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The Uniform Commercial Code Survey: Introduction

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The survey that follows highlights the most important developments of 2012 dealing with domestic sales of goods, personal property leases, payments, letters of credit, documents of title, investment securities, and secured transactions. Along with the usual descriptions of interesting judicial decisions in these areas, which are highlighted in the survey, there also has been important legislative progress. The 2010 amendments to U.C.C. Article 9,1 which are proposed to become effective in all jurisdictions that adopt them on July 1, 2013,2 have been adopted in forty-four states and the District of Columbia and Puerto Rico, and more states have legislation pending.3 Those revisions were summarized in the Introduction to the 2009 survey.4 Additionally, the 2012 amendments to U.C.C. Article 4A, which address issues related to the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), have been adopted by thirty-six states and the District of Columbia, and introduced in three others.5 The payments survey includes important details about the revisions related to remittance transfers in the wake of Dodd-Frank and the corresponding "fixes" to section 4A-108.6

Other legislative initiatives have seen modest adoptions. In 2011, the Uniform Law Commission completed a new Uniform Certificate of Title for Vessels Act that is designed to harmonize state certificate of title laws with federal laws

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2. See id. § 9-801.
regarding vessels, and with Article 9 to impede theft and facilitate boat financ-
ing. This has been adopted by the State of Virginia and is under consideration
in the State of Connecticut. Adoption of the 2003 revisions of Article 7 contin-
ues, with the adoption in 2013 by the District of Columbia and introductions in
Massachusetts and New Jersey.

On the judicial front, 2012 produced some cases that contributed to clarifying
continuing, yet uncertain, commercial law issues. The year has seen modest,
but interesting Article 7 case law, including a case involving a priority fight
between two warehouse lienholders and a perfected secured creditor of a coal
distributor. This notable case serves as a reminder that secured parties should
bear in mind that the debtor may have entered into storage agreements prior to
the attachment of the security interest that may have priority over the secured
creditor's claim to the collateral. The many cases involving leasing provide use-
ful guidance for practitioners. For instance, a case involving a finance lease for a
copier in which there was some doubt as to whether acceptance occurred dem-
strates that a signed, written certificate of delivery and acceptance continues to
be a best practice for lessors and lenders to reduce ambiguity. Additionally, this
case demonstrates the impact and importance of waivers of rights and remedies
under Article 2A, especially given that such waivers are becoming increasingly
common in commercial leases.

There were also interesting developments under Article 2, including a case in-
volving the installation of a "smart home system" in a new construction home
that identified factors that can be useful in the application of the "predominant
purpose" test to determine whether Article 2, or common law, applies to dis-
putes. The investment securities survey highlights a case in which the Eleventh
Circuit reversed a lower court's decision concerning whether the purchaser of an
interest in securities accounts had control under U.C.C. section 8-106(d)(2) so
as to defeat the interest of a judgment creditor, holding that the purchaser did
have control. Finally, among the interesting judicial decisions of the past
year were a number of decisions in which courts grappled with the application
of classic U.C.C. doctrines and the extent to which common law theories survive

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7. The final act approved at the 2011 annual meeting of the Uniform Law Commis-
sion can be accessed at http://www.law.upenn.edu/bil/archives/ulc/cotab/UCOTVA-
8. See Legislative Fact Sheet—Certificate of Title for Vessels Act, UNIF. L. COMM'N,
http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Certificate%20of%20Title%20for%20Vessels%20Act
(last visited May 17, 2013).
9. See Legislative Fact Sheet—UCC Article 7, Documents of Title (2003), UNIF. L. COMM'N,
http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=UCC%20Article%207,%20Documents%20of
10. See Anthony B. Schutz, Article 7: Documents of Title, 68 Bus. LAW. 1239, 1240-41 (2013).
11. See id. at 1241.
12. See Robert Downey, Barry A. Graynor & Stephen Whelan, Leases, 68 Bus. LAW. 1191, 1194
(2013).
15. See Veltri & Cavanaugh, supra note 6, at 1212-13.