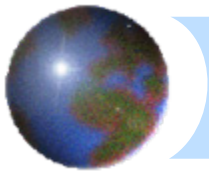


# *Enforcement of Security Interests under the SIPP Act*

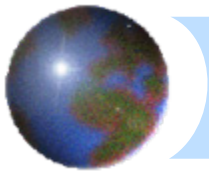
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Jeffrey D. Forchelli Professor of Law  
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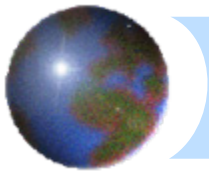
# *Enforcement of Security Interests under the SIPP Act*

- ✿ What does “enforcement” mean in this context?
  - ▣ Realization on the collateral
- ✿ Why is this topic so important?
  - ▣ The purpose of a security interest is to protect the secured creditor against loss resulting from the debtor’s default. The protection is provided by realization on the collateral.



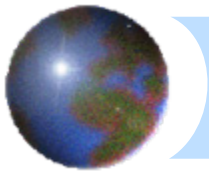
# *Enforcement of Security Interests under the SIPP Act*

- ✚ Enforcement consists of a series of steps, including:
  - ▣ Repossession
  - ▣ Disposition or collection
  - ▣ Application of proceeds of disposition or collection
  - ▣ Alternatively, retention of collateral in satisfaction of the debt (“strict foreclosure”)



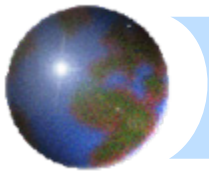
# *Repossession under the SIPP Act*

- ❖ Critically important for non-possessory security interests in tangible property
- ❖ Unnecessary for possessory security interests – secured party already has the collateral
- ❖ Irrelevant for intangible collateral



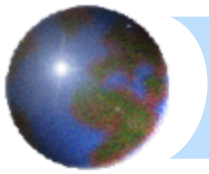
# *Repossession under the SIPP Act*

- ✚ How to do it?
- ✚ See Section 34(2)(a) of SIPP Act: “[on default], the secured creditor has, unless otherwise agreed between the parties, the right to take possession of the secured property or otherwise enforce the security contract *by any method permitted by law.*”



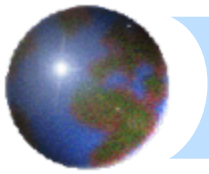
# *Repossession under the SIPP Act*

- ✚ What can secured creditor do to get possession?
- ✚ It may “take possession of the secured property or otherwise enforce the security contract by any method permitted by law.”
- ✚ Can secured creditor use “self-help” to take possession, or do so only with judicial order?



# *Disposition of Collateral under the SIPP Act*

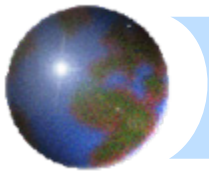
- ✚ May be done by private or public sale, lease, license, or “any other commercially reasonable manner.”
- ✚ Must be preceded by notice to debtor and others with stake in how much is raised by disposition
- ✚ Availability of this method for intangible collateral? Some SIPP Act language suggests that the answer is no



# *Application of Proceeds of Disposition*

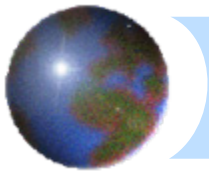
- ✚ Reasonable expenses of repossession and disposition
- ✚ Satisfaction of the obligation owed to foreclosing secured party
- ✚ Satisfaction of other obligations secured by the same collateral
- ✚ Surplus to debtor. (Debtor liable for any deficiency.)





# *Collection of Collateral under the SIPP Act*

- Secured creditor may “notify the debtor ... to make payment or otherwise render performance to the secured creditor
- Proceeds applied similarly to application in the case of disposition



# *“Strict Foreclosure” under the SIPP Act*

- ✚ Instead of disposition or collection of the collateral, secured party may propose to retain collateral in total or partial satisfaction of the debt
- ✚ Proposal must go to debtor and certain other parties with an interest in the collateral
- ✚ Those notified have veto power