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A Practical Guide to UCC Article 9 Documentation

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A PRACTICAL GUIDE TO UCC ARTICLE 9 DOCUMENTATION

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INTRODUCTION

When the author last addressed himself to the problems of documentation under the Uniform Commercial Code's Article 9,[1] it was his belief that he had sufficiently covered the field for all practical purposes. However, as the next few years passed, the volume of cases actually increased. More distressing is the fact that the later cases often indicate multiple basic misunderstandings by lenders and counsel of the Code's requirements. Considering that perhaps a majority of today's practicing lawyers studied the Code in law school, one would have expected the general level of proficiency to have increased. This has not proved to be the case. The goal of Article 9, "to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater security,"[2] does not appear to have been realized. The surface simplicity of the creation of security interests under the Code has often yielded to underlying problems. As noted by the Second Circuit, "despite this simplification and clarification of the law, the answers to relatively straightforward questions remain clouded by uncertainty."[3]

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1. Hillman, *Article 9 Documentation: Pathways and Pitfalls*, 81 COMM. L.J. 468 (1976).
2. U.C.C. § 9-101, Official Comment.
3. *In re* Knapp, 575 F.2d 341, 342 (2d Cir. 1978).

This article varies from its predecessor in a number of respects. First, it assumes less basic knowledge, offering at least a refresher course in several areas. Second, it has grown in scope as the variety of experience under the Code has increased. Last, it adopts a somewhat more transactional approach, for easier reference.

THE BASICS IN BRIEF

To obtain the blessed state of UCC perfection, which generally assures protection against third party claims,[4] there must first be a security agreement, "an agreement which creates or provides for a security interest."[5] A security interest is "an interest in personal property or fixtures which secures payment or performance of an obligation."[6] Once a security interest has been granted, and has attached (which requires agreement plus value given plus debtor's rights in the collateral[7]), the final step is generally filing of the security agreement, or a short-form financing statement, in the public records.[8]

The nature and content of these documents is examined in the following sections.

THE DOCUMENTS

Creating a security interest under the Uniform Commercial Code usually[9] requires a security agreement. To satisfy the Code's Statute of Frauds, the agreement must be in writing, be signed by the debtor, and contain a description of the collateral.[10] To obtain perfection — protection against the claims of third parties to the collateral[11] — the security agreement itself may be placed in the public record, if signed by the secured party,[12] or the parties may execute and file a short-form financing statement, which gives their

4. *See* U.C.C. § 9-301 (references to sections of Article 9 which have been altered or renumbered by the 1972 revision are cited as 1972 U.C.C.).

5. U.C.C. § 9-105(1)(h), 1972 U.C.C. § 9-105(1)(l). *See* Barth Bros. v. Billings, 68 Wis.2d 80, 227 N.W.2d 673 (1975).

6. U.C.C. § 1-201(37).

7. U.C.C. § 9-204(1), 1972 U.C.C. § 9-203(1). Concerning attachment, *see In re* County Green Ltd. Part., 438 F. Supp. 693 (W.D. Va. 1977), and cases cited.

8. For instances of perfection without filing, *see* U.C.C. §§ 9-302 through 9-306.

9. No security agreement is required if the collateral is in the possession of the secured party, the classic pledge, U.C.C. § 9-203(1)(a), or for the limited exceptions for instruments as collateral.

10. U.C.C. § 9-203(1). *See* Tate v. Gallagher, 116 N.H. 165, 355 A.2d 417 (1976), and cases cited.

11. *See* U.C.C. § 9-301.

12. The requirement of the secured party's signature is eliminated by 1972 U.C.C. § 9-402(1).

names and addresses and describes the nature of the collateral.[13] The similarity in content of the two documents has led to considerable confusion, generally resolving itself into a basic question: Can a financing statement also be a security agreement?

In a case of first impression,[14] the Rhode Island Supreme Court responded in the negative:

> [W]hile it is possible for a financing statement and a security agreement to be one and the same document. . ., it is not possible for a financing statement *which does not contain the debtor's grant of a security interest* to serve as a security agreement. . . . The financing statement does not of itself create a security interest.[15]

The decision was attacked by commentators as a horrible anachronism, "reminiscent of the worst formal requisites holdings under the nineteenth century chattel mortgage acts."[16] One court characterized the case as requiring "technical words of conveyance" to create a security interest.[17]

The controversy continued, with the Tenth Circuit requiring a specific grant of the security interest,[18] and the First Circuit voicing concern about the "continuing tension" in cases regarding the necessity for a formal security agreement.[19] Nevertheless, the smoke appears to have settled and certain basic principles have now emerged.

Most courts appear to accept the premise that "[n]o magic words or precise form are necessary to create or provide for a security interest so long as the minimum formal requirements of the Code are met,"[20] and that there is no necessity for "a separate document entitled 'security agreement' as a prerequisite for enforcement of an otherwise valid security interest."[21] On the other

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13. U.C.C. § 9-402(1).

14. American Card Co. v. H.M.H. Co., 97 R.I. 59, 196 A.2d 150 (1963). *See also* Mid-Eastern Electronics Inc. v. First Nat'l Bank, 380 F.2d 355 (4th Cir. 1967); General Electric Credit Corp. v. Bankers Commercial Corp., 244 Ark. 984, 429 S.W.2d 60 (1968).

15. 97 R.I. at 62, 196 A.2d at 152 (emphasis added).

16. 1 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 348 (1965).

17. Evans v. Everett, 279 N.C. 352, 183 S.E.2d 109 (1971).

18. Mitchell v. Sheperd Mall State Bank, 458 F.2d 700, 703 (10th Cir. 1972).

19. *In re* Numeric Corp., 485 F.2d 1328, 1331 (1st Cir. 1973).

20. *In re* Amex-Protein Dev. Corp., 504 F.2d 1056, 1058-59 (9th Cir. 1974). *See also* Shelton v. Erwin, 472 F.2d 1118 (8th Cir. 1973); *In re* Sportsland, Inc., 17 U.C.C. Rep. 1333 (D. Mass. 1975); *In re* Nottingham, 6 U.C.C. Rep. 1197 (E.D. Tenn. 1969). Cases cited in U.C.C. Rep. are generally decisions of bankruptcy judges not otherwise reported.

21. Little v. County of Orange, 31 N.C. App. 495, 229 S.E.2d 823, 824 (1976). *See also In re* Numeric Corp., 485 F.2d 1328, 1331 (1st Cir. 1973); *In re* Carmichael Ent., 334 F. Supp. 94 (N.D. Ga. 1971), *aff'd*, 460 F.2d 1405 (5th Cir. 1972).

hand, "[a] considerable body of case law has developed to the effect that a standard-form financing statement, taken alone, cannot also be considered a 'security agreement' that satisfies 9-203(1)(b). . . ."[22]

The statute says that the security agreement must create or provide for a security interest.[23] The courts differ on how far the documentation must go to satisfy this test. One court has stated that the requirement "may be satisfied not only when a security interest is caused to be or brought into existence, but also when provision or stipulation is made therefor,"[24] and held adequate as a security agreement a note containing the provision "[t]his note is secured by a security interest in [specified goods]." However, a recital that "this note is covered by security agreement dated _____," in the absence of the referenced document,[25] or that certain collateral has been deposited with the lender,[26] or that the note represents "loan for 1965 Ford"[27] have been held insufficient elsewhere. The courts seem to be seeking "language. . . . in the instrument which when read and construed leads to the logical conclusion that it was the intention of the parties that a security interest be created,"[28] but the logical constructions differ from court to court.

An intent, seemingly a present intent, to grant a security interest has been held insufficient if not accompanied by something to create the intended result.[29] There is a split of authority on the question of whether a security agreement, signed in blank by the debtor and later completed by the creditor with debtor's consent is a sufficient grant of a security interest,[30] but, of course, it would be

22. In re Numeric Corp., 485 F.2d at 1331. *See also In re* Mann, 318 F. Supp. 32 (W.D. Va. 1970); Gibbs v. King, 263 Ark. 338, 564 S.W.2d 515 (1978); Komas v. SBA, 139 Cal. Rptr. 669 (Cal. App. 1977); L & V Co. v. Asch, 267 Md. 251, 297 A.2d 285 (1972); Crete State Bank v. Lauhoff Grain Co., 195 Neb. 605, 239 N.W.2d 789 (1976); *In re* Mancini Meat & Prov. Co., 23 U.C.C. Rep. 1037 (D. Conn. 1977); *In re* Shoreline Elec. Supp. Co., 18 U.C.C. Rep. 231 (D. Conn. 1975); *In re* Sportsland, Inc., 17 U.C.C. Rep. 1333 (D. Mass. 1975); *In re* Rand, 6 U.C.C. Rep. 1129 (D. Me. 1969); *In re* Pennar Paper Co., 2 U.C.C. Rep. 659 (E.D. Pa. 1964). Similarly, notation of a lien on a motor vehicle certificate of title is insufficient to create a security interest in the absence of a security agreement. *In re* Corsi, 24 U.C.C. Rep. 216 (D. Vt. 1978), and cases cited.

23. U.C.C. § 9-105(1)(h); 1972 U.C.C. § 9-105(1)(l).

24. *In re* Amex-Protein Dev. Corp., 504 F.2d at 1058. *See also In re* Penn Housing Corp., 13 U.C.C. Rep. 947 (W.D. Pa. 1973); *In re* Center Auto Parts, 6 U.C.C. Rep. 398 (C.D. Cal. 1968).

25. Kaiser Aluminum & Chemical Sales v. Hurst, 176 N.W.2d 166 (Iowa 1970).

26. Safe Deposit Bank & Trust Co. v. Berman, 393 F.2d 401 (1st Cir. 1968); *In re* Vielleux, 5 U.C.C. Rep. 277 (D. Conn. 1967). *But cf.* Kruse, Kruse & Miklosko v. Beedy, 353 N.E.2d 514 (Ind. App. 1976) (escrow arrangement).

27. *In re* Rand, 6 U.C.C. Rep. 1129 (D. Me. 1969).

28. *In re* Nottingham, 6 U.C.C. Rep. 1197, 1199 (E.D., Tenn. 1969).

29. *In re* Taylor Mobile Homes, Inc., 17 U.C.C. Rep. 565, 569 (E.D. Mich. 1975); *In re* Martronics, 2 U.C.C. Rep. 364 (D. Conn. 1964).

30. Invalid: *In re* Hein, 20 U.C.C. Rep. 745, 749 (W.D. Wis. 1976). Valid: Means v. United Fidelity Life Ins. Co., 550 S.W.2d 302, 310 (Tex. Civ. App. 1977). One commentator argues that these cases are distinguishable. 21 U.C.C. Rep. 1177, Editor's Note.

insufficient if never completed.[31] There must be "evidence of an agreement,"[32] perhaps even the derided "words of creation or grant."[33]

A standard pre-Code form of trust receipt has been held a sufficient security agreement,[34] at least as to collateral specifically described.[35] Where a lease is held to be one intended as security[36] and, accordingly, subject to the rules of Article 9,[37] slightly different concepts may apply.[38]

It should be noted that the security agreement need not be a single document. The Code defines "agreement" as "the bargain of the parties in fact"[39] and the courts have generally not been reluctant to examine an entire "bundle of papers"[40] to determine the sufficiency or existence of a claimed security agreement.[41]

Notwithstanding the salvage value of the foregoing cases, one should not knowingly ignore the plea of one federal judge: "Banks and lending institutions would be well advised to use a single form of security agreement, and thereby avoid burdening referees and courts with this type of unnecessary problem."[42] Unfortunately, no one has yet been able to design a satisfactory universal form.

REQUIRED (IF DESIRED) PROVISIONS

While great latitude is permitted in the content of the security agreement, there are some rights which a secured party can obtain only if the security agreement so provides. These include the right

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31. Union Nat'l Bank v. Providence Wash. Ins. Co., 21 U.C.C. Rep. 1163 (W.D. Pa. 1977).

32. Scott v. Stocker, 380 F.2d 123, 127 (10th Cir. 1967).

33. First County Bank v. Canna, 124 N.J. Super. 154, 305 A.2d 442, 444 (App. Div. 1973). *See also* DuBay v. Williams, 417 F.2d 1277 (9th Cir. 1969); Needle v. Lasco Ind., 10 Cal. App. 3d 1105, 89 Cal. Rptr. 593 (1970); *In re* Shoreline Elec. Supp. Co., 18 U.C.C. Rep. 231 (D. Conn. 1975).

34. *In re* United Thrift Stores, 363 F.2d 11, 13 (3d Cir. 1966).

35. *In re* Mann, 318 F. Supp. 32, 36 (W.D. Va. 1970).

36. U.C.C. § 1-201(37).

37. U.C.C. § 9-102.

38. *In re* Walter W. Willis, Inc., 313 F. Supp. 1274 (N.D. Ohio 1970), *aff'd,* 440 F.2d 995 (6th Cir. 1971).

39. U.C.C. § 1-201(3).

40. *In re* Matronics, 2 U.C.C. Rep. 364, 368 (D. Conn. 1964). *See also In re* Modern Engineering & Tool Co., 25 U.C.C. Rep. 580 (D. Conn. 1978).

41. Young v. Golden State Bank, 560 P.2d 855 (Colo. App. 1977); *In re* Miller, 545 F.2d 916 (5th Cir. 1977), *Cert Den* 430 U.S. 987 (1977); *In re* Amex-Protein Dev. Corp., 504 F.2d 1056 (9th Cir. 1974); *In re* Wambach, 343 F. Supp. 73 (N.D. Ill. 1972), *aff'd,* 484 F.2d 572 (7th Cir. 1973); Nunnemaker Trans. Co. v. United Cal. Bank, 456 F.2d 28, 31 (9th Cir. 1972); *In re* Fibre Glass Boat Corp., 324 F. Supp. 1054 (S.D. Fla.), *aff'd,* 448 F.2d 781 (5th Cir. 1971); Komas v. SBA, 139 Cal. Rptr. 669 (Cal. App. 1977); Walter E. Heller & Co. v. Salerno, 168 Conn. 152, 362 A.2d 904 (1975); Casco Bank & Trust Co. v. Cloutier, 398 A.2d 1224 (Me. 1979); *In re* Bazaar de la Cuisine Int'l, Inc., 20 U.C.C. Rep. 1049 (S.D.N.Y 1976) (applying N.J. law); *In re* Truckers Int'l, 17 U.C.C. Rep. 1337 (W.D. Wash. 1975). *Contra, In re* Shoreline Elec. Supp. Co., 18 U.C.C. Rep. 231 (D. Conn. 1975). Casco Bank & Trust Co. v. Cloutier, *supra,* indicates that the standards may be more stringent if this theory is sought to be applied against third party claimants.

42. *In re* Wambach, 343 F. Supp. 73, 76 n.2 (N.D. Ill. 1972).

to notify account debtors prior to default,[43] the right to charge back uncollected collateral in "factoring" arrangements,[44] the right to require the debtor to assemble the collateral,[45] and the right to attorneys' fees.[46] Where rights and duties are provided in the Code, the security agreement may "determine the standards by which the fulfillment of those rights and duties is to be measured if such standards are not manifestly unreasonable."[47] The most common applications of this last provision are to detail the nature and direction of required notices and foreclosure or repossession techniques.

FUTURE ADVANCES

One of the great improvements of the UCC over common law and earlier statutory devices was its recognition of open-ended financing arrangements. The Code is specific that the "obligations covered by a security agreement may include future advances. . . whether or not the advances or value are given pursuant to commitment."[48] Difficulty has arisen because of the Official Comment of the draftsmen that "under [this provision] collateral may secure future as well as present advances *when the security agreement so provides.* . . . [T]his subsection validates the future advance interest, *provided only that the obligation be covered by the security agreement.*"[49]

The Comment, which may not be a required reading of the text of the statute, has led some courts to conclude that "in order for a security agreement to subject the collateral to future advances, the security agreement must clearly indicate that the obligation covered includes future advances."[50] Another reading of some of these cases is that even the inclusion of a future advance clause will

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43. U.C.C. § 9-502(1).
44. U.C.C. § 9-502(2).
45. U.C.C. § 9-503. *See* Clark Equip. Co. v. Armstrong Equip. Co., 431 F.2d 54 (5th Cir. 1970), *cert. denied* 402 US 909 (1971).
46. U.C.C. § § 9-504(1)(a); 9-506.
47. U.C.C. § 9-501(3).
48. U.C.C. § 9-204(5); 1972 U.C.C. § 9-204(3).
49. U.C.C. §9-204 (1962) Official Comment 8 (emphasis added).
50. Texas Kenworth Co. v. First Nat'l Bank, 564 P.2d 222 (Okla. 1977). *See also In re* Sanelco, 7 U.C.C. Rep. 65 (M.D. Fla. 1969); *In re* Rivet, 4 U.C.C. Rep. 1087 (E.D. Mich. 1967); Coin-o-matic Service Co. v. Rhode Island Hospital Trust Co., 3 U.C.C. Rep. 1112 (R.I. Sup. 1966). The Review Committee considered these cases so clearly erroneous that it declined to revise Article 9 to overrule them. *Review Committee for Article 9 of the Uniform Commercial Code, Permanent Editorial Board for the Uniform Commerical Code, Final Report* 226 (1971). *Contra,* Provident Finance Co. v. Beneficial Finance Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978), where the court's position is described as "the majority view" despite citation only of commentators in favor of its holding.

be insufficient if the subsequent advance differed in type from the nature of the original obligation of the debtor; for example, a security agreement originally covering a fixed term loan could be insufficient to cover a subsequent inventory revolving loan. Such arguments should be rejected.[51]

These cases appear to arise most frequently in "re-writes" of what would have been conditional sales contracts under pre-UCC law. The debtor, having financed his original purchase of the collateral, needs additional funds. The secured party makes an additional loan, but relies upon his original security agreement (usually an installment sales contract), even though it does not contain an explicit future advance clause. It appears to be fairly clear that this is an extremely dangerous practice which should be avoided if possible. (The problems of including a future advance provision in an installment sales contract while complying with consumer protection and disclosure laws are beyond the scope of this text.)

AFTER-ACQUIRED COLLATERAL

After-acquired property presents a situation similar to that involved in future advance clauses, although the decisions have been a bit more liberal. Revised Article 9 Section 9-402(1)[52] states that "a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after acquired collateral."[53]

Some cases have indicated that lack of "after-acquired language" in the security agreement will not bar the inclusion of the additional collateral, at least where trade custom, or normal business practice, indicates that a floating mass of collateral was intended.[54] However, this is not a universal rule. *In re Paine*[55] involved a security agreement which covered "inventory and accounts receivable," but which, in the bankruptcy judge's

51. *See* Kimball Foods, Inc. v. Republic Nat'l Bank, 557 F.2d 491 (5th Cir. 1977), *aff'd sub nom.* United States v. Kimball Foods, Inc., ____ U.S. ____, 99 S.Ct. 1448 (1979), Chrysler Credit Corp. v. Community Banking Co., 24 U.C.C. Rep. 223 (Conn. Sup. 1978). In Thorp Sales Corp. v. Dolise Bros. Co., 453 F. Supp. 196 (W.D. Okla. 1978), the argument was rejected, but the future advance clause held not to encompass obligations of debtor assigned to the secured party by others. *See also In re* E.A. Fretz Co., 565 F.2d 366 (5th Cir. 1978), and text at note 126 *infra*.

52. The prior UCC language, section 9-204(3), stated "a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement." The change in language was merely "for clarity." 1972 U.C.C. § 9-204, Reasons for Change.

53. In consumer goods transactions, the after-acquired property provision ends in ten days. U.C.C. § 9-204(4)(b); 1972 U.C.C. § 9-204(2).

54. Get It Kwik of America, Inc. v. First Alabama Bank, 24 U.C.C. Rep. 944 (Ala. Civ. App. 1978); Frankel v. Associates Financial Services Co., Inc., 22 U.C.C. Rep. 801 (Md. App. 1977), and cases cited; Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026 (1976).

55. 15 C.B.C. 621 (W.D. Mich. 1978).

language, did "not contain any language which could be interpreted as an after-acquired property clause."[56] The court held that only inventory and receivables existing at the date of execution were covered by the security agreement.

The reach of the after-acquired property clause is sometimes quite extensive. In *American Heritage Bank & Trust Co. v. O. & E., Inc.*,[57] a junior lienor took possession of a retail store, admittedly subject to a senior security interest. He then transferred the assets to a new corporation, which continued to operate, acquiring new inventory and selling the old in the normal course. It was held that the senior security interest extended to inventory purchased by the new corporation.[58]

CONTENTS OF THE FINANCING STATEMENT

The statutory provisions governing the contents of the financing statement are set forth in 1972 UCC Section 9-402:

> (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor,[59] gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. . . . When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. . . . A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.
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> . . .
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> (8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

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56. *In re* Paine, 15 C.B.C. 621, 623 (W.D. Mich. 1978).

57. 23 U.C.C. Rep. 1034 (Colo. App. 1978). *See also* Boulder Bank & Trust Co. v. United States, 26 U.C.C. Rep. 774 (D. Okla. 1979), and cases cited.

58. American Heritage Bank & Trust Co. v. O. & E., Inc., 23 U.C.C. Rep. 1034, (Colo. App. 1978). *See also In re* Taylorville Eisner Agency, Inc., 445 F. Supp. 665 (S.D. Ill. 1977) (1972 Code);- Walter E. Heller & Co., Inc. v. Salerno, 168 Conn. 152, 362 A.2d 904 (1975); Inter Mountain Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

59. The opening language in the earlier version of Article 9 is: "A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address. . . . " U.C.C. § 9-402(1) (1963).

Fixture filings are subject to additional requirements.[60]

The plain language of the statute, with the allowance for error contained in Subsection (8), would appear to have created a relatively fool-proof mechanism. This has not proved to be the case. As one judge has noted, "[i]t is most improbable that its sponsors anticipated the extent to which secured credit under the. . Code would be jeopardized by the errors and omissions of secured parties in satisfying the simple requirements of a sufficient financing statement."[61]

The following sections will review the individual elements in some detail, indicating, where appropriate, the areas in which the contents of a security agreement and financing statement may, or should, differ.

DEBTOR'S NAME

Both the security agreement and the financing statement should contain the debtor's name correctly stated and spelled. This is particularly important in the case of the financing statement, which must be indexed "according to the name of the debtor" by the filing officer.[62] Normally, the debtor will be the principal obligor on the underlying indebtedness; the "person who owes payment or other performance of the obligation secured."[63] But "[w]here the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of the collateral,"[64] and it is the *owner's* name which should appear on the financing statement.[65]

Counsel should be particularly aware of this problem where the debtor is a group of related companies or where a "family car" is involved. In *General Motors Acceptance Corp. v. Washington Trust*

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60. U.C.C. § 9-402(1); (1972) U.C.C. § 9-402 (8).
61. Coca-Cola Bottling Plants, Inc. v. Tabenken, 7 U.C.C. Rep. 565, 575 (D. Me. 1970).
62. U.C.C. § 9-403(4).
63. U.C.C. § 9-105(1)(d).
64. *Id. See* White Star Distrib., Inc. v. Kennedy, 411 N.Y.S.2d 751 (App. Div. 1978).
65. K.N.C. Wholesale, Inc. v. AWMCO, Inc., 127 Cal. Rptr. 208 (Cal. App. 1976), *vacated*, 128 Cal. Rptr. 345 (Cal. App. 1976); *In re* Smith-Whitehead, Inc., 17 U.C.C. Rep. 589 (S.D. Fla. 1975); Bank of Gering v. Glover, 192 Neb. 575, 223 N.W.2d 56 (1974); General Motors Acceptance Corp. v. Terra Contractors Corp., 6 U.C.C. Rep. 544 (N.Y. Civ. Ct. 1969); *In re* Men's Action Shop, Inc., 27 R.I.B.J. (No. 2) 18 (D.R.I. 1978).

The owner of the "borrowed collateral" is entitled to certain notices and rights under U.C.C. § 9-112. Where the collateral is household goods, both husband and wife may be the owners. Provident Finance Co. v. Beneficial Finance Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978). Not only the owner's name but his signature is required. Southwest Bank v. Moritz, 203 Neb. 45, 277 N.W.2d 430 (1979).

Co.,[66] Rosemary and her husband, David, decided to purchase a new car. The dealer prepared an invoice in Rosemary's name. The down payment was delivered by David, who signed a security agreement and financing statement in his own name. However, the car was registered to Rosemary. While affirming the trial court's finding that David had some rights in the vehicle, the appellate court held that the security interest was unperfected, since Rosemary was the owner of the collateral and her name did not appear on the financing statement.[67]

The semi-standardized form of financing statement adopted in most states, commonly called a "UCC-1," has labeled boxes in which the required information is placed. The debtor's name and address go in Box 1, at the upper left; the name and address of the secured party in Box 2, top center. If the debtor's name is placed in Box 2, and the secured party's in Box 1, with the printed captions remaining unchanged, the filing is defective.[68] The printed caption for Box 1 usually provides that the debtor be listed "last name first." Reversing the order has been held to be a fatal defect, as the filing officer may not properly index such a statement.[69] One would hope that, if the statement is in fact properly indexed, a reasonable court would sustain its validity.

TRADE NAMES

Where the debtor does business under a trade name, or is known by an assumed name, extreme care must be taken in preparing the financing statement. Under the 1972 revision of Article 9, Section 9-402 is amended to provide that "[a] financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners."[70] In the comments to this provision, the draftsmen note that the revision

> contemplates filing only in the individual name, not in a trade name. In the case of partnerships it contemplates

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66. ___ R.I. ___, 386 A.2d 1096 (1978).

67. General Motors Acceptance Corp. v. Washington Trust Co., ___ R.I. ___, ___, 386 A.2d 1096, (1978). *See also In re* Magrey, 25 U.C.C. Rep. 868, 870 (D. Conn. 1979); *In re* Bossom, 432 F.Supp. 1013 (D. Conn. 1977); Provident Finance Co. v. Beneficial Finance Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978).

68. *In re* Uptown Variety, 6 U.C.C. Rep. 221 (D. Ore. 1969).

69. *In re* Brawn, 6 U.C.C. Rep. 1031 (D. Me. 1969). *Contra, In re* Graham, 18 U.C.C. Rep. 1318 (W.D. Mich. 1975).

70. 1972 U.C.C. § 9-402(7).

> filing in the partnership name, not in the names of any of the partners, and not in any other trade names. Trade names are deemed to be too uncertain and too likely not to be known to the secured party or person searching the record, to form the basis for a filing system.[71]

The author suggests that, in the case of a partnership, the opposite may well be true, namely, that trade names or the names of the partners are more likely to be known than the name of the partnership and that the same uncertainty may prevail as to the actual partnership name. A distinction based upon whether or not mama is a partner in the mama-papa grocery store is basically unsound.

Revised Section 9-403(5) does, however, permit indexing under several names of a single financing statement, which should assist those who are aware of the problem, and which may be marginally less expensive than the current conservative practice of filing multiple financing statements.

The following cases deal with decisions under the earlier version of Section 9-402, which does not contain the language quoted above. Notwithstanding the amendment and the Official Comment, they may well retain some vitality. Although there is some support under the older statute for the validity of a filing against a debtor in his trade name, especially in the earlier cases,[72] and despite a Ninth Circuit dictum that "[f]iling under an assumed trade name is effective unless it is misleading,"[73] the clear trend of the later decisions is to invalidate such interests,[74] and, as noted above, the revision of the statute requires use of the actual name of the individual or corporate debtor.

One court formulated a "general rule,"

> that a financing statement, in order to perfect a security interest, must, in the case of an individual, or individuals,

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71. *Id.*, Official Comment 7.

72. *In re* Platt, 257 F.Supp. 478 (E.D. Pa. 1966); *In re* Bengtson, 3 U.C.C. Rep. 283 (D. Conn. 1965); *In re* Hatfield Const. Co., 10 U.C.C. Rep. 907 (M.D. Ga. 1971); *In re* Uptown Variety, 6 U.C.C. Rep. 221 (D. Ore. 1969).

73. Siljeg v. Nat'l Bank of Commerce, 509 F.2d 1009, 1012 (9th Cir. 1975). *See also In re* Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977).

74. *In re* Leichter, 471 F.2d 785 (2d Cir. 1972), and cases cited; *In re* Firth, 363 F. Supp. 369 (M.D. Ga. 1973); *In re* Hill, 363 F. Supp. 1205 (N.D. Miss. 1973); *In re* James Wells Enterprises, 21 U.C.C. Rep. 900 (M.D. Fla. 1977); Citizens Bank v. Ansley, 476 F. Supp. 51 (M.D. Ga. 1979) (incorrect trade name); *In re* Webster, 20 U.C.C. Rep. 802 (W.D. Mich. 1976); *In re* Pasco Sales Co., 383 N.Y.S.2d 42 (App. Div. 1976). Counsel for creditors in *In re* Farm & Home Supply Co., 22 U.C.C. Rep. 1081 (W.D. Pa. 1977) were unsuccessful in claiming that a filing was defective because it failed to list a trade name in addition to the actual name.

> doing business under a trade name show the name of the individual legally responsible for the debt unless the trade name and the individual debtor's name are so similar that a prospective creditor, upon seeing the trade name in the records, would be alerted that there might be a prior security interest in the involved collateral.[75] In one case involving a properly registered trade style, the bankruptcy judge stated: "[T]he filing of a financing statement in which an individual debtor is designated under an assumed business name is not calculated to give notice to the present or future creditors of such individual. . . ."[76] Another decision found the secured party conceding that a trade name filing is invalid against the trustee of an individual, but claiming that the filing is *valid when the debtor is a partnership.* The bankruptcy judge agreed.[77]

In another interesting case, a partnership was formally organized as "Farm Wood Company" but operated under the trade name "Farm House Market." The financing statement, signed by the partners, gave both the official and trade names of the partnership and it was indexed under both. The court stated the following:

> [T]he plaintiff contends, and this court agrees, that the insertion on the financing statement of only the partnership name and the name it used in its business, and the indexing under either of those names in the [filing office] was satisfactory compliance with statutory requirements.
> If this were a case where the financing statement was signed with the trade name of the debtor and the secured party filed and indexed the statement only under the trade name and not the debtors' name, then the financing statement would be insufficient to perfect the security interest. . . . However, here the debtor was a formally organized and named partnership which also used

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75. *In re* Fowler, 407 F.Supp. 799, 803 (W.D. Okla. 1975).
76. *In re* Levins, 7 U.C.C. Rep. 1076, 1082 (E.D.N.Y. 1970). *See also* Coca-Cola Bottling Plants, Inc. v. Tabenken, 7 U.C.C. Rep. 565 (D. Me. 1970); *In re* Jones, 11 U.C.C. Rep. 249 (W.D. Mich. 1972); *In re* Eichler, 9 U.C.C. Rep. 1400 (E.D. Wis. 1971), *aff'd,* 9 U.C.C. Rep. 1406 (E.D. Wisc. 1971).
77. *In re* Humphrey, 12 U.C.C. Rep. 986 (E.D. Tenn. 1973).

> another name in its business operations, both names appeared on the financing statement and the statement was indexed under both of those names.
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> . . .
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> [I]f a financing statement is signed in the name of the partnership which is the debtor under the security agreement, then there has been compliance with [9-402(1)].[78]

What, one may ask, would be the result if there had been no formal partnership agreement? This decision is a distorted mirror image of an earlier case in which the filing was in the individual names of the partners, rather than the registered trade style of the partnership. A junior lienor claimed that a proper filing could only be made in the trade name. The argument was rejected.[79]

California did require the "trade name or style," if used, on the financing statement. Failure to supply the *correct* trade name was fatal.[80] The statute in that state now requires inclusion of the trade name "if known to the secured party, but a failure to include such trade name shall not under any circumstances affect the validity of the financing statement."[81]

In re Metzler[82] presents another facet of the trade name problem. The debtor operated two distinct businesses under different trade names, one a furniture manufacturing plant and the other a retail furniture store. Debtor granted a security interest to creditor, a supplier to the manufacturing operation. The security agreement named the debtor "d/b/a [manufacturer]," and, in addition to a catch-all clause,[83] had appended a list of items of collateral, all of which were used in the manufacturing plant. The security agreement made no reference to the debtor's retail business. However, financing statements were filed against debtor using both trade names as well as his natural name. The creditor sought to reclaim the assets of the retail store. Considering parol evidence as to the intended scope of the security interest, the court determined that the catch-all did not cover the retail operation's assets.

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78. *In re* Lockwood, 16 U.C.C. Rep. 195, 203 (D. Conn. 1974). *See also In re* Katz, 563 F.2d 766 (5th Cir. 1977); Board of Comm'rs v. Berkeley Village, 580 P.2d 1251 (Colo. App. 1978).

79. Thompson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962). *See also In re* Holmes, 9 U.C.C. Rep. 1160 (W.D. Mich. 1971); Douglas-Guardian Warehouse Corp. v. Esslair Endsley Co., 10 U.C.C. Rep. 176 (W.D. Mich. 1971).

80. *In re* Thrift Shoe Co., 502 F.2d 1211 (9th Cir. 1974).

81. CAL. COM. CODE § 9402(1) (West. 1978).

82. 405 F. Supp. 622 (N.D. Ala. 1975).

83. See text at note 161, *infra*, for similar language.

ERRORS AND MISNOMERS

The UCC draftsmen appreciated that errors would be made in preparing financing statements and provided that a "financing statement substantially complying. . . is effective even though it contains minor errors which are not seriously misleading."[84] But what is a minor error? What mistakes are not seriously misleading? The problem is most acute in the area of names, now under discussion, since, as noted, the filing officer indexes the financing statement in the debtor's name.[85]

In the first significant decision, the district court held that the misnomer "Excel Department Stores" for the correct name "Excel Stores, Inc.," was seriously misleading. The court stated that, in today's complex business world, where multiple subsidiary corporations are commonly utilized, the rules of construction must have reasonable limitations: "Too loose rules invite confusion, encourage fraud, and undermine faith and stability in security transactions."[86] On appeal, the decision was reversed. The misnomer, said the Second Circuit, was a minor error.[87]

One bankruptcy judge's holding that describing "Raymond F. Sargent, Inc." as "Raymond F. Sargent *Co.*, Inc.," was fatally defective,[88] has been described by the district court in his jurisdiction as a "fanatical and impossible reading" of the statute.[89] The overwhelming weight of authority is that an error in spelling the last name of an individual debtor is fatal. Kapla*s* for Kapla*n*,[90] Boyald for Bo*rgw*ald,[91] Ran*e*lli for Ran*a*lli,[92] and Br*o*wn for Br*a*wn[93]

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84. U.C.C. § 9-402(5); 1972 U.C.C. § 9-402(8).

85. U.C.C. § 9-403(4). He may also have some form of cross-reference indexing. The Ninth Circuit has used the supplemental index to save an otherwise patently defective filing. *In re* Green Mill Inn, 474 F.2d 14 (9th Cir. 1973). Of course, a complete misnomer of the corporation, without extenuating circumstances, is fatal. Nat'l Cash Ragister Co. v. Mishkin's 125th St. Inc., 8 U.C.C. Rep. 411 (N.Y. Sup. Ct. 1970).

86. *In re* Excel Stores, Inc., 1 U.C.C. Rep. 616, 620 (D. Conn. 1963).

87. *In re* Excel Stores, Inc., 341 F.2d 961 (2d Cir. 1965). *See also In re* Causer's Town & Country Super Market, Inc., 2 U.C.C. Rep. 541 (N.D. Ohio 1965); General Motors Acceptance Corp. v. Terra Constractors Corp., 6 U.C.C. Rep. 544 (N.Y. Cir. Ct. 1969) holding that "Inc." for "Corp." was a minor error; Sales Finance Corp. v. McDermott, 240 Mass. 493, 165 N.E.2d 119 (1960).

88. *In re* Raymond F. Sargent, Inc., 8 U.C.C. Rep. 583 (D. Me. 1970).

89. *In re* Reeco Elec. Co., 19 U.C.C. Rep. 947, 951 (D. Me. 1976). *See also In re* Southern Supply Co., 405 F. Supp. 20 (E.D.N.C. 1975); *In re* A & T Kwick-N-Handi, Inc., 12 U.C.C. Rep. 765 (M.D. Ga. 1973); *In re* Nara Non Food Distrib. Inc., 66 Misc.2d 779, 322 N.Y.S.2d 194 (Sup. Ct. 1970), *aff'd without op.*, 36 App. Div. 796, 320 N.Y.S.2d 1014 (1971); *In re* Gibson's Discount Pharmacy, 15 U.C.C. Rep. 233 (E.D. Tenn. 1974).

90. Bank of North America v. Bank of Nutley, 94 N.J. Super. 220, 227 A.2d 535 (1967).

91. Nat'l Cash Register Co. v. Walley Nat'l Bank, 5 U.C.C. Rep. 396 (N.Y. Sup. Ct. 1968).

92. John Deere Co. v. William C. Pahl Const. Co., 59 N.Y. Misc.2d 872, 300 N.Y.S.2d 701 (Sup. Ct. 1969), *aff'd*, 34 App. Div. 2d 85, 310 N.Y.S.2d 945 (1970).

93. *In re* Brawn, 6 U.C.C. Rep. 1031 (D. Me. 1969).

were all held to be seriously misleading. "Sh*elia*" for "Sh*eila*" as a first name has been held to be a minor error where the last name was correct.[94] It has been held that when "James Lee Anderson" uses "Lee Anderson" in obtaining credit, lenders accepting the truncated name do so at their peril.[95] Nonetheless, where the debtor used a variant spelling of his actual name for all purposes, filing under the technically incorrect spelling has been upheld.[96] An "alias" case must be determined on its own facts. Naming the debtor correctly will suffice, even if an incorrect trade name is added.[97]

One bankruptcy judge seems to take a much more liberal view of these problems. He contends that if the signature of the debtor is legible, the filing should be considered valid, even though the debtor's name is typed incorrectly in the body of the financing statement.[98] His decisions, however, have not been generally accepted.[99]

CHANGE OF NAME

The 1972 revision of Section 9-402 adds a new provision:

> Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in the collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows or consents to the transfer.[100]

The official comments indicate that the new requirement

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94. Beneficial Finance Co. v. Kurland Cadillac-Oldsmobile Inc., 57 Misc. 2d 806, 293 N.Y.S.2d 647 (Sup. Ct. 1968), *rev'd*, 32 App. Div.2d 643, 300 N.Y.S.2d 884 (App. Div. 1969), without reference to this point.

95. Central Nat'l Bank v. Community Bank, 528 P.2d 710 (Okla. 1974). *See also In re* Arnold, 21 U.C.C. Rep. 1479 (W.D. Mich. 1977). Contrawise, if a debtor grants a security interest using his correct name, the filing is valid against a claim that he was universally regarded as having another first name. United States v. Smith, 22 U.C.C. Rep. 502 (N.D. Miss. 1977).

96. *In re* Gustafson, 14 U.C.C. Rep. 231 (W.D. Okla. 1973).

97. Drysdale v. Cornerstone Bank, 562 S.W.2d 182 (Mo. App. 1978).

98. *In re* Vaughan, 4 U.C.C. Rep. 61 (W.D. Mich. 1967); *In re* Kulesza, 4 U.C.C. Rep. 66 (W.D. Mich. 1967). *See also In re* Levins, 7 U.C.C. Rep. 1076 (E.D.N.Y. 1970).

99. Coca-Cola Bottling Plants, Inc. v. Tabenken, 7 U.C.C. Rep. 565 (D. Me. 1970).

100. 1972 U.C.C. § 9-402(7).

> provides some guidelines when mergers or other changes of corporate structure of the debtor occur with the result that a filed financing statement might become seriously misleading. . . . [T]he principle sought to be achieved. . . is that after a change which would be seriously misleading, the old financing statement is not effective as to the new collateral acquired more than four months after the change, unless a new appropriate financing statement is filed before the expiration of the four months. The old financing statement, if legally still valid under the circumstances, would continue to protect collateral acquired within the four months. Obviously, the subsection does not undertake to state whether the old security agreement continues to operate between the secured party and the party surviving the corporate change of the debtor.[101]

Perhaps the first case to consider the revised provision was *In re Taylorville Eisner Agency, Inc.*[102] Almost simultaneously with the granting of an inventory loan to the individual debtors, the assets of the business were transferred to the now-bankrupt corporation, which assumed the security interest. The trustee alleged that the lender's security interest was unperfected as to assets acquired more than four months after the "change of name," and the bankruptcy judge agreed.

On appeal, the district court reversed, indicating that the two sentences of 9-402(7) quoted above impose different tests:

> Where such a change [a change of name, corporate structure, etc.] occurs the secured party must determine whether the filed financing statement has become seriously misleading. If so, the filing is not effective to perfect a security interest in the collateral acquired by the debtor more than four months after the change unless a new appropriate financing statement is filed before the expiration of that time. There is no knowledge requirement in the sentence. . . . The burden. . . is upon the secured party.
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> The. . . final sentence deals with a different problem,

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101. 1972 U.C.C. § 9-402(7), Official Comment 7.
102. 445 F.Supp. 665 (S.D. Ill. 1977).

> namely where the debtor transfers the secured collateral. . . . Prior to this provision it was debated as to whether the security interest would continue in the collateral even after it entered the possession of the transferee, whether any after-acquired property of the transferee could be included under the original debtor's security interest, and whether a new filing was necessary. . . . The final sentence of this amendment. . . settles the question by saying that a new financing statement must be filed.
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> . . .
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> . . . In the present case the transferee corporation clearly knew. . . that the collateral, including after-acquired inventory and merchandise, was subject to a perfected security interest. The. . . [final] sentence. . . is clear that the filed statement remains effective with respect to collateral transferred by the debtor regardless of the knowledge or consent of the secured party. This also means collateral which is after-acquired property.
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> In the instant case had any creditors checked the corporation's source of title they could have easily discovered the assumption of the notes. . . and by running a check on those names found the filed financing statements. . . .
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> . . . First National Bank did not have to file a new financing statement within four months after the transfer in order to retain its perfected security interest in after-acquired property.[103]

While this reading of the statute has at least superficial appeal, to the extend that it is based upon availability of asset source histories to potential creditors, it is misleading. The trade creditor, unlike an institutional lender, does not normally have access to the corporate and pre-corporate history of his customer.

In general, under the prior version of the statute, when a corporation changed its name,[104] or a proprietorship or partnership changed its trade name,[105] no refiling was necessary to continue the

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103. *In re* Taylorville Eisner Agency, Inc., 445 F. Supp. 665, 668-70 (S.D. Ill. 1977).

104. Continental Oil Co. v. Citizens Trust & Savings Bank, 397 Mich. 203, 244 N.W.2d 243 (1976); *In re* Pasco Sales Co., 77 N.Y.Misc. 2d 724, 354 N.Y.S.2d 402 (Sup. Ct. 1974); *In re* Grape Arbor, Inc., 6 U.C.C. Rep. 632 (E.D.Pa. 1969). *See also* Siljeg v. Nat'l Bank of Commerce, 509 F.2d 1009 (9th Cir. 1975).

105. *In re* Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977); Borg-Warner Acceptance Corp. v. Wolfe City Nat'l Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976). By analogy, one need take no action

perfection of pre-change security interests. "A debtor cannot destroy the perfected security interest of a secured party by merely changing its name or corporate structure, particularly when there is no evidence to indicate that the secured party had no knowledge thereof."[106] If, however, the secured party knew that a change was imminent, the result could be otherwise.[107] Even under the older statute, there are some problems. After characterizing a "spin off" of assets as a mere change of name for UCC purposes, the Sixth Circuit intimated that a radical change of name might require refiling.[108]

Whether under the revised or original statute, it is sound practice for lender's counsel to check the debtor's corporate history for name changes prior to making any search for financing statements. Many careful practitioners under the older version use the ubiquitous UCC-3 form, which covers amendments, partial releases, continuations, etc., to indicate the name change on the record. In this new filing, the new corporate name is listed as debtor, and language included in the body of the form to indicate the reason for the amendment. Assuming that the secured party learns of the name change, the amendment would appear to be a reasonable precaution.[109] Under the revision, however, an "appropriate" refiling may require a new financing statement, which could arguably create difficulties if there are intervening creditors under either name, or bankruptcy shortly follows the refiling.

If a debtor merges into a new entity a related question arises: How effective is a premerger security interest in inventory or accounts receivable against inventory acquired and accounts arising after the merger? In one case involving this point, the court drew together the old security agreement, the debt-assumption provisions of the merger documents, and the secured party's assent to the merger to find a security agreement binding on the new entity.[110] Fortunately, the surviving corporation had the same

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(under the older version of the statute) when a woman debtor marries and adopts her husband's name. *In re* Gac, 11 U.C.C. Rep. 412 (W.D. Mich. 1972).

106. Inter Mountain Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664, 671 (Utah 1974); *In re* Sofa Centre, Inc., 18 U.C.C. Rep. 536 (M.D. Fla. 1975); *In re* Smith-Whitehead, Inc., 17 U.C.C. Rep. 589 (S.D. Fla. 1975).

107. *In re* Kalamazoo Steel Process, Inc., 503 F.2d 1218 (6th Cir. 1974); *In re* Conger Printing Co., 18 U.C.C. Rep. 224 (D. Ore. 1975).

108. *In re* Kittyhawk Television Corp., 516 F.2d 24, 28-29 (6th Cir. 1975).

109. It has been ruled that the debtor must sign an amendment. [1977] TENN. ATT'Y GEN. OP No. 4.

110. Walter E. Heller & Co. v. Salerno, 168 Conn. 152, 362 A.2d 904 (1975). See text at note 39 *supra* re the "bundle of papers" problem in general.

name as the original debtor, and the further problems of a name change did not arise.[111]

DEBTOR'S ADDRESS

A financing statement must contain "a mailing address of the debtor."[112] An actual residence address is not necessary so long as a satisfactory mailing address is given.[113] It need not be where the collateral is kept.[114] It has been held that a former address of the debtor was sufficient since he had moved only six months prior to the filing of the financing statement, and presumably mail would be forwarded.[115] In some cases, a partial address has been held sufficient on a financing statement.[116] But what if no address at all is given? The logical answer is that the filing is defective,[117] but there are a few decisions to the contrary.[118]

SECURED PARTY'S NAME

Using the name of a parent sales company instead of the sales financing subsidiary has been upheld,[119] as has the use of the name of a division.[120] Where the secured party was later merged into another corporation, but remained as a division of the surviving entity, attack on the sufficiency of the financing statement, claiming a misnomer, was rejected.[121] Where the loan was in the

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111. *See* Fliegel v. Associates Capital Co., 537 P.2d 1144 (Ore. 1975).

112. U.C.C. § 9-402(1). In California, there is an additional requirement to supply, "if the debtor is an individual, the address of his residence and the address of his chief place of business, if any." CAL. COM. CODE § 9402(1) (West 1964). Absence of the actual address has been held a minor error. Lines v. Bank of California, 467 F.2d 1274 (9th Cir. 1972).

113. *In re* De-Electronics, Inc. 4 U.C.C. Rep. 450 (D. Conn. 1967); *In re* Searles, 9 U.C.C. Rep. 538 (D. Me. 1971); *In re* Smith, 10 U.C.C. Rep. 730 (W.D. Okla. 1971).

114. *In re* The Grape Arbor, Inc., 6 U.C.C. Rep. 632 (E.D. Pa. 1969).

115. *In re* McCoy, 330 F.Supp. 533 (D. Kan. 1971); *In re* Simpson, 4 U.C.C. Rep. 250 (W.D. Mich. 1966).

116. *In re* Bankrupt Estate of Smith, 508 F.2d 1323 (5th Cir. 1975); Architectural Cabinet, Inc. v. Manley, 3 U.C.C. Rep. 263 (Pa. County Ct. 1966). An incorrect, but reasonably close, spelling of the town name has been held not seriously misleading. *In re* Raymond F. Sargent, Inc., 8 U.C.C. Rep. 583 (D. Me. 1970).

117. *In re* Smith, 205 F.Supp. 27 (E.D. Pa. 1962); *In re* Lindley, 12 U.C.C. Rep. 757 (N.D. Ala. 1973) and cases cited; *In re* HGS Technical Associates, Inc., 14 U.C.C. Rep. 237 (E.D. Tenn. 1972), *id.* at 247 (E.D. Tenn. 1973); *In re* Childress, 6 U.C.C. Rep. 549 (E.D. Tenn. 1969) (dictum); Burlington Nat'l Bank v. Strauss, 50 Wis. 2d 170, 184 N.W.2d 122 (1971).

118. Rooney v. Mason, 394 F.2d 250, (10th Cir. 1968) (addresses were "readily available and known by virtually all of the creditors"); Matter of Fowler, 407 F. Supp. 799 (W.D. Okla. 1975); *In re* French, 317 F.Supp. 1226 (E.D. Tenn. 1970); Riley v. Miller, 549 S.W.2d 314 (Ky. App. 1977).

119. *In re* Colorado Mercantile Co., 299 F. Supp. 55 (D. Colo. 1969). *See also* Roberts v. Int'l Harvester Credit Corp., 143 Ga. App. 206, 237 S.E.2d 697 (1977). Problems may arise where there is a claimed assignment from the named secured party to a related entity. *See* Thorp Sales Corp. v. Dolese Bros. Co., 453 F. Supp. 196 (W.D. Okla. 1978).

120. Clarke Floor Mach. Div. v. Gordon, 7 U.C.C. Rep. 363 (Md. 1970); *In re* Murphy Inns, Inc., 10 C.B.C. 787, 806 (N.D. Miss. 1976).

121. *In re* Wilco Forest Mach., Inc., 491 F.2d 1041, 1045 (5th Cir. 1974).

familiar SBA-bank participation format, naming the servicing bank as secured party has been held sufficient to perfect the interests of both the servicing bank and the SBA.[122]

Use of a nominee's name as the secured party of record appears to be permissible.[123] The adverse decision of one bankruptcy judge who held that "lack of perfection would seem to follow as a matter of course where the identity of the real secured party is concealed by using an entirely different name as the secured party of record for the purpose of deliberately misleading third persons"[124] was reversed on appeal.[125]

In re E. A. Fretz Co.[126] involved what the Fifth Circuit described as "floating secured parties." The security agreement and financing statement named the secured party as "Revlon, Inc." However, the obligation portion of the security agreement recited that it secured

> . . . all debts. . . owing by Debtor. . . to REVLON, INC. and/or all of its present and future divisions and affiliates. . . including without limitation any debt, liability or obligation owing from Debtor. . . to others which REVLON, INC. . . . may have obtained by assignment or otherwise.[127]

At the time of bankruptcy, about $30,000 was due to Revlon itself, but debtor owed two Revlon affiliates almost $200,000. After bankruptcy, these latter claims were assigned to Revlon, Inc. Under the caption "Floating Secured Parties Are All Wet" the court held that only the debt due to Revlon itself was secured, stating:

> Surely floating debt and floating collateral provide all the uncertainty any creditor should be required to suffer. When floating secured parties are wading in the

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122. *In re* Fried Furniture Corp., 293 F. Supp. 92 (E.D.N.Y. 1968), *aff'd*, 407 F.2d 360 (2d Cir. 1969); Russo v. First Pennsylvania Banking & Trust Co., 21 U.C.C. Rep. 648 (E.D. Pa. 1976), and cases cited. "When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party." U.C.C. § 9-105(1)(i), 1972 U.C.C. § 9-105(1)(m). Questions regarding the nature of the relationship between a lead lender and participants are beyond the scope of this text.

123. Industrial Packing Prod. Co. v. Fort Pitt Packaging Int., Inc., 399 Pa. 643, 161 A.2d 19 (1960).

124. *In re* Cushman Bakery, 14 U.C.C. Rep. 267, 278 (D. Me. 1974).

125. *In re* Cushman Bakery, 16 U.C.C. Rep. 897 (D. Me.), *aff'd*, 526 F.2d 23 (1st Cir. 1975), *cert. denied*, 425 U.S. 937 (1976).

126. 565 F.2d 366 (5th Cir. 1978).

127. *In re* E. A. Fretz Co., Inc., 565 F.2d 366, 368 n.2 (5th Cir. 1978).

> wings, clairvoyance, not mere knowledge, would be essential. We are unwilling to impose on any junior secured creditor, with knowledge or without, the additional risk that, at a date subsequent to his perfection, any affiliate of the senior creditor or any stranger to it — unnamed as secured parties in a security agreement or a financing statement — could be metamorphosed into senior secured parties by virtue of an assignment 'or otherwise,' pre-or post-bankruptcy. . . . No reasonable bank would ever make a loan in the wake of so much floating. Fear of floundering on the rocks would be far too great.[128]

It is suggested that this court goes a bit far in its description of the watery grave awaiting those who are junior to an open-ended financing arrangement. At least as to affiliates, the Revlon agreement does little more than provide for a line of credit, which may be extended by itself or by a related entity.

SECURED PARTY'S ADDRESS

The financing statement must contain "an address of the secured party from which information concerning the security interest may be obtained."[129] This requirement has been treated in a relatively relaxed fashion. Where the security agreement was itself filed as a financing statement, the address, appearing in the body of the agreement, was held sufficient.[130] It has been held that if the street address is omitted, the address may be sufficient if reference to the local telephone directory will provide an unmistakable street address.[131] Use of a post office box address has been upheld.[132] A complete lack of address should be fatal, [133] but there is contrary authority.[134]

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128. *Id.* at 372.
129. U.C.C. § 9-402(1).
130. Goldie v. Bauchet Prop., 15 Cal. 3d 307, 540 P.2d 1 (1975).
131. *In re* Bengtson, 3 U.C.C. Rep. 283 (D. Conn. 1965). *But cf.* Mid-America Dairymen, Inc. v. Newman Grove C.C. Co., Inc., 191 Neb. 74, 214 N.W.2d 18 (1974), where failure to include the telephone directory in a stipulation of facts may have been fatal.
132. Silver v. Gulf City Body & Trailer Works, 432 F.2d 992 (5th Cir. 1970); Wall Invest. Co. v. Garden State Dist., Inc., ____ P.2d ____ (Wash. 1979).
133. Strevell-Paterson Finance Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967); *In re* Gibson's Discount Pharmacy, 15 U.C.C. Rep. 233 (E.D. Tenn. 1974).
134. See cases cited at note 118 *supra*.

COLLATERAL DESCRIPTION — IN GENERAL[135]

The rights of the parties to a security agreement and the place of filing the agreement or a financing statement,[136] often depend upon the classification of the collateral under the Code. In view of the problems which have arisen in the cases and in practice, a brief review of Code criteria may be useful.

The Code classifications are primarily functional in nature, at least regarding the subclassifications of "goods," and are based upon the type of property, or its use in the hands of the owner.

Goods includes all movables and fixtures (determined at the time the security interest attaches), but not including money, documents, instruments, accounts, chattel paper, and general intangibles.[137] The older Article 9 also excludes "contract rights and other things in action,"[138] both terms being dropped as unnecessary from the 1972 version.[139] The 1972 version contains the additional exclusion of "minerals or the like (including oil and gas) before extraction."[140] Both versions include as goods the unborn young of animals and growing crops, the 1972 Code additionally including "standing timber which is to be cut and removed under the conveyance or contract for sale,"[141] a provision which has caused some consternation in jurisdictions where the title insured timber deed is the standard method of conveying uncut timber.

Goods are divided into four classes: consumer goods, farm products, inventory, and equipment.

(1) *Consumer goods* are those used or bought primarily for personal, family, or household purposes.[142] The test of primary use is extremely important in making this classification. For example: Debtor purchases a "Home-Tone Chord Organ" from Seller. Seller takes a security interest in the organ for the unpaid portion of the purchase price but does not file, knowing that filing is not required for a purchase money security interest in consumer goods.[143] Actually, however, Debtor is a night club entertainer (part-time) and uses the organ primarily in his work. The organ is

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135. This discussion is drawn in part from Hillman, *The U.C.C. Security Agreement: An Analysis*, 4 R.I. BAR ANNUAL 1 (1967), reprinted 1 U.C.C.L.J. 220 (1969).
136. U.C.C. § 9-401.
137. U.C.C. § 9-105(1)(f); 1972 U.C.C. § 9-105(1)(h).
138. U.C.C. § 9-105(1)(f).
139. 1972 U.C.C. § 9-105, Reasons for Change.
140. 1972 U.C.C. § 9-105(1)(h).
141. *Id.*
142. U.C.C. § 9-109(1).
143. U.C.C. § 9-302(1)(d). There are local variations of this theme.

equipment, not consumer goods, and Seller's interest is unperfected.[144] (2) *Farm products* includes the following if they are in the possession of a debtor engaged in farming: crops, livestock, supplies used or produced in farming operations, unmanufactured products of crops or livestock and oysters on leased, licensed, or owned beds.[145] (3) *Inventory* consists of goods held for sale, lease, to be supplied under a service contract or raw materials in process or consumed in the business.[146] (4) *Equipment* is bought and used primarily in business, farming, or a profession, or by a non-profit organization or governmental agency.[147] Anything not included in the three prior definitions is also considered equipment.[148]

The distinctions between these classes are indicated by the following examples:[149]

A. Dealer A sells a car (inventory in A's hands) to B City, for use as a police cruiser (equipment). Later B sells the car to C, an individual, for family use (consumer goods). The car falls into disrepair and C sells to D, a junk dealer (inventory).

B. A, a farmer, has some eggs laid by his hens (farm products). He sells some to B, a restaurant (inventory), some to C, a supermarket (inventory), and the balance to D, a housewife (consumer goods).

C. A owns an antique auto which he drives for pleasure (consumer goods). He sells it to B, a bank, for use as a window display (equipment). B later resells to C, a dealer in antique cars (inventory).[150]

D. A, a doctor, purchases a car, used both for his many house calls and extensively by Dr. A, his wife and family, for their personal travel. There is no clear answer here.[151] The controlling test of primary use cannot give a ready answer. The practical solution is to do whatever is necessary for perfection under all probable classifications.

The non-tangible classes of collateral are also defined in the Code.[152] The importance of understanding this collateral

144. Strevell-Paterson Finance Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967).

145. U.C.C. § 9-109(3).

146. U.C.C. § 9-109(4).

147. Furniture, furnishings, and rugs sold to a non-profit corporation are equipment. United States v. Baptist Golden Age Home, 226 F.Supp. 892 (W.D. Ark. 1964).

148. U.C.C. § 9-109(2).

149. The automotive examples, of course, assume an absence of certificate of title requirements.

150. *In re* Shepler, 54 Berks L.J. 110 (E.D. Pa. 1962); Girard Trust Corn Exchange Bank v. Warren Lepley Ford, Inc., 12 Pa.D. & C.2d 351 (1957).

151. *See* Hogan, *Financing the Acquisition of New Goods Under the U.C.C.*, 3 BOSTON COL. L. REV. 115, 120 (1962). *See generally* Funk, *Problems of Classification Under Article 9*, 102 PA. L. REV. 703 (1954).

152. These non-tangible classes of collateral are defined in the U.C.C. at these sections: chattel paper: U.C.C. § 9-105(1)(b); documents: U.C.C. § 9-105(1)(e); 1972 U.C.C. § 9-105(1)(f);

classification scheme is illustrated by some recent cases. Where the secured party had a valid security interest in debtor's inventory, it nevertheless was prohibited from selling the repossessed goods, since it was not a secured party to the essential general intangibles of patent rights and licenses,[153] the security agreement failing to specifically list these items. A bank claimed relocation payments which a local redevelopment agency owed its debtor, claiming that the bank had an absolute right over the account by an assignment. The claim was denied, as the payments were general intangibles,[154] and filing was required in order to perfect the bank's security interest.

DESCRIPTION OF COLLATERAL — SECURITY AGREEMENT[155]

The security agreement, as opposed to the financing statement,[156] must contain as precise a schedule of collateral as possible.[157] As one bankruptcy judge stated, "while 'goods, wares, and merchandise' might suffice as a description. . . of the types of collateral. . . those words are insufficient for the purposes of [Section 9-110] which requires a reasonable identification of the property described [in the security agreement]."[158]

Accounts receivable and inventory (despite the last quotation) are not conducive to extremely detailed descriptions, and one would hope that courts will accept the principle that "a description of personal property should be liberally construed where the articles are numerous and are of relatively small value on a unit basis."[159] However, equipment presently owned can be listed with some particularity, and it is better practice so to do, as is well illustrated by the case of *In re Laminated Veneers, Inc.*[160]

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instruments: U.C.C. § 9-105(1)(g); 1972 U.C.C. § 9-105(1)(i); accounts: U.C.C. § 9-106; general intangibles: 1972 U.C.C. § 9-106. "Contract Right," used only in the earlier Article 9, is defined in U.C.C. § 9-106.

153. *In re* Emergency Beacon Corp., 23 U.C.C. Rep. 766 (S.D.N.Y. 1977).

154. *In re* Joseph Kanner Hat Co., Inc., 482 F.2d 937, 939 (2d Cir. 1973); Kapp v. United States, 20 U.C.C. Rep. 1355 (N.D. Ill. 1976).

155. U.C.C. § 9-203(1)(b). This section requires that a description of land be included when a security interest covers crops or timber. North Dakota has added oil, gas, or minerals to the list of collateral requiring a land description. N.D. CENT. CODE § 41-09-16(1)(b) (1967).

156. *In re* Fairway Wholesale, Inc., 21 U.C.C. Rep. 1429 (D. Conn. 1977); American Restaurant Supply Co. v. Wilson, 25 U.C.C. Rep. 1159 (Fla. App. 1979); *In re* Nyack Rug & Furniture Co., Inc., 20 U.C.C. Rep. 1405 (S.D.N.Y. 1976).

157. *In re* E.P.G. Computer Services, Inc., 20 U.C.C. Rep. 1084 (S.D.N.Y. 1976). *Contra, In re* Whitacre, 21 U.C.C. Rep. 1169 (S.D. Ohio 1976).

158. *In re* Fairway Wholesale, Inc., 21 U.C.C. Rep. 1429, 1435 (D. Conn. 1977). *Contra, In re* Parsons College, No. 24-73 (S.D. Iowa, April 16, 1974) ("all personal property" upheld).

159. GAC Credit Corp. v. Small Business Administration, 323 F.Supp. 795, 798 (W.D. Mo. 1971).

160. 471 F.2d 1124 (2d Cir. 1973).

In that case, the security agreement contained a twenty-two page schedule of items and ended with a catch-all clause:

> In addition to all the above enumerated items, it is the intention that this mortgage shall cover all chattels, machinery, equipment, tables, chairs [etc., etc.] and all other items of equipment and fixtures belonging to the mortgagor, whether herein enumerated or not, now at the plant of [debtor], and all chattels, machinery, fixtures, or equipment that may hereafter be brought in or installed in said premises or any new premises of [debtor] to replace, substitute for, or in addition to the above described chattels and equipment. . . .[161]

The list of collateral included a truck, but did not specifically describe two automobiles which were owned by the debtor. It was agreed that the autos were "equipment" under the Code. The Second Circuit, in a 2-1 decision, upheld the ruling of the bankruptcy judge[162] that the automobiles were not covered by the security agreement.

The type of problems raised by *Laminated Veneers* can be illustrated by *In re Sarex Corporation*[163] another Second Circuit case. In *Sarex,* the security agreement described the collateral as "machinery, equipment and fixtures; molds, tools, dies, component parts including specifically [4 molds described]."[164] The trustee argued that only the four specifically described molds were covered, relying upon *Laminated Veneers.* The court disagreed, distinguishing its decision in the earlier case by stating as follows:

> Laminated Veneers does not stand for the proposition that the use of generic terms in a security agreement will be given no effect. It does stand for the proposition that the generic term 'equipment' used in reference to a lumber business does not include within it two automobiles, at least where a truck is specifically itemized in the schedule. . . .
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> . . . Laminated Veneers tells us that reliance purely on generic terminology may. . . be insufficient. This case lies

161. *In re* Laminated Veneers Co., Inc., 471 F.2d 1124, 1125 n.1 (2d Cir. 1973).
162. *In re* Laminated Veneers, Inc., 8 U.C.C. Rep. 602 (E.D.N.Y. 1970).
163. 509 F.2d 689 (2d Cir. 1975).
164. *In re* Sarex Corporation 509 F.2d 689, 690 (2d Cir. 1975).

> in between and. . . we hold the language in question to have reasonably specified and therefore identified the collateral in question.[165]

The Second Circuit seems to be applying *ejusdem generis* principles to security agreement descriptions. In any event, to avoid prolonged litigation over whether a description more nearly resembles *Laminated Veneers* than *Sarex,* the description should specifically include at least all major items of collateral.

In one case,[166] the collateral description read "all equipment as detailed in Exhibit A attached." There was no exhibit attached. The bankruptcy judge, in an extremely liberal ruling, held the single word "equipment" sufficient as a description.[167] In another, the Code generic "inventory" was held insufficient where the collateral was not *all* of the debtor's stock in trade.[168]

DESCRIPTION OF COLLATERAL — FINANCING STATEMENT

The financing statement must contain "a statement indicating the types, or describing the items of collateral."[169] As one state court has noted:

> The description of collateral in a financing statement need not be specific or exact as long as it *reasonably* identifies the type of property in which a security interest has attached. . . . It is sufficient if it provides enough information to put a person *on notice* of the existence of a security interest in a particular type of property so that further inquiry can be made about the property subject to the security interest.[170]

Indeed, it has been said that "[o]nly the most basic description of property deemed to be collateral. . . was contemplated. . . ."[171]

The facts in reported cases have ranged from a complete failure to list any collateral to a precise serial number identification.

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165. *Id.* at 691-92.

166. *In re* Whitacre, 21 U.C.C. Rep. 1169 (S.D. Ohio 1976).

167. To the same effect, Drysdale v. Cornerstone Bank, 562 S.W.2d 182 (Mo. App. 1978).

168. *In re* Fairway Wholesale, Inc., 21 U.C.C. Rep. 1429 (D. Conn. 1977). *See also* American Restaurant Supply Co. v. Wilson, 25 U.C.C. Rep. 1159 (Fla. App. 1979). See text at note 172 *infra* regarding lost exhibits to financing statements.

169. U.C.C. § 9-402(1).

170. Heights v. Citizens National Bank, 463 Pa. 48, 342 A.2d 738, 743 (1975).

171. Biggins v. Southwest Bank, 490 F.2d 1304, 1307 (9th Cir. 1974).

In several instances, the financing statement collateral description was a reference over, "see attached schedules," or similar language. Although the secured parties contended that the attachment had been lost *after* presentation to the filing officer, they were unsuccessful.[172] These cases represent a regularly recurring problem. It is suggested that attachments to the financing statement be avoided, and, if unavoidable, that the reference over be a description in itself, *e.g.*, "Equipment [or whatever], now owned or hereafter acquired, as more particularly described in the attached schedule."[173]

In general, statements filed in *commercial transactions* have permitted broad language,[174] including use of Code generic descriptions. Filings have been upheld where the stated collateral was "inventory,"[175] "motor vehicles,"[176] "equipment,"[177] "accounts receivable,"[178] "livestock,"[179] and "furniture, furnishings and equipment."[180] However, if one intends to reply upon UCC generic classifications, he must be quite sure that the description used correctly reflects the nature of the collateral in the

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172. J.K. Gill Co. v. Firestone Realty, Inc., 262 Ore. 486, 499 P.2d 813 (1972); Rusch Factors, Inc., v. Passport Fashion, Inc., 67 N.Y.Misc. 2d 3, 322 N.Y.S.2d 765 (Sup. Ct. 1971); *In re* Antekeier, 6 U.C.C. Rep. 1027 (W.D. Mich. 1969). *Contra,* with additional facts, *In re* Bowser, 1 U.C.C. Rep. 626 (W.D. Pa. 1961).

173. *In re* Stegman, 15 U.C.C. Rep. 225 (S.D. Fla. 1974). *See also In re* Vaillancourt, 7 U.C.C. Rep. 748 (D. Me. 1970). *But cf.* J.K. Gill Co. v. Firestone Realty, Inc., 262 Ore. 486, 499 P.2d 813 (1972) (sufficiency of security agreement description).

174. *See, e.g.*, Stephens v. Bank of Camilla, 133 Ga. App. 210, 210 S.E.2d 358 (1974) ("3 leases of equipment").

175. *In re* Nickerson & Nickerson, Inc., 530 F.2d 811, 329 F. Supp. 93 (D. Neb.), *aff'd,* 452 F.2d 56 (8th Cir. 1971); Security Tire & Rubber Co. v. Hlass, 246 Ark. 1084, 441 S.W.2d 91 (1969); Evans Prods. Co. v. Jorgensen, 245 Ore. 362, 421 P.2d 978 (1966); Thompson v. O.M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (1962); Borg-Warner Acceptance Corp. v. Wolfe City Nat. Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976). *Contra, In re* Modern Engineering & Tool Co., Inc., 25 U.C.C. Rep. 580 (D. Conn. 1978); *In re* Terry, 10 C.B.C. 289 (E.D. Mich. 1976).

176. James Talcott, Inc. v. Franklin Nat. Bank of Mpls., 292 Minn. 277, 194 N.W.2d 775 (1972); General Motors Acceptance Corp. v. Terra Contractors Corp., 6 U.C.C. Rep. 544 (N.Y. Cir. Ct. 1969); Bank of Utica v. Smith Richfield Springs, Inc., 58 N.Y.Misc. 2d 113, 294 N.Y.S.2d 797 (1968); *In re* Stephens, 8 U.C.C. Rep. 597 (W.D. Okla. 1970) ("passenger automobiles"); Community Bank v. Jones, 278 Ore. 647, 566 P.2d 470 (1977); Fedders Financial Corp. v. Chiarelli Bros., Inc., 289 A.2d 169 (Pa. Sup. 1972) ("air conditioners"); *In re* Kane, 1 U.C.C. Rep. 582 (E.D. Pa. 1962).

177. Mountain Credit v. Michiana Lumber & Supply, Inc., 498 P.2d 967 (Colo. App. 1972); Maryland Nat'l Bank v. Porter-Way Harvester Mfg. Co., 300 A.2d 8 (Del. Sup. 1972); *In re* Bloomingdale Milling Co., 4 U.C.C. Rep. 256 (W.D. Mich. 1966); *In re* Whiteacre, 21 U.C.C. Rep. 1169 (S.D.N.Y. 1976); Goodall Rubber Co. v. Mews Ready Mix Corp., 7 U.C.C. Rep. 1358 (Wis. Cir. Ct. 1970); Security Bank & Trust Co. v. Blaze Oil Co., 463 P.2d 495 (Wyo. 1970). *Contra, In re* Werth, 23 U.C.C. Rep. 489 (D. Kan. 1977); *In re* Terry, 10 C.B.C. 289 (E.D. Mich. 1976).

178. *In re* Carmichael Ent., Inc., 334 F. Supp. 94 (N.D. Ga. 1971), *aff'd,* 460 F.2d 1405 (5th Cir. 1972); *In re* Varney Wood Products, Inc., 458 F.2d 435 (4th Cir. 1972); Barnett Bank v. Fletcher, 290 So. 2d 533 (Fla. App. 1974); *In re* American Plating & Mfg. Co., 26 U.C.C. Rep. 497 (W.D. Ky. 1979); Walker Bank & Trust Co. v. Smith, 501 P.2d 639 (Nev. 1972); *In re* Berger, 7 C.B.C. 703 (E.D. Va. 1976).

179. Peoples Bank v. Northwest Georgia Bank, 19 U.C.C. Rep. 953 (Ga. App. 1976); Batey Land & Livestock Co. v. Nixon, 560 P.2d 1334 (Mont. 1977); *In re* Malzac, 14 U.C.C. Rep. 1223 (D. Vt. 1972); Barth Bros. v. Billings, 68 Wis .2d 80, 227 N.W.2d 763 (1975).

180. Young v. Golden State Bank, 560 P.2d 855 (Colo. App. 1977).

hands of the debtor,[181] and that the financing statement description is as broad as the security agreement.[182] While the primary collateral may be "inventory," there may be plans, licenses, etc., necessary for manufacture, which are classified as "general intangibles" or (under the pre-1972 text) as "contract rights."[183]

One cannot be too general. Despite some favorable decisions,[184] phrases such as "all personal property,"[185] or "all present and future assets"[186] have often been held insufficient to encompass specific classes of assets: "[a]ll personal property" is too broad to describe livestock and farm equipment,[187] and "other physical assets" does not include inventory.[188] A few other examples may be useful: "[r]eplacement parts and accessories" has been held insufficient to cover whatever of that nature debtor possessed.[189] Where the collateral was a small Ford truck, the description "1966 Ford" was held to satisfy the statute.[190] "Supplies" does not cover equipment and machinery.[191] Except in Kentucky,[192] it appears that "all farm equipment" is a sufficiently precise description of collateral for a financing statement.[193]

In *consumer finance* a more exacting standard may be applied. While some decisions have upheld "consumer goods" as sufficient to cover "all tangible personal property owned by a debtor except for that used in business or for farming,"[194] other courts have disagreed, finding a "commercial policy applicable to inventory

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181. *In re* Charolais Breeding Ranches, Ltd., 20 U.C.C. Rep. 193 (W.D. Wis. 1976).

182. Georgia-Pacific Corp. v. Lumber Prod. Co., 590 P.2d 661 (Okla. 1979).

183. *In re* Emergency Beacon Corp., 23 U.C.C. Rep. 766 (S.D.N.Y. 1977).

184. Leasing Service Corp. v. American Nat'l Bank, 19 U.C.C. Rep. 252 (D.N.J. 1976); *In re* JCM Coop., Inc., 8 U.C.C. Rep. 247 (W.D. Mich. 1970).

185. *In re* Lockwood, 16 U.C.C. Rep. 195, 203 D. Conn. (1974).

186. *In re* H.L. Bennett Co., ____ F.2d ____ (3d Cir. 1976); Mogul Ent., Inc. v. Commercial Crdit Business Loans, Inc., 25 U.C.C. Rep. 293 (N.M. 1978); *In re* E.P.G. Computer Services, 20 U.C.C. Rep. 1084 (S.D.N.Y. 1976). *See also* Material Service Corp. v. Bogdajewicz, 26 U.C.C. Rep. 185 (Ill. App. 1979) ("certain land trusts").

187. *In re* Fuqua, 461 F.2d 1186 (10th Cir. 1972).

188. *In re* Kirk Kabinets, 15 U.C.C. Rep. 746 (M.D. Ga. 1974).

189. Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

190. *In re* Esquire Produce Co., 5 U.C.C. Rep. 257 (E.D.N.Y. 1968). *See also* Associates Capital Corp. v. Bank of Huntsville, 274 So. 2d 80 (Ala. App. 1973).

191. *In re* Vaillancourt, 7 U.C.C. Rep. 748 (D. Me. 1970).

192. Mammoth Cave Prod. Credit Ass'n v. York, 429 S.W.2d 26 (Ky. 1968), *but cf. In re* Anselm, 344 F. Supp. 544 (D. Ky. 1972).

193. United States v. Crittenden, 563 F.2d 678 (5th Cir. 1977), *aff'd*, ____ U.S. ____ (1979); United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. 1973); First Nat'l Bank v. Calvin Pickle Co., 11 U.C.C. Rep. 1245 (Okla. App. 1973).

194. *In re* Turnage, 493 F.2d 505 (5th Cir. 1974); *In re* Trumble, 5 U.C.C. Rep. 543 (W.D. Mich. 1968); *In re* Johnson, 13 U.C.C. Rep. 953 (D. Neb. 1973).

[1968] KY. ATT'Y GEN. OP. 68-167 held that the description "all household goods" was satisfactory. [1971] S.C. ATT'Y GEN. OP. 3156 agreed, but held that the abbreviation "HHG" is insufficient. *See also In re* Beneficial Finance Co. v. Van Shaw, 476 S.W.2d 772 (Tex. Civ. App. 1972); *In re* Thompson, 8 U.C.C. Rep. 1407 (W.D. Wisc. 1971). Counsel should also keep in mind the ten-day limitation on after-acquired consumer goods. U.C.C. § 9-204(4)(b). *See In re* Harris, 23 U.C.C. Rep. 220 (N.D. Ga. 1977), and text at note 199 *infra*.

financing. . . which is not present in an individual loan case . . ."[195] The term has been held "too broad, general and meaningless."[196] One case has even held that the description "1 refrigerator, White, Philco" was "obviously insufficient."[197] The test in the consumer context, according to one court, is whether the description is "specific enough to allow the creditor's agents or the sheriff to distinguish between the goods subject to the security interest and other consumer goods owned by the debtor which may be similar in type but not subject to the security interest."[198] Note, too, that for purposes of the Truth-in-Lending Act and Regulation Z, any claim of an interest in after-acquired consumer goods must state the ten-day limitation of UCC 9-204 (4) (b).[199]

When a creditor goes to the opposite extreme, and gives a very specific description of the collateral, a rule akin to *expressio unius* applies. He risks losing his security interest in related items not encompassed by the specifics. For example: Where the collateral was described as "band transceivers," crystals, described as accessories to transceivers, were held not to be included,[200] a decision which will suprise anyone who tries to operate a crystal-controlled transceiver without the crystal. "Cotton waste" does not cover "cotton linters" where the latter are distinguished in trade usage,[201] and "dental equipment" does not cover the doctor's office equipment and furnishings.[202] Similarly, "mechanical or electrical commercial, household or industrial equipment" does not encompass carpets and furniture held as inventory.[203] Counsel

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195. *In re* Lehner, 303 F. Supp. 317, 319 (D. Colo. 1969), *aff'd* 427 F.2d 357 (10th Cir. 1970).

196. *Id.* at 320. *See* White v. Household Finance Corp., 302 N.E.2d 828 (Ind. App. 1973); *In re* Woods, 9 U.C.C. Rep. 116 (D. Kan. 1971). *See also In re* Bell, 6 U.C.C. Rep. 740 (D. Colo. 1969).

197. Freeman v. Decatur Loan & Finance Corp., 140 Ga. App. 682, 231 S.E.2d 409, 411 (1976).

198. Aronson Furniture Co. v. Johnson, 47 Ill. App. 3d 648, 365 N.E.2d 61, 65 (1977). *But cf.* Personal Thrift Plan v. Georgia Power Co., 25 U.C.C. Rep. 310 (Ga. 1978), where an abbreviated description was upheld because no filing was required.

199. Carr v. Blazer Financial Services, 598 F.2d 1368 (5th Cir. 1979); Tinsman v. Moline Beneficial Finance Co., 531 F.2d 815 (7th Cir. 1976); Ecenrode v. Household Finance Corp., 422 F. Supp. 1327 (D. Del. 1976); Sneed v. Beneficial Finance Co., 410 F. Supp. 1135 (D. Hawaii 1976); *In re* Dunne, 407 F. Supp. 308 (D.R.I. 1976); Irvin v. Public Finance Co., 340 So.2d 811 (Ala. Civ. App. 1976); Aronson Furniture Co. v. Johnson, 47 Ill. App. 3d 648, 365 N.E.2d 61 (1977); Empire Finance Co. v. Ewing, 22 U.C.C. Rep. 539 (Ky. App. 1977); Conrad v. Beneficial Finance Co., 398 N.Y.S.2d 499 (Sup. Ct. 1977); Lowery v. Finance America Corp., 32 N.C. App. 174, 231 S.E.2d 904 (1977). *Contra,* Anthony v. Community Loan & Inv. Corp., 559 F.2d 1363 (5th Cir. 1977); Public Loan Co. v. Hyde, 390 N.Y.S.2d 971 (Sup. Ct. 1977). Good faith reliance upon a Federal Reserve Board pamphlet is not a defense. Jacklitch v. Redstone Federal Credit Union, 463 F. Supp. 1134 (N.D. Ala. 1979).

200. *In re* Richards, 1 U.C.C. Rep. 620 (D. Conn. 1963).

201. Anawan Mills, Inc. v. Northeastern Fibers, Inc., 4 U.C.C. Rep. 787 (Mass. App. 1963). As to reliance upon trade usuage in analyzing the sufficiency of a description, *see* Ray v. City Bank & Trust, 358 F. Supp. 630 (S.D. Ohio 1973); Raney v. Uvalde Producers Wool & Mohair, Inc., 571 S.W.2d 199 (Tex. Civ. App. 1978).

202. *In re* Berger, 7 C.B.C. 703 (E.D. Va. 1976).

203. *In re* Nyack Rug & Furniture Co., 21 U.C.C. Rep. 904 (S.D.N.Y. 1977).

for creditors doing business in Kentucky should be aware that the law of that state requires a financing statement to include the make, year, model, and motor or identification number of a consumer vehicle.[204]

Errors in the description are often salvageable if they are minor and not seriously misleading.[205] Thus, errors in serial numbers are generally not fatal,[206] except, perhaps, where a number of like items are involved and the absence of correct numbers prevents identification.[207] However, a 1969 Toyota is seriously misdescribed when called a 1969 Fiat,[208] and a "bridal set" cannot be adequately described as a "bracelet set."[209] Giving serial numbers without anything to identify the nature of the collateral to which the numbers apply has been upheld,[210] but is clearly a dangerous practice.

It had appeared to be settled that after-acquired property of the same variety as that described by a "type" description, *e.g.*, "accounts receivable," "equipment," or "inventory," will be covered by that description, and absence of the phrase "now or hereafter acquired" in the financing statement would not be a cause of trouble.[211] But the Third Circuit has reopened the question and held to the contrary,[212] the court requiring that the inclusion of after-acquired property be unambiguously expressed in order to

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204. KY. REV. STAT. § 355.9-402(2) (1970). *See In re* Tomlin, 2 U.C.C. Rep. 197 (E.D. Ky. 1963).

205. U.C.C. § 9-402(5); 1972 U.C.C. § 9-402(8).

206. *In re* Vintage Press, Inc. 552 F.2d 1145 (5th Cir. 1977) (security agreement); *In re* Delta Molded Prods., Inc., 416 F.Supp. 938 (N.D. Ala. 1976); City Bank & Trust Co. v. Warthen Service Co., 535 P.2d 162 (Nev. 1975); Samuel Breiter & Co. v. Domler Leasing Corp., 19 U.C.C. Rep. 1248 (N.Y. Sup. Ct. 1976); Appleway Leasing, Inc. v. Wilken, 39 Ore. App. 43 (1979); Nat'l Dime Bank v. Cleveland Bros. Equip. Co., 20 Pa. D. & C.2d 511 (1959); McGehee v. Exchange Bank & Trust, 23 U.C.C. Rep. 816 (Tex. Civ. App. 1978); Adams v. Nuffer, 550 P.2d 181 (Utah 1976); *In re* Reiser, 20 U.C.C. Rep. 529 (W.D. Wis. 1976). *Contra,* Still Assoc. v. Murphy, 267 N.E.2d 217 (Mass. App. 1970).

207. United States v. Mid-States Sales Co., 336 F. Supp. 1099 (D. Neb. 1971); *In re* Aragon Ind., Inc., 14 U.C.C. Rep. 1218 (S.D. Fla. 1973). *But cf. In re* Delta Molded Products, Inc., 416 F. Supp. 938 (N.D. Ala. 1976), and Peoples Bank v. Northwest Georgia Bank, 19 U.C.C. Rep. 953 (Ga. App. 1976).

208. *In re* Hodgin, 7 U.C.C. Rep. 612 (W.D. Okla. 1970).

209. DWG, Inc. v. Peltier, 563 P.2d 152 (Okla. 1977).

210. *In re* Richards, 455 F.2d 281 (6th Cir. 1972); *In re* Bengtson, 3 U.C.C. Rep. 283, (D. Conn. 1965); Personal Thrift Plan v. Georgia Power Co., 25 U.C.C. Rep. 310 (Ga. 1978) (security agreement); *In re* A & T Kwik-N-Handi, Inc., 12 U.C.C. Rep. 765 (M.D. Ga. 1973).

211. *In re* Fibre Glass Boat Corp., 324 F. Supp. 1054 (S.D. Fla. 1971), *aff'd,* 448 F.2d 781 (5th Cir. 1971); *In re* Nickerson & Nickerson, Inc., 329 F. Supp. 93 (D. Neb. 1971), *aff'd,* 452 F.2d 56 (8th Cir. 1971); *In re* Page, 16 U.C.C. Rep. 501 (M.D. Fla. 1974); Nat'l Cash Register Co. v. Firestone & Co., 346 Mass. 255, 191 N.E.2d 471 (1963); *In re* Taylored Prods., Inc., 5 U.C.C. Rep. 286 (W.D. Mich. 1968); O'Hara & Shaver, Inc. v. Empire Bituminous Prods., Inc., 67 N.Y. Misc. 2d 47, 323 N.Y.S.2d 190 (County. Ct. 1971); American Nat'l Bank v. Nat'l Cash Register Co., 473 P.2d 234 (Okla. 1970); South County Sand & Gravel Co. v. Bituminous Pavers Co., 106 R.I. 178, 256 A.2d 514 (1969); Borg-Warner Acceptance Corp. v. Wolfe City Nat'l Bank, 544 S.W.2d 947 (Tex. Civ. App. 1976).

212. *In re* Middle Atlantic Stud Welding Co., 503 F.2d 1133 (3d Cir. 1974). See text at note 52 *supra.*

promote "simpler, clearer and more certain law for all parties,"[213] without significantly burdening the secured party. This more conservative and verbose approach taken by the Third Circuit would appear to be the better course.

It is not uncommon in inventory financing to describe the collateral as located at a specific address. What if the debtor changes the location of the collateral, or acquires additional locations? Section 9-401(3) provides that the filing remains effective "even though the debtor's residence or place of business . . . is thereafter changed."[214] However, several bankruptcy trustees have challenged security interests in those situations where the security agreement specified a former address. They have been largely unsuccessful to date,[215] but it is better practice to word the collateral descriptions, in both the security agreement and the financing statement, to include all inventory, "wherever located." If the address given in the collateral description is not correct at the time, it has been held that the description is insufficient to cover collateral at another address.[216]

CROPS OR FIXTURES AS COLLATERAL

When the collateral is crops, timber, minerals, or goods which are or will become fixtures, a description of the real estate to which they are related is required.[217] The Code considers a description of real estate sufficient "whether or not specific if it reasonably identifies what is described."[218] Thus, "the description need not describe the property by a government survey, or by lots and blocks, or metes and bounds, if it can be located from the description given."[219] Failure to include a description of the real estate is fatal.[220]

It would appear that a description by the name of the record

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213. *Id.* at 1136.

214. This applies, of course, only to a move within the same state.

215. *In re* Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977); Owen v. McKesson & Robbins Drug Co., 349 F. Supp. 1327 (N.D. Fla. 1972), and cases cited; *In re* Little Brick Shirthouse, Inc., 347 F.Supp. 827 (N.D. Ill., 1972). *In re* Page, 16 U.C.C. Rep. 501 (M.D. Fla. 1974). *But cf.* Inter Mountain Ass'n of Credit Men v. Villager, Inc., 527 P.2d 664 (Utah 1974).

216. *In re* California Pump & Mfg. Co., 588 F.2d 717 (9th Cir. 1978).

217. U.C.C. § 9-402(1); *In re* Estate of Voelker, 252 N.W.2d 400 (Iowa 1977).

218. U.C.C. § 9-110. However, care must be taken to insure that no greater specificity is required by the local version of U.C.C. § 9-402, or the applicable provisions of 1972 U.C.C. § 9-402(5). North Dakota is one of the states that requires greater specificity for filing when the collateral is fixtures or crops. N.D. CENT. CODE § 41-09-41 (1979).

219. [1972] ILL. ATT'Y GEN. OP. 276. *See also* Production Credit Ass'n v. Columus Mills, 22 U.C.C Rep. 228 (Wis. Cir. Ct. 1977).

220. *In re* Mount, 5 U.C.C. Rep. 653 (S.D. Ohio 1968); *In re* Shepard, 14 U.C.C. Rep. 249 (W.D. Va. 1974).

owner[221] and a reasonable description (*e.g.*, "the farm of Jones in Central County near Smithville") will satisfy the statute,[222] but a description by the name of the record owner alone will not.[223] The "street number address" has also been held to be sufficient.[224]

Revised Article 9's Section 9-402(6) contains a laudable provision allowing a mortgage to be used as a financing statement for fixture filings.[225]

SIGNATURES

The earlier version of the code states that the financing statement must be "signed by the debtor and the secured party."[226] The 1972 version only requires that the debtor sign the financing statement.[227] "Signed," says the Code, "includes any symbol executed or adopted by a party with present intention to authenticate a writing."[228] The Official Comments to the latter section indicate that a liberal reading is intended:

> The inclusion of authentication in the definition of 'signed' is to make clear that as the term is used in this Act a complete signature is not necessary. Authentication may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible authentications can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed

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221. The 1972 Code § 9-402(5) requires that the financing statement include the name of the record owner if the debtor does not have an interest of record and the collateral is timber, minerals, accounts, or fixtures. Under the earlier version of the Code, the name of the record owner was required for filings where the collateral is crops or fixtures in Alabama, Connecticut, Georgia, Hawaii, Kansas (if a numerical index is not kept by the filing officer), Maine, Massachusetts, Minnesota, Mississippi (fixtures), Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Tennessee, Texas, Utah, Virginia, and Wisconsin.

222. United States v. Big Z Warehouse, 311 F. Supp. 283 (S.D. Ga. 1970); United States v. Smith, 22 U.C.C. Rep. 502 (N.D. Miss. 1977); *In re* Colbert, 22 U.C.C. Rep. 511 (N.D. Miss. 1977); Mammoth Cave Prod. Credit Ass'n v. Oldham, 569 S.W.2d 833 (Tenn. Civ. App. 1977); KY. ATT'Y GEN. OP. 60-695. *But cf.* People's Bank v. Pioneer Food Inds. Inc., 253 Ark. 277, 486 S.W.2d 24 (1972) [1960], *Chanute Prod.* Credit Ass'n v. Weir Grain & Supply, Inc., 210 Kan. 181, 499 P.2d 517 (1972).

223. Piggott State Bank v. Pollard Gin Co., 243 Ark. 159, 419 S.W.2d 120 (1967); First Nat'l Bank v. Calvin Pickle Co., 11 U.C.C. Rep. 1245 (Okla. App. 1973).

224. Home Savings Ass'n v. Southern Union Gas Co., 486 S.W.2d 386 (Tex. Civ. App. 1972).

225. U.C.C. § 9-402(6).

226. U.C.C. § 9-402(1). *In re* Carter, 25 U.C.C. Rep. 1162 (D. Me. 1978).

227. 1972 U.C.C. § 9-402(1).

228. U.C.C. § 1-201(39).

or adopted by the party with present intention to authenticate the writing.[229]

The courts, and state attorneys generally, have taken a great variety of approaches in their interpretation of this requirement.[230] At one extreme, we find a few courts holding, under the earlier Article 9 text, that the signature of the secured party is not necessary.[231] On the other hand it has been held that if there are two secured parties, the signatures of both are essential.[232] There are also cases holding that the signature of a single partner in a partnership debtor satisfies the requirement.[233]

Imperfect or non-traditional "signing" has presented many problems. Where the debtor was a corporation, and the signature affixed was that of an individual without indication of his corporate capacity, the filing has been held invalid by one court[234] but upheld by others.[235] A security agreement signed by an individual on the "by" line, followed by his corporate titles, has been upheld where the corporate name appeared at the head of the document.[236] Where it is the signature of the secured party by an individual whose corporate capacity is not noted, the signing has been held to be valid,[237] at least where there is parole evidence of the individual's authority to sign for that party.[238] A wife cannot sign as agent for her spouse, since the marital relationship does not establish agency.[239]

In one case the secured party claimed that his signature consisted of his initials on the attached inventory sheets. The bankruptcy judge disagreed, indicating that he considered the Official Comments to be too broad.[240] Where four retail

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229. U.C.C. § 1-201(39) Official Comment 39.

230. *See* Evans v. Moore, 14 U.C.C. Rep. 555 (Ga. App. 1974), involving this question under the UCC sales article.

231. Riley v. Miller, 549 S.W.2d 314 (Ky. App. 1977); Strevell-Paterson Finance Co. v. May, 77 N.M. 331, 422 P.2d 366 (1967). *Contra*, Burlington Nat'l Bank v. Strauss, 50 Wis. 2d 170, 184 N.W. 2d 122 (1971).

232. *In re* Murray, 2 U.C.C. Rep. 667 (D. Ore. 1964).

233. *In re* Hammons, 438 F. Supp. 1143 (S.D. Miss. 1977), and cases cited.

234. *In re* Pennar Paper Co., 2 U.C.C. Rep. 659 (E.D. Pa. 1964).

235. Peoples Bank v. Northwest Georgia Bank, 19 U.C.C. Rep. 953 (Ga. App. 1976); *In re* A & T Kwik-N-Handi, Inc., 12 U.C.C. Rep. 765 (M.D. Ga. 1973); Plemens v. Didde-Glaser, Inc., 244 Md. 566, 224 A.2d 464 (1966); Sherman v. Upton, 242 N.W.2d 666 (S.D. 1976), *In re* Reid Communications, Inc., 21 U.C.C. Rep. 1436 (W.D. Va. 1977).

236. *In re* J.A.G.G., Inc., 25 U.C.C. Rep. 1172 (D. Conn. 1979).

237. *In re* Sports Shack, Inc., 383 F. Supp. 37 (N.D. Cal. 1974); *In re* Turcotte, 3 U.C.C. Rep. 774 (D. Me. 1966).

238. *In re* Williams, 16 U.C.C. Rep. 240 (N.D. Ala. 1974).

239. Southwest Bank v. Moritz, 203 Neb. 45, ____ N.W.2d ____ (1979); Provident Finance Co. v. Beneficial Finance Co., 36 N.C. App. 401, 245 S.E.2d 510 (1978).

240. *In re* Plummer, 6 U.C.C. Rep. 555 (E.D. Mich. 1969). *See* Travelers Indem. Co. v. First Nat. Bank, 368 S.2d 836 (Miss. 1979); *In re* Industro Transistor Corp., 14 U.C.C. Rep. 522 (E.D.N.Y. 1973).

installment sales contracts were filled out, with the balances on three brought forward to the fourth, which was the only one signed, it was held that the first three were invalid.[241] The Pennsylvania attorney general has held that a hand printed signature will suffice.[242]

A number of cases have involved the following situation: The standard UCC-1 financing statement has two lines for the signature of the secured party. The upper is unlabeled; the lower begins with the printed word "By." In each case the creditor's name was typed on the first line and the second line was left blank.

In re Horvath, a case of first impression, the bankruptcy court held in favor of the secured party, stating:

> It is clear. . . that what constitutes a valid signing of a financial [sic] statement is a very loose proposition. The usual formality of corporate signing by an individual duly authorized to act. . . who pens his signature in a corporate capacity is not required. In the last analysis the question is simply whether any symbol on the financing statement was inserted or adopted by the secured party to authenticate its participation in the security transaction evidenced by the statement; to show that the statement was genuine. . . .
>
> There was no direct evidence that [the secured party] intended its typed name to constitute its authentication or its evidencing of the genuineness of the statement. But, from all that has been before the court on this matter, it is clear that the bankrupt and [secured party] did enter into a bona fide trust receipts financing arrangement; that the bankrupt signed the financing statement which bears the typed name of [the secured party] in the blank provided for the signature of the secured party; that the financing statement was filed. . . to give notice of the asserted security interest. . . . From all this common sense compels the conclusion that the typed name. . . on the statement could have been intended for no other purpose than to reflect a showing. . . that the statement was genuine and was to evidence a bona fide security interest obtained by

241. *In re* Atkins, 9 U.C.C. Rep. 315 (E.D. Tenn. 1971).
242. [1976] PA. ATT'Y GEN. OP. 76-31.

> it. Thus, the typed name constituted a sufficient signing to meet the loose, relaxed requirement of the Code.[243]

A year later, the same bankruptcy judge faced the same problem and reached the same result, in a decision that was subsequently affirmed by the Second Circuit.[244] The following reflects his liberal interpretation of Code requirements:

> Medieval, dogmatic insistence upon the precise performance of all formalities, with disastrous results attending the neglect of them, no longer holds dominant sway in the law of secured transactions. Pragmatism and realism have been brought to commercial law. It is a welcomed relief to those concerned with and dependent upon it.[245]

One of his colleagues examined similar facts and reached the opposite conclusion: "In the instant case it is obvious that the bank through oversight omitted signing this financing statement. In the interest of preserving the integrity and reliability of the public record it would seem preferable. . . to call an oversight an oversight instead of a signature."[246] The Maine Supreme Court has adopted a strict approach to this issue and held a similar filing to be invalid. The court disposed of *Horvath* summarily: "We are not disposed to scuttle the Code requirements on a plea that they are loose and relaxed."[247]

Quite often it will be necessary to file financing statements in more than one filing office. In some states there is available a form called UCC-2, which can be placed on top of a UCC-1 so that both are prepared at once in the typewriter. Can both be *signed* at once, so that one filing office will be given a set with carbon signatures? Or can the original of one set be photocopied for the second filing? We are faced with a broad range of opinions.

Judge Hiller held that "signed" means an "actual signature

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243. *In re* Horvath, 1 U.C.C. Rep. 624 (D. Conn. 1963). *See also* Matter of Save-on-Carpets of Arizona, Inc., 545 F.2d 1239 (9th Cir. 1976).

244. *In re* Hargrove, 2 U.C.C. Rep. 40 (D. Conn. 1964), *aff'd sub nom.* Benedict v. Lebowitz, 346 F.2d 120 (2d Cir. 1965). *See also* Alloway v. Stuart, 385 S.W.2d 41 (Ky. 1964).

245. *In re* Hargrove, 2 U.C.C. Rep. at 43-44.

246. *In re* Carlstrom, 3 U.C.C. Rep. 766, 773 (D. Me. 1966). *See also In re* Hogan, 20 U.C.C. Rep. 1102 (D.S.C. 1976); *In re* Glass (N.D. Ala. 1975) as cited at 4 [1975] SEC. TRANS. GUIDE ¶ 52 at 700 (CCH).

247. Maine League Federal Credit U. v. Atlantic Motors, 250 A.2d 497, 500 (Me. 1969). *See also* Little v. County of Orange, 31 N.C. App. 495, 229 S.E.2d 823 (1976), for the very strict North Carolina rule.

manually produced by a writing instrument in the hand of the signer in direct contact with the document being executed."[248] The attorney general of Kentucky agrees.[249] His counterpart in Alabama considers a carbon signature to be satisfactory, but not a photocopy unless "authenticated."[250] New Mexico assumes prima facie validity of photo and carbon copies,[251] as do Ohio,[252] Wyoming,[253] and perhaps Oklahoma.[254] Florida recognizes carbon and photocopied signatures.[255] Carbon signatures satisfy Maryland.[256] Missouri amended Section 9-402(1) by adding a final sentence: "Without limiting the generality of the preceding sentence, any financing or other statement. . . which contains a copy, however made, of the signature of a secured party or his representative or of the debtor or his representative is 'signed' . . . ."[257]

The practical decision here is simple. Unless one is operating exclusively in Missouri, obtain sufficient originals signed for each filing office. The revision of Article 9 has added a provision to Section 9-402(1) which states: "A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state."[258] Such a provision in the security agreement should become boilerplate in states which adopt the revisions.

248. *In re* Kane, 1 U.C.C. Rep. 582, 587 (E.D. Pa. 1962).
249. [1964] KY. ATT'Y GEN. OP. 64-708.
250. [1967] ALA. ATT'Y GEN. OP.
251. [1962] N.M. ATT'Y GEN. OP. 62-126.
252. [1962] OHIO ATT'Y GEN. OP. 3289.
253. [1962] WYO. ATT'Y GEN OP. 26.
254. [1963] OKLA. ATT'Y GEN. OPS. 63-194, 63-239.
255. [1967] FLA. ATT'Y GEN. OP. 067-6; [1966] FLA. ATT'Y GEN. OP. 966-52.
256. [1969] MD. ATT'Y GEN. OP.
257. MO. REV. STAT. § 400.9—402(1) (Cum. Supp. 1978).
258. 1972 U.C.C. § 9-402(1).