floating lien.” It validates a security interest in the debtor’s existing and (upon acquisition) future assets, even though the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. See Section 9-205. Subsection (a), together with subsection (c), also validates “cross-collateral” clauses under which collateral acquired at any time secures advances whenever made.

3. After-Acquired Consumer Goods. Subsection (b)(1) makes ineffective an after-acquired property clause covering consumer goods (defined in Section 9-109), except as accessions (see Section 9-335), acquired more than 10 days after the secured party gives value. Subsection (b)(1) is unchanged in substance from the corresponding provision in former Section 9-204(2).

4. Commercial Tort Claims. Subsection (b)(2) provides that an after-acquired property clause in a security agreement does not reach future commercial tort claims. In order for a security interest in a tort claim to attach, the claim must be in existence when the security agreement is authenticated. In addition, the security agreement must describe the tort claim with greater specificity than simply “all tort claims.” See Section 9-108(e).

5. Future Advances; Obligations Secured. Under subsection (c) collateral may secure future as well as past or present advances if the security agreement so provides. This is in line with the policy of this Article toward security interests in after-acquired property under subsection (a). Indeed, the parties are free to agree that a security interest secures any obligation whatsoever. Determining the obligations secured by collateral is solely a matter of construing the parties’ agreement under applicable law. This Article rejects the holdings of cases decided under former Article 9 that applied other tests, such as whether a future advance or other subsequently incurred obligation was of the same or a similar type or class as earlier advances and obligations secured by the collateral.

6. Sales of Receivables. Subsections (a) and (c) expressly validate after-acquired property and future advance clauses not only when the transaction is for security purposes but also when the transaction is the sale of accounts, chattel paper, payment intangibles, or promissory notes .. This result was implicit under former Article 9.

7. Financing Statements. The effect of after-acquired property and future advance clauses as components of a security agreement should not be confused with the requirements applicable to financing statements under this Article’s system of perfection by notice filing. The references to after-acquired property clauses and future advance clauses in this section are limited to security agreements. There is no need to refer to after-acquired property or future advances or other obligations secured in a financing statement. See Section 9-502, Comment 2.

[Notes of Decisions \(4\)](#)

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S D C L § 57A-9-204, SD ST § 57A-9-204
Current through 2018 Session Laws and Supreme Court Rule 18-15

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Notes Of Decisions (4)

Leased property

Fact that mortgagee filed financing statement which gave it security in after-acquired personal property did not entitle mortgagee to hog-finishing barn which was leased by mortgagor and installed on subject premises, since lease of the hog-finishing barn was not intended as a security device, and the financing statement itself covered only property in which mortgagor had an ownership interest, not property he leased. SDCL 57-35-2 . [First Nat. Bank of Aberdeen v. Jacobs, 1978, 273 N.W.2d 743](#) . [Secured Transactions 116](#)

Replacement property

General language in after-acquired property clause of security agreement would not be interpreted to cover vehicles other than those therein specifically enumerated, unless they were given and accepted in replacement of specified vehicles, and thus, creditor's security interest never attached to after-acquired trucks which were trade-ins for vehicles that were not listed in security agreement; after-acquired property clause provided that security interest would include: "all increases, additions, accessions thereto and substitutions therefor now owned or hereafter acquired, or held on consignment, including all proceeds and products thereof." SDCL 57A-9-203(1)(a) , 57A-9-312(5)(b) . [Farm Credit Services of the Midlands, PCA v. First State Bank of Newcastle, Wyoming, 575 N.W.2d 250, 1998 S.D. 13](#) , rehearing denied. [Secured Transactions 116](#)

Possession of property by debtor

Under South Dakota law, possessor retained sufficient "rights" in cattle purchased with borrower's money intended for resale to allow security interest to attach them under after-acquired property clause of another loan since interest and authority exceeded "naked possession" where possessor was given complete discretion to select, purchase, and care for cattle, oral agreement for purchase and sale never specified time of sale and at no time did lender for purchase of cattle object or assert any interest in them. U.C.C. §§ 9-202 comment, 9-203. [Brown v. U.S. By and Through Farmers Home Admin. of Dept. of Agriculture, 1985, 622 F.Supp. 1047](#) . [Secured Transactions 116](#)

Continuation statement

Bank, which locally filed continuation statement, was not perfected in any property acquired by debtors subsequent to date on which law was changed to require central filing, even though security interests effective before that date remained perfected until they lapsed. U.C.C. § 9-401 ; SDCL 57A-11-105(2) . [In re Painter, 1984, 39 B.R. 544](#) . [Secured Transactions 90](#) ; [Secured Transactions 116](#)

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