

LEGAL UPDATES

PUBLISHED: SEPTEMBER 23, 2025

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Wisconsin Court of Appeals Affirms Primacy of UCC Safe-Harbor Pre- and Post-Sale Notices After Repossession

The Wisconsin Court of Appeals issued a significant decision in *Birge v. Simplicity Credit Union*, rejecting a consumer's challenge to the use of the Uniform Commercial Code (UCC) safe-harbor pre-sale and post-sale notice forms under Wisconsin Statutes Chapter 409. The consumer argued that the UCC notices violated Wisconsin law due to a Wisconsin Consumer Act (WCA) provision requiring that deficiency judgments in connection with credit sales and a narrow category of loans be calculated based on the fair market value of the collateral. The Court of Appeals disagreed, holding that use of the Wisconsin UCC safe-harbor notice complies with the law and does not conflict with the WCA's deficiency provision. During the last few years, consumer attorneys have attempted to import the WCA fair-market-value standard for deficiency judgments into notices required by Chapter 409, raising such claims against lenders on behalf of single consumers and plaintiffs in putative class actions.

This is an important decision confirming the long-held view that if lenders utilize Chapter 409's pre-sale and post-sale safe-harbor forms, they comply with Wisconsin law.

Husch Blackwell filed an amicus brief in *Birge* on behalf of the Wisconsin Credit Union League and the Wisconsin Bankers Association. The amicus brief discussed creditors' reliance on the Wisconsin UCC and the WCA when providing pre- and post-repossession notices and obtaining deficiency judgments, and the disparate roles of the UCC safe-harbor notice and the WCA's deficiency-judgment requirements. Further, the WCA provides that creditors have all the obligations, duties, rights, and remedies provided in the Wisconsin UCC unless superseded by particular WCA provisions. Indeed, the

WCA states that Wisconsin Chapter 409 governs disposition of collateral. Thus, there is no conflict between the UCC and the WCA, and use of the safe-harbor form complies with the UCC.

Key takeaways from the decision

UCC notice requirements upheld: The court held that WCA § 425.210 does not modify the UCC's notice requirements. Notices using the UCC's safe-harbor forms satisfy legal requirements.

No conflict between UCC and WCA: The court reasoned that the statutes should be read harmoniously and rejected any suggestion that the UCC and WCA conflict. The consumer's statutory argument "in fact creates conflict where none exists." Decision ¶ 28.

Deficiency judgments and fair market value: The WCA requires that deficiency judgments after repossession be based on the collateral's fair market value.

Safe-harbor form not misleading: The court held that the UCC safe-harbor notice form is not misleading for failing to mention that deficiencies will be calculated using fair market value, as this is not required by the UCC.

Statutory construction supported by history: The respective interpretations of the Wisconsin UCC and the WCA follow given the timing of the enactment of the pertinent UCC and WCA statutes and subsequent amendments.

Practical impact

Binding precedent: The decision is recommended for publication and, assuming it is ordered published, it is binding precedent in Wisconsin courts.

Continued use of UCC safe-harbor forms: Lenders and servicers can continue to use the UCC's safe-harbor notice forms for pre- and post-sale notifications in consumer transactions governed by both the UCC and WCA.

What this means to you

This decision provides clarity and certainty for Wisconsin lenders, affirming that compliance with the UCC's notice requirements remains sufficient, even in transactions also subject to the WCA. It rejects recent efforts by consumer lawyers to create a conflict between these statutory schemes and reinforces the primacy of the UCC's safe-harbor provisions for post-repossession notices.

Contact us

If you have questions about how this decision may impact your operations or need assistance reviewing your notice forms and procedures, please contact Marci Kowski, Lisa Lawless, or your Husch Blackwell attorney.