Update on Consumer Issues in the UCC Article 9 Revision Project

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I. Introduction

Previous articles in this journal have taken an introductory look at the Uniform Commercial Code ("UCC") Article 9 revision project, providing an overall perspective as well as commentary on some of the proposed revisions. Future articles will explore individual issues in greater detail and will provide additional perspectives on the proposed revisions from varying viewpoints, as the Quarterly Report and the姿势 Institute's Quarterly Update on Article 9 Revision continue.

II. Repossessions and Deficiency Judgments

The November, 1993 discussion of consumer issues began with a report by Michael Perry, an attorney with Legal Services of Eastern Missouri, describing what he called a systemic failure of the UCC to protect consumer debtors from unscrupulous lenders who sell collateral to below-market prices in order to maximize the deficiency judgment. In many cases, this failure has resulted in the repossession of essential property, such as clothing, appliances, and furniture, without adequate notice or opportunity to contest the judgment.

III. Other Remedies Issues and the Search for Perfect Justice

The package of Article 9 revisions being advocated by consumer representatives includes a "true" bar date and deficiency judgment if the creditor does not file an action within one year. This approach aims to prevent the creditor from enforcing a deficiency judgment, even if compliance with Article 9 is not timely or properly conducted. The conference also discussed the need for a true bar date, which would prevent the creditor from enforcing a deficiency judgment, even if compliance with Article 9 is not timely or properly conducted.

For more information, please refer to the full article in the Quarterly Report.
technicalities every time a debtor defaults, no matter how much that would help the individual debtor who lost her job and now can't pay. Such a lender may be tempted to simply abandon that market and invest elsewhere. There is no government agency to fit the void, and no Community Reinvestment Act reforms can successfully substitute for a shortage of willing lenders. If more legitimate lenders abandon these markets and others tighten their credit terms accordingly, the result will be to add one more dimension to the urban credit crunch for marginal borrowers.

IV. Real Estate Contractual Interests

The Article 9 Reporters have floated a fascinating proposal to recognize in Article 9 a new class of interests deriving from real estate mortgages and land sales contracts. In effect, any right to receive payment pursuant to a mortgage or a land sale contract would be treated as personal property subject to Article 9. For example, the secured lender who properly perfected a security interest in a promissory note secured by a mortgage could enforce the claim against the debtor's rights in both the note and the mortgage, eliminating the old situation where a secured party could claim one but not the other under Article 9.12 This would not affect real estate interests, including recorded real estate mortgages or assignees who recorded an assignment of the mortgage under real property law. But absent such a competing claim it would permit the Article 9 secured party to pre-claim, for example, against the debtor's estate in bankruptcy.

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Your author finds this idea intriguing and worthy of serious consideration. It also has interesting potential implications in the context of various real estate-related oil and gas contracts, possibly including production payments contracts and operating agreements, which have proved to be troublesome to the American Bar Association UCC Task Force on Oil and Gas Finance that has been studying the implications of Article 9 on behalf of the Drafting Committee. At the November 1993 meeting there was open discussion as to whether this proposal (if adopted) should recognize a specific new category of Article 9 collateral (i.e., "realty paper" or "realty receivables"), or should merely expand the current definition of general intangibles. While your author tends to favor the former approach, on grounds that "realty paper" is like "chattel paper" (already recognized at UCC section 9-105(b)(2)) in that it represents a discrete category of property with certain unique characteristics, there was considerable support at the meeting for the other view, partly on grounds that this would not require modification of existing security agreements. It will be interesting to see how this creative new concept develops during the revision process.

V. Choice of Law and Perfection by Filing

One of the most drastic of the proposed Article 9 revisions is the proposal to provide for perfection of a security interest in certain tangible personal property by filing a financing statement in the state where the debtor is located, irrespective of the location of the collateral. This would continue a trend reflected in the 1972 Article 9 revisions (and evident in


13. See also, the Article 9 Reporters comments and the Drafting Committee's UCC Article 9-102(b)(3) (Text 3/23/92).

14. The "notice of filing" would be protected in the Quarterly Report, supra note 11, at 79, 75.


16. The frame "notice of filing" shall be used throughout in the Quarterly Report, supra note 11, at 79, 75.