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The Importance of Investing in Leadership

By Lani Van Dusen

Many equipment leasing and finance organizations have been investing in leadership, but at varying levels. This article provides evidence that the level of investment has a direct relationship to the level of leadership effectiveness. In turn, the level of leadership effectiveness has a direct relationship to organizational performance.

The Impact of Alternative Finance on the Equipment Finance and Leasing Industry

By Charles B. Wendel

Alternative finance companies are increasing their lending. This article examines why and describes their typical business models. It also looks at how they can best work with equipment leasing and finance firms to serve more borrowing clients and increase revenues.

Special Considerations For Perfection Opinions Covering Electronic Chattel Paper As Collateral

By Margo H.K. Tank and R. David Whitaker

The equipment leasing industry is expanding its use of electronic records and signatures to document equipment leases. Inclusion of electronic chattel paper in a perfection opinion will require the attorney preparing the opinion to understand both the structure for establishing "control" under UCC Section 9-105 and the technology platform being used to manage the electronic chattel paper and transfer control.

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The Equipment Leasing & Finance Foundation

1825 K Street NW
Suite 900
Washington, DC 20006
202.238.3400
www.leasefoundation.org



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By Margo H.K. Tank and R. David Whitaker

The equipment leasing industry is expanding its use of electronic records and signatures to document equipment leases. Inclusion of electronic chattel paper in a perfection opinion will require the attorney preparing the opinion to understand both the structure for establishing “control” under UCC Section 9–105 and the technology platform being used to manage the electronic chattel paper and to transfer control.

Editor’s note: This article is a companion piece to the March 2015 Foundation study by BuckleySandler titled Digital Documents: Financing Paperless Transactions. The study is available at www.leasefoundation.org.

A recent study completed by the Equipment Leasing and Finance Foundation confirms that the equipment leasing industry is expanding its use of electronic records and signatures to document equipment leases.¹ As the use of electronic lease documentation grows, so does the desire of equipment lessors to offer those leases to lenders as collateral on the same footing with paper-based leases.² In turn, lenders taking electronic leases as collateral seek the same level of confidence concerning the existence of a first-priority, perfected security interest that is achieved when the lender takes delivery and physical possession of paper-based leases.

To facilitate these objectives, Revised Article 9 of the Uniform Commercial Code has adopted a specific structure for perfecting a first-priority security interest against equipment

leases evidenced by electronic records.³ Revised Article 9’s special structure permits a secured party to perfect a first-priority security interest in leases evidenced by electronic records and signatures without requiring either physical possession of tangible lease documentation or the filing of a first-in-time financing statement.⁴

This new structure presents a challenge for legal counsel asked to issue a perfection opinion concerning the leases evidenced by electronic documentation, since Revised Article 9 replaces the customary reliance on physical delivery and possession of original paper lease documents with certain technology-based process requirements.⁵ This article will discuss (1) the structure established by Revised Article 9 for establishing a first-priority security interest in leases evidenced by electronic documents,

(2) special issues to consider when determining whether that structure has been met, and (3) sample language for perfection and priority opinions addressing equipment leases evidenced by electronic documents.⁶

EQUIPMENT LEASE DOCUMENTS AS ELECTRONIC CHATTEL PAPER

Revised Article 9 defines “chattel paper,” in pertinent part, as

a record or records that evidence both a monetary obligation and a security interest in specific goods, ... [or] a lease of specific goods. ... In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods.⁷

“Electronic chattel paper” is further defined as chattel paper evidenced by a record

or records consisting of information stored in an electronic medium.⁸ Therefore, by definition a lease of specific equipment evidenced by electronic records and signatures will be electronic chattel paper under Revised Article 9. It is possible to perfect a security interest in electronic chattel paper by filing a financing statement covering the electronic chattel paper.⁹ However, just as with paper chattel paper (referred to in Revised Article 9 as “tangible chattel paper”), there is a structure available for taking a perfected security interest in electronic chattel paper that will have priority over a security interest perfected by filing.

Section 9–105 of Revised Article 9 (Section 9–105) supplants the former Article 9’s notion of perfection by *possession* of the original of the tangible chattel paper with *control* of the authoritative copy of the

electronic chattel paper. Further, it sets the stage for creating liquidity in the market for electronic chattel paper by establishing the rights of a secured party in control vis-à-vis other parties holding a security interest in the electronic chattel paper.¹⁰ Specifically, Revised Article 9 provides that:

(a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed *other* than merely as proceeds of inventory subject to a security

interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.¹¹

The term "purchaser" in Revised Article 9 includes a secured party taking a security interest in the chattel paper.¹² Therefore, if a secured party has "control" of electronic chattel paper, the secured party has a security interest in the electronic chattel paper that is perfected under Section 9-314 of Revised Article 9 and, under the circumstances outlined above, prior to earlier security interests in the chattel paper perfected by filing a financing statement.¹³

CONTROL OF ELECTRONIC CHATTEL PAPER

The requirements for establishing control are set out in Section 9-105. Control of electronic chattel paper is intended to be the "functional equivalent" of possession of tangible chattel paper.¹⁴

Under the original version of Section 9-105 of Revised Article 9, a secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in numbered clauses 4, 5, and 6 below, unalterable;
- (2) The authoritative copy identifies the secured party as the assignee of the record or records;
- (3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any revision of the authoritative copy is readily iden-

tifiable as an authorized or unauthorized revision.¹⁵

Under the original terms of Section 9-105, it is necessary to satisfy all six of the above-listed requirements to have control of electronic chattel paper. Therefore, if a system does not meet all of the above-listed requirements, a secured party will not have "control" of electronic chattel paper under original Section 9-105.

However, the 2010 amendments to Revised Article 9,¹⁶ which have been adopted by forty-seven states and the District of Columbia as of the date of this article, create a more permissive regimen for establishing control. Under the 2010 amendments, control is established "if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned."¹⁷

This new general rule substantially liberalizes the requirements for control described above. In states that have enacted the 2010 amendments those six requirements now serve as a safe harbor for meeting the

general rule of control, but failing to satisfy all six requirements is not necessarily fatal to establishing control.¹⁸

The requirements for establishing control are set out in UCC Section 9-105. Control of electronic chattel paper is intended to be the "functional equivalent" of possession of tangible chattel paper.

On the other hand, in those states that have not enacted the 2010 amendments as of this writing (including Oklahoma, and also New York and Missouri, both of which adopted some of the 2010 amendments but not those pertaining to Section 9-105), it is still necessary to satisfy all six requirements in order to establish control. Because the 2010 amendments have not been universally adopted by all jurisdictions, the discussion in this article assumes the six requirements are mandatory and not just a safe harbor.

Ownership and control are related to access rights and change dynamically as control is transferred within the eVault and pursuant to an internal record integrated into the eVault.

EVALUATING A SYSTEM FOR ESTABLISHING CONTROL OF ELECTRONIC CHATTEL PAPER

Official Comment 4 to Section 9–105 of Revised Article 9 states the drafters' intention to leave to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context.¹⁹

Satisfying the requirements of UCC Section 9–105 entails more than the agreement of interested persons. In Official Comment 4, the drafters observe that "control" requires that it be "a physical impossi-

bility (or sufficiently unlikely or implausible so as to approach practical impossibility) to add or change an identified assignee without the participation of the secured party (or its authorized representative). It would not be enough for the assignor merely to agree that it will not change the identified assignee without the assignee-secured party's consent."²⁰

On the other hand, the drafters also observe that the standards applied to determine whether a party has control of electronic chattel paper should not be more stringent than those applied in the paper world to determine whether a party has possession of tangible chattel paper.²¹

The primary practical model that has emerged for establishing control pursuant to Section 9–105 is a "closed system" in which all parties seeking control have access to the authoritative copy of the electronic chattel paper on a single server platform and software system specifically designed to manage transfers of control and the integrity of the electronic chattel paper (often referred to in the industry as an "eVault").²²

Ownership and control are related to access rights and change dynamically as control is transferred within the eVault and pursuant to an internal record integrated into the eVault.²³ As part of the process of preparing a perfection and priority opinion for electronic chattel paper being stored and transferred using an eVault, it is necessary to review and confirm that the eVault effectively meets the requirements of Section 9–105.

To do so, the eVault must successfully perform each of these four functions:

- Identifying the authoritative copy of the electronic chattel paper
- Establishing the location of the authoritative copy of the electronic chattel paper
- Identifying the current secured party in control
- Effecting a transfer of control from the debtor to a secured party, or from one secured party to another

An eVault is usually designed as a self-contained, secure environment. It leverages the fact that with electronic chattel paper it is control over access,

and not physical location, that is of chief importance to meeting the requirements of Section 9–105. The authoritative copy of the electronic chattel paper is created and stored in the eVault, which is managed either by the secured party or its designated custodian. Every party requiring access, from the original owner creating the documentation and obtaining signatures to the ultimate secured party or purchaser, obtains access to the authoritative copy and the transfer functions via the eVault.

Access may be either direct or through a portal. The authoritative copy is stored in the eVault, and the eVault employs an internal ownership record or registry to keep track of the identity of the control party. Each subsequent secured party takes control by accepting a transfer of control initiated by the current party in control (beginning with the original owner of the electronic chattel paper), taking advantage of the transfer functions built into the eVault. The eVault also stores and protects the integrity of the authoritative copy.

In evaluating the eVault and its effectiveness, there are three key

elements to bear in mind. The first key element is the requirement for an authoritative copy. The second key element is that there is a method for establishing the person in control of the authoritative copy. The third key element is that the authoritative copy must be distinguishable from other copies.

Requirement for an Authoritative Copy

The emphasis on an authoritative copy reflects a reality of the electronic environment: there is really no such thing as a tangible original document that can be physically transferred from person to person. The transmission of an electronic document results in the creation of a new copy, not the physical transposition of the existing copy.²⁴ A copy, to qualify as the authoritative copy under Section 9–105, must meet three criteria: it must be unique, identifiable, and (except as otherwise provided) unalterable.²⁵

Unique

The first criterion, that the authoritative copy be "unique," should be understood in its simple dictionary sense: that is, the authoritative copy must have a characteristic that distinguishes

it from other copies. That characteristic may be provided by technology or by process or agreement. For example, an authoritative copy stored within a secure information processing system may either be provided with a unique control number or be held in a specified server or other location.²⁶

Essentially, the authoritative copy must be unalterable without detection, but that copy may be altered so long as the changes can be tracked and it can be determined whether the change was authorized.

Identifiable

As a practical matter, if a record is unique, almost by definition it is identifiable, so that the second criterion for an authoritative copy appears somewhat redundant. The most sensible interpretation of the identification rule is that the document management system being used, or the agreement of the parties, must explicitly define the authoritative copy in terms of its unique characteristic. In other words,

an agreement or system rule or system function should specify, describe, or detect the unique feature that identifies the authoritative copy.

Unalterable (with Exceptions)

Finally, the third criterion for an authoritative copy is that the record must be unalterable, but this general rule is subject to three significant exceptions. First, the record may be altered to reflect a new, authorized control party of the record. Second, the record may be altered to reflect whether it is the authoritative copy. And finally, the record may be altered so long as the authorized copy reflects whether the revision is authorized or unauthorized.²⁷

These exceptions are so extensive that as a practical matter they almost swallow the rule. Essentially, the authoritative copy must be unalterable without detection, but that copy may be altered so long as the changes can be tracked and it can be determined whether the change was authorized.²⁸

Identifying the Party in Control

The second key element in the evaluation of the eVault is that

the authoritative copy must in some way be tied to a method for identifying the current party in control. This may be done by having evidence of the transfer of control integrated into the authoritative copy itself, or by having the authoritative copy logically associated with a methodology for tracking control, so that a person viewing the authoritative copy also is alerted and has access to the evidence of control.²⁹

Transfers of control should be handled through a secure access process that requires authorization from the current person in control and acceptance from the person receiving control. The eVault should also generate and retain records evidencing the entire chain of control and all transfers.

Distinguishing the Authoritative Copy

The third key element is the requirement that all copies of the authoritative copy must be readily identifiable as such and distinguishable from the authoritative copy. Section 9–105 does not specify a technological or process solution to this requirement, which makes possible multiple strategies for

satisfying the requirement. For example, the requirement could presumably be met by storing the authoritative copy in a secure information processing system that automatically brands all copies as such.

As an alternative, the record itself could give notice of the location at which the authoritative copy is stored, so that by definition all copies stored at other locations are not the authoritative copy. As yet a third example, the record itself could provide for reference to a registry or system rules for determining the location of the authoritative copy, so that a person reviewing the record is on notice to check the registry or system rules to identify the authoritative copy.

SAMPLE LANGUAGE FOR A PERFECTION OPINION

Once the eVault has been reviewed and determined to be effective, it will be desirable to place specific language in the opinion letter addressing certain specific elements of the review process as well as certain key assumptions concerning the eVault's ongoing manage-

ment and operation. Whereas formats for perfection opinion letters vary, most include certain common elements relevant here: a list of documents reviewed, a statement of assumptions, and the statement of the opinion concerning perfection.³⁰

For purposes of the following discussion and examples, it will be assumed that the opinion and documentation have defined the pledgor of the electronic chattel paper as the "debtor," the lender or purchaser as the "secured party," and the electronic chattel paper as the "collateral."³¹

Because most attorneys are not technologists, any review of the eVault is likely to be based on a system description of the eVault that has been provided to the attorney, together with a certification of the accuracy of the description from the debtor. In addition, it is likely that a third party is managing and operating the eVault both to effectuate transfers of control between, and act as the document custodian for, the debtor and the secured party. In that case, a copy of the agreement between the debtor and the document custodian, and between the

secured party and the document custodian, will also need to be reviewed to establish that the third party has agreed to act as the designated custodian of the authoritative copy for both parties.

Here are examples of the kind of language that might be added to the section of the opinion letter concerning reviewed documents³²:

- Certificate of the Debtor dated <INSERT DATE> with respect to the description and functioning of the system for managing transfers of control and preservation of the authoritative copy of the Collateral (the “eVault”) in accordance with <INSERT STATUTORY REFERENCE TO SECTION 9–105 UNDER CONTROLLING LAW>, and the system description attached thereto as Exhibit A (the “eVault Description”).
- Agreement between the Debtor and <INSERT NAME OF DESIGNATED CUSTODIAN>, dated <INSERT DATE> (the “Debtor eVault Agreement”), with respect to the appointment of <INSERT NAME OF DESIGNATED CUSTODIAN> (“Document

Custodian”) as the Debtor’s designated custodian in accordance with <INSERT STATUTORY REFERENCE TO SECTION 9–105 UNDER CONTROLLING LAW>.

- Agreement between the Secured Party and <INSERT NAME OF DESIGNATED CUSTODIAN>, dated <INSERT DATE> (the “Secured Party eVault Agreement”), with respect to the appointment of the Document Custodian as the Secured Party’s designated custodian in accordance with <INSERT STATUTORY REFERENCE TO SECTION 9–105 UNDER CONTROLLING LAW>.

In addition, it will probably be desirable to establish certain assumptions concerning the ongoing performance of the document custodian and the functioning of the eVault. In particular, it will usually be necessary to assume that the eVault is functioning as anticipated and that the security controls in place to prevent unauthorized transfers of control are being correctly and consistently employed.

Here are examples of the kind of language that might be

added to the section of the opinion letter concerning assumptions:

- The eVault Description is complete and accurate, and the eVault will at all times function as described in the eVault Description.
- The Debtor eVault Agreement and Secured Party eVault Agreement will remain in full force and effect and will not have been breached, until such time as the Debtor and Secured Party, respectively, no longer have any interest in the Collateral.³³
- The authoritative copies of the Collateral, as that term is used in <INSERT STATUTORY REFERENCE TO SECTION 9–105 UNDER CONTROLLING LAW>, will be continuously maintained in the eVault.³⁴
- Any transfer of control with respect to the Collateral from the Debtor to the Secured Party will be performed by a transfer of control within the eVault and will require the participation of a duly authorized representative of the Debtor to initiate the Transfer, and the participation of the Secured Party or a duly appointed authorized repre-

sentative of the Purchaser is required in order to accept the transfer of control.

- The Document Custodian will establish, implement and maintain appropriate internal controls, business processes and security measures with respect to its administration and operation of the eVault so as to comply with the requirements of <INSERT STATUTORY REFERENCE TO SECTION 9–105 UNDER CONTROLLING LAW>.³⁵

Finally, the opinion will need to address the question of perfection and priority (subject, of course, to the sections in the opinion letter on document review and assumptions). Here is an example of the language that might be added to the section of the opinion letter concerning perfection and priority:

- The security interest in the Collateral will be a perfected security interest upon completion of a transfer of control of the Collateral from the Debtor to the Secured Party in accordance with the procedures established by the eVault. The security interest in the Collateral perfected by the transfer of control will have priority

over any other security interest in the Collateral.³⁶

The opinion letter itself will likely need to include special terms addressing the additional documents reviewed, and assumptions made, as a precondition to the opinion concerning perfection and priority.

CONCLUSION

The inclusion of electronic chattel paper in a perfection opinion will require the attorney preparing the opinion to understand both the structure for establishing “control” under Section 9–105, and the technology platform being used to provide the eVault. It will likely be necessary to review additional agreements concerning custody and management of the eVault as well.

Lastly, the opinion letter itself will likely need to include special terms addressing the additional documents reviewed, and assumptions made, as a precondition to the opinion concerning perfection and priority.

Endnotes

1. BuckleySandler, *Digital Documents: Financing Paperless Transactions*, research study (Washington, DC: Equipment Leasing & Finance Foundation, 2015).

2. For a more detailed discussion of the law applicable to the use of electronic records and signatures in commerce, see Buckley, Kromer, Tank and Whitaker, *The Law of Electronic Signatures* (2014–2015 Edition, Thomson Reuters); See also the Standards and Procedures for electronic Records and Signatures (“SPeRS”), Version 3.0 (SPeRS Inc. 2015).

3. Revised Article 9 of the Uniform Commercial Code (2000 Revision), as promulgated by the Uniform Law Commission (hereafter “ULC”), and as amended, in certain states, by UCC Article 9 Revisions (2010), as promulgated by the ULC.

4. See generally Jane K. Winn, *Electronic Chattel Paper: Invitation Accepted*, 46 Gonzaga L. Rev. 407 (2010/11).

5. Legal counsel sometimes makes a distinction between issuing an opinion concerning perfection of the security interest, and issuing an opinion concerning the priority of the security interest. For purposes of this article, the authors assume that the opinion is intended to address both perfection and priority.

6. This article is presented for purposes of education and discussion. It is intended to be informational only and does not constitute legal advice regarding any specific situation, product or service.

7. Uniform Commercial Code (hereafter “UCC”) § 9–102(a)(11).

8. UCC § 9–102(a)(31).

9. UCC § 9–312(a).

10. See UCC §§ 9–314(a) and (b); See also UCC § 9–105, Draft Rptr’s Cmt. 2 (1998) (“Control is necessary to benefit for the special priority rule provided in Section 9–330. In descriptive terms, it provides that control of electronic chattel paper is the functional equivalent of “possession” of tangible chattel paper. . . . [t]he draft leaves to the marketplace the development of systems and procedures for dealing with control of electronic chattel paper in a commercial context.”).

11. See UCC §§ 9–330(a), (b) (emphasis added). The term “purchaser” includes a secured party taking a security interest in the chattel paper.

12. UCC §§ 1–201(29) and (30).

13. UCC § 9–314(a).

14. UCC Section 9–105, Official Comment 2.

15. UCC § 9–105.

16. UCC Article 9 Revisions (2010), as promulgated by the ULC.

17. UCC Article 9 Revisions (2010), § 9–105(a).

18. UCC Article 9 Revisions (2010), § 9–105(b).

19. UCC Section 9–105, Official Comment 4.

20. *Id.*

21. *Id.*

22. Certain eVault implementations also permit transfers of control and the authoritative copy of the electronic chattel paper from one eVault to another, subject to the same controls and procedures that apply for a transfer of control within a single eVault, and also providing for the de-certification of the former authoritative copy on the eVault relinquishing control.

23. A second model has also emerged, which uses an independent registry to record transfers of control and the loca-

tion of the authoritative copy. This model has been adopted by the first residential mortgage industry for electronic mortgage notes that qualify as transferable records under Section 16 of the Uniform Electronic Transaction Act (hereafter “UETA”), but is not currently widely used with respect to electronic chattel paper.

24. As the Comment to section 12 of the UETA explains:

In an electronic medium, the concept of an original document is problematic. For example, as one drafts a document on a computer the “original” is either on a disc or the hard drive to which the document has been initially saved. If one periodically saves the draft, the fact is that at times a document may be first saved to disc then to hard drive, and at others vice versa. In such a case the “original” may change from the information on the disc to the information on the hard drive. Indeed, it may be argued that the “original” exists solely in RAM and, in a sense, the original is destroyed when a “copy” is saved to a disc or to the hard drive.

UETA § 12 cmt. 2 (1999) (emphasis added).

25. UCC § 9–105(1)(6).

26. Professor Jane Winn has observed:

The issue is, therefore, not whether the electronic chattel paper record is absolutely unique in the sense that chattel paper represented by a piece of paper is a unique collection of atoms in the material world, because no electronic record used in an electronic business information system can be unique in that sense. Rather, the electronic chattel paper record must exist within a computer system which is designed to distinguish one special copy of the record as uniquely significant.

Jane Kaufman Winn, *Electronic Chattel Paper Under Revised Article 9: Updating The Concept Of Embodied Rights For Electronic Commerce*, 74 Chi.-Kent. L. Rev. 1055, 1061 (1999).

27. UCC § 9–105(4)–(6). Note that while Section 9–105 permits the record to be altered, so long as alterations can be identified as authorized or unauthorized, most eVaults are designed to prevent unauthorized alteration of the electronic records stored in the eVault.

28. It is also worth noting the following with respect to the rule on unalterability:

- The rule does not prohibit untracked or unmonitored changes prior to execution and issuance of the record. The record only becomes a transferable record when it is signed and issued. Pre-execution drafts may be revised or altered as necessary, with or without tracking of alterations.

- While it must be possible to determine whether alterations or revisions to the authoritative copy have been authorized, the statute does not define what constitutes an authorized change or who has to authorize the change. These issues are left to agreement or system rule.

- Revised Article 9 does not require the authoritative copy to be static over time. Hence, the rule that provides that the record may be altered to reflect its status as authoritative or nonauthoritative. The copy that qualifies as the authoritative copy at one time, during or after the transaction, need not be the same copy that qualifies as the authoritative copy at another time. All that is required is that, at any given moment, there is a single authoritative copy. So, for example, the authoritative copy may be transmitted from one location to another, which technically requires the reproduction of the authoritative copy

at the place of receipt and destruction or decertification of the authoritative copy at the sending location.

29. Examples of methods that might be used to establish the linkage between the authoritative copy and control include:

- The authoritative copy of a transferable record is created and stored in a secure electronic environment (transferable record device). Each transferable record device keeps track of the entity or entities controlling the authoritative copy of each transferable record stored on that device. The transferee takes control of a transferable record by becoming the identified party in control of the authoritative copy in accordance with a control-tracking scheme administered by the device.

- The authoritative copy of a transferable record on its face identifies a registry as the place to determine the current party in control. Owners of transferable records would register them with the identified registry. Thereafter, all transfers of control would occur under a secure transfer system operated as part of, or in conjunction with, the registry. The registry becomes the ultimate authority with regard to the question of who controls the transferable record.

30. See, for example, *The Collected Tri-Bar Legal Opinion Reports 1979–1998* (hereafter “TriBar Reports”), Section of Business Law, American Bar Association (1999).

31. It is also assumed that the opinion will include all the customary terms concerning document review and assumptions associated with chattel paper, other than those related to delivery and possession.

32. The sample language set out in this article is intended only as a series of examples — the actual language in the opinion would, of course, have to

be developed and drafted to take into account the specific circumstances of the transaction and all applicable law.

33. While it is conceivable that a breach by the debtor could impact control (such as by not complying with provisions of the agreement concerning assignment and protection of credentials for access to the eVault), it is more likely that a breach by the custodian would threaten control.

34. Note that the term "authoritative copy" is used in Section 9-105, but is not a defined term in Revised Article 9.

35. The eVault will need to be maintained in a way that ensures that the people and system processes used to create, secure, and transfer control of the authoritative copy remain reliable over time. A failure of reliability in any area could result in the failure of control under Section 9-105.

36. This statement of priority will, of course, be subject to all the additional limitations and exceptions concerning perfection and priority that are included in the opinion letter. See the *TriBar Reports* for examples.

Digital Documents – Financing Paperless Transactions is available to download from the Foundation's library at www.leasefoundation.org.



Margo H.K. Tank

mtank@buckleysandler.com

Margo Tank is a partner in the Washington, DC, office of BuckleySandler LLP. She advises financial services institutions and technology companies on structuring online and mobile financial services product offerings in compliance with the Electronic Signatures in Global and National Commerce Act (ESIGN), the Uniform Electronic Transactions Act (UETA), and other state and federal laws governing electronic financial services transactions; electronic chattel paper; mobile payments and mobile wallets; prepaid access and virtual payment methods; and laws related to privacy and data security, money transmission, and unfair or deceptive acts and practices. Ms. Tank acts as the co-reporter for the drafting committee preparing the Standards and Procedures for Electronic Records and Signatures (SPeRS) (www.spers.org), and advocacy before Congress and federal regulators with respect to electronic financial services issues as counsel to the Electronic Financial Services Council and the Electronic Signatures and Records Association. She was named a "2009 Mortgage Banking Technology All-Star" by Mortgage Banking magazine. She is also a member of the American Bar Association's Business Law Section and the Committee on the Law of Commerce in Cyberspace, a member of the Electronic Transactions Association's Mobile Payments Committee, and is on the xDTM Standard Board of Governors. Ms. Tank is co-author of *The Law of Electronic Signatures and Records* (West, a Thomson Reuters business, 2012–2013 edition) and a number of articles. Before entering private practice, she was counsel to the U.S. House of Representatives, Committee on Banking and Financial Services. Ms. Tank received her JD with honors from Drake University Law School in 1992. She received a BA from the University of Vermont in 1985 and also studied commercial law at Queens College, Oxford University, in England in 1991.



R. David Whitaker

dwhitaker@buckleysandler.com

David Whitaker is counsel in the Chicago office of BuckleySandler LLP. Mr. Whitaker advises financial services companies in transactional, legal, and regulatory matters. Mr. Whitaker also assists companies in their efforts to structure and implement platforms and processes that conform to the requirements of ESIGN, UETA, other applicable state and federal laws, and various industry standards. Prior to joining BuckleySandler, Mr. Whitaker was senior company counsel in the Strategy & Operational Risk Group at Wells Fargo Bank, where he served as team leader for the group of attorneys supporting Wells's electronic financial services. Among other products, he served as the primary legal architect at Wells for the development of the vSafe online document storage service and the clearXchange P2P electronic payments platform. Mr. Whitaker was named a "2009 Mortgage Banking Technology All-Star" by Mortgage Banking magazine. He is also a member of the American Bar Association's Business Law Section, and the Business Law Section's Committee on the Uniform Commercial Code, Committee on the Law of Commerce in Cyberspace, and UCC Subcommittee on Letters of Credit. He has co-chaired the Cyberspace Committee's Task Force on Federated Identity Management. Mr. Whitaker was the reporter for SPeRS as well as for the Mortgage Bankers Association white paper "Security Interests in Transferable Records." He was an active participant in the drafting of revised articles 5 and 9 of the UCC. For UETA, he chaired the task force on scope. He is a co-author of *The Law of Electronic Signatures* (West). Mr. Whitaker holds a BA with high honor in international relations from James Madison College at Michigan State University, and a JD cum laude from the University of Illinois. He has also studied international business law and British constitutional law at Queen's College, Oxford University, England.