

Memorandum To: Drafting Committee, Advisors, Observers—UCC and Emerging Technologies
From: Edwin E. Smith, Chair
Charles W. Mooney, Jr., Reporter
Date: February 28, 2022
Re: Revised Draft UCC for March 7-8 Drafting Committee Meeting

Accompanying this memo are:

- (i) February 28, 2022 UCC Draft
- (ii) Track changes draft, comparing the February 28 draft with the January 17 draft (considered at the January 28-29 meeting)

The Addendum to this memo lists the principal changes from the earlier draft, roughly in the order appearing in the draft and not in any order of priority for consideration. We will be preparing and distributing an Agenda for the meeting in the next few days. *However, note that we will consider the new provisions on “hybrid” (“bundled”) transactions in Articles 2 and 2A on March 8 and not on March 7.*

Note also that as a feature of Word’s track changes several existing UCC articles and official comments (primarily in Articles 2, 2A, and 7) appear as all “new” because they were not included in the January draft. You will need to look at the “clean” draft versions to see underlines and strikeouts reflecting changes from the current UCC text and official comments.

We look forward to seeing you at the upcoming meeting.

ADDENDUM

1. “Money” definition in 1-201(b)(24)
2. “Hybrid transaction” and “Hybrid lease” provisions in Articles 2 and 2A
3. “Signed” definition in 1-201(b)(37) and treatment of “writing,” “written,” and “record” in Articles 2 and 2A
4. “Conspicuous” definition in 1-201(b)(10)
5. “Control” issues:
 - a. “Person” in 7-106 (no change from current law and earlier drafts), 9-105A, and 12-105 (no change from earlier drafts)
 - b. “Secured party” changed to “Purchaser” in 9-105 (no change from January draft)
 - c. “Purchaser” in 8-106 (no change from current law)
 - d. Control through another person: Provisions on no duty to acknowledge, no duties on person who acknowledges, and no duty to confirm acknowledgment, based on 9-313 provisions. Added to 7-106, 8-106, and 12-105 and in new 9-107B for control under 9-104, 9-105, and 9-105A.
6. New comment to 8-501(d) on “customer name” context for CERs, etc.
7. New comment on “specific goods” in definition of “chattel paper” in 9-102
8. New choice-of-law rules for perfection and priority for chattel paper in 9-301(5) and new 9-306A (former 9-306A on perfection and priority for CAs, CERs, and CPIs changed to 9-306B). New 9-306A adopts the “electronic chattel paper’s jurisdiction (see, e.g., 8-110/9-305) for electronic copies of records evidencing CP when no tangible copies exist. Revised 9-301(5) adopts location of tangible CP for perfection by possession and priority when no electronic copies exist. Perfection by filing in CP continues to be in location of debtor.
9. Expansion of official comments to explain certain rules in Articles 7 and 9 (including those for security interests) for non-negotiable documents of title and goods covered by them.
10. New comment to 9-314 on shared control by debtor and secured party and relevance for perfection.
11. Revised 9-317(f) for non-SP buyers of chattel paper and new 9-317 (g) and (h) for buyers of electronic documents of title and CERs.

12. Revised 9-605(b) and 9-628(f) on exceptions from exculpatory provisions when secured party lacks knowledge necessary for compliance with Article 9 duties.

13. Possible changes of “written” and “writing” to “record” for consumer-goods transactions in 9-614, notice of plan to sell collateral, and 9-616, explanation of calculation of surplus or deficiency.

14 . New 12-104(b) on control of CA and CPI for purposes of becoming qualifying purchaser.

15. Change of bottom of waterfall in 12-107 to District of Columbia from location of debtor with DC as a fallback.