

MEMORANDUM

TO: UCOTA Standby Committee

FROM: Alvin Harrell, Ed Smith

RE: UCOTA

DATE: June 22, 2006

A review of the Uniform Certificate of Title Act (UCOTA) subsequent to its approval by NCCUSL last year suggested a need to address an additional issue that was not previously raised during the drafting process.

The issue concerns the need to provide for a security interest perfected in another state (by the method in which a so-called certificate of title (CT) "lien entry" form is filed with the motor vehicle title office, resulting in the lien being noted on the CT under current CT laws) to be carried forward when a new CT is created by the enacting state, so as to be treated as a perfected security interest in that state. The issue arises any time the owner of a vehicle subject to a security interest perfected in another state applies for a new CT in the enacting state.

Under current law in most (if not all) states, a security interest perfected by CT "lien entry" in another state will be carried forward as a similar "lien entry" on the new CT and treated as perfected in the new state. There have been some problems with debtors who are able to obtain a "clean" CT in the second state by obscuring or fraudulently releasing the prior lien entry, but as information is increasingly shared through on-line systems it is hoped this problem will be diminished.

The UCOTA drafting process focused on the initial perfection of a security interest in the enacting state by submission of a security-interest statement (as the UCOTA equivalent of a lien entry form). The carry-forward of existing security interests received little or no attention, perhaps because it is a largely mechanical (and self-evident) process. In addition, UCC Article 9 sections 9-316(d) and (e) and 9-337 provide back-up rules to govern priorities where the CT system fails to operate in the customary manner.

Nonetheless, existing CT laws typically include a statutory provision calling for existing security interests from other states to be carried forward. A state enacting UCOTA would need to retain such a provision, unless UCOTA is amended to include a carry-forward feature. The latter is desirable, so that the enacting state will have a carry-forward provision that is fully compatible with and integrated into UCOTA.

The attached proposal accomplishes this by deeming that an application for a CT under UCOTA section 9 is within the definition of a security-interest statement at section 2(a)(27), if the application indicates the existence of a security interest. This will result in the

security interest being carried forward in the enacting state and perfected under sections 25 and 26. The carried-forward security interest will then be treated the same as any security interest perfected in the enacting state.

Section 9(b)(4) would be amended to require the application to include the name and address of the secured party or its representative so as to fully conform section 9(b) to the content requirements for a security interest statement as set forth in section 25.

A conforming amendment at section 25(a) is also proposed, to make clear that an application may constitute a security-interest statement, including applications under sections 21(b) and 22(b). A further amendment to section 26(e) makes clear that perfection also may be achieved pursuant to the back-up rule of Article 9 at section 9-316(d) (which provides for continuing perfection even if the CT system fails, though subject to certain competing claims under sections 9-316(e) and 9-337).

There has been discussion as to whether the “back-up” rule at Article 9 section 9-316(d) is sufficient to address instances where the CT application omits the prior security interest, as in that event the application does not constitute a security interest statement under the proposed amendment to section 2(a)(27). One possible solution is to revise section 11 by adding a new subsection (b) to provide that: “Nothing in this act precludes an office from noting on a certificate of title the name and address of a secured party that is not a secured party of record.” As an alternative, it was suggested that the definition of security-interest statement at section 2(a)(27)(B) be expanded to include a CT application covering a vehicle that is subject to a prior security interest known to the office, even if the application omits the security interest. The latter approach was not favorably received by some who have participated in the discussion to date.

Section 2(a)(27):

“Security-interest statement” means:

(A) a record created by a secured party which indicates a security interest; or

(B) an application for which the office is required to create a certificate of title, if the application indicates a security interest.

Section 9(b)(4):

an indication of all security interests in the vehicle known to the applicant, including the name and mailing address of the secured party or a representative of the secured party, and, if the application includes a direction to terminate a security-interest statement, the information required for sufficiency of a security-interest statement under Section 25(a) and the secured party’s or its representative’s name and address for receiving communications;

Section 11(b) (Other subsections to be re-lettered)

Nothing in this act precludes an office from noting on a certificate the name and address of a secured party that is not a secured party of record.

Note that this provision is bracketed to signal that it might best go in the Official Comments rather than the text.

Section 25(a):

A security-interest statement is sufficient if it includes the name of the debtor, the name of the secured party or a representative of the secured party, a description that reasonably identifies the vehicle and is not seriously misleading under Section 20, and is delivered by:

(A) if the security-interest statement is indicated on an application for which the office is required to create a certificate of title, the owner; or

(B) if the security-interest statement is not indicated on an application for which the office is required to create a certificate of title, a person authorized to file an initial financing statement covering the vehicle pursuant to [Uniform Commercial Code Section 9-509].

Section 26(e):

A security interest is perfected to the extent provided in [Uniform Commercial Code Section 9-316(d)]. A secured party may also perfect a security interest by taking possession of a vehicle, but only if it does so pursuant to [Uniform Commercial Code Sections 9-313(b) and 9-316(d)].