

### **355.9-328 Priority of security interests in investment property.**

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under KRS 355.9-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under KRS 355.9-106 rank according to priority in time of:
  - (a) If the collateral is a security, obtaining control;
  - (b) If the collateral is a security entitlement carried in a securities account and:
    1. If the secured party obtained control under KRS 355.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;
    2. If the secured party obtained control under KRS 355.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
    3. If the secured party obtained control through another person under KRS 355.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or
  - (c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in KRS 355.9-106(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under KRS 355.9-313(1) and not by control under KRS 355.9-314 has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under KRS 355.9-106 rank equally.
- (7) In all other cases, priority among conflicting security interests in investment property is governed by KRS 355.9-322 and 355.9-323.

**Effective:** July 1, 2001

**History:** Repealed and reenacted 2001 Ky. Acts ch. 119, sec. 10, effective July 1, 2001.

-- Created 2000 Ky. Acts ch. 408, sec. 68, effective July 1, 2001.