

CHAPTER 41-12
UNIFORM COMMERCIAL CODE - CONTROLLABLE ELECTRONIC RECORDS

41-12-01. (12-101) Title.

This chapter may be cited as Uniform Commercial Code - Controllable Electronic Records.

41-12-02. (12-102) Definitions.

1. In this chapter:
 - a. "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under section 41-12-05. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.
 - b. "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.
 - c. "Transferable record" has the meaning provided for that term in:
 - (1) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 473; 15 U.S.C. Section 7021(a)(1)]; or
 - (2) Subsection 1 of section 9-16-15.
 - d. "Value" has the meaning provided in subsection 1 of section 41-03-29, as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.
2. The definitions in chapter 41-09 of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to this chapter.
3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this title.

41-12-03. (12-103) Relation to chapter 41-09 and consumer laws.

1. If there is conflict between this chapter and chapter 41-09, chapter 41-09 governs.
2. A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and title 6, sections 13-04.1-09 through 13-04.1-09.3, and chapters 13-05, 13-08, 13-10, and 47-14.

41-12-04. (12-104) Rights in controllable account, controllable electronic record, and controllable payment intangible.

1. This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections 3, 4, 5, 7, and 8 of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.
2. To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.
3. Except as provided in this section, law other than this chapter determines whether a person acquires a right in a controllable electronic record and the right the person acquires.
4. A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

5. A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.
6. Except as provided in subsections 1 and 5 for a controllable account and a controllable payment intangible or law other than this chapter, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.
7. An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.
8. Filing of a financing statement under chapter 41-09 is not notice of a claim of a property right in a controllable electronic record.

41-12-05. (12-105) Control of controllable electronic record.

1. A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:
 - a. Gives the person:
 - (1) Power to avail itself of substantially all the benefit from the electronic record; and
 - (2) Exclusive power, subject to subsection 2, to:
 - (1) Prevent others from availing themselves of substantially all the benefit from the electronic record; and
 - (2) Transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and
 - b. Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in subsection a.
2. Subject to subsection 3, a power is exclusive under paragraph 2 of subdivision a of subsection 1 even if:
 - a. The controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or
 - b. The power is shared with another person.
3. A power of a person is not shared with another person under subdivision b of subsection 2 and the person's power is not exclusive if:
 - a. The person can exercise the power only if the power also is exercised by the other person; and
 - b. The other person:
 - (1) Can exercise the power without exercise of the power by the person; or
 - (2) Is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.
4. If a person has the powers specified in paragraph 2 of subdivision a of subsection 1, the powers are presumed to be exclusive.
5. A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:
 - a. Has control of the electronic record and acknowledges that it has control on behalf of the person; or

- b. Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.
- 6. A person that has control under this section is not required to acknowledge that it has control on behalf of another person.
- 7. If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or chapter 41-09 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

41-12-06. (12-106) Discharge of account debtor on controllable account or controllable payment intangible.

- 1. An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:
 - a. The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or
 - b. Except as provided in subsection 2, a person that formerly had control of the controllable electronic record.
- 2. Subject to subsection 4, the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:
 - a. Is signed by a person that formerly had control or the person to which control was transferred;
 - b. Reasonably identifies the controllable account or controllable payment intangible;
 - c. Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;
 - d. Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and
 - e. Provides a commercially reasonable method by which the account debtor is to pay the transferee.
- 3. After receipt of a notification that complies with subsection 2, the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.
- 4. Subject to subsection 8, notification is ineffective under subsection 2:
 - a. Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;
 - b. To the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or
 - c. At the option of the account debtor, if the notification notifies the account debtor to:
 - (1) Divide a payment;
 - (2) Make less than the full amount of an installment or other periodic payment;
 - or
 - (3) Pay any part of a payment by more than one method or to more than one person.
- 5. Subject to subsection 8, if requested by the account debtor, the person giving the notification under subsection 2 seasonably shall furnish reasonable proof, using the method in the agreement referred to in subdivision a of subsection 4, that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection 2.

6. A person furnishes reasonable proof under subsection 5 that control has been transferred if the person demonstrates, using the method in the agreement referred to in subdivision a of subsection 4, that the transferee has the power to:
 - a. Avail itself of substantially all the benefit from the controllable electronic record;
 - b. Prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and
 - c. Transfer the powers specified in subdivisions a and b to another person.
7. Subject to subsection 8, an account debtor may not waive or vary its rights under subdivision a of subsection 4 and subsection 5 or its option under subdivision c of subsection 4.
8. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

41-12-07. (12-107) Governing law.

1. Except as provided in subsection 2, the local law of a controllable electronic record's jurisdiction governs a matter covered by this chapter.
2. For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by section 41-12-06 unless an effective agreement determines that the local law of another jurisdiction governs.
3. The following rules determine a controllable electronic record's jurisdiction under this section:
 - a. If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic record's jurisdiction.
 - b. If subdivision a does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic record's jurisdiction.
 - c. If subdivisions a and b do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.
 - d. If subdivisions a, b, and c do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.
 - e. If subdivisions a through d do not apply, the controllable electronic record's jurisdiction is the District of Columbia.
4. If subdivision e of subsection 3 applies and this chapter is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this chapter is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).
5. To the extent subsections 1 and 2 provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this chapter, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.
6. The rights acquired under section 41-12-04 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.