

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

PART 6
DISCHARGE AND PAYMENT

440.3601 Discharge; effect against holder in due course.

Sec. 3601. (1) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

440.3602 Discharge; payment; "signed" defined.

Sec. 3602. (1) Subject to subsection (5), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(2) Subject to subsection (5), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (3) even if the party obliged to pay the note has received a notification under this subsection.

(3) Subject to subsection (5), to the extent of a payment under subsections (1) and (2), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 3306 by another person.

(4) Subject to subsection (5), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any party that has acquired those rights and that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (2) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(5) The obligation of a party to pay the instrument is not discharged under subsections (1) to (4) if either of the following applies:

(a) A claim to the instrument under section 3306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument.

(b) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(6) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

440.3603 Tender of payment; effect; refusal of tender as discharge; interest; obligor ready and able to pay on due date.

Sec. 3603. (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is

discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993.

440.3604 Discharge by intentional voluntary act; canceling or striking out endorsement; "signed" defined.

Sec. 3604. (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(2) Cancellation or striking out of an endorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the endorsement.

(3) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

440.3605 Secondary obligor; rights and duties; agreement to modification or to extend time when payments are due; obligation secured by interest in collateral; discharge; impairing value of interest in collateral; knowledge of accommodation; consent or waiver of discharge; release or extension; burden of persuasion; presumption.

Sec. 3605.

(1) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(b) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(c) If the secondary obligor is not discharged under subdivision (b), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(2) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which 1 or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(b) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(c) To the extent that the secondary obligor is not discharged under subdivision (b), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(a) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(b) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(c) To the extent that the secondary obligor is not discharged under subdivision (b), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(4) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under article 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(5) A secondary obligor is not discharged under subsection (1)(c), (2), (3), or (4) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under section 3419(3) that the instrument was signed for accommodation.

(6) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(7) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide both of the following:

(a) That the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor.

(b) That the recourse of the secondary obligor continues as if the release or extension had not been granted.

(8) Except as otherwise provided in subsection (9), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(9) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

History: 1962, Act 174, Eff. Jan. 1, 1964;—Am. 1993, Act 130, Eff. Sept. 30, 1993;—Am. 2014, Act 101, Imd. Eff. Apr. 10, 2014.

440.3606 Repealed. 1993, Act 130, Eff. Sept. 30, 1993.

Compiler's note: The repealed section pertained to discharge, impairment of recourse or of collateral, and express reservation.