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☐ ____ ☐ ____ ☐ ____ ☐ ____

Negotiable Instruments Under the Uniform Commercial Code

Publication 613 Release 92 March 2025

HIGHLIGHTS

- This release contains updates and revisions to provide the current status of the law, including developments in statutory, and regulatory law.

Chapter 2—Essential Attributes of Commercial Paper. *Lost instruments.* The UCC specifically contemplates that a negotiable instrument may be lost and, consequently, allows the claimant to prove its claim by evidence other than the instrument itself. For discussion and case references, see § 2.02[2][g].

Chapter 11—Holders in Due Course. *Forgery.* Va. Code § 18.2-172 provides that if any person forges a writing to the prejudice of another's right, or utters, or attempts to employ as true, such forged writing, knowing it to be forged, the person shall be guilty of a Class 5 felony." *Brouillard v. Commonwealth*, 2024 Va. App. LEXIS 452 (Vir. App. Aug. 6, 2024). See § 11.01.

Nonissuance as a defense. An unissued or undelivered instrument is binding on maker or the drawer, but nonissuance may be raised as a defense. *Asgaard Fund, L.P. v. MM80 Oceanside Holdings, LLC*, 335 So. 3d 1233 (Fla. Dist. Ct. App. 2021). See § 11.01.

Alteration of instrument. Missouri defines "alteration" to mean "(i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an in-

complete instrument relating to the obligation of a party." *Provident Sav. Bank, F.S.B. v. Focus Bank,* 548 F. Supp. 3d 862 (E.D. Mo. 2021). See § 11.01A.

Discharge-for-value rule. In a case in which plaintiff mistakenly transmitted the full amount of the debtor's outstanding principal balance three years before its loan repayment was due, the plaintiff brought an action for restitution when defendants refused to return the portion representing the principal; the district court erred in deciding that defendants were not obligated to return the money because the discharge-for-value rule did not shield defendants. *Citibank, N.A. v. Brigade Capital Mgmt., LP*, 49 F.4th 42 (2d Cir. 2022). See § 11.03[2].

Antecedent debts as value. The Minnesota's Uniform Fraudulent Transfer Act does not define "reasonably equivalent value" and determination of whether a debtor received reasonably equivalent value in exchange for a transfer of its assets depends on the facts and circumstances of each case. Satisfaction of an antecedent debt can constitute reasonably equivalent value. *Kelley v. Westford Special Situations Master Fund, L.P.*, 2024 U.S. Dist. LEXIS 205783 (D. Minn. Nov. 13, 2024). See § 11.03[4].

FTC Rule. Plaintiff alleged that his employer was liable for negligence per se under Alabama law because the Federal Trade Commission Act created a duty to safeguard the personal identifying information employees gave it. *Gibson v. Warrior Met Coal Inc.*, 2024 U.S. Dist. LEXIS 181017 (N.D. Ala. Oct. 3, 2024). See § 11.06.

Chapter 12—Enforcing Negotiable Instruments; Defenses. *Foreclosures.* A mortgage slip is not a negotiable instrument as defined by Article 3 of the Missouri Uniform Code. *Keller v. Pennymac Loan Servs., LLC*, 2024 U.S. Dist. LEXIS 219192 (W.D. Mo. Dec. 4, 2024). Where there is no endorsement or allonge, mere physical possession of a note is insufficient to confer standing to enforce the note. *Deutsche Bank Natl. Trust Co. v. PJK Holdings, LLC*, 2024 NY Slip Op 05787 (App. Div. 2nd Dept.). Under Tennessee law, the mortgage note is a negotiable instrument which can be sold or assigned to another party who then receives the right to enforce the instrument. *Williams v. Bank of Fayette Cty.*, 2024 U.S. Dist. LEXIS 189904 (W.D. Tenn. Oct. 18, 2024). The promissory note and the mortgage notes are negotiable instruments in nature, and this allows them to be negotiated and its transfer is protected under Chapter 9 of the Commercial Transactions Act. *In re Allied Fin., Inc. v. WM Capital Partners 53, LLC*, 616 B.R. 1 (Bankr. D.P.R. 2020). See § 12.04A.

Allonges. A court rejected a defendant's argument that allonges were not "firmly affixed," observing that there was additional indicia that the allonges relate to the note. Each allonge identified the loan number, the amount of the loan, and the borrower.

Courchevel 1850 LLC v. Alam, 2019 U.S. Dist. LEXIS 189451 (E.D.N.Y. Oct. 30, 2019). See § 12.05[1].

Standing to foreclose. A party has standing to foreclose on real property if it is the holder or the owner of the note. *Ammons v. Wilmington Sav. Fund Soc'y*, 2024 U.S. Dist. LEXIS 78865 (S.D. Tex. Apr. 30, 2024). See § 12.05[3].

Mistake as a defense. Tennessee courts follow the statutory instruction that the companion official commentary shall constitute evidence of the purposes and policies underlying the statute in any dispute as to the proper construction of the statute. *Goodman v. Commercial Bank & Tr. Co.*, 72 F.4th 122 (6th Cir. 2023). See § 12.14.

Promise to pay. A home equity line of credit with a defined maturity and closed draw period may be classified as a negotiable instrument as well as a promissory note, as it involves an unconditional promise to pay a fixed amount of money rather than a revolving line of credit. *Wishengrad v. Carrington Mortg. Servs.*, 529 P.3d 880 (Nev. 2023). See § 12.19[1].

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VOLUME 2

Revision		
☐	Title page.	Title page
☐	2-1 thru 2-7.	2-1 thru 2-7
☐	2-27 thru 2-41	2-27 thru 2-41
☐	2-103 thru 2-105	2-103 thru 2-105
☐	2-145 thru 2-147	2-145 thru 2-147
☐	11-5 thru 11-15	11-5 thru 11-16.1
☐	11-33 thru 11-85	11-33 thru 11-86.3
☐	11-95 thru 11-96.1.	11-95 thru 11-96.2(1)
☐	11-96.13 thru 11-96.21.	11-96.13 thru 11-96.21
☐	11-115 thru 11-125	11-115 thru 11-125
☐	12-7 thru 12-23	12-7 thru 12-24.1
☐	12-51 thru 12-63	12-51 thru 12-64.1
☐	12-85.	12-85 thru 12-86.1
☐	12-99.	12-99 thru 12-100.1
☐	12-109 thru 12-117	12-109 thru 12-118.1
☐	12-131 thru 12-141	12-131 thru 12-142.1
☐	12-183	12-183 thru 12-184.1

VOLUME 2B

Revision		
☐	Title page.	Title page
☐	I-1 thru I-73	I-1 thru I-71

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