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Forms and Procedures Under the Uniform Commercial Code

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FORMS and PROCEDURES under the Uniform Commercial Code

Bender's Uniform Commercial Code Service

VOLUME 5

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Dedication

The authors dedicate this book to their parents.
Acknowledgement

The authors jointly and equally bear the entire responsibility for the following forms and text which, except in a few clearly indicated instances, are entirely original. However, we do wish to acknowledge the helpful information and exemplary forms supplied by the following persons and concerns: Lawrence Warehouse Company of Massachusetts; New York Central System; Worcester County National Bank; American Airlines; Mr. Donald E. Horton, Executive Vice President of the American Warehouseman’s Association; The Philadelphia National Bank; General Motors Acceptance Corporation; Epsco, Inc.; General Electric Credit Corporation; The National Showmut Bank of Boston; Auto Owners Finance Co., Inc.; Brookline Trust Company; South Shore National Bank of Quincy; State Street Bank and Trust Company; Rockland Trust Company; Charles River Stores, Inc.; National Dock and Storage Warehouse Co.; United Van Lines, Inc.; Boston Storage Warehouse Co.; First National Bank of Boston; and Smith-Corona Marchant, Inc.

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In the thirty-five years since this book was originally published many have contributed to the 75 or so updates that to it: too many to name in the short space of an acknowledgment. Those who have helped include deans, fellow teachers, staff, law students, corporations, practicing lawyers, government officials, friends and relations. Also to be include are other authors in the field of commercial law whose writings have helped educate everyone interest in the subject. Some have given advice, others supplied form used in actual practice and others have
Acknowledgement

suggested changes or additions. Their generosity and assistance have made it a better book.
Preface

The idea for this book was conceived when the authors were perusing pre-Code form books for the possible adaptation of the forms for use under the Uniform Commercial Code. Three major weaknesses in those books became at once apparent.

First, the forms were poorly drafted for whatever use to which they could be put. They were often long and cumbersome. Unnecessarily technical language was used, "legalese" (whereas, wherefore, witnesseth, provided, etc.) abounded, organization was illogical and particular obligations and rights of parties were buried in long, unbroken and, to the parties at least, unfathomable, paragraphs.

Second, the compilers presupposed that every lawyer or businessman using the forms was so well informed of the mechanics and substantive law of every given transaction that he could select the proper form instantly. Accompanying text, if any, was more often misleading than helpful. While the commercial specialist might find such books useful, the lawyer with diverse practice would be induced to make an imprudent choice of form for sheer economy of time, thereby failing to meet the needs and to protect the interests of his client.

Third, pre-Code forms, while usable under the Code (though often with the indulgence of courts and clients alike), simply failed to take advantage of or to meet the often pragmatic innovations made by the Code. It is not only unwise legally but also commercially inexpedient to assume that the Code has made no changes in the law governing a particular transaction. True, a note negotiable under the Negotiable Instruments Law would remain so under Article 3 of the Code, but how much more liberal is the Code in what parties may include in their notes without affecting negotiability. This simple example illustrates what is true for far more intricate commercial transactions.

The forms presented herein use ordinary language where legal or commercial "words of art" which have precise substantive meaning are not required. The modern and, in most cases, clear and consistent terminology of the Code itself is used in all forms. The user of these forms is told in form-oriented text when, how and why the forms should be used and the substantive results of their use. Finally, the forms are for use exclusively under the Uniform Commercial Code with the multitude of variations possible under the Code reflected in the alternative and optional clauses.

Both the authors and the publisher plan to keep these materials up to date. Significant Code decisions, amendments to the Code recommended by the Permanent Editorial Board or adopted by several states, suggestions from users of these volumes and the results of the authors' own continued study will be reflected in periodic revisions of or supplementation to both forms and text.

WILLIAM F. WILLIER
FREDERICK M. HART

Brighton, Massachusetts
July 1963

Addendum to Preface

Since the Preface to this book was written much has changed. Lawyers drafting forms of agreement for clients contain less legalese and they have become more readable. Court
Preface

decisions have clarified doubtful points raised by the language of the Uniform Commercial Code. Federal legislation has provided protection to consumers and made the task of drafting commercial agreements more complicated. Consequently, this book has expanded from one volume to eight, and includes much new material. The coverage of consumer legislation as it relates to drafting agreements now occupies close to half of its pages.

Presently, the Uniform Commercial Code is undergoing substantial revision. Articles 3, 4, 5, and 8 have been significantly changed, and Articles 2A and 4A have been added. Within a year or so, there will be a new version of Articles 2 and 9, and a new Article 2B. This legislative activity has required, and will continue to require, substantial revision of the text. Since the new builds upon the old, integration of the new will present a challenge.

Bill Willier’s death in 1985 was a loss to his students, his colleagues and to the continued development of this book. Although most, if not all, of the material that he wrote in this book has since been revised, his contribution to the book will endure. It is still his book as much as it is mine.

Frederick M. Hart
Albuquerque, New Mexico
May, 1998
How to Use This Publication

Organization of Publication

*Forms and Procedures Under the Uniform Commercial Code* (Volumes 5–5G of Bender’s Uniform Commercial Code Service) is divided into Articles that correspond to Articles 1 through 9 of the Uniform Commercial Code. Each Article is in turn divided into Parts, and each Part consists of one or more point paragraphs. The first digit of each point paragraph indicates the Article number. The second digit corresponds to the Part of the Article. The two digits following the decimal point identify the point paragraph number. Thus, §32.01 refers to Article 3, Part 2, point paragraph number 1.

Articles 1, and Parts 1 through 3 of Article 2, appear in Volume 5. Parts 4 through 6 of Article 2, Articles 2A and 3, and Parts 1 through 4 of Article 4, appear in Volume 5A. Parts 5 and 6 of Article 4, and Articles 4A, 5, 6, 7 and 8 appear in Volume 5B. Revised Article 9 appears in Volume 5C. Parts 1 through 3 of Article 9 appear in Volume 5D. Parts 4 through 11 of Article 9 appear in Volume 5E. Parts 12 through 16 of Article 9 appear in Volume 5F.

Volume 5G includes a Table of State Variations that identifies each state’s variations to the Official Text of the Uniform Commercial Code, as well as a chart of state adoptions. In addition, Volume 5G includes a table of cases, a table of code references, and a subject matter index.

Consumer Credit Legislation

Since the initial publication of this set in 1963, various federal consumer protection statutes have been enacted which affect the drafting of commercial agreements. Coverage of this legislation has been integrated throughout the set, most particularly in Article 9. The following statutes are examined in Article 9 Parts 10 through 16:

- Truth in Lending Act
- Uniform Consumer Credit Code
- Gramm-Leach-Bliley Privacy Act of 1999
- Fair Credit Reporting Act
- Consumer Credit Protection Act
- Equal Credit Opportunity Act
- Fair Debt Collection Practices Act

Use of Forms

Basic Forms are given for each type of commercial transaction in the appropriate Article. Each provision of a Basic Form is discussed in the text following the Form. Each clause in the Form is cross-referenced to a section in the text in which the particular clause is discussed. At that section, the relevant Code provision is analyzed, as are the practical consequences of the use of the clause. Alternate and optional clauses are also provided. The first digit in a Form number corresponds to the Article of the text in which the Form appears. The second digit corresponds to the Part of the Article in which it appears. Thus, Form 92–1 is Form 1 in Part 2 of Article 9.

State-by-state Article 9 filing information is included as Appendix B to Revised Article 9 in Volume 5D. Additionally, effective financing statements for farm products in states adopting a central filing system are included as Appendix D to Part 6 of Revised Article 9.

User’s Aids

*Forms and Procedures* includes several aids to facilitate efficient use of the publication. A Publication Table of Contents for the entire set appears at the beginning of each volume. In addition, each volume includes its own detailed Table of Contents, and a detailed Synopsis precedes each Part of an Article. A Table of Cases, a Table of Code References, and an Index are included in Volume 5G.