The Enron Bankruptcy - An Examiner’s Tale

In May 2002 the bankruptcy court approved the appointment of Neal Batson as an independent Examiner to investigate Enron’s off-balance sheet transactions and the role that those transactions and Enron’s directors, officers and professional advisers played in Enron’s collapse. The Examiner filed four Reports with the court addressing these issues. In 4,500 pages documented with over 14,000 footnotes, these reports analyzed issues including the role and potential liability of Enron’s professional advisers (including financial institutions and accountants), the role and potential liability of in-house and outside lawyers that advised Enron and possible breaches of fiduciary duty and governance failures by Enron’s officers and directors. The Reports also provided a detailed assessment of the likely treatment of structured finance transactions in Enron’s bankruptcy. Now that the Examiner’s final Report has been filed, the Business Law Section Spring Meeting will provide one of the first presentations by the lawyers who examined Enron. The Business Law Section Spring Meeting, to be held in Seattle, April 1-4, 2004, will feature programs and committee meetings at which the Enron Examiner’s counsel, attorneys representing the Unsecured Creditors’ Committee in the Enron bankruptcy, representatives from the SEC and other experts will address the lessons to be learned by lawyers in the post-Enron environment. Substantive legal areas including bankruptcy, structured finance, derivatives, securities disclosure, legal opinions, lawyers’ professional and ethical obligations, liability of other professional advisers, director and officer responsibilities and corporate governance will be covered in these programs and meetings.

(Continued on page 2)
Programs and Committee Meetings:

Lawyers Caught in the Enron Spotlight:
Thursday April 1
8:30 – 10:30 a.m.
Counsel to the Enron Examiner and other experts will analyze lawyers’ roles in Enron’s off-balance sheet transactions – advising on disclosure, counseling officers and directors and rendering legal opinions – and “lessons learned” on better ways to identify and address issues arising from participation in complex transactions in today’s charged corporate environment. Sponsored by Law Firms, Corporate General Counsel and Professional Conduct Committees.

Enron’s Lessons for Investment Bankers, Accountants, Attorneys and Other Advisers:
Thursday April 1
2:30 – 4:30 p.m.
Counsel to the Enron Examiner and Creditors’ Committee and a representative from the SEC will analyze the roles of financial institutions, accountants, attorneys and other professional advisers in Enron’s off-balance sheet transactions and resulting investigations, settlements, lawsuits and criminal indictments, and adoption of codes of conduct in the post-Enron environment. Sponsored by Developments in Business Financing, Commercial Financial Services, Professional Conduct and Law and Accounting Committees.

Lessons Learned from Enron Regarding Derivatives, “True Sale” Analyses and Substantive Consolidation:
Friday April 2
8:00 – 9:00 a.m.
An assessment of the bankruptcy challenges to Enron’s structured finance and derivatives transactions. Sponsored by Subcommittee on Securitization and Derivatives of the Commercial Financial Services Committee.

Structured Finance and Derivatives Under the Enron Microscope:
Friday April 2
10:30 a.m. – 12:30 p.m.
Counsel to the Enron Examiner and Creditors’ Committee and a representative of the SEC will discuss lessons for structuring and disclosing off-balance sheet transactions and derivatives, including accounting and financial statement disclosure, bankruptcy, corporate governance, MD&A and other securities disclosure, and liability and ethics issues for professionals in the post-Enron environment. Sponsored by Commercial Financial Services, Developments in Business Financing and Uniform Commercial Code Committees.

Bankruptcy Issues from the Enron Examination:
Friday April 2
2:30 – 4:00 p.m.
The panel will discuss claims against third parties for aiding and abetting officer wrongdoing (including imputation of wrongful conduct that can bar such claims), equitable subordination of a lender’s claim for participation in a debtor’s misrepresentation of its financial condition, the impact of multiple entities on avoidance actions and substantive consolidation of non-debtors. Sponsored by Business Bankruptcy Committee.

Current Issues in Opinion Practice:
Friday April 2
3:15 – 5:15 p.m.
The panel will focus on opinion issues raised by the Final Report of Neal Batson, Examiner, in In re Enron. The panel will discuss differences in opinion practice when issuing opinions to one’s own client, including ethical issues, securities law issues and bankruptcy law issues raised by the Report will be discussed. Sponsored by Legal Opinions Committee.

This Newsletter is jointly published three times a year by the Uniform Commercial Code Committee and the Commercial Financial Services Committee of the American Bar Association’s Section of Business Law. The views expressed are the views of the authors only, and are not necessarily those of the ABA, the Section or either Committee. Please contact Katherine S. Allen, Stites & Harbison, PLLC, 424 Church Street, Suite 1800, Nashville, Tennessee 37219, katherine.allen@stites.com or Kathleen J. Hopkins, Real Property Law Group, PLLC, 1218 3rd Avenue, Suite 1900, Seattle, Washington 98101, khopkins@rp-lawgroup.com with any comments or suggestions.
Introduction

The asset-based commercial-paper market currently consists of $708 billion in assets (up from $517 billion in 1999), and is by far the most rapidly growing segment of the U.S. credit markets. Between 1987 and 2002, Standard & Poor’s rated $270 billion worth of U.S. commercial mortgage-backed securities (“CMBS”). Higher levels of Treasury-rate and corporate-bond-spread volatility make CMBS very attractive to investors. CMBS investments provide spread stability, as well as liquidity and strong collateral performance relative to the corporate sector.

In CMBS pool transactions, each borrower customarily is prohibited from prepaying its mortgage but may be permitted (provided there is no default under the loan) to execute a collateral defeasance. In a collateral defeasance, the real estate security for the loan is released from the lien and replaced with U.S. government obligations. Since the early 1990s, defeasance has been an effective means of making the pricing on CMBS more attractive by eliminating the prepayment risks associated with fixed-rate loans. As a result of the boom in the conduit market, defeasance has become the overwhelmingly preferred alternative to yield-maintenance prepayment premiums in securitized mortgage financing.

Benefits of Defeasance

Lenders and investors in securitized loan transactions prefer defeasance to yield-maintenance prepayment provisions because the certificate holders receive “call protection,” making pricing of the CMBS more attractive (by providing “tighter” spreads and cheaper financing) and providing substitute collateral that is safer and easier to realize on than real estate collateral (which may involve fluctuations in value and expensive and time-consuming foreclosure proceedings), thereby virtually eliminating the default risk for the loan being defeased (although a yield-maintenance prepayment premium may still apply if a loan default occurs). Defeasance also enhances yield predictability by reducing the risk of reinvesting prepayment proceeds in an uncertain interest-rate environment, and reduces costs and the use of intermediaries. Unlike yield-maintenance prepayment provisions, defeasance provides for continuing payments over the remaining term of the loan. A defeased loan secured by U.S. government obligations (which are considered less risky collateral than commercial real estate) is viewed as a positive event by the rating agencies and may result in a ratings upgrade if a sizable portion of the CMBS pool is defeased.

Typically, the costs to the borrower of defeasance are equal to or less than the costs of a yield-maintenance prepayment of the loan. The master servicer calculates the cost of a yield-maintenance prepayment by the borrower in accordance with the yield-maintenance formula in the mortgage loan documents. On the other hand, defeasance is a “process” and the cost is calculated by combining transaction costs and the securities cost along a yield curve. The borrower customarily will seek to defease its loan in connection with a sale or refinance of the real property collateral, to take advantage of lower interest rates or higher yields (or to refinance for more money and for a longer term). Defeasance costs to the borrower generally decrease the closer the loan is to its maturity date, because the property may have experienced significant appreciation and the loan balance has decreased (thus resulting in a lower cost of the defeasance deposit). The overall cost to the borrower will be less with

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defeasance than a yield-maintenance prepayment obligation if the defeasance occurs at a time when interest rates have risen in relation to the stated loan rate, i.e., the borrower will be able to purchase treasury instruments (or certain other permitted “government securities”) with a face value less than the outstanding loan balance. The borrower can effectively “hedge” its risk and will not pay any minimum prepayment premium regardless of the interest-rate environment (usually one percent in a yield-maintenance scenario). The borrower in a securitized loan transaction often will seek to gain flexibility by requesting the ability to release collateral from the mortgage, so that it can sell or refinance the real property collateral at any time. Therefore, a provision may be inserted in the mortgage granting the borrower a limited right to substitute collateral subject to rating agency approval and other requirements (generally based on new underwriting criteria, with all costs of compliance to be paid for by the borrower).

Defeasance is a highly technical and complex process and involves numerous parties, including the following: borrower, borrower’s counsel, master servicer, master servicer’s counsel, accountants, rating agencies, successor borrower, securities broker-dealer, escrow agent, purchaser, purchaser’s counsel, new lender (trustee), new lender’s counsel, securities intermediary, securities intermediary’s counsel, and special servicer.

Defeasance clauses are becoming the “norm” in securitized mortgage transactions, including CMBS and REMIC financings, and surely there will be case law dealing with mortgage defeasance in the not-too-distant future. However, defeasance clauses may be as vulnerable to challenge as yield-maintenance prepayment provisions because defeasance calls for prepaying borrowers to substitute Treasury obligations for mortgages, instead of providing a substitute property of equivalent risk. Defeasance also may be deemed objectionable because it applies even to borrowers prepaying below market notes.

**REMICs and FASITs**

Specialized forms of prepayment/defeasance provisions are commonly utilized in connection with real estate mortgage investment conduits (“REMICs”), financial asset securitization investment trusts (“FASITs”) and other sophisticated forms of securitized mortgage-financing transactions. These provisions generally permit the borrower to elect to obtain a release of a particular property from the loan pool by substituting “defeasance collateral” sufficient to generate the income stream that would otherwise have been generated by the loan collateral being released. REMIC rules require that the defeasance collateral (usually Treasury securities) consist of direct, noncallable and nonredeemable securities or certificates of deposit issued (or guaranteed) by the U.S. government or one of its instrumentalities. Eligible substitute collateral must constitute “government securities” as defined in the Investment Company Act of 1940, and include U.S. Treasury Obligations, direct obligations of Fannie Mae or Freddie Mac and interest-only strips issued by the Resolution Funding Corp. (RFC).

Typically, the borrower is required by the original loan documents to provide the master servicer with at least 30-60 days prior written notice of the date it intends to defease the loan. (A typical defeasance transaction may take 30 days to close). The defeasance collateral is substituted as collateral security for the note, and the borrower is required to execute a pledge and security agreement (and any other necessary documents) creating a first priority lien therein. The borrower is also required to deliver

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to the lender, among other things, written confirmation from the applicable rating agency (or agencies) that the substitution of collateral will not result in the withdrawal, downgrade, or qualification of the current rating. A non-consolidation opinion from the borrower’s counsel may also be required. The borrower (because it has effectively prepaid the loan) customarily is released from all obligations under the note and other security documents (except those that expressly survive payment of the loan, and any misrepresentations in connection with the defeasance or failure to provide the requested defeasance documentation), but as part of the transaction the borrower is required to create a special-purpose, “bankruptcy remote” successor entity (“SPE”), unaffiliated with the original borrower, to which it will irrevocably assign all of its obligations, rights and duties under the loan documents (including the pledged defeasance collateral), usually for a nominal consideration. The successor SPE borrower will not be permitted to own any other property other than the defeasance collateral or incur any additional debt. This insulates the borrower from personal liability while allowing the loan obligation, and the documents evidencing and securing the same, to remain in place. This structure also enables the trust to distance itself from the credit risk of the original borrower. It may be feasible in some instances for the trustee or master servicer to create a specific bankruptcy-remote SPE “accommodation borrower” for each pool of securitized loans, with the note and defeasance collateral for each defeased loan being held by the same entity. The benefits of this specific structure include lower defeasance costs, easier administration, greater probability of legal and regulatory compliance with respect to fees, taxes, and entity requirements, and minimization or avoidance of substantive-consolidation or other bankruptcy risks with respect to the original borrower (or related persons or entities).

There is normally a longer “lockout” period (during which the borrower is prohibited from prepaying the loan) in connection with the defeasance provision. Under REMIC rules, to protect the REMIC tax status of a CMBS transaction, defeasance cannot occur before the second anniversary of commencement of the REMIC, i.e., the first day that the REMIC securities are issued. In anticipation of securitization (even if the loan is not initially securitized), lenders usually permit defeasance upon the earlier to occur of the required two-year REMIC lockout period or three (or sometimes four) years after the date of the loan. In the event of default by the borrower under any of the loan documents, the borrower may be required to pay a form of “make whole” payment calculated by determining the amount sufficient to purchase the defeasance collateral as of the date of acceleration of the loan (with a minimum payment of, e.g., 1% of the default prepayment amount).

The borrower may be permitted to revoke its defeasance request if revocation occurs before the release of the original real property collateral. However, the borrower may be required to submit a “defeasance deposit” to the lender at the time of the initial request, to cover the costs incurred by the servicer in connection with the request (including internal review and approvals and anticipated costs of third-party reviews, certifications, opinions, and approvals).

Rating Agency Requirements

In the past, rating agencies (such as Standard & Poor’s, Moody’s, and Fitch) reviewed every defeasance transaction in order to affirm the existing rating. However, one of the major rating agencies, Standard & Poor’s, now permits the servicer to complete the defeasance without obtaining confirmation from Standard & Poor’s if the servicer delivers an approved form of certification within 10 days after completion of the defeasance, and the following conditions are satisfied:

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1. The loan is not one of the ten largest loans in the pool; 2. The loan has a principal balance at the time of the defeasance of less than $20 million and 5% of the pool principal balance; and; 3. Where a successor borrower assumes the loan, the successor borrower and its affiliates do not hold loans (whether fully or partially defeased) in such pool that in the aggregate (i) total more than $20 million or (ii) comprise more than 5% of the pool principal balance. Standard & Poor’s Structured Finance Criteria: CMBS Defeasance Criteria, Standard & Poor’s, April 10, 2003, at p. 58.

The rating agency, upon completion of its review of the required defeasance documentation, will send a confirmation letter to the master servicer stating that the defeasance will not result in a suspension, withdrawal, downgrade, or qualification of any of the current ratings assigned to the investor certificates.

Issuers in securitized loan transactions customarily will include the following defeasance provisions in their loan documents in order to comply with rating agency requirements: (i) defeasance must occur in accordance with the requirements of and within the time permitted by, applicable REMIC rules and regulations, (ii) the borrower must provide U.S. government securities as replacement collateral in an amount sufficient to pay the note in accordance with its terms, (iii) an independent accounting firm should certify that the collateral is sufficient to pay the note in accordance with its terms, (iv) the loan must be assumed (and collateral owned) by an entity meeting single-purpose bankruptcy-remote (SPE) criteria and (v) counsel must provide an opinion that the trustee has a perfected security interest in the new collateral.

If required, the master servicer also will submit the defeasance request and related documents to each rating agency that rated the CMBS to obtain a “no downgrade” letter (which may take two weeks or longer to procure). The master servicer is charged with seeing that all rating agency requirements are met, and all costs in connection therewith are customarily borne by the borrower (including the cost of acquiring the substitute collateral and fees for the legal opinions, the independent certified public accountant’s “comfort letter,” and the rating agency’s confirmation letter). 

**Bankruptcy Issues**

It is possible that the giving of substitute collateral could constitute a potential preference under § 547 of the Bankruptcy Code. As noted above, the defeasance collateral will consist of U.S. government obligations, which generally are the safest form of security available. The real estate, even if security for a very conservative mortgage loan, is always subject to value fluctuations, while the government obligations, if held to maturity (as intended) are not. Hopefully, the most a bankruptcy court would say is that the difference in value between the real estate and the pledged securities (and not the whole defeasance collateral) is a preference. However, mortgage debt obligations rarely are defeased when the property is worth less than the debt, so the defeasance collateral almost always will be worth less than the property released. Therefore, no bankruptcy preference would occur in this situation because a preference, to be voidable under § 547, must result in the transferee receiving more than it would receive in a Chapter 7 liquidation of the debtor/mortgagor’s assets if the transfer had not occurred. If the real property collateral were worth more than the defeasance collateral, the creditor would not have received a preference as a result of the defeasance.

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The lender may seek one or more opinions of counsel for the borrower, in form and substance and delivered by counsel that would be satisfactory to a “prudent lender,” stating among other things that (i) the lender has a perfected first priority security interest in the defeasance collateral and that the defeasance security agreement is enforceable against the borrower in accordance with its terms, (ii) in the event of a bankruptcy proceeding or similar occurrence with respect to the borrower, none of the defeasance collateral nor any proceeds thereof will be property of the borrower’s estate under § 541 of the Bankruptcy Code or any similar statute and the grant of security interest therein to the lender will not constitute an avoidable preference under § 547 of the Bankruptcy Code or applicable state law. (It may be problematic to give a “clean” perfection opinion because of the preference issue unless the defeasance collateral was obtained at least 90 days in advance of the release of the real property collateral.)

If an express defeasance provision is not included in the mortgage loan documents, a REMIC compliance opinion may be required by the rating agency as a condition to granting a release of any portion of the collateral.

**Conclusion**

Defeasance provisions have become the overwhelmingly preferred alternative to yield-maintenance prepayment provisions in CMBS loans. Although defeasance offers definite benefits for both lenders and borrowers compared to yield-maintenance prepayment premiums, defeasance is a highly technical, complicated and cumbersome process, and the parties must fully comply with the strict requirements of the master servicer and, where applicable, the rating agencies. Furthermore, the defeasance must be carefully documented, with special attention paid to the required attorney’s opinions and accountant’s certifications, as well as the proper attachment, perfection, and priority of the trustee’s security interest in the defeasance collateral and in all proceeds thereof. ♦

### Revised Uniform Commercial Code Article 7—Documents of Title

By Linda J. Rusch*
Hamline University of Law
St. Paul, MN

In 2003, both the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved revisions to Article 7 of the Uniform Commercial Code covering documents of title. A document of title is a record issued to or by a bailee covering goods in the bailee’s possession and that is treated in the regular course of business or financing as evidencing that the person in possession or control of the record is entitled to deal with the record and the goods the record covers. UCC 1-201(b)(16) (as revised by conforming amendments to Revised Article 7). Documents of title come in two basic varieties, negotiable and nonnegotiable. Revised 7-104. The main effect of having a negotiable document of title is that a negotiable document of title, unlike a nonnegotiable document, represents title to the goods. In certain circumstances, a transferee of a negotiable document of title may obtain better rights to the document and the goods it covers than its transferor had to convey. Revised 7-501 and 7-502. The revision to Article 7 focused on updating the article to provide for electronic commerce, including electronic documents of title, and to take into account both domestic and international developments affecting documents of title.

To provide for electronic documents of title, a document of title is required to be in a “record” as opposed to a “writing.” UCC 1-201(b)(16) (as revised by

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conforming amendments to Revised Article 7). The definition of “record” allows for both electronic and paper formats. Revised 7-102(a)(10). Documents of title are then divided into two formats based upon the medium in which the document is held:

“An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information inscribed on a tangible medium.” UCC 1-201(b)(16) (as revised by conforming amendments to Revised Article 7). The issuer of the document of title determines the format in which the document is initially issued. Converting a tangible document of title to an electronic document of title or vice versa requires compliance with Revised 7-105, which provides a process by which the person entitled under the document can request the issuer to reissue the document of title in the alternative medium. The substitute document of title issued in the new medium will contain a notation that it was originally issued in the previous format. The person who procures issuance of the document of title in the alternative medium must surrender possession or control of the first document of title to the issuer, and in doing so warrants that such person was entitled under the surrendered document of title. Revised 7-106. The definition of “delivery” in Article 1 is revised to provide that a tangible document of title is delivered by voluntary transfer of possession and an electronic document of title is delivered by voluntary transfer of control. UCC 1-201(b)(15) (as revised by conforming amendments to Revised Article 7).

The majority of the provisions in Revised Article 7 apply to both electronic and tangible documents of title, with some provisions being limited to tangible documents of title. Those limited to tangible documents include Revised 7-304 (tangible bills of lading in a set), Revised 7-505 (liability of indorser), and Revised 7-506 (right to compel indorsement). An electronic document of title may be either negotiable or nonnegotiable, Revised 7-104, and if negotiable may be transferred by due negotiation. Revised 7-501.

To complete the integration of electronic documents of title throughout the Uniform Commercial Code, Revised Article 7 makes several conforming amendments to both the statutory text and official comments of the other articles of the UCC. Revised Article 7, Appendix I. Perhaps most important are the amendments to Article 9 which allow for control as provided in Revised 7-106 to be a permissible attachment and perfection step for electronic documents of title. Revised Article 7, Appendix I, conforming amendments to UCC 9-203 and 9-310. As a general rule in the Article 9 scheme, negotiable electronic documents of title are treated the same as negotiable tangible documents of title and nonnegotiable electronic documents of title are treated the same as nonnegotiable tangible documents of title, with the control concept substituting for possession. The choice of law provision that depends upon the location of the collateral, however, is limited to tangible negotiable documents. Revised Article 7, Appendix I, conforming amendment to UCC 9-301. See also Revised Article 7, Appendix I, conforming amendment to UCC 9-338(2) (limited to tangible documents of title).

Other changes to update Article 7 take into account deregulation of affected industries, changes in industry practice since the original

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promulgation in the 1950’s, and the overall revision process for the entire UCC. For example, references to tariffs were eliminated in Revised 7-103, 7-204, 7-309, 7-403, and 7-601 and the warehouse liability limiting rules in Revised 7-204 and the warehouse lien rules in Revised 7-209 were updated to reflect changes in practices in the warehouse industry. In addition, several sections were updated to reflect Article 2A on leasing and Revised Article 9. See Rev. 7-209, 7-403, 7-503, 7-504, and 7-509.

The revisions to Article 7 thus bring documents of title into the modern electronic age.

Revised Article 7 is available to the states for enactment in the 2004 legislative sessions and copies of the Act are available from NCCUSL.◆

*Professor Rusch served as an ALI representative to the Article 7 Drafting Committee and as Co-Reporter on the project.

Message from the Chair: Uniform Commercial Code Committee

by Stephanie A. Heller
Federal Reserve Bank of New York
New York, NY

hope that you all are planning to attend the Spring Meeting on April 1-4, 2004 in Seattle. The UCC Committee will be the principal sponsor of the following programs at the Spring Meeting:

UCC Committee Forum: Bypass Surgery: Strategies for Contracting Out of UCC Rules
(Thursday, April 1 2:30 – 4:00, 1 hour of CLE)

Have you ever wondered whether an agreement has gone too far in contracting out of the UCC? Is it really so easy to tell which UCC rules are mandatory and which can be contracted away? Are there strategies for getting out of the UCC altogether? This program will examine all of those questions, in the context of many Articles of the UCC.

New Lawyer Institute: Decoding the Uniform Commercial Code
(Thursday April 1, 11:00 – 12:30)

This program is a must for everyone who skipped UCC classes in law school and now find themselves relying on their bar exam review course notes on the UCC. The program will introduce the structure of the Uniform Commercial Code and its commentary, the relationship between the various articles of the Code as well as the relationship among the Code, the common law and other relevant state and Federal laws. The panelists will share their own strategies for tackling Code related issues in their areas of expertise.

Program: Harmony & Discord: Consumer Protection in Commercial Transactions
(Friday April 2, 8:00 – 10:00)

This program will cover what consumer and business lawyers need to know about consumer protection, both in and out of the UCC. The primary focus will be on sales of goods, leases of goods, secured transactions, and debt collection generally. The presenters will discuss: UCC provisions that expressly or commonly protect consumers; the Code’s silence on some consumer issues and what to do about it; the ways in which some similar consumer protection rules in different laws interact; the important federal rules that protect consumers; some common and some not-so-common state laws and regulations that protect consumers; and some statutes that could be regarded as anti-consumer legislation.
Program: Woulda, Coulda, Shoulda – How to Draft Loan Documents under Revised Article 9 to Survive Challenges in Bankruptcy (Friday April 2, 2:30 – 4:30)

How do you draft to make sure that secured transactions under revised Article 9 survive a challenge in the event of a bankruptcy? When will the bankruptcy trustee have priority? How can these transactions be made “bullet-proof”?

The UCC Committee will also be cosponsoring several other programs and many of our Subcommittees will offer mini-programs at the subcommittee meetings.

As has become customary, we will have our joint committee dinner with the CFS Committee on the Thursday evening of the Spring Meeting. This year the dinner will be held in the Columbia Tower Club on April 1, commencing at 8 pm. If you are attending the Spring Meeting and have not already done so, I hope you will consider registering for this dinner – it is always a highlight of the Spring Meeting.

Before I conclude my column, I wish to bring to your attention two matters concerning UCC Committee membership. The first is a new web tool that the Business Law Section has introduced to check Business Law Section membership status. I strongly encourage each of you to review your memberships and, where appropriate, join a Committee or Subcommittee. It is easy to do and it is the only way to ensure that you are officially on the membership lists and list serves of the various Committees and Subcommittees which are of interest to you. All you need to do is go to http://www.abanet.org/buslaw/committees/ and enter your name and ABA membership number.

Second, current UCC Committee members who are on the Committee list serve recently received an electronic membership survey. I would like to thank those of you who have already responded to the survey for your vital feedback and encourage those of you who have received the survey but have not yet responded, to respond. The information that you provide will be instrumental to our planning for the future of the Committee. If you are a current Committee member and have not received the survey but would like to, please contact me directly at stephanie.heller@ny.frb.org.

See you in Seattle.

**UCC Subcommittee on Sales of Goods**

The Sales of Goods Subcommittee will meet in Seattle at 11:30 a.m. on Friday, April 2, to discuss its role in the process for enactment of the proposed amendments to Article 2. The subcommittee will also consider what it can do to assist practitioners as we move into an era of Article 2 practice in which only some jurisdictions have enacted the 2003 amendments to Article 2. Recall that the original version of Article 2 took 15-20 years before nearly universal enactment. How will this jurisdictional split affect UCC litigation and transactional practice?

**C. Robert Beattie, Chair**  
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**CHECK THIS OUT!**

Go to the UCC/CFS Joint Website at  
www.abanet.org/buslaw/cfs-ucc/home.html  
and click on (Commercial Finance) Master Calendar
The Subcommittee on Scope and the Subcommittee on Article 1 will hold a joint meeting in Seattle to wrap up the final issues revolving around the approval of Revised Article 1 and the enactment process. The Subcommittees will discuss briefly the mission and role of the newly merged Subcommittee on General Provisions and Relation to Other Law (including a contest to find the catchiest acronym/nickname for this subcommittee) and entertain discussion on future projects. The recent action of the Office of Comptroller of the Currency on preemption of state laws as applied to nationally chartered banks, and its impact on the UCC, will also be discussed.

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At the ABA Business Law Section meeting in Seattle, the Subcommittee on Leasing will hear a presentation and discussion on emerging issues of lease accounting, including FIN 45 and 46 and developments in evolving European accounting principles for leases.

A short summary of the proposed new amendments to UCC 2A-Leases will be distributed. The Committee also will hear a status report on the new clarifying Official Comments to 2A that have been agreed to by the Reporter and the Drafting Committee. These new 2A comments affect 2A-101 (or Prefatory Note) (leasing is distinctive), 2A-201 (statute of frauds), 2A-106 (choice of law/forum in consumer leases), 2A-211 (warranties against interference), 2A-222 (E commerce and leasing), 2A-310 (accessions), 2A-405 (excused performance), 2A-501 (damages—basic lease/sale differences), and 2A-517(f) (new statutory right for lessee to use goods as “mitigation of damages” after rejection or revocation). The purpose of the new Comments to 2A is to spell out more explicitly how and why commercial leasing law differs from sales law.

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The Committee submitted a summary of recent case law and statutory developments affecting equipment leasing for the annual UCC survey in The Business Lawyer (Volume 59, August 2004). These summaries also will be circulated at the meeting in Seattle.
UCC Subcommittee on Payments

In Seattle, the Payments Subcommittee will be sponsoring a panel discussion on "ANSI Standards, the Collection of Checks, and Check 21." What is the American National Standards Institute? How do ANSI standards affect check collection? How will check collection change with the advent of Check 21? How will the changes affect the liability of parties under UCC Articles 3 and 4 and federal regulations? Our panelists will discuss both current and proposed technical and legal standards for each phase of a check’s life cycle.

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UCC Subcommittee on Letters of Credit

Agenda for the Letter of Credit Subcommittee Meeting in Seattle (4:00-5:00 PM Friday April 2, 2004 – Sheraton Seattle, Suite 424, Fourth Floor):

1. Highlights from the Annual LC Survey in Miami – George Hisert, Bingham McCutcheon.

2. "What's a Landlord to Do?" – Brief discussion of the recent lease cap cases -- Mayan Networks, PPI, Stonebridge & Mobility – and how Landlord's counsel might try to draft around them.

3. "Trouble at the Mart – Letting the Applicant Control the Draw" – Comparing Dairy Mart and K-Mart; Merchant Letters of Credit


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Please notify both the ABA and the editors if you have any changes or corrections.

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UCC Subcommittee on Investment Securities

The Investment Securities Subcommittee will meet at the ABA Section of Business Law Spring Meeting in Seattle, Washington on April 2, 2004 from 1:00 PM to 2:00 PM at the Sheraton Seattle Hotel. At that time, Sandra M. Rocks of Cleary, Gottlieb, Steen & Hamilton will give a presentation on Investment Securities as Collateral and the New TriBar Report on Security Interest Opinions, and a lively discussion will follow.

At future meetings, the Subcommittee will examine the rules applicable to U.S. Treasury book-entry securities and book-entry securities issued by U.S. government-sponsored entities, opinions given in secondary offering of securities and U.S. security agreement forms relating to investment property collateral. We welcome other suggestions for future meetings.

Please join us at the ABA spring meeting in Seattle.

Lynn A. Soukup, Chair
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Penelope Christophorou, Vice-Chair
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Message from the Chair
Commercial Financial Services Committee

Dear members and other interested persons:

The Committee on Commercial Financial Services of the Section of Business Law (the “Committee”) has not met since my last reports of October 28, 2003, and December 28, 2003, but we will meet soon (April 1-3 in Seattle), and our activities are ongoing, so I have several items to report. I recently attended the January Midwinter Leadership Meeting of the Section of Business Law, at which all of the committee chairs within the Section have an opportunity to meet with the Officers of the Section and the members of the Section's Council. That four-day meeting provides a great opportunity to exchange ideas and gain insights as to how we may better manage the affairs of our Committee.

A couple of things became very obvious at the recent meetings. First, although we are one of the largest committees of the Section, our membership is only a fraction of that of the Section as a whole, and only a small percentage of our members are “active,” in the sense of attending meetings and programs, speaking on panels, publishing materials for the ABA, and the like. Indeed, nearly 97% of the members of the Section are “passive” members who join the Section and its committees to receive the benefits of passive membership, including access to publications and continuing legal education.

Although our active members are the engine that keeps the train running, and although active membership is encouraged and typically is personally rewarding, the leaders of the Section have strongly focused on the need to provide services and content to our passive members as well. Without a strong membership base, we would not have the revenues necessary to permit us to do all the good things we do.

Therefore, we will increase our focus on “pushing out” as many benefits as possible to our members as a whole. We will attempt to do this though our newsletter, through the Section's increasingly improving web site (if

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you haven't visited it lately, please do so when you have a moment and you will see that it is much improved, and getting better all the time, with more improvements to come), through targeted email blasts (while attempting not to spam you excessively), and through provision of more dispersed and innovative programming, including audiocasts, videocasts, satellite programs, institutes, and so forth. We will also continue to focus on publishing written materials of practical value to busy commercial financial services lawyers.

Second, and closely related, is the increasing extent to which we will rely on technology to accomplish these objectives, both because it is much more cost-effective, and because we now have the ability to get good content out to our members more quickly and in a more usable and friendly format.

We also intend seriously to focus on membership recruitment and diversity. To maintain the vitality of our Committee, we need to continue to add new and diverse members. I recently appealed to our members at large for volunteers to liaise with the Section's Committees on Membership, Institutes and Seminars, and Diversity. I'm pleased to report that I have been able to fill the Membership Liaison slot with two able volunteers (Stuart Ames and Bob Young), the Institutes and Seminars Liaison slot with two able volunteers (Marshall Grodner and Tom Ward), and the Diversity Liaison slot with two able volunteers (Jeremy Friedberg and Neal Kling).

As always, we have a busy agenda as a Committee for the Spring Meeting of the Section in Seattle, Washington from April 1-3, 2004.

Our Committee and several subcommittees will meet in Seattle, mostly in the Sheraton Hotel. A complete schedule is readily available at www.abanet.org in the Section of Business Law area.

We will be the primary sponsor of two programs and a committee forum. On Friday morning at 10:30, Lynn Soukup will chair a program focusing on the lessons of Enron for commercial finance practitioners. At 3 pm on Friday afternoon, Chris Rockers will moderate a forum on the subject of loan trading, featuring knowledgeable participants in the market including a representative of the LSTA (the principal trade group for participants in the loan trading market). At 10:30 am on Saturday morning, Steve Weise, Jeff Turner and Teresa Harmon will present the 2003 Commercial Law Developments program.

In addition, we will co-sponsor several other programs, including a newly-inaugurated "new lawyers' institute" on April 1. And, of course, our subcommittees will have many substantive presentations as well.

The foregoing is just a sample of what our Committee will do at the Spring Meeting. Several other committees with overlapping focus, including the UCC, Banking, Business Bankruptcy and Legal Opinions Committees, also will be presenting programs and forums that you will find of interest. The hardest problem is scheduling things so as not to conflict - there is almost too much good stuff.

We will have our traditional joint dinner with UCC on April 1. Details and a sign-up form were emailed to all Committee members on the listserv on February 9, 2004, but to recap:

The dinner will be held at the Columbia Tower Club. It will be a spectacular event, but at a cost of only $100 per person. Seating will be limited and on a first come, first served basis. The Columbia Tower Club is atop the Columbia Tower, nearly 80 stories above downtown Seattle. Not only is the food great, but the views are fantastic. Many thanks to Committee member Malcolm Lindquist for helping to arrange the dinner. The dinner follows the Section Welcome Reception, which will take place from 6-7:30 pm at the Experience Music Project.

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We've intentionally allowed 1/2 hour to get from one place to the other because they're about a mile apart, but I have been assured that there is convenient and cheap public transportation that can get you from point A to point B in 1/2 hour. We'll be sure to send transportation details to everyone in advance. We hope that many of you will attend the dinner. We'll keep the speeches short and the fun and fellowship long.

For those of you who are not currently active members, I hope this report will give you at least a hint of why you might wish to become more active. I can't oversell the benefits of active membership.

For those of you who are passive members, I hope this report will reassure you that we (both the Committee and the Section) value your membership and are ever striving to find more and better ways to deliver value and benefits of membership to you.

I'm now 2.5 years into a 4-year term as Chair of your Committee. I will probably be the last 4-year chair, because a couple of years ago the Section shortened leadership terms to 3 years (but grandfathered in those of us, like me, who had already been appointed to 4-year terms). I was given the option to shorten my term but declined, because I genuinely value the privilege of chairing this great Committee and hope to do the best I can with the time that remains in my term. Thanks for the opportunity to be your Chair and don't hesitate to contact me (email preferred) with suggestions, ideas, criticism, praise, or any other relevant communications.

**CFS Real Estate Financing Subcommittee**

During the BLS Spring Meeting in Seattle on Thursday April 1, 2004, the CFS Real Estate Financing Subcommittee will be conducting a program titled “Defaults in Securitized Mortgage Transactions.” Our presenter will be Michael R. Garner, from the Seattle firm of Short Cressman & Burgess, PLLC. Mr. Garner has extensive experience in mortgage backed securities financing and litigation, having represented clients throughout the western states, Hawaii and Canada. We invite all to attend what promises to be an informative and timely presentation.

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**Neal Kling, Vice-Chair**
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**JOIN THE UCC E-MAIL DISCUSSION GROUP**

This free discussion group, created and moderated by the editors of the UCC Bulletin (and sponsored by Thomas West, publisher of the “UCC Reporting Service,” with assistance from the Washlaw Web), is conducted using e-mail. Once you have joined, you receive approved messages and are able to send your messages to the group.

To subscribe, go to: [http://lists.washlaw.edu/mailman/listinfo/ucclaw-l](http://lists.washlaw.edu/mailman/listinfo/ucclaw-l) and follow the instructions.
The Agricultural & Agri-Business Financing Subcommittee of the CFS Committee is planning a program focusing on the Perishable Agricultural Commodities Act (PACA) and its effect on secured lenders, both in and out of bankruptcy. The featured speakers will be Pat Rynn, Newport Beach, CA who represents PACA claimants throughout the country, and Charles Cipione, Dallas, TX, who has served as the PACA consultant in the Fleming and K Mart bankruptcy cases.

During the coming year, the subcommittee intends to begin the process of updating the 50-state agricultural lien survey which was prepared several years ago. We could use volunteers to cover many states. If anyone is interested in assisting with this project, please contact me via email at phillip.kunkel@gpmlaw.com.

Finally, the subcommittee will be meeting in conjunction with the American Agricultural Law Association in Des Moine, Iowa in the fall. We will be sponsoring a program on agricultural financing issues outside Article 9, including UCC Articles 2, 5, and 7, PACA and agricultural liens.

The next meeting of the Creditors Rights Subcommittee will be in Seattle on Thursday, April 1, 2004 at 1:00 pm. There will be three notable presentations as well as litigation and legislative updates. We will be honored to have two bankruptcy judges speak to our group: Hon. Philip Brandt of Seattle and Hon. Michael Williamson of Tampa, together with Albert Manwaring of Wilmington, will be speaking about an aspect of the Netscape bankruptcy. Other late breaking topics of interest will be discussed. Your input on topics of interest is appreciated. Subsequent meetings will be at the ABA Annual meeting in Atlanta in August 2004 and at the National Conference of Bankruptcy Judges in Nashville in October 2004.

Joining the Creditors Rights Subcommittee is as simple as sending an email to Duane Geck, chair, or to Carolyn Richter, vice chair.
CFS Cross-Border Secured Transactions Subcommittee

Our Subcommittee has been relatively quiet since the ABA Annual Meeting in San Francisco last August. For those of you who attended, our panel discussion on new developments in secured transactions under the proposed OAS Model Law and the Mexican Commercial Code was extremely informative. Our formal thanks again go out to Boris Kozolchyk, National Law Center for Inter-American Free Trade, Manuel Galicia, Galicia y Robles S.C., and John Stephenson, Jackson Walker LLP, for their efforts in making it such a worthwhile program.

There are a few ongoing projects to bring to your attention. There is a new mini-convention under way at the Hague on International Jurisdiction and Judgments, which would apply only to consensual choice of law and jurisdiction provisions in business/commercial transactions. For those of you who have followed the extremely difficult efforts over the years of reaching a worldwide agreement on enforcement of judgments, this limited approach appears to be much more practical.

UNCITRAL is in the final stages of drafting a new Legislative Guide on Secured Transactions. This will prove an invaluable tool for those countries seeking to either develop new, or revise existing, laws to promote secured transactions. Unlike the convention approach, it primarily would serve as an educational and legislative tool for reaching such goals country by country.

Finally, the Subcommittee is working on rolling out a much more informative and friendly website for our members. Current ideas include not only more timely notification to everyone of breaking issues and project updates, but a resource guide for secured transactions lawyers where we could post current written materials and provide a database of contacts within and outside the U.S. Anyone wishing information on, or who has an interest in assisting with, any of these projects, should contact us at the locations above.

Our next meeting is scheduled during the Business Law Section Spring Meeting in Seattle, April 1-4, 2004. In keeping with prior sessions, this will be a joint meeting with the International Commercial Law Subcommittee of the UCC Committee, to be held from 9:00 to 10:30 a.m. on Friday, April 2nd. A meeting agenda will be circulated to all members prior to the meeting.

CFS Securitization and Derivatives Subcommittee

The Securitization and Derivatives Subcommittee will meet from 7:30 a.m. to 9:00 a.m. on April 2nd at the Business Law Section’s Spring Meeting in Seattle. At 8:00 a.m., after taking care of the regular business of the Subcommittee, Lynn Soukup, Dennis Connolly, Kit Weitnauer and Mark Duedall, all of Alston & Bird, will regale us with their experience while acting as counsel to the Enron Examiner and related Creditors Committee. Specifically, they will discuss what we can and should learn from the Enron debacle regarding the use of derivatives, best practices in true sale analysis and the application of substantive
consolidation concepts in connection with structured transactions. Later that morning, our parent committee will co-sponsor a related program – Structured Finance and Derivatives Under The Enron Microscope.

Our Subcommittee is approaching the hundred member mark. Members of the Commercial Financial Services and UCC Committees who are interested in securitization and related derivatives products, or who simply want to know what the acronyms FIN46R and FAS140 really stand for, are invited to join the Subcommittee by emailing the Chair. We look forward to seeing you in Seattle.

CFS Intellectual Property Financing Subcommittee

The Intellectual Property Financing Subcommittee Meeting at the Spring Meeting in Seattle will take place on Thursday April 1 at 10:30 am in the Sheraton Grand Ballroom C, Second Floor. Come and join us for further discussions on rights of secured creditors in intellectual property, whether under the UCC or federal IP and bankruptcy laws.

We continue to explore the implications of the differing federal and state regimes on the rights of parties to IP transactions, and how those rights can be split among the parties to transactions. Subcommittee co-chairs are Professor Thomas Ward, Professor, University of Maine and Leianne S. Crittenden, Chief Counsel, Financing Division, Oracle Corporation, and we hope to see you there!

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CFS Secured Lending Subcommittee and UCC Secured Transactions Subcommittee

As usual, the Secured Transactions Subcommittee of the UCC Committee and the Secured Lending Subcommittee of the Commercial Financial Services Committees meet jointly at each Spring Meeting of the Business Law Section and each ABA Annual Meeting as a leading national forum for the presentation and discussion of new and important topics concerning secured transactions law and secured lending, with a particular, but not exclusive, focus on developing issues under UCC Article 9.

The Secured Transactions and Secured Lending Subcommittees will be meeting again jointly at the upcoming Spring Meeting in Seattle, from 9:00 a.m. to 10:30 a.m. on Saturday, April 3, 2004, in Grand Ballroom C on the Second Floor of the Seattle Sheraton.

The program for this year’s Spring Meeting, titled “Two’s Company, Three’s a Crowd: Part 4 of UCC Article 9”, will be a focused discussion of Part 4 of UCC Article 9 from various perspectives, illuminating Part 4’s (often unexpected) impact on the rights of persons who are not parties to a secured transaction. For practitioners, academics and judges alike, Part 4 can be a quagmire of misunderstanding, under-appreciation and even vacuous stares. The program promises to make an important contribution to the better understanding and demystification of Part 4 and Article 9’s impact on the rights of third parties (and corresponding traps for the

(Continued on page 19)
Lynn Soukup of the Washington D.C. office of Alston & Bird is the innovative architect of the program, having drafted most of the excellent written materials that will be made available at the Joint Meeting. Lynn will be joined in the presentation by a formidable panel of well known secured transactions and commercial law experts, George Hisert of the San Francisco office of Bingham McCutchen, Holly Towle of the Seattle office of Preston Gates & Ellis, and Professor Neil Cohen of Brooklyn Law School and of counsel to Bingham McCutchen, and will feature mock scenarios and (Not Ready for Prime Time quality) play-acting, expert commentary and practical advice.

The Joint Meeting this Spring in Seattle will also mark the conclusion of Meredith Jackson’s tenure as Chair of the Secured Lending Subcommittee. Meredith’s insightful intelligence, radiant energy, rapier wit and ready and memorable laugh have infused and elevated the collaboration of the Secured Transactions and Secured Lending Subcommittees and enhanced the Joint Meeting’s status as a leading national forum. In addition to her leadership, Meredith also has been a frequent speaker at the Joint Meeting, most recently at last year’s Spring Meeting in Los Angeles, where she collaborated with Bruce Shepherd of Latham & Watkins in a tantalizing discussion of the challenges faced in structuring the financing of Las Vegas-style mega-casinos.

Meredith has set a high hurdle, but a smooth succession is assured as the Secured Lending Subcommittee is fortunate to have Malcolm Lindquist stepping up as the new Chair and Lynn Soukup, who has served the Business Law Section so ably in so many roles, coming in as Vice-Chair. The future of the Joint Meeting is indeed being served.

Peter Carson’s tenure as Chair of the Secured Transactions Subcommittee will also be coming to an end this year after the Annual Meeting. Peter will be succeeded by Leianne Crittenden as Chair.

If you have an interest in joining the leadership of the Secured Transactions Committee by becoming a Vice-Chair, please feel free to contact either Peter or Leianne.

We look forward to seeing you in Seattle.
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Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to John McCabe and Katie Robinson at the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of March 1, 2004.

1. In addition to enactments noted below, all states have adopted the 1995 Official Text of Article 5 of the UCC, other than Puerto Rico (no action) and Wisconsin (no action). Furthermore, all states have adopted the 1994 Official Text of Article 8 of the UCC and the 1998 Official Text of Article 9 of the UCC other than Puerto Rico (no action).
2. South Dakota has adopted only 1987 Official Text without the 1990 Amendments.
3. New York and South Carolina are the only states that still have the 1951 version of Articles 3 & 4.
4. States which have repealed Article 6 are identified by indicating “Repeal” next to the state name; states adopting the revisions suggested in Alternative B to the 1989 Official Text are identified by indicating “Revise” next to the state name.
5. In addition to the enactments noted, Puerto Rico has only adopted the following Articles: the 1995 version of Article 1, Article 4A, the 1978 version of Article 8, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.
UCC Scorecard - Revisions

ARTICLE 1 – GENERAL PROVISIONS
Final Version: December, 2001
Status: Adopted by two states, the Virgin Islands, and pending in several others.
UCC Committee Contact:
David Snyder (216) 687-2319
Margaret Moses (312) 915-6430

ARTICLE 2 – SALES
Final Version: November 2003
Status: Approved at NCCUSL annual meeting 2002 and at ALI annual meeting in 2003.
UCC Committee Contact:
Rob Beattie (612) 607-7000

ARTICLE 2A – LEASES
Final Version: November 2003
Status: Approved at NCCUSL annual meeting 2002 and at ALI annual meeting in 2003.
UCC Committee Contact:
Ed Huddleson (202) 543-2233

ARTICLE 3 – NEGOTIABLE INSTRUMENTS
Final Version: November, 2002
Status: Adopted in one state and pending in several others.
UCC Committee Contact:
Stephanie Heller (212) 720-8198
Paul Turner (310) 472-5802

ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS
Final Version: November, 2002
Status: Adopted in one state and pending in several others.
UCC Committee Contact:
Stephanie Heller (212) 720-8198
Paul Turner (310) 472-5802

ARTICLE 7 – DOCUMENTS OF TITLE
Final Version: October 2003
Status: Pending in several states.
UCC Committee Contact:
William Towle (406) 721-0720.

ARTICLE 9 – SECURED TRANSACTIONS
Latest Amendments December, 2001
Status: Adopted by all 50 states.
UCC Committee Contact:
Steve Weise (213) 244-7831
Peter Carson (415) 693-2000

UNIFORM ELECTRONIC TRANSACTIONS ACT
Final Version: 1999
Status: Adopted by 42 states and pending in several more.
UCC Committee Contact:
Rob Beattie (612) 607-7000
Ben Beard (208) 885-6747

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT
Status: Adopted by 2 states.
UCC Committee Contact:
Mary Jo Howard Dively (412) 392-2136

UNIFORM CONSUMER LEASES ACT
Final Version: May, 2001
Status: Adopted in one state.
UCC Committee Contact:
Michelle Hughes (757) 499-8800
### Section of Business Law Application for Membership

- I, ____________________________, am applying for membership in the ABA Section of Business Law and enclose $__________ as my annual membership dues for the year 2003-2004. I understand that Section dues include $20 for a basic subscription to *The Business Lawyer* for one year and $14 for a basic subscription to *Business Law Today* for one year; these subscription charges are not deductible from the dues, and additional subscriptions are not available at these rates.

**Dues:**
- _____ $45 for an ABA member
- _____ FREE for a member of the ABA Law Student Division

Membership in the American Bar Association is a prerequisite to enrollment in the Section of Business Law.

- Please send me an application to join the American Bar Association.
- Please send me information on joining the UCC Committee.
- Please send me information on joining the CFS Committee.

**Complete and return to:**  
ABA Section of Business Law  
750 N Lake Shore Drive  
Chicago, IL 60611

For further information, call (312) 988-5588

**ABA member ID:** _______________  **Date:** _______________

**Name:** ________________________________

**Firm:** ___________________________________

**Address:** ___________________________________

**City:** ___________  **State:** ___________  **Zip:** ___________

**Phone:** Business ( ) ___________  Home ( ) ___________

- Payment enclosed. (Make check payable to American Bar Association.)
- VISA  □ MasterCard  □ American Express

**Card No.** ____________________________  **Exp. Date** ___________

**Signature** ____________________________________________________________________________

*Please sign and date this application*

**NOTE:** Membership dues in the American Bar Association and ABA Sections, Divisions and Forums are not deductible as charitable contributions for federal income tax purposes. However, such dues may be deductible as business expenses.