

## THOMSON REUTERS PRACTICAL LAW

## Documents of Title USA (National/Federal)

## Related Content

*This Practice Note provides an overview of documents of title (and related documents) such as bills of lading, air waybills, sea waybills, and warehouse receipts. This Note describes the process by which these documents are issued and used and the purpose of these documents (for example, as evidence of their receipt of goods for transportation or storage services, and to serve as contracts of carriage or storage). This Note also discusses the differences between negotiable and nonnegotiable documents of title.*

Manufacturers, distributors, resellers, and other suppliers of goods, components, and raw materials (goods) in the supply chain frequently outsource their logistics functions to outside logistics vendors so they can concentrate on their core competencies. Logistics vendors include:

- Transportation providers (frequently called carriers), such as trucking companies, and ocean, rail, and air carriers to move goods throughout the supply chain. For more information about transportation providers, see [Practice Note, Logistics: Transportation Service Providers Overview](#).
- Warehouses (frequently called warehousemen) to temporarily store the goods until they must either resell or otherwise use the goods. Transportation providers also engage warehouses, typically to store goods at connecting points in the supply chain, for example, at a warehouseman's:
  - transportation hub; or
  - distribution facility.

For an overview of the supply chain, see [Practice Note, Supply Chain Overview](#).

An outside logistics vendor typically:

- Does not take title to the goods.
- Takes temporary custody of the goods to enable it to transport or store the goods on behalf of the party requesting the transportation or storage services (a [Uniform Commercial Code](#) (UCC) Article 7 bailor).
- Is a UCC Article 7 bailee.
- May issue a document of title or similar document to the bailor, for example, a:
  - bill of lading issued by a carrier to a party requesting transportation services; or
  - warehouse receipt issued by a warehouseman to the party requesting storage services.

This Note sets out an overview of documents of title, including a general discussion of the functions of documents of title, as well as documents that share some, but not all, the characteristics of documents of title.

## What are Documents of Title?

Under the UCC, documents of title include:

- Bills of lading (see [Bills of Lading](#)).
- Warehouse receipts or orders for the delivery of goods (see [Warehouse Receipts](#)).
- Dock warrants or dock receipts, which are provisional documents issued by a maritime or river dock owner to an inland transportation company after the inland transportation company deposits the goods at the dock. The warrant or receipt is evidence that the goods were deposited at the dock. The warrant or receipt can then be used:
  - by the maritime carrier to pick up the goods for the maritime leg of the journey; and
  - as the basis for preparing the bill of lading to be issued by the maritime carrier.

(UCC § 1-201(b)(16).)

UCC Section 1-201(b)(16) also provides that documents of title broadly include any other document that in the regular course of business or financing is treated as adequately evidencing that the person or entity in possession of it is entitled to receive, hold, and dispose of the:

- Document of title.
- Goods covered by the document of title.

To be a UCC document of title, a document must purport to:

- Be issued by or addressed to a bailee.
- Cover identifiable goods in the bailee's possession, which are either:
  - identified; or
  - fungible portions of an identified mass.

(See [Identifiable Goods in Bailee's Possession](#).)

A document of title performs several other functions, including:

- Serving as a receipt that provides the party requesting transportation or storage services with evidence of the goods' delivery to the specified carrier or warehouse.
- Serving as a short-form contract between the party requesting transportation or storage services and the carrier or warehouse, respectively, which typically contains provisions regarding:
  - shipping or storage fees;
  - quantity of goods shipped or stored;
  - obligations to safeguard the goods;
  - allocation of risk; and
  - disclaimers and limitation of liability.
- Aiding in the transfer of rights in the goods while they are shipped or stored, where the transfer of the documents from one person to another becomes the transfer of the rights in the goods.
- Serving as the basis for a UCC Article 7 statutory lien that secures the bailor's obligation under a bill of lading or warehouse receipt to pay for:
  - charges for storage, transportation, delivery, and expenses that are necessary for preserving or transporting the goods; and
  - any other charges for which the document expressly specifies a lien is claimed, to the extent the law and the agreement between the parties allow the charges.

(UCC § 7-307.)

For more information about allocation of risk, see:

- [Practice Note, Risk Allocation in Commercial Contracts](#).

- [Avoiding Key Risk Allocation Pitfalls Under Commercial Contracts Checklist](#).

For more information about limitation of liability, see [Standard Clause, General Contract Clauses: Limitation of Liability](#).

## Identifiable Goods in Bailee's Possession

A document of title must cover goods:

- In the carrier's or warehouseman's (acting as bailee) possession. A document is not a document of title if the bailee is not in possession of the goods even if the bailee can produce a certificate of title or other record that evidences ownership.
- That are identifiable, including:
  - goods specifically identified in the document; or
  - fungible portions of an identified mass of goods.

(UCC § 1-201(b)(15).)

For example, coat check and baggage check receipts are not documents of title because they typically do not identify the goods. However, a bill of lading that describes wheat, corn, rye, or other commodities that come from a grain silo or other storage area is a document of title if it references fungible portions of an identified, but undifferentiated, mass of the same type of goods.

Fungible goods are goods of which any unit is:

- The equivalent of any other unit because of:
  - the nature of the goods; or
  - usage of trade.
- Deemed by any agreement entered into by the parties to be the equivalent of any other unit, even if the units are not alike.

(UCC § 1-201(b)(18).)

## Negotiable versus Non-Negotiable Documents of Title

Whether a document of title is negotiable or non-negotiable depends on how it identifies the transferee and method of transfer.

Whether a document of title is negotiable or non-negotiable impacts the rights of third parties who may gain rights in the document. A new third party can gain title to the goods and to the document instead of the originally intended consignee. The scope of the new third party's rights depends on whether the previous holder of the document (the person who possesses and has a property right in the document of title) has:

- Negotiated a negotiable document of title to the third party. The new third-party holder obtains the superior rights of a holder by due negotiation, which the original holder undertakes by proper endorsement and delivery.
- Transferred a negotiable or non-negotiable document of title to the third party. The third-party transferee acquires only the rights that the transferor had or had the power to convey. A transfer is affected by delivery and an agreement to transfer title to the document or to the goods the document represents.

For more information about the mechanics of the negotiation and transfer of bills of lading, see [Practice Note, Bills of Lading: Duly Negotiated or Transferred Bills of Lading](#).

## Negotiable Documents of Title

A document of title is negotiable if the document is made out to and requires the goods to be delivered to:

- A bearer (see [Bearer Paper](#)).
- The order of a named person (see [Order Paper](#)).

(UCC § 7-104(a).)

## Bearer Paper

Bearer paper may be negotiated from one person to another by simple delivery of possession without the need for endorsement. Bearer paper entitles the bearer (whosoever happens to hold the document) to delivery of the goods from the carrier or warehouse.

Bearer paper can be created:

- Explicitly.
- Implicitly if order paper fails to nominate the consignee (the party to whom the goods are to be delivered).

## Order Paper

Order paper may be transferred by the person named on the document (or a later endorsee) by negotiating the document to another person.

Negotiation requires:

- Endorsement of the named person either:
  - in blank (without naming a new transferee); or
  - to a specific person, who must also endorse it before the document can be negotiated.
- Delivery of possession of the order paper to the transferee.

## Non-Negotiable Documents of Title

A document of title is non-negotiable if it:

- Does not meet the negotiability requirements ([UCC § 7-104\(b\)](#)) (see [Negotiable Documents of Title](#)).
- At the time it is issued, has a conspicuous legend expressing that it is non-negotiable, for example, stating that the document of title is:
  - "non-negotiable"; or
  - "not negotiable".

([UCC § 7-104\(c\)](#).)

Unlike the negotiation of a negotiable document of title, the negotiation of a non-negotiable document of title transfers only the transferor's actual interests in the underlying goods. This means any transferee who obtains the document acquires:

- No better rights than those held by the transferor.
- Rights to the document and underlying goods subject to existing claims.

These characteristics essentially render a non-negotiable document of title to be merely a service contract for transportation or storage and may not be an effective means to transfer the goods' title.

## Bills of Lading

Issued by a carrier to the party requesting transportation services (shipper or consignor of goods), a bill of lading is sometimes called a:

- B/L.
- BOL.
- Waybill.

A bill of lading is a UCC document of title that performs several functions. For example, a bill of lading:

- Is a receipt that provides the shipper or consignor with evidence of the goods' delivery to the specified carrier (acting as the bailee entrusted to safeguard the goods while providing transportation services on behalf of the shipper or consignor) through which the goods have been placed on their way to the consignee.
- Is a contract that states the terms and conditions under which the carrier agrees to transport the goods.

- Ordinarily entitles the person finally possessing the bill of lading to receive the goods, which typically is the consignee after the goods reach their destination.

The carrier or its agent issues the bill of lading by signing and sending it to the consignor. The consignor then typically mails the bill of lading to the consignee or its agent, which entitles the consignee to receive the goods at the destination.

Any carrier can issue a bill of lading, regardless of the method of transportation (whether by land, water, or air). The carrier issues the bill of lading to the consignor either at:

- The place of shipment.
- The place of destination.
- Any other designated place that the consignor requests.

The carrier then delivers the goods covered in the bill of lading to either:

- The order of a consignor or consignee, if the bill of lading is negotiable (see [Negotiable Documents of Title](#)). Order bills of lading are generally used for goods that have not been paid-for in advance, such as goods sent under:
  - an open account; or
  - a [commercial letter of credit](#).
- A specifically named consignee, if the bill of lading is non-negotiable (a straight bill of lading), which requires the carrier to deliver the goods only to the consignee named in the bill of lading (see [Non-Negotiable Documents of Title](#)). Straight bills of lading are generally used in transactions where either:
  - someone has already paid for the goods; or
  - the goods do not require payment, such as donations or gifts.

For more information on using commercial letters of credit as payment for purchasing goods, see [Practice Note, Commercial Letters of Credit](#). For more information about bills of lading, including the mechanics of negotiation, see [Practice Note, Bills of Lading](#).

## Other Categories of Bills of Lading

There are many subcategories of bills of lading. These include:

- Clean bills of lading, which state that the specified cargo has been loaded onto the conveyance in apparent good order and condition.
- Soiled bills of lading, which the carrier can issue if it receives any goods (including packaging) that are not in apparent good order and condition.
- Direct bills of lading, which are used when the conveyance used to pick up the goods is also used to deliver the goods to their final destination.
- Inland bills of lading, which are used in domestic overland shipping, whether by truck or rail.
- Multimodal bills of lading, which are through bills of lading covering at least two different modes of transport, for example, ocean freight and truck.
- Ocean bills of lading, which are used in the domestic or international transportation of goods over open water.
- Received bills of lading, which are temporary bills of lading used when the goods have arrived at the port and are ready to load to the vessel, but the vessel has yet to arrive.
- Through bills of lading, which are consolidated bills of lading used to transport goods via multiple modes of transportation. They allow for the carrier to pass the cargo through multiple:
  - modes of transportation; or
  - different distribution centers.

## Sea Waybills

Maritime carriers sometimes use sea waybills instead of bills of lading to cover ocean transportation of goods. Serving a similar function to a bill of lading, a sea waybill:

- Is a receipt that provides the shipper or consignor with evidence of the goods' delivery to the specified ocean freight carrier through which the goods have been placed on their way to the consignee.
- May be used as a contract that states the terms and conditions under which the ocean freight carrier agrees to transport the goods.
- May not be effective to entitle the person in possession of the waybill to receive the goods.

However, unlike a bill of lading, a sea waybill:

- Is not a document of title.
- Is not negotiable.
- Cannot be used in a sale of goods transaction where payment is made using a commercial letter of credit.
- Does not require the consignee to produce to the carrier the sea waybill duly endorsed to the carrier to receive the goods, but rather, the carrier has the burden of confirming the consignee's identity as listed in the sea waybill.

Given these characteristics, a sea waybill is sometimes used for:

- Intercompany transactions where there is little risk of consignee fraud.
- Transactions where there is no commercial letter of credit financing.
- Any other through transaction where the goods are:
  - consigned directly to the customer at the final destination of the voyage; and
  - not consigned to the order of somebody else.

## Air Waybills

Shippers frequently use air freight to move lightweight, time-sensitive packages over long distances, for example:

- Legal documents.
- High-technology goods.
- Perishable goods.
- Other high-value goods.

Air freight service providers or air freight carriers, include:

- Airlines dedicated exclusively to cargo transport.
- Freight divisions or subsidiaries of passenger airlines.
- Parcel or package carriers such as United Parcel Service and Federal Express that use various modes of transportation to transport mainly small packages. Package carriers use aircraft to move time-sensitive shipments between hubs before transferring the packages to delivery trucks that carry the packages to their final destinations.

Air freight service providers typically issue air waybills in lieu of bills of lading to cover domestic and international air transportation of goods from airport to airport. Similar in function to a bill of lading, an air waybill:

- Serves a receipt that provides the shipper or consignor with evidence of the goods' delivery to the specified air freight carrier that is transporting the goods bound for the consignee.
- May be used as a contract that states the terms and conditions under which the air freight carrier agrees to transport the goods.
- May not be effective to entitle the person in possession of the waybill to receive the goods.

However, unlike a bill of lading, an air waybill:

- Is not a document of title.
- Is always a non-negotiable document.

Despite its non-negotiability, an air waybill can be used to make payment:

- Under a commercial letter of credit.
- On a [cash on delivery](#) (COD) basis.

In a sale of goods transaction involving air shipment and payment terms incorporating a commercial letter of credit, the shipper typically:

- Presents the original air waybill to the bank.
- Collects the billed value of the shipped goods from the bank.

The bank then debits to the consignee (typically the buyer who ordered the goods) the amount paid by the bank to the shipper. The carrier releases the goods to the consignee on receipt of a bank release order from the consignee's bank.

In a sale of goods transaction involving air shipment and COD payment terms, the goods are:

- Consigned directly to the importer.
- Released to the importer after the importer:
  - makes the COD payment; and
  - complies with the instructions in the air waybill.

## Master Air Waybills

International shipments that contain consolidated cargo are frequently documented by master air waybills (MAWB), which consist of house air waybills (HAWB) containing information about each individual shipment within the consolidation. Consolidated shipments frequently contain upwards of 30 individual shipments, each requiring its own HAWB.

In a typical arrangement, the airline issues a MAWB to the freight forwarder (an expert in logistics management that organizes shipments on behalf of shippers), who then issues its own HAWB to its customers. For more information about freight forwarders, see [Practice Note, Logistics: Freight Forwarding](#).

The International Air Transport Association (IATA), the main trade association for the world's airlines, which helps to formulate industry policy on critical aviation issues, has initiated an e-AWB project to replace paper air waybills with electronic contracts of carriage between freight forwarders and carriers. By instituting the e-AWB project, the IATA hopes to foster improved efficiency and reliability for all stakeholders in the air freight industry, including carriers, freight forwarders, customs brokers, and ground handlers, as well as for shippers.

For information about air freight service providers and the IATA, see [Practice Note, Logistics: Transportation Service Providers Overview: Air Freight Services Providers](#).

## Warehouse Receipts

Warehouse receipts are UCC documents of title that fulfill a similar function in the storage of goods as a bill of lading in the transportation of goods. Issued by a warehouse to the party requesting storage services, a warehouse receipt:

- Provides the party requesting storage services with evidence of the goods' delivery to the specified warehouse.
- Serves as a contract that states the terms and conditions under which the warehouse agrees to store the goods.
- If negotiable, ordinarily entitles the person possessing the warehouse receipt to receive the goods.

While UCC Article 7 does not prescribe any particular form for a warehouse receipt, the warehouse is liable for damages caused to any person injured by its omission of certain key provisions, including provisions regarding:

- The location of the warehouse where the goods are stored.
- The date of issue of the receipt.

- The unique identification number of the receipt.
- A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order.
- Storage fees and handling charges.
- A description of the goods or the packages containing them.
- The signature of the warehouse or its agent.
- If the receipt is issued for goods that the warehouse owns or co-owns, a statement of that ownership, including whether the warehouse has:
  - sole ownership;
  - joint ownership; or
  - ownership in common with others.
- A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or [security interest](#).

(UCC § 7-202(b).)

A warehouse may also include any terms that:

- Are not contrary to the UCC.
- Do not impair its obligation to deliver the stored goods under [UCC Section 7-403](#).
- Do not impair its duty of care under [UCC Section 7-204](#).

(UCC § 7-202(c).)

For more information about drafting and negotiating warehouse receipts, see [Standard Document, Warehouse Receipt Terms and Conditions](#). For more information about drafting and negotiating warehouse agreements, see [Standard Document, Warehouse Agreement](#).

#### PRODUCTS

PLC US Commercial Transactions, PLC US Law Department

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