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**ABA to Represent Industry at Drafting Committee Meeting on Asset Freezing Orders Act**

A Drafting Committee to create a Uniform Act on Asset Freezing Orders will meet for two days of discussions beginning November 19 in Washington, DC. This is one of several committee meetings of the National Conference of Commissioners on Uniform State Laws to be held over the weekend. NCCUSL is the national organization which develops and promotes uniform state laws. Once an act is approved by NCCUSL, it frequently is submitted to state legislatures for consideration.

The draft and other materials to be considered at the Drafting Committee meeting can be found at [http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov\\_draft.pdf](http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov_draft.pdf), [http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov\\_agenda.pdf](http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov_agenda.pdf), and [http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov4\\_memo.pdf](http://www.law.upenn.edu/bll/archives/ulc/afoa/2010nov4_memo.pdf). ABA will represent the industry at the meeting.

As the Reporter's memorandum accompanying the draft of the Act indicates, "[t]he evil to be addressed by an asset freezing order is the dissipation of assets by a party leaving nothing to satisfy the underlying claim if judgment is ultimately entered." This is one reason that an asset freezing order is important to creditors.

At the same time, "[t]he issuance of an asset freezing order can have a significant effect on the party against whom it is issued and on third parties charged with compliance with the order. Accordingly, the study committee concluded that there should be a rigorous standard which had to be met before an asset freezing order could be issued. Section 2 of this draft contains the standards for issuance."

Another important provision is Section 6(2). It "is designed to provide protection for third parties, like banks, who may hold the assets of a party against whom an asset freezing order is entered. This provision requires indemnification of the reasonable costs of compliance with an asset freezing order regardless of whether the order was issued appropriately or not. This provision is taken from English law."

According to the Reporter's memorandum, "[t]he enforcement of asset freezing orders issued by state courts is problematic under the current state of the law, because those orders are not final orders or judgments. They are not enforceable in sister states under the Full Faith & Credit Clause but may be enforceable under the doctrine of comity. Likewise, there is no uniform law for the enforcement of asset freezing orders issued by foreign states. The study committee recognized that a uniform law would have to contain special provisions for the enforcement of asset freezing orders. Section 6 contains those special provisions."

"Section 7(1) relates to the enforcement of asset freezing orders in sister states. . . . Section 7(2) concerns enforcement of asset freezing orders of courts of foreign states and adopts the same approach as Section 7(1)."

Note the limits contained in the charge to the Committee: "Resolved, that a drafting committee be formed to draft an act on asset freezing orders, and that the act shall exclude coverage of asset freezing orders against consumer debtors or in domestic relations matters, and other similar matters." [See Section 8 of the draft.]

Should you have comments on the draft or other materials to be considered at the Drafting Committee meeting, please contact ABA's L.H. Wilson at (202) 663-5030 or [lwilson@aba.com](mailto:lwilson@aba.com).

### **ABA Comments on Draft of Manufactured Housing Act**

As noted in the October issue of ABA UCC/Uniform Law News, a meeting of the NCCUSL Drafting Committee to create a Manufactured Housing Act was held in mid-October. Because of the Act's potential impact on financial institutions, an ABA Working Group on Manufactured Housing was formed to provide input to the Drafting Committee. Members of our Working Group reviewed the draft of the Act and held a conference call to discuss issues in more detail.

ABA's 10/13/10 comment letter recognized the benefits of uniform state laws governing conveying and encumbering manufactured homes. However, several concerns with and objections to the draft were noted. "Many of our points are stated eloquently in Marc Lifset's 9/30/10 letter . . . , and it would be redundant to reiterate them here. Suffice it to say, we support the concerns and objections contained in the Lifset letter."

The ABA letter notes that "[t]he general thrust of the draft is designed to ensure that a manufactured home purchaser acquires the home as real property. In a nutshell, the primary author of the draft advocates treating all manufactured homes as real property once they leave a retailer's inventory. For the reasons outlined in the Lifset letter, we do not agree with this approach."

"Our Working Group members report no significant problems in this area to justify the radical overhaul of multiple types of laws necessary to achieve the goals of the draft. There is no compelling need for such a wide-ranging project. Moreover, the changes contained in the draft would have unintended consequences - they would increase the costs of housing intended to be affordable and make transactions more complex. The ABA Group feels that narrowly-tailored amendments of the type noted in the Lifset letter in the few states where needed would be a much better approach."

The ABA Working Group will continue to follow this drafting project closely. There is still time if you would like to join our Group. Composed of financial institution loan officers, bank attorneys, and state bankers association professionals who lobby state legislatures on behalf of their members, the ABA Group meets by conference call on an as-needed basis. We welcome your participation.

For additional information or to obtain a copy of NCCUSL's initial draft of the Act, please contact ABA's L.H. Wilson at (202) 663-5030 or [lwilson@aba.com](mailto:lwilson@aba.com). ABA's comment letter is available at <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/ABACommentLetter10132010.pdf>. The Marc Lifset letter referenced above can be found at <http://www.aba.com/aba/documents/GeneralCounsel/UniformLaws/MarcLifsettLetter09302010.pdf>.

### **Comments Sought on Draft of Principles of Federalism**

The October issue of ABA UCC/Uniform Law News highlighted agenda items for the Symposium on Federalism, Preemption and State Law co-sponsored by NCCUSL and other organizations. Held at the George Washington University Law School on October 29, 2010, the Symposium was an all-day program with presentations by representatives of various levels of government, academics, and attorneys.

The purpose of the meeting was to begin a dialogue among federal, state, and local governments and other entities interested in the intersection of and balance between state and federal regulation in areas of shared federal/state interest. In particular, the program explored the issue of when it is appropriate for federal law to preempt state law.

One segment of the Symposium focused on banking and was entitled "Regulating Areas of Shared Federal and State Responsibility: A Case Study of the Financial Reform Legislation." The panel considered in some detail preemption issues and the new financial reform legislation. Panelists on this subject had different perspectives, and their views were understandably diverse.

Another feature of the program was an overview and discussion of NCCUSL's Draft Statement of Federalism Principles. A work in progress, NCCUSL welcomes comments on the draft and how best to integrate the roles and responsibilities of federal and state governments in recognition of our complex national economy. To receive a copy of the 10/7/10 draft or to obtain additional information, please contact ABA's L.H. Wilson at [lwilson@aba.com](mailto:lwilson@aba.com) or (202) 663-5030.

### **Summary of 2010 Amendments to UCC Article 9 (Secured Transactions) Published**

An enlightening article summarizing the 2010 Amendments to UCC Article 9 is included in the Fall 2010 issue of the American Bar Association's Commercial Law Newsletter (see <http://www.abanet.org/buslaw/committees/CL190000pub/newsletter/201011/201011.pdf>). The article was prepared by Edwin E. Smith, chair of the ALI/NCCUSL Drafting Committee on Amendments to UCC Article 9. Ed is a partner with Bingham McCutchen LLP and is a leading authority on the UCC.

Article 9 of the Uniform Commercial Code provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. Amendments to selected sections of Article 9 were approved earlier this year by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

Ed Smith's article highlights changes relating to the filing rules, changes unrelated to filing, and the important transition rules. Changes affecting filing rules include ones relating to (1) name to be provided on a financing statement when the debtor is an individual, (2) definition of "registered organization," (3) name of registered organization, (4) name of debtor when collateral is held in trust, (5) name of debtor when collateral is administered by a personal representative, (6) debtor's change of location, and (7) new debtor.

Prior issues of ABA UCC/Uniform Law News provide background information on this important drafting project and outline efforts of the ABA Working Group on Secured Transactions to find workable solutions acceptable to the banking industry. Composed of representatives of money center, regional, and community banks -- as well as state bankers association professionals -- members of our Working Group devoted countless hours to this project. ABA is grateful for their commitment.

Reports indicate that efforts are already underway in several state legislatures to prepare the amendments for introduction in 2011. If you have questions or need additional information, feel free to contact ABA's L.H. Wilson at [lwilson@aba.com](mailto:lwilson@aba.com) or (202) 663-5030.

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