ABA Working Group Considers Latest Draft of Manufactured Housing Act

The ABA Working Group on Manufactured Housing is reviewing the latest draft produced by the Reporter for the Uniform Law Commission (ULC) Drafting Committee charged with developing an act on this subject. In addition, our Working Group will hold a conference call to discuss issues in more detail.

The ULC Drafting Committee is scheduled to meet October 28-30, 2011, in Chicago, and ABA will represent the industry at the meeting. The draft of the Act and other documents to be considered at the meeting were just released and should be posted soon on the ULC website (see http://www.nccusl.org/Committees.aspx?type=Drafting or http://www.law.upenn.edu/bll/archives/ulc/ulc.htm#mha).


Section 3 of the October meeting draft is a key section. It relates to the retail sale of a new manufactured home. Section 3(a) provides in part that "[a] manufactured home retailer that sells a new manufactured home shall transfer title to the home by a deed in recordable form if the home is or will be installed on land in this state. The retailer may not deliver the deed until the home has been delivered to that land." Section 3(b) provides in part that "[w]hen the home is installed or the deed is filed for recording, whichever occurs first, the home becomes real property for all purposes from the time the title was transferred."

The Comment to Section 3 provides in part that "[w]hile a manufactured home is part of a dealer's inventory, the home is personal property. Subsection (b) provides two methods by which the home converts to real property - the home is installed, as defined in Section 2(3), or the deed to the home is filed for recording, which, pursuant to subsection (a), cannot occur before the home is delivered to the land on which it will be installed."

Other sections of the draft relate to various subjects, such as a manufactured home acquired before the Act's effective date; the severance of a manufactured home; the relocation of a manufactured home; the
rights, titles, and interests in a manufactured home; and taxation of a manufactured home.

There is still time to join the ABA Working Group. Composed of financial institution loan officers, bank attorneys, and state bankers association professionals who lobby state legislatures on behalf of their members, the ABA Group meets by conference call on an as-needed basis. Please contact ABA's L.H. Wilson at (202) 663-5030 or lwilson@aba.com if you are interested in joining.

ULC Study Committee on Choice of Law in Fraudulent Transfers Meets; Your Input Needed

Earlier in October this Study Committee of the Uniform Law Commission held a conference call meeting. ULC study committees are typically charged with gathering information and comment about a particular subject and with preparing a report and recommendation as to whether a drafting project should be undertaken.

This Committee's task is to consider and make recommendations concerning the need for and feasibility of drafting a uniform act on choice of law rules in actions involving fraudulent transfers. At its October meeting the Committee considered a detailed paper authored by Professor Kenneth C. Kettering entitled "Codifying a Choice of Law Rule for Fraudulent Transfer: A Memorandum to the Uniform Law Commission." The paper can be found at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1920512.

The initial paragraphs of Professor Kettering's paper highlight the proposal: "The Uniform Law Commission ('ULC') has had great success in codifying the law of fraudulent transfer. The current uniform law on the subject, the Uniform Fraudulent Transfer Act ('UFTA'), promulgated in 1984, has been enacted by 43 states. The UFTA was a modernization of the Uniform Fraudulent Conveyance Act ('UFCA'), promulgated in 1918, which was widely enacted in its time and remains the law in two states.

Neither the UFTA nor the UFCA contains any choice of law rule. They therefore leave to other law - which in every state appears to be common law - determination of which jurisdiction's fraudulent transfer law applies when a given transaction is challenged. The purpose of this paper is to propose that the ULC institute a project to draft a uniform law on that subject, either as part of a revised UFTA or as a stand-alone statute." [footnotes omitted]

Drawing from his experience as a practicing lawyer, Professor Kettering notes that the subject is of "eminent practical significance." He cites illustrative circumstances in which "[c]hoice of law can determine the outcome of litigation over an allegedly fraudulent transfer."

From a creditor's standpoint, the impact of a controversial current product - so-called "asset protection trusts" - should be considered. The paper describes such a trust as "a species of spendthrift trust - that is, a trust having a restraint on voluntary or involuntary alienation of the beneficiary's interest. Such a restraint, if enforced, shields the beneficiary's interest from the beneficiary's creditors.... Pennsylvania courts were the first to face the question of whether such a trust might be self-settled - that is, whether a person may convey property to a spendthrift trust of which he himself is the beneficiary. Pennsylvania courts refused to allow the settlor's creditors to be thwarted by such an arrangement, and they based that holding on the primordial rule of fraudulent transfer law.... As spendthrift trusts became accepted in other states, courts uniformly followed this rejection of the self-settled variety, until the doctrine's origin in fraudulent transfer law faded from memory and it was taken simply as an axiom of trust law." [footnotes omitted]

Professor Kettering then outlines recent state statutes and developments relating to self-settled spendthrift trusts: "Lately there has been a vogue for statutory reversal of this rule. At least ten states...have enacted statutes validating self-settled spendthrift trusts." The paper provides other useful background information and highlights the issue at hand: "The viability of this product, therefore, may depend upon which state's fraudulent transfer law will be applied to a lawsuit by a creditor challenging a conveyance to such a trust." [footnotes omitted]
Also complicating this area are the changes that individual states have made to the uniform acts: "States enacting the UFTA or its predecessor have been liberal with nonuniform amendments." The paper analyzes the impact of three types of nonuniform amendments. These relate to (1) foreclosure sales and similar involuntary transfers, (2) insider preferences, and (3) statute of limitations.

During the October Study Committee meeting, concern was expressed that it might be difficult to get state legislatures interested in a free standing choice of law statute and that the product might be ignored as overly technical. It was agreed that the Study Committee chair would work with Professor Kettering in developing an issues list to be considered during the next conference call meeting of the group, which will likely be held in mid-November. If you have comments on this matter, please contact ABA's L.H. Wilson as soon as possible at (202) 663-5030 or lwilson@aba.com.

ULC Drafting Committee on Powers of Appointment Act Meets

This Drafting Committee of the Uniform Law Commission met September 23-24, 2011, in Washington, D.C. A memorandum prepared by Professor Thomas P. Gallanis identifies the major issues in drafting a uniform act on powers of appointment and provides the relevant language from the Restatement Third of Property and other uniform acts, such as the Uniform Probate Code. The memorandum can be found at http://www.law.upenn.edu/bll/archives/ulc/poaa/2011apr_%20Memo.pdf. Professor Gallanis also serves as Reporter for the Drafting Committee.

According to the memorandum, "[t]he power of appointment is a core device in modern estate planning practice. Powers of appointment are routinely included in trusts for tax reasons and to add flexibility to the property arrangement..... Only a minority of states have enacted power-of-appointment legislation..... For most jurisdictions, the law governing powers of appointment is primarily or exclusively case law - and some jurisdictions have little or no case law on point."

The draft considered at the September Committee meeting is available at http://www.law.upenn.edu/bll/archives/ulc/poaa/POAPPA_Draft_082511.htm. Based on comments at the meeting, the Reporter will be making several revisions to the draft.

Creditors should give particular attention to Article 6 of the draft, which relates to rights of the donee's creditors in appointive property. This drafting project is just getting started, and the Committee welcomes any comments. It is generally easier to get changes during a project's initial stages than near the end. If you have concerns or suggested revisions, please contact ABA's L.H. Wilson at (202) 663-5030 or lwilson@aba.com.

Joint Fall Meeting of American Bar Association Commercial Finance Committee and UCC Committee

The agenda for the Joint Fall Meeting of these two American Bar Association committees was recently released. Scheduled for November 16, 2011, at the New York Marriott Marquis, programs slated to take place include:

- Regulation U – What Every Deal Lawyer Should Know
- Healthcare 201: Advanced Principles of Healthcare Finance
- What's New in the Syndicated Loan Market

For the detailed agenda, see http://www.americanbar.org/content/dam/aba/administrative/business_law/2011_fall_comfin_ucc_agenda.pdf.
Registration material and other information can be found at http://apps.americanbar.org/buslaw/committees/CL710000pub/meetings.shtml.

Fall Meeting of American Bar Association Banking Law Committee to be in Washington, DC

Always a good opportunity to exchange views and explore issues with key banking people, this year's Fall Meeting of the Bar Association's Banking Law Committee will be held at The Ritz-Carlton, Washington, D.C., November 3-5, 2011.

One of the highlights of this meeting will be the panel of Federal Banking Agency General and Chief Counsel on Saturday, November 5.

The meeting agenda can be found at http://www.americanbar.org/content/dam/aba/administrative/business_law/2011_banking_law_agenda.pdf.

For registration materials and other information, see http://apps.americanbar.org/buslaw/committees/CL130000pub/meetings.shtml.

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