Financial Institutions and Commercial Law
Section: Oklahoma Enacts 2010 Amendments to UCC Article 9

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By Alvin C. Harrell and Fred H. Miller

INTRODUCTION

In 2010, the uniform text of Uniform Commercial Code (UCC) Article 9 (governing security interests in personal property and fixtures) was revised by the sponsoring organizations. Consistent with longstanding practice, the 2010 amendments to the uniform text (2010 amendments) were then offered to the states for enactment into law. The 2010 amendments essentially represent a fine-tuning of Article 9 as to a handful of problem areas that warranted further clarification after the comprehensive revisions to the uniform text in 1998 (with technical amendments in 1999).

BACKGROUND

The 1998-1999 revisions to Article 9 rank as probably the most successful uniform law revision project in history, in terms of scope and effect and also in terms of prompt enactment (being enacted in all U.S. jurisdictions within the three-year uniform enactment period). As had been the case with other recent UCC revisions, Oklahoma was among the first states to enact the 1998-1999 revisions. Given that the 2010 amendments represent relatively modest and uncontroversial changes to the 1998-1999 uniform text, in nearly all instances merely clarifying existing UCC (and Oklahoma) law, many observers expected that Oklahoma would quickly enact the 2010 amendments as well. But that was not to be.

ENACTMENT OF THE 2010 AMENDMENTS IN OKLAHOMA

In May 2015, Oklahoma became the last state to enact the 2010 amendments, doing so outside the uniform enactment period, meaning that there is a gap between the uniform effective date of July 1, 2013, applicable in most other jurisdictions, and the Nov. 1, 2015, effective date of the 2010 amendments in Oklahoma. For issues and transactions arising in this gap period, there is some risk that Oklahoma law may be different (or at least less clear) than the law of other jurisdictions.

OKLAHOMA COMMENTS

Recognizing the need to address this situation, in 2014 the UCC Committee of the OBA Financial Institutions and Commercial Law Section reconvened its Legislative Review Subcommittee to draft new (2014) Oklahoma Comments for Oklahoma’s UCC Article 9, as published in the Oklahoma Statutes Annotated. The result was 2014 Oklahoma Comments for UCC Article 9, published in the latest hardback edition of the Oklahoma Statutes Annotated for Title 12A, along with the then-current text of Oklahoma Article 9 (which did not include the 2010 amendments). Also included in the hardback edition are: the pre-2010 Official Comments and the earlier Oklahoma Comments addressing the impact in Oklahoma of the 1998-1999 revision to Article 9.
Thus, the hardback edition of Title 12A includes three sets of UCC Comments: the pre-2010 Official Comments; the 1998-1999 Oklahoma Comments; and 2014 Oklahoma Comments addressing the impact of Oklahoma's failure at that time to enact the 2010 amendments. The 2014 Oklahoma Comments continue to have relevance to transactions subject to Oklahoma Article 9 before the Nov. 1, 2015, effective date of Oklahoma's enactment of the 2010 amendments. However, Oklahoma's June 2015 enactment of the 2010 amendments then required a further updating of the 2014 Oklahoma Comments, to address the effects of the 2015 enactment. Thus, the Legislative Review Subcommittee reconvened to draft 2015 Oklahoma Comments for publication in a new pocket part supplement to Title 12A (along with the new statutory text and Official Comments reflecting the 2010 amendments).

THE 2010 AMENDMENTS

While the 2010 amendments are mostly clarifications of prior law (including some, as noted in the 2014 and 2015 Oklahoma Comments, that appear only in Official Comments to the uniform text), there are a few places where clarification required revisions to the statutory text in ways that change prior law.9 The two most important of these are at section 9-503 (affecting the name of an individual debtor as shown on a form UCC-1 (Article 9 financing statement)), and section 9-316 (affecting the grace period for automatic perfection of a security interest when the place to file changes by reason of a change in the location of the debtor or the collateral).10 This is not the place for a full explanation of the impact of these changes,11 but interested parties should be aware of the need to consider the issues. There are also some changes to the requirements for the safe-harbor model forms, at sections 9-516 and 9-521, which may warrant some updating efforts.

Additionally, clarifications are made in the 2010 amendments (and/or the Official Comments) which relate to such things as: electronic authentication (section 9-102(a)(7)); certificates of title (sections 9-102(a)(10) and 9-311);12 “control” (sections 9-104 and 9-105); anti-assignment clauses (sections 9-406 and 9-408); and disposition sales of collateral (sections 9-611 and 9-613). While these clarifications may not require changes in parties' practices or procedures (an issue that must be considered on a case-by-case basis in the context of a specific scenario), as they largely restate existing law, nonetheless interested parties may need to be aware of any potential impact in a given transaction.

CONCLUSION

It is surprising that such uncontroversial clarifications of the law, as embodied in the 2010 amendments, would spark resistance as they did in the Oklahoma Legislature so as to delay the enactment for five years (thereby creating potential and unwarranted transition and choice of law problems for Oklahoma transactions). Hopefully, the 2015 Oklahoma Comments will help to minimize these problems, and over time the resulting potential complexities can be minimized. The narrow scope of the changes and the broad consistency with prior law also should help. Most importantly, however, going forward this important Oklahoma law is once again consistent with the law in all other states.

1. See NCCUSL, http://www.uniformlaws.org/. The sponsoring organizations are: The Uniform Law Commission (ULA), also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL); and the American Law Institute (ALI); with the active participation of the American Bar Association (ABA) and many other parties and organizations.

2. The NCCUSL was organized by the states in 1892, and offered the Uniform Sales Act (precursor to UCC Article 2) for enactment by the states in 1906.


4. See UCC Article 9, Secured Transactions (1998) Summary, available at http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%209%20Secured%20Transactions%20(1998). Oklahoma has a claim to significant credit for this success. The Co-Reporter for the 1998-1999 revision was former Oklahoma lawyer and OU Adjunct Professor Charles W. Mooney Jr., and University of Oklahoma Law Professor Fred H. Miller was the Executive Director of NCCUSL throughout the revision and enactment process.

5. Oklahoma Enrolled House Bill No. 1773 passed the legislature in May 2015 and was signed by Governor Mary Fallin on June 4, 2015 (to be codified in scattered sections of Tit. 12A Okla. Stat. §§1-9-101 et seq.).

6. As noted below, the 2014 and 2015 Oklahoma Comments are designed in part to address this problem. See, e.g., Fred H. Miller, Oklahoma Comments and the 2010 Amendments to UCC Article 9, 68 Consumer Fin. L. Q. Rep. 360 (2014).


9. For additional overviews of the 2010 amendments, see, e.g.: Alvin C. Harrell, The 2010 Amendments to the Uniform Text of Article 9, 65 Consumer Fin. L. Q. Rep. 138 (2011); Thomas J. Buiteweg, Revised UCC Article 9 Provisions Affecting Vehicle Finance, id. at 147.

10. See generally sources cited supra at notes 6, 7 & 9.

11. That is a role for the 2015 Oklahoma Comments, which cover these issues. See also other sources cited supra at notes 6-9.

12. See also: sources cited supra at note 9; and for discussion of related issues, see, e.g., Julie R. Caggiano & Alvin C. Harrell, Common Certificate of Title Litigation and UCC Article 9 Issues, and the Impact of CT Laws, 65 Consumer Fin. L.Q. Rep. 446 (2011).

ABOUT THE AUTHORS

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