

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

Kenny Murena, Chair kmurena@dvllp.com

Adina Pollan, First Vice-Chair (Legislative) apollan@mcglinchey.com

Matthew Hale, Second Vice-Chair (Study Groups) mhale@srbp.com

Hon. Mindy Mora, Judicial Chair

I. Welcome & Approval of Minutes from the Prior Meeting - Exhibit A

Kenny Murena

II. Introductions of Special Guests and Pro Bono Reminder

Kenny Murena

The Section reaffirms its goal to achieve 100% participation in pro bono service by Business Law Section members and attorneys in their firms.

One way to achieve this goal is to participate in the **Veterans' Financial Literacy Project**

Middle District of Florida Bankruptcy Court's Districtwide Virtual Pro Se Clinic (Volunteer attorneys and unrepresented parties who want a virtual consult with a volunteer attorney can register at:

<http://www.bankruptcyproseclinic.com> and will then be matched up for a virtual consult at a mutually convenient time),

Northern District of Florida Pro Bono Initiative

Southern District of Florida Pro Bono Opportunities

- Take a Chapter 7 **or** Chapter 13 Case
- Mentor a student clinic team (usually a chapter 7 case or adversary proceeding) at one of our three participating law schools in Miami-Dade and Broward Counties
- Mentor a non-bankruptcy lawyer who is doing a bankruptcy case pro bono
- Represent a creditor in an adversary proceeding (many times a discharge action involves domestic support obligations)
- Represent a debtor in an adversary proceeding (usually a discharge action or objection to exemptions)
- Represent a debtor at a 2004 examination
- Represent a creditor at a 2004 examination
- Represent a debtor for an MMM mediation
- Staff a pro se clinic (usually 2 hours)
- Help with intake at a legal services provider

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

III. Business Law Section Update & Welcome

Mark Stein, Section Chair

Manny Farach, Section Chair-Elect

Stephanie Lieb, Section Treasurer

Peter Valori, Section Secretary

Gregory Yadley, Section Chair of Long-Range Planning

Doug Bates, Section Immediate Past Chair

IV. Legislation

A. Legislative Overview for 2024 Session

Robert Barron, Legislation Committee Chair

Woody Pollack, Legislation Vice Chair

Aimee Diaz Lyon, Section Lobbyist

B. Legislative Review Subcommittee

Adina Pollan, Legislative Vice Chair

Thomas Zeichman, Bob Charbonneau, Jodi Dubose, Andrew Layden, James Silver, Luis Rivera, Dave Slenn, Ivan Reich, Jessey Krehl, Joseph Pack, Zach Hyman

1. Subcommittee considered the Florida Bar's legislative positions on Bankruptcy, Uniform Commercial Codes, and Debtor-Creditor Issues for the 2022-24 biennium, which will sunset at the July 2024 meeting of the Board of Governors (BOG), to determine if BLS should recommend to the Big Bar that it retain the positions for the next two years.

Attached as **Exhibit B** is a Memorandum from the Big Bar and the list of all legislative positions that will sunset in July.

Report from Adina as to whether the Subcommittee recommends any changes to the legislative positions.

We will present any proposed changes to the legislative positions to the Legislation Committee meeting at 3:00 pm on June 22, 2024. The EC will approve the lists of legislative positions from all substantive Committees at the EC meeting.

2. Subcommittee (Thomas Zeichman) considered the Health Care bill - [HB 1549](#)
 - A. It shortens the statute of limitation for collecting medical debt from 4 years to 3.

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

(4) WITHIN THREE YEARS.—An action to collect medical debt 7163 for services rendered by a facility licensed under chapter 395, 7164 provided that the period of limitations shall run from the date 7165 on which the facility refers the medical debt to a third party 7166 for collection.

- b. It expands the ability to claim exemptions to shield them from the collection of medical debt for vehicles (from the usual \$1,000 to \$10,000) and personal property (when the homestead is not claimed from \$4,000 to \$10,000). New text below:

222.26 Additional exemptions from legal process concerning medical debt.—If a debt is owed for medical services provided by a facility licensed under chapter 395, the following property is 7191 exempt from attachment, garnishment, or other legal process in an action on such debt: (1) A debtor's interest, not to exceed \$10,000 in value, in a single motor vehicle as defined in s. 320.01(1). (2) A debtor's interest in personal property, not to 7196 exceed \$10,000 in value, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the 7198 State Constitution.

- 3. Subcommittee (Bob Charbonneau) considered the Debt Relief Services bill – SB 1074 and HB 1031
 - a. This Bill proposes an amendment to a consumer protection statute, 817.802. This statute makes it unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in Florida, directly or indirectly, a fee or contribution greater than \$50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than \$120 per year for additional consultations or, alternatively, if debt management services are provided, the person may charge the greater of 7.5% of the amount paid monthly by the debtor to the person or \$75 per month.
 - b. 817.803 excepts a number of entities from the application of 817.802. Sections (4)(a) and (b) are the proposed amendments to the statute, and add to the list of parties excepted from 817.802 telemarketers or sellers that provide debt relief services within the scope of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. ss.6101 6108, and the Telemarketing Sales Rule, 16 C.F.R. part 310. These parties are excepted, as the new language proposes, because these entities are already required to comply with existing federal regulations, so long as the telemarketer or seller does not receive money or other value from a debtor to disburse to a creditor in accordance with the definition of debt management services under Fla. Stat. § 817.801(4)(b).

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

- c. The proposed amendment to the statute adopts the definition of “debt relief service” contained in 16 CFR section 310.2, which defines a debt relief service as “any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.”
- d. This amendment proposes to except from 817.802 anyone who tele-markets or sells debt relief services, so long as the telemarketer or seller does not receive money from a debtor to be disbursed to the debtor’s creditors. Because it’s a consumer protection statute it may not fall within the purview of the Business Law Section, but if it does, it appears to be in keeping with and clarifying the rules regarding telemarketers and sellers of debt relief services, so long as they do not collect money from their clients to disburse to creditors.

C. 2024 Legislative Items Advanced by or of Interest to Committee

1. Judgment Lien Amendments

Prof. Jeff Davis, Jodi Dubose

HB 0175 by Rep. Christopher Benjamin (D-Miami Gardens)

SB 984 by Sen. Rouson (D-St. Petersburg)

Judgment Lien Act was passed in 2022. Amendments proposed by the Study Group were presented to and approved by this Committee at the June 2023 Annual Meeting. Thereafter, the Study Group reviewed possibility of legislative fix for some bad case law that narrowly interprets judgment liens and considering whether a glitch bill was needed.

The bill specified provisions to be used in resolving priority of conflicting rights between judgment lienholder and secured party. It specifies that rights of certain judgment debtors to proceed against judgment debtor's property are subject to certain provisions and provides that an account debtor may discharge certain obligations through a settlement agreement. Definitions of accounts and payment intangibles were taken from Article 9. The bill addressed when a lien attaches upon the transfer of title to vehicles and the timing of filing lien certificates.

10/16/2023 - House filed the bill

November 2023 – The bill passed several Committees

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

2024 Session – SB 984 passed the Senate 36-0 and passed the House 112-0

Signed into law or vetoed by Governor?

Thank you, Professor Davis, Jodi Dubose and every other Committee Member who assisted with this effort.

As explained in Section E.2. below, the Bankruptcy/UCC Committee’s Article 12 Study Group has proposed to further amend Florida’s judgment lien statute (Fla. Stat. § 55.202) in connection with implementing the 2022 amendments to the UCC. The proposed amendment would exclude “controllable accounts” and “controllable payment intangibles” from the effect of a judgment lien. An analysis prepared by the study group is attached as **Exhibit E**. (see also **Exhibit C-1** at White Paper, p. 3, fn. 10).

After his CLE presentation, during or immediately following this meeting, Robert Kain, on behalf of the Article 12 Task Force, will move to have our Committee APPROVE the proposed amendment to Fla. Stat. § 55.202 as part of the Article 12 amendments.

2. *Warehouse Liens / Towing and Storage Amendments* (§713.585)

Dennis LeVine

HB 0179 by Rep. Melony Bell (R-Fort Meade)

SB 774 by Sen. Keith Perry (R-Gainesville)

The Bill revises requirements for law enforcement agencies and the Department of Highway Safety and Motor Vehicles relating to removal of vehicles or vessels, revises requirements for sale, liens, and notices of lien, requires towing-storage operator to accept certain types of payment, revise requirements for sale or disposition of property at self-service storage facilities, and specifies copies of specified documents constitute proof for transfer of title and requires that rental agreements authorize tenants to designate alternate contact person.

10/16/23 – House filed the Bill

November 2023 – Passed House Committees of reference

January 2024 - Senate filed the Bill

2024 Session - HB 179 passed the House 115-0 and passed the Senate 33-0

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

Signed into law or vetoed by Governor?

Explanation of the changes to the original Bill and the law now in effect.

Thank you, Dennis Levine and all other Committee Members who worked on this.

3. *Florida Statutes, Chapter 517 Amendments*

Will Blair

[SB 532](#) by Sen. Jason Brodeur (R-Lake Mary)

The Bill provides for an extensive rewrite of Chapter 517, F.S. Specifically the bill revises the list of securities that are exempt from registration requirements, revises requirements for exemptions from registration for securities transactions, provides duties of issuers, provide certain sales are voidable within specified time, prohibits agents of issuers from engaging in certain acts, provides criteria to determine integration of offerings for purpose of registration and registration exemption, provides communications in connection with seminars and meetings and communications on securities offerings are not deemed to constitute general solicitation or general advertising, revises circumstances under which person is eligible for payment from Securities Guaranty Fund, and revises fund disbursement amounts.

1/10/24 – Senate file the Bill

2024 Session - SB 532 passed the Senate 39-1 and passed the House 113-0

Signed into law or vetoed by Governor?

Thank you, Will Blair, for your efforts.

4. Motor Vehicle Exemption Bill

Luis Rivera, Kelly Roberts

Value of Motor Vehicles Exempt from Legal Process

[HB 981 / HB 0029](#) by Rep. Benjamin (D-Miami Gardens)

[SB 158](#) by Sen. Polsky (D-Boca Raton)

The Bill revises the upward value of motor vehicle owned by natural person that is exempt from legal process from \$1,000 to \$5,000. The Bill does not have the cost of living adjustment.

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

9/5/23 – House filed the Bill

October 2023 – The Bill passed House Committees of reference

2024 Session - SB 158 passed Senate 37-0 and passed House 112-0

Signed into law or vetoed by Governor?

Thank you, Kelly and Luis, for your efforts.

5. Debt Relief Services

[HB 1031](#) by Rep. James Buchanan (R-North Port)

The Bill expands the list of exceptions to Part IV of Chapter 817, F.S., relating to credit counseling services, to also exempt a telemarketer or seller who provides any debt relief services; and provides that certain relevant terms have the same meanings as provided in the federal Telemarketing Sales Rule, 16 C.F.R. s. 310.2.

2024 Session - HB 1031 passed the House 119-0 and passed the Senate 39-0

Signed into law or vetoed by Governor?

D. Legislative Items Being Monitored

1. *Foreclosure Notice Bill*

April Stone, Hon. Catherine Peek McEwen

As of the 2023 Labor Day meeting, there was no traction from Attorney General Moody's office towards pushing this legislation forward, with Judge McEwen having discussed with the Attorney General's chief of staff the need to determine the optimal timing for advancing the bill, not wanting to push it until the foreclosure rates were up.

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

At the 2024 Winter Meeting, Judge McEwen stated that it does not appear the bill will gain much traction unless foreclosure rates around the state begin to increase.

Update after Winter Meeting

2. *FDUTPA*: Revisions to Fla. Stat. § 501.207(3)
R. Scott Shuker, Michael A. Friedman

Triple motion on the proposed revisions passed, but we did not get a sponsor in time for the 2023 session. As of the 2023 Labor Day Meeting, the Task Force was searching for a sponsor, hoping the revisions would gain traction, and considering looking for another bill to attach its revisions to. A sponsor and vehicle were not obtained and, as such, the proposed amendment was advanced in the 2024 session.

At the 2024 Winter Meeting, there were no updates to report. The amendments have not made their way onto an existing bill and they will not be introduced as a stand-alone bill. We are still waiting for the appropriate vehicle to attach these amendments to.

Update after Winter Meeting

3. *UCRERA Amendments*
Judge Mindy Mora, Kathleen DiSanto

As of the 2023 Labor Day Meeting, there was no agreement among the title insurance and traditional real estate members of RPPTLS and BLS regarding the language of the proposed glitch bill (proposed by RPPTLS) and the RPPTLS backed off and put it in our hands. The Task Force reported that it would make a recommendation of whether and how to proceed.

On 1/12/24, the UCRERA Task Force met by Zoom. During the meeting, the Task Force discussed whether it should finalize a white paper for a UCRERA glitch bill. Because the RPPTLS are no longer moving forward with their white paper and proposed glitch bill, the Task Force decided to not move forward with any proposed legislation. Instead, the Task Force will monitor how the courts interpret and apply UCRERA and decide if a glitch bill is necessary.

At the 2024 Winter Meeting, Judge Mora reported that RPPTLS are no longer pursuing amendments to UCRERA, and the plan is to wait for courts to interpret the existing statute and see if any more substantive changes are needed in the next

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

few years for a more comprehensive amendment to the statute if necessary.

No further update. Will remove from Agenda.

4. Federal Legislative Updates

a. H.R. 1017 - Bankruptcy Venue Reform Act

(There is no companion bill in the Senate)

118th Congress (2023-2024)

John Hutton, Hon. Catherine Peek McEwen (not present)

As of the 2023 Annual Meeting, the House Bill had bipartisan support, it had approximately 10 sponsors including U.S. Rep. Katherine Castor, we needed Republican cosponsors, and there was no companion Senate Bill. There was a report that Senator Warren will help and that Rep. Laurel Lee was mulling it over.

As of the 2023 Labor Day Meeting, the Bankruptcy venue reform was not a priority in the 118th Congress. The Act was introduced and referred to the Judiciary Committee in February, where it has sat without action. There were nine cosponsors joining the original sponsor, who is a Democrat. Seven cosponsors were Democrats; two were Republican. One of the cosponsors is from Florida: Rep. Kathy Castor, a Democrat. Judge Jay Brown got a sponsorship commitment from a Republican representative from Jacksonville, but the member's office has not pushed the original sponsor to list him. If that comes through, we will have one bipartisan pair from Florida co-sponsoring. Judge McEwen explained that Rep. Laurel Lee, a Republican from Florida who is on Judiciary and is a former state judge, is interested in learning more. The only other Floridian on Judiciary is Rep. Matt Gaetz, another Republican. And early in 2023, Doug connected Judge Isicoff with Rep. Gaetz's office to foster NCBJ legislation relations. Judge McEwen expressed the importance of garnering bipartisan support for any bill in the present Congress and did not think Judiciary will think the bill deserves attention unless there is a large number of cosponsors. There have been rumblings that Senator Elizabeth Warren may lend her support, and possible Representative Laurel Lee.

At the 2024 Winter Meeting, Judge McEwen reported that the Bankruptcy Venue Reform Act (H.R. 1017) is stuck in neutral. There is no Senate companion bill. Only one of the ten sponsors is in the Florida delegation, Kathy Castor of Tampa. If you want to move the bill out of neutral, then

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

you need to enlist support of more co-sponsors from Florida. The House has in-district work periods Jan. 22-26 and Feb. 20-29. If you don't know who your local House Rep. is or how to find the district office phone number in order to make an appointment, please contact Judge McEwen.

Update after Winter Meeting

b. Subchapter V Debt Cap Ceiling Sunset Extension

1/13/24 Update from Judge McEwen: The NCBJ is working the Hill to get the sunset for the Subchapter V debt cap ceiling of \$7.5 million extended or, better yet, making that current debt cap permanent. The deadline was June 19, 2024. Judge Isicoff and Judge McEwen have been personally involved in the effort. Rep. Laurel Lee of Tampa is on the House Judiciary Committee, so her support is key. Rep. Matt Gaetz is also on Judiciary. His support would also be instrumental if anyone can help with that.

At the 2024 Winter Meeting, Judge McEwen presented and indicated there was some pushback recently to the extension of the \$7.5 million debt limit for Subchapter V bankruptcy cases, but that it was a work in progress and legislative efforts were ongoing.

Update after Winter Meeting

c. Amendments to Federal Rules of Civil Procedure 16 and 26 regarding privilege logs

At the 2024 Winter Meeting, Judge McEwen reported that amendments are under consideration by the JCUS Civil Rules Advisory Committee. A recently proposed amendment to Fed. R. Bankr. P. 7031 to permit special masters will be considered by the JCUS Bankruptcy Rules Advisory Committee for further comment, or not, this Spring. The attempt has failed twice, once in the 1990s and once in 2009. If anyone would like to comment on the proposal, do that by sending an email to Judge McEwen, and she will pass it on. The proposal can be found on the U.S. Courts' rules suggestions webpage at the very top (Judge Kaplan is the proponent).

Update after Winter Meeting

d. Congressional Legislation affecting Student Loans

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

H.R. 306 – *Stopping Abusive Student Loan Collection Practices in Bankruptcy Act of 2023*: This legislation would add a provision in the Bankruptcy Code to provide for attorneys’ fees and costs for the debtor if the Debtor pursues dischargeability of student loan debt and the debt is ultimately discharged.

H.R. 138 – *Private Student Loan Bankruptcy Fairness Act of 2023*: Under this proposed legislation, private student loans would be dischargeable without the need for a debtor to establish undue hardship as required under current law.

S. 136 – *ISA Student Protection Act of 2023*: Under this proposed legislation, educational income share agreements would not be subject to same undue hardship standard typical of student loan discharges.

e. Congressional Legislation on Exemptions

H.R. 962 – *Protecting Gun Owners in Bankruptcy Act of 2023*. The legislation would increase the exemption for firearms to \$3,000 and clarifies that such firearms are household goods not subject to liens in bankruptcy.

f. Congressional Legislation on Health Savings Accounts

H.R. 2959 and companion S. 2621 – *Health Savings Act of 2023*. This legislation seeks, among other things, to exempt HSA’s from creditor claims under federal bankruptcy exemptions (Florida law already provides for this in F.S. sec. 222.22.)

E. Study Groups

1. *UCC Article 9 - Financing Statements*
Adina Pollan apollan@mcglinchey.com
Mark Wolfson mwolfson@foley.com

The 11th Circuit decision in the case *In re NRP Lease Holdings, LLC*, 50 F.4th 979 (11th Cir. 2022), which held that, under Florida law, because the Florida Secured Transaction Registry did not employ “standard search logic” for searches of financing statements, the statutory safe harbor for financing statements that fail to correctly name the debtor could not apply, and so the financing statements filed by creditor that incorrectly named debtor were “seriously misleading” and ineffective to perfect creditor's security interest in debtor's assets. In answering the 11th

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

Circuit’s certified questions, the Florida Supreme Court in *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 346 So.3d 587, 593 (Fla. 2022) adopted “the definition of ‘standard search logic’ accepted in the secured transactions industry, which requires the search to identify specific hits, if any,” and held that “the search option offered by the Registry, which returns the entire index, is not a ‘standard search logic.’” The court held that “section 679.5061(3) provides one way and one way only to search the filing office’s records for purposes of determining whether the safe harbor applies to a financing statement that incorrectly names a debtor— i.e., ‘using the filing office’s standard search logic, if any.’” *Id.* As a result, the court explained that “[b]ecause the Registry lacks a ‘standard search logic,’ the search contemplated by section 679.5061(3) is impossible, which means that filers are left with the zero-tolerance rule of section 679.5061(2).” *Id.* Because the zero-tolerance rule applies “until the Registry employs a standard search logic, ... any financing statement that fails to correctly name the debtor as required by section 679.5031(1) is ‘seriously misleading’ and therefore ineffective.” *Id.*

Study Group was formed to make recommendation regarding possible legislative or administrative proposal to bring Florida’s search registry into the 21st century and provide a safe harbor as well as review other states with the requisite search logic which could serve as a model.

At the 2023 Labor Day Meeting, the Study Group reported on their efforts to remedy the effects of the *Beach Boulevard* case (*In re NRP Lease Holdings, LLC*, 50 F.4th 979 (11th Cir. 2022)). In particular, the Study Group explained it was working with the Secretary of State and the DBPR to find out how to fix the website, which has been more of an operational issue. And, the group was focusing on exploring legislative avenues to remedy the issue in the interim while the Secretary of State works through the issue. The Study Group believes that approximately 1/3 of UCC-1s are invalid under this new case. Finally, the Study group was working to get the notice out to all affected parties.

At the 2024 Winter Meeting, the study group reported that it is in the process of working with the Secretary of State’s office to refine the search and make it more user friendly for the people inputting the information. Two issues that have been flagged are retroactivity and specifics on how the search engine should run. The goal was to get something accomplished in 2024.

Report from Study Group

- Mark Wolfson wrote a paper that will be published shortly.
- Study Group is coordinating with Joseph Van de Bogart regarding the changes that have just been made to the website.

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

2. *UCC Article 12 – New Fla. Stat. § 669 and Related UCC Amendments*

Robert Kain rkain@conceptlaw.com

Matthew Hale

Hon. Mindy A. Mora

The Uniform Law Commission (“ULC”) proposed new UCC Article 12, to be titled Fla. Stat. § 669, as an expansion of the Uniform Commercial Code (“UCC”), Fla. Stat. §§ 661 –680. Article 12 establishes a baseline framework allowing creditors to secure liens on digital assets owned by debtors and updates UCC Article 9, Secured Transactions, Fla. Stat. § 679, for electronic assets (payment intangibles and payment accounts, § 679.1021), *et al.* The ULC’s goal is to modernize the UCC for basic transactions involving electronic money and digital assets on a national, state-by-state level much like it did in the 1950s for the transactions involving goods.

The Article 12 Task Force has reviewed, edited, and commented on the 140+ page version of Fla. Stat. § 669. The Task Force includes Business Law Section members, Real Property Probate and Trust Law Section members, and representatives from the Florida Bankers Association and interested industry groups.

At the 2023 Annual Meeting, this Committee formed a Study Group, which identified a number of issues with the proposed Amendments and recommended further review and consideration of the proposed Amendments, various terminology used, and how it cross-references and affects other Florida Statutes.

At the 2023 Labor Day Meeting, The Article 12 Task Force presented to this Committee the proposed Amendments to Florida’s UCC Article 12, a draft Florida UCC Article 12 Bill, and a white paper, and requested input. The Task Force explained that the proposed legislation is ULC-approved and contains many revisions to other sections of the UCC and solicited the participation of this Committee. This Committee discussed the proposed legislation, noting that Florida would be one of the first large commercial states to adopt the Article 12 UCC amendments and the importance of the issue on the definition of money and whether it includes Central Bank Digital Currency.

Fla. Stat. § 669 is a critical piece of legislation which, if passed as proposed by the ULC, will establish Florida as a national leader and support a variety of state-wide interests.

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

An updated version of the White Paper and a Summary Comparison of Existing UCC Articles to Proposed Adoption of the UCC Amendments (2022), including new Article 12 are attached as **Exhibit C-1** to this Agenda.

Report from Our Study Group:

The Study Group supports the efforts of the Article 12 Task Force and recommends that the Bankruptcy/UCC Committee support the proposed legislation. This Committee's Study Group has reviewed the proposed changes to Articles 8 and 9 and elsewhere in the UCC to ensure Florida's non-uniform provisions are not affected by the proposed legislation.

The Study Group has also considered whether Florida's judgment lien statute should be further amended in connection with implementing the 2022 UCC amendments. The recent amendments to Florida's judgment lien statute, Fla. Stat. § 55.202, added "accounts" and "payment intangibles" categories of property subject to a judgment lien. The 2022 UCC amendments introduce "controllable accounts" and "controllable payment intangibles" as new types of digital assets, which are intended to benefit from the "take free" rules and negotiability elements engrained in new Article 12. If "controllable accounts" and "controllable payment intangibles" are subject to judgment liens in Florida, the negotiability characteristics of these types of digital assets would be undermined.

The Study Group has prepared an analysis of this judgment lien issue, which is attached as **Exhibit E**. To preserve the overall structure and intent of Article 12 as to "controllable accounts" and "controllable payment intangibles," the Study Group supports an amendment to the judgment lien statute that would exclude "controllable accounts" and "controllable payment intangibles" from the effect of a judgment lien. This amendment is supported by the Article 12 Task Force (*see Exhibit C-1* at White Paper, p. 3, fn. 10).

A CLE presentation by Robert Kain on the structure and operation of UCC Article 12 will follow our meeting today, after which he will invite discussion and inquire as to this Committee's support of the proposed new Article 12 (Fla. Stat. § 669). Further, as mentioned in Section C.1. above, Robert Kain will move to have our Committee APPROVE the proposed amendment to Florida's judgment lien act, Fla. Stat. § 55.202, discussed above, as part of the Article 12 amendments (*see Exhibit C-1* at White Paper, p. 3, fn. 10) and he will move to have our Committee REJECT the proposed amendment on Choice of Law for Securities, Fla. Stat. § 678.1101 (*see Exhibit C-1* at White Paper, p. 1, fn. 2 and **Exhibit C-2**).

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

The Article 12 Task Force is also seeking approval of Corporations, Business Litigation, and the Blockchain/Digital Assets Committees, each of which has Article 12 study groups. If these substantive Committees approve the proposed legislation, the Article 12 Task Force will seek approval of the proposed UCC Article 12 (as Fla. Stat. § 669) by the BLS Executive Council at the BLS Labor Day Retreat, and thereafter the Florida Bar Executive Committee.

3. *Commercial Financing Disclosure Law - Product Brokers & Providers*

[HB 1353](#) by Rep. Bankson (R-Apopka)

Jocelyn Macelloni, Matt Hale, Diane Wells, Mark Wolfson, John Hutton

The bill creates the “Florida Commercial Financing Disclosure Law,” which requires a provider that consummates more than five commercial financing transactions of \$500,000 or less in a 12-month period to give each business that enters into a consumer financing transaction certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment. The bill establishes exemptions to these disclosures and provides that a provider’s characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.

A Study Group was formed to investigate whether this Committee wants to propose a glitch bill or other legislation to address this law and to look into what is happening in Florida and nationwide. As of the Labor Day Meeting, the Study Group was planning to prepare a position paper regarding a possible legislative proposal to address definition of “business,” “business purpose transaction,” “accounts receivable purchase transaction,” the Attorney General as the “exclusive” authority to enforce legislation, as well as any other matters deemed necessary.

Report from Study Group

4. *Motor Vehicle Exemption Study Group*

Kelly Roberts, Luis Rivera

See 2024 Legislative Items (above)

Report from Study Group

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

5. *ABC Study Group*
Trish Redmond, Jodi Dubose

After the enactment of the “glitch bill” amendments, the ULC announced that it would propose a model Assignment for the Benefit of Creditors Act. So, the Study Group is monitoring this and will provide updates to the Committee as it develops. Since the Labor Day Meeting, there has been some movement at the ULC level and the Study Group will review it.

Report from Study Group

V. Continuing Legal Education

A. 2024 Bankruptcy/UCC Committee CLE Programs Since 2024 Winter Meeting

1. Bankruptcy Law Case Update - Webinar

May 21, 2024, 12:00 PM - 1:00 PM

Presentation and discussion of recent bankruptcy case law developments from November 2023 through April 2024.

Mariane Dorris - Shuker & Dorris P.A. Orlando, FL

Lauren Stricker - Shuker & Dorris P.A. Orlando, FL

Reginald Sainvil - Baker & McKenzie LLP Miami, FL

2. MCA Lenders & Bankruptcy – Is it the Wild West or a New Frontier - Webinar

June 12, 2024, 12:00 pm – 1:00 pm

The program provided an overview of the history of MCA lending and the issues implicated by how you characterize a merchant cash advance, and provided practice pointers for the boots on the ground.

Kathleen L. DiSanto, Buss Ross, P.A.

Mathew B. Hale, Stichter, Riedel, Blain & Postler, P.A.

Luis E. Rivera II, GrayRobinson, P.A.

Lynn Welter Sherman, Trenam Law

B. 2024 CLE Programs Sponsored by Other Committees or Organizations

1. Second Annual Symposium titled “Perspectives in Bankruptcy Law”

(Florida State University College of Law Business Review)

This Symposium featured current and former U.S. Bankruptcy Court Judges (including Chief Judge Karen Specie) as well as prominent bankruptcy scholars

January 26, 2024

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

Florida State University College of Law

2. 40th Annual Federal Securities Institute
(Corporations, Securities & Financial Services Committee)
February 15-16, 2024
Tampa Marriott Water Street
 3. 48th Annual Alexander L. Paskay Memorial Bankruptcy Seminar
(American Bankruptcy Institute and Stetson University College of Law)
This seminar featured programming options geared toward both business and consumer issues, taught by a faculty of prominent regional and national speakers and bankruptcy judges.
February 15-16, 2024
Westin Tampa Waterside Hotel
 4. Annual View from the Bench & Bar and Judicial Reception
(Florida International University College of Law)
Distinguished federal and state judges, corporate & in-house counsel, government attorneys, and private practitioners discussed the latest areas of practice growth - from Artificial Intelligence to the science of jury selection. All proceeds provide scholarships for deserving students who will become the next generation of lawyers and judges.
March 1, 2024
Miracle Theater, Coral Gable, Florida
- C. Future CLE Programs Relevant to this Committee
1. Ethical Dilemmas in Bankruptcy – Webinar
June 26, 2024
Presentation and discussion of recent bankruptcy case law regarding ethical issues arising under Federal Rules of Bankruptcy Procedure 2014, 2016 & 2019 and 11 U.S.C. §362(a) & (k).
12:00 pm – 1:00 pm
 2. *The Judge Michael G. Williamson View from the Bench 2024*
November 7, 2024 – Tampa
November 8, 2024 – Miami
- D. Ideas for Future CLEs:
1. Alternative Dispute Resolution
 2. Article 9
 3. Commercial Mortgage-Backed Security (CMBS) Loans

Agenda for the Meeting of the Bankruptcy/UCC Committee of the Business Law Section of the Florida Bar at the Annual Meeting

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

4. ABC Sales
5. Non-recourse obligations

E. CLE Committee Report & Florida Bar Journal
Luis Rivera luis.rivera@gray-robinson.com
Kathleen DiSanto kdisanto@bushross.com

Report from CLE Committee

Please reach out to the CLE Committee if there are any CLE presentations that you are interested in coordinating. The CLE Committee asks members to route all CLEs through the CLE Committee.

Also, there are upcoming opportunities for members to submit articles for publication in *The Florida Bar Journal*, which is the premier source of practical articles on Florida law. The primary purpose of the Business Law column is to educate or inform the reader on issues of business law and practical concern to lawyers. The CLE Committee welcomes articles and essays addressing important issues in bankruptcy corporation, banking, business, bankruptcy, computer and cyber law, antitrust and franchise law, litigation, and related areas of law in Florida. Anyone interested in submitting an article should reach out to the CLE Committee.

VI. Communications Committee Report & BLS Newsletter

April Stone astone@tmppllc.com
Shirley Palumbo shirley.palumbo@nexteraenergy.com
Crystal Potts crystal@potts-legal.com

The Committee requests articles and blogs for the Section newsletters and social media outlets.

Submission guidelines: <https://flabizlaw.org/blog-submission/>

Topics: what your Committee/Task Force is doing this year, including CLEs, meetings, projects, etc. If any CLE presenter would like to provide a written synopsis of their presentation, the Committee welcomes that as well.

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

VII. Out of State Division Newsletter Submissions

Don Workman, Hon. Catherine Peek McEwen

All members, especially young lawyers, are encouraged to submit articles which are almost guaranteed to be published. Most editions have articles from Bankruptcy/UCC members.

VIII. Cross-Committee Partnership and Other Liaison Reports

A. *IMF Committee* – **Kelly Roberts**, Katherine Van de Bogart

B. *Financial Literacy* – **John Hutton**, Tara Trevorrow

C. *Membership Committee* – **Juan Mendoza**, Christina Taylor

D. *Pro Bono* – **Raina Shipman**, Jim Moon, Tara Trevorrow, Hon. Laurel Myerson Isicoff

E. Scholar and Fellows Retention Task Force – **Zack Hyman**, Chris Broussard, Hon. Catherine McEwen

F. *Regional Bankruptcy Bar Liaisons*

Megan Murray mmurray@underwoodmurray.com

(BBA-ND Fla., BBA-SD Fla., TBBA)

Christian Haman chaman@dallagolaw.com (CFBLA, JBBA, SFBPA)

G. *American Bankruptcy Institute (ABI)*

Adina Pollan

2024 Southeast Bankruptcy Workshop

July 25, 2024

Ritz Carlton Naples

Link to Register: <https://members.abi.org/register?eventkey=se24>

H. *Commercial Law League of America (CLLA)* – **Robert Charbonneau**

I. *Florida Institute of CPAs (FICPA)* – **Don Workman**

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

IX. New Business

- A. Business Litigation Task Force on the Voluntary Trial Resolution statute is currently working on a rewrite of section 44.104, Florida Statutes. The Task Force’s target is to present a completed draft and white paper at the Labor Day Retreat.

Allison Leonard will describe what the Task Force is working on and what it will be asking our Committee to consider and approve in September.

X. Future Meetings, Retreats

- A. Business Law Section Annual Labor Day Retreat
August 29 – September 2, 2024
Ritz Carlton Naples

Link to Register: <https://flabizlaw.org/calendar/#!event/2024/8/29/annual-labor-day-retreat>

XI. CLE Presentation on the structure and operation of Florida’s New UCC Article 12 – Fla. Stat. § 669

Robert Kain

PowerPoint Presentation attached as **Exhibit D**.

Discussion regarding the Committee’s position on the proposed new UCC Article 12 (Fla. Stat. § 669).

Motion to APPROVE the proposed amendment of Judgment Liens Act (making clear that Controllable Electronic Records (CERs) and Controllable Payment Intangibles (CPIs) are not covered by the Judgment Lien Statute) as part of the Article 12 amendments (*see Exhibit C-1* at White Paper, p. 3, fn. 10).

Motion to REJECT the proposed amendment on Choice of Law for Securities, Fla. Stat. § 678.1101 (*see Exhibit C-1* at White Paper, p. 1, fn. 2 and **Exhibit C-2**).

If this Committee has no position on these last two motions, then a NO COMMENT vote is acceptable.

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Annual Meeting**

Thursday, June 20, 2024, 1:00 p.m. – 3:00 p.m., Waldorf Grand Ballroom 2

XII. Adjourn