

UNIFORM COMMERCIAL CODE (EXCERPT)

Act 174 of 1962

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

440.1201 Definitions.

Sec. 1201. (1) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this act that apply to particular articles or parts of this act, have the meanings stated.

(2) Subject to definitions contained in other articles of this act that apply to particular articles or parts of this act, and unless the context otherwise requires, as used in this act:

(a) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(b) "Aggrieved party" means a party entitled to resort to a remedy.

(c) "Agreement", as distinguished from contract as defined in subdivision (l), means the bargain of the parties in fact, as found in their language or by implication from other circumstances, including course of performance, course of dealing, or usage of trade or course of performance as provided in section 1303.

(d) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(e) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(f) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(g) "Branch" includes a separately incorporated foreign branch of a bank.

(h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(i) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. The term does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(j) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include any of the following:

(i) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to surrounding text of the same or lesser size.

(ii) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(l) "Contract", as distinguished from agreement as defined in subdivision (c), means the total legal obligation that results from the parties' agreement as determined by this act as supplemented by any other applicable laws.

(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(n) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

- (o) "Delivery" means either of the following:
 - (i) With respect to an electronic document of title, a voluntary transfer of control.
 - (ii) With respect to an instrument, document of title, or chattel paper, a voluntary transfer of possession.
- (p) "Document of title" means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. "Electronic document of title" means a document of title evidenced by a record consisting of information stored in an electronic medium. "Tangible document of title" means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
- (q) "Fault" means a default, breach, or wrongful act or omission.
- (r) "Fungible goods" means either of the following:
 - (i) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit.
 - (ii) Goods that by agreement are treated as equivalent.
- (s) "Genuine" means free of forgery or counterfeiting.
- (t) "Good faith", except as otherwise provided in article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (u) "Holder" means any of the following:
 - (i) A person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.
 - (ii) A person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession.
 - (iii) A person in control of a negotiable electronic document of title.
- (v) "Insolvency proceedings" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
- (w) "Insolvent" means any of the following:
 - (i) Having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute.
 - (ii) Being unable to pay debts as they become due.
 - (iii) Being insolvent within the meaning of federal bankruptcy law.
- (x) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more countries.
- (y) "Organization" means a person other than an individual.
- (z) "Party", as distinct from "third party", means a person that has engaged in a transaction or made an agreement subject to this act.
- (aa) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (bb) "Present value" means the amount as of a date certain of 1 or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (cc) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (dd) "Purchaser" means a person that takes by purchase.
- (ee) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (ff) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (gg) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
- (hh) "Right" includes remedy.
- (ii) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel

paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. The term does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2401, but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 2505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2401 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a security interest is determined under section 1203.

(jj) "Send" in connection with a writing, record, or notice means any of the following:

(i) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified on the instrument or otherwise agreed, or if there is not an address specified or agreed, to any address reasonable under the circumstances.

(ii) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(kk) "Signed" includes any symbol executed or adopted by a party with present intention to adopt or accept a writing.

(ll) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(mm) "Surety" includes a guarantor or other secondary obligor.

(nn) "Term" means a portion of an agreement that relates to a particular matter.

(oo) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(pp) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(qq) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1964, Act 250, Eff. Aug. 28, 1964;—Am. 1978, Act 369, Eff. Jan. 1, 1979;—Am. 1987, Act 16, Imd. Eff. Apr. 24, 1987;—Am. 1992, Act 101, Eff. Sept. 30, 1992;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 87, Eff. July 1, 2013.

440.1202 Definitions.

Sec. 1202. For purposes of this act:

(a) Subject to subdivision (f), a person has "notice" of a fact if the person has any of the following:

(i) Actual knowledge of it.

(ii) Received a notice or notification of it.

(iii) From all the facts and circumstances known to the person at the time in question, reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking those steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subdivision (f), a person "receives" a notice or notification when either of the following occurs:

(i) It comes to that person's attention.

(ii) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of those communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

440.1203 Transaction in form of lease; "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under lease agreement; determination.

Sec. 1203. (1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and any of the following are met:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(d) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because any of the following are met:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into.

(b) The lessee assumes risk of loss of the goods.

(c) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs.

(d) The lessee has an option to renew the lease or to become the owner of the goods.

(e) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(f) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if either of the following are met:

(a) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed.

(b) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(5) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

440.1204 Value for rights.

Sec. 1204. Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them for any of the following:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery under a preexisting contract for purchase.

(d) In return for any consideration sufficient to support a simple contract.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

440.1205 Time for taking action.

Sec. 1205. (1) Whether a time for taking an action required by this act is reasonable depends on the nature, purpose, and circumstances of the action.

(2) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or

within a reasonable time.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 2012, Act 86, Eff. July 1, 2013.

440.1206 Presumption.

Sec. 1206. Whenever this act creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1998, Act 278, Imd. Eff. July 27, 1998;—Am. 2012, Act 86, Eff. July 1, 2013.

440.1207 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to performance or acceptance of reservation of rights.

440.1208 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to right to accelerate or require collateral.

440.1209 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to subordination.

440.1210 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to definitions.

440.1211 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to contract, security, or instrument, and introduction of euro to agreement.