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PERFECTION OF PURCHASE MONEY SECURITY INTERESTS IN MOBILE HOMES UNDER SECTION 9-302 OF THE UNIFORM COMMERCIAL CODE

In recent years mobile homes have been estimated to account for more than three-fourths of all new homes sold in the United States for \$12,500 or less.¹ There were 412,690 mobile homes manufactured in the year 1969, representing a four-fold increase in annual production since 1960.² The fact that a mobile home may be easily moved over the highway, yet is designed and used principally as a stationary dwelling,³ has precipitated several legal problems.⁴ One such problem has arisen under section 9-302 of the Uniform Commercial Code [hereinafter UCC] concerning the perfection of a purchase money security interest⁵ attendant to the sale of a mobile home.

Section 9-302 attempts to co-ordinate the UCC security interest filing provisions with various state certificate of title statutes by exempting goods covered by certificate statutes from the filing provisions of the UCC.⁶ Subsections (1)(d) and (3)(b-Alternatives A and B) were specifically drafted⁷ to accomplish this desired co-ordination. Reference is made

¹U.S. NEWS & WORLD REP., Mar. 11, 1968, at 82.

²UNITED STATES BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1970, at 681 (91st ed. 1970).

³U.S. NEWS & WORLD REP., Mar. 11, 1968, at 82.

⁴Legal problems, other than those which involve the perfection of security interests, concerning mobile homes arise principally in the areas of taxation and zoning restrictions. An interesting discussion of these problems is found in Bartke & Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970).

⁵Non-purchase money security interests in vehicles pledged as collateral will not be discussed in this Note. The UCC has operated after some initial difficulty to force most states either to adopt certificate of title laws which require that all types of security interests must be noted on the titles in order to perfect the interests or to eliminate such notation requirements completely. In the latter situation perfection relating to motor vehicles may be accomplished for non-purchase money security interests by the regular UCC filing provisions. For a lucid discussion of non-purchase money security interests in motor vehicles under the UCC, see Welsh, *Security Interests in Motor Vehicles under Section 9-302 of the Uniform Commercial Code*, 37 U. CIN. L. REV. 265, 270-86 (1968) [hereinafter cited as Welsh].

⁶UNIFORM COMMERCIAL CODE § 9-302, Comment 8.

⁷Although earlier drafts of the UCC omit such provisions, the 1952 version and subsequent versions have included substantially the same filing provisions. See UNIFORM COMMERCIAL CODE §§ 9-302(1)(3), (2)(b) (1952 version); UNIFORM COMMERCIAL CODE §§ 9-302(2)(b), [alternative (2)(b)] (1952 version, Supp. No. 1); UNIFORM COMMERCIAL CODE §§ 9-302(1)(d), (3)(b-Alternatives A & B) (1957 version); UNIFORM COMMERCIAL CODE §§ 9-302(1)(d), (3)(b-Alternatives A & B) (1958 version); UNIFORM COMMERCIAL CODE §§ 9-302(1)(d), (3)(b-Alternatives A & B) (1962 version).

in these subsections to "motor vehicles," and the effect of the states' varying definitions of "motor vehicles" upon these subsections⁸ is thus of major significance.

Of the forty-nine states⁹ which have adopted the UCC, thirty-one define "motor vehicles" as those vehicles which are self-propelled,¹⁰ thus apparently excluding mobile homes. A substantial number of states, on the other hand, have definitions which specifically include trailers or mobile homes as motor vehicles.¹¹ A few other jurisdictions¹² have definitions similar to that of Vermont, which states that a "motor vehicle [is a vehicle] propelled or drawn by power other than muscular power . . ."¹³ Such a definition may reasonably be said to include mobile homes, although in New York, under a similar definition, the courts have until

⁸If mobile homes are not motor vehicles under a particular state's definition, the question becomes how security interests in mobile homes may otherwise be perfected. Welsh at 286-90. *But see* 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 20.8, at 576 (1965) [hereinafter cited as GILMORE]; see notes 24-29 and accompanying text *infra*.

⁹Louisiana has not adopted the UCC.

¹⁰The following states have adopted "self-propelled" definitions of motor vehicles which are applicable to section 9-302: ALA. CODE tit. 36, § 1(21) (1958); ALASKA STAT. § 28.10.650(9) (1962); ARIZ. REV. STAT. ANN. § 28-124 (1956); ARK. STAT. ANN. § 75-102 (Repl. Vol. 1957); CAL. VEHICLE CODE § 415 (West 1971); DEL. CODE ANN. tit. 21, § 101 (1953); FLA. STAT. ANN. § 317.011(21) (1968); HAWAII REV. STAT. § 286-2 (1968); IDAHO CODE ANN. § 49-101(b) (1967); ILL. ANN. STAT. ch. 95 ½, § 1-146 (Smith-Hurd 1971); IND. ANN. STAT. § 47-1802(b) (Repl. Vol. 1965); IOWA CODE ANN. § 321.1(2) (1966); KAN. STAT. ANN. 8-126(b) (1964); ME. REV. STAT. ANN. tit. 29, § 1(7) (Supp. 1970-71); MD. ANN. CODE art. 66 ½, § 1-149 (Repl. Vol. 1970); MICH. STAT. ANN. § 9.1833 (Rev. Vol. 1968); MO. STAT. ANN. § 301.010(15) (1963); NEV. REV. STAT. § 482.075 (1967); N.H. REV. STAT. ANN. § 259:1 (XVII) (1966); N.M. STAT. ANN. § 64-1-6(b) (Repl. Vol. 1960); OKLA. STAT. ANN. tit. 47, § 23.1 (1962); ORE. REV. STAT. § 481.040 (1969); PA. STAT. ANN. tit. 75, § 102 (1971); R.I. GEN. LAWS ANN. § 31-1-3(b) (1968); S.C. CODE ANN. § 46-212 (1962); UTAH CODE ANN. § 41-1-1(b) (Repl. Vol. 1970); VA. CODE ANN. § 46.1-1(15) (Repl. Vol. 1967); WASH. REV. CODE § 46.04.320 (1967); W. VA. CODE ANN. § 17A-1-1(b) (1966); WIS. STAT. ANN. § 340.01(35) (1958); WYO. STAT. ANN. § 31-30(b) (1957). The District of Columbia has a similar definition of motor vehicle. D.C. CODE ANN. § 40-101(a) (1967).

¹¹COLO. REV. STAT. ANN. § 13-6-2(2) (1963); MINN. STAT. ANN. § 168.011(4) (1960); MISS. CODE ANN. § 8125-23(j) (Supp. 1968); MONT. REV. CODES ANN. § 53-104 (Repl. Vol. 1961); N.C. GEN. STAT. § 20-6 (Repl. Vol. 1965); N.D. CENT. CODE § 39-05-01(6) (Supp. 1971); OHIO REV. CODE ANN. § 4505.01 (Baldwin 1971); S.D. CODE § 32-3-1(1) (1967); TENN. CODE ANN. § 59-103(b) (Repl. Vol. 1968); TEX. PEN. CODE ANN. art. 1436-1(1) (Supp. 1970).

¹²CONN. GEN. STAT. ANN. § 14-1(26) (1958); GA. CODE ANN. § 68.101 (1967); KY. REV. STAT. ANN. §§ 186.010(4), (7)(a) (1969); MASS. ANN. LAWS ch. 90, § 1 (1967) [see note 16 *infra*.]; N.Y. PERSONAL PROP. LAW § 301(1) (McKinney 1962); VT. STAT. ANN. tit. 23, § 4(15) (1967).

¹³VT. STAT. ANN. tit. 23, § 4(15) (1967).

recently been inconsistent in their determination of the matter.¹⁴ In addition, two states have somewhat nebulous definitions,¹⁵ the effects of which are difficult to predict, while other states omit any reference to motor vehicles in this section.¹⁶

Such varying definitions have a significant effect upon section 9-302 filing provisions applicable to the perfection of security interests in mobile homes. The version of section 9-302(1)(d) which most states have adopted¹⁷ is as follows:

(1) A financing statement must be filed to perfect all security interests except the following:

(d) a purchase money security interest in consumer

¹⁴*Recchio v. Manufacturers & Traders Trust Co.*, 55 Misc. 2d 788, 286 N.Y.S.2d 300 (Sup. Ct. 1968), held that mobile homes were not motor vehicles with respect to filing requirements. *In re Vinarsky*, 287 F. Supp. 446 (N.D. N.Y. 1968), and *Albany Discount Corp. v. Mohawk Nat'l Bank*, 54 Misc. 2d 238, 282 N.Y.S.2d 401 (Sup. Ct. 1967), held that mobile homes were motor vehicles in regard to filing requirements. New York rectified the disparity when *Recchio* was reversed by the Appellate Division of the Supreme Court [35 App. Div. 2d 769, 316 N.Y.S.2d 915 (1970)] and *Albany Discount* was upheld by the Court of Appeals [28 N.Y.2d 222, 269 N.E.2d 809, 321 N.Y.S.2d 94 (1971)].

¹⁵Nebraska defines "motor vehicle" in two different statutes. Section 60-401 pertaining to motor vehicle operator's licenses does not include trailers; however, section 60-501 pertaining to motor vehicle safety responsibility does cover trailers. *Neb. Rev. Stat.* §§ 60-401, 60-501 (1968). New Jersey defines "motor vehicles" as including "all vehicles propelled otherwise than by muscular power . . ." N.J. STAT. ANN. § 39:1-1 (1961). When considered alone this definition raises the question of whether vehicles pulled by other than muscular power fall within the definition of "propelled." "Motor-drawn vehicles" are defined in the same statutory section as including trailers. N.J. STAT. ANN. § 39:1-1 (1961). The indication would seem to be that mobile homes are not "motor vehicles," but the definition of "motor vehicles" when read alone is unclear.

¹⁶ME. REV. STAT. ANN. tit. 11, § 9-302 (1964); MASS. ANN. LAWS ch. 106, § 9-302 (1963); OKLA. STAT. ANN. tit. 12A, § 9-302 (1963); ORE. REV. STAT. § 79.3020 (1970); VA. CODE ANN. § 8.9-302 (Added Vol. 1965). In such a situation these states' definitions are obviously irrelevant.

¹⁷The following statutory citations indicate the states adopting to a substantial degree the 1962 version of section 9-302(1)(d) of the UCC and where such provisions may be found in the respective state statutes: ALA. CODE tit. 7A, § 9-302(1)(d) (Added Vol. 1966); ALASKA STAT. § 45.05.734(a)(4) (1962); ARIZ. REV. STAT. ANN. § 44-3123(A)(4) (1967); ARK. STAT. ANN. § 85-9-302(1)(d) (Addendum 1961); COLO. REV. STAT. § 155-9-302(1)(d) (1963); CONN. GEN. STAT. ANN. § 42a-9-302(1)(d) (1958); DEL. CODE ANN. tit. 5A, § 9-302(1)(d) (Spec. UCC Pamphlet 1967); GA. CODE ANN. § 109A-9-302(1)(d) (1962); IDAHO CODE ANN. § 28-9-302(1)(d) (1967); ILL. ANN. STAT. ch. 26, § 9-302(1)(d) (Smith-Hurd 1963); IND. ANN. STAT. § 19-9-302(1)(d) (Repl. Vol. 1964); IOWA CODE ANN. § 554.9302(1)(d) (1967); KY. REV. STAT. ANN. § 355.9-302(1)(d) (1969); MD. ANN. CODE art. 95B, § 9-302(1)(d) (Repl. Vol. 1964); MISS. CODE ANN. § 41A-9-302(1)(d) (Spec. UCC Supp. 1967); MINN. STAT. ANN. § 336.9-302(1)(d) (1966); MO. ANN. STAT. § 400.9-

goods; but filing is required for a fixture^{18]} under Section 9-313 or for a motor vehicle required to be licensed

. . . .¹⁹

It is clear that if a mobile home is a "motor vehicle," this provision requires filing to perfect a purchase money security interest.²⁰ While the language in (1)(d) above, "required to be licensed," at first glance may seem particularly relevant to unlicensed, seldom-moved mobile homes²¹ which fall within a state's definition of motor vehicles, in those cases litigated it has not been accorded significance.²²

If, however, a mobile home is not considered to be a motor vehicle, it might logically come under the category of "consumer goods," purchase money security interests in which are automatically perfected.²³ Such a result is undesirable generally because it would impede commercial practices and thus defeat the basic purpose of the UCC.²⁴ Automatic perfection might seem to be acceptable to a lender financing the original purchase of a mobile home; however, few institutions would consider financing the purchase of a used mobile home since there would be no adequate means of determining the encumbrances upon it.²⁵ Those financing the original purchase would also find automatic perfection undesirable since

302(1)(d) (1965); MONT. REV. CODES ANN. § 87A-9-302(1)(d) (Repl. Vol. 1964); NEB. REV. STAT. UCC § 9-302(1)(d) (Rev. Issue 1971); NEV. REV. STAT. § 104.9302(1)(d) (1967); N.H. REV. STAT. ANN. § 382-A:9-302(1)(d) (1961); N.J. STAT. ANN. § 12A:9-302(1)(d) (1962); N.M. STAT. ANN. § 50A-9-302(1)(d) (Repl. Vol. 1962); N.Y. U.C.C. § 9-302 (1)(d) (McKinney 1964); N.C. GEN. STAT. § 25-9-302(1)(d) (Repl. Vol. 1965); N.D. CENT. CODE § 41-09-23(1)(d) (Repl. Vol. 1968); PA. STAT. ANN. tit. 12A, § 9-302(1)(d) (1970); R.I. GEN. LAWS ANN. § 6A-9-302(1)(d) (1969); S.C. CODE ANN. § 10.9-302(1)(d) (1966); S.D. CODE § 57-37-4(4) (1967); TENN. CODE ANN. § 47-9-302(1)(d) (Repl. Vol. 1964); UTAH CODE ANN. § 70A-9-302(1)(d) (Repl. Vol. 1968); VT. STAT. ANN. tit. 9A, § 9-302(1)(d) (1966); WASH. REV. CODE ANN. § 62A.9-302(1)(d) (Supp. 1970); W. VA. CODE ANN. § 46-9-302(1)(d) (1966); WIS. STAT. ANN. § 409.302(1)(d) (1964). The District of Columbia also adopted the 1962 version, D.C. CODE ANN. § 28:9-302(1)(d) (1967).

¹⁸The possibility of treating mobile homes as fixtures when they are being lived in and are attached to real property by plumbing, etc. is outside the scope of this note. Perfection of purchase money security interests in fixtures merely involves other UCC filing under section 9-313, rather than the UCC provisions yielding to perfection by notation on state certificates of title.

¹⁹UNIFORM COMMERCIAL CODE § 9-302(1)(d).

²⁰See UNIFORM COMMERCIAL CODE § 9-302, Comment 4.

²¹See note 3 and accompanying text *supra*.

²²Research indicates only New York cases have raised this specific point; see, e.g., Albany Discount Corp. v. Mohawk Nat'l Bank, 28 N.Y.2d 222, 269 N.E.2d 809, 321 N.Y.S.2d 94, 98 (1971).

²³Welsh at 287.

²⁴UNIFORM COMMERCIAL CODE § 1-102(2)(b); Welsh at 289.

²⁵See generally Welsh at 287.

section 9-307(2) of the UCC²⁶ may operate to allow the security interest of a subsequent purchaser to prevail in certain circumstances in spite of the prior perfection.²⁷ Such undesirable treatment of mobile homes as consumer goods is likely to occur in those twenty-one states²⁸ which have both a definition of motor vehicles based on self-propulsion and the above-quoted version of section 9-302(1)(d).

In order to co-ordinate the UCC with previously existing state certificate of title statutes concerning the perfection of security interests in motor vehicles, subsection (3)(b) of 9-302 exempts the subsection (1)(d) filing requirement when state certificate statutes are available.²⁹ Subsection (4) then provides that perfection of such security interests can only be attained by compliance with the applicable state certificate statute referred to by subsection (3)(b).³⁰ Since before the UCC some of the states merely allowed, while others required notation on a certificate of title for perfection of a security interest in a motor vehicle,³¹ the UCC provided two alternative provisions for adoption as subsection (3)(b).³²

²⁶Section 9-307(2) and Comment 3 (in part) are largely self-explanatory:

(2) In the case of consumer goods . . . a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes . . . unless prior to the purchase the secured party has filed a financing statement covering such goods.

UNIFORM COMMERCIAL CODE § 9-307(2).

As to purchase money security interests which are perfected without filing under Section 9-302(1)(c) and (d): A secured party may file a financing statement (although filing is not required for perfection). If he does file, all buyers take subject to the security interest. If he does not file, a buyer who meets the qualifications stated in [9-307(2)] takes free of the security interest.

UNIFORM COMMERCIAL CODE § 9-307, Comment 3 (emphasis in original).

²⁷UNIFORM COMMERCIAL CODE § 9-307, Comment 1; Welsh at 287 n.93.

²⁸Those twenty-one states are: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Illinois, Indiana, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, Utah, Washington, and Wisconsin. See Appendix A.

²⁹UNIFORM COMMERCIAL CODE § 9-302, Comment 8.

³⁰UNIFORM COMMERCIAL CODE § 9-302(4).

³¹Six states (Alabama, Maine, Massachusetts, Minnesota, New York, and Rhode Island) currently have not enacted any type of certificate of title laws. They rely solely upon subsection (1)(d) to determine whether filing is required to perfect purchase money security interests in mobile homes since they also have no central means of filing to which either Alternative A or B in conjunction with subsection (4) can apply. To determine how such security interests may be perfected, these states must generally look to other sections of the UCC. 1 GILMORE § 20.1, at 553. The following sections of the UCC are relevant in this regard: 4-208, 9-102(1)(b), 9-104(f), 9-113, 9-303, 9-304(1), 9-305, 9-307(2), and 9-313.

³²UNIFORM COMMERCIAL CODE § 9-302, Alternative (2)(b), Reason (1952 version, Supp. No. 1); see UNIFORM COMMERCIAL CODE § 9-302, Comment 8 (1962 version); 1 GILMORE § 20.8, at 573.

Alternative A to subsection (3)(b) has been adopted by thirty-seven states³³ substantially as follows:

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

. . .

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.³⁴

Alternative A was designed to be adopted by those states which have "complete" certificate of title laws requiring all security interests to be noted on the certificate in order to perfect such interests.³⁵ Under this alternative the various types of definitions of "motor vehicles" have no consequence for (3)(b) itself, since the term is not present in the wording of Alternative A. If, however, a state's certificate of title act is applicable by its own terms to mobile homes, Alternative A, when combined with subsection (4), will operate to require that purchase money security interests be noted on the certificates of title as the exclusive means of perfection.³⁶

In order for the exclusiveness feature of subsection (4), as combined

³³The following states have adopted Alternative A to section 9-302(3)(b): ALA. CODE tit. 7A, § 9-302(3)(b) (Added Vol. 1966); ALASKA STAT. § 45.05-734(c)(2) (1962); ARIZ. REV. STAT. ANN. § 44-3123(c)(2) (1967); ARK. STAT. ANN. § 85-9-302(3)(b) (Addendum 1961); CAL. COMM. CODE § 9302(3)(b) (West 1964); CONN. GEN. STAT. ANN. § 42a-9-302(3)(b) (1958); DEL. CODE ANN. tit. 5A, § 9-302(3)(b) (Spec. UCC Pamphlet 1967); GA. CODE ANN. § 109A-9-302(3)(b) (1962); HAWAII REV. STAT. § 490-9-302(3)(b) (1968); IDAHO CODE ANN. § 28-9-302 (3)(b) (1967); ILL. ANN. STAT. ch. 26, § 9-302(3)(b) (Smith-Hurd 1963); KY. REV. STAT. ANN. § 355.9-302(3)(b) (1969); ME. REV. STAT. ANN. tit. 11, § 9-302(3)(b) (1964); MD. ANN. CODE art. 95B, § 9-302(3)(b) (Repl. Vol. 1964); MASS. ANN. LAWS ch. 106, § 9-302(3)(b) (1963); MINN. STAT. ANN. § 336.9-302(3)(b) (1966); MISS. CODE ANN. § 41A:9-302(3)(b) (Spec. UCC Supp. 1967); MONT. REV. CODES ANN. § 87A-9-302(3)(b) (Repl. Vol. 1964); NEB. REV. STAT. UCC § 9-302(3)(b) (Rev. Issue 1971); NEV. REV. STAT. § 104.9302(3)(b)(1967); N.H. REV. STAT. ANN. § 382-A-9-302(3)(b) (1961); N.J. STAT. ANN. § 12A-9-302(3)(b) (1962); N.M. STAT. ANN. § 50A-9-302(3)(b) (Repl. Vol. 1962); N.C. GEN. STAT. § 25-9-302(3)(b) (Repl. Vol. 1965); N.D. CENT. CODE § 41-09-23(3)(b) (Repl. Vol. 1968); OHIO REV. CODE ANN. § 1309.21(c)(2) (Baldwin 1971); OKLA. STAT. ANN. tit. 12A, § 9-302(3)(b) (1963); ORE. REV. STAT. § 79.3020(3)(b) (1969); R.I. GEN. LAWS ANN. § 6A-9-302(3)(b) (1969); S.C. CODE ANN. § 10-9-302(3)(b) (1966); S.D. CODE § 57-37-7 (1967); TENN. CODE ANN. § 47-9-302(3)(b) (Repl. Vol. 1964); TEX. BUS. & COMM. CODE § 9.302(c)(2) (1968); VA. CODE ANN. § 8.9-302(3)(b) (Added Vol. 1965); WASH. REV. CODE ANN. § 62A.9-302(3)(b) (Supp. 1970); W. VA. CODE ANN. § 46-9-302(3)(b) (1966); WIS. STAT. ANN. § 409.302(3)(b) (1964).

³⁴UNIFORM COMMERCIAL CODE § 9-302(3)(b - Alternative A) (1962 version).

³⁵UNIFORM COMMERCIAL CODE § 9-302, Comment 8.

³⁶UNIFORM COMMERCIAL CODE § 9-302, Comment 8; 1 GILMORE § 20.8, at 574.

with subsection (3)(b), to exist, subsection (1)(d) must be treated as a filing provision of the UCC.³⁷ This allows the language of (3)(b) to cover what would otherwise be within subsection (1)(d) so that (3)(b) can then take precedence over (1)(d). In this regard Alternative A would exempt mobile homes covered by certificate of title statutes from UCC filing provisions even though such mobile homes would not be exempted under (1)(d) in a state having a narrow definition of "motor vehicles." This results from the direct reference by Alternative A to the state's certificate statute, rather than to "motor vehicles."³⁸ Alternative B has been adopted in substantially the same form by ten states:³⁹

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

. . .

(b) of this state which provides for central filing of security interests in such property, or a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such security interest can be indicated by a public official on a certificate or duplicate thereof.⁴⁰

Alternative B when originally drafted was designed to operate upon "non-mandatory" statutes (*i.e.* permissive statutes), which provided that notations could be made upon title certificates, so that the notation would become the exclusive means of perfecting such security interests.⁴¹ The states which had previously enacted "non-mandatory" certificate of title statutes have since amended these statutes; thus all certificate statutes are

³⁷The treatment of subsection (1)(d) as a filing provision in relation to vehicles is further desirable since otherwise the subsection would be treated as an automatic perfection provision. Applying such an automatic perfection provision to vehicles, and in particular mobile homes, which have relatively high resale value, is commercially inappropriate. See notes 23-28 and accompanying text *supra*. Indeed, the wording "required to be licensed" coming after "motor vehicle" in (1)(d) would tend to confirm that it was the UCC drafters' intention that subsection (1)(d) be regarded as a filing provision with respect to licensed mobile property, while it was an automatic perfection provision with respect to other general consumer goods.

³⁸1 GILMORE § 20.8 at 574.

³⁹Those states having adopted Alternative B are: COLO. REV. STAT. § 155-9-302(3)(b) (1963); FLA. STAT. ANN. § 679.9-302(3)(b) (1966); IND. ANN. STAT. § 19-9-302(3)(b) (Repl. Vol. 1964); IOWA CODE ANN. § 554.9302(3)(b) (1967); MICH. STAT. ANN. § 19.9302(3)(b) (Rev. Vol. 1964); MO. ANN. STAT. § 400.9-302(3)(b) (1965); N.Y. U.C.C. § 9-302(3)(b) (McKinney 1964); PA. STAT. ANN. tit. 12A, § 9-302(3)(b) (1970); UTAH CODE ANN. § 70A-9-302(3)(b) (Repl. Vol. 1968); VT. STAT. ANN. tit. 9A, § 9-302(3)(b) (1966).

⁴⁰UNIFORM COMMERCIAL CODE § 9-302(3)(b-Alternative B) (1962 version).

⁴¹UNIFORM COMMERCIAL CODE § 9-302, Comments 8 & 9.

now "complete" in nature.⁴² Since Alternative B will also operate to coordinate the UCC filing provisions with "complete" certificate of title statutes,⁴³ this alternative remains effective in the ten states mentioned above.

Alternative B refers directly to "motor vehicles" rather than to a certificate of title statute as provided under Alternative A.⁴⁴ This leaves both subsections (1)(d) and (3)(b-Alternative B) dependent upon the scope of the term "motor vehicles." Since all vehicle certificate of title statutes are now complete, perfection of purchase money security interests in mobile homes which are not "motor vehicles" would seem to be unduly complicated where the state has a certificate statute and has enacted Alternative B. Clearly a security interest in such property must be noted on the certificate in order to be perfected, thus precluding automatic perfection under (1)(d). But if it is not treated as a consumer good and not otherwise exempted, the filing of a financing statement may be required under filing provisions of the UCC. In the former instance it would seem pointless for the UCC to provide automatic perfection. In the latter instance it would be an undue burden upon creditors to require both filing and notation under two separate systems in order to perfect one security interest.

The interplay between the various states' definitions of "motor vehicles," subsection (1)(d), alternatives of subsection (3)(b), and certificate of title statutes has thus resulted in several conflicts. As previously discussed these are: the limiting effect that narrow definitions of "motor vehicle" have on subsection (1)(d) and (3)(b-Alternative B); the possibility that mobile homes may be treated as consumer goods; the formal inconsistency of Alternative A overriding subsection (1)(d); and the possibility of requiring double perfection. In these areas of conflict there may be considerable confusion and resulting litigation with respect to the method by which perfection of purchase money security interests in mobile homes should be accomplished.⁴⁵ Several means are available to alleviate this confusion arising under section 9-302. One remedy, which the District of Columbia has adopted,⁴⁶ would be to add "or trailer" to the term "motor vehicle" when direct reference is made to the term under subsection (3)(b). The meaning of such a version of (3)(b) could hardly be more clear.

⁴²See Appendix A. It would seem that the existence of two alternatives is an anachronism since all certificate of title statutes are "complete." PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE—REVIEW COMMITTEE FOR ARTICLE 9 OF THE U.C.C., FINAL REPORT 238 (1971) [hereinafter cited as FINAL REPORT].

⁴³1 GILMORE § 20.8, at 575.

⁴⁴See notes 35-38 and accompanying text *supra*.

⁴⁵See generally Welsh at 289, 290; FINAL REPORT at 237.

⁴⁶D.C. CODE ANN. § 28:9-302(3)(b) (1967).

Another means to avoid the confusion of 9-302 would be the approach taken by Kansas,⁴⁷ which simply omitted the word "motor" from the term "motor vehicle." Most states have also defined "vehicles" in their statutes, and such definitions generally are broad enough to include mobile homes.⁴⁸ Still another possible approach is to broaden the definition of "motor vehicles" in the appropriate section of the state statutes referred to by section 9-302⁴⁹ or, perhaps, to insert a specific definition of "motor vehicles" in 9-302 itself, as Wyoming has done.⁵⁰

Although there are several alternatives to remedying the confusion which surrounds the term "motor vehicles" in section 9-302, an approach which is geared towards uniform adoption by the states may well be the most desirable.⁵¹ Uniformity of the law among jurisdictions is a basic purpose of the UCC as adopted by most states.⁵² A uniform remedy would simplify an out-of-state creditor's task of determining encumbrances against a mobile home and, further, would allow a particular state court's interpretation of such uniform remedial provisions to benefit other states if they later face the same legal questions.

Such a uniform remedy has been proposed by the Review Committee for Article 9 of the Uniform Commercial Code in the form of a new version of subsection (3)(b). The proposed version of (3)(b) is as follows:

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

. . .

(b) the following statutes of this state; [[list any certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute]]; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as a debtor.⁵³

⁴⁷KAN. STAT. ANN. § 84-9-302(3)(c) (Supp. 1971).

⁴⁸Welsh at 288.

⁴⁹*Cf.* Welsh at 289-90.

⁵⁰WYO. STAT. ANN. § 34-9-302(5) (Supp. 1971).

⁵¹*See* Welsh at 290.

⁵²UNIFORM COMMERCIAL CODE § 1-102(2)(c).

⁵³FINAL REPORT at 83 (note omitted). The filing provisions of subsection (4) read as follows:

Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a

The elimination of the two alternatives under this version would be a major step toward achieving uniformity since only six states currently are without any certificate of title legislation.⁵⁴ The proposed provision also offers the safeguard of allowing the individual state to name the certificate of title statute to which the UCC filing provisions shall yield.⁵⁵ When this is combined with the lack of reference to "motor vehicles" which might limit the scope of subsection (3)(b), it becomes impossible for a mobile home which falls within a certificate of title statute not to be exempted from the regular UCC filing requirements.⁵⁶

The new provision is a response by the Review Committee to the numerous criticisms section 9-302 of the UCC has received.⁵⁷ By proposing the change in subsection (3)(b), the Review Committee has not taken a specific position on whether mobile homes are "motor vehicles," but instead leaves the individual states free to decide this matter for themselves.⁵⁸ The Committee clearly stated that: "Public policy as to mobile homes ought not now be frozen in a uniform Code."⁵⁹ The proposed subsection also removes any conflict between the UCC and the certificate of title laws of a state by providing that the UCC will yield to the certificate laws.⁶⁰ Any formal inconsistency which may have arisen between subsection 1(d) and 3(b) has been resolved by the language in subsection (3) itself, which clearly states that the provisions under subsection (3) will prevail over subsection (1)(d).⁶¹

While there is confusion in the area of perfecting purchase money security interests in mobile homes under section 9-302 of the UCC,⁶² no

security interest in property subject to the statute or treaty can be perfected only by compliance therewith, except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

FINAL REPORT at 83.

⁵⁴See note 31 *supra*.

⁵⁵FINAL REPORT at 238.

⁵⁶Such a possibility now exists where a state has a narrow definition of "motor vehicle" and has adopted Alternative B to subsection (3)(b). The Review Committee's version of subsection (3)(b) would also remove the possibility of courts in states with a narrow definition and Alternative A making an improper determination that mobile home security interests would not be exempt from UCC filing requirements. Such a determination is not inconceivable because of the general confusion in this area.

⁵⁷FINAL REPORT at 237.

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰See note 55 and accompanying text *supra*.

⁶¹FINAL REPORT at 237.

⁶²See generally Welsh at 289, 290; FINAL REPORT at 237; 1 GILMORE § 20.8 at 572.

state need be without a remedy concerning such confusion. There are several effective reforms which have been invoked by individual states, but the real need, in light of the fact that the problem centers around provisions of the Uniform Commercial Code, is for uniform remedial action. The newly proposed provisions of the Review Committee offer an effective and convenient means to that end.

EUGENE M. ELLIOTT, JR.

APPENDIX				CERTIFICATE OF TITLE STATUTE
STATE	SUBSECTION (1)(d)	ALTERNATIVE OF SUBSECTION (3)(b)	MOTOR VEHICLE DEFINED AS	
ALABAMA	regular	A	self-propelled	none
ALASKA	regular	A	self-propelled	ALASKA STAT. § 28.10.470 (1962)
ARIZONA	regular	A	self-propelled	ARIZ. REV. STAT. ANN. § 28-325 (A) (1956)
ARKANSAS	regular	A	self-propelled	ARK. STAT. ANN. § 75-160 (Repl. Vol. 1957)
CALIFORNIA	other	A	self-propelled & propelled or drawn*	CAL. VEHICLE CODE § 6300 (West 1971)
COLORADO	regular	B	other	COLO. REV. STAT. ANN. § 13-6-19 (1963)
CONNECTICUT	regular	A	propelled or drawn	CONN. GEN. STAT. ANN. § 14-185 (1958)
DELAWARE	regular	A	self-propelled	DEL. CODE ANN. tit. 21, § 2332A (Supp. 1970)
FLORIDA	other	B	self-propelled	FLA. STAT. ANN. § 319.27(2) (1968)
GEORGIA	regular	A	propelled or drawn	GA. CODE ANN. § 68-421a (1967)
HAWAII	other	A	self-propelled	HAWAII REV. STAT. tit. 17, § 286-46 (1968)
IDAHO	regular	A	self-propelled	IDAHO CODE ANN. § 49-414 (1967)
ILLINOIS	regular	A	self-propelled	ILL. ANN. STAT. ch. 95 ½, § 3-302 (Smith-Hurd 1971)
INDIANA	regular	B	self-propelled	IND. ANN. STAT. § 47-2501 (Repl. Vol. 1965)
IOWA	regular	B	self-propelled	IOWA CODE ANN. § 321.50 (1966)
KANSAS	other	other	self-propelled	KAN. STAT. ANN. § 8-135(c)(5) (1964)

KENTUCKY	regular	A	propelled or drawn	KY. REV. STAT. ANN. § 186.045 (1969)
MAINE	other	A	self-propelled	None
MARYLAND	regular	A	self-propelled	MD. ANN. CODE art. 66 1/2, § 3-302(a) (Supp. 1971)
MASSACHUSETTS	other	A	propelled or drawn	None
MICHIGAN	other	B	self-propelled	MICH. STAT. ANN. § 9.1938(a) (Rev. Vol. 1968)
MINNESOTA	regular	A	other	None
MISSISSIPPI	regular	A	other	MISS. CODE ANN. § 8125-46 (Supp. 1968)
MISSOURI	regular	B	self-propelled	MO. ANN. STAT. § 301.310(1) (1963)
MONTANA	regular	A	other	MONT. REV. CODES ANN. § 53-110 (a) (Repl. Vol. 1961)
NEBRASKA	regular	A	other	NEB. REV. STAT. § 60-110 (Reissue 1968)
NEVADA	regular	A	self-propelled	NEV. REV. STAT. § 482.432 (1967)
NEW HAMPSHIRE	regular	A	self-propelled	N.H. REV. STAT. ANN. § 269-A:10 (Supp. 1970)
NEW JERSEY	regular	A	other	N.J. STAT. ANN. § 39:10-11(j) (Supp. 1971)
NEW MEXICO	regular	A	self-propelled	N.M. STAT. ANN. § 64-5-2(b) (1960)
NEW YORK	regular	B	propelled or drawn	None
NORTH CAROLINA	regular	A	other	N.C. GEN. STAT. § 20-58 (Repl. Vol. 1965)
NORTH DAKOTA	regular	A	other	N.D. CENT. CODE § 39-05-09 (Supp. 1971)

OHIO	other	A	other	OHIO REV. CODE ANN. § 4505.13 (Baldwin 1971)
OKLAHOMA	other	A	self-propelled	OKLA. STAT. ANN. tit. 47, § 23.3 (1962)
OREGON	other	A	self-propelled	Ore. Rev. Stat., § 481.412(2) (1969)
PENNSYLVANIA	regular	B	self-propelled	PA. STAT. ANN. tit. 75, § 203(b) (1960)
RHODE ISLAND	regular	A	self-propelled	None
SOUTH CAROLINA	regular	A	self-propelled	S.C. CODE ANN. §§ 46-150.3(c), .11 (1962)
SOUTH DAKOTA	regular	A	other	S.D. CODE § 32-3-41 (1967)
TENNESSEE	regular	A	other	TENN. CODE ANN. § 59-324 to 326 (Repl. Vol. 1968)
TEXAS	other	A	other	TEX. PEN. CODE ANN. art. 1436-1, § 41 (Supp. 1971)
UTAH	regular	B	self-propelled	UTAH CODE ANN. § 41-1-87 (Repl. Vol. 1970)
VERMONT	regular	B	propelled or drawn	Vt. STAT. ANN. tit. 23, § 2042 (Supp. 1971)
VIRGINIA	other	A	self-propelled	VA. CODE ANN. § 46.1-72 (Repl. Vol. 1967)
WASHINGTON	regular	A	self-propelled	WASH. REV. CODE § 46.12.095 (1967)
WEST VIRGINIA	regular	A	self-propelled	W. VA. CODE ANN. § 17A-4A-1 (1966)
WISCONSIN	regular	A	self-propelled	Wis. STAT. ANN. § 342.19 (Supp. 1971)
WYOMING	other	other	self-propelled	Wyo. STAT. ANN. § 31-36 (1967)
DISTRICT OF COLUMBIA	regular	other	self-propelled	D.C. CODE ANN. § 40-702 (1967)

*CAL. VEHICLE CODE §§ 415, 670 (West 1971).