

October 2008 Bank Alert

With the significant increase in the amount of loan workout matters, we have come across a situation where banks have found themselves unsecured, albeit under very specific circumstances. Suppose for instance that a lender secured its loan with a pledge of a limited liability company interest so that the lender could realize the benefit of certain permits or other assets which might not otherwise be directly pledgable. Typically, a lender would take a security interest in general intangibles and file a UCC-1 Financing Statement to perfect the security interest. If after doing this, the borrower/owner simultaneously pledges its limited liability company interest to another lender under Article 8 of the Uniform Commercial Code and delivers possession of certificates to the junior lender, the junior lender will trump the senior lender provided it did not know of the earlier grant of the security interest. Possession trumps filing.

While equity follows debt, there are certain circumstances where a pledge of stock of an LLC interest is required. In this case, you need to be sure that you have a perfected security interest in the pledge of such an interest. To do this, the borrower would need to opt into the provisions of Article 8 and actually deliver the certificated interest(s) in the limited liability company to the lender with a power of transfer, similar to a stock power. To further protect yourself, the loan agreement would not allow the changing of the certificated interest without the lender's prior written consent. [Visit Our Website](#)

As always, should you have any questions, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Shrair', with a long horizontal line extending to the right.

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