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Blockchain Law

Digital assets come of age with New York's new UCC Article 12

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From a legal development standpoint, the clearest sign that digital assets have reached a new level of maturity is when the law gives up trying to shoehorn their legal issues into rules that were developed long ago in other contexts, and instead recognizes that these assets need their own legal framework, attuned to their own specific features, needs and issues.

New York saw such a development when on Dec. 5, 2025, New York Governor Kathy Hochul signed into law a set of amendments to the New York Uniform Commercial Code which create a new article, Article 12, covering a broad range of digital assets, with various associated changes to other UCC provisions. N.Y. Assemb. Bill 3307-A, N.Y. Sen. Bill S1840A, 2025-2026 Legis. Sess. (N.Y. 2025) (Bill). These provisions will take effect 180 days after enactment, with an effective date of June 3, 2026.

Background and rationale

In 2022, the Uniform Law Commission (ULC) issued a set of Uniform Commercial Code Amendments (2022), the key feature of which was to add to the model Uniform Commercial Code (UCC) a new article, Article 12, entitled "Controllable Electronic Records," to deal with digital assets, along with related changes to other existing UCC provisions. As the ULC explained in its Prefatory Note to Article 12 in these amendments, these model amendments sought to respond to the growing use and commercial significance of digital assets, in what the drafting committees described as a major component "of the effort to adapt the UCC to emerging technologies as they might affect electronic commerce."

In function, the model Article 12 amendments addressed a growing divergence between traditional commercial law concepts, such as possession, delivery, and negotiability, that were developed in a world of tangible physical assets and instruments, and the practical realities of dealing with assets that exist solely in electronic form and may be transferred or controlled exclusively through electronic means. Such assets may be rooted in blockchain-based technology or, as described in Article 12's Prefatory Notes, "technologies that have yet to be developed, or even imagined."

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In their Prefatory Note, the drafters emphasized that Article 12 seeks to establish a technology-neutral legal framework under which certain electronic records may be treated as transferable property, just like physical assets or paper financial instruments under existing law. Rather than regulating the underlying technology or market participants, however, the amendments tie ownership, transfer, and priority of such assets to the functional concept of "control." See §12-105.

UCC Article 12 seeks to simplify how digital assets, or "controllable electronic records" (discussed below), including cryptocurrencies, non-fungible tokens, tokenized payment rights, and certain electronic payment obligations, can be owned, transferred, perfected, and used as collateral under the UCC. Its goal in so doing is to bring predictability to electronic asset transactions, which to date have been governed through contract law, traditional property principles, or bespoke statutory regimes varying across jurisdictions. With the model Article 12 framework, the ULC sought to offer lawmakers a means to regulate the current legal uncertainty and commercial risk involved in digital transactions, but in a way that avoids premature regulation of new and emerging technologies that continue to develop.

According to data on the ULC website, since the 2022 UCC amendments were first promulgated, they have been adopted to some extent by a majority of U.S. states. However, adoption has been uneven. Some states have enacted the amendments largely verbatim, while others introduced state-specific modifications, including major substantive omissions and revisions affecting Article 12. Nonetheless, to date, at least 32 states as well as the District of Columbia have adopted at least some components of UCC Article 12.

New York's recent enactment of Article 12 reflects a significant push towards the uniform adoption of the UCC's electronic asset regulation framework. New York's action is particularly significant given New York's unique role as a leading commercial and financial jurisdiction, with a well-developed secured transactions jurisprudence, whose law parties frequently elect to have govern their transactions.

Digital assets subject to Article 12

As adopted in New York, Article 12 defines as a new category of personal property the controllable electronic record (CER). This term is intended to embrace such digital assets as:

- cryptocurrencies and other blockchain-based tokens (e.g., Bitcoin, Ethereum, and stablecoins);
- non-fungible tokens representing unique digital or real-world assets (e.g., certain digital assets and asset-backed tokens); and
- tokenized payment rights and other blockchain-based claims (e.g., tokenized debt instruments, cash flows, and other contracts).

Article 12 accomplishes this by defining a CER broadly as "a record stored in an electronic medium that can be subjected to control," subject to certain express exceptions. N.Y. U.C.C. §12-102(a)(1).

In general, an electronic record can be "subjected to control" so as to be a CER under Article 12 if the electronic record, a record attached to or logically associated with it, or a system in which it is recorded gives the controlling party (1) the power to avail itself of substantially all of the benefit of the electronic record; (2) the exclusive power to (i) prevent others from availing themselves of substantially all of the benefit of the electronic record and (ii) to transfer control of the electronic records or prevent others from obtaining control of the electronic record; and (3) to identify itself, in any manner, as having such powers. See §12-105.

Article 12 expressly excludes from the definition of CER certain types of electronic records that are generally already subject to other UCC provisions or regulatory regimes. Specifically, the definition of CER expressly excludes: deposit accounts (governed by UCC Article 9), electronic chattel paper (governed by UCC Article 9), electronic documents of title (governed by UCC Article 7), electronic money (governed by UCC Article 9), investment properties (governed by UCC Article 8), transferable records (governed by 15 U.S.C. §7021(a)(1)); or controllable accounts and controllable payment intangibles (discussed below). See N.Y. U.C.C. §12-102(a)(1).

By employing a functional and technology-neutral definition of CER, Article 12 permits this term to be applied to new kinds of assets that may emerge in the future, without reference to particular platforms or systems. At the same time, Article 12's exclusion from the definition of CERs various digital assets already governed by other UCC articles or regulatory regimes serves to limit Article 12 from encroaching into other bodies of law.

Statutory focus on "control"

A defining feature of Article 12 is that it looks not to having possession but rather to having "control" as the legal factor primarily defining ownership of a subject digital asset. Under many other UCC frameworks, possession is often used to determine who has enforceable rights in collateral or qualifies as a holder in due course. See, e.g., N.Y. U.C.C. §3-302 (concerning negotiable instruments). But for many purely electronic assets, particularly those based on decentralized systems, possession in a tangible sense is impossible. Article 12 breaks free of the conundrums posed by attempting to address digital assets through possession-based standards by looking instead at the power to "control" them.

Under §12-105(a), a party has "control" of a CER if the CER, or a record attached to or logically associated with it, or the system in which it is recorded:

- gives that party the power to avail itself of substantially all of the benefit of the CER;
- gives that party the exclusive power to (i) prevent others from availing themselves of substantially all of the benefit of the electronic record and (ii) transfer control of the CER or prevent others from obtaining control of the CER; and
- gives that party the ability to identify itself, in any manner, as having such powers.

Additionally, a person can also be considered in control of a CER "through another person" (other than a transferor of an interest in the CER) if either (i) the CER is subject to the control of a third party who acknowledges the person's control of the electronic record; or (ii) a third party acknowledges it will obtain control of the CER on such person's behalf and subsequently does obtain control over the CER. See §12-105(e).

Though "control" over a CER under Article 12 must be "exclusive," Article 12 recognizes that the operation of ordinary system protocols, such as decentralization, should not be viewed as undermining "exclusive" control over a CER. See § 12-105(b)(1). However, control will not be considered "exclusive" if the would-be controlling party shares power with another party and (i) the would-be controlling party's powers with respect to the CER can only be exercised jointly with that other party, (ii) the other party can exercise such powers with respect to the CER independently, or (iii) the other party is the transferor of the would-be controlling party's interest in the CER. See §12-105(c).

Article 12 does not condition CER status on any specific technological methods for deriving the benefits of a CER, or for exercising exclusive power over a CER, or for identifying an entity as the owner of a CER. Thus, cryptographic keys, distributed ledgers, centralized registries, or other technologies may all satisfy these requirements, so long as the functional criteria outlined in Article 12 are met. §12-105(a)(2).

"Take-free" rules and "qualifying purchasers" of CERs

Article 12 applies "take-free" rules to CERs that are analogous to the "holder in due course" rules of UCC Article 3 (applying to negotiable instruments) and the "protected purchaser" concept of UCC Article 8 (applying to investment securities). Under these rules, persons who are deemed "qualifying purchasers" of CERs will take them free of any competing claims by third parties who claim to have superior rights to the asset.

Under §12-102(a)(2), a person is deemed to be a "qualifying purchaser" of a CER if that person acquires control of the CER "for value, in good faith, and without notice of a claim of a property right in the [CER]." Compare, e.g., N.Y. U.C.C. §3-302 (holder in due course rule for negotiable instruments). Under the "take-free" rule of §12-104(e), being a "qualifying purchaser" means that the purchaser "acquires its rights in the [CER] free of a claim of a property right in the [CER]" by another person. The statute also protects against persons attempting to make an end run around these protections for "qualified purchasers" by styling claims characterized

under theories of conversion, replevin, constructive trust, or equitable lien which seek to challenge the rights of a qualifying purchaser. §12-104(g).

Section 12-102(a)(2) further augments these take-free provisions by also specifically providing that for CERs that "would be a 'draft' or a 'note,' as those terms are defined in [UCC §3-104], if the [CER] were a signed writing," they will enjoy the protections that New York specially codified in N.Y. U.C.C. §3-304(7). Section 3-304(7) provides that "[i]n any event, to constitute notice of a claim or defense, the purchaser must have knowledge of the claim or defense or knowledge of such facts that his action in taking the instrument amounts to bad faith." As explained by the New York Court of Appeals in *Chemical Bank v. Haskell,* 51 N.Y.2d 85, 411 N.E.2d 1339, 432 N.Y.S.2d 478 (1980), having such "knowledge" under this provision means having "actual knowledge" of the competing claim, not merely reason to know (citing the UCC's definition of "knowledge" contained within its definition of "notice" in then-UCC §1-201(25) (the predecessor to the current UCC §1-202(a)), and further imposes a "subjective test" as to whether the purchaser's actions in light of such knowledge "amounts to bad faith."

In addition, under §12-104(h), the filing of a financing statement does not constitute notice of a claim of a property right in a CER.

By imposing these high standards for what constitutes notice of competing claims, New York's new Article 12 regime provides greater certainty and protection for good-faith purchasers and lenders, and thus makes New York law particularly favorable for digital asset transactions.

Use of CERs as collateral

In addition to creating the new Article 12, the Bill further facilitates the use of digital assets as collateral by introducing the concepts of "controllable accounts" and "controllable payment intangibles" into UCC Article 9. See §§9-102(a)(27-a), (27-b) (as amended). These concepts do not themselves constitute CERs, but rather are traditional rights to payment that are tied to a CER. The statute expressly excludes "controllable accounts" and "controllable payment intangibles" from the definition of CERs. §12-102(a)(1).

Because the Bill extends the enforceable security interest in CER collateral to any associated "controllable accounts" or "controllable payment intangibles," see §9-203(b)(3)(D), this framework helps support the use of CERs as collateral, and has particular implications for securitizations. For lenders, this minimizes the risk that a CER might get transferred while the underlying right to payment still remains with the transferor. Functionally, this means that by satisfying the requirements of §12-105 and gaining control of a CER tied to a right to payment, a lender achieves a perfected security interest in the "controllable account" or "controllable payment intangible" along with the underlying right to payment associated therewith. See §§9-107A (as added), 9-314 (as amended).

Perfection, priority and transfer rules

Article 12 also recognizes that the intangible nature of CERs requires them to have their own rules for perfection of security interests in CERs. Under the Bill, a security interest in a CER, controllable account, or controllable payment intangible may be perfected by either the filing of a financing statement or obtaining "control" in accordance with §12-105. See §9-312(a) (as amended); §9-314(a) (as amended).

However, the New York UCC creates a hierarchical priority scheme that favors control over filing. In this framework, a party that perfects by control maintains super-priority over a party who perfects solely by filing, regardless of the sequential order of perfection, per newly-added §9-326A.

This framework parallels existing UCC frameworks for tangible instruments. In those frameworks, actual possession generally has priority over mere filing. Likewise, with CERs, filing provides a baseline of protection, but "control" mechanism (the functional equivalent in this context of possession) will prevail. See, e.g., §9-330 (as amended).

Furthermore, under §12-104(d), the transfer of a CER is not merely a contractual assignment but a statutory vesting of rights, transferring all rights in the CER that the transferor had or had power to transfer. This rule ensures that the rights associated with the CER remain intact through the chain of title, subject only to the "take-free" protections afforded to "qualifying purchasers."

Implications for chattel paper

In another change outside of Article 12, the Bill revises the UCC definition of "chattel paper," a category of assets that includes financing agreements, auto loans, leases and the like. Through these amendments, the definition of chattel paper has been revised to reference the right to receive a monetary obligation secured by specific goods or due under a lease, rather than the physical or electronic record itself. See §9-102(a)(11) (as amended).

Perfection of security interests in chattel paper by a method other than filing now requires the secured party to have not just possession of all authoritative tangible copies but now also control of all authoritative electronic copies. See §9-314A (newly added). Moreover, the standard for control of electronic chattel paper under §9-105 has been aligned with that of control under the Article 12 framework, focusing on the ability to identify authoritative copies and prevent unauthorized changes. Specifically, for electronic chattel paper under §9-105 as amended by the Bill, control requires that the system maintain a single authoritative copy that identifies the secured party as the assignee, is unique and unalterable except as permitted, and that any copies are readily identifiable as non authoritative.

Distinguishing CERs and electronic money

The Bill also includes provisions distinguishing between CERs, like privately issued cryptocurrencies, and "electronic money," defined as "money in an electronic form." See §9-102(31-a) (as amended). "Electronic money" is expressly excluded from the definition of CER under §12-102(a)(1). Functionally, this definition generally applies to any domestic or foreign government-authorized electronic medium of exchange, providing an important distinction between cryptocurrencies and legal tender, as fiat currency in electronic form not covered by the rules that govern CERs under Article 12.

In addition, the Bill modifies §1-201(b)(24) to clarify that "money" does not include an electronic record that was in existence before the record was authorized or adopted by a government. This exception ensures that any pre-existing cryptocurrencies will be governed by the provisions of Article 12, as a CER, rather than the currency rules of UCC Articles 3 or 4A.

Governing law

Section 12-107 sets forth rules about governing law in matters involving CERs. If the CER or "a record attached to or logically associated" with the CER and "readily available for review" specifies a governing law, that law will govern matters affecting that CER under UCC Article 12. §12-107(c)(1). Alternatively, if no such law is specified by the rules of a CER but a governing law is specified for the system in which the CER is recorded, that law will govern. §12-107(c)(2). Ultimately, if there is nothing to specify any governing law, Article 12 defaults to using the law of the District of Columbia (as a neutral proxy for the model law) as the governing law. See §12-107(c)(5).

Transitional rules

Even though the Bill will not take effect until June 3, 2026, it also includes specific transition provisions (codified within an accompanying new UCC Article 12-A) which govern the continuation, perfection, and priority of pre-existing interests in light of the new regulatory framework, in order to facilitate orderly implementation of these new rules and protect the existing rights of market participants:

- Parties holding security interests or other interests in property subject to the UCC amendments have a grace period of one year following the Bill's effective date to satisfy any new perfection requirements imposed by the amendments. During this adjustment period, perfected interests under the prior framework remain protected even if the new law's perfection standards differ.
- Secured parties will likewise have until one year after the Bill's effective date to amend agreements and obtain control of Article 12 property, or undertake other actions necessary to maintain or re-perfect their interests under the updated UCC framework. Failure to take such steps by the end of this period may result in loss of priority relative to other parties.

- Security interests and priorities that were validly perfected immediately before the effective date generally will retain their priority status through the adjustment date, notwithstanding the amendments. Likewise, transactions that were validly entered into and enforceable under pre-amendment law will remain valid and enforceable after transition period.

Conclusion

New York's adoption of UCC Article 12 and the other 2022 UCC amendments in the Bill is an important step that heralds the mainstreaming of digital assets in commercial and financial transactions. When the law no longer treats digital assets as a fringe issue or an afterthought but rather as an important tool that warrants its own legislative provisions specifically geared to its needs and features, digital assets legally have come of age.

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