

STUDENT COMMENTS

RECENT UNIFORM COMMERCIAL CODE DEVELOPMENTS

INTRODUCTION

Following the inception of the Uniform Commercial Code with its enactment in Pennsylvania in 1953, the Code has been moving toward maturity and acceptance at a very healthy pace.¹ Since March 1963, the number of jurisdictions which have enacted the Code has increased from eighteen to twenty-nine, including the two most populous states, California and New York. It appears to be only a matter of time before all will be Code states.²

The table in Part I of this article is a compilation of the eleven jurisdictions which have most recently adopted the Code. Part III concerns itself with the requirements of filing which are necessary to perfect a security interest in these jurisdictions.

The adaptability of the Code to the changing commercial world has been shown twice since its original promulgation. The first time was in 1958, with the adoption of the official 1958 recommended changes; the second in 1962, with the promulgation of further changes. Part II sets forth these changes together with a discussion of the reasons for them as expounded by the Permanent Editorial Board and additional comments by this author. Reference has been made to which of the twenty-nine states have enacted the 1962 recommended changes, either in form or in substance. Many states have enacted amendments to various sections in order to conform to local practice. Those amendments were not adopted by the Permanent Editorial Board and are not treated in this article.

¹ For an extensive discussion of the Uniform Commercial Code including its history, purposes and acceptance by the various states, see Malcolm, *The Uniform Commercial Code in the United States*, 12 Int. & Comp. L.Q. 226 (1963).

² In addition to the states which have enacted the Code, bills have been introduced in the following states for its adoption: Hawaii (H.B. 191—died in House; S.B. 401—died in Senate); Minnesota (H.B. 294—died in House; S.B. 868—died in Senate) and Washington (H.B. 129—died in Senate).

Bills to study the Code have been proposed in the following states: Florida (S.C.R. 692—adopted May 29, 1963); Hawaii (H.C.R. 61—died in House Committee); Idaho (S.B. 115—died in Senate); Iowa (S.J.R. 17—law without approval, May 18, 1963); Kansas (S.C.R. 19—adopted April 10, 1963); Nevada (A.C.R. 3—adopted April 4, 1963); North Carolina (S.B. 601—House substitute died in Senate); South Carolina (H.B. 1472—approved June 14, 1963) and South Dakota (S.B. 234—approved March 2, 1963).

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I. TABLE OF ADOPTING STATES³

State	Effective Date	Adopting Law	Version Adopted	Citation
California	Jan. 1, 1965	Cal. Laws 1963, ch. 819	62	Cal. Commercial Code: secs. 1101-10104
District of Columbia	Jan. 1, 1965	Pub. L. No. 88-243, 88th Cong., 2d Sess. (Dec. 30, 1963)	62	D.C. Code secs. 28:1-101—10-104
Indiana	July 1, 1964	Ind. Laws 1963, ch. 317	62	_____
Maine	Dec. 31, 1964	Me. Laws 1963, ch. 362	62	Me. Rev. Stat. Ann. ch. 190, secs. 1-101—9-507
Maryland	Feb. 1, 1964	Md. Laws 1963, ch. 538	62	Md. Ann. Code art. 95B, secs. 1-101—10-104
Missouri	July 1, 1965	Mo. Laws 1963, S.B. 2	62	Mo. Rev. Stat. secs. 400.1-101—400.10-102
Montana	Jan. 1, 1965	Mont. Laws 1963, ch. 264	62	Mont. Rev. Codes Ann. secs. 87A-1-101—87A-10-103
Nebraska	Sept. 2, 1965	Neb. Laws 1963, L.B. 49	58	_____
Tennessee	July 1, 1964	Tenn. Laws 1963, ch. 81	62	_____
West Virginia	July 1, 1964	W. Va. Acts 1963, ch. 193	62	W. Va. Code Ann. ch. 46, secs. 4313 [46-1-101]—4505(209) [46-10-104]
Wisconsin	July 1, 1965	Wis. Laws 1963, ch. 158	62	Wis. Stat. ch. 158, tit. XL, secs. 401.101—409.507

II. 1962 UNIFORM COMMERCIAL CODE⁴ RECOMMENDED AMENDMENTS OF THE PERMANENT EDITORIAL BOARD⁵

ARTICLE I: GENERAL PROVISIONS

SECTION 1-201(27).⁶

Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is

³ A table of the remaining eighteen states may be found in: B.C. U.C.C. Co-Ord. 2 (1963) and Willier and Hart, Forms and Procedures under the Uniform Commercial Code ¶ 11.05 (1963).

⁴ Uniform Commercial Code, 1962 Official Text with Comments, published by the American Law Institute and the Commissioners on Uniform Laws, hereinafter cited UCC with a section number, e.g., UCC § 1-201 or, generally, Code.

⁵ This unique Board was established by agreement between the American Law Institute and the National Conference of Commissioners on Uniform State Laws on August 5, 1961. It consists of eleven members: the Director of the Institute (chairman), five selected by the National Conference and five by the Institute. A majority of the Board must be from Code states with no state being represented by more than one member.

The general purpose of the Board is to submit recommended Code amendments to the National Conference and Institute, which, in turn, determines whether the change is to be promulgated.

⁶ Enacted by: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention, if the organization had exercised due diligence. *An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.*⁷

REASON FOR AND PROBABLE EFFECT OF THE CHANGE⁸

The proposed addition to Section 1-201(27) limits the scope of the due diligence as required by this section. The adoption of this modification is intended to alleviate the fear held by large business organizations of being required to extensively investigate a transaction for adverse claims before purchasing commercial paper⁹ or investment securities.¹⁰ Aside from its intended purpose, the modification would also affect the imputation of knowledge to parties of a sales transaction,¹¹ banks,¹² bulk transferees¹³ and secured or unsecured creditors.¹⁴

The proposed definition creates new undefined terms—a malady not foreign to such attempts at clarification. Only another amendment or judicial interpretation in individual cases will determine the meaning of such terms as “maintaining reasonable routines for communicating significant information,” “reasonable compliance,” “individual acting for the organization,” as well as the overall meaning. An attempted general clarification of “due diligence” requirements is proffered in the first sentence, but the next sentence describes what “due diligence” does not require in the absence of certain criteria. Does this latter sentence mean that “due diligence” includes the exceptions to the non-requirements, for which non-compliance imputes knowledge to the organization? If it does, then a teller in a bank, which has more than adequate internal control procedures,¹⁵ who was given a stop payment order but for some reason neglected to reconvey this in-

⁷ Proposed additions to the Code are denoted by italics; deletions are in brackets.

⁸ The comment which follows each section discusses the reasons expounded by the Permanent Editorial Board for each change, along with additional comment by the author.

⁹ E.g., UCC § 3-302(1)(c).

¹⁰ E.g., UCC § 8-302.

¹¹ E.g., UCC § 2-207(2)(c) (notification of objections to additional terms in an acceptance to prevent their becoming part of the contract).

¹² E.g., UCC § 4-303(1) (when notice received determines if stop payment of an item is effective).

¹³ E.g., UCC § 6-104(3) (error in list of creditors compiled by a bulk transferee with notice is ineffective).

¹⁴ E.g., UCC § 9-301(1)(b) (priority of a lien creditor without knowledge of prior unperfected security interest).

¹⁵ Proper internal control procedures are described in American Institutes of Accounting, Internal Control (1949).

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formation, will cause the bank to be charged with the notice and thereby to be liable to the customer.¹⁶ The imputation of knowledge to the bank would be based on the fact that the teller knew of the transaction and that the information would affect it. This break in the communications link can be applied to every transaction in which notice is required.

ARTICLE 2: SALES

There are no proposed amendments for any section in Article 2.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-105.¹⁷ When Promise or Order Unconditional

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

.
(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

This modification removes all doubts as to the negotiability of notes under the Code where the notes provide that they may be prepaid or accelerated pursuant to the terms of a particular loan agreement or mortgage. Such a note was definitely regarded as negotiable under the Negotiable Instruments Law since the acceleration or prepayment clause was within the requirement of payment within a "fixed or determinable future time."¹⁸ This addition to Section 3-105(1)(c) is intended to retain that status.

The rationale for the allowance of a reference in a negotiable note to prepayment or acceleration rights in a separate agreement is based solely on practicalities. Almost every note executed is given for an underlying transaction evidenced by a complex agreement with the intention that the payee have rights on both instruments. Surely if the terms of the agreement were incorporated into the note, it would not meet the qualifications of a negotiable instrument¹⁹ and therefore would not be marketable. Since rights arising out of the agreement are separate and distinct from rights on the note, a default on the agreement will not allow the aggrieved party to sue on the note until it is due.²⁰

A note can provide that it may be accelerated²¹ in good faith²² with-

¹⁶ Supra note 10.

¹⁷ Supra note 6.

¹⁸ NIL § 1(3). See also *Schmidt v. Pegg*, 172 Mich. 159, 137 N.W. 524 (1912). Cf. UCC § 3-104(1)(c).

¹⁹ UCC § 3-104(1).

²⁰ A demand note would remedy this difficulty if the maker would execute such a note. UCC § 3-104(1)(c) (writing payable on demand is negotiable).

²¹ UCC § 3-109(1)(c).

²² UCC § 1-208. This section must be read in conjunction with any acceleration clause.

out affecting its negotiability.²³ The modification simply sanctions the intent of the parties without requiring their using blanket acceleration provisions in the note or flirting with non-negotiability of the note by inserting the agreement's provisions; acceleration, thereby, may be exercised when it is most effective—upon the maker's breach.²⁴

SECTION 3-112.²⁵ Terms and Omissions Not Affecting Negotiability

(1) The negotiability of an instrument is not affected by . . .

(b) a statement that collateral has been given [for the instrument] *to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on [the instrument the collateral may be sold] those obligations the holder may realize on or dispose of the collateral; or . . .*

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The original drafters of the Code did not intend that the standard cross collateral provisions which are found in most bank collateral note forms should render the notes non-negotiable. The purpose of this modification of Section 3-112(1)(b) is to eliminate the possibility of such a result.

The possible ramifications of this modification may, however, carry beyond its intended purpose. Under a strict interpretation, Section 3-112-(1)(b) would provide that statement of a *possessory* security interest would not affect the note's negotiability; whereas a more liberal reading would make the provision applicable to a non-possessory security interest. The meaning of the word "given" will control.

The liberal interpretation would be more desirable. At common law, a mortgage of personal property was merely an incident of the debt which followed an assigned note whether the mortgage was transferred or not.²⁶ Difficulties arise in instances where a holder of a mortgage and mortgage note²⁷ transfers them separately, for the transferee of the mortgage receives nothing.²⁸ Allowance of a reference in the context of a negotiable secured note would simply be a statement of the common law. Such a reference would cause a buyer to hesitate before purchasing the note without an assignment of the security agreement.

A further result of a liberal interpretation would be that a note, which was carefully drafted so as to protect its negotiability,²⁹ could incorporate within it the terms of the security agreement and thereby serve a dual role. Although the note would be negotiable only with the security agreement, it is not recommended that this practice be exercised. Any security agreement which would fully protect the parties, would, of necessity, contain

²³ Supra note 3.

²⁴ See discussion as to the relation of the security to the debt under Section 3-112, *infra*.

²⁵ Supra note 6.

²⁶ Waterbury Trust Co. v. Weisman, 94 Conn. 210, 108 Atl. 550 (1919).

²⁷ This is classified as chattel paper under the Code. UCC § 9-105(1)(b).

²⁸ Supra note 26.

²⁹ UCC § 3-104(1).

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necessary provisions which would destroy the negotiability of the note if used and would not form the desired agreement if not used.

SECTION 3-122.³⁰ Accrual of Cause of Action

. . . (4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment,

(a) in the case of a maker [of a demand note], *acceptor or other primary obligor of a demand instrument*, from the date of demand; . . .

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Although the Code drafters did not intend that interest was to run on a certified check or similar demand instrument before demand, bankers have expressed the fear that Section 3-122 might dictate this result by judicial interpretation that the demand note is due upon issue and interest should run from that date.³¹ This modification was intended to clarify this ambiguity by specifically providing that "legal" interest commences only upon demand. The exception, "unless an instrument provides otherwise," is intended to allow a provision for an increased rate of interest after default.³²

It is unfortunate that the draftsmen saw fit for the first time to use the archaic and troublesome form "primary obligor" which is nowhere defined even though the equally archaic "secondary party" is defined as a drawer or endorser,³³ and yet, when either party is mentioned, it is as drawer or endorser and not as secondary party. By deduction, "primary obligor" must mean any obligor not secondary. The use of the term does seem to include within the purview of the amended subsection obligors of demand certificates of deposit since the obligor is neither a maker nor an acceptor. This conclusion may be questioned due to the fact that when the drafters intended to provide for accrual of a cause of action against these "not classified" obligors, it saw fit to describe them as "obligor[s] of a . . . certificate of deposit."³⁴

SECTION 3-412.³⁵ Acceptance Varying Draft. . .

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the [continental] United States, unless the acceptance states that the draft is to be paid only at such bank or place.

REASON FOR AND PROBABLE EFFECTS OF THE CHANGE

The deletion of "continental" takes into account the admission of Alaska and Hawaii as states. That term had been originally used to exclude from this provision the territories of the United States. Since Puerto Rico

³⁰ Supra note 6.

³¹ Coleman v. Page's Estate, 202 S.C. 486, 25 S.E.2d 559 (1943).

³² This construction would be in accord with prevalent case law. See, Union Estates Co. v. Adlon Const. Co., 221 N.Y. 183, 116 N.E. 984 (1917).

³³ UCC § 3-102(1)(d).

³⁴ UCC § 3-122(2).

³⁵ Supra note 6.

and other United States territories are politically considered "in the United States," an acceptance to pay at a bank located in one of them may not vary the terms of the draft.³⁶

SECTION 3-504.³⁷ How Presentment Made

... (4) A draft accepted or a note made payable in the [continental] United States must be presented at such bank.

....

REASON FOR THE CHANGE

The deletion of "continental" takes into account the admission of Alaska and Hawaii as states.³⁸

ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

SECTION 4-106.³⁹ Separate Office of a Bank

A branch or separate office of a bank (maintaining its own deposit ledgers)⁴⁰ is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article *and under Article 3*.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Prior to the proposed modification to Section 4-106, it was not clear whether Section 4-104 applied to time limits, such as the one imposed for the presentment of an instrument,⁴¹ or the due course holding status of a purchaser of an instrument⁴² under Article 3, as well as time limits under Article 4. This modification is intended to remove all doubt as to the applicability of Section 4-106 to Article 3. As to the status of one office of a bank as a holder in due course after another office had received notice of a defect, this modification is intended to prevent that status from being affected except where a duty to communicate such notice had existed.⁴³

SECTION 4-109.⁴⁴ Process of Posting

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (a) *verification of any signature;*
- (b) *ascertaining that sufficient funds are available;*
- (c) *affixing a "paid" or other stamp;*

³⁶ This argument is somewhat diluted by the usage of the term "United States, its territories or possessions" in UCC § 9-103(5).

³⁷ Supra note 6.

³⁸ Applying the argument in UCC § 3-412, supra, would a note made payable at a bank in Guam have to be presented at that bank?

³⁹ Supra note 6.

⁴⁰ Words in parenthesis are optional.

⁴¹ UCC §§ 3-503 (Time of Presentment) and 3-504 (How Presentment Made).

⁴² UCC §§ 3-302 (Holder in Due Course) and 3-304 (Notice to Purchaser).

⁴³ See UCC § 1-201(27), supra note 6 and accompanying text.

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- (d) *entering a charge or entry to a customer's account;*
- (e) *correcting or reversing an entry or erroneous action with respect to the item.*

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The completion of the "process of posting" is one of the measuring points in determining when an item is finally paid⁴⁵ in a situation where knowledge, notice, stop-order, legal process or set-off comes too late to affect the payor bank's right or duty to pay an item,⁴⁶ and in determining upon which party the burden of loss lay on the closing of a bank in the collection process.⁴⁷ Although the definition provided by this section is determined by the "usual procedure" for completion of the "process of posting" of each bank, it eliminates the fear on the part of banks of having to alter their procedure of completing the "process of posting," particularly in instances where the procedure is accomplished by an electronic process. It is probable that the courts in interpreting this section will require the payor bank in question to show both its usual process of posting for a particular item and the time when that process is completed. Section 4-213 sets out the minimum process of posting requirements as determining to pay an item and recording the payment in the bank's usual procedure for that type item.⁴⁸ It leaves the time of the actual completion to each individual bank. Although, as mentioned above, this poses a proof problem, it is not an overbearing burden for a bank to show when an item is finally posted under its usual process of posting procedure. This is more beneficial to a bank than being required to alter its procedures to be protected.

SECTION 4-204.⁴⁹ Methods of Sending and Presenting; Sending Direct to Payor Bank

....

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Although Section 3-504(2) provides three permissive and non-exclusive methods by which presentment may be made,⁵⁰ an increasing doubt has

⁴⁴ Supra note 6.

⁴⁵ UCC § 4-213(1)(c).

⁴⁶ UCC § 4-303(1)(d). Note that a garnishment or stop order comes too late if a bank either has completed its process of posting or has examined the account and decided to pay. The second limit is less than a completed process of posting.

⁴⁷ UCC § 4-214.

⁴⁸ A bank normally does not use the same methods for posting different types of items. Checks are normally processed electronically, while promissory notes are done manually.

⁴⁹ Enacted by: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

⁵⁰ The methods are: (1) by mail; (2) through a clearing house; and (3) at the place of acceptance or payment specified in the instrument.

arisen as to whether presentment at a centralized bookkeeping center or electronic processing center maintained or used by the payor bank, especially one at a location other than that of the bank, or branch where the item is stated to be payable, is a method permitted by the Code.⁵¹ The new subsection (3) to Section 4-204 specifically expands the scope of permissible places of presentment to include any location requested by the payor bank which, of course, includes any system utilized.

ARTICLE 5: LETTERS OF CREDIT

There are no proposed amendments for any section in Article 5.

ARTICLE 6: BULK TRANSFERS

SECTION 6-103.⁵² Transfers Exempted From This Article

....

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Subsections (6) and (7) of Section 6-103 require public notice for the type transfers contained therein⁵³ to be exempt from Article 6. The new paragraph at the end of the section gives precision to the provision for public notice and adds to the desired uniformity which the Code attempts to achieve.⁵⁴

SECTION 6-104.⁵⁵ Schedule of Property, List of Creditors

....

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. *If the transferor is the*

⁵¹ For an interesting discussion of electronic check handling and its legal problems as viewed by bankers, see Clarke, Bank Deposits and Collections, 80 B.L.J. 1 (1963).

⁵² Enacted by: California, Connecticut, Georgia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

⁵³ UCC § 6-103(6) exempts a bulk transfer to a transferee with a known place of business in the state, who gives public notice of his being bound to pay the transferor's debts in full and who remains solvent.

UCC § 6-103(7) exempts a bulk transfer to a new enterprise organized to continue the transferor's business, if the transferee gives public notice, assumes the transferor's debts and receives only an interest in the enterprise junior to creditors' claims.

⁵⁴ UCC § 1-102. See Willier and Hart, Forms and Procedures under the Uniform Commercial Code ¶ 61.04(5) (1963).

⁵⁵ Supra note 6.

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obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

....

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The addition to Section 6-104(2) clarifies its application to the special case of a bulk transfer by an obligor of outstanding bonds and the like where there is an indenture trustee, thus lessening the transferor's clerical burden. The transferee's clerical burden is also eased since the required notice⁵⁶ is required to be sent only to the indenture trustee, the sole listed creditor.⁵⁷

In wisely naming the indenture trustee as the sole creditor of a bulk transferor, in this case the obligor of outstanding bonds, the drafters encourage the free transfer of the bonds during and after the bulk sale. Since their claims are treated as not against the bulk transferor, but the indenture trustee, the bulk transfer in no way affects their investment. If notice were required to be sent to each bondholder, those who purchased a bond after the requisite notice had been sent by the bulk transferee would not be entitled to notice⁵⁸ and would have no right to treat the claim as ineffective against him since proper notice had been given.⁵⁹ Another possible difficulty which may arise from notice being sent to each bondholder is that a selling panic would cause the price and marketability of the bond to be unstable.

SECTION 6-106.⁶⁰ Application of the Proceeds (Optional)

....

Optional Subsection (4)

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the (specify court) in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Optional Section 6-106, prior to the promulgation of optional subsection (4),⁶¹ required the transferee to assure that the amount he paid for the subject of the bulk sale was applied to the debts of the transferor of creditors

⁵⁶ UCC § 6-105.

⁵⁷ UCC § 6-107(3).

⁵⁸ UCC § 6-109(1).

⁵⁹ Supra note 56; see also UCC § 6-104(1).

⁶⁰ Enacted by: Maryland, Montana, Pennsylvania, Tennessee and West Virginia.

⁶¹ Optional UCC § 6-106 had been adopted by Alaska, Kentucky, Montana, New Jersey, Oklahoma, Pennsylvania, Tennessee and West Virginia.

whom the transferee was able to identify as provided in subsection (1). The assurance could be accomplished in many ways, including retention of the consideration until the transferor's debtors are ascertained or deposit of the funds in an escrow account. Optional subsection (4), in specifically permitting the funds to be deposited in a court, removes the doubt as to the validity of an actual and sometimes necessary practice.

Rather than discouraging bulk transfers, the adoption of optional subsection (4) will encourage them due to the fact that its provisions are permissive and allow a bulk transferee, when he desires, to utilize a court as an escrow agent. It should be spelled out in the contract for sale which party is to bear the costs of the escrow agent if one is to be used.

A problem may arise if the judiciary of a state which adopts this subsection has no prior provisions permitting its courts to act in the capacity of an escrow agent in a bulk sale. In that case, the functions of the court specified in the subsection would be expanded and the court might resist this expansion of its duties.

SECTION 6-107.⁶² The Notice

....

(3) The notice in any case shall be delivered personally or sent by registered *or certified* mail. . . .

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The Permanent Editorial Board, in proposing this amendment, goes along with the recent development of allowing certified mail as a substitute for registered mail in the sending of notices. This is in accordance with statutes of many states which equate the validity of certified mail with registered mail.⁶³ A letter which is certified is less expensive than one which is registered, yet the delivery of either is equally certain.

SECTION 6-108.⁶⁴ Auction Sales; "Auctioneer"

(3) . . . The auctioneer shall:

....

(b) give notice of the auction personally or by registered *or certified* mail. . . .

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

This addition permits the giving of notice by certified mail.⁶⁵

⁶² Enacted by: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

⁶³ E.g., Mass. Gen. Laws Ann. Ch. 4 § 7 (1955). This statute provides: "'Registered mail,' when used with reference to the sending of notice . . . shall include certified mail."

⁶⁴ Supra note 62.

⁶⁵ For a broader explanation, see the reason for the change in UCC § 6-107.

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ARTICLE 7: DOCUMENTS OF TITLE

SECTION 7-210.⁶⁶ Enforcement of Warehouseman's Lien

....

(2)(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

This addition permits the giving of notice by certified mail.⁶⁷

ARTICLE 8: INVESTMENT SECURITIES

SECTION 8-102.⁶⁸ Definitions and Index of Definitions

....

(2) ["Proper form" means regular on its face with regard to all formal matters.] A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

With the amendment of Section 8-208, which deletes the term "proper form," the definition of that term in Section 8-102 becomes unnecessary.⁶⁹

"Clearing corporation" and "custodian bank" are terms used, but undefined, in new Section 8-320. Those additions consequently necessitate the added definitions in Section 8-102.

SECTION 8-107.⁷⁰ Securities Deliverable; Action for Price

(1) *Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him in blank.*

(2) *When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price*

(a) *of securities accepted by the buyer; and*

(b) *of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.*

⁶⁶ Supra note 62.

⁶⁷ See note 65, supra.

⁶⁸ Enacted by: California, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, Pennsylvania, Tennessee, West Virginia and Wisconsin.

⁶⁹ As to the wisdom of the deletion of the term "proper form," see textual comment following the amendment to UCC § 8-208, infra at text accompanying note 79.

⁷⁰ Supra note 68.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Section 8-107 points out the fungible⁷¹ nature of transferable securities and the remedies of the seller upon the buyer's breach of the contract of sale. Unless otherwise agreed and subject to legislation or market rules, a broker may satisfy his delivery obligation by delivering a security of the issue either in bearer form, registered in the transferee's name or indorsed to the transferee or in blank. A broker, however, still may not pledge a customer's securities for his own indebtedness without the customer's permission.

The remedy allowed the seller in subsection (2) seems to compel specific performance of the sales contract where it would be impractical for the seller to resell the securities.⁷² This area of "impracticability" appears very flexible. The Permanent Editorial Board suggests that it would include unlisted securities of a closely held corporation and also those which could be sold only with "substantial delay and expense" due to the necessity for compliance with regulatory or procedural requirements.⁷³ With this hazy guideline as to when the purchase price may be recovered, the plaintiff seller in his proof of "delay and expense" is not limited by any particular statute but may show all facts relevant to this issue.

It should also be noted that the purpose of Section 8-107(2), as expressed by the Permanent Editorial Board,⁷⁴ is to follow the rule and dictum of *Agar v. Orda*.⁷⁵ The *Agar* case held that a seller of securities may recover only damages from a buyer upon the buyer's refusal to accept the securities; it also suggested in dicta that if the buyer had accepted the securities, the seller may recover the purchase price of the securities.⁷⁶

In order to insure the continuance of the *Agar* rule, New York enacted its version of Section 8-107 which allows the seller of securities to recover the agreed contract price along with any other remedies from a purchaser who refused to pay for securities, which the seller had tendered or delivered. It expressly does not affect the remedy of a seller of securities which have not been tendered or delivered.⁷⁷

Section 8-107(2), as recommended by the Permanent Editorial Board, compromises with the *Agar* dictum by providing that the seller of securities may recover the agreed price due under a contract of sale from a buyer who had accepted the securities, as well as those not accepted by the buyer, where resale would be burdensome. Note also that New York allows this recovery

⁷¹ UCC § 1-201(17).

⁷² The specific performance aspect of this modification is analogous to that in the sale of goods. See UCC § 2-709. Although the seller of securities is not specifically required to turn over the subject of the sale upon recovery of the purchase price, it can be assumed that this requirement will be read in by the courts.

⁷³ Report Number 1 of the Permanent Editorial Board for the Uniform Commercial Code, 39 (1962).

⁷⁴ *Ibid.*

⁷⁵ 264 N.Y. 248, 190 N.E. 479 (1934).

⁷⁶ Although the Uniform Sales Act did not apply to the sale of securities, the court, by analogy, based its conclusion on §§ 63 and 64 of that Act.

⁷⁷ N.Y. Consol. Laws, Ch. 38: § 8-107.

STUDENT COMMENTS

upon tender by the seller as well as upon acceptance by the buyer, while this proposed change does not.⁷⁸

SECTION 8-208.⁷⁹ Effect of Signature of Authenticating Trustee, Register of Transfer Agent

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) the security is genuine [and in proper form]; and

...

(c) he has reasonable grounds to believe that the security is *in the form and* within the amount the issuer is authorized to issue.

....

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The alteration of the wording of Section 8-208 has changed the implied warranty given by an authenticating trustee or the like to a purchaser of the security with no notice of a defect. Under the unmodified version of Section 8-208, the one in the position of an authenticating trustee warranted as a *fact* that the security was "regular on its face with regard to all formal matters."⁸⁰ The modification reduces the warranty to one guaranteeing that he had *reasonable grounds* to believe that the security was *in the form the issuer was authorized to issue*. A breach of the latter warranties of "reasonable grounds to believe" and "form . . . authorized by the issuer" creates a possibly difficult proof problem when compared with the superseded warranty in which a breach as to form could be determined by an examination of the document to determine its regularity.

The Permanent Editorial Board believes that the duty so imposed reflects the existing case law.⁸¹ On the other hand, New York, in its attempt to codify the same case law, limits the warranty of a transfer agent in the transfer of a security to a warranty that the security is in a form which the transfer agent was authorized to sign.⁸²

The difference in interpretation of the warranty of a transfer agent between the recommended Section 8-208 and that which was adopted in New York may lead to completely opposing views in a transfer in which the agent had reasonable grounds to believe the security was (or was not) in the form which the issuer was authorized to issue⁸³ but the agent was (or was not) authorized to sign.⁸⁴ Opposite results could very easily be reached under

⁷⁸ Ibid.

⁷⁹ Supra note 68.

⁸⁰ "Proper form" as defined by UCC § 8-102(2) (1958 Official Version).

⁸¹ In 1962 Official Comment 1, the Permanent Editorial Board expressed the prevailing case law as to the effect of authenticating trustees, transfer agents and registrars as *Jarvis v. Manhattan Beach Co.*, 148 N.Y. 652, 43 N.E. 68 (1896).

⁸² N.Y. Consol. Laws, Ch. 38: § 8-208.

⁸³ UCC § 8-208(1)(c), as recommended by the Permanent Editorial Board.

⁸⁴ UCC § 8-208 as enacted by New York. Supra note 82.

a statute which was designed to create uniformity among the states in commercial law.⁸⁵

SECTION 8-306.⁸⁶ Warranties on Presentment and Transfer

....

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery. [A broker is not an intermediary within the meaning of this subsection.]

....

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

By deleting the specific exclusion of brokers from subsection (3), the Permanent Editorial Board leaves the determination of the status of a person as a broker to the court in each individual case. Should the court determine the person to be an intermediary, the warranties of subsection (3) apply; while if he is a broker, those of subsection (5).

This change was precipitated by the revision of Section 8-306 in New York.⁸⁷

SECTION 8-308.⁸⁸ Indorsement, How Made; Special Indorsement; Indorser Not a Guarantor; Partial Assignment

....

(3) "An appropriate person" in subsection (1) means

....

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—*either that person or his successor*; or

....

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The inclusion of a fiduciary, one who had indorsed a security but who is no longer in a fiduciary capacity, as "an appropriate person" to indorse is intended to eliminate probable confusion caused by the conflict of the prior Section 8-308(3)(b) and Section 8-403(3)(a) which allows an issuer of a security to rely on a fiduciary relationship expressed in a security until notified otherwise.

The addition, Section 8-308(3)(b), relieves the issuer of a security to a fiduciary of the burden of inquiry as to the existence of the relationship at

⁸⁵ Supra note 54.

⁸⁶ Supra note 68.

⁸⁷ N.Y. Consol. Laws, Ch. 38: § 8-306.

⁸⁸ Supra note 68.

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the time of indorsement, and consequently gives added protection for the issuer.

SECTION 8-313.⁸⁹ When Delivery to the Purchaser Occurs; Purchaser's Broker as Holder

(1) Delivery to a purchaser occurs when

(e) *appropriate entries on the books of a clearing corporation are made under Section 8-320.*

[(2) Except as specified in subparagraphs (b) and (c) of subsection (1) the purchaser is not the holder of securities held for him by his broker despite a confirmation of purchase and a book entry and other indication that the security is part of a fungible bulk held for customers and despite the customer's acquisition of a proportionate property interest in the fungible bulk.]

(2) *The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.*

(3) *Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.*

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The inclusion of appropriate entries on the books of a clearing corporation as an instance when delivery to a purchaser occurs is required by the new Section 8-320.⁹⁰

New subsections (2) and (3) merely spell out the meaning which the Permanent Editorial Board had anticipated the replaced subsection (2) to have. These changes should in no way affect the determination of the status of a "holder" and "owner" of securities.⁹¹

SECTION 8-320.⁹² Transfer or Pledge within a Central Depository System

(1) *If a security*

(a) *is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and*

(b) *is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and*

(c) *is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making*

⁸⁹ Supra note 68.

⁹⁰ See UCC § 8-320, infra.

⁹¹ Compare the 1958 and 1962 Official Comments to UCC § 8-313.

⁹² Supra note 68.

of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (Section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (Sections 9-304 and 9-305).

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Section 8-320 is illustrative of the determination possessed by the Permanent Editorial Board in adhering to the principles and purposes of the Code "to permit the continued expansion of commercial practices through custom, usage and agreement of the parties."⁹³

The method of transferring or pledging securities by brokers and banks within a central depository system—a newly developing and commercially efficient method—is approved by Section 8-320. The Permanent Editorial Board also provided protection for the public and the issuing corporation from possible detrimental effects which may grow out of this method. These include the wrongful registering or transferring securities through a book transfer of the central depository,⁹⁴ or the doing of harm to an individual through an inappropriate book entry which is later withdrawn.⁹⁵

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-103.⁹⁶ Accounts, Contract Rights, General Intangibles and Equipment Relating to Another Jurisdiction; and Incoming Goods Already Subject to a Security Interest

⁹³ UCC § 1-102(2)(b).

⁹⁴ UCC § 8-320(4). Registration of the transfer must be made in accordance with Part 4 of Article 8.

⁹⁵ UCC § 8-320(5).

⁹⁶ Enacted by: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri (did not adopt subsection (5)), Montana, New York, Pennsylvania, Tennessee and West Virginia.

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....

(2) If the chief place of business of a debtor is in this state . . . then the security interest may be perfected by filing in this state. (*For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.*)

....

Optional subsection (5):

((5) Notwithstanding subsection (1) and Section 9-302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this state, this Article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.)⁹⁷

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The additions to Section 9-103 are optional and should be adopted by states whose commerce includes the financing of airplanes of foreign carriers and of international accounts receivable. This is so because they cover these areas which heretofore had been untouched by the Code. The optional modifications define the chief place of business of a foreign carrier for the purposes of perfecting a security interest in an airplane and also provides the sole method of perfecting a security interest in accounts receivable or contract rights which bear an appropriate relation to the state⁹⁸ when the assignor's records are kept in a foreign country.

Foreign air carriers are required to designate an agent in the United States upon whom process may be served.⁹⁹ It is not unusual for these carriers to take loans on the security of airplanes. The optional language in subsection (2) provides that the state in which this agent's office is located is the chief place of business of the principal foreign air carrier for the purpose of determining the validity and perfection of the security interest in its airplanes.

Although subsection (1) governs the perfection of security interests arising from sales on an open account basis by a foreign seller with an office in the United States to a resident of the United States, there was no provision for the perfection of security interests arising from foreign sales where the seller has no place of business in the United States. Optional subsection (5) covers this situation. It provides that such a security interest may *only* be perfected by notification to the account debtor as provided in the Code.¹⁰⁰

⁹⁷ Material within parenthesis is optional.

⁹⁸ Compare UCC § 1-105(1).

⁹⁹ Federal Aviation Act, 49 U.S.C.A. §§ 1301 et seq. (1958).

¹⁰⁰ See UCC §§ 9-112(b) (notice of intent to retain collateral); 9-309 (filing as

SECTION 9-206.¹⁰¹ Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists

(1) Subject to any statute or decision which establishes a different rule for buyers *or lessees* of consumer goods, an agreement by a buyer *or lessee* that he will not assert against an assignee any claim or defense which he may have against the seller *or lessor* is enforceable by an assignee. . . .

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The growth of lease financing has introduced problems which are parallel to those arising from conditional sales. The addition to Section 9-206 is intended to be their solution.

The expanded Section 9-206 is applicable to the assignment of leases as well as purchase money security interests, with the result that a clause waiving all defenses against a good faith assignee¹⁰² of a security agreement or a lease is valid, except where the defenses so waived could be asserted against a holder in due course of a negotiable instrument.¹⁰³

It is doubtful that the drafters intended to bring strict leases within the purview of Article 9, but rather their apparent intention was that it be limited to bailment leases.¹⁰⁴ If "leases" is interpreted to include strict leases and thus make them subject to the article's provisions, the result could well be that large corporations such as I.B.M., which leases large amounts of valuable equipment, would be required to file a financing statement in order to prevent its interest in the equipment from being subject to the claims of creditors of the lessee who hold a position of greater priority under Section 9-301.

SECTION 9-401. Place of Filing; Erroneous Filing; Removal of Collateral

(1)

(With no change in language or content, the options offered as subsection (1) have been rearranged.)

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

The alternatives for subsection (1) of Section 9-401, as set forth in the prior versions of the Code, have caused much confusion. The rearrangement

notice); 9-318 (notification for assignment); 9-504(3) (notification of sale of collateral on default); and 9-505(2) (notice of acceptance of collateral as discharge).

¹⁰¹ Enacted by: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

¹⁰² "Good faith assignee" as used in the text is spelled out in UCC § 9-206(1) as "an assignee who takes . . . for value, in good faith, and without notice of a claim or defense. . . ." Note that "value" is that which is defined in UCC § 1-201(44) and includes an executory promise as opposed to Article 3 "value" as in UCC § 3-303, which does not.

¹⁰³ See UCC § 3-305(2).

¹⁰⁴ This is a lease with an option-to-buy-provision which applies a portion of the payments to the purchase price. It is very commonly used in Pennsylvania. See *Commonwealth v. Two Ford Trucks*, 185 Pa. Super. 292, 137 A.2d 847 (1957).

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of the options into three distinct suggested subsections is designed to eliminate any question as to what recommended alternatives are suggested as places to file.¹⁰⁵ Very few of the jurisdictions which have enacted the Code adopted one of the offered alternative methods of filing without modifying it somewhat to conform to local practice.¹⁰⁶

SECTION 9-403.¹⁰⁷ What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

....
(2) Upon such lapse the security interest becomes unperfected. *A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.*
....

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Although the effectiveness of a filed financing statement for a demand obligation was included in the 1958 version of Section 9-403,¹⁰⁸ it was very possible that it could have been considered either as an obligation of five years or less, in which case the filing would have been effective for five years from filing *plus* a grace period of sixty days, or as "any other filed financing statement,"¹⁰⁹ the effectiveness of which is only five years. The additional language in subsection (2) eliminates this possible ambiguity.

The change should also make searches for filed statements more exact because of its definiteness in providing a time of termination for the effectiveness of all financing statements.

ARTICLE 10: EFFECTIVE DATE AND REPEALER

SECTION 10-104.¹¹⁰ Laws Not Repealed

(1)

*((2) This Act does not repeal. . . *, cited as the Uniform Act for the Simplification of Security Transfers, and if in any respect there is any inconsistency between that Act and the Article of this Act on investment securities (Article 8) the provisions of the former Act shall control.)¹¹¹*

¹⁰⁵ This clarification was suggested in an article by Robert Haydock, Jr., "Certainty and Convenience—Criteria for the Place of Filing Under the Uniform Commercial Code," 3 B.C. Ind. & Com. L. Rev. 179, 185 (1962), B.C. U.C.C. Co-Ord. 595, 604 (1963).

¹⁰⁶ See the table of the filing requirements for the eleven jurisdictions which have most recently adopted the code, *infra* Part III.

¹⁰⁷ Enacted by: Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Tennessee, West Virginia and Wisconsin.

¹⁰⁸ UCC § 9-403(2) provides:

A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and . . . sixty days. Any other filed financing statement is effective for a period of five years from the date of filing.

¹⁰⁹ *Ibid.*

¹¹⁰ Enacted by: District of Columbia, Indiana, Maryland, Missouri (does not include the inconsistency stipulation), Tennessee and West Virginia.

¹¹¹ See note 97, *supra*.

Note: At * in subsection (2) insert the statutory reference to the Uniform Act for the Simplification of Fiduciary Security Transfers if such Act has previously been enacted. If it has not been enacted, omit subsection (2).

REASON FOR AND PROBABLE EFFECT OF THE CHANGE

Subsection (2) of Section 10-104 is optional and should be adopted by those states which have enacted the Uniform Act for the Simplification of Fiduciary Security Transfers;¹¹² obviously it is unnecessary for the remaining states to adopt subsection (2).

Although Article 8 was intended to be a negotiable instrument law dealing with securities,¹¹³ the Permanent Editorial Board has recommended the retention of the widely enacted and satisfactory Uniform Act for the Simplification of Fiduciary Security Transfers in order to allay any doubts as to the protection afforded to transfers of securities by fiduciaries.

This amendment will not affect the uniformity desired by the Code,¹¹⁴ for results obtained under either Act should be identical.

III. FILING IN THE CODE STATES¹¹⁵

The majority of the twenty-nine states which have adopted the Uniform Commercial Code have selected one of the three optional methods of filing recommended in the official text.¹¹⁶ Some have made minor variations while others have made substantial departures. The following table of the requirements for filing in the eleven states¹¹⁷ included in this article is intended to give a general perspective of the degree of departure involved.

The table presents data which includes: the proper place to file,¹¹⁸ the various filing fees,¹¹⁹ special requirements concerning the form of the financing statement,¹²⁰ the effect of the debtor's change of residence; the place of business or location of the collateral,¹²¹ and the states in which a notation on the certificate of title of a motor vehicle supplants filing as a method of perfecting a security interest in the vehicle.¹²²

¹¹² This Act has been enacted in 35 states and the District of Columbia.

¹¹³ UCC § 8-101, 1962 Official Comment.

¹¹⁴ See note 54, *supra*.

¹¹⁵ This section is an updating of a table compiled by Robert Haydock, Jr., *supra* note 105, at 191, B.C. U.C.C. Co-Ord. at 611.

¹¹⁶ UCC § 9-401(1).

¹¹⁷ For the filing requirements of the eighteen states not herein included see note 3, *supra*.

¹¹⁸ UCC § 9-402.

¹¹⁹ UCC §§ 9-403 (financing statement); 9-404 (termination statement); 9-405 (statement of assignment); 9-406 (release statement); and 9-407 (information).

¹²⁰ UCC § 9-402.

¹²¹ UCC § 9-401(3).

¹²² UCC § 9-302.

California

1. *Place of Filing*—Second option,¹²³ except that there is no special filing as to fixtures¹²⁴ and there is special filing as to crops and timber. (a) File for farm-connected collateral¹²⁵ (other than crops or choses-in-action arising from the sale of farm goods) or consumer goods¹²⁶ with the county recorder in the county of the debtor's residence, or if the debtor is not a resident,¹²⁷ where the goods are kept. (b) For crops or timber to be cut, file with the county recorder in the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State.

2. *Form of Statement*—The financing statement must, in addition to mailing addresses of the secured party and the debtor, set forth the addresses of the residence and chief place of business of the debtor, if the debtor is an individual; the address of the chief place of business of the debtor, if the debtor is an organization; and the trade name or style of the debtor, if it is doing business as such. If the financing statement covers crops or timber to be cut, the real estate must be described.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*¹²⁸—For filing any statement, the fee is two dollars if it conforms with the standards prescribed by the Secretary of State, and three dollars if it conforms only with the requirements of the Code. The fee for an information certificate issued pursuant to Section 9-407 is one dollar plus an additional dollar for each statement of assignment contained therein. For a copy of a filed statement the fee is one dollar for the first page and fifty cents for all others.

5. *Motor Vehicles and Boats*—Note security interest on the certificate of title if one is required¹²⁹ unless the boat or vehicle is inventory.¹³⁰

¹²³ The options herein used are those set forth in the 1962 Official Version of UCC § 9-401.

¹²⁴ UCC § 9-102(1)(c) as added by California provides that priorities between conflicting security interests in fixtures are governed by real property law. California has entirely omitted UCC § 9-313.

¹²⁵ Farm-connected collateral as used throughout this table includes equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer.

¹²⁶ The revision of UCC § 9-401(a) by California appears ambiguous upon a cursory reading. However, the physical structure of that section allows but one meaning—only security interests in crops are excluded from being filed in the county of the debtor's residence.

¹²⁷ The California version of UCC § 9-401 (new subsection (5)) defines the residence of an organization as being the county in which it, in fact, has its chief place of business. This attempted clarification fails in its purpose since nowhere is "chief place of business" defined.

¹²⁸ California has interchanged UCC § 9-405 and 9-406 by assigning § 9-405 to release of collateral and § 9-406 to assignments.

¹²⁹ See Cal. Vehicle Code § 6301 (1963); Cal. Harb & Nav. § 718 (1963).

¹³⁰ UCC § 9-302(3)(b) as adopted by California.

District of Columbia

1. *Place of Filing*—First option. File for any type goods in the office of the Recorder of Deeds of the District.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For all statements, the fee is two dollars. The fee for an information statement issued pursuant to Section 9-407 is one dollar plus an additional fifty cents for each statement of assignment contained therein. For a copy of a filed statement the fee is three dollars for the first two pages plus one dollar for each additional page and fifty cents for certification.

5. *Motor Vehicles*—Note security interest on the certificate of title if one is required¹⁸¹ unless the vehicle is inventory.¹⁸²

Indiana

1. *Place of Filing*—Second option. (a) For farm-connected collateral¹⁸³ or consumer goods, file with the county recorder in the county of the debtor's residence, or if the debtor is not a resident of Indiana, in the county where the goods are kept. If the debtor is a corporation, file with the county recorder in the county where its principal place of business is located and in the office of the Secretary of State. For crops, also file with the county recorder in the county where the land lies. (b) File for fixtures with the county recorder in the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State.

2. *Form of Statement*—The debtor need not sign the financing statement if the security agreement authorizes the secured party to file a financing statement and such financing statement states that it is filed in accordance with a security agreement signed by the debtor and authorizing the filing of the statement.¹⁸⁴ Section 9-408(3)(b) authorizes the secretary of state to recommend filing forms. The provisions of the Intangibles Tax Act¹⁸⁵ and the provisions of Chapter 110 of the Acts of 1959¹⁸⁶ do not apply.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—One dollar for any type of statement with the following exceptions: one dollar for an information certificate issued pursuant to Section 9-407(2) without any other papers plus fifty cents for every statement reported therein; fifty cents per page for copies of any financing statement, and in addition one dollar per certificate if it is certified by the filing officer.

¹⁸¹ D.C. Code § 40-702 (1961).

¹⁸² Alternative subsection 3(b) of UCC § 9-302 adopted.

¹⁸³ UCC § 9-302(1)(c) has been amended to require filing in order to perfect a non-possessory purchase money security interest in farm equipment having a purchase price in excess of \$500.

¹⁸⁴ UCC § 9-402(2)(c) as added by Indiana.

¹⁸⁵ Ind. Ann. Stat. § 64-2731 (1962) imposes a tax on the sale, transfer, assignment, and the like of intangible property.

¹⁸⁶ Ind. Ann. Stat. § 39-3249 (1962) requires the identification of draftsmen of instruments transferring interests in real estate.

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5. *Motor Vehicles*—The Indiana certificate of title law requires notation on the certificate of title of only those liens outstanding at the time of issuance.¹³⁷ Alternative B of Section 9-302(3)(b) which was adopted by Indiana provides for perfection of a security interest in motor vehicles, not inventory, by a notation of the security interest on the certificate of title if the notation "can be indicated by a public official" on the certificate. The application of this section may be clarified by regulations prescribed by the Secretary of State pursuant to Section 9-408(3)(a).

Maine

1. *Place of Filing*—Third option, except that central filing is required for farm-connected collateral¹³⁸ and consumer goods¹³⁹ if the debtor is a non-resident, resides in an unorganized place or is a corporation; the second crop filing is with the registry of deeds in the county where the land lies. (a) For farm-connected collateral and consumer goods, file with the clerk of the municipality where the debtor resides, but if the debtor is a corporation, a non-resident or resides in an unorganized place, file with the Secretary of State. For crops, file also with the registry of deeds in the county where the land lies. (b) File for fixtures in the office of the registry of deeds in the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State, and, in addition, if the debtor is not a corporation and either has a place of business in only one municipality of the state or has a place of residence but no place of business in the state, file with the clerk of the municipality of such place of business or residence.

2. *Form of Statement*—A financing statement concerning crops or fixtures must contain a general description of the real estate and the name of the record owner.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For filing any type of statement, with the exception of a termination statement, the fee is two dollars if it conforms to the standards prescribed by the Secretary of State and three dollars if it does not; the fee for filing a termination statement is two dollars. Although Maine adopted Section 9-407, it deleted the provision in subsection (2) pertaining to information certificates; for copies of a statement issued pursuant to Section 9-407, the fee is one dollar plus fifty cents for each page above three in any one statement.

5. *Motor Vehicles*—Maine does not have a certificate of title law.

Maryland

1. *Place of Filing*—Maryland has not adopted any of the options set out in the official text of the Code. (a) File for fixtures with the circuit

¹³⁷ See Ind. Ann. Stat. § 47-2501 (1955).

¹³⁸ See note 133, *supra*.

¹³⁹ The filing exemption provided by UCC § 9-302(1)(d) for the perfection of a non-possessory purchase money security interest in consumer goods has been eliminated by Maine.

court clerk of the county where the land lies. (b) For all other collateral,¹⁴⁰ if the debtor is (1) a resident individual, file with the clerk of the circuit court in the county in which the debtor resides; (2) a non-resident individual or an organization, file with the clerk of the circuit court in the county of its chief place of business or (3) a non-resident individual or an organization with no place of business in Maryland, file in the office of the State Department of Assessments and Taxation. (c) For crops, file an additional financing statement with the clerk of the circuit court in the county where the land is located. In the above cases where Baltimore is the place in question, it is to be considered a county for filing purposes and the filing is with the Clerk of the Supreme Court of Baltimore City.

2. *Form of Statement*—The statements must be printed, in not less than 8 point type, or typed, in not less than elite type, in black on white paper of sufficient texture to be readable, of a size not to exceed 8½ by 14 inches; the printed matter is not to exceed 6½ by 10 inches. For statements smaller than maximum size, the upper and lower margins must each be at least two inches, while the side margins must each be at least one inch. All names must be typed or printed below the signature if one is used. The name and address of the person to whom the recorded statement is to be sent must be submitted with the statement. The financing statement must state whether or not the underlying transaction is subject to the Maryland Recordation Tax,¹⁴¹ and this fact, as well as the principal amount of the initial debt on which the tax will be based, must be indicated in the statement. When the collateral is fixtures, the statement must state conspicuously at its top "To be recorded in the Land Records," and if it is filed in a county where the block system of recording is used, the statement must sufficiently describe the realty or contain the block reference.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*¹⁴²—For filing any financing statement, the fee is the amount set by statute¹⁴³ which is subject to amendment. Should a statement with a rider attached be presented for photostating or microfilming, the fee is tripled if the statement is not readily subject to the process. Maryland did not adopt Section 9-407.¹⁴⁴

¹⁴⁰ Maryland has amended UCC § 9-302(1)(c) and (d) so as to require filing in order to perfect a non-possessory purchase money security interest in farm equipment and consumer goods having a purchase price in excess of \$500.

¹⁴¹ Md. Ann. Code art. 81, § § 277, 278 (Supp. 1962). The tax ranges from \$1.10 - \$2.20 per \$500 according to the county where filed. Section 278 imposes a sanction for evading the tax.

¹⁴² Md. Ann. Code art. 36, § 12(b) (Supp. 1962) (provides for all fees).

¹⁴³ Md. Ann. Code art. 36, § 12(a)(17) (Supp. 1962) (certificates for chattel securities, \$2 per page with the minimum charge being \$3 plus \$.50 per name for each name to be indexed).

¹⁴⁴ See Md. Ann. Code art. 36, § 12(14) (Supp. 1962) (provides that the cost of duplicate copies of statements on record shall not exceed one-half the cost of the original papers plus \$.75 for certification).

5. *Motor Vehicles*—Although Maryland has a certificate of title law, it is not for the purpose of perfecting security interests.¹⁴⁵ Filing provisions of the Code, therefore, apply to motor vehicles.

Missouri

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods, file with the recorder of deeds of the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also with the recorder of deeds of the county where the land lies. (b) File for fixtures with the recorder of deeds in the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State, and if the debtor has a place of business in only one county in Missouri, file also with the recorder of deeds of that county; or where the debtor has no place of business in Missouri, but is a resident, file also with the recorder of deeds of the county in which he resides.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For the filing of all statements, the fee is fifty cents. Missouri did not adopt Section 9-407.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required¹⁴⁶ unless the vehicle is inventory.¹⁴⁷

Montana

1. *Place of Filing*—Second option. (a) For farm-connected collateral or consumer goods, file with the county clerk and recorder in the county in which the debtor resides, or if the debtor is not a resident of Montana, in the county in which the goods are kept. For crops, also file with the county clerk and recorder in the county where the land is located. (b) File for fixtures with the county clerk and recorder of the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—One dollar for all statements, unless the recording entails a photographic process, in which case the fee is two dollars per page. If the collateral is rolling stock of street railways, the fee is fifteen dollars. The fee is one dollar plus thirty cents for each statement contained in a certificate issued pursuant to Section 9-407 in addition to a fee of fifty cents per page for the copy of the statement.

¹⁴⁵ Md. Ann. Code art. 66½, § 24 (1957). See also Maryland amendments to UCC § 9-302. Applications for certificates of title in Maryland should continue to disclose outstanding security interests at the time of application, since failure to do so might be a basis for invalidating a security interest on grounds related to estoppel.

¹⁴⁶ See Mo. Rev. Stat. § 301.190 (1959).

¹⁴⁷ See note 132, *supra*.

5. *Motor Vehicles*—Note security interest on the certificate of title if one has been issued or is required.¹⁴⁸

Nebraska

1. *Place of Filing*—Nebraska has not adopted any of the options set out in the official text of the Code. (a) For unharvested crops, file with the county clerk in the county where the land lies. (b) File for fixtures in the office where a mortgage on the real estate concerned would be filed. (c) For all other collateral (1) if the debtor is a resident, file with the county clerk of the county in which he resides;¹⁴⁹ (2) if the debtor is a non-resident and the collateral is within the state, file with the county clerk of the county where the collateral is located at the time of execution, *unless* the collateral is to be moved and kept in another county, in which case file with the county clerk of that county; (3) if the debtor is a non-resident and the collateral is outside the state at the time of execution, but is going to be kept in the state, file with the county clerk of the county where it will be kept; and (4) if the debtor is a non-resident and the collateral is to be kept in different counties, file with the county clerk in each county where any part of the collateral is to be kept. Filing in a county will only protect the security interest in collateral kept in that county.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For a statement of release, termination or assignment contained within a financing statement, the fee is fifty cents. For all other statements, the fee is one dollar. Nebraska did not adopt Section 9-407.

5. *Motor Vehicles*—Note security interest on the certificate of title if one has been issued or is required.¹⁵⁰

Tennessee

1. *Place of Filing*—Second option. (a) For farm-connected collateral¹⁵¹ or consumer goods, file with the register of the county in which the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also with the register in the county where the land lies. (b) File for

¹⁴⁸ See Mont. Rev. Codes Ann. § 53-107 (1947).

¹⁴⁹ UCC § 9-401(1)(c), as enacted by Nebraska, provides that, for purposes of filing, the county of residence of a corporation is where the office of its last resident agent is located. If a partnership or other unincorporated entity maintains a place of business in Nebraska it is a resident and unless another designation is given in the security instrument which would be controlling, its residence for the purpose of filing is its Nebraska principal place of business. The county of residence for the purpose of filing of a debtor comprised of joint venturers, one of whom is a resident, is the county in which he resides.

¹⁵⁰ See Neb. Rev. Stat. § 60-110 (Supp. 1963). A certificate of title is not required on newly manufactured automobiles held by a dealer for resale, but one must be delivered upon the resale. Nebraska has amended UCC § 9-302(3)(b) so as to allow perfection of a security interest in these autos where the secured party was required to retain the manufacturer's certificate of origin.

¹⁵¹ *Supra* note 133.

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fixtures with the register in the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State.

2. *Form of Statement*—A financing statement covering crops or fixtures, in addition to describing the real estate, must give the name of the record owner of the real estate.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For a financing continuation statement or a financing statement indicating an assignment, the fee is two dollars; for a release or termination statement, one dollar. For an information certificate issued pursuant to Section 9-407, the fee is one dollar plus fifty cents for each assignment or financing statement reported therein and fifty cents per page for a copy of a financing statement or statement of assignment.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.¹⁵²

West Virginia

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods, file with the county clerk in the county of the debtor's residence, or if the debtor is not a resident, in the county where the goods are kept. For crops, file also in the office of the county clerk where the land lies. (b) File for fixtures with the clerk of the county court of the county where the land lies. (c) For all other collateral, file in the office of the Secretary of State. In addition, where the debtor has a place of business in only one county of the state, file also with the county clerk of such county, or if the debtor has no place of business in the state, but resides in the state, file also with the county clerk of the county in which he resides.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—New filing required within four months.

4. *Fees*—For all statements, the fee is one dollar. West Virginia did not adopt Section 9-407.

5. *Motor Vehicles*—Note security interest on the certificate of title if one has been issued or is required.¹⁵³

Wisconsin

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods,¹⁵⁴ file with the register of deeds in the county of the debtor's residence, or if the debtor is not a resident, in the county where the goods are kept. For crops, file also with the register of deeds in the county where the land lies. (b) File for fixtures with the register of deeds of the county where the land lies. (c) For all other collateral, file with the Secretary of State and in addition, file with the register of deeds in the

¹⁵² See Tenn. Code Ann. § 59-314 (1955).

¹⁵³ See W. Va. Code Ann. § 1721(130), 1721(151a)-1721(151o) (1961).

¹⁵⁴ Wisconsin has amended UCC § 9-302(1)(c) and (d) so as to require filing in order to perfect a non-possessory security interest in farm equipment and consumer goods with a purchase price in excess of \$250.

county where: (1) the debtor's principal place of business is located if it is within the state; (2) the residence of the debtor is located if it is within the state and the debtor has no place of business in the state; and (3) the collateral is to be kept within the state if the debtor is a non-resident and has no place of business in the state.

2. *Form of Statement*—A financing statement concerning crops or fixtures must also contain the name of the record owner, as well as a description of the real estate.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—For the filing of all statements, the fee is one dollar. In enacting Section 9-407, Wisconsin deleted subsection (2). The result of this deletion is that the only information obtainable from the filing officer, pursuant to Section 9-407, is the time and day of filing noted on a copy supplied by the person filing. Section 9-407 also provided that the return of the copy to the person who had filed it is not a certification by the filing officer that the copy is a true one.

5. *Motor Vehicles*—Note security interest on the certificate of title if one has been issued or is required.¹⁵⁵

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¹⁵⁵ See Wis. Stat. § 342.10 (1961).