

MEMORANDUM TO: Commissioners on Uniform State Laws

FROM: Steven L. Harris and Charles W. Mooney, Jr., Reporters

DATE: June 3, 1998

RE: Uniform Commercial Code Article 9 - Statement of Policy Issues

Following is a list of policy issues resolved by the 1998 Annual Meeting draft of Revised Article 9. The list includes the issues that we believe are most significant. The Reporters' Prefatory Comment to the draft contains an overview of the treatment of these issues as well as many others. Because there may be a wide range of opinion as to which policy issues are more, or less, significant, we encourage you to review that Comment.

1. Scope. The draft expands the scope of Article 9 to cover:

- a. Nonpossessory, statutory agricultural liens (it also includes relevant special priority rules), but not other statutory liens;
- b. Sales of payment intangibles and promissory notes (it also includes relevant special perfection rules);
- c. Security interests created by governmental debtors, to the extent not governed by special statutes regulating governmental secured transactions;
- d. Sales of health-care-insurance receivables (a type of account);
- e. Consignments of goods (it also includes relevant special priority rules);
- f. Commercial tort claims;
- g. Liens on property (including real property) to the extent they secure a right to payment serving as collateral (e.g., mortgage note);
- h. Deposit accounts as original collateral (including special perfection and priority rules); and
- i. Supporting obligations (such as guaranties) that support collateral that is a right to payment.

2. Consumer Transactions. The draft includes a carefully balanced set of provisions concerning consumer transactions. In several instances, the draft addresses issues as they affect non-consumer transactions while maintaining silence with respect to consumer transactions.

3. Choice of Law. The draft contains new choice-of-law rules with respect to the law governing perfection and priority.

a. The baseline rule for applicable law for nonpossessory security interests in most types of collateral is the location of the debtor. Debtors that are registered organizations (e.g., corporations) are located in their jurisdiction of organization (e.g., jurisdiction of incorporation).

b. The location of collateral continues to determine applicable law for possessory security interests.

c. The draft provides special choice-of-law rules for agricultural liens, goods covered by a certificate of title, deposit accounts, investment property, and letter-of-credit rights.

4. Filing.

a. The draft adopts a medium-neutral approach that accommodates modern information technology. This approach is particularly significant for the filing rules.

b. In general, the draft does not address the identity of the person that files a record with a filing office. Instead, it focuses on whose authority is necessary for the filing to be effective.

c. The draft provides a mechanism for a debtor to file a termination statement for a financing statement when a secured party wrongfully fails to do so.

d. The draft embraces a policy under which all records that are filed and associated with a particular financing statement remain available for searches in the filing office records until at least one year after the financing statement lapses. They are not removed (“purged”) upon the filing of a termination statement. This policy also accommodates the draft’s substantial reduction of the permissible discretion that a filing office may exercise in accepting or rejecting records submitted for filing.

e. The draft provides for central filing for all financing statements, except that fixture filings and certain minerals- and timber-related filings will continue to be made in the applicable real-property records.

5. Default and Enforcement. The draft contains substantially more precise provisions relating to default and enforcement.

a. For transactions other than consumer transactions, in the case of a secured party’s failure to comply with Article 9, the draft adopts the “rebuttable presumption” rule and rejects the “absolute bar” rule.

b. For transactions other than consumer transactions, the draft permits a secured party to accept collateral in partial satisfaction of the obligations that it secures, subject to safeguards for debtors and competing claimants.

S.L.H.

C.W.M.