

Analysis of Florida’s Judgment Lien Statute and Effect of 2022 UCC Amendments

Bankruptcy/UCC Committee Article 12 Study Group

The Article 12 Study Group for the Bankruptcy/UCC Committee (the “**Study Group**”) examined whether, in light of the 2022 Uniform Commercial Code Amendments (the “**2022 UCC Amendments**”), any corresponding changes were needed to Florida’s judgment lien statute. Before Florida’s judgment lien statute was amended in 2023 (the “**Judgment Lien Amendments**”), a judgment lien arising from a judgment lien certificate generally only attached to a judgment debtor’s tangible property. However, the Judgment Lien Amendments added payment intangibles and accounts to the types of property subject to a judgment lien. With the 2022 UCC Amendments’ introduction of “controllable accounts” and “controllable payment intangibles” as new types of recognized digital assets, the Study Group determined that a simple amendment to Florida’s judgment lien statute is warranted to preserve the purpose and intent of the 2022 UCC Amendments as to these assets.

1. Introduction

Under the new Article 12 in the 2022 UCC Amendments, proposed as new Fla. Stat. § 669, a new category of digital asset is designated: “controllable electronic record” (“**CER**”). A CER is defined as a “record stored in an electronic medium that is susceptible to ‘control.’” Article 12 and the revisions to Article 9 introduce principles of negotiability to CERs—“take free” rules—effectively permitting CERs to be transferred so as to cut off competing property claims (including security interests) to the CER. The preferred method of perfecting a security interest in a CER is through “control,” and a security interest in a CER perfected by “control” has priority over a security interest in the CER perfected only by filing a financing statement. The definition of “control” for CERs is intended to provide flexibility for use with different and emerging technologies.

For a complete discussion on the intricacies 2022 UCC Amendments, please refer to the White Paper by the Business Law Section’s Article 12 Task Force, *Florida New UCC Article 12 – Fla. Stat. 669: Secured Transactions for Digital Assets and Associated UCC Amendments*.¹

2. “Controllable accounts” and “controllable payment intangibles”

The 2022 UCC Amendments also introduced “controllable accounts” and “controllable payment intangibles,” which are subsets of accounts and payment intangibles respectively. A “controllable account” is an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control of the controllable electronic record. Similarly, a “controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control of the controllable electronic record.

¹ A copy of the White Paper can be accessed at <https://flabizlaw.org/committees-task-forces/task-forces/article-12-fs-669-task-force/>

If a party in control of a CER evidencing a controllable account or controllable payment intangible transfers control, the controllable account or controllable payment intangible is transferred with the CER. If the transferee is a “qualifying purchaser,” it benefits from the same “take-free” rule applicable to CERs. The 2022 UCC Amendments define a “qualifying purchaser” as a purchaser that obtains control of a CER for value, in good faith, and without notice of a claim of a property right in the CER. Filing a UCC-1 financing statement is not notice of a claim of a property right in a controllable electronic record.²

In sum, the new “take free” rules with respect to “controllable accounts” and “controllable payment intangibles” are analogous to the “holder in due course” rule for negotiable instruments. The official comments to the 2022 UCC Amendments evidence this intent:

An account debtor (obligor) on such a right to payment agrees to make payments to the person that has control of the controllable electronic record that evidences the right to payment. Assignments and other aspects of these rights to payment are governed by revisions to UCC Article 9 . . . as well as Article 12. Because a qualifying purchaser of a controllable account or controllable payment intangible will take free of competing property claims, these rights to payment also would have this attribute of negotiability. Article 12 provides special rules with respect to the payment obligations and conditions of discharge of account debtors on controllable accounts and controllable payment obligations.

2022 UCC Amendments, Prefatory Note to Uniform Commercial Code Amendments (2022), Cmt. 2(b).

3. Florida’s Current Judgment Lien Statute

Because the Judgment Lien Amendments added accounts and payment intangibles as property subject to a judgment lien, the Study Group has determined that an amendment to Section 55.205 of the Florida Statutes is required to preserve the purpose and effect of the 2022 UCC Amendments with respect to “controllable accounts” and “controllable payment intangibles.”

The property subject to a judgment lien in Florida is described in Fla. Stat. § 55.202(2):

(2) A judgment lien may be acquired on a judgment debtor’s interest in all personal property in this state subject to execution under s. 56.061, **including payment intangibles and accounts**, as those terms are defined in s. 679.1021(1), and the proceeds thereof, but excluding fixtures, money, negotiable instruments, and mortgages.

Thus, the property over which a judgment lien can be acquired consists of: (i) all personal property in this state subject to execution under s. 56.061,³ and (ii) payment intangibles and

² 2022 UCC Amendments § 12-104(h).

³ Section 56.061, in turn, provides: “**56.061 Property subject to execution.**—Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution. Likewise, the interest in personal property in possession of a vendee under a retained title

accounts, as those terms are defined in s. 679.1021(1). However, the statute expressly excludes “fixtures, money, negotiable instruments, and mortgages.”

As an initial observation, under the existing judgment lien statute, cryptocurrency such as Bitcoin would not be subject to a judgment lien. CERs are defined as general intangibles under the 2022 UCC Amendments, and “general intangibles” were not added to the type of property subject to a judgment lien under the Judgment Lien Amendments. Case law predating the Judgment Lien Amendments held that a judgment lien does not apply to intangible rights such as contract rights or choses of action. *Peninsula State Bank v. United States*, 211 So. 2d 3, 5 (Fla. 1968); *See also In re Cohen*, No. 09-16860-BKC-PGH, 2009 WL 3675400, at *3 (Bankr. S.D. Fla. Oct. 30, 2009) (holding that “a judgment lien does not attach to intangible property”).

However, with the insertion of accounts and payment intangibles into the judgment lien statute, those specific types of intangibles *are* now subject to judgment liens. As discussed *supra*, the driving intent behind controllable accounts and controllable payment intangibles is to imbue a type of negotiability to these digital assets. To preserve this type of negotiability, and considering that the judgment lien statute already expressly carves out “negotiable instruments” from the effect of a judgment lien, the Study Group believes that “controllable accounts” and “controllable payment intangibles” should likewise be excluded from the effect of a judgment lien.

The Study Group proposes that, as part of the amendments to Florida’s UCC to incorporate the 2022 UCC Amendments, that the judgment lien statute, Fla. Stat. § 55.202, also be amended to exclude “controllable accounts” and “controllable payment intangibles.” Proposed bill text is attached to this analysis. The primary change is reproduced below:

(2) A judgment lien may be acquired on a judgment debtor’s interest in all personal property in this state subject to execution under s. 56.061, including payment intangibles and accounts, as those terms are defined in s. 679.1021(1), and the proceeds thereof, but excluding fixtures, money, negotiable instruments, ~~and mortgages, and controllable payment intangibles and controllable accounts~~ as those terms are defined in s. 679.1021(1).

contract or conditional sale contract shall be subject to levy and sale under execution to satisfy a judgment against the vendee. This shall be done by making the levy on such personal property.”

1 **55.202 Judgments, orders, and decrees; lien on personal**
2 **property.-**

3 (1) A judgment lien securing the unpaid amount of any money
4 judgment may be acquired by the holder of a judgment:

5 (a) Enforceable in this state under its laws or the laws of
6 the United States;

7 (b) Entered by an issuing tribunal with respect to a
8 support order being enforced in this state pursuant to
9 chapter 88; or

10 (c) Enforceable by operation of law pursuant to
11 s. 61.14(6).

12 (2) A judgment lien may be acquired on a judgment debtor's
13 interest in all personal property in this state subject to
14 execution under s. 56.061, including payment intangibles
15 and accounts, as those terms are defined in s. 679.1021(1),
16 and the proceeds thereof, but excluding fixtures, money,
17 negotiable instruments, ~~and mortgages,~~ and controllable
18 payment intangibles and controllable accounts as those
19 terms are defined in s. 679.1021(1).

20 (a) For payment intangibles and accounts subject to a
21 judgment lien under subsection (2) and the proceeds
22 thereof:

23 1. The rights of a judgment lienholder under this section
24 are subject to the rights under chapter 679 of a secured
25 party, as defined in s. 679.1021(1), who has a prior filed

26 financing statement encumbering such payment intangibles or
27 accounts and the proceeds thereof.

28 2. This section does not affect the obligation under
29 s. 679.607(1) of an account debtor, as defined in
30 s. 679.1021(1), except as the rights and obligations under
31 this paragraph are otherwise adjudicated under applicable
32 law in a legal proceeding to which the secured party and
33 account debtor are joined as parties.

34 (b) A judgment lien is acquired by filing a judgment lien
35 certificate in accordance with s. 55.203 with the
36 Department of State after the judgment has become final and
37 if the time to move for rehearing has lapsed, no motion for
38 rehearing is pending, and no stay of the judgment or its
39 enforcement is then in effect. A court may authorize, for
40 cause shown, the filing of a judgment lien certificate
41 before a judgment has become final when the court has
42 authorized the issuance of a writ of execution in the same
43 matter. A judgment lien certificate not filed in compliance
44 with this subsection is permanently void and of no effect.

45 (c) For any lien, warrant, assessment, or judgment
46 collected by the Department of Revenue, a judgment lien may
47 be acquired by filing the judgment lien certificate
48 information or warrant with the Department of State in
49 accordance with subsection (5).

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50 (d) Except as provided in s. 55.208, the effective date of
51 a judgment lien is the date, including the time of day, of
52 filing. Although no lien attaches to property, and a
53 creditor does not become a lien creditor as to liens under
54 chapter 679, until the debtor acquires an interest in the
55 property, priority among competing judgment liens is
56 determined in order of filing date and time.

57 (e) Except as provided in s. 55.204(3), a judgment creditor
58 may file only one effective judgment lien certificate based
59 upon a particular judgment.

60 (3) Except as otherwise provided in s. 55.208, the priority
61 of a judgment lien acquired in accordance with this section
62 or s. 55.204(3) is established at the date and time the
63 judgment lien certificate is filed.

64 (4) As used in ss. 55.201-55.209, the terms "holder of a
65 judgment" and "judgment creditor" include the Department of
66 Revenue with respect to a judgment being enforced by the
67 Department of Revenue as the state IV-D agency.

68 (5) Liens, assessments, warrants, or judgments filed
69 pursuant to paragraph (2)(c) may be filed directly into the
70 central database by the Department of Revenue, or its
71 designee as determined by its executive director, through
72 electronic or information data exchange programs approved
73 by the Department of State. Such filings must contain the
74 information set forth in s. 55.203(1).

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