

**MINUTES OF COMMISSION MEETING**  
**September 15, 2005**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Albert Burstein, Vito Gagliardi Jr., James Woller and Sylvia Pressler. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

**Minutes**

On page 4, at the end of the second line in the first full paragraph, the word “or” should be inserted after “payment.” Also on page 4, in the second full paragraph, the last word on the first line “recoded” should be “recording.”

With the changes requested above, the minutes were accepted.

**UCC Articles 1 and 7**

According to John Burke, approximately 15 states have signed on to proposed changes to U.C.C. Articles 1. and 7. which are under consideration by the Commission. Chairman Burstein asked if there was a reason why the states with the heaviest commercial interests, for example, California, New York and Pennsylvania, have not adopted either section. Mr. Burke said that nothing in Article 7. is controversial. However, Article 1. contains a new choice of law provision, and most states have retained the old standard requiring that the law chosen to govern the transaction must bear some relation to the transaction. Concerning documents of title, Article 7 has been modernized to take account of electronic documents of title. The provisions reference ESIGN and UETA. The liability rules have remained intact.

With regard to electronic documents of title, these documents would be transferred via a third-party registry responsible for maintaining a record of ownership and transfer of a given document. Professor Garland suggested that with an electronic document, the possibility exists of a transfer to multiple individuals, which is less likely with a paper document, when one person is given the original and all others have copies or forgeries. Mr. Burke explained that such a situation is always a possibility, but that the third-party would be responsible for maintaining information about any transfer.

Mr. Burke explained that if the new Article 1 is adopted, there is a possibility in some states that a non-UCC transaction may have borrowed a definition from the old Article 1. Those cases likely would have to be relitigated to settle the issue, but that would not be a problem in New Jersey.

Chairman Burstein asked if there was any reason, in Mr. Burke’s opinion, not to recommend these pieces to the Legislature. Commissioner Pressler expressed concerns

about the definition of good faith, and Mr. Burke pointed out that the definition of good faith that was of concern was the one already included in the Code. He noted that the only Article in which the good faith standard still exists is Article 5, all other Articles have moved to the reasonable commercial standard of fair dealing. Chairman Burstein also suggested that there is a body of interpretive law that has been built up over the years. Mr. Burke explained that one of the objections to the definition of good faith is that it imposes a higher standard, rather than a lower one. Commissioner Gagliardi confirmed that ultimately, industry standards and practices will be examined to see what the reasonable commercial standard of fair dealing is.

Commissioner Woller posed the following question: if you go to a merchant who is offering cotton fabric and brocade and says all his fabric is sold for a price of \$3, and you, as a purchaser, know that such a price is fair for cotton and less than cost for brocade, do you have to tell the seller? Mr. Burke suggested that if you are dealing between merchants, the assessment might be that the selling merchant is deemed to know what he is doing and the value of his goods. Commissioner Pressler asked if there wasn't an international covenant regarding the sale of goods. Mr. Burke confirmed that there was, and that it did not say anything about good faith, merely stating that a treaty must be interpreted in good faith, leaving open the question of whether good faith is required in the context of an individual deal. Mr. Burke also explained that most of the cases dealing with these issues are arbitrated, and since only about 20% of arbitration decisions are published, it is not clear how this issue would be decided. He noted that a party is supposed to impose an international standard of good faith, not a domestic standard, and too much variation from what would be the norm in that trade may cause a problem.

After additional consideration of the good faith standard, and the issue of the importance of uniformity, the Commission, at the suggestion of Commissioner Gagliardi, agreed that Staff would research this matter to determine if all the jurisdictions that have adopted these Articles have done so as written. Staff will identify any variation in key terms for the next meeting.

### **Medical Peer Review**

Only one response to the circulated Report has been received. The Commission indicated that it was satisfied with its decision not to recommend a statutory change.

### **Title 39**

Laura Tharney reported that she had sent questions to the MVC regarding licensing and had received a detailed, multi-page response. MVC has indicated that a representative or representatives will attend the October Commission meeting.

There was a brief discussion of the contents of the various volumes of the statute highlighting the sections in Volume 1 that have been most heavily revised, which are the registration, licensing, license plate and equipment sections.

Ms. Tharney said that the Commission has looked at everything in Volume 1 at least once. Licensing and registration have been made into distinct and separate sections. Material has been added to some of the sections to clarify certain topics and language has been streamlined. There are few substantive changes, all of which are noted in the comments to the various sections. The language for permits has been expanded, registration has not been significantly changed other than a reorganization, the license plate section has been substantially reorganized, and the equipment section was modified to remove language which is inconsistent with federal statute or regulatory language.

Ms. Tharney asked whether the Commission wished to look at other provisions of Volume 1 or move on to Volume 2. The sections pertaining to "Offenses" in Volume 2 is the area which has received the highest number of requests for substantive change.

For the purposes of the October meeting, Chairman Burstein said that in view of the fact that individuals from the MVC will be attending, the Commission wants to address areas of the statute with which the Commission has some familiarity, and which contain the most substantial changes. This will afford the Commission the opportunity to ask the MVC representatives whether or not the Commission changes are making sense and are supportable by the MVC.

Ms. Tharney will send out four sections (approximately 60 pages) to the MVC, including, licensing, registration, license plates and equipment. Commissioner Gagliardi said that the Commission should reach out through ex officio members, to get a legislator or staffer to be present at our October meeting. Mr. Cannel will make the appropriate contacts. Commissioner Gagliardi suggested finding a person with whom Staff can be in ongoing contact.

Chairman Burstein asked Ms. Tharney to prepare, in advance of the October meeting, a synopsis of each section, which will be shown first to the Commission and then supplied to the MVC. Each synopsis should include her methodology: what she tried to achieve and how she went about it.

Ms. Tharney reported to Commissioner Pressler that she had looked at health and vital statistics regarding organ donation and had found that they do not contradict the organ donation language contained in the licensing section of Title 39.

### **Uniform Mortgage Satisfaction Act**

John Cannel said that he had flagged possible issues. The term "security interest" (number 17. in Section 102., Definitions) is used instead of "mortgage." This has the benefit of being uniform from state to state, but may cause a problem since that term is a term of art used in Article 9 of the U.C.C. and may cause confusion as a result. Professor Garland suggested that the word "land" be placed before the term. Ms. Tharney said that security interest can be defined to include mortgage.

The Commission decided to use New Jersey terminology. A reference will be made in the definitions section to the uniform terminology. Mr. Cannel will add "mortgage" to the Definitions section.

Mr. Cannel brought some deviations from the current law to the attention of the Commission. The proposed statute does not contemplate a satisfaction that is endorsed on the mortgage itself. Commissioner Pressler said that this method of satisfaction, should be included in the statute to reflect long-standing New Jersey practice.

Mr. Cannel also explained that the proposed statute has a strange requirement regarding what must be recorded, specifically, if one sends in a satisfaction with a number of technical problems, it still must be recorded. Current New Jersey law has fewer technical requirements, but is stricter about the required components appearing in the document forwarded for recording. Mr. Cannel recommended that a revised statute should cite to New Jersey's requirements. The Commission elected not to change current New Jersey law in these matters.

The Commission requested that this project be revised for the next meeting, highlighting existing law that does not require any change, and the changes to retain uniformity with other states.

Commissioner Woller observed that the language in Section 104 which permits the reinstatement of the mortgage if a mistake is made seems to run counter to the other language about being able to rely on a definitive action. Professor Bell suggested that since the new language requires a filing of documents not previously mandated to be filed, a method of correction has to be provided.

Commissioner Pressler said that the statute also provides that if the payoff statement is incorrect, the only remedy is to sue for personal liability. She asked if it was clear under the proposed language that one cannot file a document of rescission if there was an error in the payoff statement. If one can reasonably rely on the payoff statement, one should not be able to file a document of rescission. She said that the language concerning a "reasonable opportunity to act on the corrected payoff" is a litigation maker and that a deadline for taking action should be included in the statute.

Chairman Burstein asked what happens in a situation in which a payoff statement is received, and includes figures for principal, interest, escrow and other charges, and the payor disputes some of the charges. Mr. Cannel said that the statute simply does not deal with that issue. Commissioner Woller added that, pursuant to current law, a person has 30 days to contest it on the RESPA form.

Since the statute affects a great number of people, the concern is not so much to achieve complete uniformity with other states as it is with getting the language right. Mr. Cannel said that Staff would revise the draft and highlight the items that contain non-uniform language after the revision.

Professor Garland noted that he had a number of comments and Mr. Cannel said that he would meet with him to discuss those, as well as reaching out to Mr. David Ewan and the Mortgage Bankers Association.

#### **Miscellaneous**

The next meeting is scheduled for October 20, 2005.