



DELBERT HOSEMANN
Secretary of State

2012 Business Law Reform Study Groups
Minutes of the UCC Study Group, Meeting #1
August 23, 2012

This meeting of the Uniform Commercial Code (UCC) Study Group (hereinafter the “Study Group” or the “Committee”) was called to order on Thursday, August 23, 2012 at 11:05 A.M. at the Office of the Secretary of State, 401 Mississippi Street, Jackson, Mississippi. A list of the participants is attached as Exhibit A.

Welcome

Drew Snyder, Assistant Secretary of State of Policy and Research, welcomed the group and thanked all for their willingness to serve. Mr. Snyder reviewed some of the past topics considered by study groups and the topics being reviewed by other study groups this year. He introduced the Secretary of State staffers who were present for the meeting. The group members introduced themselves and Mr. Snyder recognized Rod Clement of Bradley Arant Boult Cummings for providing lunch for the group.

Remarks by the Secretary

Secretary Hosemann welcomed and thanked all the members. A similar UCC study group met two years ago and Secretary Hosemann commented on the good work done by that study group and that the legislative proposals developed by the group were passed by the State Legislature. Secretary Hosemann also commented on the progress the Secretary of State’s Business Services Division and IT department had made in implementing online UCC filings over the past year.

Remarks by Tom Riley on Article 9 and Fraudulent UCC Filings

Tom Riley, Assistant Secretary of State of Business Services, stated that the Business Services Division receives over 300,000 UCC filings per year, with about seventy-five percent (75%) of those being filed electronically. The online system captures the document as it is entered, so the new system helps eliminate human error when entering the name of the debtor. In addition to the Article 9 amendments, Mr. Riley recommended the group consider fraudulent UCC filing legislation. The number of bogus filing is only four to five per month, but these filings are a big issue for the officials who get fraudulent UCC filings against them. This

is a problem around the country and becoming a problem in Mississippi. There are laws in other states that we can adopt to address these issues.

Group Discussion on Article 9

Drew Snyder asked Mr. Clement to initiate the discussion on issues related to the adoption of the Uniform Law Commission's 2010 Amendment to Article 9. Mr. Clement requested the Secretary of State's Office obtain information from the Department of Public Safety (DPS) on how DPS determines names, names changes, etc. Individual names will be an issue. Mr. Riley stated he had contacted DPS about accent marks and other punctuation and was informed those are not used by DPS in names.

Mr. Clement also suggested reviewing Section 2-719(4). The limitation on remedies needs a small change because of a change made after that section was reviewed by the previous study group. Currently, the law allows remedies to be disclaimed, but the remedies cannot be limited.

The group began discussing the name of the debtor and the amendments to Article 9. The name of the debtor is important for perfection and searching. A standard search picks up only exactly what is entered. A non-standard search will find much more. The legal standard is that a secured party is properly perfected when the filing appears in a standard search.

The amendments provide that an individual does not have to search every variation of a name; instead, the name shown on the driver's license is sufficient. Secretary Hosemann stated that he felt tying this to the driver's license could present problems if errors were present in the drivers' license database.

John Tucker said that small lenders, such as Tower Loan, prefer the safe harbor provision in Alternative B of Article 9, but other group members stated that Alternative A also provides for cases where a borrower has no driver's license. Others also stated that Alternative A provides a more specific rule to make perfection easier.

There are two important points in the amendment. First, if the borrower has a driver's license and the lender uses the name as it appears on the license, then the lender is perfected. Second, if another lender uses the driver's license to search for prior liens the lender will be able to easily find those liens.

Secretary Hosemann raised the issue of expired licenses. With many Mississippians having expired licenses, would perfection only occur with unexpired licenses? Cliff Harrison commented that the language of Alternative A says a driver's license of this state that is not expired. Mr. Harrison noted there is a fallback for those without driver's licenses; the lender would put the individual's name or first personal name and surname.

The issue is not just the ease of perfecting the first time, which may be easier under Alternative B, but also searching for prior liens. Under Alternative A, if the debtor has a driver's license, the lender will search for the name on the drivers' license.

After much discussion on Alternative A and Alternative B, Mr. Clement suggested that an entire session may need to be devoted to the issue. Questions were also raised as to the

accuracy of the driver's licenses, for example: name changes after marriage – do the driver's licenses accurately reflect the name or do some people wait until it expires to change the name on the driver's license. Another question for later discussion was whether the few states who adopted Alternative B had specific reasons for adopting that Alternative. Secretary Hosemann suggested including non-driver's identification issued by DPS.

Additional changes in the amendment included adding that the name on the "public organic record" as the name to be used for an organization. Also, a secured party could file a correction statement whereas the current version only allows the debtor to file the statement. It is not a correction issue, but an issue of authority to file.

Tom Riley raised the concern that a UCC filing could have the name correct, but a typing error in the filing office could result in the filing not appearing in the standard search. If a lender finds this using a non-standard search would they still lend knowing the previous lender was unperfected because it was entered incorrectly by the filing office? A group member suggested that the result would be the same under either Alternative. The question is what name or how many variations must be checked when doing a standard search. There was additional discussion on typographical errors and previous issues caused by such problems. The group also discussed the issue in the context of fixture filings and land records, and using A/K/A to cover all names.

Secretary Hosemann asked the group to again consider the driver's licenses issues and the potential issues the office may face for typographical errors. The group discussed the issue and it was stated that there is a difference between (1) knowing that you are perfected because you use the driver's license and (2) deciding what type of search requirements the lender should use to ensure there is nothing previously filed. The issue of the standard search was again discussed, including possibly expanding the standard search.

Fraudulent UCC filings

Mr. Riley began discussing fraudulent UCC filings. These are usually filed by "freemen" or "sovereign citizens." The idea is that the freeman claims an interest in his body and everything he owns. This is to keep the government from claiming any interest in his property. People also file these against public officials who they do not like, such as VA officials or the Governor. Mississippi needs a way to deal with these before they are filed. Currently, if the form is correctly filled, it must be accepted. There are several options in different states that can be considered to help stop this. Several examples of fraudulent filings were also discussed, including individuals putting bloody thumb prints on the filings.

Additional Issues to Consider in the Next Meeting

Before closing, Mr. Clement discussed adding the definition of good faith in Article 9 of the UCC. There was some discussion on this topic and that the definition is already included in Article 1. Also there was an issue raised on where to file common law trusts.

Closing

Mr. Snyder reviewed goals for the next meeting. The group should determine whether to recommend Alternative A, B, or neither. The group will also need to discuss which remedies Mississippi should use to cut down on fraudulent UCC filings. Policy and Research will conduct some research on the issues raised during the meeting such as name changes, drivers' license changes, and the good faith definition. Drew Snyder and Secretary Hosemann thanked everyone for their participation and the meeting was adjourned at 12:45 PM.

EXHIBIT A
UCC Study Group, Meeting # 1
August 23, 2012

Participants

Members:

1. Les Alvis (phone)
2. Cheryn Baker (phone)
3. Betty Morgan Benton
4. Rod Clement
5. Gordon Fellows
6. Jerome Hafter
7. Cliff Harrison
8. Mary Largent Purvis (phone)
9. Jeff Stancill
10. John Tucker

Secretary of State's Office:

1. Delbert Hosemann, Secretary of State
2. Justin Fitch, Senior Attorney, Division of Policy and Research
3. Lin Floyd, Special Assistant / Legislative Director
4. Preston Goff, Attorney, Policy and Research Division
5. Diane Hawks, Chief of Staff
6. Tom Riley, Assistant Secretary of State of Business Services
7. Drew Snyder, Assistant Secretary of State of Policy and Research