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New York's UCC Amendments Are Live: What Secured Lenders Need to Know About Digital Asset Collateral

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KEY POINTS

- New York's UCC amendments, effective June 3, 2026, add Article 12 and allow for an additional perfection method, "control," for controllable electronic records (CERs) used as collateral.
- A security interest perfected by control of a CER has priority over one perfected only by filing a UCC-1 financing statement, even if the filing came first.
- Under UCC Section 12-105(a), control requires the power to avail oneself of substantially all benefits of a CER, exclusively prevent others from doing the same, and transfer those powers.
- For CER collateral, governing law is determined by the CER itself, the platform's rules, or, by default, the District of Columbia, not the debtor's location.
- Lenders have until the adjustment date of June 3, 2027, to obtain control of CER collateral; after that date, perfection by filing alone will be permanently subordinate to control.

On June 3, 2026, New York's amendments to the 2022 Uniform Commercial Code (UCC) took effect. These amendments add Article 12 to the UCC[1], creating rules for "controllable electronic records" (CERs), and update Article 9's secured transaction rules to account for these new asset types. A CER is an electronic record that can be subjected to "control" under the new statute; the definition is broad and technology neutral.

Cryptocurrencies, certain tokens, and other blockchain-based assets may qualify, but not every digital asset is a CER; the statute excludes asset types with their own UCC rules, such as deposit accounts, investment property, and electronic money. For secured lenders, the amendments require a renewed review of collateral descriptions, digital asset diligence, custody and control arrangements, and perfection policies. While perfection by filing remains available, obtaining control has become the determinative factor in establishing priority for CER collateral.

WHY THIS MATTERS FOR SECURED LENDERS

Before these amendments, lenders typically treated digital assets as "general intangibles" and perfected by filing a UCC-1 financing statement. That method still achieves perfection, but under the revised priority rules, a security interest perfected by "control" of a CER has priority over one perfected only by filing, even if the filing came first. A lender with a blanket UCC-1 covering "all assets" could therefore be subordinated by a lender that later obtains control of specific digital asset collateral.

- **Filing vs. Control**: Control wins, regardless of timing
- **Control vs. Control**: First to obtain control wins
- **Filing vs. Filing**: First to file wins (unchanged from prior law)

WHAT DOES 'CONTROL' MEAN IN PRACTICE?

Control under Article 12 serves a comparable function to physical possession of tangible collateral. A person has control of a CER when the electronic record or system gives that person: (1) the power to derive substantially all the benefit from it, (2) the exclusive ability to prevent others from doing the same, and (3) the ability to transfer those powers to another person. The statute does not prescribe a specific technology, and the security agreement must separately grant the lender enforceable rights in the underlying asset for the control arrangement to have legal effect. Control can be established through several practical arrangements:

- **Key Custody**: The lender (or its agent) holds the private keys to the borrower's digital assets, either directly or through a multisignature arrangement where the lender holds enough keys to block unauthorized transfers.
- **Third-Party Custodian**: A qualified custodian holds the assets under an agreement that gives the lender control rights.
- **Smart Contract or Platform Control**: Assets are locked in a smart contract requiring lender authorization, or the borrower's exchange or platform acknowledges the lender's control (comparable to a deposit account control agreement).

TRANSACTION DOCUMENT UPDATES

Security agreements for deals involving digital assets should be updated to reflect the new framework. Key provisions include:

- **Collateral Descriptions:** Expressly reference CERs, controllable accounts, controllable payment intangibles, digital wallets, private keys, and related access credentials.
- **Negative Covenants:** Restrict the borrower from transferring digital assets, changing wallet providers, or granting control to third parties without lender consent.
- **Conditions Precedent:** Require the borrower to deliver evidence of control arrangements as a condition to closing or funding.
- **Representations and Warranties**: Require the borrower to disclose all digital asset holdings, confirm ownership and control, and represent that no competing party has control.
- **Further Assurances**: Require the borrower to take steps necessary to establish and maintain the lender's control of CER collateral.

DILIGENCE CONSIDERATIONS

Lenders should add the following to their due diligence for any borrower that holds or may acquire digital assets:

- Does the borrower own or hold any digital assets, including cryptocurrency, tokens, or blockchain-based instruments?
- Where are these assets held, and who holds the private keys or access credentials?
- Are assets held by a third-party custodian or exchange, and has any other party been granted control?
- Are any digital assets pledged, staked, or otherwise encumbered?

GOVERNING LAW

The amendments introduce a new choice-of-law framework for CER collateral. Rather than looking to the debtor's location, the governing law for perfection and priority is determined (1) first, by any jurisdiction designated in the CER itself; if none, then (2) by the system or platform rules; if none, then (3) the District of Columbia law governs by default.

For widely used decentralized blockchain assets (*e.g.*, Bitcoin or Ethereum), the District of Columbia default likely applies because no centralized operator makes a jurisdictional designation. Lenders should investigate what platform or protocol governs the borrower's digital assets and whether it includes governing-law provisions.

TRANSITION RULES AND EXISTING DEALS

New York's transition provisions establish a one-year transition period:

- **Perfection Is Preserved:** A security interest perfected by filing before June 3, 2026, remains perfected, provided the filing method still satisfies the revised statute's requirements.
- **Priority Is Not Protected:** A lender that perfected only by filing can be subordinated by a competing party that obtains control during the transition period. On June 3, 2027, any remaining basis for asserting pre-amendment priority positions will be extinguished.
- **Adjustment Date (June 3, 2027):** After this date, any remaining pre-amendment priority positions that differ from the revised statute's priority rules will no longer be recognized.

For existing transactions, lenders should identify any digital assets that may qualify as CERs and consider obtaining control before June 3, 2027.

PRACTICAL TAKEAWAYS

- **For New Deals:** Apply the same rigor to material digital assets that would apply to deposit accounts and investment property: identify them in diligence, address them in the security agreement, and establish control.
- **For Existing Deals:** Perform a targeted collateral audit. Identify borrowers that hold digital assets, classify those assets under the new definitions, and assess whether current perfection provides adequate priority.
- **For All Deals:** Treat June 3, 2027, as a firm deadline. After that date, lenders whose perfection in CER collateral rests solely on a filed financing statement will be permanently subordinate to any competing secured party that holds control.

For questions about how New York's UCC amendments affect your secured lending transactions or digital asset collateral arrangements, contact our Finance + Banking Practice Group.

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[1] N.Y. U.C.C. Law art. 12-A

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