

THE NOTICE OF SALE: WHAT YOU NEED TO KNOW

We receive many inquiries from our clients in regard to the requirements under the Uniform Commercial Code for notice of sale.

A so-called "notice of sale" is what the secured creditor sends a debtor after repossession of its collateral and prior to the sale. The purpose of the notice of sale is to not only advise the debtor of the impending sale, but also to effectively cut off the debtor's redemption rights.

Who is entitled to receive the notice of sale? The UCC as adopted in Kentucky requires that notice be sent to the "debtor" and to any other secured party from whom the secured creditor has received written notice of a claim to the collateral. The term "debtor" includes all co-makers and guarantors — in short, anyone who is liable for the debt. If the debtor is a separate individual from the owner of the collateral, then the owner is entitled to separate notice as well.

Even if the co-makers are husband and wife residing at the same residence, each should receive a separate notice of sale.

When should a notice be sent? The UCC requires "reasonable notification." A cautious creditor might give as much as thirty days notice when the circumstances warrant it. In the case of a routine sale of a repossessed automobile, two weeks to ten days should be adequate.

What information must the notice of sale convey? This depends upon whether the sale is going to be a private or public one. If the sale is to be a private one, then the notice need only give the date after which the sale will take place. It is a good practice, however, when a creditor is considering a sale to a specific individual for a specific price, to disclose what that sale price will be unless higher bids are received or the debtor redeems his property by paying off the balance.

If the collateral is to be sold at a public sale, the notice should give the time and place of the public sale.

In either case, if the notice of sale does not give the amount for which the debtor may redeem his property, then it is a good practice to include a phone number which the debtor may call to obtain that information prior to the sale.

It is also good practice to state in the notice of sale that the recipient will be looked to for any deficiency balance in the event the sales proceeds are not sufficient to satisfy the outstanding balance.

How should the notice of sale be sent? Since the Code only requires that it be sent to the last known address of the debtor, regular mail is sufficient. Of course, certified mail offers the opportunity to document the notice's receipt in the event that later becomes an issue. Since certified mail is frequently refused by debtors avoiding their creditors, however, it is probably the best practice to send one copy by regular first-class mail and one copy by

certified mail. By doing so a creditor might be able to more easily establish that not only was notice sent, but that it also was in all probability received.

When is a notice of sale unnecessary? The Code does allow a secured creditor to forego sending notice of sale if the collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market — for example, common shares sold on the New York Stock Exchange.

If the collateral involved is not consumer goods, the creditor can also forego the notice of sale requirement if the debtor executes a written waiver of his right to notice of sale after default has occurred.



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