

# Who Owes Whom? Understanding Debtor Rights and Assignments under UCC 9-406

**Presented by:**

John M. Riccione, Taft

Brianna M. Skelly, Taft

William J. Serritella, Jr., Taft

Elizabeth Winkowski, Taft

David Susler, National Material L.P.



# Welcome and Some Housekeeping Items

- Be sure to sign-in for MCLE Credit at the registration desk.
- Ask questions! Our panelists are happy to engage with you.
- If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week.
- Watch for the survey/feedback link sent to your email after the program.

## A reminder about the benefits of ACC membership...

- Free CLE, Roundtables, DEI & Professional Development Programs
- Socials, Special Networking Groups, Annual Celebration Event
- Community Outreach, Diversity Initiatives & Pro Bono Offerings
- Leadership and Speaking Opportunities, Chicago Lawyer Subscription
- Access to ACC Global Resources, including:
  - ACC ACC Survey Portal, Resource Library, Contracts Portal & Legal Ops Section
  - Docket Magazine & Newsstand (searchable legal news feed)
  - E-Groups and Committees on Substantive Practice Areas

# Today's Presenters



John M. Riccione  
Taft

[jriccione@taftlaw.com](mailto:jriccione@taftlaw.com)

(312) 836-4173



William J. Serritella, Jr.  
Taft

[wserritella@taftlaw.com](mailto:wserritella@taftlaw.com)

(312) 840-4396



Brianna M. Skelly  
Taft

[bskelly@taftlaw.com](mailto:bskelly@taftlaw.com)

(312) 836-4195



Elizabeth Winkowski  
Taft

[ewinkowski@taftlaw.com](mailto:ewinkowski@taftlaw.com)

(312) 840-4307



David Susler  
National Material L.P.

[dsusler@nmlp.com](mailto:dsusler@nmlp.com)

(847) 806-7273

# Who Owes Whom? Understanding Debtor Rights and Assignments Under UCC 9-406.

- UCC 9-406
- Practical Example
- Ineffective Anti-Assignment Provisions
- Best Practices



# Section 9-406 in General

- **Applies to Secured Parties**
  - Section 9-406 uses the terms assignors and assignees
  - These terms were defined in 2022 under Section 9-102:
    - (7A) “Assignee”, except as used in “assignee for benefit of creditors”, means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.
    - (7B) “Assignor” means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.
- **Purpose is to protect account debtor and create certainty; explains how an account debtor satisfies its payment obligations when assignment occurs**
- **Does not create a private right of action**
  - Forest Cap., LLC v. BlackRock, Inc., 658 F. App’x 675 (4th Cir. 2016)
- **However, secured party has right to collect under Section 9-607 in the event of default**
  - Durham Com. Cap. Corp. v. Ocwen Loan Servicing, LLC, 777 F. App’x 952 (11th Cir. 2019)

# 810 ILCS 5/9-406(a) – Effect of Notification

- **Sec. 9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

•  
**(a) Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i) and (l), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.



# 810 ILCS 5/9-406(b) – Ineffective Notification

- **b) When notification ineffective.** Subject to subsections (h) and (l), notification is ineffective under subsection (a):
  - (1) if it does not reasonably identify the rights assigned;
  - (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or
  - (3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
    - (A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
    - (B) a portion has been assigned to another assignee; or
    - (C) the account debtor knows that the assignment to that assignee is limited.
- **(g) Subsection (b)(3) not waivable.** Subject to subsections (h) and (l), an account debtor may not waive or vary its option under subsection (b)(3).

# Case Studies on Notification

- **Effective Notification**
  - First State Bank Nebraska v. MP Nexlevel, LLC, 307 Neb. 198, 215, 948 N.W.2d 708 (2020) (effective notification adequately alleged)
  - Lendr Fin., LLC v. Medefis, Inc., 744 F. Supp. 3d 860, 865 (N.D. Ill. 2024) (effective notification adequately alleged)
- **Ineffective Notification**
  - MAO-MSO Recovery II, LLC v. Allstate Ins. Co., No. 17-CV-01340, 2018 WL 1565583, at \*4 (N.D. Ill. Mar. 30, 2018) (granting motion to dismiss where effective notification not alleged)
- **Course of Conduct**
  - United Cap. Funding Corp. v. Ericsson Inc., 728 F. App'x 682 (9th Cir. 2018) (material issues of fact as to effective notification because of course of conduct)



# 810 ILCS 5/9-406(c) – Proof of Assignment

- (c) Proof of assignment. Subject to subsections (h) and (l), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).



# Example:

You are Great Architects, LLC.  
You did a job with W-T  
Engineering, LLC and owe it  
money. Before paying W-T  
Engineering, Inc., you receive  
the following letter:

Taft/

davidfogel  
pc.  
attorneys at law

1225 Franklin Avenue / Suite 201 / Garden City, New York 11530 / Tel: (516) 279-1420 / Fax: (516) 279-1310

RECEIVED  
JUN 09 2025

BY: ..... CD .....

REPLY TO: ucc@dfogelpc.com  
FILE #: 45347

June 3, 2025

VIA FIRST CLASS MAIL

GREAT ARCHITECTS,  
LLC

## NOTICE OF LIEN UNDER THE UNIFORM COMMERCIAL CODE

Creditor: Rowan Advance Group LLC  
Merchant/Debtor: DRAFTPROS, LLC, TELCON HOLDINGS, INC, THE W-T GROUP, LLC,  
KAREL GOMEZ, W-T ENGINEERING, LLC and PRATUM CONSTRUCTION  
SERVICES, LLC  
Merchant/Vendor Tax ID: 61-1795374 / 81-2907218 / 81-4650126 //  
Balance Owed by Merchant/Debtor: \$682,012.50

Dear Sir or Madam:

This office represents ROWAN ADVANCE GROUP LLC ("Creditor") in the above-referenced matter.  
**PLEASE NOTE:** you are not in any legal trouble. You are receiving this notice due to having been identified as possibly having a business relationship with the above-referenced Merchant/Debtor and therefore, you may potentially be subject to this notice. The above-referenced Balance is the amount owed to Creditor by the Merchant/Debtor, not you.

The above-referenced Merchant/Debtor entered into and defaulted under the terms of a certain Future Receivables Agreement with Creditor (the "Agreement"). Pursuant to the Agreement, Creditor maintains a Lien and Security Interest in and on any and all of the Merchant/Debtor's accounts, receivables, and other collateral described in the enclosed UCC-1 Financing Statement (collectively "Accounts"), which may be maintained or processed by you on their behalf. The Lien and Security Interest was perfected on March 31, 2025 with the filing of the UCC-1 Financing Statement, a copy of which is enclosed.

Accordingly, you are hereby notified of our client's Lien and Security Interest and we respectfully demand your compliance with Sections 9-607 and 9-406 of the Uniform Commercial Code which requires you to immediately place a hold on any monies, payments and/or remittances which you may owe, currently or in the future, to the Merchant/Debtor up until the amount of the above-stated Balance Owed. Once the hold is placed, said monies should be remitted to our office as attorney for Creditor and made payable to "David Fogel PC as Attorneys." I am confident that once the above-requested action is taken, in addition to mitigating the risk to you with respect to appropriate disbursement of the funds in which our client has a secured interest, this matter will be quickly resolved.

→ IF YOU OWE ANY MONEY TO OR HAVE AN ACCOUNT WITH THE MERCHANT: contact our office to confirm that you have placed a hold on all Account(s) and payments/monies owed to the Merchant/Debtor and the amount being held.

→ IF YOU DO NOT OWE ANY MONEY TO OR DO NOT HAVE AN ACCOUNT WITH THE MERCHANT: contact our office to confirm that you do not owe any monies to the Merchant/Debtor so that we may update our file accordingly.

Your anticipated cooperation is appreciated.

Enclosure

June 17, 2025

# Example:

Great Architects, LLC then receives from the engineering company the attached letter:

## VIA ELECTRONIC MAIL

**Re: Notice of Sale of Assets and Request for Consent to Assignment**

Dear Valued Client:


We wish to inform you that on June 16, 2025, ALTURA CAPITAL FUND III, L.P. ("*Investor*") acquired substantially all of the assets of DRAFTPROS, LLC and its subsidiaries, WT-ENGINEERING, LLC and W-T GROUP, LLC (collectively, the "*DP/WT Companies*"), all of which have been assigned to a new entity, WT GROUP AEC, LLC ("*WT Group AEC*"), including the rights and interests to various agreements between the DP/WT Companies and various parties.

As such, we are writing to notify you that the sale of the assets included the assignment of the all active agreements, and outstanding accounts receivable between W-T GROUP, LLC and Williams Architects (as amended from time to time, the "*Agreement*").

In accordance with the terms of the Agreement, we kindly request your consent to the assignment of the Agreement from THE W-T GROUP, LLC to WT Group AEC (the "*Assignment*"). To confirm your agreement, please sign this letter below and return it to me. Thank you for your assistance and prompt attention to this matter. Further, any and all future payments under the Agreement should be made to WT Group AEC pursuant to the banking instructions attached.

Should you have any questions regarding the Assignment or this request for consent, please do not hesitate to reach out to me at 224.293.6333 or [LEGAL@WTGroup.com](mailto:LEGAL@WTGroup.com).

Very truly yours,  
WT GROUP AEC, LLC

By:   
Name: Troy N. Triphahn  
Title: President and CEO

The undersigned hereby consents to the Assignment to WT Group AEC as of the date first set forth above.

**Great Architects, LLC**

By: \_\_\_\_\_  
Name: Giovanni Fabrisi  
Title: President/Managing Principal

# UCC § 9-406(d) – Anti-Assignment Clauses Are Ineffective

- The law **overrides** any private contract terms that:
  - Ban or limit assigning the receivable,
  - Require consent to assign it, or
  - Say an assignment causes a breach or default of the underlying contract.
- **Bottom line:**
  - A business can assign its right to get paid—even if the contract tries to say otherwise.

# What is NOT Rendered Ineffective

- Business covenants that don't directly restrict assignment (e.g., how prepaid funds must be used).
- Breach of contract claims between assignor and account debtor.



# Practical Impairments to Assignment

- The official comments to Section 9-406 note that subsection (d) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. However, a court could still determine that such impairments amount to impermissible restrictions.
- **Example:**
  - Buyer-seller agreement for seller to manufacture products according to specs
  - Buyer agrees to make prepayments that seller will set aside solely for manufacture
  - Seller agrees not to assign its rights
  - Seller assigns rights to a secured party anyway
- **Analysis:**
  - Seller's anti-assignment agreement is ineffective under subsection (d); its agreement concerning the use of prepaid funds, which is not a restriction or prohibition on assignment, is not. However, if Secured Party notifies Buyer to make all future payments directly to Secured Party, Buyer will be obliged to do so under subsection (a) if it wishes the payments to discharge its obligation. Unless Secured Party releases the funds to Seller so that Seller can comply with its use-of-funds covenant, Seller will be in breach of that covenant.
  - In the example, there appears to be a plausible business purpose for the use-of-funds covenant. However, a court may conclude that a covenant with no business purpose other than imposing an impediment to an assignment actually is a direct restriction that is rendered ineffective by subsection (d).

# You Can Defend, But You Can't Sue



YOU MAY STILL ASSERT  
DEFENSES



YOU CANNOT SUE THE  
ASSIGNEE FOR DAMAGES



# Key Carveouts and Overrides

(e) Doesn't Apply to Sales of Promissory Notes or Payment Intangibles

(f) Legal Rules Can't Block Assignments Either

(h) Consumer Debtors Are Treated Differently

(i) Health Insurance Receivables Are Also Carved Out

(j) This Rule Trumps Conflicting Laws



# Best Practices

- Determine whether the Notice of Assignment is effective under Section 9-406
  - Does it reasonably identify the rights assigned?
  - Is the full amount assigned?
- If in doubt, demand proof of assignment under 9-406(c)
- Notify the vendor/assignor that you received Notice or are demanding proof
  - Continue to pay vendor/assignor until proof received
- If Notice is effective or proof provided, freeze payments to vendor and set up payments to assignee



**BEST  
PRACTICE**

# Questions?

Taft/

# Thank You!



John M. Riccione  
Taft

[jriccione@taftlaw.com](mailto:jriccione@taftlaw.com)

(312) 836-4173



William J. Serritella, Jr.  
Taft

[wserritella@taftlaw.com](mailto:wserritella@taftlaw.com)

(312) 840-4396



Brianna M. Skelly  
Taft

[bskelly@taftlaw.com](mailto:bskelly@taftlaw.com)

(312) 836-4195



Elizabeth Winkowski  
Taft

[ewinkowski@taftlaw.com](mailto:ewinkowski@taftlaw.com)

(312) 840-4307



David Susler  
National Material L.P.

[dsusler@nmlp.com](mailto:dsusler@nmlp.com)

(847) 806-7273