PROPOSED REVISIONS TO
UNIFORM COMMERCIAL CODE,
ARTICLE 7–DOCUMENTS OF TITLE

Addressing Electronic Issues
WITH REPORTER’S NOTES

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2002 Draft

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Sections from revised Article 1 as adopted at the 2001 annual meeting.

SECTION 1-201. GENERAL DEFINITIONS.

* * *

(b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that apply to particular articles or parts thereof:

* * *

(5) “Bearer” means a person in possession of a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank or a person in control of a negotiable electronic document of title.

(6) “Bill of lading” means a record or records document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

* * *

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from
surrounding test of the same size by symbols or other marks that call attention to the language.

* * *

(14) “Delivery”, with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession and with respect to an electronic document of title means a voluntary transfer of control.

(15) “Document of title” means a record or records which are includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also or any other record or records which in the regular course of business or financing are treated as adequately evidencing that the person in possession or control of the record or records it is entitled to receive, control, hold, and dispose of the record or records document and the goods it covers. To be a document of title, a the record or records document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. A document of title includes an electronic document of title and a tangible document of title.

(15a) “Electronic document of title” means a document of title evidenced by a record or records consisting of information stored in an electronic medium and which the issuer of the document expressly has agreed is an electronic document of title.

(15b) “Tangible document of title” means a document of title evidenced by a record or records consisting of information that is inscribed on a tangible medium.

* * *

(20) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to
bearer or to an identified person that is the person in possession; or

(B) a person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession or;

(C) a person in control of a negotiable electronic document of title if the goods are deliverable either to bearer or to the order of \{A NAMED PERSON\} \{the person in control\}.

* * *

(39) “Signed” includes any symbol executed or adopted with present intention to adopt or accept a writing.”

* * *

(45) “Warehouse receipt” means a record or records receipt issued by a person engaged in the business of storing goods for hire.

(46) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

SECTION 1-307. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Reporter’s Note

The above sections are included for the use of the Drafting Committee. Several definitions in Article 1 must be modified in order to allow for electronic documents of title. Suggested amendments to those definitions are reflected above.
The amendments reflect reliance on the concept and definition of “record” as used in other UCC revisions. That definition is in revised Article 1 and provides.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

The amendments also reflect reliance on dividing documents of title into electronic documents of title and tangible documents of title following the model applied to chattel paper in Revised Article 9. The definitions of electronic and tangible documents of title are new and are borrowed from Revised Article 9 which used the concepts to deal with electronic chattel paper.

See Rev. 9 §§ 9-102(a)(31) and (a)(78). The additional concept that the issuer must have expressly agreed that the document of title is an electronic document of title follows the concept of transferrable record in UETA § 16. Thus an electronic document of title will be one that the issuer knows when issued will be electronic. It does not cover a paper document of title that is later converted to an electronic form. The concept of electronic chattel paper that is used in Rev. 9 is not so limited. The Committee needs to decide which approach is preferable.

**QUERY:** SHOULD ARTICLE 7 HAVE A PROVISION FOR THE CHANGE OF AN ELECTRONIC DOCUMENT INTO A PAPER DOCUMENT?

The words bearer and holder as used in Article 7 are used only in reference to negotiable documents of title. Thus it makes sense to change the definitions to be limited to negotiable documents. Control is a key concept in the redraft as it applies to electronic documents. The bracketed language and the alternate language in Section 1-201(B)(20)(c) is shown to accommodate a holder of a negotiable document of title being someone (almost assuredly a secured party) other than a bearer or to the order of a person in control. The Committee might consider whether the term “holder” should have a definition specific to Article 7 itself.

Delivery is a word that is used in connection with both negotiable and non negotiable documents of title.

Is section 1-307 appropriate as applied to electronic documents of title?

The following sections of the UCC mention the words document, documents, or documentary referring to documents of title. After we have settled on an approach within Article 7 as it relates to electronic documents of title, these sections will be examined to determine whether conforming amendments to these sections are necessary to incorporate that approach across the UCC.

*Article 2*  
2-401  
2-503  
2-504
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<th>Article 2A</th>
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UNIFORM COMMERCIAL CODE

ARTICLE 7 - WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Prefatory Note

This draft is designed to address issues of medium neutrality and electronic documents of title and incorporates changes made after the October 2001 drafting committee meeting. To the extent a section did not appear to be affected by these issues, the section was included but no changes were made to the language.

PART 1. GENERAL

SECTION 7-101. SHORT TITLE. This Article shall be known and may be cited as Uniform Commercial Code-Documents of Title.

SECTION 7-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a record which contains an written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (Section 1-201).
(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated the issuer’s instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(xx) “Sign” means, with present intent to authenticate or adopt a record,

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(yy) “Carrier” is a person engaged in the business of transporting goods for hire. The term “Carrier” includes Freight Forwarders.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". Section 7-501.

“Control”. Section 7-501A.

"Person entitled under the document". Section 7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:
"Contract for sale". Section 2-106.

"Overseas". Section 2-323.

"Receipt" of goods. Section 2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

Reporter’s Note

The definition of delivery order is revised to make it medium neutral. The definition of document incorporates the definitions from Article 1, including the definitions of electronic and tangible documents of title. The definition of sign is copied from Revised Article 2. UETA § 2 uses the term “electronic signature” which is defined as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” At this time, the definition of control is contained in a new section 7-501A. It may be appropriate to move that definition to this section.

The term “warehouseman” is shortened to “warehouse” for gender neutrality reasons.

The term “carrier” is a new definition added per Committee decision March 2001.

Freight Forwarders are also carriers in the surface transportation industry and are specifically included within the term “carrier.”

SECTION 7-103. RELATION OF ARTICLE TO TREATY, STATUTE, TARIFF, CLASSIFICATION OR REGULATION.

To the extent that any treaty or statute of the United States, regulatory statute of this State or public tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto.

Reporter’s Notes

This provision applies to tariffs that are publically mandated. Self published tariffs are not within Article 7.
SECTION 7-104. NEGOTIABLE AND NON-NEGOTIABLE WAREHOUSE RECEIPT, BILL OF LADING OR OTHER DOCUMENT-OF-TITLE.

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order in a record signed by the same or another named person.

(3) A document of title is not negotiable if, at the time it is issued, it has a conspicuous legend, however expressed, that the document of title is non-negotiable or not negotiable.

Reporter’s Notes

The deletions in subsection (1) noted above were suggested at the October 2001 meeting. Subsection (2) is edited for medium neutrality. An electronic document of title may be negotiable.

SUBSECTION (3) IS NEW AND ALLOWS THE ISSUER TO STAMP OR OTHERWISE LEGEND A DOCUMENT OF TITLE AS NON-NEGOTIABLE REGARDLESS OF HAVING THE LANGUAGE IN SUBSECTION (1) IN THE DOCUMENT. HOWEVER, ONCE ISSUED AS A NEGOTIABLE DOCUMENT OF TITLE, THE DOCUMENT CANNOT BE CHANGED FROM A NEGOTIABLE DOCUMENT TO A NON-NEGOTIABLE DOCUMENT. HOWEVER, ONE CAN FAIL TO NEGOTIATE A NEGOTIABLE DOCUMENT BY DUE NEGOTIATION. SUBSECTION (3) IS SIMILAR TO SECTION 3-104(D). THIS ADDITION IS BASED UPON DISCUSSION AT THE OCTOBER 2001 MEETING.

SECTION 7-105. CONSTRUCTION AGAINST NEGATIVE IMPLICATION.
The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable.

**Reporter’s Notes**

This deletion is based upon discussion at the October 2001 meeting. No court has cited Section 7-105 as a substantive provision important for the decision.

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**PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

**SECTION 7-201. WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER GOVERNMENT BOND.**

(1) A warehouse receipt may only be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

**Reporter’s Notes**

The deletions are to achieve gender neutrality and to clarify that the storage under bond is when a statute requires the storage to be under bond. The term “government bond” is an inaccurate descriptor of what the statute provides.

**QUERY:** SHOULD THIS SECTION HAVE A SUBSECTION (3) REFERRING TO DELIVERY ORDERS DEFINED IN SECTION 7-102(D)? OR WOULD A CROSS-REFERENCE TO SECTION 7-102(D) IN THE OFFICIAL COMMENTS BE SUFFICIENT?

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**SECTION 7-202. FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS;**
OPTIONAL TERMS.

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt expressly states embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused to the person injured by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the identification code consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his its order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the authorized signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his its agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.
(3) A warehouseman may insert in its receipt any other terms which are not contrary to the provisions of this Act and do not impair its obligation of delivery (Section 7-403) or its duty of care (Section 7-204). Any contrary provisions shall be ineffective.

**Reporter’s Note**

This section is revised to make reference to the warehouse receipt in a medium neutral manner. The idea that these terms must be expressly stated in the warehouse receipt allows for a number of records collectively to be a warehouse receipt. See definition of warehouse receipt in Article 1. The idea of an identification code is a substitute for a “consecutive number” in order to accommodate electronic documents. Changes are also made to implement gender neutrality.

**SECTION 7-203. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION.**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

**Reporter’s Note**

Even though no changes have been suggested to the text, the Committee should read this section with electronic documents of title in mind as to the requirement of “conspicuous.” Is the definition of conspicuous in Revised Article 1 adequate for this purpose?

*The Committee suggested in October 2001 that Section 7-201 be combined with Section 7-301. The Reporter did not implement this suggestion because the*
The words “good faith” in Section 7-201 mean “honesty in fact.” In accordance with the Committee request in October 2001, throughout this draft the Reporter has attempted to distinguish between purchasers in good faith who must act with honesty in fact and warehouses and carriers who must act with good faith including the observance of reasonable commercial standards of fair dealing. Warehouses and carriers, as merchants, can be expected to abide by the expanded definition of good faith that appears in the other articles of the Uniform Commercial Code.

SECTION 7-204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSEMAN’S LIABILITY.

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by its failure to exercise such care in regard to them as that a reasonably careful man person would exercise under like circumstances but unless otherwise agreed the warehouse he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Except as otherwise provided in subsection (5), damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability.
contained in the warehouseman's public tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt, the storage agreement, or public tariff. [These provisions apply to claims based on the warehouse’s accepted liability under subsection (1) and to claims on the warehouse’s conversion.]

(4) This section does not impair or repeal ...

Note: Insert in subsection (4) a reference to any statute which imposes a higher responsibility upon the warehouseman or invalidates contractual limitations which would be permissible under this Article.

[(5) As between a warehouse and a consumer who does not agree to pay storage rates based on full value liability for the warehouse, damages may be limited as allowed in subsection (2) but only if:

(a) the limitation on amount of liability is conspicuous in the storage agreement or warehouse receipt; and

(b) the consumer has agreed to the limitation on the amount of liability by so indicating {in a record}, {on the storage agreement or warehouse receipt} and by accepting or insuring against the risk of the amount of loss above the limitation.]

**Reporter’s Notes**

The changes that should be noted for purpose of electronic documents is that the “written” request by the bailor to increase the bailee’s liability can be made in a record. The other changes are based upon the discussion at the last Drafting Committee meeting. Note that the additional sentence in subsection (3) and the additional subsection (5) are bracketed for further study and discussion and do not reflect a decision by the Drafting Committee to the additions. In
subsection (5), having the customer indicate “on” the warehouse receipt or storage agreement that the customer has agreed to the limitation of liability may not be workable in the electronic environment, thus the bracketed alternatives within subsection (5) above.

IN BRACKETED SUBSECTION (5), THE WORD “CONSUMER” SHOULD HAVE THE SAME MEANING AS GIVEN IN ARTICLE 9 SECTION 102(A)(25) – A PERSON WHO ENTERED THE STORAGE RELATIONSHIP PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

SECTION 7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a negotiable warehouse receipt even though it has been duly negotiated.

Reporter’s Note

The concept of due negotiation involves the idea of possessing the document if it is tangible or control of the document if electronic. See 7-501.

SECTION 7-206. TERMINATION OF STORAGE AT WAREHOUSEMAN’S OPTION.

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the
warehouseman may sell them in accordance with the provisions of the section on enforcement of
a warehouseman's lien (Section 7-210).

(2) If a warehouseman in good faith including the observance of reasonable commercial standards of fair dealing believes that the goods are about to deteriorate or
decline in value to less than the amount of its lien within the time prescribed in subsection (1)
and Section 7-210 for notification, advertisement and sale, the warehouseman may specify in the
notification any reasonable shorter time for removal of the goods and in case the goods are not
removed, may sell them at public sale held not less than one week after a single advertisement or
posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had
no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to
persons, the warehouseman may sell the goods at public or private sale without advertisement on
reasonable notification to all persons known to claim an interest in the goods. If the
warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in
any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this
Article
upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy its lien from the proceeds of any sale or
disposition under this section but must hold the balance for delivery on the demand of any person
to whom he would have been bound to deliver the goods.

Reporter's Note
Under Revised Article 1, the notification of parties may be electronic notification. See Section 1-202. To notify someone requires that the party notifying take “such steps as may be reasonably required to inform the other in ordinary course, whether or not the other person actually comes to know of it.” This would apply to both electronic and non electronic forms of notice.

SECTION 7-207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated [OWNERS, WHETHER THROUGH NEGOTIABLE OR NON-NEGOTIABLE DOCUMENTS, AND ALL WHO CLAIM FROM THE OWNERS UNDER SECTION 7-502 OR SECTION 7-504 OF THIS ARTICLE.]

Reporter's Note

This section uses the concept of duly negotiated as defined in 7-501 and thus accommodate electronic documents of title.

The bracketed language in Subsection (2) is presented for further discussion by the Drafting Committee based on the Reporter's memo of September 18, 2001.

SECTION 7-208. ALTERED WAREHOUSE RECEIPTS. Where a blank provision in a negotiable warehouse receipt has been filled in without authority, a purchaser for value
and without notice of the want of authority may treat the insertion of unauthorized alterations leaves any receipt enforceable against the issuer according to its original tenor.

**Reporter’s Note**

The additions and strikeouts above are designed to provide a medium neutral way of referring to the inclusion of unauthorized additions to a negotiable warehouse receipt.  

**Query:** Should the distinction between an unauthorized inclusion (Sentence One) and an unauthorized alteration (Sentence Two) be clarified?  

Section 7-208 has generated no litigation.

**SECTION 7-209. LIEN OF WAREHOUSEMAN.**

(1) (a) A warehouseman has a specific lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. [Subject to subsection (1)(c), the warehouse may enforce the specific lien against persons in possession or control of the document.]

(b) If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a general lien against the goods covered by the warehouse receipt for such charges and expenses whether or not the other goods have been delivered by the warehouseman. [Subject to subsection (1)(c), the warehouse may enforce the general lien against the subsequent person in possession or control of the document.]
(c) But as against a person to whom a negotiable warehouse receipt is duly negotiated a
warehouseman's lien, specific or general, is limited to charges in an amount or at a rate specified
on the warehouse receipt or if no charges are so specified then to a reasonable charge for storage
of the goods covered by the warehouse receipt subsequent to the date of the warehouse receipt
[and for storage of the other goods covered by the general lien claimed in the warehouse receipt.]

(2) The warehouseman may also reserve a security interest against the bailor for a
maximum amount specified on the receipt for charges other than those specified in subsection
(1), such as for money advanced and interest. Such a security interest is governed by the Article
on Secured Transactions (Article 9).

(3)(a) A warehouseman's lien for charges and expenses under subsection (1) or a
security interest under subsection (2) is also effective against any person who so entrusted the
bailer with possession of the goods that a pledge of them by him the bailor to a good faith
purchaser for value would have been valid but is not effective against a person as to whom the
document confers no right in the goods covered by it under Section 7-503.

(b) A warehouseman's lien on household goods for charges and expenses in relation to the
goods under subsection (1) is also effective against all persons if the depositor was the legal
possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings
and personal effects used by the depositor in a dwelling.

[Alternate subsection (3) The warehouse’s specific lien under subsection
(1) is effective against all persons if the bailor was the legal possessor of the goods
at the time of deposit. The warehouse’s specific lien takes priority over all
perfected or unperfected security interests if the bailor was the legal possessor of]

(4) A warehouseman loses its lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

Reporter’s Note

Subsection (1) uses the term duly negotiated and incorporates electronic documents. 7-501. The splitting of subsection (a) into three subsections, one dealing with the specific lien, one dealing with the general lien, and a third subsection dealing with priority of the lien as against a subsequent holder of the warehouse receipt is new and based upon discussions at the October 2001 meeting.

The deletion of subsection (3)(b) reflects discussion at the October 2001 meeting. Alternate subsection (3) is in brackets so that the drafting committee may pursue the policy issues the committee raised at the October meeting. These policy issues are articulated in the Reporter’s memorandum of September 20, 2001 and Mr. William Towle’s memorandum of November 26, 2001.

Should packaging or other processing of the goods be part of the specific lien allowed under subsection (1)(a)? Whether the general lien should be enforceable against a person to whom a negotiable document has been duly negotiated is an open question. See bracketed language in subsection (1)(c).

The trigger for when a warehouse gains a warehouse lien remains open for committee decision. The competing triggers are possession of the goods or issuance of a warehouse receipt. As presently drafted, the trigger is the issuance of a warehouse receipt.

SECTION 7-210. ENFORCEMENT OF WAREHOUSEMAN’S LIEN.

(1) Except as provided in subsection (2), a warehouseman’s lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the
goods. Such notification must include a statement of the amount due, the nature of the proposed
sale and the time and place of any public sale. The fact that a better price could have been
obtained by a sale at a different time or in a different method from that selected by the
warehouseman is not of itself sufficient to establish that the sale was not made in a commercially
reasonable manner. If the warehouseman either sells the goods in the usual manner in any
recognized market therefor, or if he sells at the price current in such market at the time of his
sale, or if the warehouse has otherwise sold in conformity with commercially reasonable
practices among dealers in the type of goods sold, it has sold in a commercially reasonable
manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of
the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on [CONSUMER] goods [other than goods stored by a merchant
in the course of its business] may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter
to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description
of the goods subject to the lien, a demand for payment within a specified time not less than ten
days after receipt of the notification, and a conspicuous statement that unless the claim is paid
within that time the goods will be advertised for sale and sold by auction at a specified time and
place.

(c) The sale must conform to the terms of the notification.

(d) The sale must be held at the nearest suitable place to that where the goods are
held or stored.

(f) (e) After the expiration of the time given in the notification, an advertisement of
the sale must be published once a week for two weeks consecutively in a newspaper of general
circulation where the sale is to be held. The advertisement must include a description of the
goods, the name of the person on whose account they are being held, and the time and place of
the sale. The sale must take place at least fifteen days after the first publication. If there is no
newspaper of general circulation where the sale is to be held, the advertisement must be posted at
least ten days before the sale in not less than six conspicuous places in the neighborhood of the
proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may
pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
section. In that event the goods must not be sold, but must be retained by the warehouseman
subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the
goods free of any rights of persons against whom the lien was valid, despite noncompliance by
the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to
this section but must hold the balance, if any, for delivery on demand to any person to whom he
it would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by
law to a creditor against his a debtor.
(8) Where a lien is on goods stored by a merchant in the course of its business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

**Reporter's Note**

Sending notification by registered mail does not allow for electronic notification. Absent some policy reason for heightened notice requirements that would require a paper notification, the warehouse should be able to give this notice electronically. Does the Revised Article 1 definition of notify give enough protection to the person to be notified? Rev. 1-202(d). Rev. 9 allows the notice of sale to be given electronically as it requires a “reasonable authenticated notification of disposition.” Rev. 9-611.

The bracketed language in Subsection (2) is offered to clarify that the Subsection (2) procedures are for consumer goods as a consumer protection subsection.

Sections 9-613 and 9-614 specify what must be in the notification and provide a safe harbor form. Nowhere does it mandate that the notification be on paper. Enforcement provisions in Article 9 are much more elaborate than Section 7-210, including safe harbor forms for commercial and consumer enforcement sales. Does the Committee desire that Article 7 parallel these more elaborate provisions of Article 9?

The Reporter interprets Subsection (5) to mean that the warehouse gives no warranty, so long as the lien was valid. Against whom the lien is valid is a policy issue the Committee will decide under Section 7-209. In light of Subsection (5), the Reporter suggests that the warranty provisions of Section 9-610 need not be imitated in Article 7. As far as the Reporter can ascertain, no cases nor commentary about warehouse warranties exists, aside from the issue as to whether the warehouse had a valid lien.

**PART 3. BILLS OF LADING: SPECIAL PROVISIONS**

**SECTION 7-301. LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.**
(1) A consignee of a non-negotiable bill who has given value in good faith or a holder to
whom a negotiable bill has been duly negotiated relying in either case upon the description
therein of the goods, or upon the date therein shown, may recover from the issuer damages
caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to
the extent that the document indicates that the issuer does not know whether any part or all of the
goods in fact were received or conform to the description, as where the description is in terms of
marks or labels or kind, quantity, or condition or the receipt or description is qualified by
"contents or condition of contents of packages unknown", "said to contain", "shipper's weight,
load and count" or the like, if such indication be true.

(2) When goods are loaded by an the issuer of the bill of lading who is a common carrier,
the issuer must count the packages of goods if package freight and ascertain the kind and quantity
if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the
description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate
facilities for weighing such freight, an THE issuer OF THE BILL OF LADING who is a common
carrier must ascertain the kind and quantity within a reasonable time after receiving the written
request of the shipper’s request in a record to do so. In such cases "shipper's weight" or other
words of like purport are ineffective.

(4) The issuer may by inserting including in the bill the words "shipper's weight, load and
count" or other words of like purport indicate that the goods were loaded by the shipper; and if
such statement be true the issuer shall not be liable for damages caused by the improper loading.
But their omission does not imply liability for such damages.
(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit its responsibility and liability under the contract of carriage to any person other than the shipper.

Reporter’s Note

With a tangible non-negotiable bill of lading, there is no requirement that the consignee have possession of the bill in order to have rights under subsection (1). Thus a consignee under an electronic non-negotiable bill does not need “delivery” of the electronic bill. This section also contains the idea of due negotiation which includes electronic negotiable bills, 7-501. In subsection (3) “written request” is changed to “request in a record.”

The references to common carriers were deleted as obsolete after deregulation and to insure consistency with the definition of the term “Carrier.”

The wording in this section — such as “contents or condition of contents of packages unknown” or “shipper’s weight, load and count”—to indicate that the shipper loaded the goods or that the carrier does not know the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are as important today as when this section initially was approved. Moreover, the Reporter did not desire to change this familiar language because the comparable debate in the study for the proposed reform of COGSA was the most contentious issue discussed, according to Professor Michael F. Sturley, the COGSA Study Reporter. This Reporter adopted the stance that discretion is the better part of valor.

SECTION 7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting
carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, that person he is subject with respect to his its own performance while the goods are in its his possession to the obligation of the issuer. That person’s His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it the issuer in defending any action brought by anyone entitled to recover on the document therefor.

Reporter’s Note

Changes to subsection (2) are for gender neutrality.

SECTION 7-303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a
person or destination other than that stated in the bill or may otherwise dispose of the goods on
instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from
the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from
the consignor, if the goods have arrived at the billed destination or if the consignee is in
possession of the tangible bill or in control of the electronic bill;

(d) the consignee on a non-negotiable bill if the consignee is entitled as against the
consignor to dispose of them.

(2) Unless such instructions are included on a negotiable bill of lading, a person to
whom the bill is duly negotiated can hold the bailee according to the original terms.

Reporter’s Note

Changes are made to accommodate electronic bills of lading. The control concept applies to
both negotiable and non negotiable bills of lading. 7-501A.

SECTION 7-304. BILLS OF LADING IN A SET.

(1) Except where customary in overseas transportation, a bill of lading must not be issued
in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn issued in a set of parts, each of which is
numbered contains an identification code and is expressed to be valid only if the goods have not
been delivered against any other part, the whole of the parts constitute one bill.
(3) Where a **negotiable** bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of its his part.

(4) Any person who negotiates or transfers a single part of a bill of lading **issued** drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading **issued** drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

**Reporter's Note**

*Changes are made to accommodate electronic bills of lading AND FOR CLARITY.*

**SECTION 7-305. DESTINATION BILLS.**

(1) Instead of issuing a **tangible** bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender **of possession or control** of any outstanding bill of lading or other receipt covering such goods, the [carrier] issuer may procure a substitute **tangible** bill to be issued at any place designated in the request.

**Reporter's Note**

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This section contemplates a physical bill. Query whether the concept of issuing a bill at “destination” or other physical place has any electronic counterpart?

The bracketed language is offered for clarity.

SECTION 7-306. ALTERED BILLS OF LADING.

An unauthorized alteration or filling in of a blank inclusion of a provision in a bill of lading leaves the bill enforceable according to its original tenor.

Reporter’s Note

Compare section 7-208. Section 7-306 has generated no litigation.

SECTION 7-307. LIEN OF CARRIER.

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.
[Alternate subsection (2) The carrier’s specific lien under subsection (1) is effective against all persons if the bailor was the legal possessor of the goods at the time of deposit for carriage.]

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

Reporter’s Note

Compare Section 7-209 Warehouse Lien.

The trigger for when a carrier gains a carrier’s lien remains open for Committee decision. The competing triggers are possession of the goods or issuance of a bill of lading. As presently drafted, the trigger is the issuance of a bill of lading.

Alternate Subsection (2) raises similar policy issues for Committee resolution as Alternate Subsection (3) to Section 7-209 Warehouse Lien. Query: Should priority disputes between carrier liens and security interests be addressed explicitly?

Note also that Subsection (2) as presently drafted allows a carrier lien, if the carrier is required by law to accept the carriage, to be effective, in some instances, even as against stolen transported goods. Query: Does this fit with present-day transportation realities in light of deregulation?

SECTION 7-308. ENFORCEMENT OF CARRIER’S LIEN.

(1) A carrier’s lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not
made in a commercially reasonable manner. If the carrier either sells the goods in the usual
manner in any recognized market therefor or if he sells at the price current in such market at
the time of its sale or if the carrier has otherwise sold in conformity with commercially
reasonable practices among dealers in the type of goods sold he has sold in a commercially
reasonable manner. A sale of more goods than apparently necessary to be offered to ensure
satisfaction of the obligation is not commercially reasonable except in cases covered by the
preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may
pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this
section. In that event the goods must not be sold, but must be retained by the carrier subject to
the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free
of any rights of persons against whom the lien was valid, despite noncompliance by the carrier
with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this
section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by
law to a creditor against a debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the
procedure set forth in subsection (2) of Section 7-210.
(8) The carrier is liable for damages caused by failure to comply with the requirements for
sale under this section and in case of willful violation is liable for conversion.

Reporter’s Note

“Notification” as used in this section and as defined in revised article 1, 1-202, includes
electronic notification.

QUERY: Should Section 7-308 have a consumer goods - consumer protection
subsection that mirrors Section 7-210(2). Section 7-308(7) allows a carrier to use
Section 7-210(2) procedures but does not mandate its use for consumer goods.

SECTION 7-309. DUTY OF CARE; CONTRACTUAL LIMITATION OF
CARRIER'S LIABILITY.

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must
exercise the degree of care in relation to the goods which a reasonably careful person would
exercise under like circumstances. This subsection does not repeal or change any law or rule of
law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a
value stated in the document if the carrier's rates are dependent upon value and the consignor by
the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully
provided in the tariff, or where no tariff is filed he and the consignor is otherwise advised of
such opportunity in a conspicuous manner; but no such limitation is effective with respect to the
carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting
actions based on the shipment may be included in a bill of lading or tariff.
(1) A carrier is liable for damages for loss of or injury to the goods caused by its failure to exercise such care in regard to them that a reasonably careful person would exercise under like circumstances but unless otherwise agreed the carrier is not liable for damages which could not have been avoided by the exercise of such care. This subsection does not repeal or change any law or rule of law which imposes liability upon a carrier for damages not caused by negligence.

(2) Except as otherwise provided in subsection (4), damages may be limited by a term in the bill of lading or transportation document limiting the amount of liability in case of loss or damage beyond which the carrier shall not be liable; provided, however, that such liability may on request of the bailor in a record at the time of signing such bill or lading or transportation document, or within a reasonable time after receipt of the bill of lading or transportation document, be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to carrier’s public tariff, if any. No such limitation is effective with respect to the warehouseman’s liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the bill of lading, the
TRANSPORTATION DOCUMENT, or public tariff. These provisions apply to claims based on the carrier’s accepted liability under subsection (1) and to claims on the carrier’s conversion.

(4) As between a carrier and a consumer who does not agree to pay carriage rates based on full value liability for the carrier, damages may be limited as allowed in subsection (2) but only if:

(A) the limitation on amount of liability is conspicuous in the bill of lading or transportation document; and

(B) the consumer has agreed to the limitation on the amount of liability by so indicating {in a record} {on the bill of lading or transportation document} and by accepting or insuring against the risk of the amount of loss above the limitation.

Reporter’s Note

Is the addition of conspicuous necessary? Does it mean that the advise has to be in a record? Section 7-309 has the minimal changes need to become compatible with electronic commerce.

Alternate section 7-309 meets the committee’s request for coordination and consistency between section 7-210 and section 7-309. Alternate section 7-309 uses the language of section 7-210 as modified for carriers. Policy issues are the same under alternate section 7-309 as for section 7-210.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

SECTION 7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR
CONDUCT OF ISSUER.

The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of its business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

Reporter’s Note

COMPARE SECTION 7-103 AND SECTION 10-103.

The Committee should also think of the impact of Section 7-401(d) upon the discussion about the scope of Article 7.

SECTION 7-402. DUPLICATE RECEIPT OR BILL; OVERISSUE.

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by its overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

Reporter’s Note
“On its face” has been deleted as incompatible with electronic documents. Does the concept of conspicuous accomplish the same result?

SECTION 7-403. OBLIGATION OF WAREHOUSEMAN OR CARRIER TO DELIVER; EXCUSE.

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable [, but the ULTIMATE burden of PROOF establishing negligence in such cases is on the person entitled under the document];

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman’s lawful termination of storage;

(d) the exercise by a seller of its right to stop delivery pursuant to the provisions of the Article on Sales (Section 2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (Section 7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.
(2) A person claiming goods [covered by a document of title] must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid. **When the person claiming the goods refuses to pay the bailee's lien, the bailee may lawfully refuse to deliver to that person.**

(3) Unless the person claiming is one against whom the document confers no right under Sec. 7-503(1), a person claiming under a document must surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries, and the bailee must cancel the document or conspicuously note indicate the partial delivery thereon within the document or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery of the goods is to be made by the terms of or pursuant to written instructions in a record under a non-negotiable document.

Note: The brackets in (1)(b) indicate that State enactments may differ on this point without serious damage to the principle of uniformity.

**Reporter's Note**

Subsection (3) is revised to accommodate electronic documents. "Written” instruction is changed to “in a record.”

The added language in subsection (1)(b) is for clarification.

The bracketed language in subsection (2) responds to Committee discussion in March 2001 as to what triggers a bailee’s lien — issuance of a document or possession of the goods. The added sentence in subsection (2) reflects a Committee suggestion in March 2001. The Committee must be satisfied that these changes are compatible with Committee decisions relating to Section 7-209 warehouse lien and Section 7-307 carrier lien.
SECTION 7-404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO RECEIPT OR BILL.

A bailee who in good faith including THE observance of reasonable commercial standards OF FAIR DEALING has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he the bailee received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he the bailee delivered the goods had no authority to receive them.

Reporters Note

THE CHANGES REFLECT GENDER NEUTRALITY AND THE EXPANDED MEANING OF GOOD FAITH IN RECENTLY REVISED ARTICLES OF THE UNIFORM COMMERCIAL CODE. THE COMMENTS SHOULD INFORM THE BAILEE OF ITS OPTION TO USE SECTION 7-603 CONFLICTING CLAIMS; INTERPLEADER.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

SECTION 7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE NEGOTIATION".

(1) The following rules apply to a negotiable tangible document of title:

(a) When the document’s original terms run running to the order of a named person, it is negotiated by his the named person’s indorsement and delivery. After the named person’s his
indorsement in blank or to bearer any person can negotiate it by delivery alone;

(b)(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer. When the document’s original terms run to bearer, it is negotiated by delivery alone;

(b) (c) When a document running when the document’s original terms run to the order of a named person and it is delivered to him the named person, the effect is the same as if the NEGOTIABLE document had been negotiated;

(3) (d) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery;

(4) (e) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this subsection to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(2) The following rules apply to a negotiable electronic document of title:

(a) When the document’s original terms run to the order of a named person, the document is negotiated by the named person transferring control of the document to another person. Indorsement by the named person is not required in order to negotiate the document;

(b) When the document’s original terms run to bearer, it is negotiated by transfer to any person who has control of the document;

(c) When the document’s original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been
negotiated;

   (d) A document is “duly negotiated” when it is negotiated in the manner stated in this
subsection to a holder who purchases it in good faith without notice of any defense against or
claim to it on the part of any person and for value, unless it is established that the negotiation is
not in the regular course of business or financing or involves taking control of the document in
settlement or payment of a money obligation;

   (5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to
the transferee's rights.

   (6) The naming in a negotiable bill of a person to be notified of the arrival of the
goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of
any interest of such person in the goods.

   Reporter’s Note

    This section provides the foundation for treatment of a negotiable electronic document of
title and allows due negotiation of that document using the concept of control to substitute for
delivery. The idea of control is set forth in section 7-501A and is drawn from UETA § 16. This
reliance on the UETA which has been enacted in over 30 states serves to continue commercial
expectations that may have started to create “transferrable records” that were documents under
that section. Concepts of indorsement and delivery are retained for a negotiable tangible
document of title. Rights acquired under a non-negotiable electronic document are addressed in
7-504.

    QUERY: DOES SECTION 7-104(3) CREATE ANY CONFUSION OR PROBLEMS FOR SECTION 7-501 OR
SECTION 7-501A?

   SECTION 7-501A. CONTROL OF AN ELECTRONIC DOCUMENT.

   A person has control of an electronic document if the electronic document is created, stored, and
assigned in such a manner that:
(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(a) the person to which the document was issued; or

(b) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

**Reporter’s Note**

This section follows UETA § 16 and applies to electronic negotiable and non-negotiable documents.
SECTION 7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.

(1) Subject to the following section and to the provisions of Section 7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;
(b) title to the goods;
(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

Reporter's Note

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Subsection (2) equates possession and control and applies to negotiable tangible and electronic documents. As Section 7-502 only applies to negotiable documents, its language has been changed to clarify this fact.

SECTION 7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.

(1) A negotiable document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them the goods and who neither

(a) delivered or entrusted them the goods or any tangible document of title or transferred control of any electronic document covering them the goods to the bailor or his the bailor’s nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (Section 7-403) or with power of disposition under this Act (Sections 2-403 and 9-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his its nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading
discharges the carrier's obligation to deliver.

Reporter's Note

Subsection (1) is revised to apply to negotiable tangible and electronic documents of title.

SECTION 7-504. RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which its transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

   (a) by those creditors of the transferor who could treat the sale as void under Section 2-402; or

   (b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his the buyer’s rights; or

   (c) as against the bailee by good faith dealings, INCLUDING THE OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING, of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery of the goods pursuant to a non-negotiable document may be stopped by a
seller under Section 2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

Reporter's Note

Notice the revised definition of delivery in Article 1 as it applies to documents. That definition incorporates the concept of control as the substitute for possession of the document.

SECTION 7-505. INDOER NOT A GUARANTOR FOR OTHER PARTIES.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Reporter’s Note

Indorsement is a concept associated only with tangible negotiable documents.

SECTION 7-506. DELIVERY WITHOUT INDOSEMENT: RIGHT TO COMPEL INDOSEMENT.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Reporter’s Note

Indorsement is a concept associated only with tangible negotiable documents.

Discussion Point: Although indorsement is a concept associated only with tangible documents, the Committee may desire to discuss whether a comparable concept for electronic documents should exist under this section and the preceding section 7-505.
SECTION 7-507. WARRANTIES ON NEGOTIATION OR TRANSFER DELIVERY
OF RECEIPT OR BILL.

Where a person negotiates or transfers delivers a document of title for value otherwise than as a mere intermediary under Section 7-508 the next following section, then unless otherwise agreed the transferor he warrants to his its immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that the transferor he has no knowledge of any fact which would impair its validity or worth; and

(c) that his the negotiation or transfer delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Reporter’s Note

Delivery is substituted for transfer as delivery is a defined term and transfer is not. In addition, delivery connotes “voluntary” transfer of possession or control. The warranty should arise only in connection with a voluntary action.

SECTION 7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS.

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith INCLUDING THE OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING and authority. This rule applies even
though the intermediary has purchased or made advances against the claim or draft to be collected.

Reporter’s Note

ALTHOUGH SECTION 7-508 APPLIES TO A COLLECTING BANK, THE COLLECTING BANK IS A MERCHANT. CONSEQUENTLY, GOOD FAITH WAS EXPANDED IN ITS DEFINITION.

SECTION 7-509. RECEIPT OR BILL: WHEN ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5).

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

SECTION 7-601. LOST AND MISSING DOCUMENTS.

(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of possession or control of the document. If the document was not negotiable, such security may
be required at the discretion of the court. The court may also in its discretion order payment of
the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing
negotiable document is liable to any person injured thereby, and if the delivery is not in good
faith including the observance of reasonable commercial standards of fair dealing
becomes liable for conversion. Delivery in good faith including the observance of
reasonable commercial standards of fair dealing is not conversion if made in accordance
with a filed-

classification or tariff or, where no classification or tariff is filed, if the claimant posts security
with the bailee in an amount at least double the value of the goods at the time of posting to
indemnify any person injured by the delivery who files a notice of claim within one year after the
delivery.

SECTION 7-602. ATTACHMENT OF GOODS COVERED BY A NEGOTIABLE
DOCUMENT.

Except where the document was originally issued upon delivery of the goods by a person who
had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the
possession of a bailee for which a negotiable document of title is outstanding unless possession
or control of the document be first surrendered to the bailee or its negotiation enjoined, and the
bailee shall not be compelled to deliver the goods pursuant to process until possession or control
of the document is surrendered to the bailee or to impounded by the court. One who
purchases the document for value without notice of the process or injunction takes free of the lien
imposed by judicial process.

SECTION 7-603. CONFLICTING CLAIMS; INTERPLEADER.

(1) If the bailee reasonably believes that more than one person claims or will claim title or possession of the goods, the bailee is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

(2) If a court order resolves conflicting claims to a document of title or the goods covered by it, a bailee may without liability to any person comply with such court order.

(3) When the bailee uses an interpleader, the bailee may protect the bailee’s lien in the pleadings.

Reporter’s Note

Subsection (1) is redrafted to overrule case law holding that the bailee may not use Section 7-603 until more than one claimant has made claims directly to the bailee.

Subsection (2) is new. It is drafted to protect bailees who comply with a court order from being sued for misdelivery or refusal to deliver by the claimant who lost the lawsuit. Subsection (2) makes explicit what is likely implicit in Section 7-403(g).

Subsection (3) is new in response to Committee discussion in March 2001.

Section from Article 10 Effective Date and Repealer that interrelates to Article 7

SECTION 10-104. LAWS NOT REPEALED

[1] The Article on Documents of Title (Article 7) does not repeal or modify any laws
prescribing the form or contents of documents of title or the services or facilities to be afforded
by bailees, or otherwise regulating bailee’s businesses in respects not specifically dealt with
herein; but the fact that such laws are violated does not affect the status of a document of title
which otherwise complies with the definition of a document of title (Section 1-201).

**REPORTER’S notes**

SHOULD THIS SECTION BE MOVED TO SECTION 7-103 AS A SUBSECTION (2)? IF MOVED, ITS
OFFICIAL COMMENTS WOULD ACCOMPANY THE TEXT. IF NOT MOVED, THE CROSS-REFERENCES
FOR SECTION 7-103 PROBABLY SHOULD REFER TO THIS SECTION 10-104.

DOES THE LANGUAGE OF THIS SECTION AND SECTION 7-103 NEED SLIGHT TWEAKING TO
INSURE THAT THE COURTS INTERPRET THESE SECTIONS AS COMPLEMENTARY RATHER THAN
CONTRADICTORY? SEE ALSO SECTION 7-401.