Digital Assets and UCC Article 12: What Restructuring Attorneys Need to Know About Control, Perfection & Priority

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As digital assets become more integrated into commercial finance, the 2022 UCC amendments provide a modern legal framework for digital assets, including cryptocurrencies. On December 5, 2025, New York enacted these amendments, which became effective on June 3, 2026. These changes are particularly significant for restructuring professionals, who will encounter digital assets more often in distressed situations—whether advising debtors, creditors' committees, or secured lenders in bankruptcy proceedings.

Background: The Problem Article 12 Solves

The 2022 UCC Amendments were approved after years of collaboration between legal and technology experts from the American Law Institute and Uniform Law Commission. These amendments introduced Article 12, which establishes rules for transactions involving controllable electronic records (CERs). CERs are digital records stored in an electronic medium that can be "controlled" in a defined, technology-neutral way. The amendments also address controllable accounts and controllable payment intangibles. Today, 33 states have adopted the 2022 UCC amendments, including Article 12, to address transactions involving digital assets.

In New York, the New York Legislature passed the measure on June 11, 2025. The bill was delivered to the Governor on December 1, 2025, and Governor Hochul on December 5, 2025, signed the bill (S.1840-A/A.3307-A), with an effective date of June 3, 2026 (180 days after enactment).

Before Article 12, digital assets were typically classified as general intangibles — an imperfect fit that posed significant problems for secured lenders and restructuring professionals. Under pre-amendment law, perfection for general intangibles required filing a financing statement. *See* UCC §§ 9-310(a), 9-313(a). This meant secured parties had no way to achieve the priority advantages that come with possession or control-based perfection, leaving them vulnerable to competing claims and challenges in bankruptcy.

Key Changes Under Article 12: Control, Perfection, and Priority

Article 12 provides a clear legal framework for CERs — digital assets that can be owned and controlled, such as Bitcoin — by defining when a person has "control" and by aligning perfection and priority outcomes with demonstrable control. Under Article 12 "control" means the ability to: (1) avail oneself of substantially all the benefits from the digital asset (e.g., dispose of, sell, or transfer it); (2) exclusively prevent others from availing themselves of substantially all the benefits; and (3) exclusively transfer control of the asset to another person without their consent. *See* UCC § 12-105(a)(1).

Importantly, exclusivity is not lost if control is shared by agreement or technology — for example, multi-signature arrangements where multiple parties must approve a transaction. See UCC § 12-105(b).

For restructuring professionals, the critical takeaway is this: Article 12 creates a new method of perfection (control) that provides a form of super-priority status. A secured party perfected by control will have priority over a conflicting security interest held by a secured party that does not have control and perfected only by filing — even if the filing occurred first. *See* UCC § 9-326A. This fundamentally changes how restructuring attorneys must analyze secured claims involving digital assets.

For a digital asset to qualify as a CER, the record must enable a person or entity to be identified as having control (e.g., by name, cryptographic key, or other identifier) and that person or entity must have the requisite control over it. Courts have treated possession of "private keys" as strong evidence of control in digital asset disputes. *See*, e.g., *In re Celsius Network LLC*, 647 B.R. 631, 637 (Bankr. S.D.N.Y. 2023) (holding that certain customer deposits belonged to the debtor because customers had transferred control of their assets, relegating customers to unsecured creditor status). *See also In re BlockFi Inc.*, No. AP 23-1144 (MBK), 2023 WL 6148151, at *3 (D.N.J. Sept. 20, 2023).

If control is established under Article 12, a secured party can perfect its control and obtain priority advantages relative to interests perfected solely by filing. Without Article 12's control regime, digital assets remain general intangibles, and perfection relies on filing — a method that lacks the priority protections Article 12 provides.

Assets Excluded from the CER Definition

Practitioners should note that certain electronic records are excluded from the definition of "controllable electronic record" and are governed by other provisions:

- Controllable accounts and controllable payment intangibles (separately defined in Article 9)
- Deposit accounts
- Electronic copies of records evidencing chattel paper
- Electronic documents of title
- Electronic money
- Investment property
- Transferable records under E-SIGN or UETA

See UCC § 12-102(a)(1).

Restructuring Implications: Why Control Matters in Bankruptcy

For restructuring attorneys, Article 12's control framework has several practical implications:

1. **Claims Analysis**: When analyzing secured claims involving digital assets, counsel must determine whether the secured party perfected by control or by filing. Control-perfected interests will have priority under UCC § 9-326A, potentially subordinating earlier-filed security interests. This is a non-temporal priority rule — ***the control-perfected interest prevails even if the filing occurred first.***
2. **Property of the Estate**: As Celsius demonstrates, the question of who has "control" over digital assets can determine whether assets belong to the bankruptcy estate or to third parties. Restructuring professionals must scrutinize custody arrangements, terms of service, and private key access to assess estate property questions.
3. **Adequate Protection**: Secured parties perfected by control may argue for different adequate protection measures than those perfected by filing, given their stronger priority position under UCC § 9-326A.

4. **DIP Financing**: Lenders providing DIP financing secured by digital assets will need to consider whether to perfect by control, filing, or both, with corresponding implications for priming liens and priority disputes. The Official Comments to Section 9-102 specifically note that "a secured party may also wish to perfect its security interest by filing so that the perfection would continue" in the collateral and any proceeds — providing belt-and-suspenders protection.

Choice-of-Law Rules: Determining Governing Law

For restructuring attorneys dealing with multi-jurisdictional issues, Section 12-107 provides a "waterfall" of rules for determining the controllable electronic record's jurisdiction:

5. Express provision in the CER itself designating jurisdiction
6. System rules expressly providing jurisdiction
7. Express governing law provision in the CER
8. Express governing law provision in system rules
9. Default: District of Columbia

See UCC § 12-107(c).

This default to the District of Columbia is particularly important for cryptocurrency and other digital assets that lack express jurisdictional designations.

Proving Control: Lessons from Case Law

In re Vital Pharmaceutical, 652 B.R. 392 (Bankr. S.D. Fla. 2023) provides a useful framework for proving control. The court faced a dispute over ownership of social media accounts during Chapter 11 proceedings. *Id*. at 404-05. The accounts were highly valuable because they drove brand engagement and revenue, and neither party could produce documentation establishing ownership. *Id*. at 399-404. Lacking definitive contracts, the court applied a three-part test that mirrors Article 12's control framework:

10. Documented property interest
11. Control over access
12. Use of the accounts. *Id*. at 407-08

Evidence of control included exclusive possession of passwords and the ability to prevent others from accessing the account. *Id.* at 409.

Translating this to CERs, proof of control may include: possession of private keys; blockchain records showing exclusive signing authority; multi-signature arrangements conferring the relevant transfer rights; and custody agreements confirming exclusive control. Restructuring attorneys should advise clients to preserve contemporaneous evidence of control, as this evidence will be critical in any dispute over digital asset ownership or priority.

Conclusion: Preparing for Digital Asset Restructurings

With New York's 2022 UCC amendments taking effect on June 3, 2026, restructuring attorneys must understand Article 12's framework for digital assets. The key points are straightforward: 1) Article 12 creates a new asset category-controllable electronic records-that includes most cryptocurrencies and similar digital assets; 2) "control" under Article 12 requires the ability to use the asset, exclude third parties from using it, and to transfer it; 3) perfection by control provides "super-priority" over perfection by filing; 4) in bankruptcy, control determines both priority among secured creditors and, as *Celsius* illustrates, whether assets belong to the estate at all; and 5) Choice-of-law rules default to the District of Columbia

absent express provisions in the CER or system rules. Restructuring professionals who master these concepts will be better positioned to advise clients in an era when disposition of digital assets may increasingly be common in distressed situations.