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A Professional Association

UNIFORM COMMERCIAL CODE UPDATED FOR NEW MILLENNIUM

By: KEVIN M. BUSCH
COMMERCIAL DEPARTMENT CHAIR



On July 1, 2001, major changes to the Uniform Commercial Code will go into effect in Minnesota and many other (but not all) states. These changes affect the rules governing security interests (or liens) taken by

lenders on many types of non-real estate assets used as collateral. The new rules affect banks and other traditional lenders, plus any other person taking collateral to secure an unpaid obligation. Others affected include leasing companies, the person who lends money to a friend to start a business, the business that sells inventory on credit, the business owner who sells his or her interest in a business but is not paid in full at closing and the person who settles a lawsuit in exchange for payment over time.

Under current law, to obtain priority over other creditors a lender usually must file a form (known as a financing statement or, more simply, a UCC-1) with a public filing office. In Minnesota, most filings are made with the Secretary of State, but other states use a number of different filing offices. One of the difficulties of the current UCC is that it has not always been easy to determine the correct state, or the correct office or offices within a state, with which to file a UCC-1. Often lenders are required to file in multiple locations just to be on the safe side. When

lenders conduct lien searches to see if anyone else holds a competing lien, they may have to conduct searches in several different filing offices. These extra filings and searches add unnecessary expenses for everyone involved.

Under the new rules, lenders will be able to determine the proper state for filing quite easily for almost all debtors and will be required to file only one UCC-1 in that state.

UNDER THE NEW RULES,
LENDERS WILL BE ABLE
TO DETERMINE THE
PROPER STATE FOR FILING
QUITE EASILY FOR
ALMOST ALL DEBTORS
& WILL BE REQUIRED TO
FILE ONLY ONE UCC-1
IN THAT STATE.

For individual debtors, the proper state will be where the individual resides. For registered entities (such as corporations and limited liability companies), the proper state will be where the entity is formed. For instance, the proper filing office for a corporation incorporated in Minnesota will be the Minnesota Secretary of State, even though the corporation has all or most of its operations in another state. A lender will be able to find all current liens on a debtor by searching in just one location.

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4800 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-4129
TOLL FREE 877.494.MOSS
TELEPHONE 612.347.0300
FACSIMILE 612.339.6686
WWW.MOSS-BARNETT.COM

IMMIGRATION LAW: SOLUTIONS FOR EMPLOYERS

By: H. LE PHAN
EMPLOYMENT LAW PRACTICE GROUP



Heeding the pleas of employers for help, Congress enacted the American Competitiveness in the 21st Century Act (“AC21”), commonly referred to as the H-1B law, on October 17, 2000. The AC21 eradicated barriers that once made it difficult for foreign workers to obtain a nonimmigrant employment visa or change employers once they were in the United States.

Among other things, AC21 raised the H-1B quota from 115,000 to 195,000 for the next three fiscal years. It also exempted from the H-1B quota any foreigner who is employed or has a written offer of employment by a university, college or related nonprofit organization. Neither will nonprofit or government research organizations be subject to the quota. When a person under these categories leaves the related position, however, they do become subject to the H-1B quota once again, unless the subsequent employer is likewise exempt. In addition, AC21 also allows an H-1B visa holder to begin work for a new employer when a non-frivolous, legally viable H-1B petition is submitted, and no longer must wait for INS approval before doing so.

The H-1B nonimmigrant employment visa allows a foreigner to temporarily enter the United States to perform services in a “specialty occupation” as a professional for one or more employers, provided that each employer has an H-1B petition approved for the professional. Examples of “specialty occupations” include accountant, computer analyst, engineer, financial analyst, scientist, architect or lawyer.

To be eligible for an H-1B visa, the foreign worker must have an offer of employment in a “specialty occupation,” and a bachelor’s degree or a combination of college or university course work, plus three years work experience for each uncompleted year of university education. Together this would be deemed equivalent to a four-year bachelor’s degree. A spouse or unmarried child of an H-1B holder is entitled to an H-4 visa and the same length of stay as the principal. The spouse and dependent minor children cannot accept employment, but may attend school in the United States. Servants of an H-1B visa holder can receive a B-1 visa.

TO BE ELIGIBLE FOR AN H-1B VISA,
THE FOREIGN WORKER MUST HAVE
AN OFFER OF EMPLOYMENT IN A
“SPECIALTY OCCUPATION,”
AND A BACHELOR’S DEGREE
OR A COMBINATION OF
COLLEGE OR UNIVERSITY
COURSE WORK, PLUS
THREE YEARS WORK
EXPERIENCE FOR EACH UNCOMPLETED
YEAR OF UNIVERSITY EDUCATION.

The H-1B process requires an employer to file an attestation with the U.S. Department of Labor pledging to do four things:

1. Pay the H-1B worker the higher of the prevailing wage or actual wage at the workplace.
2. Give notice to U.S. workers similarly employed.
3. Promise that no labor unrest or strike exists in the position.
4. Promise to pay the foreign national’s return transportation home should he or she be fired within the validity period of the visa.

In addition, the employer must pay to the Immigration and Naturalization Service a “training fee” in conjunction with the filing of an H-1B petition. The AC21 raised the “training fee” from \$500 to \$1,000. Employers are prohibited from seeking reimbursement of the “training fee” from the H-1B beneficiary.

A foreign worker may only work six consecutive years in H-1B status. To become eligible for another six years, the foreign worker must leave the United States for one year. Periods spent in any H status, H-4 or H-1B, count toward that six year limit. For H-1B visa holders with a pending employment-based green card and who filed a labor certification or I-140 at least one year prior, the six year time limit is waived, with extensions granted in one year increments until the green card petition is either approved or denied.

Uniform commercial code article continued from front cover

(Because the new rules will be phased in over a period of time, searches in more than one location may still be advisable for several years.)

After July 1, we will also have some needed improvements to the list of assets in which a lender may take a security interest and to the rules governing how a lender must proceed to foreclose a security interest. Overall, the UCC security interest rules should now be easier to work with and easier to understand.

If you work with UCC security interests frequently and have forms that you have used in the past, you will want to have your forms updated to take full advantage of the new rules. If you

currently hold loans secured by UCC security interests, it is imperative that you examine your current UCC filings to see if they need to be updated. While many existing filings will be adequate under the new rules, some filings will need to be amended or will need to be re-filed in a new filing office. The new rules do give a grace period after July 1, 2001 in which to complete any necessary amendment or re-filing, but it would be best to act promptly.

**PLEASE CALL ANY OF THE LAWYERS
AT MOSS & BARNETT IF YOU HAVE
QUESTIONS ABOUT THE NEW UCC
SECURITY INTEREST RULES.**

MOSS & BARNETT LEADER RECOGNIZED

HORACE VAN VALKENBURG, ONE OF THE EARLY LEADERS OF MOSS & BARNETT, WAS RECENTLY RECOGNIZED IN "100 WHO MADE A DIFFERENCE," AS ONE OF THE MOST INFLUENTIAL GRADUATES OF WILLIAM MITCHELL COLLEGE OF LAW IN THE PAST CENTURY. HERE IS A REPRINT OF HIS CITATION:

HORACE VAN VALKENBURG '23

SERVICE TO MSBA PAVED WAY FOR EXECUTIVE DIRECTOR POSITION

Horace Van Valkenburg graduated from the Minneapolis College of Law at the top of his class and began the practice of law at a time when law firms were small, most attorneys were still generalists, and the Minnesota State Bar Association functioned without a staff or executive director. His service as MSBA secretary paved the way for the creation of the executive director position. He was elected



president of the association in 1946 and served for two years, focusing his efforts on educational programming and improving the public perception of attorneys. His worksheets, checklists, and what we now call continuing legal education seminars were valuable to the many lawyers then returning from military service.

The practice of law was a family affair. The son of lawyer Jesse Van Valkenburg, Horace was joined in practice by his two sons. When he hired two more attorneys, the firm became known as Van Valkenburg, Blaisdell & Moss. It has since grown into Moss & Barnett, with nearly 70 lawyers. Three grandchildren have also graduated from William Mitchell and practice law in Minnesota and California. When they speak with attorneys and judges who knew Horace Van Valkenburg, they hear of his integrity and the professionalism with which he conducted himself in all his dealings. To them, that is his greatest legacy.

**ACQUAINTANCES TELL
OF HIS INTEGRITY AND
THE PROFESSIONALISM
WITH WHICH HE
CONDUCTED HIMSELF
IN ALL HIS DEALINGS.**

– A.C.

COLLABORATIVE LAW

By: SUSAN C. RHODE
MOSS & BARNETT DIRECTOR



Problem solving for lawyers and their clients is changing significantly. Historically, parties would “go to court” and let a judge decide their disputes. Today, parties increasingly find that the courthouse is not the best place to solve complex problems and they are trying new resolution methods. Contracts frequently contain arbitration clauses, courts require litigants to engage in alternative dispute resolution before or during a lawsuit and parties themselves are finding new ways to solve their problems.

Individuals with family law problems can use a particularly broad selection of alternative problem solving methods. Most counties now offer an education program for couples and children to help them understand the court system and what alternative dispute resolution methods are available. In most instances, lawyers must try an alternative method before they can proceed to court. Alternative methods may include mediation, arbitration and neutral evaluations. One more option for parties is the Collaborative Law process.

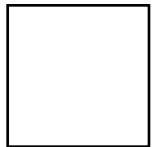
In Minnesota, more than 40 lawyers have been trained by the Collaborative Law Institute to practice Collaborative Law. The Collaborative Process started in Minnesota and has spread throughout the U.S. and Canada. Initially the Collaborative process was used only in Family Law cases; it is now used for disputes in business and other areas. Parties and lawyers who choose to use the Collaborative Process agree not to go to court, but instead settle their case through cooperation and creative problem solving.

At Moss & Barnett, our goal is to provide the best dispute resolution method for any dispute you may have.

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MOSS & BARNETT

A Professional Association
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129



Toll Free 877.494.MOSS
Telephone 612.347.0300
Facsimile 612.339.6686
www.moss-barnett.com