

Notify Other Owners When CD is Used as Collateral?

Question: When taking a CD owned by A or B or C or D as collateral, it is our understanding any one of the owners can pledge the CD and the bank must notify the other owners that the CD has been pledged to perfect its security interest. Is this correct? Can you provide a regulatory cite?

Answer by Randy Carey:

If there was such a citation it would be found in your State's UCC Article 9. In the States of which I am aware, there is no such requirement to notify the other account holders. However, as a practical matter and to avoid the possibility of any future legal action by one of the depositors, most banks require all account holders to sign a security agreement when pledging deposit accounts.

Answer by Andy Zavoina:

As Randy noted, it isn't federal. Texas has such a requirement and you would find this under [Sect. 442 of the Texas Probate Code](#). So you may want to look beyond the UCC in some cases. A good starting point for these state specific questions are the state forums in the [BOL threads](#).

Please Define "Abundance of caution"

Question: What does "abundance of caution" mean in relation to real estate? Is there a mortgage filed on the property, and if not how is the bank secured by an "AOC"?

Answer by Randy Carey:

To qualify under the abundance of caution definition, you would have to make the loan under the same terms and condition as if the borrower did not offer the real estate as collateral. For example - if the loan is secured only by that one piece of real estate - in order to treat the collateral as an abundance of caution - you would have had to have been willing (and your policies and your portfolio would have to support comparable loans) to make the loan unsecured with the same terms and condition.

Answer by Andy Zavoina:

And don't confuse a loan "over collateralized" as an abundance of caution loan and one on which you can ignore certain rules. Often this is an excuse to ignore flood or RESPA requirements. Having the collateral often imposes certain requirements, just because of the collateral. The amount of collateral is moot.

Loan Secured by Margin Stock

Question: We have a loan secured by margin stock (total loan over \$100,000). It is a non purpose loan. Do we still have to have the borrower complete the FR U-1 form. Is the 50% LTV still in effect?

Answer by Dan Persfull:

[Click here for Reg. U.](#)

What are the requirements of Regulation U for a nonpurpose loan?

If the loan is secured directly or indirectly by margin stock, form G-3 or form U-1 must be completed as described above. If the loan is not secured directly or indirectly by margin stock, no form need be completed. Regulation U places no restriction on the amount of credit that may be extended on nonpurpose loans secured by margin stock.

CD Beneficiary Required to Sign Pledge Agreement?

Question: Does a beneficiary of a CD have to sign the collateral pledge agreement if the CD is being pledged against a loan as collateral?

Answer by Dan Persfull:

No. The beneficiary is not an owner of the CD.

However, there is always the possibility that state law would have such a requirement.

Security Interests in Railway Rolling Stock

Question: How do we perfect a security interest in railcars?

Answer by Dan Persfull:

This is an excerpt from a article I found on the internet: Perfecting Security Interests In Whatever Rolls, Flies or Floats

The rules concerning such security interests are found in 49 USC § 11301. To be accepted for filing, an original copy of the mortgage must be submitted to the STB along with a letter of transmittal requesting that the instrument be recorded.

Referencing Previous Security Agreements

Question: You have filed a UCC-1 (Financing Statement) on a loan for accounts, inventory, equipment. Also have a security agreement signed with your loan papers and have described on note in collateral section equipment, inventory, accounts. Customer comes in at a later date for additional financing and you prepare a separate note. Can you reference earlier security agreement by date

or is it necessary to prepare a new security agreement along with your note describing the collateral?

Answer by Dan Persfull:

This could depend on state law - but we reference previous security agreements all the time as long as the financing statement is still valid.

Repayment Ability for Securities-Secured

Question: Can you steer me to regs, statutes or articles concerning confirming repayment ability of a consumer borrowing funds secured by collateral consisting only of securities?

Answer by Dan Persfull:

The first thing comes to my mind is predatory lending regulations, however most of these deal with lending involving the borrower's principal residence. You will need to check your state predatory lending law if they have one.

From a practical lending view, if you know the borrower does not have the ability to repay the loan, why would you want to put them in a position to lose their security? These securities could be their retirement fund.

In today's environment the examiners are critical of "asset based" lending.

Overdraft Paid By Sale of Pledged Collateral?

Question: Do you have any past rulings on overdrafts owed, where the borrower has paid loan to a zero balance and bank will not release UCC liens--until borrower's overdraft is paid in full. The bank's loan documents, state any other debt becomes a part of loan. So, does the OD balance--in effect become a new advance and can bank repossess and sale the pledged collateral to pay the OD balance?

Answer by Randy Carey:

This is going to be determined by State law and is really a legal question. A consult with your attorney is recommended.

Answer by Andy Zavoina:

Counsel familiar with your deposit agreement and loan documents is best to answer this. You should have a cross-collateralization clause in each, but it can depend on the which came first and how it is worded.

Forms for Perfecting Liens on Stock Certificates

Question: What forms do we need to perfect a lien on stock certificates? Assignment of Stock? UCC? Security Agreement?

Answer by Jack Holzknecht:

A control agreement is used to perfect a security interest in stock.

Abundance of Caution - How Much is Enough?

Question: When a loan is secured with multiple pieces of real estate, can one piece of real estate be taken with an abundance of caution or does abundance of caution incorporate the whole real estate collateral pool?

Answer by Randy Carey:

If you can make a case that you would have made the loan without the piece of property, i.e., the loan meets all Bank and other regulatory underwriting criteria without it, then yes, you could treat any additional collateral taken as an "abundance of caution".

Answer by Dan Persfull:

I agree with Randy's assessment, but one word of caution. Other than some appraisal requirement relief, the abundance of caution designation does not negate other applicable regulations such as flood.

Reg U - Failure to Maintain the Correct Ratios

Question: Is there a provision (or interpretation) of Reg U that a bank's failure to maintain the correct ratios under a Reg U secured loan can result in the loan being forgiven?

Answer by Randy Carey:

No - Regulation U imposes restriction on a bank regarding credit transactions secured by marginable securities. If the bank violates those rules, they would be subject to sanctions by their regulatory agency. It would not impact the duty of the borrower to repay the loan.

Chapter 7 Bankruptcy and Vehicle Lien

Question: What happens when a bank is unable to file a lien before the 20 day deadline and the customer declares bankruptcy? We had a customer come to us over a year ago and asked to help save his vehicle from repossession. We bailed him out, but unfortunately, due to titling problems, the old lien holder got put on the title instead of us. (We let him take the paperwork to the license bureau in good faith and it never came back to us.) Of course, they got rejected because he was removing his ex, adding his wife, changing lien holders and changing address (now you see why we let him take it for them to sort out, plus the last lien holder never sent the title in, and their lien was written on the title). They did bring it to us and we did get a lien release from the other lien holder. Resubmitted the titles and now have good titles. Once we got a copy of the title, we went ahead and submitted our notice of lien, months later. Now, they've filed for Chapter 7 bankruptcy. Do we eat this loan?

Answer by Andy Zavoina:

I can only share my personal experience and it may or may not be comparable to your Trustee's procedures.

We had a customer who had pledged her auto on one or more prior loans. We signed off on our lien and returned the documents to her when the loan paid off. She brought in the title and wanted another loan. It still reflected our lien and the lender opted not to charge her for a new title with our lien. He figured if he needed it he'd get a replacement title from the state and it would have our lien with no release signature under it.

She filed Ch. 13 and I as the collector attended the 341 hearing. Her attorney told the Trustee that we did not have a valid lien. Ours was signed off on the title and if we had wanted a good lien, we would have filed for such. The Trustee agreed with him and my claim went from secured to unsecured, just like that.

Moral of the story; consider using counsel, at least up to the point where their billable hours don't exceed the value of the collateral or the lessons learned.