

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

ARTICLE 1
GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

440.1101 Uniform commercial code; short title of act; heading of article.

Sec. 1101. (1) This act shall be known and may be cited as the "uniform commercial code".

(2) This article shall be known and may be cited as the "uniform commercial code – general provisions".

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

440.1102 Applicability of articles.

Sec. 1102. This article applies to a transaction to the extent that it is governed by another article of this act.

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

440.1103 Construction of act.

Sec. 1103. (1) This act must be liberally construed and applied to promote the following underlying purposes and policies:

(a) To simplify, clarify, and modernize the law governing commercial transactions.

(b) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.

(c) To make uniform the law among the various jurisdictions.

(2) Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

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

440.1104 Construction of act as to implied repeal by subsequent legislation.

Sec. 1104. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: 1962, Act 174, Eff. Jan. 1, 1964.

440.1105 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to effectiveness of certain provisions in case of contrary agreements.

440.1106 Meanings.

Sec. 1106. All of the following apply in this act, unless the statutory context otherwise requires:

(a) Words in the singular number include the plural, and those in the plural include the singular.

(b) Words of any gender also refer to any other gender.

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

440.1107 Repealed. 2012, Act 86, Eff. July 1, 2013.

Compiler's note: The repealed section pertained to discharge of claims or rights after breach.

440.1108 Electronic signatures.

Sec. 1108. This article modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, except that nothing in this article modifies, limits, or supersedes section 7001(c) of that act, 15 USC 7001, or authorizes electronic delivery of any of the notices described in section 7003(b) of that act, 15 USC 7003.

History: Add. 2012, Act 86, Eff. July 1, 2013.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

440.1201 Definitions.

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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".

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.

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

440.1301 Applicability of law of this state or other state or nation; applicability of act to transactions bearing relation to state; provisions specifying applicable law.

Sec. 1301. (1) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of that other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1), and except as provided in subsection (3), this act applies to transactions bearing an appropriate relation to this state.

(3) If 1 of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (a) Section 2402.
- (b) Sections 2A105 and 2A106.
- (c) Section 4102.
- (d) Section 4A507.
- (e) Section 5116.
- (f) Section 8110.
- (g) Sections 9301 through 9307.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1302 Agreements; "unless otherwise agreed"; implication.

Sec. 1302. (1) Except as otherwise provided in subsection (2) or elsewhere in this act, the effect of any provision of this act may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this act may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this act requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this act of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1303 Course of performance, course of dealing, or usage of trade.

Sec. 1303. (1) For purposes of this act, a "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if both of the following are met:

(a) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party.

(b) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) For purposes of this act, a "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a

common basis of understanding for interpreting their expressions and other conduct.

(3) For purposes of this act, a "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage of trade must be proved as facts. If it is established that a usage of trade is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5) Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. All of the following apply if that construction is unreasonable:

- (a) Express terms prevail over course of performance, course of dealing, and usage of trade.
- (b) Course of performance prevails over course of dealing and usage of trade.
- (c) Course of dealing prevails over usage of trade.

(6) Subject to section 2209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by 1 party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1304 Good faith obligation.

Sec. 1304. Every contract or duty within this act imposes an obligation of good faith in its performance and enforcement.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1305 Administration of remedies; enforcement of right or obligation.

Sec. 1305. (1) The remedies provided in this act must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1306 Claim or right arising out of alleged breach; discharge.

Sec. 1306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1307 Prima facie evidence of certain documents.

Sec. 1307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1308 Performance or promise of performance; effect of reservation of rights; applicability of subsection (1) to accord and satisfaction.

Sec. 1308. (1) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not prejudice the rights reserved by that performance, promise, or assent. Words such as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1309 Accelerating payment or performance or requiring collateral or additional

collateral.

Sec. 1309. A term providing that 1 party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

History: Add. 2012, Act 86, Eff. July 1, 2013.

440.1310 Subordination.

Sec. 1310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

History: Add. 2012, Act 86, Eff. July 1, 2013.