

Table of Contents

CHAPTER 1. CONSUMER CREDIT PROTECTION

I. OVERVIEW

- § 1:1 Introduction to consumer credit
- § 1:2 Purposes of consumer credit legislation
- § 1:3 Definition of open- and closed-end credit
- § 1:4 Definition of direct and indirect credit

II. OVERVIEW OF FEDERAL REGULATION

A. OVERVIEW

- § 1:5 In general
- § 1:6 Bureau of consumer financial protection
- § 1:7 Federal consumer financial law
- § 1:8 Covered persons
- § 1:9 Exemptions
- § 1:10 Price control and substantive changes
- § 1:11 No CFPB authority to set usury ceilings
- § 1:12 Federal preemption of usury and state law after Dodd-Frank
- § 1:13 Unfair, deceptive or abusive acts or practices
- § 1:14 Public enforcement
- § 1:15 Civil penalties
- § 1:16 Criminal proceedings
- § 1:17 Pre-dispute arbitration
- § 1:18 Disclosures
- § 1:19 Consumer complaints
- § 1:20 Whistleblower protection
- § 1:21 Mortgage reform under Dodd-Frank
- § 1:22 Regulation of payday lending and other credit products

III. FEDERAL REGULATION

A. EQUAL CREDIT OPPORTUNITY ACT

- § 1:23 In general
- § 1:24 Purpose of Act
- § 1:25 Discriminatory activities
- § 1:26 Nondiscriminatory activities
- § 1:27 Refusal of credit extensions

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 1:28 Administrative enforcement in general
- § 1:29 —Regulation B
- § 1:30 Civil liability
- § 1:31 —Actual damages
- § 1:32 —Punitive damages
- § 1:33 —Equitable and declaratory relief
- § 1:34 —Costs and attorney's fees
- § 1:35 —Statute of limitations
- § 1:36 Effect on state law

B. TRUTH IN LENDING ACT

- § 1:37 Purpose of Act
- § 1:38 Scope of coverage
- § 1:39 Regulation Z
- § 1:40 Required disclosures by lender
- § 1:41 Liability of credit card holder
- § 1:42 —For unauthorized use
- § 1:43 Advertising restrictions
- § 1:44 Billing regulations
- § 1:45 Enforcement

C. FEDERAL USURY LAWS

- § 1:46 Preemption of state law in general
- § 1:47 —National banks
- § 1:48 —Insured banks and savings and loan associations
- § 1:49 —Insured credit unions
- § 1:50 —Small business investment companies
- § 1:51 —Federally related lenders

D. FAIR CREDIT REPORTING ACT

- § 1:52 In general
- § 1:53 Purpose of Act
- § 1:54 Permissible uses of credit report
- § 1:55 —Furnishing report
- § 1:56 ——For employment purposes
- § 1:57 ——For credit or insurance transactions
- § 1:58 Prohibited uses of credit report
- § 1:59 —Exemptions
- § 1:60 Investigative consumer reports
- § 1:61 —Disclosure of investigative consumer report
- § 1:62 Compliance procedures for credit reporting agencies
- § 1:63 —Reasonable procedures
- § 1:64 —Maximum possible accuracy

TABLE OF CONTENTS

§ 1:65	—Consumer's right to notice of adverse action
§ 1:66	—Notice of responsibilities to consumer report users
§ 1:67	—Reselling consumer reports
§ 1:68	Disclosures to government agencies
§ 1:69	—Federal Bureau of Investigations
§ 1:70	Disclosure to consumers
§ 1:71	—Information on file
§ 1:72	—Sources of information
§ 1:73	—Report recipients
§ 1:74	—Miscellaneous disclosures
§ 1:75	—Summary of rights
§ 1:76	Form of disclosures
§ 1:77	Disclosure charges
§ 1:78	Information on overdue child support
§ 1:79	Requirements on consumer report users
§ 1:80	Responsibilities of information furnishers
§ 1:81	Dispute procedures
§ 1:82	Civil liability
§ 1:83	—Willful noncompliance
§ 1:84	—Negligent noncompliance
§ 1:85	—Venue
§ 1:86	—Statute of limitations
§ 1:87	Administrative enforcement in general
§ 1:88	—Federal Trade Commission
§ 1:89	—State actions
§ 1:90	Relation to state law

E. CREDIT REPAIR

§ 1:91	Purpose
§ 1:92	Definition
§ 1:93	Prohibited practices
§ 1:94	—No advances
§ 1:95	Disclosures
§ 1:96	Written contracts required
§ 1:97	—Terms required
§ 1:98	Right to cancel contract
§ 1:99	No waiver allowed
§ 1:100	Contract that does not comply may be treated as void
§ 1:101	Civil liability
§ 1:102	—Punitive damages in class actions
§ 1:103	—Punitive damage factors
§ 1:104	Administrative enforcement
§ 1:105	Statute of limitations
§ 1:106	Relation to state law

IV. STATE REGULATION

A. OVERVIEW

- § 1:107 Types of consumer credit governed by Texas Finance Code
- § 1:108 Consumer Credit Commissioner
- § 1:109 Prohibition of credit discrimination
- § 1:110 Persons protected
- § 1:111 Penalties
- § 1:112 Advertising requirements
- § 1:113 Consumer loans
- § 1:114 Installment loans not secured by real estate
- § 1:115 Single payment loans
- § 1:116 Secondary mortgage loans
- § 1:117 Texas constitutional protection
- § 1:118 Retail installment sales
- § 1:119 Revolving credit accounts
- § 1:120 Manufactured home credit transactions
- § 1:121 Motor vehicle installment sales

B. PENALTIES AND LIABILITIES

- § 1:122 Governing law
- § 1:123 Charging excessive amounts
 - Charging twice authorized amount
 - Failing to perform required acts or performing prohibited acts
 - —Material violation
- § 1:125 —Failing to perform required acts or performing prohibited acts
 - —Material violation
- § 1:126 Limitation on liability
 - Unintentional error
 - § 1:128 —Multiple violations
 - § 1:129 —Correcting violations
 - § 1:130 — —No liability
 - § 1:131 — —Limited liability
 - § 1:132 — —Limited liability for excessive amounts
 - § 1:133 Civil actions
 - § 1:134 —Venue
 - § 1:135 —Statute of limitations
 - § 1:136 —Class actions
 - § 1:137 —Previous recovery under Consumer Credit Protection Act

C. USURY LAWS

- § 1:139 Constitutional authority

TABLE OF CONTENTS

§ 1:140	Subtitles A and B, Title 4, Texas Finance Code
§ 1:141	—Scope of coverage
§ 1:142	—Alternate rate ceiling under Chapter 303
§ 1:143	—Exclusive authority
§ 1:144	Regulation of credit unions; Chapter 124 of the Texas Finance Code
§ 1:145	—Exemption from Title 4
§ 1:146	Court interpretations
§ 1:147	—Dodd-Frank impact on federal preemption
§ 1:148	—Common-law doctrine of time-price differential
§ 1:149	Penalties; dual penalty structure
§ 1:150	—Chapter 349
§ 1:151	—Common-law remedies
§ 1:152	Procedural matters
§ 1:153	—Proper claimants
§ 1:154	—Proper defendants
§ 1:155	—Jurisdiction
§ 1:156	—Venue
§ 1:157	—Statute of limitations

D. CREDIT REPORTING LAWS

§ 1:158	Governing law
§ 1:159	Permissible uses of credit report
§ 1:160	Consumer's rights
§ 1:161	—Form of disclosure
§ 1:162	—Permissible charges
§ 1:163	—Prohibited charges
§ 1:164	—Prohibited information
§ 1:165	—Exceptions allowing disclosure of prohibited information
§ 1:166	Correction of inaccurate information
§ 1:167	Dispute procedure
§ 1:168	—Consumer's dispute notice
§ 1:169	—Agency reinvestigation
§ 1:170	—Agency dispute notice
§ 1:171	—Agency reinvestigation termination
§ 1:172	—Disposition of disputed information
§ 1:173	—Notice of reinvestigation results
§ 1:174	—Availability of arbitration
§ 1:175	—Arbitration results
§ 1:176	—Waiting period
§ 1:177	Civil actions
§ 1:178	—Willful violation
§ 1:179	—Negligent violation

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 1:180 —Cumulative remedies
- § 1:181 —Attorney's fees and costs

E. CREDIT SERVICES ORGANIZATIONS

- § 1:182 Definition of credit services organization; governing law
- § 1:183 Exemptions
- § 1:184 Registration of credit services organization
- § 1:185 Disclosure statements
- § 1:186 —Required information
- § 1:187 Contract for services
- § 1:188 —Content of contract
- § 1:189 —Notice of cancellation
- § 1:190 Prohibited actions of representatives
- § 1:191 —Breach of contract
- § 1:192 —Charging before surety accounts obtained
- § 1:193 —Charging for referrals
- § 1:194 —Fraudulent or deceptive conduct
- § 1:195 —Advertising without registering
- § 1:196 —Prohibited waivers
- § 1:197 Surety accounts and bonds
- § 1:198 —Surety maintenance
- § 1:199 —Surety remedies
- § 1:200 Civil actions
- § 1:201 —Injunctive relief
- § 1:202 —Damages
- § 1:203 —Relief available under Deceptive Trade Practices Act
- § 1:204 —Statute of limitations
- § 1:205 —Relation to federal law
- § 1:206 Criminal offenses
- § 1:207 Relation of credit service organization and lender
- § 1:208 Regulation of credit access businesses

V. SUPPLEMENTAL MATERIALS ON CREDIT PROTECTION LAWS

- § 1:209 Fee for Dishonored Payment Device
- § 1:210 Tax Refund Anticipation Loans
- § 1:211 Texas Debt Management Services
- § 1:212 Texas Business and Commerce Code
- § 1:213 Plain language and model forms
- § 1:214 Texas fair notice doctrine
- § 1:215 Language skills

TABLE OF CONTENTS

- § 1:216 Credit card and debit card surcharges
- § 1:217 Financial exploitation
- § 1:218 Annual statements by mortgage servicers
- § 1:219 Finance Code chapter 398: Commercial sales-based financing

VI. CHECKLISTS

- § 1:220 Checklist—Disclosures required under Truth in Lending Act for closed-end credit
- § 1:221 —Transactions exempt from Federal Truth in Lending Act
- § 1:222 —Credit services organizations statutory exemptions
- § 1:223 —Information required in credit services organizations disclosure statements
- § 1:224 —Consumer rights under the Fair Credit Reporting Act
- § 1:225 —Permissible purposes of consumer reports
- § 1:226 —E-commerce privacy statement

VII. FORMS

- § 1:227 Form—General
- § 1:228 Model privacy forms under Gramm-Leach-Bliley

CHAPTER 2. CONSUMER LOANS

I. INTRODUCTION

- § 2:1 Statutory History
- § 2:2 Applicability of Subtitle B, Title 4, Texas Finance Code
- § 2:3 —Parties' rights
- § 2:4 Applicability of Chapter 342, Texas Finance Code
- § 2:5 —Types of loans under Chapter 342
- § 2:6 ——Texas Credit Code loans
- § 2:7 Use of optional rate ceiling

II. LICENSING

- § 2:8 License required
- § 2:9 —Exceptions
- § 2:10 Criminal penalties for operating without license
- § 2:11 Liability to borrower
- § 2:12 Agency responsible for licensing

III. REGISTRATION OF MORTGAGE BANKERS

- § 2:13 Application of Act

- § 2:14 Definitions under MBRA
- § 2:15 Registration under MBRA
- § 2:16 —Termination of registration
- § 2:17 —Reregistration
- § 2:18 Required disclosure statement under MBRA
- § 2:19 Complaints under MBRA
- § 2:20 Regulation of “residential mortgage loan originators” under the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009
- § 2:21 Residential mortgage fraud

IV. CONSUMER LOAN INTEREST RATES IN GENERAL

- § 2:22 Introduction
- § 2:23 Interest defined
- § 2:24 —Use
- § 2:25 —Forbearance
- § 2:26 —Detention
- § 2:27 —Distinction from time price differential
- § 2:28 Usurious transaction
- § 2:29 —Necessity that money be interest
- § 2:30 ——Substance of transaction essential to determination
- § 2:31 —Lender’s intent
- § 2:32 —Presumption against usury
- § 2:33 —Use of savings clauses
- § 2:34 Presumption in favor of savings clauses
- § 2:35 Construction
- § 2:36 Strict construction of usury statutes
- § 2:37 Applicability of Chapter 349 penalties

V. CONSUMER LOANS NOT OVER 10% PER YEAR SUBJECT TO TEXAS FINANCE CODE § 302.001

- § 2:38 Introduction
- § 2:39 Maximum rate
- § 2:40 Public policy
- § 2:41 Penalties
- § 2:42 —Liability amount
- § 2:43 ——Other remedies
- § 2:44 —More than twice authorized amount
- § 2:45 —Charge or present demand
- § 2:46 —Penalties exclusive
- § 2:47 —Criminal penalties

TABLE OF CONTENTS

- § 2:48 Interest rate determination
- § 2:49 —Actuarial method defined
- § 2:50 No rate specified
- § 2:51 No requirement to specify a rate

VI. CLOSED-END CONSUMER INSTALLMENT LOANS

A. OVERVIEW

- § 2:52 Chapter 342 in general
- § 2:53 Federal laws

B. NONREAL PROPERTY LOANS

- § 2:54 Introduction
- § 2:55 Regular transactions
- § 2:56 —18/8-split interest rate
- § 2:57 ——When computed
- § 2:58 ——15-day rule
- § 2:59 —Precomputed interest
- § 2:60 ——Refund of precomputed interest
- § 2:61 ——Prepayment or demand occurs before first installment date
- § 2:62 Irregular transactions
- § 2:63 —Interest method or formula
- § 2:64 Simple interest installment loans
- § 2:65 —Scheduled installment earnings method
- § 2:66 —True daily earnings method
- § 2:67 —Daily rate
- § 2:68 —Accrued interest
- § 2:69 Single payment loans
- § 2:70 —Prepaid loan
- § 2:71 Regular transaction defaults
- § 2:72 —Five cents per one dollar rule
- § 2:73 —Collection
- § 2:74 ——Time for collection
- § 2:75 Additional interest for installment deferment
- § 2:76 —Definition of deferment period
- § 2:77 —Maximum amount
- § 2:78 —Prepaying during deferment
- § 2:79 —Time for collection
- § 2:80 Irregular transaction defaults
- § 2:81 —Precomputed interest loans
- § 2:82 ——Maximum rate
- § 2:83 —Simple interest loans

- § 2:84 ——Five cents per one dollar rule
- § 2:85 ——Collection
- § 2:86 Small high-interest rate loans

C. SECONDARY MORTGAGE LOANS

- § 2:87 Definition of secondary mortgage loan
- § 2:88 Precomputed interest installment loans
- § 2:89 —Computing interest charge
- § 2:90 —15-day rule
- § 2:91 —Amount of loan
- § 2:92 Simple interest installment loans
- § 2:93 —Rate ceiling
- § 2:94 —Interest accrual
- § 2:95 —Precomputed interest not allowed
- § 2:96 Regular transaction defaults
- § 2:97 —Five cents per one dollar rule
- § 2:98 —Collection
- § 2:99 —Time for collection
- § 2:100 Additional interest for installment deferment
- § 2:101 —Definition of deferment period
- § 2:102 —Computing amount
- § 2:103 —Applicable interest
- § 2:104 —Loan prepayment
- § 2:105 —Time for collection
- § 2:106 Irregular transaction defaults
- § 2:107 —Maximum rate
- § 2:108 Date of first scheduled installment
- § 2:109 Amounts authorized to be included in contract
- § 2:110 —Trustee fees
- § 2:111 —Attorney's fees
- § 2:112 —Court costs
- § 2:113 Amounts authorized to be collected or added to loan
- § 2:114 —Title examination
- § 2:115 —Title insurance premiums
- § 2:116 —Attorney's fees
- § 2:117 —Fees connected to security interests
- § 2:118 —Real-estate appraisal
- § 2:119 —Credit report
- § 2:120 —Real-estate survey
- § 2:121 —Insurance premiums
- § 2:122 —Fees for compliance with federal programs
- § 2:123 —Administrative fee
- § 2:124 —Timing
- § 2:125 Property insurance

TABLE OF CONTENTS

§ 2:126 Debt suspension, debt cancellation and gap waiver agreements

D. INSURANCE

§ 2:127 In general
§ 2:128 Requiring borrower to obtain insurance—Nonreal property loans
 —Secondary mortgage loans
§ 2:130 —Coverage required
§ 2:131 —Duplicate property insurance
§ 2:132 Additional insurance—Nonreal property loans
 —Secondary mortgage loans
§ 2:134 Maximum amount of insurance coverage
§ 2:135 Required notice
§ 2:136 —Form of notice
§ 2:137 —Rate not fixed or approved by Commissioner of Insurance
§ 2:138 Borrower's furnishing of insurance
§ 2:139 Borrower's failure to provide insurance
 —Nonreal property loans
§ 2:141 —Addition to loan contract
§ 2:142 Insurance requirements
§ 2:143 Lender's duty to furnish insurance documents to borrower
§ 2:144 Lender's duty if insurance is adjusted or terminated
§ 2:145 Effect of unauthorized insurance charges
§ 2:146 Nonfiling insurance

E. LENDER'S DUTIES AND PROHIBITIONS

§ 2:147 In general
§ 2:148 Delivery of information to borrower
§ 2:149 Receipt for cash payment
§ 2:150 Acceptance of prepayment
§ 2:151 Return of instruments to borrower on repayment
§ 2:152 Modification of secondary mortgage loan contract
§ 2:153 Obligations under more than one contract
§ 2:154 Authorized charges
§ 2:155 Security for loan
 —Loans under Subchapter E or F
§ 2:157 Confession of judgment; power of attorney
§ 2:158 Disclosure of amount financed and payment schedule
§ 2:159 Instrument with blanks
§ 2:160 Waiver of borrower's rights
§ 2:161 Maximum loan term

VII. CERTAIN CONSUMER LOANS SUBJECT TO TEXAS FINANCE CODE CHAPTER 303

- § 2:162 Exclusive authority
- § 2:163 Scope
- § 2:164 Interest rate ceilings
- § 2:165 Use of ceilings
- § 2:166 Weekly ceiling
 - § 2:167 —Computation of weekly ceiling
 - § 2:168 —Auction rate
 - § 2:169 —Effective dates
 - § 2:170 Monthly ceiling
 - § 2:171 Quarterly ceiling
 - § 2:172 Annualized ceiling
 - § 2:173 Computation of quarterly and annualized ceiling
 - § 2:174 —Computation dates
 - § 2:175 —Quarterly effective dates
 - § 2:176 —Annualized effective dates
 - § 2:177 Maximum ceiling
 - § 2:178 Minimum ceiling
 - § 2:179 28% ceiling
 - § 2:180 21% ceiling
 - § 2:181 Contract renewals or extensions
 - § 2:182 Variable rate contracts
 - § 2:183 —Exceptions to use
 - § 2:184 —Required disclosure

VIII. HOMESTEAD LOANS

- § 2:185 Types of homestead loans
- § 2:186 Constitutional protection for homestead loans
- § 2:187 Requirements for enforceable homestead loans
- § 2:188 —Notice of constitutional protection
- § 2:189 Requirements for enforceable refinance loans
- § 2:190 Requirements for enforceable home equity line of credit
- § 2:191 Requirements for enforceable reverse mortgages
- § 2:192 Administrative interpretations
- § 2:193 Model forms

IX. SUPPLEMENTAL MATERIALS ON CONSUMER LOANS

- § 2:194 Constrained by Law Clauses
- § 2:195 Plain Language and Model Forms

TABLE OF CONTENTS

CHAPTER 3. RETAIL INSTALLMENT CREDIT

I. FEDERAL REGULATION—TRUTH IN LENDING ACT

- § 3:1 Scope of Act
- § 3:2 Purpose of Act
- § 3:3 Federal Reserve Board
- § 3:4 —Regulation Z
- § 3:5 ——Model forms
- § 3:6 ——Rate tables
- § 3:7 Applicability to retail installment credit
- § 3:8 —Transactions covered
- § 3:9 ——Definition of consumer
- § 3:10 ——Personal, family or household purposes
- § 3:11 ——Leases and bailments
- § 3:12 —Transactions not covered
- § 3:13 ——Non-natural persons
- § 3:14 ——Not repayable in less than four installments
- § 3:15 ——By person who does not regularly extend credit
- § 3:16 ——Amounts greater than \$25,000
- § 3:17 ——State regulated transactions
- § 3:18 ——Waivers and exemptions
- § 3:19 Required disclosures
- § 3:20 —Annual percentage rate
- § 3:21 ——Non open-end credit calculations
- § 3:22 —Finance charge
- § 3:23 ——Examples of charges included in finance charge
- § 3:24 —Advertising
- § 3:25 Format of disclosure
- § 3:26 Prepayment and disclosure of penalty for prepayment
- § 3:27 Enforcement responsibilities in general
- § 3:28 —Civil liability
- § 3:29 ——Ability of individuals to bring actions
- § 3:30 ——Individual damages
- § 3:31 ——Class actions
- § 3:32 ——Maintaining action against creditor's assignee
- § 3:33 —Criminal liability
- § 3:34 —Consumer's right of rescission
- § 3:35 ——Exemptions

II. STATE REGULATION

A. RETAIL INSTALLMENT SALES

- § 3:36 Governing law

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 3:37 Definition of retail installment transaction
- § 3:38 Definition of goods
- § 3:39 Goods excluded from regulation
- § 3:40 Definition of services
- § 3:41 Services excluded from regulation
- § 3:42 Definition of retail installment contract
- § 3:43 —Bailments or leases
- § 3:44 Transactions not covered under Chapter 345 of the Texas Finance Code
 - § 3:45 —Purchases under retail charge agreements
 - § 3:46 —Certain rental purchase agreements
 - § 3:47 —Federal preemption
 - § 3:48 Form of contract
 - § 3:49 —Contracts in more than one document
 - § 3:50 —Acknowledgment of delivery
 - § 3:51 ——Presumptive or conclusive proof of delivery
 - § 3:52 —Insurance statements
 - § 3:53 —Insurance obtained by the holder
 - § 3:54 —Insurance as itemized charge
 - § 3:55 ——Special disclosures for insurance as itemized charge
 - § 3:56 —Charging a documentary fee
 - § 3:57 ——Maximum amount of fee allowed
 - § 3:58 ——Disclosure requirements
 - § 3:59 —Compensation for referral
 - § 3:60 Time price differential
 - § 3:61 —Limits on add-on charges
 - § 3:62 —Calculations
 - § 3:63 ——Optional ceiling
 - § 3:64 ——Unequal payments
 - § 3:65 ——Minimum time price differential
 - § 3:66 ——Prepaid funeral benefits; medical and dental services
 - § 3:67 Calculation methods of principal balance and refund credits
 - § 3:68 —Principal balance
 - § 3:69 —Amended principal balance
 - § 3:70 —Refund credit for precomputed time price differential monthly installment contract
 - § 3:71 ——Calculation of days
 - § 3:72 Deferred installments
 - § 3:73 Amendment of contract
 - § 3:74 Permissible charges on principal balance if amended
 - § 3:75 —Default on installment
 - § 3:76 —Collection charges

TABLE OF CONTENTS

§ 3:77	— Acceleration of debt
§ 3:78	Consolidation of contracts
§ 3:79	— Allocation of payments
§ 3:80	— Mandatory consolidation
§ 3:81	Acquisition of contract
§ 3:82	Insurance on property purchased or improved
§ 3:83	— Property insurance
§ 3:84	— Other insurance
§ 3:85	— Choice of insurer
§ 3:86	— Payment of insurance
§ 3:87	— Rights of buyers
§ 3:88	— Prepayment of unpaid balance
§ 3:89	— Refund credit
§ 3:90	— Rescission of contract
§ 3:91	— Certificate of completion
§ 3:92	— Statement of payments
§ 3:93	— Prohibition on certain repossession acts
§ 3:94	— Prohibition on certain liens
§ 3:95	— Texas Constitutional protection
§ 3:96	— Nonwaivability of rights

B. MOTOR VEHICLE RETAIL INSTALLMENT SALES

§ 3:97	Governing law
§ 3:98	Transactions covered
§ 3:99	— Motor vehicle defined
§ 3:100	— Heavy commercial vehicle defined
§ 3:101	— Motor home defined
§ 3:102	— Towable recreation vehicle defined
§ 3:103	— Bailments or leases
§ 3:104	— Classification as retail installment
§ 3:105	Transactions not excluded
§ 3:106	— Noncovered vehicles
§ 3:107	— Mobile homes
§ 3:108	— Loans
§ 3:109	Form and contents of motor vehicle retail installment contract
§ 3:110	— Including information not required by Chapter 348; sequence of required information
§ 3:111	— Inclusion of documentary fee
§ 3:112	Required disclosures in general
§ 3:113	— TILA required disclosures
§ 3:114	— Documentary fee
§ 3:115	— Nonattached personal property

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 3:116 — —Form of notice
- § 3:117 —Inconsistent or conflicting disclosures
- § 3:118 Calculation methods
- § 3:119 —Cash price
- § 3:120 — —Itemized charge
- § 3:121 —Principal balance
- § 3:122 Time price differential
- § 3:123 —Legislative history
- § 3:124 —Optional ceiling
- § 3:125 —Unequal payments
- § 3:126 —Time price differential computations
- § 3:127 —Time price differential add-on charges
- § 3:128 Permissible charges
- § 3:129 —Default on installment
- § 3:130 —Documentary fee
- § 3:131 —Collection charges
- § 3:132 — —Acceleration of maturity
- § 3:133 Amendment of contract
- § 3:134 Refinancing
- § 3:135 —Transactions where refinancing not applicable
- § 3:136 Transfer of equity
- § 3:137 —Allocation of payments
- § 3:138 Acquisition of contract
- § 3:139 Insurance
- § 3:140 —Property insurance
- § 3:141 —Other insurance
- § 3:142 —Choice of insurer
- § 3:143 —Payment of insurance
- § 3:144 — —Substitute insurance
- § 3:145 Rights of buyers
- § 3:146 —Prepayment
- § 3:147 — —Refund credit
- § 3:148 —Statement of payments
- § 3:149 —Outstanding balance information
- § 3:150 —Liability
- § 3:151 —Prohibition on certain acts of repossession
- § 3:152 —Nonwaivable rights
- § 3:153 Holder registration or license

C. PENALTIES FOR RETAIL INSTALLMENT SALES

- § 3:154 Governing law
- § 3:155 Charging excessive amounts of interest or time price differential

TABLE OF CONTENTS

- § 3:156 —Charging other excessive amounts
- § 3:157 —Charging twice authorized amount
- § 3:158 —Failing to perform required acts or performing prohibited acts
- § 3:159 Limitations on liability
- § 3:160 —Unintentional error
- § 3:161 —Multiple violations
- § 3:162 —Correction of violation
- § 3:163 ——No liability
- § 3:164 ——Limited liability
- § 3:165 Procedures for civil actions
- § 3:166 —Venue
- § 3:167 —Limitations period
- § 3:168 —Class actions
- § 3:169 —Previous recovery under Consumer Credit Protection Act

III. CHECKLISTS

- § 3:170 Checklist—Drafting a retail installment contract
- § 3:171 —Prohibited contract provisions

IV. SUPPLEMENTAL MATERIALS ON RETAIL INSTALLMENT CREDIT

- § 3:172 Fee for dishonored payment device
- § 3:173 Constrained by law clauses
- § 3:174 Plain language and model forms

V. FORMS

- § 3:175 Retail installment contract—Goods and services
- § 3:176 —Home improvement
- § 3:177 —Motor vehicle
- § 3:178 —Mobile home
- § 3:179 Documentary fee disclosure clauses

CHAPTER 4. OPEN-END CREDIT

I. OVERVIEW

- § 4:1 Definition of open-end credit
- § 4:2 —Distinction from closed-end credit
- § 4:3 ——Importance of distinction
- § 4:4 Types of open-end credit
- § 4:5 —Credit cards

§ 4:6 —Lender card agreements

II. TRUTH IN LENDING ACT

- § 4:7 Purpose of Act
- § 4:8 Regulation Z
- § 4:9 —Applicability to commercial credit
- § 4:10 Conspicuousness of disclosures
- § 4:11 Use of estimates
- § 4:12 Effect of subsequent events
- § 4:13 Initial disclosure statement
- § 4:14 —Finance charge
- § 4:15 —Other charges
- § 4:16 —Security interests
- § 4:17 —Statement of billing rights
- § 4:18 Credit and charge card applications and solicitations in general
 - § 4:19 —Percentage-based fees
 - § 4:20 —Fees that vary by state
 - § 4:21 —Direct mail solicitations—Required disclosures—
 - Annual percentage rate
 - Fees for issuance or availability
 - Minimum finance/transaction charges
 - Grace period
 - Balance computation method
 - Charge card payments
 - Fees
 - Telephone solicitations
 - Solicitations made to general public
 - Alternative general public solicitation
 - Disclosures prior to renewal
 - Disclosures prior to change in terms
 - When notice not required
 - Disclosures for credit secured by principal dwelling
 - Credit card holder's liability for unauthorized use
 - Advertising restrictions
 - Billing
 - Correction of billing errors
 - Definition of billing error
 - Requirements of consumer's notice
 - Creditor's investigation of error
 - Written acknowledgment to consumer
 - Time for resolving error
 - Acceleration of debt

TABLE OF CONTENTS

- § 4:45 ——Creditor's failure to comply with resolution requirements
- § 4:46 ——Credit reports
- § 4:47 Repayment without incurrence of additional finance charges
- § 4:48 Prohibited inducements
- § 4:49 Offset against other funds
- § 4:50 Claims and defenses

III. STATE REGULATION

A. OVERVIEW

- § 4:51 Types of open-end credit regulated
- § 4:52 —Open-end account under Chapter 342
- § 4:53 ——Maximum loan charge
- § 4:54 ——Requirements of agreement
- § 4:55 ——Delivery of copy of agreement to borrower

B. OPEN-END ACCOUNTS UNDER CHAPTER 303

- § 4:56 Use of ceilings in general
- § 4:57 —Effective dates—Annualized ceiling
- § 4:58 ——Quarterly ceiling
- § 4:59 Maximum ceiling
- § 4:60 Minimum ceiling
- § 4:61 28% ceiling
- § 4:62 21% ceiling
- § 4:63 Credit card and merchant discounts
- § 4:64 Contract renewals or extensions
- § 4:65 Variable rate agreements
- § 4:66 —Exceptions to use
- § 4:67 —Required disclosures
- § 4:68 Change of agreement term
- § 4:69 —Requirements of notice
- § 4:70 —Checkoff form
- § 4:71 —Obligor's consent to change
- § 4:72 —Obligor's rejection of rate change
- § 4:73 —Disclosure of decrease in interest rate
- § 4:74 —Disclosure of certain rate variations
- § 4:75 ——When notice must be provided

C. REVOLVING CREDIT ACCOUNTS UNDER CHAPTER 346

- § 4:76 Definitions

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 4:77 —Billing cycle
- § 4:78 —Credit card
- § 4:79 —Creditor
- § 4:80 —Customer
- § 4:81 Types of revolving accounts
- § 4:82 —Revolving credit account
- § 4:83 ——Revolving loan account
- § 4:84 ——Revolving triparty account
- § 4:85 —Application
- § 4:86 Average daily balance—Computation
- § 4:87 —Day's ending balance computation
- § 4:88 ——Inclusion of interest
- § 4:89 Interest computation
- § 4:90 —Maximum interest rate
- § 4:91 ——Alternative interest computation
- § 4:92 —Billing cycle interest rates
- § 4:93 ——Equal billing cycles
- § 4:94 ——Determining equal billing cycles
- § 4:95 Fees
- § 4:96 —Annual fee
- § 4:97 —Late charge
- § 4:98 ——Notice required
- § 4:99 —Cash advance charge
- § 4:100 —Returned check fee
- § 4:101 —Over-the-limit fee
- § 4:102 —Interest on statutory fees not permissible
- § 4:103 Insurance or collateral
- § 4:104 —When acceleration is prohibited
- § 4:105 Recovery of authorized amounts
- § 4:106 —Court costs
- § 4:107 —Attorney's fees
- § 4:108 —U.C.C. filing or recording fees
- § 4:109 —Transferring title certificate for motor vehicle
- § 4:110 —Sale of collateral
- § 4:111 —Sale of insurance
- § 4:112 Multiple revolving accounts
- § 4:113 —Exception
- § 4:114 Amendment of terms
- § 4:115 Relationship to other laws—Texas
- § 4:116 —Federal law
- § 4:117 Penalties and liabilities

**D. RETAIL CHARGE AGREEMENTS UNDER
TEXAS FINANCE CODE CHAPTER 345**

- § 4:118 Coverage under Subchapter C

TABLE OF CONTENTS

- § 4:119 Requirements of agreement
- § 4:120 —Effect of compliance with Consumer Credit Protection Act
- § 4:121 Prohibitions under Subchapter C—Blank spaces in agreement
- § 4:122 —Annual fee
- § 4:123 Prohibitions under Subchapter H
- § 4:124 Rate of time price differential
- § 4:125 —Blended rate
- § 4:126 —Alternative rates under Chapter 303
- § 4:127 —Market competitive rate ceiling
- § 4:128 —Late charges
- § 4:129 Processing fee for dishonored check
- § 4:130 Attorney's fees
- § 4:131 Penalties and liabilities

IV. SUPPLEMENTAL MATERIALS ON RETAIL INSTALLMENT CREDIT

- § 4:132 Fee for dishonored payment device
- § 4:133 Constrained by law clauses
- § 4:134 Plain language and model forms

V. CHECKLISTS

- § 4:135 Drafting a credit card application form
- § 4:136 Drafting a credit card agreement

VI. FORMS

- § 4:137 Retail charge agreement
- § 4:138 Statement of billing rights—Long form (model form)

CHAPTER 5. BANK DEPOSITS AND COLLECTIONS; NEGOTIABLE INSTRUMENTS

I. OVERVIEW OF BANK DEPOSITS AND COLLECTIONS

A. GOVERNING STATUTES AND REGULATIONS

- § 5:1 Mix of statutory and common law
- § 5:2 Texas Uniform Commercial Code Article 4
- § 5:3 Preemption by federal law
- § 5:4 —Expedited Funds Availability Act

- § 5:5 ——Regulation CC (12 C.F.R. Part 229)
- § 5:6 Federal Reserve regulations
- § 5:7 Conflict of law
- § 5:8 —Other U.C.C. articles
- § 5:9 Variation of U.C.C. provisions by agreement
- § 5:10 —Limitation on agreements
- § 5:11 Ordinary care
- § 5:12 —Damages for failure to exercise due care
- § 5:13 Statute of limitations

B. U.C.C. DEFINITIONS

- § 5:14 In general
- § 5:15 Relating to accounts
- § 5:16 —Types of drafts
- § 5:17 ——Checks
- § 5:18 ——Documentary drafts
- § 5:19 Relating to time or calculation of periods
- § 5:20 —Time of receipt of items
- § 5:21 ——Waiver, modification, extension of time limit
- § 5:22 ——Excusable delay
- § 5:23 Relating to settlement and means of collection
- § 5:24 Bank
- § 5:25 Depositary bank
- § 5:26 Payor bank
- § 5:27 —Payable at bank
- § 5:28 Intermediary bank
- § 5:29 Collecting bank
- § 5:30 —Payable through bank
- § 5:31 Presenting bank
- § 5:32 Electronic presentment

II. COLLECTION BY DEPOSITORY AND COLLECTING BANKS

A. DEPOSITORY BANK

- § 5:33 Warranties to other banks and drawer
- § 5:34 Holder of item

B. COLLECTING BANKS

- § 5:35 Liability flows from agency status
- § 5:36 —Change in status
- § 5:37 ——Agent or sub-agent
- § 5:38 —Effect of form of indorsement; nature of credit given

TABLE OF CONTENTS

§ 5:39	—Simultaneous status as agent and holder in due course
§ 5:40	Pay any bank indorsement
§ 5:41	Collection or return
§ 5:42	—Responsibility
§ 5:43	— —Ordinary care
§ 5:44	Duty of depositary bank under Regulation CC
§ 5:45	Duty of returning bank under Regulation CC
§ 5:46	Instructions from transferor
§ 5:47	—Effect
§ 5:48	—Form
§ 5:49	—Exemptions
§ 5:50	Sending and presenting items
§ 5:51	—Methods
§ 5:52	— —Authorized methods

C. TRANSFER AND WARRANTIES

1. In General

§ 5:53	Transfer between banks
	2. Transfer Warranties
§ 5:54	Purpose of warranties
§ 5:55	Liability for payment of item upon dishonor
§ 5:56	By whom and to whom
§ 5:57	Transferor's warranties
§ 5:58	—Signatures
§ 5:59	—No alteration
§ 5:60	—Not subject to defense or claim in recoupment
§ 5:61	—No knowledge of any insolvency proceeding
§ 5:62	Breach of transferor's warranties
§ 5:63	—Accrual of cause of action
§ 5:64	—Damages
	3. Presentment Warranties
§ 5:65	Similar to presentment warranties for negotiable instruments
§ 5:66	Warranties on presentment and transfer mutually exclusive
§ 5:67	Disclaimer of presenter's warranties
§ 5:68	Presenter's warranties—By whom and to whom
§ 5:69	—Person entitled to enforce item
§ 5:70	—No knowledge that drawer's signature, or creation of draft, is unauthorized
§ 5:71	—No alteration

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 5:72 Breach of presenter's warranties—Accrual of cause of action
- § 5:73 —Damages
- § 5:74 —As to acceptor's obligation

4. Other Warranties

- § 5:75 Encoding warranties
- § 5:76 —Damages for breach
- § 5:77 Retention warranties; electronic presentment agreement
- § 5:78 Federal warranties—Warranty of settlement amount, encoding, offset, and preferences
- § 5:79 —Breach
- § 5:80 ——After July 1, 2006

D. SECURITY INTERESTS OF COLLECTING BANK

- § 5:81 In general
- § 5:82 Duration and termination of interest
- § 5:83 Credit given or applied
- § 5:84 Withdrawn as matter of right
- § 5:85 Advances against item
- § 5:86 Extent of security interest where several items received
- § 5:87 When bank given value for purposes of holder in due course

E. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT BANK; LIABILITY OF DRAWER OR INDORSER

- § 5:88 In general
- § 5:89 When notice timely
- § 5:90 Acceptance or dishonor

F. SETTLEMENT BY BANK

- § 5:91 Applicable laws and regulations
- § 5:92 —Default medium of settlement
- § 5:93 —Default time of settlement
- § 5:94 —When settlement becomes final
- § 5:95 Bank's right to charge-back or refund
- § 5:96 —When collecting bank's right arises
- § 5:97 —Effect on other rights of collecting banks
- § 5:98 —Requirements for charge-back or refund

TABLE OF CONTENTS

- § 5:99 —When item has been returned or notice of non-payment sent
- § 5:100 —Charge-back of items payable in foreign currency
- § 5:101 —Right of depository bank to charge-back or refund

G. AVAILABILITY OF FUNDS

- § 5:102 In general
- § 5:103 Mandatory funds availability schedule under Regulation CC
- § 5:104 —Institutions required to comply
- § 5:105 —Next-day availability
- § 5:106 —Second-day availability
- § 5:107 —Fifth-day availability
- § 5:108 —One-day extension for cash withdrawals and case-by-case exceptions
- § 5:109 —Extension for out-of-state deposits
- § 5:110 —Exception for new accounts, large deposits, etc
- § 5:111 —Disclosure of availability policy
- § 5:112 —Liability for violation

III. COLLECTION BY PAYOR BANKS

- § 5:113 Revocation and recovery of settlement
- § 5:114 —Deferred posting
- § 5:115 —Exceptions to revocation of settlement
- § 5:116 Duty to settle on day of receipt
- § 5:117 Right to revoke settlement
- § 5:118 —Returning item
- § 5:119 —Expedited return under Regulation CC
- § 5:120 —Sending notice of dishonor
- § 5:121 —Time of dishonor
- § 5:122 Payor bank's responsibility for late return of item
- § 5:123 —Documentary drafts and items not payable on demand
- § 5:124 —Defenses to liability
- § 5:125 Order in which items may be paid
- § 5:126 —Priorities
- § 5:127 —Timeliness of stop-payment orders, writs of garnishment, notices, and set-offs
- § 5:128 Final payment of item by payor bank
- § 5:129 —What constitutes final payment—Payment in cash
- § 5:130 —Settling without reserving right to revoke
- § 5:131 —Provisional settlement for item
- § 5:132 —Relationship between final settlement and final payment

IV. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

A. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT

- § 5:133 Properly payable items
- § 5:134 Items creating overdrafts
- § 5:135 —Bank's voluntary payment of overdraft is loan
- § 5:136 Right to charge account for altered or incomplete instruments
- § 5:137 Postdated checks

B. BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR

- § 5:138 In general—Effect of overdraft
- § 5:139 —Time for determining account balance
- § 5:140 Duty owed only to customer
- § 5:141 Damages

C. CUSTOMER'S RIGHT TO STOP PAYMENT

- § 5:142 In general
- § 5:143 Who may stop payment
- § 5:144 Items subject to stop-payment order
- § 5:145 Stop-payment order—Requirements
- § 5:146 —Time to effect
- § 5:147 —Expiration and renewal
- § 5:148 Damages

D. STALE CHECKS; DEATH OR INCOMPETENCE OF CUSTOMER

- § 5:149 Bank not obligated to pay check over six months old
- § 5:150 —Right of bank to pay stale check
- § 5:151 Incompetence of customer
- § 5:152 Death of customer
- § 5:153 —Right of person claiming interest in estate to stop payment

E. CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION

- § 5:154 Bank's provision of statements of account
- § 5:155 Customer's duty to examine statement or items

TABLE OF CONTENTS

- § 5:156 Duty of bank to return item or maintain copy
- § 5:157 Effect of customer's failure to comply with duty
- § 5:158 —Bank's duty to prove loss
- § 5:159 —Repeat alterations or forgeries by same wrongdoer; repeater rule
- § 5:160 Comparative negligence
- § 5:161 Absolute preclusion after one year

F. BANK'S RIGHT TO SUBROGATION

- § 5:162 Payor bank's right to subrogation on improper payment
- § 5:163 —To whom subrogated

V. COLLECTION OF DOCUMENTARY DRAFTS

- § 5:164 Handling documentary drafts
- § 5:165 Presentment of on arrival drafts
- § 5:166 Presenting bank's responsibility for documents and goods
- § 5:167 Referee in case of need
- § 5:168 —Decision not to use referee
- § 5:169 Privilege of presenting bank to deal with goods; security interest for expenses

VI. INSOLVENCY OF BANKS AND PREFERENCE

- § 5:170 In general
- § 5:171 Suspension of payment prior to final payment
- § 5:172 Final payment without settlement

VII. TEXAS UNIFORM COMMERCIAL CODE ARTICLE 3

A. REQUIREMENTS OF NEGOTIABLE INSTRUMENTS

- § 5:173 Introduction
- § 5:174 Conflict between U.C.C. Articles 3 and 4
- § 5:175 Definition of negotiable instrument
- § 5:176 —Order must be unconditional
- § 5:177 ——Countersignature on traveler's checks
- § 5:178 —Payable to bearer or order
- § 5:179 —Payable on demand or at definite time
- § 5:180 ——Demand
- § 5:181 ——At definite time
- § 5:182 —Contain only permissible additions

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 5:183 —Amount payable
- § 5:184 ——Fixed sum
- § 5:185 ——Foreign currency
- § 5:186 Identification of payee
- § 5:187 —Multiple signers
- § 5:188 —Automated signature of issuer
- § 5:189 —Method of identification
- § 5:190 ——Rules for determination of holder
- § 5:191 ——Instrument payable to account
- § 5:192 ——Instrument payable to trust or estate
- § 5:193 ——Instrument payable to agent or representative
- § 5:194 ——Instrument payable to fund or organization that is not legal entity
- § 5:195 ——Instrument payable to office or officeholder
- § 5:196 —Instrument payable to two or more persons alternatively
- § 5:197 Payment place
- § 5:198 Date of instrument
- § 5:199 —Exception for checks
- § 5:200 —Undated instrument
- § 5:201 Contradictory terms in instrument
- § 5:202 Incomplete instrument
- § 5:203 —Incomplete instrument qualifying as instrument
- § 5:204 —Alteration of incomplete instrument
- § 5:205 ——Burden of proof

B. TRANSFER OF NEGOTIABLE INSTRUMENTS

- § 5:206 Definition of negotiation
- § 5:207 Indorsement by holder required
- § 5:208 —Definition of indorsement
- § 5:209 —Signature considered indorsement
- § 5:210 —Instrument payable to holder under name not that of holder
- § 5:211 —Types of indorsement—Special indorsement
- § 5:212 ——Effect of special indorsement
- § 5:213 ——Blank indorsement
- § 5:214 ——Effect of blank indorsement
- § 5:215 ——Conversion of blank indorsement to special indorsement
- § 5:216 ——Anomalous indorsement
- § 5:217 ——Restrictive indorsement
- § 5:218 ——Checks indorsed pay any bank, for deposit or for collection
- § 5:219 ——Indorsee as agent, trustee or fiduciary

TABLE OF CONTENTS

§ 5:220	— — — Defense of payment in violation of indorsement
§ 5:221	— Right to require indorsement
§ 5:222	Negotiation subject to rescission
§ 5:223	Rights acquired by transfer
§ 5:224	Partial transfer

C. PRESENTMENT AND DISHONOR

1. Presentment

§ 5:225	Definition
§ 5:226	Rules governing presentment
§ 5:227	Place of presentment
§ 5:228	Method of presentment
§ 5:229	When presentment effective
§ 5:230	Obligations of person to whom presentment made
§ 5:231	Rights of person to whom presentment made

2. Dishonor

§ 5:232	Right to dishonor
§ 5:233	Unaccepted draft (other than documentary draft)
§ 5:234	— Check presented for immediate payment over the counter
§ 5:235	— Time draft
§ 5:236	Accepted draft
§ 5:237	Dishonor without presentment
§ 5:238	Notice of dishonor
§ 5:239	— Method of giving notice
§ 5:240	— Time for notice—Instrument taken for collection by collecting bank
§ 5:241	— Instrument not taken for collection by collecting bank
§ 5:242	— Sufficiency of notice
§ 5:243	— Excused notice of dishonor
§ 5:244	— Excused delay in notice of dishonor
§ 5:245	Evidence of dishonor

D. ENFORCEMENT RIGHTS

1. Person Entitled to Enforcement

§ 5:246	Introduction
§ 5:247	Nonholder in possession
§ 5:248	Lost, destroyed or stolen instruments
§ 5:249	— Proof of terms
§ 5:250	— Findings required for judgment

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 5:251 —Special rules for cashier's checks, teller's checks, and certified checks
- § 5:252 ——Necessity of declaration of loss
- § 5:253 ——Required time frame
- § 5:254 ——Enforceability of claim
- § 5:255 ——Obligation to pay check
- § 5:256 ——Payment of check before claim enforceable
- § 5:257 ——Claim enforceable before check presented
- § 5:258 ——Check presented by holder in due course
- § 5:259 Holder in due course
- § 5:260 —Value
- § 5:261 —Good faith
- § 5:262 —No notice of overdue instrument
- § 5:263 —No notice of unauthorized signature or alteration
- § 5:264 —Proof of signature
- § 5:265 ——Status as holder in due course
- § 5:266 —No notice of claims to instrument
- § 5:267 —No notice of defenses or claims in recoupment
- § 5:268 ——Notice of discharge
- § 5:269 —Limitation on rights of holder in due course—Effect of partial performance
- § 5:270 —Effect of instrument on obligation taken
- § 5:271 ——Suspension of obligation until dishonor or payment
- § 5:272 ——Obligee may enforce either check or obligation
- § 5:273 ——Obligee may not enforce to extent obligation suspended
- § 5:274 —Obligee entitled to enforce but not in possession
- § 5:275 —Person not acquiring rights of holder in due course

2. Defenses

- § 5:276 Defenses against holder in due course
- § 5:277 Defenses against holders not in due course
- § 5:278 —Claims in recoupment
- § 5:279 —Lack of consideration
- § 5:280 —Statute of limitations
- § 5:281 —Accord and satisfaction by use of instrument
- § 5:282 ——Instrument with conspicuous statement of tender in full satisfaction of claim
- § 5:283 ——Claim not discharged—Claimant is an organization
- § 5:284 ——Claimant proves tender of repayment within 90 days after payment
- § 5:285 ——Claim discharged
- § 5:286 —Notice of breach of fiduciary duty

TABLE OF CONTENTS

§ 5:287	— —Notice of breach of fiduciary duty is notice of claim
§ 5:288	— —Taker's notice where instrument payable to fiduciary
§ 5:289	— —Taker's notice where instrument issued by fiduciary and payable to fiduciary personally
§ 5:290	— —Taker's notice where instrument issued by fiduciary to taker as payee
§ 5:291	—Alteration
§ 5:292	— —Discharge of obligation
§ 5:293	— —Enforcement of altered instrument
§ 5:294	Obligor's assertion of defenses or claims of another person
§ 5:295	Consumer transaction

E. LIABILITIES OF PARTIES

§ 5:296	Joint and several liability
§ 5:297	—Right of contribution
§ 5:298	Signature required for liability
§ 5:299	—Manner of signature
§ 5:300	—Unauthorized signature
§ 5:301	—Signature of organization
§ 5:302	Impostors or fictitious payees
§ 5:303	—Rules applicable until negotiation by special indorsement
§ 5:304	—Negligence in paying or taking instrument
§ 5:305	Employer liability for fraudulent employee indorsement; padded payroll rule
§ 5:306	—Contributory negligence of bank
§ 5:307	— —Definitions—Fraudulent indorsement
§ 5:308	— — —Responsibility with respect to instruments
§ 5:309	— — —Indorsement in name of person to whom payable
§ 5:310	Negligence contributing to forged signature of instrument alteration
§ 5:311	—Contributory negligence of person asserting preclusion
§ 5:312	Drawee's liability on unaccepted draft
§ 5:313	Acceptance of certified check
§ 5:314	Refusal to pay cashier's checks, teller's check's, and certified checks
§ 5:315	Obligation of issuer of cashier's check
§ 5:316	—Person to whom obligation owed
§ 5:317	Obligation of acceptor on certified checks
§ 5:318	Obligation of drawer—Unaccepted draft

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 5:319 — —To whom obligation owned
- § 5:320 —Accepted draft
- § 5:321 Obligation of indorser
- § 5:322 —To whom obligation owed
- § 5:323 —Indorsement without recourse
- § 5:324 —Lack of notice of dishonor
- § 5:325 —Draft accepted by bank after indorsement
- § 5:326 —Check collection delayed
- § 5:327 Transfer warranties
- § 5:328 —Recovery from warrantor
- § 5:329 —Warranties with respect to checks
- § 5:330 —Accrual of cause of action
- § 5:331 Presentment warranties—Unaccepted drafts
- § 5:332 —Damages for breach
- § 5:333 — — —Defenses
- § 5:334 —Dishonored drafts
- § 5:335 —Damages for breach
- § 5:336 —No disclaimer with respect to checks
- § 5:337 —Accrual of cause of action
- § 5:338 Payment or acceptance by mistake
- § 5:339 —Limitation of remedies
- § 5:340 —Effect of recovering payment or revoking acceptance
- § 5:341 Conversion of instrument
- § 5:342 —Persons prohibited from bringing conversion action
- § 5:343 —Measure of liability in conversion action
- § 5:344 —Limitation on liability of good faith representative
- § 5:345 Notice to third party of right to defend action
- § 5:346 —Binding notification

F. DISCHARGE AND PAYMENT

- § 5:347 Discharge and effect of discharge
- § 5:348 —Notice to holder in due course
- § 5:349 Payment
- § 5:350 —Obligation discharged
- § 5:351 —Notice deemed
- § 5:352 —Obligation not discharged
- § 5:353 — — —Claim to instrument enforceable against party receiving payment
- § 5:354 — — —Person making payment knows instrument stolen and pays it
- § 5:355 Tender of payment
- § 5:356 —Refusal of tender
- § 5:357 Discharge by cancellation or renunciation

TABLE OF CONTENTS

- § 5:358 —Effect of cancellation of indorsement
- § 5:359 Discharge of secondary obligors—Releases
- § 5:360 —Release—Obligations between primary and secondary obligors not affected
- § 5:361 ——Secondary obligor is discharged
- § 5:362 ——Exception
- § 5:363 —Extensions
- § 5:364 ——Obligations between primary and secondary obligors not affected
- § 5:365 —Release—Secondary obligor is discharged
- § 5:366 —Modification
- § 5:367 ——Obligations between primary and secondary obligors not affected
- § 5:368 ——Secondary obligor is discharged
- § 5:369 —Collateral
- § 5:370 —No discharge
- § 5:371 —No discharge if secondary obligor consents
- § 5:372 —Secondary obligor's recourse preserved
- § 5:373 —Secondary obligor's burden
- § 5:374 ——Amount of loss

VIII. CHECKLISTS

- § 5:375 Checklist—Preparing Negotiable Instruments
- § 5:376 —Requirements of Negotiability

IX. FORMS

A. BANK REGULATIONS

- § 5:377 Statement of deposit cut-off time
- § 5:378 Night depository agreement—Long Form
- § 5:379 —Short Form

B. NEGOTIABLE INSTRUMENTS

- § 5:380 Note—Payable on demand
- § 5:381 ——Security provision
- § 5:382 —Payable at specific time
- § 5:383 ——Multiple Payees
- § 5:384 ——Secured

CHAPTER 6. FUNDS TRANSFERS, CURRENCY EXCHANGE AND TRANSMISSION, AND CHECK SELLERS

I. OVERVIEW

§ 6:1 Different types of funds transfer

II. TEXAS UNIFORM COMMERCIAL CODE ARTICLE 4A

A. BACKGROUND AND SCOPE OF LAW

§ 6:2 Background of law
§ 6:3 Scope of law
§ 6:4 Federal reserve regulations/other federal regulations
§ 6:5 Relationship with federal law; federal preemption
§ 6:6 Agreement between parties to vary provisions
§ 6:7 Choice of law—By agreement
§ 6:8 —By funds transfer system rule
§ 6:9 —Absent agreement or rule

B. U.C.C. DEFINITIONS

§ 6:10 In general
§ 6:11 —Payment order
§ 6:12 ——Payment order requiring multiple payments
§ 6:13 ——Forms of transmission distinguished
§ 6:14 —Beneficiary and beneficiary's bank
§ 6:15 —Receiving bank
§ 6:16 —Sender
§ 6:17 —Funds transfers
§ 6:18 ——Credit and debit transfers distinguished
§ 6:19 ——Credit card and check transactions excluded
§ 6:20 —Intermediary bank
§ 6:21 —Originator and originator's bank

C. ISSUANCE AND ACCEPTANCE OF PAYMENT ORDERS

§ 6:22 Time of issuance
§ 6:23 Security procedure
§ 6:24 —Sufficiency of particular methods
§ 6:25 —Effect on determining who bears loss
§ 6:26 —Time of receipt of payment order
§ 6:27 Authorized and verified payment orders

TABLE OF CONTENTS

- § 6:28 —Written agreements
- § 6:29 —Verification test
- § 6:30 ——Commercial reasonableness
- § 6:31 ——Customer chooses security measure
- § 6:32 Unenforceability of certain verified payment orders
- § 6:33 —Bank's agreement to limit enforcement
- § 6:34 —Refund of payment
- § 6:35 Acceptance of payment orders and liability for non-acceptance
- § 6:36 —Time of acceptance
- § 6:37 ——Premature acceptance
- § 6:38 —Liability for non-acceptance

D. REJECTION OF PAYMENT ORDERS

- § 6:39 Notice of rejection
- § 6:40 —Form of notice
- § 6:41 ——Reasonable means of transmission of notice
- § 6:42 ——By agreement
- § 6:43 Acceptance precludes rejection
- § 6:44 Effect of suspension of payments

E. AMENDMENT AND CANCELLATION OF PAYMENT ORDERS

- § 6:45 Amendment
- § 6:46 Cancellation
- § 6:47 —Mode of communication; effect of security procedures
- § 6:48 —Cancellation by operation of law
- § 6:49 —Effect of acceptance prior to cancellation

F. EXECUTION OF PAYMENT ORDERS

- § 6:50 Execution date
- § 6:51 —Determination by sender's instruction
- § 6:52 Execution by the receiving bank
- § 6:53 —Obligation in executing order
- § 6:54 —Erroneous execution
- § 6:55 —Wrong beneficiary
- § 6:56 —Damages for delay
- § 6:57 —Sender's duty to report erroneous execution

G. PAYMENT OF PAYMENT ORDERS

- § 6:58 In general
- § 6:59 Payment date

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 6:60 Sender's obligation to pay receiving bank
- § 6:61 —Effect where intermediary bank involved
- § 6:62 Beneficiary's bank obligations
- § 6:63 —Notice to beneficiary
- § 6:64 —Effect of failure to notify
- § 6:65 Payment by beneficiary's bank to beneficiary
- § 6:66 Discharge of underlying obligation

**III. FEDERAL ELECTRONIC FUNDS TRANSFER
ACT (15 U.S.C.A. §§ 1693 TO 1683R;
REGULATION E (12 C.F.R. PART 205))**

- § 6:67 Scope of Act
- § 6:68 Definitions—Electronic funds transfer
- § 6:69 —Exclusions from definition
- § 6:70 —Unauthorized electronic fund transfer
- § 6:71 —Preauthorized electronic fund transfer
- § 6:72 —Electronic terminal
- § 6:73 —Other definitions
- § 6:74 Disclosure of terms and conditions of transfers
- § 6:75 Transfers
- § 6:76 Resolution of errors
- § 6:77 —Investigation of error
- § 6:78 —Annual error resolution notice
- § 6:79 —What constitutes error
- § 6:80 —Liabilities of financial institution
- § 6:81 —Defenses
- § 6:82 —Liabilities of consumer
- § 6:83 —Means of access to consumer's account
- § 6:84 —Compulsory use; waiver of rights
- § 6:85 Enforcement

**IV. REGULATION OF MONEY SERVICES
BUSINESSES (CHAPTER 151, TEXAS FINANCE
CODE)**

- § 6:86 Scope of law
- § 6:87 Regulatory agencies
- § 6:88 Investigatory powers
- § 6:89 Definitions—Money Services
- § 6:90 —Currency exchange
- § 6:91 —Money transmission
- § 6:92 —Payment instrument
- § 6:93 —Money
- § 6:94 —Stored value

TABLE OF CONTENTS

§ 6:95	Exclusions
§ 6:96	Money services license
§ 6:97	Minimum qualifications for a license
§ 6:98	Application for license
§ 6:99	Conduct of money transmission business
§ 6:100	Disclosure requirements for money transmission transactions
§ 6:101	Examinations
§ 6:102	Records
§ 6:103	Confidentiality
§ 6:104	Administrative and criminal penalties
§ 6:105	Administrative procedures
§ 6:106	Money transmission—Conducting business through delegate—Contract requirements
§ 6:107	—Reporting requirements
§ 6:108	—List of delegates
§ 6:109	—Authorized conduct
§ 6:110	—Trust imposed
§ 6:111	—No commingling
§ 6:112	—Conducting business
§ 6:113	Currency exchange
§ 6:114	—License required
§ 6:115	Enforcement—Cease and desist orders
§ 6:116	—Consent order
§ 6:117	—Administrative penalty
§ 6:118	—Determination
§ 6:119	—Amount
§ 6:120	—Hearing
§ 6:121	—Order and collection
§ 6:122	—Criminal offense
§ 6:123	—Notice and hearing procedures for non-emergency orders
§ 6:124	—Notice and hearing procedures for emergency orders
§ 6:125	—Requirements of order
§ 6:126	—Hearing
§ 6:127	—Finality of order
§ 6:128	Administrative proceedings

V. REGULATION OF FOREIGN CURRENCY TRANSMISSIONS (CHAPTER 278, TEXAS FINANCE CODE)

§ 6:129	Scope of law
§ 6:130	Definitions—Currency and fee

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 6:131 —Currency transmission and currency transmission business
- § 6:132 Currency transmission disclosures
- § 6:133 —When rate of exchange is fixed
- § 6:134 —When rate of exchange is not fixed
- § 6:135 —Language of disclosure
- § 6:136 Cancellation and Refund of Transaction
- § 6:137 Civil penalty for violation

VI. CHECKLISTS

- § 6:138 Drafting a U.C.C. funds transfer agreement

VII. FORMS

- § 6:139 U.C.C. funds transfer agreement
- § 6:140 Payment order
- § 6:141 Cancellation of payment order
- § 6:142 Notice to bank from customer—Report of erroneous payment order
- § 6:143 Application for currency exchange, transmission, or transportation
- § 6:144 Personal financial statement
- § 6:145 Statement of personal history
- § 6:146 Application for check sellers license

Table of Contents

CHAPTER 7. COMMERCIAL LOANS

I. OVERVIEW

- § 7:1 Definition of commercial loan
- § 7:2 Regulatory compliance
- § 7:3 Regulation of interest rates on commercial loans
- § 7:4 —Rate
- § 7:5 —What constitutes interest
- § 7:6 ——Prepayment premium
- § 7:7 ——Delinquency charge
- § 7:8 ——Returned check fee
- § 7:9 ——Excess interest resulting from prepayment
- § 7:10 —Computation
- § 7:11 —Special rules for qualified commercial loans
- § 7:12 ——Consideration excluded from usury calculation
- § 7:13 ——Renewals and extensions covered
- § 7:14 —Special rule for asset-backed securities transactions
- § 7:15 —Special rule for account purchase transactions
- § 7:16 Commercial loan process
- § 7:17 —Loan application
- § 7:18 ——Financial information
- § 7:19 ——Business plan
- § 7:20 —Agreement on terms
- § 7:21 —Loan documentation
- § 7:22 —Loan closing
- § 7:23 —Participating the loan

II. CLASSIFICATION OF LOANS

- § 7:24 By security
- § 7:25 —Unsecured
- § 7:26 —Secured
- § 7:27 ——Borrowing base loans
- § 7:28 ——Distinguished from factoring
- § 7:29 ——Underwriting
- § 7:30 ——Structuring
- § 7:31 ——Pricing
- § 7:32 ——Credit risk concentrations
- § 7:33 ——Elements of factoring agreement
- § 7:34 ——Advance factoring

- § 7:35 By interest terms
- § 7:36 —Fixed
- § 7:37 —Floating
- § 7:38 ——Prime based—Determined internally
- § 7:39 ——Determined by publication
- § 7:40 ——Prime plus
- § 7:41 ——Matched funds indices
- § 7:42 ——United States treasury bills
- § 7:43 ——Determined by reference to publication
- § 7:44 —Floating—SOFR
- § 7:45 ——Determined by reference to publication
- § 7:46 By funding terms
- § 7:47 —Term loan
- § 7:48 ——Constant or reducing loan
- § 7:49 ——Single funding or several draws
- § 7:50 ——Single payment or amortization
- § 7:51 —Revolving credit
- § 7:52 ——Notice of borrowing
- § 7:53 ——Amounts and dates requested
- § 7:54 ——Certification
- § 7:55 ——Letter of credit options
- § 7:56 —Discretionary loan
- § 7:57 By lender
- § 7:58 —Single lender
- § 7:59 —Multibank

III. TERM SHEETS

- § 7:60 Basic terms
- § 7:61 —Borrower
- § 7:62 —Loan amount
- § 7:63 —Funding terms
- § 7:64 —Interest rate
- § 7:65 —Repayment terms
- § 7:66 —Term of loan
- § 7:67 —Loan fees
- § 7:68 —Guarantors
- § 7:69 —Collateral
- § 7:70 —Satisfactory loan documentation
- § 7:71 Detailed terms
- § 7:72 —Representations and warranties
- § 7:73 —Financial covenants
- § 7:74 —Other covenants
- § 7:75 —Opinion of borrower's counsel
- § 7:76 —Conditions to closing

TABLE OF CONTENTS

§ 7:77	—Events of default
§ 7:78	—Governing law
§ 7:79	—Expiration and/or withdrawal date
§ 7:80	Commitment letters
§ 7:81	—Drafting
§ 7:82	—Conditions to funding
§ 7:83	—Satisfaction clauses
§ 7:84	—Commitment acceptance
§ 7:85	—Commitment fees
§ 7:86	Letters of intent

IV. LOAN AGREEMENTS

§ 7:87	Recitals
§ 7:88	Definitions
§ 7:89	Terms of credit
§ 7:90	Accordion provision
§ 7:91	Economic protections for lenders
§ 7:92	—Yield protection
§ 7:93	—Changes in capital adequacy regulations
§ 7:94	—Availability of types of advances
§ 7:95	—Funding indemnification
§ 7:96	—Taxes
§ 7:97	—Lender statements; survival of indemnity
§ 7:98	Conditions of credit
§ 7:99	—Delivery of documents
§ 7:100	—Absence of defaults
§ 7:101	Representations and warranties
§ 7:102	—Organization or formation and existence
§ 7:103	—Authorization
§ 7:104	—Enforceability
§ 7:105	—No violation
§ 7:106	—Financial condition
§ 7:107	—Title to properties
§ 7:108	—Litigation
§ 7:109	—Environmental compliance
§ 7:110	—Use of proceeds
§ 7:111	—Capitalization
§ 7:112	—Subsidiaries
§ 7:113	—Solvency
§ 7:114	—Real property
§ 7:115	—Compliance with laws and agreements
§ 7:116	—Investment and holding company status
§ 7:117	—Payment of taxes
§ 7:118	—ERISA

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 7:119 —Disclosure
- § 7:120 Compliance with foreign assets control regulations
- § 7:121 Affirmative covenants
- § 7:122 —Financial reporting
- § 7:123 —Payment of taxes
- § 7:124 —Further assurances
- § 7:125 —Use of proceeds
- § 7:126 —Maintenance of collateral
- § 7:127 —Insurance
- § 7:128 Required Flood Insurance Notice
- § 7:129 Affirmative covenants—Right of inspection
- § 7:130 —Notice of litigation
- § 7:131 —Notice of change of name or location
- § 7:132 —Maintenance of corporate standing
- § 7:133 —Compliance with laws
- § 7:134 —ERISA compliance
- § 7:135 —Notice of material event
- § 7:136 —Performance of obligations
- § 7:137 —Accounts receivable and accounts payable reports
- § 7:138 Negative covenants
- § 7:139 —Financial covenants
- § 7:140 ——Leverage ratio
- § 7:141 ——Tangible net worth
- § 7:142 ——Fixed charge coverage ratio
- § 7:143 —Restriction on additional debt
- § 7:144 ——Importance of definition of indebtedness
- § 7:145 —Fundamental changes
- § 7:146 —Liens
- § 7:147 ——Permitted liens
- § 7:148 —Leases
- § 7:149 —Investments
- § 7:150 —Transfer of assets
- § 7:151 —Issuance of stock and dividends
- § 7:152 —Subchapter S corporation
- § 7:153 —Off-balance sheet transactions
- § 7:154 Events of default
- § 7:155 —Failure to pay principal and interest
- § 7:156 —Breach of representations and warranties
- § 7:157 —Insolvency
- § 7:158 ——Involuntary proceeding
- § 7:159 ——Voluntary proceeding
- § 7:160 ——Inability to pay debts
- § 7:161 —Failure to observe covenants
- § 7:162 —Failure to pay other debt

TABLE OF CONTENTS

§ 7:163	—ERISA default
§ 7:164	—Change in control
§ 7:165	—Discontinuation of business
§ 7:166	—Entry of judgment against borrower
§ 7:167	—Default under or termination of guaranty
§ 7:168	Remedies on default
§ 7:169	Agreement between agent and banks
§ 7:170	—Appointment; nature of relationship
§ 7:171	—Powers
§ 7:172	—General immunity
§ 7:173	—No responsibility for loans, recitals, etc
§ 7:174	—Action on instructions of lenders
§ 7:175	—Employment of agents and counsel; delegation of duties
§ 7:176	—Reliance on documents; counsel
§ 7:177	—Agent's reimbursement and indemnification
§ 7:178	—Notice of default
§ 7:179	—Rights as a lender
§ 7:180	—Lender credit decision
§ 7:181	—Successor agent
§ 7:182	—Agent's fee
§ 7:183	—Execution of collateral documents
§ 7:184	—Collateral releases
§ 7:185	—Co-agents, documentation agent, syndication agent, etc
§ 7:186	Guaranty
§ 7:187	Security agreement and pledge
§ 7:188	Miscellaneous provisions
§ 7:189	—Construction
§ 7:190	—Lender expenses
§ 7:191	—Indemnification of lender
§ 7:192	—Notices
§ 7:193	—Amendments
§ 7:194	—Assignments and participations
§ 7:195	—Confidentiality of information
§ 7:196	—Choice of law
§ 7:197	—Consent to jurisdiction
§ 7:198	—Waiver of jury trial
§ 7:199	Arbitration provision
§ 7:200	Counterparts/fax signatures
§ 7:201	Right of set-off
§ 7:202	—Recoupment distinguished
§ 7:203	Usury savings clause
§ 7:204	Severability
§ 7:205	Damage waiver

- § 7:206 USA Patriot Act compliance
- § 7:207 Press releases and other public disclosures
- § 7:208 Compliance with statute of frauds
- § 7:209 —Notice to obligor
- § 7:210 Schedules
- § 7:211 Exhibits

V. LOAN CLOSING

- § 7:212 Closing process
- § 7:213 Closing date
- § 7:214 Closing checklist
- § 7:215 Document execution
- § 7:216 —Representative capacity
- § 7:217 —Signatures on contract unambiguous
- § 7:218 —Signatures on contract in ambiguous capacity
- § 7:219 Wire transfers
- § 7:220 Payoff letters
- § 7:221 Post-closing documents
- § 7:222 —Delay closing
- § 7:223 —Close with agreement to provide certain documents after close
- § 7:224 —Post-closing delivery letter

VI. PARTICIPATION AGREEMENTS

- § 7:225 Basic structure
- § 7:226 Types of participations
- § 7:227 —Funded participants
- § 7:228 —Risk participants
- § 7:229 —Generally impermissible for bank
- § 7:230 —Permissible risk participations
- § 7:231 Reasons for participations from participant's perspective
 - § 7:232 —Low transaction costs
 - § 7:233 —Attractive lending opportunities
 - § 7:234 —Utilizing lead's expertise
 - § 7:235 —Diversification
 - § 7:236 —New borrower relationships
 - § 7:237 —Strengthened correspondent relationships
 - § 7:238 —Utilization of available funds
- § 7:239 Problems from participant's perspective
- § 7:240 —Lack of information
- § 7:241 —Lack of involvement in negotiations
- § 7:242 —Dependency upon lead
- § 7:243 —Insolvency of lead

TABLE OF CONTENTS

§ 7:244	— —Loan by participant to lead
§ 7:245	— —Purchase by participant from lead
§ 7:246	— —Set-off
§ 7:247	—Conflicts of interest
§ 7:248	Fiduciary duties of lead
§ 7:249	—Duties under terms of agreement
§ 7:250	—Misrepresentations by lead
§ 7:251	Regulatory aspects of participations
§ 7:252	—Comptroller of the Currency
§ 7:253	—Federal Reserve Board
§ 7:254	—FDIC
§ 7:255	Documentation
§ 7:256	—Loan agreement
§ 7:257	— —Permissibility of participations
§ 7:258	— —Participant's direct rights
§ 7:259	— —Set-offs
§ 7:260	— —Information
§ 7:261	—Participation agreement
§ 7:262	— —Relationship of parties
§ 7:263	— —Interest in collateral and guaranties
§ 7:264	— —Due diligence
§ 7:265	— —Payment of purchase price
§ 7:266	— —Right to receive payments in respect of loan
§ 7:267	— —Loan administration
§ 7:268	— — —Consent to amendments
§ 7:269	— — —Financial stability of lead
§ 7:270	— — —Restrictions on transfer
§ 7:271	— — —Purchase options
§ 7:272	— —Information
§ 7:273	— —Representations
§ 7:274	— —Standard of care
§ 7:275	— —Reimbursement and indemnification
§ 7:276	— —Assignments
§ 7:277	— —Set-off
§ 7:278	— —Duties of agent or lead lender
§ 7:279	— —Duties of agent or lead bank—Transmittal of notice
§ 7:280	— —Exercise due care
§ 7:281	Exculpatory clause
§ 7:282	Participation certificate
§ 7:283	Sharing information
§ 7:284	Voting rules
§ 7:285	Collateral and setoffs
§ 7:286	— <i>Pro rata</i> distribution of setoff funds

VII. FORMS

§ 7:287	Loan closing checklist
---------	------------------------

- § 7:288 Short form letter of intent
- § 7:289 Long form term sheet
- § 7:290 Commitment letter
- § 7:291 Letter loan agreement
- § 7:292 Loan agreement—Single bank/term and revolver
- § 7:293 Credit agreement—Multibank/term and revolver
- § 7:294 Form of assignment and acceptance
- § 7:295 Form of opinion of counsel for the borrower
- § 7:296 Borrowing base certificate
- § 7:297 Notice of borrowing
- § 7:298 Officer's certificate
- § 7:299 Corporate resolution authorizing borrowing
- § 7:300 Borrower's counsel's legal opinion for loan secured by Texas real estate
- § 7:301 Default waiver letter
- § 7:302 Participation agreement
- § 7:303 Entire agreement statement
- § 7:304 Factoring documentation checklist
- § 7:305 Factoring agreement (limited recourse)
- § 7:306 Factoring agreement (full recourse)
- § 7:307 Notice to customer re: purchase of accounts
- § 7:308 Notice to customer requesting acknowledgment of no defenses to payment

CHAPTER 8. PROMISSORY NOTES

I. OVERVIEW

- § 8:1 Definition; general construction principles
- § 8:2 Negotiability under Uniform Commercial Code
- § 8:3 Statutory history

II. TYPES OF PROMISSORY NOTES

- § 8:4 Introduction
- § 8:5 Demand note
- § 8:6 Balloon note
- § 8:7 Installment note
- § 8:8 Secured note
- § 8:9 —Real estate lien note
- § 8:10 —Recourse versus nonrecourse notes
- § 8:11 Fixed rate note
- § 8:12 Variable rate note
- § 8:13 Original issue discount note
- § 8:14 Payment-in-kind note

TABLE OF CONTENTS

- § 8:15 Note in series
- § 8:16 Note as a security
- § 8:17 Certificate of deposit

III. REQUIREMENTS OF NEGOTIABLE PROMISSORY NOTES

- § 8:18 In general
- § 8:19 —Question of law
- § 8:20 Promise unconditional
- § 8:21 —Reference to other record
- § 8:22 —Contain only permissible additions
- § 8:23 Payable to bearer or order
- § 8:24 Payable on demand or at definite time
- § 8:25 —Demand
- § 8:26 —At definite time
- § 8:27 ——Effect of extension option
- § 8:28 —Payable both at fixed date and on demand prior to fixed date
- § 8:29 Amount payable
- § 8:30 —Fixed sum
- § 8:31 —Foreign currency
- § 8:32 Interest
- § 8:33 —Interest on interest-bearing instrument
- § 8:34 —Statement of interest
- § 8:35 —Late charges
- § 8:36 —Default interest
- § 8:37 —Amount of interest indeterminable
- § 8:38 —Avoiding usury
- § 8:39 Identification of payee
- § 8:40 —Rules for determination of payee
- § 8:41 ——Note payable to account
- § 8:42 ——Note payable to trust or estate
- § 8:43 ——Note payable to agent or representative
- § 8:44 ——Note payable to fund or organization that is not legal entity
- § 8:45 ——Note payable to office or officeholder
- § 8:46 —Note payable to two or more persons alternatively
- § 8:47 Payment place
- § 8:48 —Payment place not stated in note
- § 8:49 —Maker's address not stated
- § 8:50 —Maker has more than one address
- § 8:51 —Maker has no place of business
- § 8:52 Date of note
- § 8:53 Contradictory terms in note

- § 8:54 Incomplete note
- § 8:55 —Incomplete note qualifying as instrument
- § 8:56 —Alteration of incomplete instrument
- § 8:57 ——Burden of proof
- § 8:58 Effect of other agreements on instrument
- § 8:59 —Other agreements as defense
- § 8:60 Statement of non-negotiability
- § 8:61 Non-negotiable promissory notes compared—Definition of non-negotiable note
- § 8:62 —Non-negotiable notes and Chapter 3
- § 8:63 —Texas courts apply Chapter 3 principles to nonnegotiable notes by analogy

IV. DRAFTING CONSIDERATIONS

- § 8:64 Introduction
- § 8:65 Nonrecourse language
- § 8:66 —Loans to partnerships
- § 8:67 —Loans secured by real estate
- § 8:68 Limited recourse
- § 8:69 Notes given in renewal and extension
- § 8:70 —Renewal of collateral documents
- § 8:71 —Renewal or ratification of guaranty
- § 8:72 Usury savings clause
- § 8:73 —Ineffective for note usurious on its face
- § 8:74 Prepayment rights and penalties
- § 8:75 Attorney's fees
- § 8:76 Choice of law provisions
- § 8:77 Forum selection
- § 8:78 Subordination
- § 8:79 Waivers
- § 8:80 Basis of interest calculation
- § 8:81 Default

V. CONSUMER ISSUES

- § 8:82 Introduction
- § 8:83 Truth-in-lending disclosures
- § 8:84 Texas Finance Code
- § 8:85 FTC regulations—Notice to cosigner
- § 8:86 —Holder of consumer credit contract

VI. TRANSFER OF PROMISSORY NOTES

- § 8:87 Introduction
- § 8:88 Negotiation

TABLE OF CONTENTS

§ 8:89	—Indorsement
§ 8:90	— —Use of allonge
§ 8:91	— — —Allonge affixed to note
§ 8:92	— —Right to require indorsement
§ 8:93	—Holder status
§ 8:94	—Negotiation subject to rescission
§ 8:95	Rights acquired by transfer
§ 8:96	Partial transfer
§ 8:97	Transfer of secured notes
§ 8:98	—Securitization
§ 8:99	Transfer of non-negotiable notes

VII. PRESENTMENT AND DISHONOR

§ 8:100	Presentment
§ 8:101	—Rules governing presentment
§ 8:102	—Excused presentment
§ 8:103	Dishonor—Right to dishonor
§ 8:104	—Excused notice of dishonor
§ 8:105	— —Notice not required by note
§ 8:106	— —Notice waived

VIII. ENFORCEMENT RIGHTS

A. PERSON ENTITLED TO ENFORCEMENT

§ 8:107	Introduction
§ 8:108	Nonholder in possession
§ 8:109	Lost, destroyed or stolen note
§ 8:110	—Essential elements
§ 8:111	—Proof of terms
§ 8:112	—Findings required for judgment
§ 8:113	Holder
§ 8:114	—Holder in due course
§ 8:115	— —Value
§ 8:116	— —Good faith
§ 8:117	— —No notice of default
§ 8:118	— — —Payable on demand
§ 8:119	— — —Payable at definite time
§ 8:120	— — —Default in payment of interest
§ 8:121	— —No notice of unauthorized signature or alteration
§ 8:122	— — —Proof of signature
§ 8:123	— — —Status as holder in due course
§ 8:124	— —No notice of claims to note
§ 8:125	— —No notice of defenses or claims in recoupment
§ 8:126	— — —Notice of discharge

- § 8:127 — — — Public filing itself not notice
- § 8:128 — — — Effectiveness of notice
- § 8:129 — — — Limitations on rights of holder in due course—
 - Effect of partial performance
- § 8:130 — — — Effect of security interest
- § 8:131 — — — Effect of instrument on obligation taken
- § 8:132 — — — Suspension of obligation until payment
- § 8:133 — — — Obligee may enforce either note or obligation
- § 8:134 — — — Obligee may not enforce to extent obligation suspended
- § 8:135 — — — Obligee entitled to enforce but not in possession
- § 8:136 — — — Person not acquiring rights of holder in due course
- § 8:137 — — — FDIC deemed holder in due course

B. DEFENSES

- § 8:138 Defenses against holder in due course
- § 8:139 Defenses against holders not in due course
- § 8:140 — — — Claims in recoupment and setoff
- § 8:141 — — — Lack of consideration as defense
- § 8:142 — — — Statute of limitations
- § 8:143 Acceleration
- § 8:144 Defenses against holders not in due course—Statute of limitations—Laches
- § 8:145 — — — Breach of duty of good faith
- § 8:146 — — — Tender of payment
- § 8:147 — — — Effect of refusal of tender on third parties
- § 8:148 — — — Interest payments after tender
- § 8:149 — — — Accord and satisfaction by use of note
- § 8:150 — — — Acceptance of partial payment in full satisfaction of note
- § 8:151 — — — Notice of breach of fiduciary duty
- § 8:152 — — — Notice of breach of fiduciary duty is notice of claim
- § 8:153 — — — Taker's notice where note payable to fiduciary
- § 8:154 — — — Taker's notice where note issued by fiduciary and payable to fiduciary personally
- § 8:155 — — — Taker's notice where note issued by fiduciary to taker as payee
- § 8:156 — — — Alteration of note
- § 8:157 — — — Discharge of obligation
- § 8:158 — — — Enforcement of altered note
- § 8:159 Obligor's assertion of defenses or claims of another person
- § 8:160 Defenses of accommodation party
- § 8:161 Defenses in consumer transaction

TABLE OF CONTENTS

§ 8:162 Burden of proof

C. MAKING DEMAND ON MAKER

§ 8:163 In general
§ 8:164 Notice requirements
§ 8:165 —Demand for payment
§ 8:166 —Notice of intent to accelerate
§ 8:167 —Notice of acceleration
§ 8:168 —Abandonment of acceleration

D. REINSTATEMENT

§ 8:169 In general

E. FILING SUIT ON A NOTE

§ 8:170 Introduction
§ 8:171 Texas Business Court venue
§ 8:172 Basic elements of suit
§ 8:173 Additional allegations
§ 8:174 —Unmatured note
§ 8:175 —Deficiency judgment
§ 8:176 Presumptions
§ 8:177 Summary judgment

IX. LIABILITIES OF PARTIES

§ 8:178 Joint and several liability
§ 8:179 —Right of contribution
§ 8:180 Signature required for liability
§ 8:181 —Signature of individuals
§ 8:182 —Signature of representative
§ 8:183 —Rules of construction
§ 8:184 ——Signature on note in unambiguous capacity
§ 8:185 ——Signature on note in ambiguous capacity
§ 8:186 ——Exception—Signature of guarantor in ambiguous capacity
§ 8:187 ——Note made in assumed name
§ 8:188 ——Representative liable to holder in due course
§ 8:189 ——Representative liable to other person
§ 8:190 Unauthorized signature/forgery
§ 8:191 Signature of organization
§ 8:192 Obligation of issuer of note
§ 8:193 —Issuer signed incomplete note
§ 8:194 —Person to whom obligation owed

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 8:195 Co-signors and other accommodation parties
- § 8:196 —Obligation of accommodation party
- § 8:197 —Presumption and notice of accommodation status
- § 8:198 ——Effect of enforcer's notice of accommodation status
- § 8:199 ——Guarantee of collection rather than payment
- § 8:200 ——Other indication
- § 8:201 ——Reimbursement and enforcement
- § 8:202 Conversion of note
- § 8:203 —Persons prohibited from bringing conversion action
- § 8:204 —Measure of liability in conversion action
- § 8:205 —Limitation on liability of good faith representative

X. DISCHARGE AND PAYMENT

- § 8:206 Discharge and effect of discharge
- § 8:207 —Notice to holder in due course
- § 8:208 Payment
- § 8:209 —Notification of transfer
- § 8:210 —Obligation not discharged
- § 8:211 ——Claim to note enforceable against party receiving payment
- § 8:212 Discharge by cancellation or renunciation
- § 8:213 Discharge of secondary obligors
- § 8:214 —Effect of extension of due date
- § 8:215 —Effect of material modification
- § 8:216 —Effect of security interest
- § 8:217 Discharge of indorsers and accommodation parties—Notice
- § 8:218 Discharge of secondary obligors—Consent and waiver
- § 8:219 —Right to enforce retained
- § 8:220 —Burden of proof
- § 8:221 ——Presumption

XI. CHECKLISTS

- § 8:222 Drafting a promissory note

XII. FORMS

- § 8:223 Promissory note (prime rate/semi-annual installments with demand option)
- § 8:224 Fixed rate commercial promissory note with security agreement
- § 8:225 Secured fixed rate promissory note with balloon payment

TABLE OF CONTENTS

- § 8:226 Promissory note (fixed rate/term with monthly installments/non-assignable)
- § 8:227 Short form non-negotiable promissory note for use with credit agreement
- § 8:228 Demand promissory note (Eurodollar/nontransferable)
- § 8:229 Allonge with recourse
- § 8:230 Allonge without recourse
- § 8:231 Corporate resolutions authorizing execution of promissory note
- § 8:232 Assignment of note and lien (personal property)
- § 8:233 Assignment of note and lien (real estate)
- § 8:234 Agreement to indemnify for altered or lost notes
- § 8:235 Affidavit of lost note

CHAPTER 9. GUARANTIES

I. INTRODUCTION

- § 9:1 Definition

II. TYPES OF GUARANTIES

- § 9:2 Guaranty of payment
- § 9:3 Guaranty of collection
- § 9:4 —Collection efforts required
- § 9:5 —Collection efforts excused
- § 9:6 Unconditional guaranties vs. conditional guaranties
- § 9:7 Guaranty of negotiable instrument
- § 9:8 Limited guaranty
- § 9:9 Liability of certain guarantors under leases
- § 9:10 Specialty guaranties
- § 9:11 Continuing guaranty
- § 9:12 —Revocation of continuing guaranty by notice
- § 9:13 ——Requirement of written revocation
- § 9:14 —Revocation of continuing guaranty by death of guarantor
- § 9:15 Multiple guarantors
- § 9:16 —Joint and several liability
- § 9:17 ——Partnership issues
- § 9:18 —Joint liability
- § 9:19 Tax characterization
- § 9:20 Government guaranties

III. REQUIREMENTS OF VALID GUARANTY

- § 9:21 Contract principles apply

- § 9:22 Material terms; special and general guaranties
- § 9:23 Writing
 - Exception—Main purpose doctrine
- § 9:25 —No necessity of date on guaranty
- § 9:26 —Existence of blanks in guaranty
- § 9:27 —Ambiguity
- § 9:28 Consideration
 - General presumption of consideration
- § 9:30 ——Corporate presumption of consideration
- § 9:31 —Unnecessary if agreements executed contemporaneously
- § 9:32 —Consideration required if guaranty contract entered into independently
- § 9:33 ——Sufficiency and types of independent consideration
 - Postponement of enforcement as consideration
- § 9:35 ——Extension of future credit as consideration
- § 9:36 ——Detrimental reliance on guaranty as consideration
 - Guarantor does not actually have to receive value
- § 9:38 Capacity to enter into guaranty
- § 9:39 Capacity in which guaranty signed
- § 9:40 Acceptance and notice of acceptance
- § 9:41 Special consumer Federal Trade Commission notice
- § 9:42 Subordination
- § 9:43 Assignability
- § 9:44 Waivers and consents
- § 9:45 Choice of venue
- § 9:46 Jury waiver and arbitration
- § 9:47 Construction of guaranty agreements

IV. GUARANTY SUBSTITUTES

- § 9:48 Joint and several note
- § 9:49 Third-party pledge agreement
- § 9:50 Indemnity/surety agreement
- § 9:51 Keep-well agreement
- § 9:52 Non-disposal agreements
- § 9:53 Note purchase agreement
- § 9:54 Take-or-pay contract
- § 9:55 Comfort Letters

V. BANKRUPTCY ISSUES

- § 9:56 Automatic stay
- § 9:57 —Effect

TABLE OF CONTENTS

§ 9:58	—Exceptions to automatic stay
§ 9:59	—Nondebtor guarantors
§ 9:60	— —Chapter 13 exception
§ 9:61	— —General exception
§ 9:62	Discharge of debtor in bankruptcy
§ 9:63	Modification of underlying debt in bankruptcy
§ 9:64	Guaranty as fraudulent transfer
§ 9:65	—Execution of a guaranty is transfer
§ 9:66	—Transfers made with actual intent to defraud
§ 9:67	—Transfers for less than reasonably equivalent value
§ 9:68	—Reasonably equivalent value defined
§ 9:69	— —Reasonably equivalent value for a guaranty
§ 9:70	— — —Burden of proof
§ 9:71	—Intercompany guaranties
§ 9:72	— —General principles
§ 9:73	— — —Upstream guaranty
§ 9:74	— — —Cross-stream guaranty
§ 9:75	— — —Downstream guaranty
§ 9:76	Payment on guaranty as preferential transfer
§ 9:77	—Elements of preference
§ 9:78	—One-year avoidance period for insider transfers
§ 9:79	Bankruptcy drafting issues

VI. ENFORCEMENT

§ 9:80	Demand for payment
§ 9:81	—Notice of acceleration of underlying debt not required
§ 9:82	Requirements for creditor to recover on guaranty
§ 9:83	—Validity of signatures presumed
§ 9:84	— —Verified denial required
§ 9:85	—No presumption of validity
§ 9:86	Proper parties/Joinder
§ 9:87	Motion for summary judgment against guarantor
§ 9:88	Rights and remedies of guarantor
§ 9:89	—Subrogation to rights of obligee
§ 9:90	—Setoff
§ 9:91	—Contribution from co-guarantors
§ 9:92	Creditor's duties to guarantor
§ 9:93	—Notice of sale of U.C.C. collateral
§ 9:94	— —Commercially reasonable sale
§ 9:95	— —Compare—No duty to sell
§ 9:96	—Notice of sale of real property not required
§ 9:97	Defenses of guarantor
§ 9:98	—Statute of limitations

- § 9:99 —Laches
- § 9:100 —Illegality of underlying obligation
- § 9:101 —Misrepresentation of fact
- § 9:102 —Waiver/ratification of fraud defense
- § 9:103 —Duress
- § 9:104 —Forgery of underlying obligation
- § 9:105 —Failure to accept tender of performance
- § 9:106 —Mutual mistake
- § 9:107 —Material alteration or modification
- § 9:108 —Elements of pleading defense
- § 9:109 —Non-material modification or alteration
- § 9:110 —Impairment of guarantor's rights or remedies
- § 9:111 —Impairment of collateral
- § 9:112 —Failure to conduct proper U.C.C. foreclosure sale
- § 9:113 —Failure to comply with Texas Property Code in deficiency suit arising from nonjudicial foreclosure of realty
- § 9:114 Waiver of defenses
- § 9:115 Repudiation
- § 9:116 Release
- § 9:117 Attorney's fees
- § 9:118 Application of D'Oench Duhme doctrine
- § 9:119 Dodd-Frank Act Guarantor Rule

VII. CHECKLISTS

- § 9:120 Drafting a guaranty

VIII. FORMS

- § 9:121 Absolute guarantee of payment of obligation
- § 9:122 —Limited as to time and amount
- § 9:123 Absolute guaranty of payment of obligation—In consideration to credit line extension
- § 9:124 Short form of continuing guaranty of payment for one or more guarantors
- § 9:125 Commercial guaranty of specific indebtedness for one or more individual guarantors
- § 9:126 Continuing subsidiary guaranty for multiple guarantors
- § 9:127 Conditional guaranty of payment of obligation
- § 9:128 Plain language consumer guaranty of specific indebtedness
- § 9:129 Certificate of corporate resolutions and incumbency authorizing guaranty by corporation
- § 9:130 Notice of revocation of continuing guaranty

TABLE OF CONTENTS

§ 9:131 Guaranty of collection of obligation

CHAPTER 10. INTERCREDITOR AND SUBORDINATION AGREEMENTS

I. OVERVIEW

- § 10:1 Private vs. institutional financing
- § 10:2 Nature of multiple creditor agreements
- § 10:3 Intercreditor agreements in general
- § 10:4 Subordination agreements in general
- § 10:5 —Debt subordination
- § 10:6 —Lien subordination
- § 10:7 ——Right of subordination
- § 10:8 ——Consensual or statutory liens
- § 10:9 ——Statutory subordination of real estate mortgage to oil and gas lease
- § 10:10 ——Rights relative to third parties
- § 10:11 Distinction between contractual and equitable subordination
- § 10:12 Intercreditor and subordination agreements distinguished
- § 10:13 Formal requirements
- § 10:14 Interpretation and construction

II. PARTIES

- § 10:15 Senior creditor or lienholder
- § 10:16 Statutory lienholder
- § 10:17 Junior creditor or lienholder
- § 10:18 Creditors of equal footing; *pari passu*
- § 10:19 Insider creditors
- § 10:20 Contractual subordination of intercompany debt
- § 10:21 Equitable subordination of insider claims
- § 10:22 Borrower/debtor

III. DRAFTING THE AGREEMENT

- § 10:23 Introduction
- § 10:24 Defining senior debt
- § 10:25 —Inclusion of interest
- § 10:26 ——Effect of interest rates
- § 10:27 ——Renewing, extending, altering terms of senior debt
- § 10:28 —Cap on senior debt
- § 10:29 —Priority of future advances
- § 10:30 Payment in full of senior debt

- § 10:31 Defining junior debt
- § 10:32 —Insider debt
- § 10:33 —Renewing, extending, altering terms of junior debt
- § 10:34 Identification of collateral
- § 10:35 Releasing and selling collateral
- § 10:36 Perfection of liens
- § 10:37 —Filing of subordination agreement
- § 10:38 —Failure of senior creditor to perfect lien
- § 10:39 ——Bankruptcy trustee's avoidance powers
- § 10:40 ——Effect on subordination agreements
- § 10:41 —Intervening liens
- § 10:42 —Circular priority
- § 10:43 ——Texas circular priority law
- § 10:44 General debt subordination provisions
- § 10:45 Partial (inchoate) subordination
- § 10:46 —Limitations on debt payment
- § 10:47 —Junior creditor payments held in trust
- § 10:48 Triggering, blockage or stopping events
- § 10:49 —Automatic subordination
- § 10:50 —Declaration of subordination
- § 10:51 —Effect of triggering event
- § 10:52 —Default of senior loan as triggering event
- § 10:53 ——Written notice of default of senior loan
- § 10:54 ——Limitation on stops in non-monetary defaults
- § 10:55 —Debtor's bankruptcy as triggering event
- § 10:56 —“Standstill” of enforcement by junior lender
- § 10:57 Length of “standstill”
- § 10:58 Number of “standstills”
- § 10:59 Partial standstill
- § 10:60 Payment after triggering event
- § 10:61 —Length of payment stop
- § 10:62 —Junior creditor's rights after triggering event
- § 10:63 Triggering, purchase option
- § 10:64 Marshaling of collateral
- § 10:65 Threshold requirements
- § 10:66 Waiver of marshaling
- § 10:67 Invoking the doctrine
- § 10:68 Notices
- § 10:69 —From third parties
- § 10:70 Warranties and representations
- § 10:71 Payover of insurance/condemnation proceeds
- § 10:72 Modification of agreement
- § 10:73 Effect of adding new parties; new intercreditor agreement

TABLE OF CONTENTS

- § 10:74 Binding on assignees, successors
- § 10:75 Bankruptcy issues
- § 10:76 Double dividends to senior debt
- § 10:77 Prohibition on conversion of junior debt into equity
- § 10:78 Filing proof of claim
- § 10:79 —Senior files proof of claim on junior creditor's behalf
- § 10:80 Assignment of voting rights under chapter 11
- § 10:81 Purchase/assignment of junior claims to senior creditor
- § 10:82 Senior creditor's receipt of postpetition interest
- § 10:83 —Rule of explicitness
- § 10:84 —Rule's continuing viability questioned
- § 10:85 Junior creditor's receipt of securities of reorganized debtor
- § 10:86 —"X" clause
- § 10:87 —Operation
- § 10:88 Junior's subrogation rights
- § 10:89 SBA Lien Subordination
- § 10:90 HUD Intercreditor Agreement
- § 10:91 Creditor-on-creditor violence issues

IV. ENFORCING THE AGREEMENT

- § 10:92 Overview
- § 10:93 Enforceable in bankruptcy
- § 10:94 —No proof of senior creditor's reliance
- § 10:95 Theories of enforcement
- § 10:96 —Contract
- § 10:97 —Equitable lien
- § 10:98 —Equitable assignment
- § 10:99 —Constructive trust
- § 10:100 Standing to enforce
- § 10:101 Defenses
- § 10:102 —Lack of consideration
- § 10:103 —Fraud
- § 10:104 —Unexecuted subordination agreements

V. CHECKLISTS

- § 10:105 Checklist—Drafting an intercreditor agreement

VI. FORMS

- § 10:106 Form—Intercreditor agreement
- § 10:107 —Subordination agreement
- § 10:108 —Short form landlord's subordination agreement

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 10:109 —Long form landlord's subordination agreement
- § 10:110 —Intercompany subordination agreement
- § 10:111 —SBA Subordination Agreement

Table of Contents

CHAPTER 11. SECURED TRANSACTIONS

I. OVERVIEW

- § 11:1 Governing laws—Texas Uniform Commercial Code
Article 9
- § 11:2 —Revisions of Article 9
- § 11:3 —Transactions covered by Article 9 of the UCC
- § 11:4 ——General exclusions under Article 9 of the UCC
- § 11:5 ——Lease and other interest in real estate excluded
from Article 9
- § 11:6 ——Statutory liens
- § 11:7 ——Landlord's liens
- § 11:8 ——Security interest affected by other statutes
- § 11:9 ——Effect of obligation secured by interest not subject
to Article 9

II. TYPES OF COLLATERAL

A. TANGIBLE PERSONAL PROPERTY

- § 11:10 Overview
- § 11:11 Tangible personal property
- § 11:12 —Goods
- § 11:13 ——Consumer goods
- § 11:14 ——Equipment
- § 11:15 ——Farm products
- § 11:16 ——Inventory
- § 11:17 ——Accessions
- § 11:18 ——Fixtures
- § 11:19 ——Manufactured homes
- § 11:20 ——Aircraft
- § 11:21 ——Motor vehicles
- § 11:22 ——Rolling stock
- § 11:23 ——Vessels
- § 11:24 ——As-extracted collateral

B. INTANGIBLE PERSONAL PROPERTY

- § 11:25 Accounts
- § 11:26 —Health-care-insurance receivables
- § 11:27 —Government contracts
- § 11:28 Chattel paper

- § 11:29 —Electronic chattel paper
- § 11:30 —Tangible chattel paper
- § 11:31 Instrument
- § 11:32 —Promissory notes
- § 11:33 Investment property
- § 11:34 General intangibles
- § 11:35 —Payment intangibles
- § 11:36 —Software
- § 11:37 Deposit accounts
- § 11:38 —Nonnegotiable certificate of deposit
- § 11:39 Life insurance
- § 11:40 Documents
- § 11:41 —Documents of title
- § 11:42 —Warehouse receipts
- § 11:43 Letter-of-credit rights
- § 11:44 Commercial tort claims
- § 11:45 Virtual currency

III. CREATION OF SECURITY INTEREST

- § 11:46 Security agreements
- § 11:47 —Title to collateral immaterial
- § 11:48 —Collateral description
- § 11:49 ——Security entitlement; securities account; commodity account
- § 11:50 ——After-acquired property
- § 11:51 —Obligations secured by lien
- § 11:52 ——Future advances
- § 11:53 —Signature of debtor
- § 11:54 ——Nonsignatory bound by agreement
- § 11:55 —Arbitration provisions
- § 11:56 —Language evidencing intent of parties
- § 11:57 ——Special oil and gas rule
- § 11:58 ——Security agreement vs. sale
- § 11:59 ——Security agreement vs. true lease
- § 11:60 ——Significance in bankruptcy
- § 11:61 ——Test
- § 11:62 Attachment
- § 11:63 —Time attachment occurs
- § 11:64 —Effect of attachment: Continuation of security interest
- § 11:65 ——Waiver of security interest
- § 11:66 ——Right to proceeds
- § 11:67 ——Right to payment or performance

TABLE OF CONTENTS

- § 11:68 —Limitations on attachment of after-acquired property
- § 11:69 ——Consumer goods
- § 11:70 ——Commercial tort claims
- § 11:71 ——After-acquired property of new debtor
- § 11:72 —Attachment of commingled goods
- § 11:73 Purchase money security interests (PMSI)
- § 11:74 —Superpriority rule
- § 11:75 —Collateral other than inventory and livestock
- § 11:76 ——Livestock
- § 11:77 ——Inventory
- § 11:78 —Dual status rule
- § 11:79 —Allocation of payment rules
- § 11:80 —Burden of establishing extent of PMSI

IV. PERFECTION

- § 11:81 Overview
- § 11:82 Methods of perfection
- § 11:83 —Collateral subject to perfection by possession
- § 11:84 —Registered certificated security
- § 11:85 —Perfection by possession through third person/agent
- § 11:86 —Perfection by control
- § 11:87 ——Control of investment property
- § 11:88 ——Control of deposit account
- § 11:89 ——Deposit account at secured party bank
- § 11:90 ——Deposit account at third party bank
- § 11:91 ——Control of letter-of-credit rights
- § 11:92 ——Multiple consents required
- § 11:93 ——Transfer v. assignment
- § 11:94 ——Automatic perfection
- § 11:95 ——Control of electronic chattel paper
- § 11:96 ——Control of virtual currency
- § 11:97 ——Duration of perfection
- § 11:98 —Perfection by filing
- § 11:99 ——UCC-1 financing statement
- § 11:100 ——When to file
- § 11:101 ——Content of financing statement
- § 11:102 ——Name of debtor
- § 11:103 ——Use of trade name or assumed name
- § 11:104 ——Effect of change of debtor's name
- § 11:105 ——Name of secured party
- § 11:106 ——Description of collateral
- § 11:107 ——Signature requirements

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 11:108 ———Description of real estate on which collateral located
- § 11:109 ———Fixtures
- § 11:110 ———As-extracted collateral
- § 11:111 ———Effect of errors or minor omissions
- § 11:112 ———Where to file
- § 11:113 ———Local filing
- § 11:114 ———Central filing
- § 11:115 ———Methods of filing
- § 11:116 ———Delivery of original
- § 11:117 ———Online filing
- § 11:118 ———Facsimile filing
- § 11:119 ———When filing deemed complete; tender rule
- § 11:120 ———Duration of filing
- § 11:121 ———Effect of lapse
- § 11:122 ———Form UCC-3
- § 11:123 ———Continuation statement
- § 11:124 ———Assignment of security interest
- § 11:125 ———Amendment of financing statement
- § 11:126 ———Master amendment or assignment
- § 11:127 ———Termination statement
- § 11:128 ———Response period
- § 11:129 ———Debtor may file termination
- § 11:130 ———Duty of secured party to provide notice upon assignment
- § 11:131 ———Form UCC-5 information statement
- § 11:132 Method of perfection—Perfection by filing—UCC-1 financing statement—Fraudulently filed termination procedure
- § 11:133 Methods of perfection—Perfection by filing—Automatic perfection
- § 11:134 ——Temporary perfection—Instruments, certificated securities and negotiable documents
- § 11:135 ——Perfection of security interest in proceeds
- § 11:136 ——Accounts
- § 11:137 ——Chattel paper
- § 11:138 ——Instruments
- § 11:139 ——Investment property
- § 11:140 ——Special rules effecting securities intermediaries
- § 11:141 ——Choice of law governing perfection
- § 11:142 ——Priority rules
- § 11:143 ——General intangibles
- § 11:144 ——Intellectual property
- § 11:145 ——Commercial tort claims
- § 11:146 ——Deposit accounts

TABLE OF CONTENTS

§ 11:147	—Virtual currencies
§ 11:148	—Life insurance
§ 11:149	—Documents
§ 11:150	— —Period of perfection without filing
§ 11:151	— —Priority rule
§ 11:152	—Letter-of-credit rights
§ 11:153	—Money
§ 11:154	—Goods—Consumer goods—Perfection
§ 11:155	— —Priority rule
§ 11:156	— —Farm products—Perfection
§ 11:157	— —Agricultural lien priority
§ 11:158	— —Priority between secured party and landlord
§ 11:159	— —Compliance with Food Security Act of 1985
§ 11:160	— —Inventory
§ 11:161	— —Equipment
§ 11:162	—Fixtures—Perfection
§ 11:163	— —Priority rule
§ 11:164	—Aircraft
§ 11:165	—Vessels
§ 11:166	—Rolling stock
§ 11:167	—Motor vehicles and manufactured homes
§ 11:168	—Motor vehicles and other goods covered by a certificate of title—Choice of law governing perfection
§ 11:169	— —Priority rules
§ 11:170	—As-extracted collateral—Choice of law governing perfection
§ 11:171	— —Special automatic perfection rule
§ 11:172	— —Continuous perfection rule
§ 11:173	— —Priority rules

V. GENERAL RULES OF PRIORITY

§ 11:174	Introduction
§ 11:175	Unperfected security interests
§ 11:176	Purchase Money Security Interest rules
§ 11:177	Conflicting perfected interests in same collateral
§ 11:178	Ordinary course of business transactions
§ 11:179	Transactions outside the ordinary course of business
§ 11:180	—Buyer of goods
§ 11:181	—Lessee of goods
§ 11:182	Interest arising under U.C.C. Articles 2, 2A
§ 11:183	Future advances
§ 11:184	—Intervening lien creditor
§ 11:185	Statutory possessory liens

- § 11:186 Mechanics' liens
- § 11:187 Commingled goods
- § 11:188 Consigned goods

VI. BANKRUPTCY ISSUES

- § 11:189 Preferences
- § 11:190 —Elements of preference
- § 11:191 ——“Transfer” broadly defined
- § 11:192 ——Transfer must enhance creditor’s position
- § 11:193 —When transfer made
- § 11:194 ——Time transfer takes effect
- § 11:195 ——Time of perfection
- § 11:196 ——Date of bankruptcy filing
- § 11:197 ——What constitutes “perfection”
- § 11:198 —Creditor’s defenses to preference attach
- § 11:199 ——Enabling loans
- § 11:200 ——Security interests in inventory/receivables
- § 11:201 —Effect of bankruptcy on security interest in proceeds

VII. RIGHTS AND OBLIGATIONS OF PARTIES PRIOR TO DEFAULT

- § 11:202 Duty of reasonable care; criminal liability of debtor
- § 11:203 Duty to provide statement of account
- § 11:204 —Defenses to payment
- § 11:205 —Waiver of buyer’s rights
- § 11:206 —Exception for consumer goods
- § 11:207 —Other exceptions
- § 11:208 —Assignability of account
- § 11:209 —Modification of, or substitution for, contract underlying account
- § 11:210 —Direct payment from account debtor to secured party
- § 11:211 —Debtor’s control over collateral
- § 11:212 Consent to sale of collateral
- § 11:213 —Right to setoff
- § 11:214 —Right of purchaser of production to terminate security interest
- § 11:215 —Right of purchaser to buy free and clear of production interest or statutory lien

VIII. EXTINGUISHMENT OF LIENS, RELEASES OF COLLATERAL AND TERMINATION STATEMENTS

- § 11:216 Extinguishment of Lien

TABLE OF CONTENTS

§ 11:217 UCC-3 Releases and Terminations

IX. CHOICE OF LAW RULES

§ 11:218 Introduction

X. CHECKLISTS

- § 11:219 Security agreement drafting checklist
- § 11:220 Inventory checklist
- § 11:221 Accounts checklist
- § 11:222 Tangible chattel paper checklist
- § 11:223 Equipment checklist
- § 11:224 Fixtures checklist
- § 11:225 Farm products checklist
- § 11:226 Consumer goods checklist
- § 11:227 General intangibles checklist
- § 11:228 Instruments checklist
- § 11:229 Life insurance checklist
- § 11:230 Motor vehicles checklist
- § 11:231 Manufactured home checklist
- § 11:232 U.S. vessel checklist
- § 11:233 Texas vessel checklist
- § 11:234 Aircraft document checklists
- § 11:235 Bills of lading and warehouse receipts checklist
- § 11:236 Investment property checklist
- § 11:237 Deposit account checklist
- § 11:238 Railroad rolling stock checklist

XI. FORMS

- § 11:239 Form—UCC-1 Financing Statement
- § 11:240 —UCC-3
- § 11:241 —UCC-5
- § 11:242 —UCC-11
- § 11:243 —Pledge and security agreement (all assets)
- § 11:244 —Security agreement (equipment)
- § 11:245 Secured party in possession of collateral
- § 11:246 Accounts receivable financing security agreement
- § 11:247 Form—Stock pledge agreement
- § 11:248 —Stock power
- § 11:249 —Federal Reserve Form U-1
- § 11:250 —Investment property security agreement
- § 11:251 —Investment property account control agreement
- § 11:252 —Security agreement and mortgage (trademarks and patents)

- § 11:253 —Assignment for security (patents)
- § 11:254 —Assignment for security (trademarks)
- § 11:255 —Special power of attorney (trademarks and patents)
- § 11:256 —Aircraft security agreement and Privacy Act Statement together with recording instructions
- § 11:257 —First preferred ship mortgage and optional application for filing form CG 5542 and information
- § 11:258 —Application for Texas certificate of title for vessel/boat
- § 11:259 —Application for Texas certificate of title for outboard motor
- § 11:260 —130-U Motor Vehicle
- § 11:261 —Letter of credit control agreement
- § 11:262 —Deposit account control agreement

CHAPTER 12. LETTERS OF CREDIT

I. OVERVIEW

- § 12:1 Introduction
- § 12:2 Transaction structure
- § 12:3 —Three separate contracts
- § 12:4 —Relationship of parties
- § 12:5 ——Independence principle
- § 12:6 Types of letters of credit
- § 12:7 —Commercial
- § 12:8 Commercial letters of credit—Typical documents presented
- § 12:9 Standby letters of credit
- § 12:10 —Distinction from guaranty contract
- § 12:11 Red clause in letter of credit
- § 12:12 Clean letters of credit
- § 12:13 Reducing letters of credit
- § 12:14 Revolving letters of credit
- § 12:15 Drafts
- § 12:16 Sight draft
- § 12:17 Time demand draft

II. GOVERNING LAWS

- § 12:18 Uniform Commercial Code Article 5
- § 12:19 —Current revision
- § 12:20 Letter of credit defined
- § 12:21 Participating parties
- § 12:22 Adviser defined

TABLE OF CONTENTS

- § 12:23 Beneficiary defined
- § 12:24 Applicant defined
- § 12:25 Confirmor defined
- § 12:26 Nominated person defined
- § 12:27 Scope of UCC
- § 12:28 Engagements not subject to UCC
- § 12:29 Uniform Customs and Practice for Documentary Credits (UCP) and International Standby Practices 1998 (ISP98)
- § 12:30 UCP definition of credit
- § 12:31 Making letter of credit subject to UCP or ISP98
- § 12:32 Scope of UCP
- § 12:33 Obtaining UCP 600 or ISP 98
- § 12:34 Conflicting UCC and UCP and ISP98 provisions
- § 12:35 Applicability of other UCC articles
- § 12:36 Conflicting UCC provisions
- § 12:37 Federal regulations

III. FORM AND CONTENT

- § 12:38 Formal requirements
- § 12:39 Requirements
- § 12:40 Expiration date
- § 12:41 Definitive undertaking by parties
- § 12:42 Consideration
- § 12:43 General rules of contract construction
- § 12:44 Intention of parties
- § 12:45 Construction against drafter
- § 12:46 Reformation
- § 12:47 Time of establishment of credit
- § 12:48 Issue date
- § 12:49 Revocability
- § 12:50 Necessity of indicating whether revocable or irrevocable
- § 12:51 Irrevocable letter of credit
- § 12:52 —Withdrawal
- § 12:53 Revocable letter of credit
- § 12:54 Special provisions applicable to national banks
- § 12:55 Special provisions applicable to Texas savings and loan associations (TXS&L)
- § 12:56 Texas agency statutory requirements

IV. PRESENTMENT FOR PAYMENT

- § 12:57 Issuer's duty in general
- § 12:58 Demand must be by beneficiary

TEXAS PRACTICE GUIDE FINANCIAL TRANSACTIONS

- § 12:59 Time allowed for honoring
- § 12:60 Required documents
- § 12:61 UCP and ISP98 acceptance provisions
- § 12:62 Standard for examination of documents
- § 12:63 Strict compliance defined
- § 12:64 Standard banking practice
- § 12:65 Knowledge of other industries
- § 12:66 Strict compliance defined is a question of law
- § 12:67 Substantial compliance distinguished
- § 12:68 Obligation on nondocumentary conditions
- § 12:69 Notice of discrepancies of documents
- § 12:70 Effect of not giving timely notice of discrepancies
- § 12:71 Drawing on a letter of credit during a global crisis or state of emergency

V. OBLIGATION OF OTHER PARTIES

- § 12:72 Direct obligation of confirmor
- § 12:73 Nominated person
- § 12:74 Adviser
- § 12:75 Duty to advise
- § 12:76 Timeliness of duty to advise
- § 12:77 Liability for errors made in advice

VI. FRAUD

- § 12:78 Fraud in the transaction and forgery
- § 12:79 Issuer's obligation to honor
- § 12:80 Issuer's proper dishonor
- § 12:81 Materiality requirement
- § 12:82 Notice of fraud
- § 12:83 Injunctions against honor
- § 12:84 Statutory requirements for injunctions against honor
- § 12:85 Issuance in general
- § 12:86 Showing of fraud
- § 12:87 Injunctions against honor—Showing of fraud—Inclusion of untrue statements
- § 12:88 Effect of lifting of injunction

VII. REIMBURSEMENT

- § 12:89 Reimbursement agreements
- § 12:90 Right to immediate reimbursement
- § 12:91 Preclusion from restitution

VIII. WARRANTIES

- § 12:92 Article 5 warranties

TABLE OF CONTENTS

- § 12:93 Timing of warranties
- § 12:94 Warranties under other U.C.C. articles

IX. REMEDIES

- § 12:95 Overview
- § 12:96 Wrongful dishonor or repudiation
- § 12:97 Wrongfully threatening to draw
- § 12:98 Specific performance
- § 12:99 Injunctive relief to extend or reinstate
- § 12:100 Incidental and consequential damages
- § 12:101 Mitigation of damages
- § 12:102 Breach
- § 12:103 Liquidated damages
- § 12:104 Attorney's fees
- § 12:105 Interest
- § 12:106 Statute of limitations
- § 12:107 —Under prior Article 5

X. TRANSFER AND ASSIGNMENT

- § 12:108 Transfer of letter of credit
- § 12:109 Transfer of letter of credit by operation of law
- § 12:110 Beneficiary's successor by operation of law
- § 12:111 Issuer's recognition of disclosed successor by operation of law
- § 12:112 Beneficiary's name change
- § 12:113 Assignment of proceeds
- § 12:114 Consent to assignment
- § 12:115 Transferee's rights superior to assignee's rights
- § 12:116 Mode of assignment

XI. SUBROGATION

- § 12:117 Of issuer
- § 12:118 Of applicant
- § 12:119 Of nominated person
- § 12:120 When subrogation rights arise

XII. BANKRUPTCY ISSUES

- § 12:121 Applicant's bankruptcy
- § 12:122 —Automatic stay
- § 12:123 Letter of credit and proceeds not subject to stay
- § 12:124 Preferential transfers
- § 12:125 Letter of credit not property of the bankruptcy estate

- § 12:126 Collateral pledged as security
- § 12:127 Assets subject to reimbursement
- § 12:128 New value
- § 12:129 Preference toward beneficiary
- § 12:130 Direct/indirect transfer doctrine
- § 12:131 No new value given
- § 12:132 Issuer's insolvency and validity of letters of credit
- § 12:133 —Role of Federal Deposit Insurance Corporation (FDIC)
- § 12:134 Liquidation of insolvent bank
- § 12:135 Purchase and assumption agreements
- § 12:136 Exclusion of letters of credit from P&A agreement
- § 12:137 Power to repudiate contracts
- § 12:138 Damages for repudiation
- § 12:139 Letter of credit as provable claim
- § 12:140 What constitutes provability—Three-part test
- § 12:141 Applicability to letters of credit
- § 12:142 Letter of credit as insured deposit
- § 12:143 Standby letter of credit

XIII. CHOICE OF LAW

- § 12:144 Choice of law and forum
- § 12:145 Effect of not choosing
- § 12:146 Bank branches

XIV. CHECKLISTS

- § 12:147 Provisions to include in letter of credit under Chapter 5/UCP600/ISP98

XV. FORMS

- § 12:148 Application for letter of credit
- § 12:149 Application of letter of credit—To Bank
- § 12:150 Revocable Letter of Credit
- § 12:151 Irrevocable standby letter of credit
- § 12:152 Irrevocable documentary/commercial letter of credit
- § 12:153 General letter of credit—With guaranty
- § 12:154 Special letter of Credit
- § 12:155 Draft
- § 12:156 Certificate
- § 12:157 Notice of dishonor
- § 12:158 Transfer certificate
- § 12:159 Notice of Assignment—To issuer
- § 12:160 Amendment to letter of credit—Issued by bank

TABLE OF CONTENTS

- § 12:161 Request to issue letter of advice
- § 12:162 Advice of credit
- § 12:163 Confirmation of Credit
- § 12:164 Confirmation of issued letter of credit

Table of Laws and Rules

Table of Cases

Index