

From: David Snyder [mailto:dsnyder@wcl.american.edu]
Sent: Monday, February 22, 2010 1:31 PM
To: Smith, Edwin E.
Subject: UCC Art 9 revisions

Dear Ed:

A few thoughts occurred to me during the conference call last week, but I wasn't sure whether my status as an observer allowed me an uninvited speaking role. If you think it worthwhile, perhaps you could circulate them to the group. If not, feel free to let them go.

1. My first concern is that we not do something that is going to make it unduly difficult for people who become disabled to get credit. Imagine Linda's father, or other sole proprietors, farmers, et al. who get old or sick and can't drive. They get a state ID instead of a driver's license, which they have to surrender. As long as the name on the state id shows the same name as on the old DL—which the lender will have copied in its files—all is fine, right? If that's right, so far there's no problem.
2. Lots of people move, especially in cities that span several states. That means they will eventually get a new driver's license, not necessarily when the old one was set to expire. The move and the potential for moving will mean that the lender will have an extra diligence burden because the jurisdiction for filing could change, not just the name, although the name could change too, particularly as State 2 driver's licenses may be subject to different name rules than State 1's. My guess is that most such borrowers will not have the old driver's license: they may be required to surrender it to State 2 (this has happened to me), or they may destroy or discard it even if they are allowed to keep it.
3. Points 1 and 2, I think, are not too bad for a borrower who already has a loan and is renewing or being monitored. The lender will have a copy of the old DL in its files and can deal with any changes. What about a new borrower who has become disabled from driving or who has moved in the last [you pick the period]. The lender sees the new license/ID and demands a copy of the old one. Potential Borrower cannot produce it. I worry that some lending officer is going to halt the loan because Potential Borrower won't have the documents that the lender's forms require. And I worry that this situation will be worse for aging people or mobile people than under current law because the driver's license is reaching official status in the revision, and the point of the revision is for the lenders to make it part of a routine. These potential borrowers will break the routine and could thus lose their credit. Is that plausible? If so, is it significant?

In other words, I just want to make sure we don't do something that makes it so that post-revision, recently disabled/mobile people all of a sudden can't get a secured loan when they could have done so pre-revision. That will be doing harm, in my view. Admittedly, though, that skeptical view to the proposed revision may be influenced by a hunch that the benefits of the proposal are outweighed by the costs in terms of statutory and regulatory complexity—an apparently minority view on the committee these days.

With thanks,

David

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