THE JOURNAL RECORD

# Gavel to Gavel: Banks, borrowers, and Bitcoin – using crypto as collateral

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Lenders and borrowers should take note of upcoming changes to Oklahoma's Uniform Commercial Code (UCC), which will guide lenders desiring to perfect a security interest in cryptocurrencies and other digital assets.

Effective November 1, 2024, Oklahoma's UCC will generally align with the Uniform Law Commission's 2022 changes to the UCC, which have been adopted by 20 other states as of this writing.

The most sweeping change is the new Article 12, governing "controllable electronic records" (CER). A CER is defined as "a record stored in an electronic medium that can be subjected to control." The definition of CER was designed to encompass virtual (non-fiat) currencies, non-fungible tokens (NFTs), and digital assets in which specified rights to payment are embedded, like Bitcoin. Though outside this article's scope, CERs also provide a mechanism for evidencing rights to payment via "controllable accounts" and "controllable payment intangibles."

The amendments categorize a CER as a form of general intangible, so a CER-like Bitcoin will be covered by a security agreement that includes general intangibles in the collateral description. A lender may perfect its interest in a CER by filing a financing statement, but a secured party with "control" over a CER has priority.

To perfect by control, a lender must have (a) the power to enjoy the benefit of the CER, (b) the exclusive power to prevent others from enjoying the benefit of the CER, (c) the exclusive power to transfer control of the CER, and (d) the ability to identify itself to third-parties as having power to accomplish each of the foregoing (for example, via a cryptographic key).

Priority for two competing parties with control over a CER will be determined by the traditional first-in-time, first-in right rule.

Like with chattel paper and many other types of assets, the new Article 12 provides that a third party who purchases a CER for value, in good faith, and without notice of a competing claim will acquire it free from competing property interests. A lender's control over a CER should make it difficult for a third party to purchase CER in good faith after the lender obtains control.

While lenders navigate the complexities of these new laws, borrowers should expect lenders to require loans secured by CER to have other credit support such as guaranties and more traditional collateral, often coupled with enhanced loan covenants.

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