



BUSINESS LAW SECTION

UCC COMMITTEE

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SIGNATURE REQUIREMENT ON FINANCING STATEMENTS

LEGISLATIVE PROPOSAL (BLS-2012-02)

TO: Office of Governmental Affairs
FROM: Jenny Park Garner, Chair of Legislative Subcommittee
Business Law Section (the "Section") UCC Committee (the "Committee")
DATE: May 31, 2011
RE: Proposal to Amend Civil Code § 3440.1(h) Relating to the Signature Requirement on Financing Statements

SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the "Executive Committee"): June 3, 2011
Approval Vote: For: 15 Against: 0

Executive Committee Contact:	Committee Contact:
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HISTORY, DIGEST AND PURPOSE

The Committee serves as a forum to educate Section and State Bar members on recent developments and current issues in the field of commercial law and secured transactions; and provides a vehicle for the UCC bar to communicate with the general public, the California Legislature, regulatory agencies, business trade associations, and other interested groups. The Committee also assists in the law reform work of the Section.

Consistent with the Committee's mission, this legislative proposal recommends a technical change to subdivision (h) of Section 3440.1 of the Civil Code relating to the signature

requirement on financing statements, to conform such law with Division 9 of the Commercial Code.

Proposal and Reasons for Proposal.

Civil Code Section 3440 *et seq.* provides generally that a transfer of personal property not accompanied by delivery and change of possession is void against the transferor's creditors. *See* West's Ann.Cal.Civ. Code § 3440 (2010).

Civil Code Section 3440.1 exempts certain types of transfers from the general rule. One such exempted transfer, under subdivision (h) of Section 3440.1 of the Civil Code, is where a transferor or transferee files a financing statement with the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code and publishes notice of the intended transfer at least 10 days before the date the transfer occurs. The current statute provides that the financing statement must be “signed by the transferor.”

This legislative proposal would amend subdivision (h) of Section 3440.1 of the Civil Code to eliminate the requirement that a financing statement be signed by the transferor, and instead require that the transferor authorize the filing in an “authenticated record.”

This legislative proposal is needed to conform Section 3440.1(h) of the Civil Code to Division 9 of the Commercial Code, which eliminated, under the 2001 amendments, the requirement that a financing statement be signed. Under Sections 9502(a) and 9509(a) of the Commercial Code, records filed with the office of the Secretary of State do not require signatures for their effectiveness. Instead, a person is entitled to file a financing statement if the debtor “authorizes the filing in an authenticated record.” (Commercial Code § 9509(a))¹

As explained in Official Comment 3 to Section 9-502 of the UCC, “[t]he elimination of the signature requirement facilitates paperless filing.” As a result of this change to the UCC, the form of National UCC Financing Statement (Form UCC1), available on the California Secretary of State website (<http://www.sos.ca.gov/business/ucc/financing-statement.htm>) was revised so there is no longer a signature line for the debtor. Since the UCC financing statement form no longer provides a signature line for the debtor/transferor, parties need to manually add a signature block for the transferor to comply with Civil Code Section 3440.1(h)(1).

¹ “Authenticate” means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record. (Commercial Code § 9102(a)(7))

“Record”, except as used in “for record,” “of record,” “record or legal title,” and “record owner,” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form. (Commercial Code § 9102(a)(69))

This proposal would simply amend Civil Code Section 3440.1(h)(1) to track Division 9 of the Commercial Code so that the transferor or transferee could file a financing statement with the California Secretary of State without a physical signature, as long as the transferor authorized the filing in an authenticated record.

HISTORY

Division 9 of the Commercial Code was repealed and replaced by Stats. 1999, c. 991 (SB 45), to become operative on July 1, 2001. Further amendments were made by Stats. 2000, c. 1003 (SB 2002), with the amendments to Commercial Code Sections 9502 and 9509, along with other amendments, to become operative on July 1, 2001. The Committee is not aware of any prior proposals to amend Section 3440.1 of the Civil Code along the lines of this proposal.

APPLICATION

If enacted in 2012, the proposed legislation would become effective on January 1, 2013.

PENDING LITIGATION

As of the date submitted, the Committee is unaware of any pending litigation that is relevant to this legislative proposal.

LIKELY SUPPORT AND OPPOSITION

Those who are involved with the filing of financing statement will likely support this conforming change to Section 3440.1(h) of the Civil Code. The Committee is not aware of any opposition.

FISCAL IMPACT

The Committee believes this legislative proposal, if enacted, will have no fiscal impact on the State.

GERMANENESS

The Committee's members have the special knowledge, training, experience and technical expertise to recommend this legislative proposal as this legislative proposal concerns a conforming change with Division 9 of the Commercial Code.

TEXT OF PROPOSAL

SECTION 1. Section 3440.1 of the Civil Code is amended to read:

This chapter does not apply to any of the following:

- (a) Things in action.
- (b) Ships or cargoes if either are at sea or in a foreign port.
- (c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.
- (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.
- (e) A transfer or assignment made for the benefit of creditors generally or by an assignee acting under an assignment for the benefit of creditors generally.
- (f) Property exempt from enforcement of a money judgment.
- (g) Standing timber.
- (h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:
 - (1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, ~~signed~~signed~~by the transferor~~by the transferor ~~and~~authorized in an authenticated record by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms “transferor” in lieu of “debtor” and “transferee” in lieu of “secured

party.” The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property that (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (c) of Section 10308 of the Commercial Code).

(l) Transition property, as defined in Section 840 of the Public Utilities Code, or recovery property, as defined in Section 848 of the Public Utilities Code.

(m) A transfer of property by any governmental entity.