

AGENDA

Drafting Committee to Revised Uniform Commercial Code Article 7: Documents of Title

January 18-20, 2002
Washington, D.C.

Henry D. Gabriel, Jr., Chair
Drew Kershen and Linda Rusch, Reporters

The drafting committee will meet Friday, January 18th, Saturday, January 19th, and the morning of Sunday January 20th at the Wyndham Washington Hotel in Washington D.C. We will begin at 8:30 on Friday and Saturday mornings. Because we have a very full agenda, we would like to work as long on Sunday morning as is practical.

Although we presently plan to begin discussion on the electronic issues, we may allocate a good portion of our time on the non-electronic issues as well, with the idea to give as much guidance as possible to the reporters on both sets of issues to allow as much development as possible in the new draft for the April meeting.

We will begin on Friday morning with a discussion of provisions of the draft that are concerned with electronic documents of title. As a preliminary matter, it is important to note that the draft presupposes four categories of documents of title: tangible negotiable documents, electronic negotiable documents, tangible non-negotiable documents, and electronic non-negotiable documents of title. The revisions on electronic documents of title draw from two sources: Revised Article 9 and UETA.

We will begin with an examination of the definitions that have been revised to accommodate electronic documents:

- 1-201(b)(6) (bill of lading)
- 1-201(b)(15) (document of title)
- 1-201(b)(15a) (electronic document of title)
- 1-201(b)(15b) (tangible document of title)
- 7-102(1)(d) (delivery order)

We also need to discuss as a threshold policy issue whether the draft should cover documents of title that are converted to electronic form after issuance in a paper form. The current draft uses the UETA concept of transferrable record that would cover electronic documents only if issued in electronic form.

The concepts of negotiation and due negotiation that apply to tangible negotiable documents and that depend upon the delivery concept have been adapted to electronic negotiable documents using the concept of control drawn from UETA § 16 as a substitute for the delivery concept. Delivery covers both transfer of possession of a tangible document and transfer of control of an electronic document. While indorsement is retained for tangible documents, a substitute concept has not been developed for electronic documents. See UETA § 16. The proposed changes are contained in the following sections:

- 7-501A (control)
- 7-501 (negotiation and due negotiation)
- 7-502 (rights upon due negotiation)
- 7-503 (rights in the goods under documents)
- 7-504 (rights when not due negotiation)
- 7-505 and 7-506 (indorsement)
- 7-507 (warranties upon negotiation)
- 1-201(b)(5) (bearer)
- 1-201(b)(14) (delivery)
- 1-201(b)(20) (holder)
- 7-205 (title after due negotiation)
- 7-207 (fungible goods and due negotiation)
- 7-209 (warehouse lien, rights upon due negotiation)
- 7-301 (due negotiation of bill of lading)
- 7-303 (rights to delivery of goods with bill of lading)
- 7-403 (obligation to deliver, person entitled under document)
- 7-601 (lost and missing documents)
- 7-602 (attachment of the goods)

Several sections have changes to change “writing” to “record” and otherwise make the draft medium neutral. We should look at these changes, however, most of them should not take too much time.

1-201(b)(10) (conspicuous) has already been revised in Article 1 for medium neutrality. This definition should be consulted in reference to sections which require a term to be conspicuous. (7-203, 7-309)

- 7-104 (negotiable documents)
- 7-202 (form of warehouse receipt)
- 7-204 (duty of care)
- 7-208 (altered warehouse receipts)
- 7-304 (bill of lading in a set)
- 7-305 (destination bills)
- 7-306 (altered bills)
- 7-402 (duplicate bill)

Notification is required in several instances. The draft relies on the revised Article 1 definition of notice which incorporates electronic notices. The changes in the draft are incorporated in these sections:

- 7-206 (termination of storage)
- 7-210 (enforcement of warehouse lien)
- 7-308 (enforcement of carrier lien)

In addition to the discussion of electronic issues, the other issues we may discuss from the draft are:

The Concept of Good Faith

- i. Reporter's Note to 7-203 (liability for non-receipt or misdescription) explains the approach adopted;
- ii. Other sections where good faith is used include
 - (1) 7-206 (termination of storage)
 - (2) 7-404 (no liability for good faith delivery)
 - (3) 7-504 (rights acquired in absence of due negotiation)
 - (4) 7-508 (warranties)
 - (5) 7-601 (lost and missing documents).

The Duty of Care –

- iii. Comparison and Coordination for Warehouses and Carriers
 - (1) 7-204 (warehouse duty of care)
 - (2) 7-309 (carrier duty of care)

Liens and their Enforcement

- iv. Comparison of Warehouse and Carrier Liens
 - (1) 7-209 (warehouse lien)
 - (2) 7-307 (carrier lien)
- v. Comparison of Warehouse and Carrier Enforcement Measures
 - (1) 7-210 (warehouse lien enforcement)
 - (2) 7-308 (carrier lien enforcement)
- vi. Compatibility and Consistency between 7-403 (obligation of warehouse or carrier to deliver; excuse) and the sections on liens and enforcement of liens

7-207 (fungible goods and pro-rata sharing in shortage situations)

7-603 (conflicting claims; interpleader)

Comparison and Coordination between 7-103 (relation of Article 7 to other laws) and 10-104 (laws not repealed).