Committee on Commercial Financial Services
Christopher J. Rockers, Husch & Eppenberger, LLC

In this column I have generally tried to highlight programs and activities sponsored by the Committee on Commercial Financial Services. The column in the last newsletter addressed scheduled programs and meetings at the Spring Meeting in Tampa. I won’t repeat those here other than to say that we have a great line-up and it will be well worth the effort to attend the Spring Meeting at the Tampa Marriott from April 6 through April 9, 2006. As we do every year, our Committee and UCC Committee will be jointly hosting a dinner on Thursday, April 6, at The Columbia Restaurant. It promises to be a great time and I look forward to seeing you there.

More...

Committee on Uniform Commercial Code
Stephanie Heller, Chair, Federal Reserve Bank of New York

Well we are just weeks away from the 2006 Spring Meeting in Tampa and our second installment of “Stump the Chumps”. If you have somehow missed hearing about this great event, let me fill you in. Instead of holding our traditional full UCC Committee meeting at the Spring Meeting on Friday April 7th from 2:00 – 3:00, we will once again devote the time to asking a series of undoubtedly arcane UCC questions to a panel of UCC experts. This year’s panelists will be:

- Amy Boss, Temple University School of Law
- Neil Cohen, Brooklyn Law School
- Alvin Harrell, Oklahoma City University School of Law
- Sandra Rocks, Cleary, Gottlieb, Steen & Hamilton
- Lynn Soukup, Pillsbury Winthrop Shaw Pittman

As in the past, questions can be submitted in advance to me (Stephanie.heller@ny.frb.org), or you can come to the meeting with questions in hand. This new UCC Committee tradition is one that you will not want to miss.

More...

Ongoing Searching and Filing Issues Under Article 9
Norman M. Powell, Esquire

Uniform Commercial Code Revised Article 9 (“Article 9”) is in effect in all fifty states, the District of Columbia, and the U.S. Virgin Islands. The transition from Article 9 as previously in effect (“Former Article 9”) to Article 9 is nearly complete. This article focuses on certain searching and filing issues under Article 9 during the remainder of the transition period and beyond. It provides practice tips on filing and searching, and discusses certain issues presented by the transition from Former Article 9 to
Article 9, including the advent of electronic filing. Unless otherwise noted, all citations are to Article 9.

FILLING OUT THE FORMS

Aspirational nomenclature notwithstanding, Article 9, like any other article of the Uniform Commercial Code (the “UCC”), may be enacted in any given jurisdiction with non-uniform provisions. Many interested parties contact local counsel or consult compilations such as Hawkland’s Uniform Commercial Code Series, CCH’s Secured Transactions Guide, Matthew Bender’s Forms and Procedures Under the UCC, and Callaghan’s Uniform Commercial Code Reporting Service to learn of and better comply with such non-uniform provisions. Section 526 authorizes and requires each filing office to adopt rules to carry out the provisions of Article 9. Such rules are to be consistent with Article 9, and adopted and published in accordance with local law. Official Comment 3 to § 526 notes that model filing-office rules have been developed by The International Association of Corporate Administrators (“IACA”).

More...
The meeting will cover a range of topics from attachment and proper perfection to foreclosure, preservation and transfer. Prof. Tom Ward will lay the framework for discussion with a brief presentation on some of the problem areas. Subcommittee Co-Chair Leianne Crittenden will serve as moderator for the discussion. See you in Tampa.

Subcommittee on Loan Workouts
Caroline C. Galanty, Kimberly S. Winick

**THE FORBEARANCE DANGER ZONE: "Course of Dealing" and other Pre-and Post-Default Lender Liability Pitfalls** will be the topic when the Loan Workout Subcommittee meets in Tampa this Spring. Bill DuPre and Shelley D. Rucker of Miller & Martin PLLC, Atlanta, will discuss how to navigate through the myriad and oft-hidden lender liability risks that can arise as lenders declare a default and work out their troubled commercial loans. Subcommittee Chair Caroline Galanty, Assistant General Counsel with Bank of America, N.A., Los Angeles, will moderate the program, which will be held at the Marriott on Thursday, April 6, at 2:30 p.m.

Subcommittee on Real Estate Financing
Neal Kling, Kathleen J. Hopkins

**"Defeasances in Real Estate Financing—the Good, the Bad and the Ugly"** is the topic of the Real Estate Financing Subcommittee’s spring meeting in Tampa. During this program, Timothy Boyce of Dechert, LLC; Mikel Bistrow of Duane Morris LLP; Josh Cohen of Commercial Defeasances, and Arthur Field of Field Consulting LLC and former chair of the BLS Legal Opinions Committee, will discuss how defeasances work, their interplay with defaulting loans and special issues to consider in defeasance opinion letters. We look forward to a lively and timely discussion; it will take place on Saturday, April 8, 2006, 1:00-2:30 p.m. at the Marriott’s Meeting Room 12 on Level 3.

Committee on Uniform Commercial Code: Subcommittee Reports

Subcommittee on Investment Securities
Penelope (Penny) Christophorou, Meredith Jackson

The Investment Securities Subcommittee will meet on Thursday, April 6, 2006 from 10:00 AM to 11:00 AM at the ABA Section of Business Law Spring meeting in Tampa, Florida. Lynn Soukup of Pillsbury Winthrop Shaw Pittman LLP, Sandra M. Rocks of Cleary Gottlieb Steen & Hamilton LLP and Meredith Jackson of Irell & Manella LLP will discuss a secured party’s purchase of securities collateral at a private sale where the securities are of a type customarily sold on a recognized market but are illiquid. Please join us.

Subcommittee on Leasing
Barry A. Graynor, Teresa Davidson

At the 2006 ABA spring meeting, Charles Lichtman, a shareholder of the Berger Singerman firm, will give a presentation entitled “Commercial Small Ticket Leasing – Are You Really Leasing to...
'Consumers'? The presentation will explore the legal issues on small ticket leasing and the intersection between commercial and consumer law. Time permitting, we may also discuss the following topics:

1. Norvergence legal fallout – in particular, the enforceability of jury trial waivers and so-called floating forum selection clauses;
2. Legislative proposals regarding electronic waste and recycling fees.

Task Force on Forms Under Revised Article 9
Katherine Simpson Allen

The Task Force on Forms Under Revised Article 9 will meet at the Spring Meeting on Thursday, April 6, 2006, from 4:30 - 5:30 p.m. in Meeting Room 11, Level 3, at the Tampa Marriott. At the meeting, we will review the status of the draft forms previously proposed and the progress of the review / revision / annotation of those drafts by Task Force members. If sufficient progress has been made, we will also work towards establishing a publication schedule for the new forms book.

Please note that Jonathan Lipson has stepped down as Chair of the Task Force, pleading the press of other ABA work, leaving former Co-Chair Kathi Allen as the new Chair. Please contact Kathi at katherine.allen@stites.com with any questions or suggestions.

Joint Task Force/Working Group Reports
Subcommittees on Secured Lending and Secured Transactions
Malcolm C. Lindquist, Leianne S. Crittenden, Katherine Simpson Allen, Pauline Stevens

This report appears under both of the above committees’ links, so it is not deja vu if you thought you already read this....

The CFS Committee’s Secured Lending Subcommittee and the UCC Committee’s Secured Transactions Subcommittee will hold a joint meeting at the Spring Meeting in Tampa, on Saturday, April 8 from 8:30 to 10:00 a.m., in Salon F, Level 2 of the Tampa Marriott. We have arranged for your early morning listening pleasure a spring medley of commercial lending topics, delightfully presented in a light humor sauce and designed to ease you painlessly into a full Saturday of demanding activities.

Revised Article 9. The Permanent Editorial Board’s body of commentary on Revised Article 9 continues to grow. Neil Cohen (Jeffrey D. Forchelli Professor of Law at Brooklyn Law School) was a member of the Revised Article 9 Drafting Committee, and will bring you up to date on The PEB’s RA9 Commentary - The Article That Wouldn’t Die.

COTA. Meanwhile, a new uniform act is born. Steve Leitess (of Leitess Leitess Freidberg + Fedder PC in Baltimore) is a member of, and ABA Advisor to, the Drafting Committee for the newly approved Uniform Certificate of Title Act. He will get you up to speed on What You Need To Know About the Uniform Certificate of Title Act Before You Can Go from 0 to 60.
Equine Financing. No efforts are under way to corral the idiosyncrasies of the law governing the use of racehorses and other equine assets as collateral, and these million dollar babies have to be handled with care. Just in time for the spring sales and the Derby, Kathi Allen (of Stites & Harbison PLLC in Nashville) will explain why A Horse is a Horse . . . Unless it's Collateral.

Please join us for an informative and entertaining session.

Joint Task Force on Deposit Account Control Agreement
Marshall Grodner, Ed Smith

The Deposit Account Control Agreement Task Force has completed its initial phase of its project by submitting its Initial Report and form Deposit Account Control Agreement to The Business Lawyer for publication. The Initial Report and the form are expected to be published in the February, 2006 edition of The Business Lawyer. Members of the UCC Committee and the Commercial Financial Services Committee can access the Initial Report and the form as submitted at the website of the Task Force. The website's address is www.abanet.org/dch/committee.cfm?com=CL710060.

Additionally, we have activated the list serve for the Task Force. The list serve's address is bl-depositcontrol@mail.abanet.org.

The Task Force will continue its work by preparing riders to the form Deposit Account Control Agreement to address various arrangements not currently contemplated in the form but for which the form may easily be adapted. First to be discussed at our March 9, 2006 meeting at the offices of Bingham McCutchen LLP in New York City will be the Cash Sweep Rider and the Lockbox Rider. The form of these riders are also available on the website of the Task Force.

At the Business Law Section's Spring Meeting, the Task Force will present a committee forum entitled: Using the New Model Deposit Account Control Agreement. The committee forum is set for April 7, 2006 from 3:00 pm - 4:30 pm at the Tampa Marriot, Salon IV, Level 2. The Task Force will also hold a regular meeting on April 6, 2006 from 9:00 - 10:00 am at the Tampa Marriot, Meeting Room 12, Level 3.

The Co-chairs would like to thank all of our members who participated in the completion of the initial phase of our project.

Anyone interested in joining the Task Force can do so at the website or please feel free to contact Marshall Grodner at mgrodner@mcclinchey.com or Ed Smith at Edwin.Smith@Bingham.com.

Special Meeting on Bank Deposits

Friday April 7 8:00-10:00 am, Meeting Room 10, Level 3

The meeting is jointly sponsored by the UCC Subcommittee on Payments, Commercial Financial Services Committee, Consumer Financial Services Subcommittee on Deposit Products and Payment Systems, and Banking Law Subcommittee on Payments and Electronic Banking.
At the 2005 Business Law Section Spring Meeting, the UCC Subcommittee on Payments and the Banking Law Subcommittee on Payments and Electronic Banking presented a mini program entitled “What’s wrong with the law of bank deposits?” The panelists considered recent case law developments and provided their own personal views as to whether a law reform effort should be undertaken to make this body of law more uniform and predictable.

In Tampa, we will be holding a special two hour meeting that picks up where we left off last Spring. It is structured as a forum for attendees and facilitators to debate and discuss the pros and cons of developing a Model or Uniform Law of Bank Deposits. The topics that will be discussed include setoff, adverse claims, special deposits, fiduciary accounts, and joint accounts. While we expect to explore each topic individually the ultimate goal of the session is to try to determine whether there is enough of a practical problem to support any uniform law effort.

We hope that you all will be able to join us Friday morning at what we expect will be a lively, interactive session facilitated by:

- Barkley Clark, Shook, Hardy & Bacon L.L.P.
- Alvin Harrell, Oklahoma City University School of Law
- Joseph Sommer, Federal Reserve Bank of New York
- LH Wilson, American Bankers Association

Please consider reading the corresponding paper and two page chart, drafted by Joseph Sommer, Counsel and Assistant Vice President of the Federal Reserve Bank of New York, in advance of the meeting as it provides background for the discussion.

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**UCC Scorecard**

**UNIFORM STATE LAWS SCORECARD**

*Survey of Adoptions of Revised Official Text of the UCC*

As of March 16, 2006

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**Spring Meeting Calendar**

Times and places are taken from the tentative schedule to help you in planning your attendance. Please confirm meeting times and locations in the Annual Meeting program book. All meetings will be held at the Tampa Marriott unless otherwise noted.

**Committee on Commercial Financial Services**

**CHRONOLOGICAL SCHEDULE OF EVENTS**

**Thursday, April 06, 2006**

9:30 AM - 10:30 AM

*Syndications and Lender Relations Joint Meeting*

Tampa Marriott

Meeting Room 6, Level 2

Cochairs - Robert Grodner and Anthony Callobe

10:30 AM - 12:00 PM

*Intellectual Property Financing*

Tampa Marriott

Meeting Room 6, Level 2

Cochairs - Leianne Crittenden and Thomas M. Ward
Committee on Uniform Commercial Code

Thursday, April 6, 2006
8:00 AM – 9:00 AM

Joint Meeting: State Certificates of Title and Simplification
(Meeting Room 2, Level 2)
Chair - Alvin Harrell, Oklahoma City University of Law
Vice-Chair - Leanne Leathens, The CIT Group

At the Certificate of Title meeting in Tampa we will have: a discussion of UCOTA enactment issues, its relation to other law, and the compilation of an ABA state-by-state compendium and enactment guide.

More...
MESSAGE FROM THE CHAIR:
COMMERCIAL FINANCIAL SERVICES COMMITTEE
By: Christopher J. Rockers
Husch & Eppenberger, LLC
Kansas City, Missouri
christopher.rockers@husch.com

In this column I have generally tried to highlight programs and activities sponsored by the Committee on Commercial Financial Services. The column in the last newsletter addressed scheduled programs and meetings at the Spring Meeting in Tampa. I won’t repeat those here other than to say that we have a great line-up and it will be well worth the effort to attend the Spring Meeting at the Tampa Marriott from April 6 through April 9, 2006. As we do every year, our Committee and UCC Committee will be jointly hosting a dinner on Thursday, April 6, at The Columbia Restaurant. It promises to be a great time and I look forward to seeing you there.

There are several reasons you should attend the Spring Meeting. If you have attended meetings in the past or if you are a regular you know that the Section provides phenomenal content which is focused, current and sophisticated. It is a great way for commercial finance lawyers to stay on the cutting edge and understand the direction of our practice and the finance industry and to take advantage of an opportunity to learn about current issues in a broad range of business law disciplines. Our ranks include many of the top practitioners in this business and the accomplishments of our members, and their willingness to share their knowledge, never cease to amaze me.

There is another reason to attend and to become active, and if you have practiced for a number of years, there is a reason to encourage younger, less experienced lawyers in your firm to attend and become active. Committee work and work in other areas of the Section is a fantastic opportunity to meet and get to know others in our profession. These are contacts and friendships that continue with us throughout the year and over the years, and ultimately provide a facet to our practice that we might not otherwise have an opportunity to take advantage. It’s a great way to develop contacts for referrals and referral networks, but it is an even better way to establish friendships with a truly wonderful and warm group of people from around the country.

As many of you know, I have suffered a loss in the past months and I have been able to start to cope with that loss, in part, with the support and thoughts and kindnesses given and shown to me and expressed to me by the friends that I have through the Section and the CFS committee. I want to thank all of you for your support and thoughts, and to offer that support and network of friends as an example of one of the many benefits of attending our meetings and becoming active in committee work.

If you are considering becoming active but you feel as if you don’t have the time to do it now, or you may be waiting for the right time - now is the right time. None of us can predict the future.
Committee on Uniform Commercial Code  
Stephanie Heller, Chair, Federal Reserve Bank of New York

Well we are just weeks away from the 2006 Spring Meeting in Tampa and our second installment of “Stump the Chumps”. If you have somehow missed hearing about this great event, let me fill you in. Instead of holding our traditional full UCC Committee meeting at the Spring Meeting on Friday April 7th from 2:00 – 3:00, we will once again devote the time to asking a series of undoubtedly arcane UCC questions to a panel of UCC experts.

This year’s panelists will be:
- **Amy Boss**, Temple University School of Law
- **Neil Cohen**, Brooklyn Law School
- **Alvin Harrell**, Oklahoma City University School of Law
- **Sandra Rocks**, Cleary, Gottlieb, Steen & Hamilton
- **Lynn Soukup**, Pillsbury Winthrop Shaw Pittman

As in the past, questions can be submitted in advance to me ([Stephanie.heller@ny.frb.org](mailto:Stephanie.heller@ny.frb.org)), or you can come to the meeting with questions in hand. This new UCC Committee tradition is one that you will not want to miss.

Immediately following the UCC Committee meeting, we will hold our Committee Forum entitled “Using the New Model Deposit Account Control Agreement.”

The 1998 revisions to Article 9 of the Uniform Commercial Code (“Article 9”) brought within the scope of Article 9 for the first time security interests in deposit accounts as original collateral. A security interest in a deposit account as original collateral must be perfected by control. Control of a deposit account under Article 9 is achieved in one of three ways. While two of these methods are straightforward, the third method, which requires the debtor, the secured party and the depositary bank to have “agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing the disposition of the funds in the deposit account without further consent of the debtor,” has proved to be more challenging. This is largely because secured parties and depositary institutions have developed their own forms of triparty control agreements (commonly referred to as “deposit account control agreement”) that largely focus on their own needs and concerns. The result has been a classic “battle of the forms”, with each secured party and depositary bank insisting on using its own form.

This Committee Forum marks the successful completion of a two year joint effort of the UCC, CFS and Banking Law Committees to develop a standard form of deposit account control agreement that could gain wide acceptance in the industry and which could be implemented with no or minimal negotiation. As the title suggests, the panel will discuss the provisions of the model agreement and how it can be used in practice.
We will also present two CLE programs. The first, entitled "Avoiding the Pitfalls of UCC Practice" will take place on Thursday April 6th from 2:30-4:30 in Salon V, Level 2 of the Tampa Marriott. This program is designed as a way for commercial lawyers to share ideas and tips they have developed or come across to aid them in their practice. These include things to put into an agreement, things to lookout for in negotiating a deal, and other ways to protect a client’s rights or expectations. The written materials consist of 35 suggestions submitted in advance by committee members. During the program, those in attendance will discuss and critique these suggestions, a few late submissions, as well as any others they may care to offer.

Then on Saturday, April 8th we will present “UCC v. International Law: Clash of the Titans” from 2:00 – 4:00 in Meeting Room 6, Level 2 of the Tampa Marriott. Many secured transactions contain international components, often resulting in a clash between UCC Article 9 and foreign law. The program will cover, among other topics, security interests in "goods on the water," the application of UCC Section 9-307, foreign hypothetical lien creditors and foreign account debtors.

I would also like to remind everyone about a special meeting on Bank Deposits to be held on Friday April 7th from 8:00 – 10:00 (Tampa Marriott meeting Room 10 Level 3). This session will serve as a forum for attendees and facilitators to debate and discuss the pros and cons of developing a Model or Uniform Law of Bank Deposits. It has been suggested that such legislation is needed and should deal with topics such as setoff rights, creditor process, and issues related to jointly held and special deposit accounts. The meeting is jointly sponsored by the UCC Subcommittee on Payments, Commercial Financial Services Committee, Consumer Financial Services Subcommittee on Deposit Products and Payment Systems, and Banking Law Subcommittee on Payments and Electronic Banking.
Facilitators include:
Barkley Clark, Shook, Hardy & Bacon L.L.P.
Alvin Harrell, Oklahoma City University School of Law
Joseph Sommer, Federal Reserve Bank of New York
LH Wilson, American Bankers Association

Finally I would be remiss if I did not mention our UCC Committee dinner which will be held jointly with the Commercial Financial Services Committee. The dinner will take place on Thursday April 6th at 8:00 pm at The Columbia Restaurant, 2117 East 7th Avenue which is roughly 3 miles from the hotel.

Once again we will reserve a few tables for new committee members and first time Spring Meeting attendees who would like to have dinner with Committee leadership and learn more about the work of the Committees and the ins and outs of the Spring Meeting. If you are a new member or a first time attendee and would like to sit at the reserved tables, please check the box on the registration form.

If you have not already done so, you can register for the dinner on-line at:

http://meetings.abanet.org/aba_timssnet/Meetings/tnt_meetings.cfm?action=long
&primary_id=CLCFUC6&webtextid=15501&Subsystem=MTG&related_prod_flag=0

As always, I want to thank each of you for your continued commitment and involvement in the UCC Committee.

Sincerely
Stephanie Heller
Uniform Commercial Code Revised Article 9 (“Article 9”) is in effect in all fifty states, the District of Columbia, and the U.S. Virgin Islands. The transition from Article 9 as previously in effect (“Former Article 9”) to Article 9 is nearly complete. This article focuses on certain searching and filing issues under Article 9 during the remainder of the transition period and beyond. It provides practice tips on filing and searching, and discusses certain issues presented by the transition from Former Article 9 to Article 9, including the advent of electronic filing. Unless otherwise noted, all citations are to Article 9.

**FILLING OUT THE FORMS**

Aspirational nomenclature notwithstanding, Article 9, like any other article of the Uniform Commercial Code (the “UCC”), may be enacted in any given jurisdiction with non-uniform provisions. Many interested parties contact local counsel or consult compilations such as Hawkland’s Uniform Commercial Code Series, CCH’s Secured Transactions Guide, Matthew Bender’s Forms and Procedures Under the UCC, and Callaghan’s Uniform Commercial Code Reporting Service to learn of and better comply with such non-uniform provisions. Section 526 authorizes and requires each filing office to adopt rules to carry out the provisions of Article 9. Such rules are to be consistent with Article 9, and adopted and published in accordance with local law. Official Comment 3 to § 526 notes that model filing-office rules have been developed by The International Association of Corporate Administrators (“IACA”).

Many jurisdictions have imposed non-uniform requirements through their administrative rules. For example, Alaska’s administrative rules provide that a document is not entitled to be recorded unless “the information required for indexing is in English.” Alaska Admin. Code tit. 11, § 06.040(a)(6). In Illinois, the filing office requires that (i) a financing statement be typewritten or computer generated, (ii) the names and addresses of debtor and secured party be in capital letters, font size of at least 12 in Times New Roman style, and (iii) the filer must submit two copies and a self-addressed stamped envelope. Ill. Admin. Code tit. 14 § 180.12.

Provided a filer has complied with the format, tender, and other technical requirements of the relevant filing office, the grounds on which a filing may properly be rejected are few. Section 516(b) reflects the view that filing officers should not pass upon the legal effectiveness of filings, and grew out of concern that under Former Article 9 proper filings were sometimes rejected based on perceived shortcomings. Because § 516(b) constrains filing offices from passing

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1 Article 9 took effect in most jurisdictions on July 1, 2001, commencing a five-year transition period.
2 IACA’s model rules are available at www.iaca.org.
3 See § 516(b), which Official Comment 3 to § 516 describes as “... an exclusive list of grounds upon which the filing office may reject a record.”
upon the legal effectiveness of filings, the absence of rejection should not be taken as corroboration of sufficiency.

Beyond local non-uniformity, some filers have trouble with the mechanics of filing. A few basic rules and concepts are perhaps worth reviewing.

**Initial filings**

Put the debtor’s name in the correct box. Box 1a is for organization debtors. Box 1b is for individual debtors. Put nothing other than or in addition to the debtor’s name in the debtor’s name box. “XYZ, LLC, a Delaware limited liability company” is incorrect, and will most likely render a filing ineffective. Likewise, “XYZ Investments, settlor of that certain trust u/a/d 3/15/05” is incorrect and probably ineffective.

**Amendments**

Each amendment must identify, by file number, the initial financing statement to which the amendment relates. § 512(a)(1) [both alternative A and alternative B]. Do not confuse amendments and correction statements. A correction statement can be filed only by the debtor. § 518(a) and Official Comment 2 thereto. A correction statement has no legal effect. § 518(c) and Official Comment 2 thereto.

**In Lieu Continuations**

An in lieu continuation is an initial financing statement filed in specified circumstances and meeting specified requirements. The circumstances are that (i) the office in which it is to be filed is the proper office in which to file under Article 9, (ii) the pre-effective-date financing statement to which it relates was filed in another state or office, and (iii) the requirements discussed in the next sentence are met. § 706(a). The requirements are that the in lieu continuation (i) satisfy the requirements of Part 5 of Article 9 for an initial financing statement (e.g. provision of debtor’s name and collateral description), and (ii) identify the pre-effective-date financing statement to which it relates by (a) indicating the office in which it was filed, (b) providing the dates of filing and file numbers (if any) of the financing statement and the most recent continuation thereof (interim continuations need not be mentioned), and (c) indicating that the pre-effective-date financing statement remains effective. § 706(c). When filing an in lieu continuation, consider getting and keeping a copy of the pre-effective-date financing statement to which it relates. Filing offices must maintain a record of information contained in a filed financing statement for at least one year after its effectiveness has lapsed. § 522(a). Records and information can be destroyed or purged thereafter. Thus, at a later date it may be impossible to prove the priority asserted in an in lieu continuation, which depends upon the effectiveness of an earlier filing that may be purged before the matter is contested.
TRUSTS AND TRUSTEES AS DEBTORS

The unique issues encountered when filing against trusts and trustees as debtors have been explored at length in these pages. That article focused on the nuts and bolts of completing and filing financing statements with trusts or trustees as debtors. Of course, the threshold question of who is the debtor (for example, as between trust and trustee) is relevant not only for filing purposes, but also in establishing who should be granting the relevant security interest. Section 9-102(a)(28) defines the term debtor as, among other things, “a person having an interest . . . in the collateral . . . .” Because the answer to this question is beyond the scope of both Article 9 and the UCC generally, the inquiry begins with the analysis, under law other than the UCC, of who holds an “interest” in the trust estate.

Some trusts, such as Delaware statutory trusts, are separate legal entities distinct from their settlors and trustees, and under applicable law generally hold legal title to the trust estate (see Delaware Statutory Trust Act, 12 Del. C. §§ 3801(a), 3805(f)). In such cases, the debtor is the trust, the trust may be (and in the case of a Delaware statutory trust, is) a registered organization, and the filing should be made in the trust’s location as determined under the applicable subsection of § 9-307 (subsection (e) in the case of a Delaware statutory trust). The location of the settlor, trustee, or any other party is irrelevant.

Other trusts, such as Delaware common law trusts, do not feature the same separate legal entity status as Delaware statutory trusts and, under applicable law, the trustee generally holds legal title to the trust estate, in trust for the benefit of the designated beneficiary. In such cases, the trustee is the debtor, for the reason that it has an interest in the trust estate (see § 9-102(a)(28)), and the filing should be made in the trustee’s location as determined under the applicable subsection of § 9-307.

Still other trusts, while not registered organizations, may nevertheless hold legal title to the trust estate. In such cases, the debtor is the trust, and the filing should be made in the trust’s location as determined under § 9-307(b). If the trust has

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4 See Filings Against Trusts and Trustees Under Revised Article 9 – Thirteen Variations, 35 UCC L.J. 91 (2002).
5 The entity formerly known as a “Delaware business trust” is now known as a “Delaware statutory trust” existing under the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., which was formerly known as the “Delaware Business Trust Act” (see 73 Del. Laws 329 (2002)).
6 Except with respect to filings relating to fixtures (§ 9-301(3)(A)), timber to be cut (§ 9-301(3)(B)), and as-extracted collateral (§ 9-301(4)); Article 9 provides for filing in the debtor’s location, without regard to the location of the collateral to which the filing relates (§ 9-301(1)). Security interests in goods covered by a certificate of title (§ 9-303), deposit accounts (§ 9-304), and letter-of-credit rights (§ 9-306) are perfected by methods other than filing.
only one place of business, the trust is located at its place of business (§ 9-307(b)(2)). If the trust has more than one place of business, the trust is located at its chief executive office (§ 9-307(b)(3)).

Section 9-503 sets forth the rules for providing the debtor’s name on the financing statement. Section 9-503(a)(1) provides the rule applicable where the debtor is a registered organization, and requires that the debtor’s own name be used. Where the debtor is a trust which is not a registered organization, or is a trustee acting with respect to property held in trust, the applicable rules are found in § 9-503(a)(3). If there is a name specified for the trust in its organic documents, § 9-503(a)(3)(A) requires that such name be used. If no name is so specified, § 9-503(a)(3)(A) requires that the settlor’s name be used, together with additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors. Section 9-503(a)(3)(B) requires, in connection with all filings involving trust or trustee debtors (other than trust debtors that are registered organizations, to which § 9-503(a)(3) is inapplicable – see § 9-503, Official Comment 2), that the financing statement indicate that the debtor is a trust or is a trustee acting with respect to property held in trust. This requirement may be met if the debtor’s name as it appears in box 1a or 1b includes such indication (note, however, that no modification of or words additional to the debtor’s name should appear in box 1a or 1b), or if the debtor’s name as it appears in box 1a or 1b does not include such indication, if the appropriate item (trust or trustee acting with respect to property held in trust) is checked in box 17 of the national form of UCC1 financing statement addendum.

The remainder of the information called for in the subparts of box 1 (viz., boxes 1c through 1g), is to be completed with information corresponding to the debtor, regardless of whether the trust’s name (if it has one) or the settlor’s name (if the trust has no name) appears in box 1a or box 1b. In no instance should the financing statement name the trustee in box 1a or 1b (the style widely used under Former Article 9), excepting only the unlikely case of an unnamed trust whose settlor and trustee are one and the same. As a practical matter, in any instance in which Article 9 requires that box 1a or 1b contain a name that might not be readily associated with the address which follows in box 1c, excepting only the unlikely case of an unnamed trust whose settlor and trustee are one and the same. As a practical matter, in any instance in which Article 9 requires that box 1a or 1b contain a name that might not be readily associated with the address which follows in box 1c, completing box 1c so as to specify a “care of” address. Thus, communications addressed to the trust by name or, if it has none, to the settlor, would be sent in care of the person readily associated with the address appearing in box 1c, better assuring proper delivery and routing than might occur should communications arrive at such address without such person's name.\(^7\)

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\(^7\) The address specified in box 1c must be that of the debtor. If, for example, the debtor is the trustee of an unnamed trust, Article 9 requires that the settlor’s name appear in box 1a or 1b and that the trustee’s address appear in box 1c. This suggestion is intended to avoid the confusion and delay which could accompany attempted delivery at the trustee’s address of correspondence identifying only the settlor as addressee.
The chart appearing at the end of this article summarizes and provides step-by-step guidance for the completion of UCC1 financing statements relating to trusts and trustees as debtors. It includes nine variations where a trustee is the debtor, three variations where a trust which is not a registered organization is the debtor, and a single variation where a trust which is a registered organization is the debtor. Finally, the chart indicates where UCC1 financing statements prepared in each of the thirteen variations should be filed.

Delaware’s role in corporate trust financings is such that a significant number of financing statements relating to trusts and trustees are filed in Delaware. In recent years, some Delaware practitioners have continued to observe confusion where trusts and trustees are debtors. It was decided that greater tolerance of certain imprecision was warranted. Effective January 1, 2005, Delaware Article 9 includes new, non-uniform Sections 9-203(j) and (k) dealing with instances in which the debtor is a trust (including a registered organization) or a trustee acting with respect to property held in trust. The former provides that a security agreement is properly authenticated if authenticated in the name of either the trust or the trustee by a person authorized to bind the debtor. The latter states that the debtor’s security agreement creates or provides for a security interest whether in the name of the trust or the trustee. New Section 9-509(f) extends the concept introduced in new Sections 9-203(j) and (k), providing that if the debtor or secured party is a trust (including a registered organization) or a trustee acting with respect to property held in trust, and is otherwise entitled to file a record, authorization to file a record by an authorized person in the name of either the trust or the trustee is effective. New Section 9-516(e) provides that if the debtor is a trust (including a registered organization) or a trustee acting with respect to property held in trust, the information required by Section 9-516(b)(5) to appear on a financing statement with respect to the debtor (mailing address, type and jurisdiction of organization) may be provided with respect to either the trust or the trustee. See 74 Del. Laws 332 (2004).

**DID YOU ACTUALLY FILE?**

Article 9 provides that communication to a filing office of a record meeting all the requirements of applicable § 9-516(b), or acceptance of a record by the filing office, constitutes filing. § 9-516(a). Thus, a wrongfully rejected record is effective as a filed record (except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files). § 9-516(d). If a filing office refuses to accept a record, it is required to communicate to the person that presented the record the fact of and reason for the refusal, and the date and time the record would have been filed had the filing office accepted it. Filers should keep such communications – the date and time of wrongful rejection is the date and time of filing for such a record. Of course, a prudent filer may continue in her efforts to cause an appropriate financing statement to appear in the filing office records.
In the case of a wrongfully rejected record, nothing appears in the public record.\(^8\) In the case of a written record, if the filer requests an acknowledgment of the filing, the filing office must send an image of the record showing its file number and the date and time of the filing. Alternatively, if the filer furnishes a copy of the record, the filing office may note upon the copy the file number and the date and time of the filing of the record, and send the copy to the filer. § 9-523(a). This first alternative offers the filer an opportunity to verify that information in the written record was entered correctly into the filing office’s database, while the second alternative does not.

In the case of a record other than a written record, the filing office must communicate to the filer an acknowledgment that provides (i) the information in the record, (ii) the file number assigned to the record, and (iii) the date and time of the filing of the record. § 9-523(b). Thus, the filer has an opportunity to verify that information in the record was entered correctly into the filing office’s database.

**ARTICLE 9 ISN’T EVERYTHING**

An Article 9 Section 523 search report typically indicates that it discloses all federal tax liens filed in the searched office naming the indicated debtor. But the debtor’s location for federal tax purposes may differ from its location for Article 9 purposes, and its name for federal tax purposes may be rendered with greater variation than its name for Article 9 purposes. Thus, a statement that a search report contains all indicated federal tax liens, while accurate, can easily be misunderstood.

Federal tax liens are created upon the neglect or refusal to pay taxes due after demand. 26 U.S.C. § 6321. They are perfected – valid against a purchaser, secured party, mechanic’s lien or judgment lien creditor - upon filing of a federal tax lien notice in the proper office. 26 U.S.C. § 6323(a). The requisite filing occurs on IRS Form 668 in the state in which the property is located (as determined under federal law) 26 C.F.R. § 301.6323(f)-1(d). Real property is located in the state in which it is situated. 26 U.S.C. § 6323(f)(2)(A). Personal property (tangible and intangible, regardless of physical location) is deemed located at the taxpayer’s residence (principal executive office for corporations and partnerships) at the time the notice of lien is filed. 26 U.S.C. § 6323(f)(2)(B). Within the proper jurisdiction, a notice of tax lien must be filed in the office designated for the filing of IRS notices of lien (determined under applicable state law). 26 U.S.C. § 6323(f)(1)(A). A filed notice of lien remains effective for ten (10) years, even if the taxpayer’s location changes. 26 U.S.C. § 6323(g)(3). And the IRS may successively refile notices of lien in the taxpayer’s old location every ten (10) years unless the taxpayer reports its new location to the IRS in the

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8 Some filing offices may be able to establish the date, and perhaps the time, of rejection by reviewing computer records of their work flows, but the capturing of such data is generally serendipitous, and it is often purged after a few months or a year.
prescribed manner. 26 C.F.R. § 301.6323(g)-1(b). Thus, and particularly in the case of registered organizations, the proper jurisdiction and filing office in which to search may be different for UCC financing statements than for federal tax liens.


WE’RE STILL IN THE TRANSITION PHASE

Financing statements filed and effective under Former Article 9 continue to be effective until the earlier of their natural lapse date or June 30, 2006. § 9-705(c). Thus, for the remainder of the transition period, a comprehensive search will include the debtor’s current and former locations, and the locations of relevant tangible collateral, for at least the last five (5) years. See Official Comment 4 to § 9-705. The continued effectiveness of financing statements filed under Former Article 9 is assessed under Former Article 9. § 9-705(c). Thus, effectiveness is determined, and search queries should be drafted, in deference to the more liberal debtor name requirements of Former Article 9. See § 9-705(c) and Official Comment 4 thereto.

But the priority of conflicting claims to collateral is determined under Article 9. § 9-709(a). Thus, a lawyer opining as to perfection and priority under the law of the debtor’s Article 9 location may be addressing pre-effective-date filings in other jurisdictions. A special rule covers the instance in which the relative priorities in dispute were established before the effective date of Article 9, in which case Former Article 9 determines priority (See § 9-709(a)).

Continuation of pre-effective-date financing statement

A financing statement filed before the effective date of Article 9 may be continued only by filing in the state and office designated by Article 9. The general rule provides that a continuation statement filed after the effective date does not continue the effectiveness of a financing statement filed under Former Article 9. An exception applies if Article 9 prescribes filing in the same jurisdiction and filing office as Former Article 9. See § 9-705 and Official Comment 5 thereto. If the proper jurisdiction or office for filing has changed, an initial financing statement in lieu of a continuation should be filed in the office prescribed by Article 9.
Amendment and termination of pre-effective-date financing statements

For financing statements filed in the jurisdiction and office required by Article 9, amendments and terminations should be filed in the same office. § 9-707(b) and (c). For financing statements not filed in the jurisdiction and office required by Article 9, an initial financing statement in lieu of continuation should be filed in the jurisdiction and office required by Article 9. Such an in lieu filing may initially reflect the amended information, or may be filed initially without change, and amended immediately thereafter. § 9-707(c)(2) and (3). As an alternative for termination of pre-effective-date financing statements filed in the Former Article 9 jurisdiction and office when Article 9 would require filing in a different place, a termination statement may be filed in the old office. This alternative is available only if the financing statement hasn’t been “in lieued.” § 9-707(e). Note as well that if the financing statement was filed in a local filing office under the second or third alternative of Former Article 9 § 401(1), that office may not be accepting termination statements unless it continues to be a filing office for real estate and fixture filings, etc.

Words with two meanings

Terms in a Former Article 9 security agreement collateral description should normally be interpreted as defined in Former Article 9 as in effect when the security agreement was executed. § 9-703 and Official Comment 3 thereto. Likewise terms in Former Article 9 financing statement collateral descriptions. But any continuation statement or in lieu initial financing statement may be ineffective as to collateral for which the description should have been revised in deference to the revised definitions of certain terms appearing in Article 9. § 9-705(f), § 9-504 and § 9-108, and § 9-706(c)(1). Secured parties are deemed authorized to make such amendments upon the effectiveness of Article 9. Article 9 Section § 9-708(2) and the Official Comment thereto.

ELECTRONIC FILING UPDATE

Delaware, the place for filing against a great many registered organizations, currently offers three (3) filing option: direct online filing, indirect XML entry via agent’s website, and manual or paper-based filing.

Direct entry via website

Filers with access to the world wide web may visit www.state.de.us/sos. Scroll the table on the left side of the screen and, under the heading SERVICES, click “File UCC Documents.” Follow the prompts to open an account. Key in all financing statement information. The screen is fairly intuitive, its data fields clearly labeled. The format, however, is not the same as that of the national
paper-based filing form appearing at § 9-521. Delaware’s website limits collateral descriptions to 24,000 characters (about 5 pages). Filing fees may be paid by Visa, Mastercard, or Discover, or through a payment account maintained with the Delaware Secretary of State.

**Indirect XML entry via agent’s website**

Largely the same as direct entry, these filings are made by registered agents of the Delaware Secretary of State, and are typically submitted in “batches” to the Secretary of State.

**Manual filing**

Paper documents are submitted to the Delaware Secretary of State, whether by hand, overnight or other courier, or fax. All information on the form is keyed into the system by Secretary of State personnel. All attachments are imaged, not keyed.

**Some Pros and Cons**

In manual filing, the document prepared and approved by the filer is the record filed. In direct online and indirect XML filing, the document prepared and approved by the filer is not the record filed. Instead, it is a “source document” to which a typist (whether the filer, in the case of direct entry via website, or an agent, in the case of indirect XML entry) refers when keying in the data which constitute the electronic filing. Without suggesting the rates of occurrence among filers, agents, and filing office personnel, it seems axiomatic that data entry and manipulation provides opportunity for human error and other variation. Least pernicious, though disconcerting to those not expecting it, filing office data systems may produce the data stored in electronic records in a format that differs from that the filer understood to have been submitted (e.g., skipped lines between paragraphs in collateral description may not appear). At the other end of the spectrum, collateral descriptions or even debtor’s names may be rendered with imprecision.

Delaware hopes to offer electronic filing with filers keying in all information traditionally appearing on the “face” of the financing statement form, but transmitting collateral descriptions electronically in pdf format. In conjunction with that initiative, Delaware plans to offer acknowledgement copies (and filed records) that will be identical in format and content to what was filed. These innovations, which may be available later this year, will limit the risk of human error to the keying of (presumably) shorter data fields for the financing statement “face” data.
GETTING THE DEBTOR’S NAME RIGHT

Under Article 9, “. . . a financing statement is sufficient only if it . . . provides the name of the debtor.” § 9-502(a)(1). As regards individual debtors, Article 9 provides that “A financing statement sufficiently provides the name of the debtor. . . . (A) if the debtor has a name, only if it provides the individual . . . name of the debtor. . . .” § 9-503(a). For the avoidance of doubt, Article 9 explicitly provides that “Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 9-503(a) is seriously misleading.” § 9-506(b). One determines whether the statement of a debtor’s name is seriously misleading by applying what is sometimes referred to as the search logic test: “If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 503(a), the name provided does not make the financing statement seriously misleading.” § 9-506(c).

The degree of precision required by Article 9 can be achieved by the careful filer who verifies a registered organization’s name by reference to the appropriate documents relating to its formation and existence. And while the requirements of Article 9 are equally straightforward with respect to individual debtors, these requirements seem to be based on an unwarranted assumption that interested parties can reasonably determine, precisely and unequivocally, individual debtors’ names.

What is an individual debtor’s name?

A great deal of attention has been paid this past year to a decision which held, “For a financing statement to be sufficient under Kansas law, the secured creditor must list an individual debtor by his or her legal name, not a nickname.” Clarke v. Deere and Co. (In re Kinderknecht), 308 B.R. 71, 73 (10th Cir. BAP 2004). That leaves the question, what is an individual’s legal name? The uniform form of UCC1 financing statement which appears in Article 9 calls for “DEBTOR’S EXACT FULL LEGAL NAME.” § 9-521(a). The subparts of box 1b are labeled “INDIVIDUAL’S LAST NAME, FIRST NAME, MIDDLE NAME, and SUFFIX.” § 9-521(a). One wonders what differences there might be among names, correct names, legal names, and exact full legal names.

Delaware and many other states recognize the common law right of any person to change his or her name so long as the change of name is not made for an improper purpose. This right is abrogated only as to individuals subject to supervision of the State’s Department of Corrections, who may only effect a name change by prescribed judicial procedure. The judicial procedure for name change is available to, but optional for, all other persons. See 10 Del C. Ch. 59.
If you can’t know what it is, how can you put it in box 1b? Delaware adopted non-uniform text in § 506(a) which renders § 503(a) inapplicable to individual debtors. But no other state has deviated from the uniform text of Article 9 in this regard. When filing against individual debtors in other jurisdictions, interested parties might shift their focus from “what is the debtor’s name” to “what names might be effective?” As mentioned above, IACA has promulgated Model Administrative Rules (“MARS”) under Article 9. MARS provide standard rules for search logic. MARS have been adopted in most states, albeit with some non-uniformities. Under the uniform text of Article 9, only if a search of the official records using the debtor’s legal name and the official search logic would disclose a financing statement containing a debtor name other than the debtor’s legal name is that financing statement not rendered ineffective because of the name variation. MARS search logic ignores punctuation, accents, capitalization, spaces, and other “noise words,” and ignores words or abbreviations indicating the nature of an organization (e.g., Co. or Corp.), but does not ignore common variations and abbreviations, typographical errors, or misspellings.

Thus, filers might consider filing under each name that might be deemed the debtor’s legal name, but ignore variants that will be ignored by MARS (the second component of this recommendation assumes a filer knows what the relevant MARS is or will be - neither Article 9 nor its official commentary definitively indicates whether the relevant search logic is that in place when the record at issue is filed, at the time the search which either finds or doesn’t find it is conducted, or at some other time.)

CONCLUSIONS AND PRACTICE TIPS

When Filing:

1. Know and follow non-uniform requirements of local law or filing office administrative rules.
2. Get the debtor’s name right, and put it (and only it) in the right box.
3. Remember that an in lieu continuation is an initial filing.
4. Get and keep copies of old filings being “in lieued” to prove their continued effectiveness and priority.
5. Whatever was properly communicated to the filing office is what’s filed.
   This may or may not differ from what you asked your staff or third-party vendor to file, or from what appears in the filing office records.

Searching:

1. Places to search:
   • Debtor’s Article 9 location at all relevant times.
   • Debtor’s Former Article 9 location at all relevant times (until the transition period ends).
• Tangible collateral’s Former Article 9 location at all relevant times (until the transition period ends).
• For non-Article 9 interests (e.g. federal tax liens), wherever applicable law indicates.

2. Names to search:
• For filings effective under Article 9 – debtor’s name.
• For filings effective under Former Article 9 – variations on debtor’s name.
• For non-Article 9 interests, whatever variations applicable law indicates.

Legal Opinions:

1. What is the opinion based on?
• The filed record?
• The record revealed in a search?
• The information intended to be filed?

2. What does the opinion say it’s based on?

3. When opining as to priority of filings:
• Consider sufficiency of search query.
• Consider that the opinion law may govern the relative priority of post-effective date filings in such jurisdiction and pre-effective date filings in other jurisdictions.
• When opining as to in lieu continuations, consider whether you’re unwittingly opining under the laws of the “old” filing jurisdiction.

A final word of caution -

“An attorney’s failure to file a UCC financing statement in the manner necessary to perfect his client’s security interest constitutes malpractice as a matter of law.”
Filings Against Trusts and Trustees Under Article 9 – Thirteen Variations

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<th>Trust without a Name</th>
<th>Trust is Debtor and is not a Registered Organization</th>
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* Where the name in box 1a or 1b is not commonly associated with the address in box 1c, consider specifying the address in box 1c “in care of” or “c/o” a name commonly associated with such address, e.g., the trustee’s name.
Please join us at our upcoming meeting in Tampa on April 6. Our program will feature two topics. First, we will have a presentation on the interplay between the new value defense and Section 503(b)(9)'s new administrative priority for goods delivered within 20 days of a bankruptcy filing. Mark Duedall, a partner in the bankruptcy practice group of Alston & Bird LLP, and Byron Starcher, an associate in the bankruptcy practice group of Nelson Mullins Riley & Scarborough LLP, both from Atlanta, Georgia, will be our guest speakers. They will be distributing an article they wrote on this topic that was published in the Preference Quarterly Law Journal. Mark and Byron will also discuss the extent to which 28 U.S.C. 1409(b) applies to preference litigation, and other preference topics of recent interest. The second topic is the changes to executory contracts in Section 365 of the Bankruptcy Code brought about by the Bankruptcy Reform Act. Our guest speaker for this topic is Andrea Coles-Bjerre, Assistant Professor at the University of Oregon School of Law. Prior to teaching, Andrea was a bankruptcy practitioner with Milbank Tweed’s New York office. We will also discuss other current developments in the bankruptcy and creditors’ rights fields.

The meeting will be held on Thursday, April 6, from 1:00 to 2:30, at the Tampa Marriott Waterside, and we are currently scheduled to meet in the Florida Salon II, Level II. We will meet jointly with the Business Bankruptcy Litigation Subcommittee.

At our fall meeting in San Antonio, Texas, at the National Conference of Bankruptcy Judges, The Honorable Robert Mark, Chief Judge of the United States Bankruptcy Court for the Southern District of Florida, spoke about his recent decision regarding the Florida homestead exemption, In re Elona Kaplan, 331 B.R. 483 (October 6, 2005). In that decision, Judge Mark considered the Bankruptcy Reform Act’s amendments to Section 522(b)(3) of the Bankruptcy Code that impact the amount a debtor can claim as a homestead exemption. Judge Mark held that, even though Florida has opted out of the federal bankruptcy exemptions, the federal cap of $125,000 applies to a Florida debtor. Judge Mark’s decision was strongly influenced by the legislative history of the Act. Judge Mark, in Kaplan, declined to follow In re Robin Bruce McNabb, decided by Judge Haines of the U.S. Bankruptcy Court for the District of Arizona, 326 B.R. 785 (June 23, 2005). In McNabb, Judge Haines held that the federal cap on the amount of a debtor’s homestead exemption applied only in states that have not opted out of the federal exemption scheme. Only Texas and Minnesota have not opted out of the federal exemption scheme. Judge Haines ruled that the plain meaning of the Act required a finding that the federal cap did not apply to an Arizona debtor. We also discussed the recent decision by Judge Steven Friedman of the United States Bankruptcy Court for the Southern District of Florida, In re Wayrynen, 332 B.R. 479 (October 14, 2005). Wayrynen followed McNabb on this issue. We hope to see you at the meeting on April 6!
UNIFORM STATE LAWS SCORECARD

Survey of Adoptions of Revised Official Text of the UCC\(^1\)

As of March 13, 2006

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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 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 November 8, 2005.

1. In addition to enactments noted below, all states and the District of Columbia have adopted (i) the 1995 Official Text of Article 5 of the UCC, other than Wisconsin, (ii) the 1994 Official Text of Article 8 of the UCC and (iii) the 1998 Official Text of Article 9 of the UCC.

2. New York and South Carolina are the only states that still have the 1951 version of Articles 3 and 4.
American Bar Association  
Section of Business Law  
Commercial Financial Services Committee  
Spring Meeting  
April 6-9, 2006  
Tampa, FL

**CHRONOLOGICAL SCHEDULE OF EVENTS**

Times and places are taken from the tentative schedule to help you in planning your attendance. Please confirm meeting times and locations in the Annual Meeting program book. All meetings will be held at the Tampa Marriott unless otherwise noted.

**Thursday, April 06, 2006**

9:30 AM - 10:30 AM  
**Syndications and Lender Relations Joint Meeting**  
Tampa Marriott  Meeting Room 6, Level 2  
Cochairs - Robert Grodner and Anthony Calloobre

10:30 AM - 12:00 PM  
**Intellectual Property Financing**  
Tampa Marriott  Meeting Room 6, Level 2  
Cochairs - Leianne Crittenden and Thomas M. Ward

11:30 AM - 1:00 PM  
**Institute for the Young Business Lawyer:**  
**Understanding and Documenting Commercial Loans--A Beginner's Guide**  
Tampa Marriott  Salon VI, Level 2  
Chair - Susan Tyler

1:00 PM - 2:30 PM  
**Joint Meeting: Creditors' Rights**  
Tampa Marriott  Salon II, Level 2  
Chair - Carolyn P. Richter

2:00 PM - 5:30 PM  
**Aircraft Financing (Session 1)**  
Tampa Marriott  Meeting Room 6, Level 2  
Chair - James D. Tussing

2:30 PM - 4:00 PM  
**Loan Workouts**  
Tampa Marriott  Meeting Room 5, Level 2  
Chair - Caroline Galanty

4:00 PM - 5:30 PM  
**Lender Liability**  
Tampa Marriott  Meeting Room 5, Level 2  
Chair - Gerald L. Blanchard
Friday, April 07, 2006

7:30 AM - 9:00 AM

Agricultural and Agri-Business Financing
Chair - T. Randall Wright
Tampa Marriott  Meeting Room 8, Level 3

9:00 AM - 10:30 AM

Cross-Border Secured Transactions Joint Meeting
Chair - James C. Chadwick
Tampa Marriott  Salon D, Level 2

9:00 AM - 12:30 PM

Aircraft Financing (Session 2)
Chair - James D. Tussing
Tampa Marriott  Meeting Room 8, Level 3

10:30 AM - 12:30 PM

Program: THE PRICE OF THEIR TOYS:
Financing Boats, Planes and Sports Teams
Chair - James D. Prendergast
Tampa Marriott  Salon IV, Level 2

3:00 PM - 4:30 PM

Committee Forum: Using the New Model Deposit
Account Control Agreement
Joint Meeting with Uniform Commercial Code
Chair - Edwin E. Smith
Tampa Marriott  Salon IV, Level 2
Cosponsored by: Committee on Banking Law, Committee on Uniform Commercial Code, and Committee on Consumer Financial Services

4:30 PM - 6:00 PM

Loan Documentation
Chair - Jeremy S. Friedberg
Tampa Marriott  Salon IV, Level 4
Saturday, April 08, 2006

7:30 AM - 9:00 AM
Securitization and Derivatives
Chair - Martin Fingerhut
Tampa Marriott  Meeting Room 8, Level 3

8:30 AM - 10:00 AM
Secured Lending Joint Meeting
Chair - Malcolm Lindquist
Tampa Marriott  Salon F, Level 2

10:00 AM - 10:30 AM
Commercial Financial Services
Chair - Christopher J. Rockers
Tampa Marriott  Salon V, Level 2

10:30 AM - 12:30 PM
Program: Commercial Law Developments
Cochairs - Steven O. Weise and Teresa W. Harmon
Tampa Marriott  Salon V, Level 2
Committee on Uniform Commercial Code

1:00 PM – 2:30 PM
Real Estate Financing Meeting on Defeasances
Chair - Neal Kling
Tampa Marriott  Meeting Room 12 , Level 3

2:30 PM - 3:30 PM
Meeting of Subcommittee Chairs and Vice Chairs
Chair - Christopher J. Rockers
Tampa Marriott  Meeting Room 8, Level 3

* Ticket Required
** Closed Meeting
American Bar Association  
Section of Business Law  
2006 Spring Meeting UCC Schedule  
Tampa, Florida  
April 6 – 8, 2006

Times and places are taken from the tentative schedule to help you in planning your attendance. Please confirm meeting times and locations in the Annual Meeting program book. All meetings will be held at the Tampa Marriott unless otherwise noted.

Thursday, April 6, 2006

8:00 AM – 9:00 AM

Joint Meeting: State Certificates of Title and Simplification (Meeting Room 2, Level 2)

Chair - Alvin Harrell, Oklahoma City University of Law  
Vice-Chair - Leanne Leathens, The CIT Group

At the Certificate of Title meeting in Tampa we will have: a discussion of UCOTA enactment issues, its relation to other law, and the compilation of an ABA state-by-state compendium and enactment guide.

9:00 AM – 10:00 AM

Deposit Control Agreements (Meeting Room 12, Level 3)

The Task Force will be discussing riders to the model deposit account control agreement dealing with, among other things, lock box arrangements and cash sweeps.

10:00 AM – 11:00 AM

Investment Securities (Meeting Room 12, Level 3)

Presentation: Secured Party Purchase of Collateral at Private Sale – Collateral Customarily Sold on a Recognized Market
This presentation will cover the Burns v. Anderson case and relevant provisions of UCC Article 9.

11:00 AM – 12:00 NOON

Leasing
Chair - Barry A. Gaynor, Cooley Godward LLP
Vice-Chair - Teresa Davidson, Volvo Commercial Finance

A discussion of the do's and don'ts of small ticket leasing, i.e., license and other governmental requirements (e.g., "loan broker" laws, usury laws) that are unique to small ticket vs. larger "commercial deals"

12:00 NOON – 1:00 PM

Consumer Involvement Task Force
Co-Chair - William Woodward, Temple University School of Law
Co-Chair - Michael Ferry, Legal Services of Eastern Missouri

The Task Force will 1) update one another on developments of interest to the Consumer Fellows and other consumer advocates; 2) see where the Consumer Fellows could best be used on the schedule and make sure those meetings are covered; 3) provide an update on the Model Home Banking Agreement; 4) continue a discussion of creating a academic resource group for local consumer lawyers; and 5) consider the possibility of working with other Committees on programming.

UCC Litigation
Co-Chair - Mark E. Wilson, Kerns, Pitrof, Frost & Pearlman
Co-Chair - Mary Binder, Bank One

A discussion of the current drafts of the on-going project to draft pattern jury instructions for the payments Articles of the Uniform Commercial Code.
2:30 PM – 4:30 PM

PROGRAM: "Avoiding the Pitfalls of UCC Practice" (Salon V, Level 2)

This program is designed as a way for commercial lawyers to share ideas and tips they have developed or come across to aid them in their practice. These include things to put into an agreement, things to lookout for in negotiating a deal, and other ways to protect a client's rights or expectations. The written materials consist of 35 suggestions submitted in advance by committee members. During the program, those in attendance will discuss and critique these suggestions as well as any others they may care to offer.

4:30 PM – 5:30 PM

Forms under Article 9 (Meeting Room 11, Level 3)
Co-Chair - Jonathan C. Lipson, University of Baltimore School of Law
Co-Chair - Kathi Allen, Stites & Harbison PLLC

The Task Force will review the status of the forms previously proposed and the promised review/revision and/or annotation by Task Force members. Depending on the progress made, we will try to establish a publication schedule for the new forms book.

8:00 PM

UCC/CFS dinner (TBA)

Friday, April 7, 2006

8:00 AM – 9:00 AM

Model Trading Partners Agreement (Bayshore Boardroom, Level 3)

The MTPA Task Force will be meeting to follow up on the merger of the MTPA project with the E-Data Agreement Project. We will not have any drafts available but will report on the Winter Working Meeting and what the next steps forward will be.

8:00 AM – 10:00 AM

Special Joint Meeting on Bank Deposits (Meeting Room 10, Level 3)
UCC Subcommittee on Payments:
Co-Chair - Paul S. Turner
Co-Chair - Steve Veltri
Vice-Chair - Marina Adams

This session will serve as a forum for attendees and facilitators to debate and discuss the pros and cons of developing a Model or Uniform Law of Bank Deposits. It has been suggested that such legislation is needed and should deal with topics such as setoff rights, creditor process, and issues related to jointly held and special deposit accounts. The meeting is jointly sponsored by the UCC Subcommittee on Payments, Commercial Financial Services Committee, Consumer Financial Services Subcommittee on Deposit
Products and Payment Systems, and Banking Law Subcommittee on Payments and Electronic Banking.

Facilitators include:
Barkley Clark, Shook, Hardy & Bacon L.L.P.
Alvin Harrell, Oklahoma City University School of Law
Joseph Sommer, Federal Reserve Bank of New York
LH Wilson, American Bankers Association

9:00 AM --10:30 AM

International Commercial Law (Salon D, Level 2)
Chair - Lawrence Safran, Latham & Watkins LLP
Vice-Chair - Kate Sawyer, Cleary Gottlieb

Presentation: Sovereign Bond Defaults and Aggressive Creditor Tactics
Speakers: Mark Cymrot, Baker & Hostetler
Michael Nelson, Federal Reserve Bank of New York,

The speakers will discuss recent attempts to seize sovereign assets located in the United States as a result of sovereign bond defaults. In particular, the default of Argentina sovereign debt has spawned numerous, aggressive attempts to seize such assets. Presentation will include a brief discussion of the relatively recent law enacted in Belgium designed to prevent Euroclear from being attached as a conduit for payments on restructured sovereign bonds by holdout creditors and an analysis of ICSID as an alternative forum for sovereign creditors.

10:00 AM – 11:00 AM

Sales of Goods (Meeting Room 12, Level 3)
Co-Chair - Scott Burnam, University of Montana School of Law
Co-Chair - Keith Rowley, William S. Boy School of Law

Presentation: Consumer Psychology and Consumer Warranties
Speaker: Prof. Larry Garvin, Ohio State University College of Law

11:00 AM – 12:00 PM

Transferable Records (Meeting Room 1, Level 2)

11:00 AM – 12:00 PM

General Provisions of Law (Salon D, Level 2)

Representatives of the National Conference of Commissioners on Uniform State Laws and the American Law Institute are meeting in April with representatives of the Canadian Justice Department, the Uniform Law Conference of Canada, and the Mexican Uniform Law Center to consider the harmonization of North American law by incorporating into the personal property security laws of each country the substance of
the provisions of the Assignment of Receivables in International Trade Convention promulgated by UNCITRAL. Bill Henning, Executive Director of NCCUSL, will discuss the role of the Conference in the international arena and will describe this and other current and potential projects.

1:00 PM – 2:00 PM

**Letters of Credit**

(Meeting Room 2, Level 2)

Chair - Carter H. Klein, Jenner & Block
Vice-Chair - George A. Hisert, Bingham McCutcheon LLP

The Agenda will include the following topics:

- ISP vs. UCP -- Is there a preferred regime for standby's in the market?
- Stonebridge Technologies -- Should the Fifth Circuit's recent decision alarm issuers of landlord letters of credit? Does it follow Mayan Networks?
- JPMorgan v. US Bank -- Good news for issuers on indemnities and attorneys' fees in LC cases
- Status of UCP 600 -- When will it be adopted; what are its major changes; what challenges does it present.
- Status of Model Supersedeas LC -- Moving ahead with IIBLP and issuer support
- Report on the Annual Letter of Credit Survey -- which IIBLP will be holding in Miami on March 1-2.

2:00 PM – 3:00 PM

**UCC Committee Meeting featuring Stump the Chumps II:**

(Salon IV, Level 2)

A panel of UCC experts who will answer UCC related questions

We will devote the UCC Committee Meeting to the second installment of – Stump the Chumps. As the title suggests, a panel of brave but perhaps somewhat foolhardy UCC luminaries will attempt to answer questions posed by the audience. So whether your question originated on the UCC listserve, from your practice or from your own life experience, come to the meeting with questions in hand. All questions will be entertained no matter how arcane!

Panelists:  
Amy Boss, Temple University School of Law  
Neil Cohen, Brooklyn Law School  
Alvin Harrell, Oklahoma City University School of Law  
Sandra Rocks, Cleary, Gottlieb, Steen & Hamilton  
Lynn Soukup, Pillsbury Winthrop Shaw Pittman

3:00 PM -- 4:30 PM

**JOINT COMMITTEE FORUM: Using the New Model Deposit Account Control Agreement**

(Salon IV, Level 2)

Moderator: Edwin E. Smith, Bingham McCutchen LLP

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Panelists: Marshall Grodner, McGlinchey Stafford
Cris Kako, JP Morgan Chase
Roberta Torian, PNC Bank
Barbara Yadley, Holland & Knight

4:30 PM -- 5:30 PM

Leadership Meeting
(Salon III, Level 2)
Saturday, April 8, 2006

8:30 PM -10:00 PM

Secured Transactions
(Salon F, Level 2)
Chair - Leianne S. Crittenden, Oracle Financing Division
Vice-Chair - Pauline Stevens, Morrison Foerster LLP
Presentation: Spring medley of commercial lending topics delightfully presented in a light humor sauce

Topics to be discussed include:

- PEB's RA 9 Commentary, the Article that wouldn't die
- A Horse is a Horse . . . Unless it's Collateral.
- What you need to know about Uniform Certificate of Title Act before you can go from 0 to 60.

Speakers: Neil Cohen, Brooklyn Law School

2:00 PM -- 4:00 PM

PROGRAM: Program: UCC v. International Law: (Meeting Room 6, Level 2)
Clash of the Titans.

Many secured transactions contain international components, often resulting in a clash between UCC Article 9 and foreign law. The program will cover, among other topics, security interests in "goods on the water," the application of UCC Section 9-307, foreign hypothetical lien creditors and foreign account debtors.

Panelists: Arnold S. Rosenberg, Thomas Jefferson School of Law
Lawrence Safran, Latham & Watkins LLP
George Hisert, Bingham McCutchen LLP
Thomas S. Hemmendinger, Brennan, Recupero, Cascione, Scungio & McAllister, LLP