

The 2022 Amendments to the Uniform Commercial Code Abrogate Property Rights to Tangible Assets



By Daylea DuVall Camp & Jack McPherrin

Key Takeaways

- The proposed 2022 amendments to Articles 9 and 12 of the Uniform Commercial Code strip individuals of their property rights to real-world assets.
- The entities responsible for the UCC's governance consist of partisan actors who serve special interests.
- The UCC has already been used to abrogate property rights to investment securities through amendments to Article 8.
- The 2022 amendments facilitate the adoption of a U.S. central bank digital currency, one of the biggest threats to economic freedom and individual autonomy facing us today.
- The same language used to facilitate a U.S. CBDC also paves the way for the abrogation of property rights to tangible assets through dematerialization and tokenization.
- The proposed amendments to UCC Articles 9 and 12 cede individuals' property rights to the world's largest financial institutions.
- States' widespread adoption of the 2022 UCC amendments would pave the road to a completely digitized economy in which all tokenized real-world assets would be legally controlled by financial behemoths.
- The economic activity and freedom of all individuals would be dependent on the whims of the central banks and financial institutions that control the blockchain networks on which tokenized assets are transacted.
- Policymakers and the general public must be wary of the 2022 UCC amendments and those who are advocating for the dematerialization and tokenization of assets.
- It would behoove state legislators to prevent too-big-to-fail financial institutions from taking control of all of society's assets through UCC Articles 9 and 12, while also re-establishing property rights to investment securities through UCC Article 8.

In 2022, the Uniform Law Commission (ULC) and the American Law Institute (ALI) proposed new amendments to the Uniform Commercial Code (UCC), including revisions to the already existing UCC Article 9 and the creation of the entirely new UCC Article 12. These amendments would ultimately strip all Americans of their property rights to tangible assets and create an economic system that is utterly controlled by the world's largest financial institutions.

Before delving into the details of these revisions and the impact they would have, it is important to review what the UCC is, who is responsible for its governance, how the UCC has already been utilized to abrogate property rights, and why other aspects of the 2022 UCC amendments—particularly the facilitation of a U.S. central bank digital currency (CBDC)—threaten to eradicate individual liberty.

The Uniform Commercial Code: A Proven Threat

The Uniform Commercial Code was created in in the early 1950s by the Uniform Law Commission and the

American Law Institute, and was then adopted by every state over the next two decades. Rather than being a federal law, it is a uniformly adopted set of state laws that was developed to unify disparate state commercial codes and foster a more efficient system of interstate commerce.¹ As the ULC notes on its website, the UCC is “a comprehensive set of laws governing all commercial transactions in the United States,”² and is considered “the backbone of American commerce.”³ To this day, the UCC remains governed by a joint partnership between the ULC and ALI called the Permanent Editorial Board for the Uniform Commercial Code.⁴

The ULC and ALI take great pains to present themselves as nonpartisan legal organizations that exist purely to serve the public and provide expert solutions to complicated problems. This façade of non-partisanship has led state legislators to trust them implicitly and regularly enact their model policies with little, if any, oversight. In reality, however, both organizations are comprised of activist lawyers and law professors who champion left-wing causes and serve special interests, to the detriment of society.⁵ While this is clearly evidenced by recent changes to the UCC—both already enacted and recently proposed—it is important to note that the tentacles of the ULC and ALI spread to other areas beyond commercial law. For instance, the ULC formally approved model legislation in 2023 that would grant governors and public health authorities near-dictatorial power during any future, loosely defined “public health emergency,” which the ULC has recommended for enactment by all states.⁶

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Revocation of Property Rights to Securities

Though such other initiatives are highly concerning and should certainly be examined more closely by policymakers, the Uniform Commercial Code has been the primary vehicle through which the ULC, ALI, and monolithic financial institutions attempt to fundamentally alter society. In fact, these organizations have already succeeded in doing so via amendments to UCC Article 8, which governs investment securities. The amendments to UCC Article 8 were proposed by the ULC and ALI in 1994 and subsequently passed in all 50 states by 2001.⁷

As explained more thoroughly in a separate *Policy Tip Sheet*,⁸ the 1994 UCC Article 8 amendments replaced investors’ property rights to their newly dematerialized securities with a novel legal concept called a “security entitlement,” which is just a contract. Under this new arrangement, individuals, organizations, or businesses that purchase a security are no longer the owners of that security. Instead, ownership has shifted to organizations holding securities in trust for brokers and other financial institutions, the most popular of which is the Depository Trust Company.⁹

Further, the revised UCC Article 8 ensures that securities purchasers do not even have priority claim over their security entitlements. Rather, it is the secured creditors of securities brokers—the world’s largest banks—that have absolute priority over investors’ securities and can legally take them during any potential insolvency proceeding. Ultimately, the ULC and ALI nullified the entire concept of property rights to investment securities, all to the benefit of too-big-to-fail banks—who stand ready to complete the theft of the securities themselves whenever the next declared financial crisis produces a cascade of insolvencies.¹⁰

Facilitation of Central Bank Digital Currency

More recently, the ULC and ALI proposed new revisions to the UCC in 2022 that follow a similar theme as their changes to UCC Article 8, posing an equal if not greater threat to individual property rights and society. The 2022 UCC amendments include changes to Article 9—which governs secured transactions—and the creation of an entirely new Article 12—which would govern a new concept called “controllable electronic records.”¹¹ These changes would be highly problematic for multiple reasons.

As separate *Policy Tip Sheets* explain in more detail,¹² the 2022 UCC amendments include language that unnecessarily encourages the adoption of a U.S. central bank digital currency (CBDC), colloquially referred to as the “digital dollar.” The U.S. Federal Reserve defines a CBDC as “a digital form of central bank money that is widely available to the general public” that is “a liability of the central bank.”¹³ CBDCs—or any form of systematic, programmable, and centrally controlled digital currency issued by the Federal Reserve, commercial banks, international institutions, or other powerful financial entities—represent the ultimate control mechanisms over society. Their capacity for total surveillance and coercion is virtually limitless.

CBDCs are designed specifically for complete control over all financial activity. They give governments and private institutions such as the Federal Reserve the ability to enforce policy to the smallest single transaction of any individual. And, central bankers have been direct about how they intend to wield this new power. For instance,

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Agustin Carstens—general manager of the Bank of International Settlements, the “central bank of central banks”—infamously stated in a 2020 panel discussion: “We don’t know who’s using a \$100 bill today and we don’t know who’s using a \$1,000 peso bill today. The key difference with the CBDC is the central bank will have absolute control on the rules and regulations that will determine the use of that expression of central bank liability, and we also will have the technology to enforce that.”¹⁴

The tyrannical power established by CBDCs stretches far beyond financial surveillance. CBDCs can be programmed to make certain actions, products, and services costlier or altogether unavailable on an individual basis, punish or reward users for their saving and spending habits, cause money to expire if not spent within specific time frames, impose negative interest rates to shrink account balances, among a host of other powers imaginable now or in the future.¹⁵

Essentially, the continued dematerialization of the U.S. dollar and the imposition of a U.S. CBDC—or other centrally administered, programmable digital currencies—would lead to complete control over Americans’ ability to transact and operate freely in society. The fact that the 2022 UCC amendments lay the groundwork for such a totalitarian system is already problematic enough. That is not all that the 2022 amendments would do, however. The same newly introduced legal mechanisms would also create a framework for stripping Americans of their property rights to real-world assets.

Tokenization and Centralized Control of Real-World Assets

In addition to facilitating a potential U.S. CBDC, the ULC’s proposed amendments to UCC Article 9 and the creation of UCC Article 12 would govern the dematerialization of real-world assets (RWA)—tangible assets that have appreciating value like real estate, gold, or artwork.¹⁶ These changes to the UCC would create a system conducive to efficiently transacting RWA through blockchain networks, which hinges upon a process called “tokenization.”

The Threat of Tokenization

Tokenization is the process by which an item of value is dematerialized into digital form. When an item is tokenized, it then exists in two forms: its original physical form and a digital “twin” form, called a token, which can then be exchanged on a blockchain. Tokens can represent anything of value, including physical assets, financial assets, intangible intellectual property, and personal data.¹⁷ According to a report by Deloitte, the purpose of tokenization is to (a) make illiquid assets liquid to be used as cash, (b) open markets to new investors through fractional trading, and (c) increase operational efficiency.¹⁸

Tokenization in and of itself is not necessarily a problem. In fact, some aspects of tokenization could be seen as beneficial to society, because tokenization allows for direct peer-to-peer transactions on blockchain networks without the need for a trusted third party. However, it is vital to understand that there are different types of tokens, and different types of systems that tokens can be housed within. As Brownstone Institute expert Aaron Day explains, “[N]ot all tokens are created

equally. These tokens could promote freedom, decentralization, or free trade, or be used as a surveillance mechanism that leads to confiscating our assets.”¹⁹

The vision of the powerful financial interests who are pushing for the tokenization of RWA and the 2022 UCC amendments is for all assets and money to be tokenized and transacted in a cashless society on blockchain networks that these actors control.²⁰ Physical assets that are not tokenized and transacted in their system would be worthless in markets because their value would not be represented by a token on a blockchain. The “choice” given to asset owners will essentially be to either tokenize their assets and give up their property rights, or suffer societal ostracization.

As such, actors who can establish centralized control of this relatively nascent system can control all of society. And, the amendments to UCC Articles 9 and 12 would allow for that type of centralized control by the same actors—the world’s largest financial institutions—who are responsible for abrogating our property rights to investment securities and facilitating central

bank digital currencies. Similar to what has transpired with UCC Article 8, this new arrangement could allow financial institutions to control all real-world assets.

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UCC Articles 9 and 12 Explained

The newly proposed UCC Article 12 would classify all dematerialized assets as “controllable electronic records (CERs),” “controllable accounts,” and/or “controllable payment intangibles.”²¹ CERs would include tokenized real-world assets, as well as other forms of electronically exchangeable products such

as cryptocurrency and non-fungible tokens. Some CERs may themselves be personal property of inherent value, such as Bitcoin. Otherwise, a CER is simply a record of “information that is retrievable in perceivable form” that evidences one of two types of digital assets: controllable accounts and controllable payment intangibles.²²

As mentioned previously, upon the tokenization of a real-world asset, that asset will exist in both its original physical form and as a digital token. Under UCC Article 12, that token is considered a CER. Each token can be programmed by what is called a “smart contract,” which contains details about the asset’s fair value, ownership, controllable account/controllable payment intangible, and other attributes.²³ Smart contracts contain codes of instructions that instruct blockchains to perform certain functions, like to buy or sell upon certain times or conditions. As such, while never moving from its physical location, assets can still be instantly purchased and/or traded upon via the blockchain multiple times.²⁴

After being tokenized and classified as a CER, physical assets can be bought and sold in fractions, and/or serve as collateral for securities and loans traded in the derivatives market. Fractional ownership occurs when a person buys only a portion of an asset, whether it is a tangible asset or a financial asset such as a stock.²⁵ However, fractional ownership is an illusion that exists only within a digital framework, which presents serious problems for prospective “owners.”

For instance, there is no value in 15 percent of a famous painting in the physical world; the painting is only valuable in its whole form. Purchasing fractional shares in an asset is really purchasing a proportional “interest” in shares of an asset’s future value. Fractional investors purchase a portion of

a portion. Yet, these fractional shares of stocks and physical assets give individuals the illusion that they own valuable collateral. The 2022 UCC amendments would ensure that they do not.

The True Beneficiaries of Centralized Tokenization

Similar to how UCC Article 8 defines individual securities investors as entitlement holders—with no property rights to the securities that investors think they own—the amendments to UCC Articles 9 and 12 would define individuals as purchasers of “interest,” who are considered neither secured parties nor qualifying purchasers. CERs are connected to the aforementioned controllable accounts and controllable payment intangibles in the same way that security entitlements are linked to securities. Again, if a CER is not a money token, it is simply a record without any value. One can own “interest” in the record without owning rights to the related asset. Thus, having “interest” in the CER does not give a buyer rights to the asset. The 2022 UCC amendments would establish a hierarchy of

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ownership rights that ensures the average individual purchasing said interest—the “buyer”—has the weakest rights to the asset. From highest to lowest, that hierarchy is: qualifying purchaser; secured party; buyer.²⁶

Furthermore, qualifying purchasers—which will most often be custodial brokers²⁷—do not have to purchase the CER; they only must obtain control of the CER or purchase the controllable account or controllable payment intangible. In other words, whoever purchases the asset or controls the CER is the true owner. Individuals will give custodial brokers control of their CERs to use the custodial

broker's digital trading platforms, wallets, kiosks, or to process digital payments. According to the Internal Revenue Service, "The majority of digital asset transactions today occur using these brokers."²⁸

Currently, the U.S.-based Depository Trust Clearing Corporation (DTCC)—the parent company of the aforementioned Depository Trust Company and one of the most powerful financial institutions in the world—is working in conjunction with Europe-based financial behemoths Euroclear and Clearstream to establish "an industry-wide digital asset ecosystem to drive acceptance of tokenized assets."²⁹ DTCC's digital assets division "mobilizes the power of blockchain technology to build a global, liquid and interconnected ecosystem for digital assets."³⁰ This ecosystem will be positioned to control most digital asset securities, CERs, controllable accounts, and controllable payable intangibles through their platforms and services.

Thus, just as UCC Article 8 has given ultimate control and ownership of investors' securities to the too-big-to-fail financial institutions, the 2022 amendments would create a system by which those same actors can take control of all real-world assets.

Conclusion

States' widespread adoption of the 2022 UCC amendments would pave the road to a completely digitized economy in which all tokenized real-world

assets would be legally controlled by giant financial institutions. Simultaneously, the same amendments would facilitate the adoption of a U.S. central bank digital currency—a form of tokenized money that would be directly issued, programmed, and controlled by the Federal Reserve and/or the banks that own it.

As such, the economic activity and freedom of all individuals will be dependent on the whims of the central banks and financial institutions that control the blockchain networks on which tokenized assets are housed and transacted. In the end, individuals will own nothing and have zero privacy in this system. Further, their freedom to use the assets and money they no longer own will be tightly controlled.

Policymakers and the general public must be wary of those who attempt to persuade them of the benefits of asset dematerialization and tokenization. Those who are most strongly in favor of this system—and of the 2022 UCC amendments—have already positioned themselves to control it, which would necessitate the eradication of all personal property rights and individual liberty. These

actors have already accomplished part of their objective by surreptitiously taking legal ownership of individual investors' securities through the revisions to UCC Article 8. It would behoove state legislators to prevent these too-big-to-fail leviathans from taking the rest of society's assets through UCC Articles 9 and 12, while also re-establishing individuals' property rights to investment securities through UCC Article 8.

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