



Commercially Reasonable **Article 9 Sales**



Attorneys navigating UCC Article 9 foreclosures must ensure that every aspect of the collateral disposition meets the legal standard of commercial reasonableness. While the statute provides a framework, courts consistently evaluate whether the secured party acted according to real-world commercial customs and practices. Documented procedures, market exposure, competitive bidding, and expert validation are all necessary to defend a sale against challenges and preserve a lender's deficiency rights.

The Legal Foundation of Commercial Reasonableness

Commercial reasonableness is central to UCC Article 9. Section 9-610(b) states that "every aspect of the disposition of collateral"—including method, manner, time, place, and terms—must be commercially reasonable. Courts require more than formal compliance; they require actions grounded in commonly accepted business practices within the relevant industry.

Courts look to how market participants typically sell similar assets, how buyers are identified, how notices are delivered, and whether the process maximizes value. Commercial reasonableness also serves as evidence of good faith, an implied duty in every contract governed by the UCC.



II. Why Commercial Reasonableness Requires Industry Expertise

Because commercial reasonableness is measured against actual business practice, courts often rely on expert testimony to establish what those practices are. Scholars emphasize that commercial reasonableness cannot be determined in isolation; it depends on objective benchmarks and industry-established norms.

Industry expertise becomes essential when collateral is specialized, when the market is niche, or when the sale conditions require tailored outreach. Without expert involvement, the process risks being deemed unreasonable, weakening the lender's ability to recover deficiencies and exposing the attorney and client to challenge.

III. The Attorney's Risk: Litigation, Deficiency Claims, and Good Faith

Case law demonstrates that insufficient marketing, limited buyer outreach, inadequate notice, or below-market sale prices create real legal exposure. Courts may invalidate deficiencies or award damages if the sale fails to reflect responsible commercial practice.

Commercial reasonableness is intertwined with good faith. If a sale lacks the hallmarks of industry-standard execution, courts may find a breach of the duty of good faith—potentially rendering the transaction unenforceable. This makes process documentation, market exposure, and expert procedure vital.





IV. Practical Application of Industry Standards to Article 9 Sales

Courts compare a secured party's actions with accepted business customs. These practices provide the evidence courts require when determining whether the sale process was commercially reasonable.

V. Consequences of Not Meeting Commercial Reasonable Standards

Attorneys should advise lenders that failing to involve experts introduces significant risk.

Courts have invalidated sales where:

- ✗ Collateral was sold with insufficient advertising
- ✗ Sales attracted only a single bidder
- ✗ Market-specific publications were ignored
- ✗ Prices were disproportionately low relative to market value

In these cases, lenders lost deficiency rights, and courts inferred lack of good faith.

VI. Conclusion

A commercially reasonable UCC Article 9 sale is more than a statutory requirement—it is an evidentiary benchmark based on established industry practices.



AuctionAdvisors daily operations—marketing collateral, attracting buyers, conducting sales, and documenting results—mirror precisely the practices courts examine. By involving our firm, attorneys ensure that the sale aligns with real-world commercial standards.

AuctionAdvisors Delivers:

- Comprehensive marketing campaigns targeting both general and industry-specific buyers
- Competitive bidding environments that maximize sale proceeds
- Compliance-ready notice preparation and timing
- Asset-specific valuation guidance and sale structuring
- Documentation of advertising, inquiries, bidder participation, and final sale results
- Independent, arm's-length execution that satisfies judicial expectations
- Expert testimony, when necessary, to validate commercial reasonableness

LEADERSHIP

JOSHUA OLSHIN

Joshua Olshin is a partner at AuctionAdvisors and brings his extensive experience advising corporations, financial institutions, municipalities and individuals on the disposition of assets throughout the United States. Before entering the auction business, Mr. Olshin worked as a corporate/transactional attorney in private practice for more than 8 years, beginning his career at Skadden Arps Slate Meagher & Flom and then at Friedman Kaplan Seiler & Adelman. During his time as an attorney, he advised top Fortune 500 companies on the acquisition and disposition of corporate assets.

Mr. Olshin received his B.A. from Johns Hopkins University, his J.D. from Northwestern University Law School and his M.B.A from INSEAD (Fontainebleau, France). Mr. Olshin is a member of various trade organizations and his affiliations have included: Turnaround Management Association (TMA), American Bankruptcy Institute (ABI), National Association of Home Builders (NAHB), Urban Land Institute (ULI), Mortgage Bankers Association (MBA), National Association of Auctioneers (NAA) and is admitted to the New York Bar Association.



OREN KLEIN



Oren Klein is a restructuring and insolvency professional specializing in assignments concerning bankruptcy trustees, federal and state receiverships, special fiscal agents, special masters and assignments for the benefit of creditors. Mr. Klein has served as a Partner with AuctionAdvisors for the past 12 years. Prior to his position at AuctionAdvisors, Mr. Klein was a Partner at Integrated Property Group, LLC for over 4 years. Mr. Klein currently serves as the Chairman of the Turnaround Management Association's New Jersey Chapter with over 220 members in the insolvency and restructuring industry. He also served as a member of the Chapter Resource and Response Committee for the Global Turnaround Management Association serving 52 Chapters with over 10,000 members worldwide.

Mr. Klein holds a bachelor's degree from Rutgers University and is a graduate of The World Champion College of Auctioneering. He is a real estate broker in 5 states and a licensed auctioneer. Mr. Klein has also served as Special Master and Court-Appointed Receiver in several state court actions.

Oren Klein, 973-753-1313 ext 703
oklein@auctionadvisors.com

Joshua Olshin, (212) 375-1222 ext. 705
jolshin@auctionadvisors.com