



WHY STATES SHOULD ADOPT UNIFORM COMMERCIAL CODE, ARTICLES 3 AND 4 AMENDMENTS

The Amendments to Articles 3 and 4 of the Uniform Commercial Code contain a number of discrete changes that address current problems or which keep pace with developments of legal rules in other areas. The Amendments provide the following:

- **Lost Instrument Enforcement.** Amendments establish that a purchaser of a negotiable instrument may enforce the instrument even though the instrument was lost while it was in the possession of a previous holder. This solves adverse case law that hinders FDIC purchase and assumption transactions when the actual note cannot be located.
- **No Double Payment Obligation.** Amendments clarify that a maker of a negotiable promissory note which has been sold may continue to make payments to the seller of the note, and obtain a discharge for those payments, until notified to direct payments to the buyer. This Amendment protects innocent makers of negotiable notes which are sold and also conforms Article 3 to common practice and to the general law of contracts.
- **Unsigned, Telephonically Authorized Checks.** The amendments ultimately shift the burden of payment to the bank where such checks are deposited rather than the bank of the drawer when such a check is not authorized, on the theory that the bank of the telemarketer soliciting such checks is in a better position to police its customer's practices.
- **Effect of FTC Legend.** Amendments provide that a holder of a consumer promissory note which is required by the Federal Trade Commission to contain a legend that the note is subject to claims and defenses of the maker, is subject to the same claims and defenses even if the required legend is omitted. This Amendment further implements the relevant Federal Trade Commission rule to prevent inappropriate conduct by sellers or lenders.
- **Electronic Records and Signatures.** Amendments provide that various notices may be given electronically as well as in writing. These Amendments further the goal of removing barriers to electronic commerce.
- **Modernized Suretyship Rules.** The amendments update the legal rules relating to guarantors and other parties secondarily liable as signatories to negotiable instruments in order to conform generally to the modern law of suretyship and guaranty. This reduces the burdens of guarantors or accommodation signers when there is payment of an instrument signed or guaranteed.