

Florida's
New UCC
Article 12 –
Fla. Stat.
669

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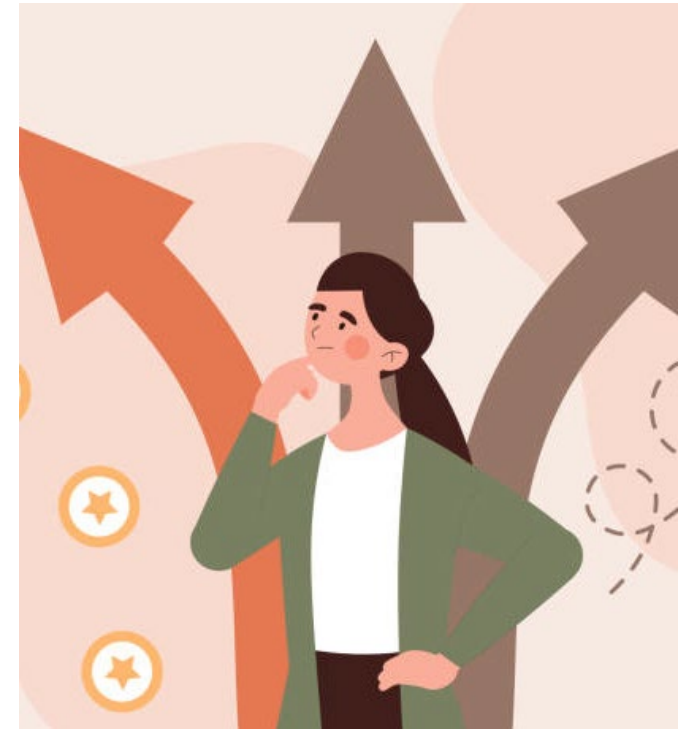
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Overview of Florida's New UCC Article 12

- New Fla. Stat. 669
- - Amended Fla. Stat. 679 and 679
 - (Secured Transactions / Chattel Paper)



Why New Art. 12 (F.S. 669) and How Amendments Effect F.S. 679 and 679

1. Expanded UCC framework: include digital assets, crypto, NFTs, blockchain token, tokenized smart contracts, distributed ledger technologies (DLTs), DAO certs (for decentralized autonomous organization), and any other “controllable electronic records”
2. Aim: Update and clarify debtor-creditor relationships for these emerging technologies
3. F.S. 679 and 679 amended to mirror UCC Art 12 (F.S. 669)



What is a Controllable Electronic Record*

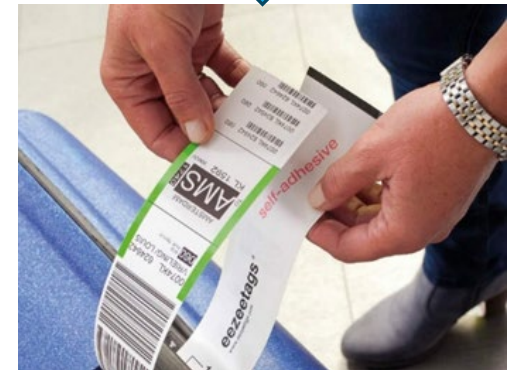
1. (a) Electronic accounts (including accounts receivable) and electronic payment intangibles (including electronic loan agreements); (b) Cryptocurrencies; (c) NFTs that qualify as CERs and other tethered assets; and (d) Electronic (fiat) money other than central bank digital currencies.
2. Controllable payment intangibles/controllable accounts may have an opt-out Art. 12 feature.
3. Controllable pmt intangibles/controllable acct requires debtor to pay the person in control of the CER



*F.S. 669.102(1); F.S. 679.1021(1)(b); 1021(1)(mmm); 1021(1)(cc) and (dd))

Required Elements of CERs

1. Must have the “controllable” attribute*
2. CER must be a “record;” CER be retrievable in a perceivable + conspicuous form (an id’d digital asset + debtor/lender data or account #); must be “electronic;” must be “controllable.”**
NFT or DAO certificate can be a CER.
3. CERs analogous to airport luggage tags
4. Eg.: Bitcoin residing on Exchange Platform (CoinBase) has an id’d CER and platform limits transfers w/o lender approval
5. Controllable payment intangibles/controllable accounts must require the debtor to pay the person in control of the CER



*See §§ 678.1021, 1061; §§ 679.1021, 1041(1)(d), 1051, 1053, and 1054.

** See §§ 671.201(34); 669.105(1)(b); § 671.201(17); and 669.105.

Highlights: Control and Take-Free Rule

- 1. Control:** A set of powers that include ability to derive substantially all benefits from the CER, or an exclusive power to prevent others from benefiting from the CER (may be shared), and have the capability to readily identify itself as having these powers.
- 2. Take Free Rule:** Allows qualifying purchaser (QP) of CER to acquire all rights transferor had, free of any property claims, if (i) bona fide purchaser, (ii) acting in good faith (iii) w/o notice of earlier claim, and (iv) takes control over CER.
- 3. Why:** Rule designed to facilitate the free and clear transfer of digital assets, enhancing liquidity and marketability



Highlights: Perfection by Control and Super-Priority

- 1. Perfection by Control:** A person obtains control of controllable acct/pmt intangible by obtaining control of the CER that evidences the controllable acct/pmt intangible. A person will be QP with respect to controllable acct/pmt intangible only if it is a QP with respect to the CER that represents the controllable acct/pmt intangible
- 2. No central registration system.** No UCC 1 Financing Stmt.
- 3. Super-Priority:** Security interests in CERs, controllable accts, and controllable pmt intangibles can be perfected by filing, § 679.3121(1), but super priority is established by control.



Highlight: Super-Priority Part II

- 1. Control Establishes Super-Priority.** Security interest is perfected by control of CER (or controllable acct/pmt intangible evidenced by the CER), and has priority over a security interest not perfected by control, § 679.3251.
- 2. Non-temporal, Super-Priority Perfection.** Unlike the QP provisions of Art. 12, § 669.102(1)(b), amended Art. 9 priority does not require that the secured party not have notice of someone else's property claim to the collateral. § 679.331.
- 3. Choice of Law:** In contrast to security interest in CER perfected by the filing of UCC 1 Fin Stmt, priority of the security interest is governed by the CER's jurisdiction, rather than location of the debtor, § 679.3063(1).



UCC FINANCING STATEMENT

Debtor Name: _____

Secured Party Name: _____

Description of Collateral: _____



UCC 2022 Amendments to the Uniform Commercial Code

The UCC is updated periodically to keep pace with legal and technological developments. The 2022 amendments implement the following updates:

1. Create a new UCC Article 12 on Controllable Electronic Records
2. Update Article 9 to allow perfection of security interests in digital assets
3. New rules for mixed transactions involving both goods and services
4. Update rules for electronic negotiable instruments
5. Updated terminology to account for electronic signatures and documents

Summary: Transition Rules

- 1. General.** General rule is UCC Amendments will have a certain Effective Date (ex. July 1, 2026), hence choice-of-law rules are important to determine which state's transition rules apply.
- 2. Established Priorities.** The key exception to transition rule on Effective Date is: any pre-effective date priority will stay in place for two (2) years following the statute's Effective Date, § 669.502(1)(a) (an "adjustment date"). §§ 669.702 - 669.706.
- 3. Best Resource:** Many examples regarding rules and perfecting security interest: "Explaining the 2022 UCC Amendments Through Illustrations," S. Sepinuck, 12 Transactional Lawyer 1, 2 (Oct. 2022).



UCC FINANCING STATEMENT
FORM #UCC-1 (REVISED 2017)

DEBTOR NAME (PRINT OR TYPE)
SECURED PARTY NAME (PRINT OR TYPE)
DESCRIPTION OF COLLATERAL (PRINT OR TYPE)



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Questions and Resources

1. Fla Bar Business Law Section, Article 12 – F.S. 669 Taskforce at <https://flabizlaw.org/committees-task-forces/task-forces/article-12-f-s-669-task-force/>.
2. Online Fla Bar CLE Seminar: “The New UCC Article 12: Why, When and What Does It Do?” Online at item #1 above.
- 3.
4. White Paper: “Florida’s New UCC Article 12 – Fla. Stat. 669, Secured Transactions for Digital Assets and Associated UCC Amendments.” Online at item #1 above.
5. “White Paper ver 20231230a + FS 669 Chart.” Online at item #1 above.
6. Article 12 and Related Amendments on ULC’s website at <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac>
7. “Proposed 2022 Amendments to the Uniform Commercial Code: Digital Assets,” E. Smith, et al., ABA, Business Law Today, March 25, 2022, at <https://businesslawtoday.org/2022/03/proposed-2022-amendments-uniform-commercial-code-digital-assets/>.
8. “Explaining the 2022 UCC Amendments Through Illustrations,” S. Sepinuck, 12 Transactional Lawyer 1, 2 (Oct. 2022).
9. Fla Legis UCC Art 12 – Fla Bill Draft verMay23. Online at item #1 above.



Thank you



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Chair, Fla. Bar Article 12 – F.S. 669 Taskforce

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