UCC Insurance for Commercial Banks and Lenders

AMERICAN LAND TITLE ASSOCIATION

ACROSS THE BOARD, ACCESS TO COMMERCIAL CREDIT IS SCARCE AND DIFFICULT TO OBTAIN. Federal Reserve Chairman Ben Bernanke recently noted that small businesses "have had difficulty obtaining the credit that they need to expand and, in some cases, even to continue operating." Small businesses employ half of all Americans and account for about 60 percent of gross job creation, and improving their lending climate is crucial for improving the economy and reducing joblessness. Small Business Administration (SBA) loans have disappeared since the end of stimulus funding and in the first quarter of 2010, lending to small business was down $40 billion from the first quarter of 2008.

ENTER, UNIFORM COMMERCIAL CODE (UCC) INSURANCE, which provides lenders a means to transfer many of the risks of commercial secured lending to a well capitalized, regulated insurance market. Experts believe that commercial lenders are denying businesses loans as an overreaction to poor-quality loans over the last decade and heightened scrutiny by regulators. UCC insurance counters these concerns by providing lenders confidence that the loan is properly documented and secured by a business's assets – most commonly their inventory, equipment and receivables.

THE UNIFORM COMMERCIAL CODE (UCC) is a comprehensive code, uniformly adopted by all 50 states, to clarify and harmonize most aspects of commercial law, including how a lender acquires a first lien (or right) to a business's assets (also called collateral) in order to secure a loan. (This is much the same way a lender uses a consumer's home to secure a mortgage loan.) This efficiency provides a legal framework so that a lender in Massachusetts can make a business loan to a manufacturer in Illinois to expand their business. This makes it easier for the lender to make loans. UCC Insurance makes commercial lending more secure by assuring the lender that they have a properly perfected a lien on the business's collateral. A UCC Insurance Policy is the functional equivalent of a real estate title insurance lender's policy.

IMAGINE A SMALL BUSINESS that wants to expand and hire new employees but doesn't have the necessary cash, so it seeks a loan from the local community bank pledging its assets. These assets might include its inventory, equipment, receivables (or future money owed by its customers for payment of the good they purchase) or other collateral. If a default were to occur, imagine the problems caused for the bank when it realizes the loan documents were improperly prepared or filed or it discovers that another bank has superior rights to the assets. UCC insurance protects against these risks by assuring and then insuring that the proper UCC documents are identified, prepared and filed. Without a UCC insurance policy providing coverage for cost-of-defense and payment of a loss occurring as a result of the loan not being properly secured, lenders must self insure the risk.

UCC INSURANCE REDUCES COMMERCIAL LENDING RISK by enhancing credit and document quality of secured loans, providing greater transparency of the transaction and strengthening underwriting. This improves overall loan portfolio quality and reduces any bank losses that result from defaults. It also protects the insured lender's status as a properly secured creditor in a bankruptcy proceeding. Again, similar to the role of title insurance in real estate mortgages, the presence of UCC insurance offers a standard to facilitate sale to the secondary market.

UCC INSURANCE BENEFITS commercial lenders, banks, investors, government guarantors, bank regulators and taxpayers, and is an important "Best Practice Risk Management Tool" for safe and sound lending practices by secured lenders and banks. Most lenders and banks require title insurance for their loans secured by mortgages, and now those same banks and lenders can secure and protect their loan secured by personal property under the Uniform Commercial Code.

UCC Insurance Benefits

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ACCESS TO COMMERCIAL CREDIT IS SCARCE. With commercial finance losses continue to mount lenders continue to reduce commercial loan risk. As a consequence, access to commercial credit by worthy borrowers is hindered, preventing these businesses from expanding and creating jobs to fuel economic recovery. Lenders looking to reduce their credit risk and improve the value of their commercial loan portfolio need a cost effective solution to manage risk and provide the credit necessary to grow our economy.

ENTER UNIFORM COMMERCIAL CODE (UCC) INSURANCE. UCC Insurance was developed by the title industry as a risk management tool to protect lenders that provide businesses credit. Like a real estate title insurance lender's policy, which reduces the risk of mortgage loans by assuring lenders that the loan is properly secured by real property, UCC Insurance reduces the risk of commercial loans by assuring lenders that the loan is properly secured by the borrower's personal property, or business assets (including inventory, accounts receivable, equipment, etc.)

THE UCC IS A COMPREHENSIVE CODE designed to harmonize most aspects of commercial law. This efficiency provides a legal framework so that goods may be manufactured in State A, warehoused in State B, sold from State C and delivered in State D. UCC Article 8 (Securities) and Article 9 (Secured Transactions) establish standard rules secured business loans using business assets. As a result, UCC insurance:

- Insures lenders against losses caused by improperly attaching, perfecting and obtaining first priority in for each of the 25 categories of collateral covered by Article 9.
- Protects against fraud and forgery in the loan transaction.
- Provides coverage for defects in loan documentation, search office errors and omissions and financing statements defects, errors and inaccuracies.
- Includes proper UCC search & filing functions.
- Provides for cost-of-defense in the event of a loss resulting from the failure of any of the insuring provisions.

UCC INSURANCE PROVIDES BETTER PROTECTION than the traditional attorneys' opinions, which are often heavily stipulated, excepted and characterized. UCC insurance:

- Shifts the risks outlined above (which are otherwise self-insured by the lender) and transfers them to a well-capitalized insurance company;
- Enhances credit quality, improves the document quality of secured loans and adds greater transaction transparency;
- Improves loan portfolio quality by reducing lender losses from loan defaults, facilitating the sale of the Insured loan in to the secondary market; and
- Preserves the insured lender's status as a secured creditor in a bankruptcy proceeding.

UCC INSURANCE BENEFITS CREDITORS: commercial lenders, investors, government guarantors, bank regulators and taxpayers, and should be utilized as an important "Best Practice Risk Management Tool" to enhance safe and sound lending practices of secured lenders.