

Article 12
CONTROLLABLE ELECTRONIC RECORDS

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RCW 62A.12-101 Short title. (Effective January 1, 2024.) This Article may be cited as uniform commercial code—controllable electronic records. [2023 c 266 § 1001.]

Construction—2023 c 266: "Nothing in this act may be construed to support, endorse, create, or implement a national digital currency." [2023 c 266 § 1201.]

Effective date—2023 c 266: "This act takes effect January 1, 2024." [2023 c 266 § 1204.]

RCW 62A.12-102 Definitions. (Effective January 1, 2024.) (a) **Article 12 definitions.** In this Article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under RCW 62A.12-105. 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.

(2) "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.

(3) "Transferable record" has the meaning provided for that term in:

(A) Section 201(a)(1) of the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7021(a)(1); or

(B) RCW 1.80.150(1).

(4) "Value" has the meaning provided in RCW 62A.3-303(a), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b) **Definitions in Article 9A.** The definitions in Article 9A of this title of "account debtor," "controllable account," "controllable payment intangible," "chattel paper," "deposit account," "electronic money," and "investment property" apply to this Article.

(c) **Article 1 definitions and principles.** Article 1 of this title contains general definitions and principles of construction and

interpretation applicable throughout this Article. [2023 c 266 § 1002.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.

RCW 62A.12-103 Relation to Article 9 and consumer laws. (Effective January 1, 2024.) (a) **Article 9A governs in case of conflict.** If there is conflict between this Article and Article 9A of this title, Article 9A of this title governs.

(b) **Applicable consumer law and other laws.** A transaction subject to this Article is subject to any applicable rule of law that establishes a different rule for consumers and chapter 19.86 RCW. [2023 c 266 § 1003.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.

RCW 62A.12-104 Rights in controllable account, controllable electronic record, and controllable payment intangible. (Effective January 1, 2024.) (a) **Applicability of section to controllable account and controllable payment intangible.** 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 (c), (d), (e), (g), and (h) of this section of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b) **Control of controllable account and controllable payment intangible.** 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.

(c) **Applicability of other law to acquisition of rights.** Except as provided in this section, law other than this Article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) **Shelter principle and purchase of limited interest.** 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.

(e) **Rights of qualifying purchaser.** A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) **Limitation of rights of qualifying purchaser in other property.** Except as provided in subsections (a) and (e) of this section for a controllable account and a controllable payment intangible or law other than this Article, 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.

(g) **No-action protection for qualifying purchaser.** 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.

(h) **Filing not notice.** Filing of a financing statement under Article 9A of this title is not notice of a claim of a property right in a controllable electronic record. [2023 c 266 § 1004.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.

RCW 62A.12-105 Control of controllable electronic record.

(Effective January 1, 2024.) (a) **General rule: Control of controllable electronic record.** 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:

(1) Gives the person:

(A) Power to avail itself of substantially all the benefit from the electronic record; and

(B) Exclusive power, subject to subsection (b) of this section, to:

(i) Prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) 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

(2) 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 (1) of this subsection.

(b) **Meaning of exclusive.** Subject to subsection (c) of this section, a power is exclusive under subsection (a) (1) (B) (i) and (ii) of this section even if:

(1) 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

(2) The power is shared with another person.

(c) **When power not shared with another person.** A power of a person is not shared with another person under subsection (b) (2) of this section and the person's power is not exclusive if:

(1) The person can exercise the power only if the power also is exercised by the other person; and

(2) The other person:

(A) Can exercise the power without exercise of the power by the person; or

(B) 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.

(d) **Presumption of exclusivity of certain powers.** If a person has the powers specified in subsection (a)(1)(B)(i) and (ii) of this section, the powers are presumed to be exclusive.

(e) **Control through another person.** 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:

(1) Has control of the electronic record and acknowledges that it has control on behalf of the person; or

(2) Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f) **No requirement to acknowledge.** A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(g) **No duties or confirmation.** 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 Article or Article 9A of this title 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. [2023 c 266 § 1005.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.

RCW 62A.12-106 Discharge of account debtor on controllable account or controllable payment intangible. (Effective January 1, 2024.)

(a) **Discharge of account debtor.** An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) Except as provided in subsection (b) of this section, a person that formerly had control of the controllable electronic record.

(b) **Content and effect of notification.** Subject to subsection (d) of this section, 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:

(1) Is signed by a person that formerly had control or the person to which control was transferred;

(2) Reasonably identifies the controllable account or controllable payment intangible;

(3) Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) Provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) **Discharge following effective notification.** After receipt of a notification that complies with subsection (b) of this section, 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.

(d) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (b) of this section:

(1) 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;

(2) 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 Article; or

(3) At the option of the account debtor, if the notification notifies the account debtor to:

(A) Divide a payment;

(B) Make less than the full amount of an installment or other periodic payment; or

(C) Pay any part of a payment by more than one method or to more than one person.

(e) **Proof of transfer of control.** Subject to subsection (h) of this section, if requested by the account debtor, the person giving the notification under subsection (b) of this section seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1) of this section, 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 (b) of this section.

(f) **What constitutes reasonable proof.** A person furnishes reasonable proof under subsection (e) of this section that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1) of this section, that the transferee has the power to:

(1) Avail itself of substantially all the benefit from the controllable electronic record;

(2) Prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) Transfer the powers specified in (1) and (2) of this subsection to another person.

(g) **Rights not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its rights under subsections (d)(1) and (e) of this section or its option under subsection (d)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this Article 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. [2023 c 266 § 1006.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.

RCW 62A.12-107 Governing law. (Effective January 1, 2024.) (a) **Governing law: General rule.** Except as provided in subsection (b) of this section, the local law of a controllable electronic record's jurisdiction governs a matter covered by this Article.

(b) **Governing law: RCW 62A.12-106.** 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 RCW 62A.12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) **Controllable electronic record's jurisdiction.** The following rules determine a controllable electronic record's jurisdiction under this section:

(1) 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 Article or this title, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If (1) of this subsection 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 Article or this title, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If (1) and (2) of this subsection 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.

(4) If (1), (2), and (3) of this subsection 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.

(5) If (1) through (4) of this subsection do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) **Applicability of Article 12.** If subsection (c) (5) of this section applies and this Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this Article 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).

(e) **Relation of matter or transaction to controllable electronic record's jurisdiction not necessary.** To the extent subsections (a) and (b) of this section provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this

Article, 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.

(f) **Rights of purchasers determined at time of purchase.** The rights acquired under RCW 62A.12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase. [2023 c 266 § 1007.]

Construction—Effective date—2023 c 266: See notes following RCW 62A.12-101.