



# THE NEW UCC ARTICLE 12: WHAT YOU NEED TO KNOW NOW

American College of Bankruptcy  
March 22, 2025

## Presenters

Hon. Mindy Mora

Adam M. Back

Alice B. Eaton

Charles W. Mooney, Jr.

# Presenters



**The Honorable Mindy A. Mora** was appointed as a U.S. Bankruptcy Judge sitting in the Southern District of Florida, Palm Beach Division, on April 6, 2018. She practiced in the areas of Bankruptcy, Commercial Finance, and Securitized Real Estate Finance and Litigation from 1982 to 2018, prior to her appointment to the bench. Judge Mora is a member of the National Conference of Bankruptcy Judges and participates as a member of the Business Law Sections of both the American Bar Association and The Florida Bar, the Association of Commercial Finance Attorneys, the Bankruptcy Bar Association of South Florida, and the International Women's Insolvency and Restructuring Confederation. Presently, Judge Mora is actively involved in the Business Law Section of The Florida Bar by serving as the judicial co-chair of both the Bankruptcy/UCC Committee and the Long-Range Planning Committee. Throughout much of her legal practice, Judge Mora was active in the development of Florida's commercial laws, most recently as a member of The Florida Bar Business Law Section task forces that prepared draft Florida legislation adopting a modified version of the Uniform Commercial Real Estate Receivership Act and a modified version of U.C.C. Article 12.



**Adam M. Back** is a Member in Stoll Keenon Ogden's Lexington office where he serves a variety of clients through the Bankruptcy & Financial Restructuring, Business Litigation, Arbitration & Mediation, and Appellate practice groups. He has prominent experience in the energy, retail, agricultural, healthcare, financial services, and mining industries where he has represented creditors, debtors, executives, lenders, and others. Adam is routinely acknowledged by Best Lawyers and Kentucky Super Lawyers, including his recognition as a 2022 Best Lawyers®, Lawyer of the Year. He is also on the advisory board for the ABI Southeast Bankruptcy Workshop and the ABI Midwest Regional Bankruptcy Seminar and the steering committee for the Judge Joe Lee Bankruptcy Institute. Adam is also the elected Vice Chair of the Kentucky Bar Association's Bankruptcy Section.



**Alice Belisle Eaton** is the Deputy Chair of the Paul, Weiss Restructuring Department, she advises creditor and debtor clients in corporate reorganizations and bankruptcies, with a focus on postpetition financings, exit financings and related transactions. Alice was twice named as one of *Law360's* "Bankruptcy MVPs." In 2024, she was shortlisted for *Euromoney's* "Woman in Business Law Award" for "Restructuring & Insolvency Lawyer of the Year." She was also recognized as a 2022 "Outstanding Restructuring Lawyer" by *Turnarounds & Workouts* and named in *Lawdragon's* "500 Leading US Bankruptcy & Restructuring Lawyers." Since 2018, Alice has also served as a member of the Complex Case Committee for the U.S. Bankruptcy Court for the Southern District of Texas, which is tasked with reviewing and recommending changes to the existing procedures for complex bankruptcy cases.



**Charles W. Mooney Jr.** is a leading legal scholar in the fields of commercial law and bankruptcy law. He is currently a professor of law at the University of Pennsylvania Law School. His book, *Security Interests in Personal Property*, is a widely adopted text used in law schools around the U.S. Charles was honored for his contributions to the uniform law process by the Oklahoma City School of Law and was awarded the Distinguished Service Award by the American College of Commercial Finance Lawyers. He also served as U.S. Delegate at the Diplomatic Conference for the *Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol* and for the Diplomatic Conference for the UNIDROIT (Geneva) Convention on Intermediated Securities. He also served as a Reporter for the Drafting Committee for the Revision of the UCC (Emerging Technologies, including new Article 12), a Co-Reporter for the Drafting Committee for the Revision of UCC Article 9 (Secured Transactions), as the ABA Liaison-Advisor to the Permanent Editorial Board for the UCC, and as a member of Council and Chair of the Committee on UCC of the ABA Business Law Section.

# Organization

- Background
- What All This Might Mean to a Bankruptcy Practitioner
- The New Article 12
- Treatment of Digital Assets in Chapter 11s
- Secured Transactions
- Linked Assets
- Choice of Law
- Money
- Transitional Rules

# BACKGROUND

# Why Article 12?

- New types of assets
- New structures & transaction types
- New problems:
  - Cutting off third-party property claims/threats to asset fungibility
  - Questions about secured transactions
    - Unappealing choices for perfection
  - Digital assets that (maybe) become money
  - The need to address electronic trade finance transactions



# State Enactments and Introductions (I) of 2022 UCC Amendments as of February 15, 2025

STATE		
Alabama	Kentucky	Pennsylvania
California	Louisiana	Rhode Island
Colorado	Maine	South Dakota
Delaware	Minnesota	Virginia
District of Columbia	Nebraska	Washington State
Georgia	Nevada	Massachusetts (I)
Hawaii	New Hampshire	New York (I)
Illinois	New Mexico	Oregon (I)
Indiana	North Dakota	South Carolina (I)
Iowa	Oklahoma	



# WHAT ALL THIS MIGHT MEAN TO A BANKRUPTCY PRACTITIONER

# What All This Might Mean to a Bankruptcy Practitioner

Digital assets and related payment rights raise many practical issues in bankruptcy:

1. What are these assets?
  - Digital assets are not “money” (*see* slide 21)
2. How does a debtor use digital assets?
  - Are digital assets considered cash collateral?
  - What permission is required for a debtor to use digital assets?
3. Who has rights in these assets?
  - Are digital assets considered property of a debtor’s estate?
  - What is the role of crypto exchanges in digital assets?
  - What about secured creditor rights? Who maintains a perfected security interest and who has priority?
4. How does a debtor dispose / sell digital assets?





# **THE NEW ARTICLE 12**

# Article 12 Does Not

## Article 12 Does not Address:

- Chattel paper evidenced by an electronic record
- An electronic document of title
- Investment property (including UCC Article 8 opt-in)
- A transferable record (UETA and E-SIGN)
- A deposit account
- Electronic (fiat) money (more later)

## Article 12 Does not:

- Address substantive law issues related to CERs:
  - Regulatory classification of a digital asset as a security or commodity
  - Money transmitters laws of other regulatory compliance issues
  - Copyright or other intellectual property issues
  - Contractual relationships
  - Taxation of digital assets

# Controllable Electronic Record (CER)

- Record: “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form” (UCC 1-201(b)(31)) +
- Electronic +
- Subject to Control
  - If not controllable, excluded.

# Why Control?

- The problem of intangibility
- Possession vs. Control
- What do you control when you control a digital asset?



# Controllable Electronic Record (CER)

- Control:
  - Non-exclusive power to enjoy “substantially all the benefit” of CER
  - Exclusive power to:
    - Prevent others from enjoying “substantially all the benefit”
    - Transfer control of CER (or CER resulting from transfer) to another person
  - Exclusive power to transfer to another the power to use
  - Identification of person in control (name, station, key, or similar)
- Rebuttable presumption of exclusive control



# Controllable Electronic Record (CER)

- Control may be exercised for another
  - A has control but acknowledges that A has control for B. B also has control.
- Exclusivity allows sharing/multi-sig/custodial arrangements by agreement or system design.
- Multi-sig (m of n) hypos:
  - 1/2: Both have control.
  - 3/4: All have control.
  - BUT: If A can transfer/prevent a transfer but B can only transfer/prevent a transfer with the consent of A: Only A has control.

# Controllable Electronic Record (CER)?

- Spotify stream
- Facebook page
- Web domain name
- Bitcoin
- Tokenized equity
- NFT



# Rights of a Purchaser and Take Free Rule

- Purchaser of CER (or CER resulting from purchase) acquires all rights in CER that the transferor had or had power to transfer (shelter principle))
- Qualifying purchaser takes free of any property claims to CER
- Qualifying purchaser: Purchaser who obtains control of a CER:
  - for value;
  - in good faith; and
  - without notice of a property claim to the CER;
  - The filing of a financing statement itself is not notice of a property claim to the CER
- Purchaser of CER through custodian or exchange may be a qualifying purchaser
- A secured party may be a qualifying purchaser.

# Qualifying Purchaser – Example

1. Hacker “steals” a bitcoin from wallet of Owner and transfers to Hacker’s own wallet. Hacker has control. Hacker then transfers the bitcoin to Purchaser’s wallet and Purchaser has control.
2. Under pre-2022 UCC: Common law would apply and under *nemo dat* Purchaser acquires only what Hacker could convey. Hacker did not have ownership to give, so Purchaser takes subject to Owner’s rights.
3. After the 2022 UCC amendments: If Purchaser meets the requirements for a qualifying purchaser, Purchaser would take free of Owner’s rights and take good title.
4. If instead of bitcoin the CER was tethered to another asset (as in an NFT), legal rights against an issuer would be subject to other law.

# Crypto Exchanges

- Crypto exchanges generally
  - If regulated at all, often regulated as money transmitters
  - Not banks, not securities exchanges
  - Users accept terms of service via clickwrap/browsewrap
    - Not generally sufficient to create deposit control agreement
- UCC Article 8 opt-in
  - A clearing corporation or a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. (UCC § 8-102(a)(14))
  - Impact of UCC Article 8 opt-in
- Exchange having control for a customer





# Crypto & Property of the Estate in Bankruptcy (1)

- Under section 541(a) of the Bankruptcy Code, property of the estate is broadly defined as comprising all legal and equitable interests of the debtor in tangible and intangible property, wherever located and by whomever held. This property includes, among other things:
  - Any interest in property that is recovered under enumerated provisions of the Bankruptcy Code;
  - Any interests in property preserved for or transferred to the estate under section 510(c) of the Bankruptcy Code (equitable subordination) or section 551 of the Bankruptcy Code (preservation of avoided transfers);
  - Proceeds, products, or profits from property of the estate, except for post-petition wages in a Chapter 7 case; and
  - Property that the estate acquires after the petition date.
- However, section 541(b)(1) excludes from property of the estate any power that the debtor may exercise solely for the benefit of another.
- Additionally, section 541(d) provides that the estate does not include any power that the debtor may exercise solely for the benefit of another entity, including the power to distribute assets of a trust.

# Crypto & Property of the Estate in Bankruptcy (2)

- In recent bankruptcy cases filed by cryptocurrency platforms, a central issue concerned whether digital assets purchased or deposited by customers would constitute property of the debtors' estates.
  - If the digital assets are found to be property of the estate, then the customers would hold general unsecured claims against the estate for the value of the digital assets at the time of the filing.
  - Conversely, if the customers' digital assets are not property of the estate, then the assets held by the exchange would remain property of the customers not subject to dilution by general unsecured claims.
- Unlike traditional bank accounts or broker accounts, digital assets are not guaranteed or backstopped by any governmental or other agency, such as the FDIC or the Securities Investor Protection Corporation (SIPC).
- In general, custodial accounts are usually held for a customer's benefit, but this does not necessarily create a trust relationship in favor of the customer.
- The accounts are governed by the terms of use between the platform and customer.

# Crypto & Property of the Estate in Bankruptcy (3)

- When determining the issue of whether digital assets constituted property of a debtor's estate, bankruptcy courts examined the terms and conditions of use of the relevant platform.
- In *Voyager*, the *SDNY* bankruptcy court ruled that assets in customers' "for the benefit of" (FBO) accounts at a third-party bank were not property of the debtors' estates.
  - The debtors moved unopposed to permit withdrawals by customers of funds in their FBO accounts.
  - The court ruled that the funds in the FBO accounts were not property of the estates because "the Debtors do not have either legal title or equitable interests to the funds in [these accounts]."
  - Notably, the third-party bank that housed the assets confirmed to the court that pursuant to the terms of the FBO account agreement, *Voyager* was not permitted to hold or take ownership of the customer funds.
- In comparison, in *Celsius*, the *SDNY* bankruptcy court ruled that the digital assets in Celsius' Earn Accounts were property of the bankruptcy estates.
  - The court similarly looked toward the terms of use, which stated that customers granted Celsius "all rights and title to such [cryptocurrency] including ownership rights."
  - Applying principles of contract law, the bankruptcy court ruled that there were valid, enforceable contracts between Celsius and Earn Account holders, which rendered the digital assets property of the debtors' estates.

# Digital Assets as Cash Collateral

- Whether bitcoin and other digital assets are considered cash collateral comes down to whether they are considered “cash” or “other cash equivalents”
  - There is limited precedent regarding whether bitcoin and other digital assets constitute cash collateral.
  - However, it is unlikely that these digital assets would be considered cash collateral because they are not money.
  - For example, the *Celsius* bankruptcy court noted that “[b]y current definition, cryptocurrency is not money because it is not a medium of exchange created . . . by a domestic or foreign government.”
- However, to the extent monetizing digital assets is outside the ordinary course of business, then the debtor may still seek court approval to do so.
  - For example, the bankruptcy court in *FTX* approved a digital asset management and monetization program, whereby the FTX debtors could sell digital assets, hedge and generate yield from Bitcoin and Ether through derivative trading, and stake other digital assets to generate yield.
  - The debtors addressed concerns from the U.S. Trustee regarding the disclosure rules for postpetition “financing.”
  - A *pro se* customer objected, arguing that the digital assets may belong to the estate. The bankruptcy court approved the program when the other parties in the case supported the program and the debtors confirmed they would maintain records to reflect the source of the debtors’ assets that would be monetized.





# SECURED TRANSACTIONS



# Perfection of a Security Interest under the Pre-2022 UCC

## What is a CER under the Article 9 of the pre-2022 UCC?

### General Intangible

Any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software. (UCC 9-102(42))

### Investment Property

Means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account (UCC 9-102(49))

### Money

Means a medium of exchange currently authorized or adopted by a domestic or foreign government (UCC 1-201(24))

- El Salvador, Central African Republic

# Security Interest in a CER under the 2022 Amendments

- Collateral categorization: no need to change collateral descriptions in security agreements or collateral indications on financing statements
  - A CER is a “general intangible”
  - Bitcoin becomes CER
- Attachment: normal rules apply
- Perfection
  - By filing, *or*
  - By control (as defined in Article 12)
- Priority
  - A security interest perfected by control is superior to a security interest not perfected by control (non-temporal priority)

# PERFECTION OF SECURITY INTEREST – EXAMPLE 1

- **EXAMPLE 1:** Lender makes a loan to Debtor and obtains a security interest in “all of Debtor’s Bitcoin.” Debtor executes a security agreement and transfers Debtor’s bitcoin to Lender’s wallet (which would be “control” as defined in Article 12).
- **Is Lender’s security interest in the Bitcoin perfected?**
  - **Under the pre-2022 UCC:** No. There is no UCC-1 financing statement filed, and no agreement to treat the Bitcoin as a financial asset under UCC Article 8 and no control agreement with a securities intermediary. Lender may have system-level control over the bitcoin and a security interest, but the security interest is not perfected.
  - **After the 2022 UCC amendments:** Yes. Under Section 12-105(a)(1) Lender has control of the bitcoin (a CER). Lender now has bitcoin under its own private key control.

# PERFECTION OF SECURITY INTEREST – EXAMPLE 2

- **EXAMPLE 2:** Lender makes loan to Debtor and obtains a security interest in “all of Debtor’s Bitcoin.” Debtor executes a security agreement and transfers to Lender a copy of the private key but retains a copy of the private key.
- **Is Lender’s security interest in the Bitcoin perfected?**
  - **Under the pre-2022 UCC:** No. Same analysis as for Example 1.
  - **After the 2022 UCC amendments:** Yes. Both Lender and Debtor have control. Although neither actually has exclusive powers, 12-105(b) provides that power is deemed exclusive under subsection (a)(1) notwithstanding that the power is shared.
    - Allows for reliance on custodians and echoes control under UCC Articles 8 and 9 by control agreement allowing Debtor access.
    - 12-105(c) (c) limits, but the limitation would apply only if Lender’s power were contingent on Debtor’s cooperation.

# PRIORITY – EXAMPLE 1

- **EXAMPLE 1:** On day 1 Lender A makes a loan to Debtor and obtains a security interest in Debtor's bitcoin. Lender files a UCC-1 financing statement in the proper filing office covering the bitcoin. On Day 2, Lender B makes a loan to Debtor and obtains a security interest in Debtor's bitcoin. Debtor transfers Debtor's bitcoin to Lender B's digital asset wallet.
- **Whose security interest has priority?**
  - **Under the pre-2022 UCC:** Lender A has priority because Lender A's security interest is perfected by filing. As already explained, although Lender A has control as defined in Article 12, that does not perfect the security interest under pre-2022 Article 9.
  - **After the 2022 UCC amendments:** Lender B has priority because Lender B has control of the bitcoin. Under UCC 9-326A a security interest in a CER perfected by control has priority over a security interest not perfected by control.



# PRIORITY – EXAMPLE 2

- On Day 1, Lender A makes a loan to Debtor secured by a security interest in Debtor's bitcoin. Debtor's bitcoin is maintained on an exchange and Debtor is the owner. The exchange is not a securities intermediary. Lender A files a UCC-1 financing statement in the proper filing office covering the bitcoin. On Day 2, Lender B makes a loan to Debtor secured by security interest in Debtor's bitcoin. Lender B is aware of Lender A's security interest and obtains the exchange's acknowledgement that it holds the bitcoin on Lender B's behalf.
- *Whose security interest has priority?*
  - **Under the pre-2022 UCC:** Lender A has priority because Lender A has a perfected security interest under UCC Article 9 and Lender B's security interest is unperfected.
  - **After the 2022 UCC amendments:** Lender B wins because Lender B has control of the bitcoin. The Exchange has control and has acknowledged that it has control on behalf of Lender B. Under UCC 9-326A a security interest in a CER perfected by control has priority over a security interest in a CER not perfected by control.

# PRIORITY – EXAMPLE 3

- **EXAMPLE 3:** Same facts as Example 2, except that Exchange is a securities intermediary, has agreed to treat the bitcoin as a financial asset, and agreed on Day 2 to comply with Lender B's entitlement orders without further consent of Debtor (i.e., a control agreement).
- *Whose security interest has priority?*
  - **Under the pre-2022 UCC amendments:** Lender B has priority because Debtor's interest in the bitcoin is a security entitlement and Lender B has perfected by control. Under UCC 9-328 a security interest in investment property perfected by control has priority over a security interest in a property not perfected by control.
  - **After the 2022 UCC amendments:** The result is the same.

# TETHERING

The image features a hand in a suit sleeve pointing at a central digital icon of a padlock. This icon is part of a larger network of various symbols including server racks, a globe, a shield, and binary code, all interconnected by lines. The background is a blurred city skyline. The word 'TETHERING' is prominently displayed in bold, black, sans-serif capital letters on the left side of the image.

# Tethering – General Rule

- What rights are evidenced by the CER and whether “take-free” rules apply to those rights upon a transfer of the CER are all determined by other law (with the exception noted)
  - *Examples*
    - A non-fungible token where copyright law may be well be applicable
    - A token evidencing a security where the organizational law of the issuer may be applicable
    - A token evidencing a real estate interest where real estate law may be applicable
  - Exception for “controllable accounts” and “controllable payment intangibles” (more later)





# “Tethering” – Exception for Certain Payment Rights Evidenced by the CER (1)

- An “account” or “payment intangible” evidenced by a CER is a “controllable account” or “controllable payment intangible” if the account debtor has agreed to pay the person in control of the CER
- A controllable account or a controllable payment intangible travels with the CER, and the transferee of the controllable account or controllable payment intangible benefits from the same “take-free” rule as are available with the CER
- The effect is to create an electronic instrument
- If the terms of the controllable account or controllable payment intangible provide that the account debtor will not assert claims or defenses against the transferee of the CER (see UCC § 9-403), then the effect is to create an electronic *negotiable* instrument



# “Tethering” – Exception for Certain Payment Rights Evidenced by the CER (2)

- Account debtor discharge rule (similar to UCC §§ 3-602 and 9-406)
  - Account debtor agrees to pay the person in control
  - After a transfer of control and absent notification of the transfer and a payment direction, the account debtor may obtain a discharge by paying the person formerly in control
  - Once the account debtor receives a notification of the transfer and a payment direction, the account debtor may obtain a discharge by paying the transferee and may not obtain a discharge by paying the person formerly in control
  - The account debtor may request “reasonable proof” that control of the CER has been transferred to the transferee
  - **The notification is ineffective unless the account debtor has agreed in a signed record with the person at the time in control to a method by which the transferee can provide “reasonable proof” that control has been transferred to it**

# CHOICE OF LAW



# Choice of Law (1)

- Matters covered by Article 12 and for perfection by control governed by law of the CER's jurisdiction: See 12-107 (the "waterfall") and 9-306B
- The CER's jurisdiction is that is expressly stated in the CER or, if not, in the system in which the CER is recorded
- If not expressly stated in the CER or system, the CER's jurisdiction is the jurisdiction whose law is stated to govern the CER or, if not, the system
- Otherwise, the CER is located in the District of Columbia or, if DC has not adopted the amendments, the Official Text applies
- Normal choice-of-law rules for perfection by the filing of financing statement apply



## Choice of Law (2)

- But for the account debtor discharge rule, look to
  - The law governing the agreement under which the controllable account or controllable payment intangible arose if that agreement is effective under applicable law
  - Otherwise, look to the law of the CER's jurisdiction

# MONEY

A collage of various international banknotes, including US dollars, Mexican pesos, and Chinese yuan, scattered across the frame. The notes are overlapping and slightly faded, creating a textured background. The word "MONEY" is prominently displayed in the center-left in a bold, black, sans-serif font.



# Money (1)

- “Money” is defined in the pre-2022 UCC as a medium of exchange authorized by a domestic or foreign government
- When El Salvador adopted bitcoin, it arguably (and probably) became “money” under the pre-2022 UCC definition, leading to unanticipated outcomes
- The 2022 amendments revised the definition of “money” to exclude a medium of exchange in an electronic record (such as bitcoin) which existed before it was authorized or adopted by a government
- A medium of exchange in an electronic record so excluded might still qualify as a CER (e.g., bitcoin).



## Money (2)

- The definition of “money” in the pre-2022 amendments UCC is sufficiently broad to include a virtual currency authorized or adopted by a government - what the proposed amendments refer to in Article 9 as “electronic money”
- Under the pre-2022 Article 9 a security interest in money can be perfected only by possession.
- Under the 2022 UCC amendments
  - If electronic money is a deposit account (even one at a central bank), the normal deposit account rules apply
  - If electronic money is not a deposit account, a security interest may be perfected only by “control” similar to control for a CER (but only if the electronic money is susceptible to control)
    - Except for UCC § 9-332, any “take-free” rule would be determined by the law governing the money



# Money (3)

- Some states, which have concerns about a central bank digital currency being adopted by the United States, have stripped out the electronic money provisions from the amendments. In these states:
  - Money must be in tangible form, such as bills, notes and coins
  - Electronic money would be a general intangible in which the only method to perfect a security interest would be by the filing of a financing statement
- Nothing in the 2022 UCC amendments requires the issuance of a federal central bank digital currency, nor could the amendments do as so under state law
- If the collateral consists of a central bank digital currency at some point adopted by the United States or it consists of a central bank digital currency adopted by another country, there may be problematic choice-of-law issues relating to this form of collateral





# TRANSITIONAL RULES

A background image showing a business meeting. Several people are gathered around a table, looking at a tablet and various financial documents. The documents contain bar charts, pie charts, and tables of data. One person is pointing at the tablet, while another is writing in a notebook. The scene is brightly lit, suggesting a modern office environment.

# Transitional Rules (1)

- Designed to protect the expectations of parties to pre-amendments effective date transactions and to provide for sufficient time for parties to plan transactions post-amendments effective date
- Do not contain a uniform effective date for the amendments because some states were ready to enact the amendments as early as possible



## Transitional Rules (2)

- However, the transition rules will contain a uniform adjustment date of the later of July 1, 2025, or one year from the effective date
  - The adjustment date is intended to give transacting parties a grace period to preserve (when possible) priorities already established on the effective date if the amendments would otherwise affect those priorities.
  - Example:
    - Pre-ED, SP1 perfects by filing. Pre-ED SP2 takes what would be control under Article 12 but does not file. SP1 has priority over SP2.
    - On the effective date, SP-1's pre ED established priority is preserved until the adjustment date. On the adjustment date, the priority rules under the amendments apply. Because SP2 has control, its security interest has priority over SP1's security interest under the amendments.