

Consignment or Bailment?

For creditors, Bailment & Consignment transactions get a little fuzzy. Scroll on to learn what makes a Bailment different from a Consignment.

#Article9 #UCC #Consignment #Bailment



Consignment



Consignor has title of unsold goods

A consignment is when the owner (the consignor) retains title to goods delivered to the consignee.



Consignee sells the goods

The consignee will then hold the goods for sale or use.



Consignee now has title of sold goods

When the goods are sold, the consignor's rights attach to the proceeds.



Consignor invoices consignee for sold goods

If the consignee is not able to sell the goods, they can be returned to the consignor without any obligation.



Consignor invoices consignee for sold goods

Bailment

Under a bailment agreement, the bailor (owner) delivers its goods to another party (the bailee), for some express purpose.

Once the bailee has fulfilled this purpose, the goods are returned to the bailor.

In other words, a bailment is a transfer of physical possession of the goods, not a transfer of title or ownership of the goods.

"Express Purpose"
could be to improve
upon the original goods

Here's an example:

Fictional Fan manufactures and sells industrial-sized fans.

Fictional Fan manufactures all the smart fan parts; however, Fictional Fan doesn't have the equipment needed to assemble and program the motherboards that make their fans "smart."

Fictional Fan hires a third party to assemble and program the motherboards.

Under an agreement between Fictional Fan and the third party, the third party will assemble and program the motherboards and send the completed motherboards back to Fictional Fan.

Fictional Fan retains ownership of the pieces/parts, even when they are in the third party's possession.

Comparison

Consignment Bailment

	Consignment	Bailment
Who owns the goods?	consignor	bailor
Who receives the goods?	consignee	bailee
Can the goods be sold?	yes	no
Does ownership (title) of the goods pass?	yes (if the goods are sold)	no
Can the goods be repossessed?	yes (if you properly perfect a security interest)	yes (if you properly perfect a security interest & if goods have not been commingled with other goods)

Best Practice

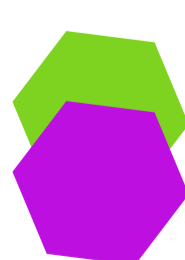


Technically, a bailment is not a sale of goods, it tends to fall under Article 2 of the UCC, not Article 9.

Hope for Bailment & Prepare for Consignment



Before releasing goods to a third party, ensure you have a signed security agreement and file a UCC-1.



Releasing goods to another party, whether the intention is for the goods to be returned or sold, is a risk.

What if the third party files for bankruptcy protection, while in possession of your goods?

Even when those goods are slated to be returned to you, if you failed to file a UCC under Article 9, your right to repossess those goods may be in jeopardy.



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Consignment & Bailment?

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