

*Fall 1969*

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#### Recommended Citation

*Description of Collateral in a Financing Statement: Should It Be Required?*, 4 Val. U. L. Rev. 205 (1969).  
Available at: <https://scholar.valpo.edu/vulr/vol4/iss1/8>

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## DESCRIPTION OF COLLATERAL IN A FINANCING STATEMENT: SHOULD IT BE REQUIRED?

### INTRODUCTION

Sections 9-110 and 9-402 of the Uniform Commercial Code set forth the requirements for the perfection of security interests in property pledged as collateral for long and short-term loans.<sup>1</sup> One of the most

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#### 1. UNIFORM COMMERCIAL CODE § 9-110:

For the purpose of this Article any description of personal property or real estate is sufficient whether or not specific if it reasonably identifies what is described.

#### UNIFORM COMMERCIAL CODE § 9-110, Comment:

The requirement of description of collateral . . . is evidentiary. The test of sufficiency of a description laid down by this Section is that the description do the job assigned to it—that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called 'serial number' test. The same test of reasonable identification applies where a description of real estate is required in a financing statement.

#### UNIFORM COMMERCIAL CODE § 9-402(1):

A financing statement is sufficient if it is signed by the debtor and the secured party, 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. A financing statement may be filed before a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, 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 both parties.

#### UNIFORM COMMERCIAL CODE § 9-402, Comments 1-3:

(1) Subsection (1) sets out the simple formal requisites of a financing statement under this Article. These requirements are: (1) signatures and addresses of both parties; (2) a description of the collateral by type or item. Where the collateral is growing crops or fixtures, the financing statement must also contain a description of the land concerned . . . .

(2) This Section adopts the system of 'notice filing' which has proved successful under the Uniform Trust Receipts Act. What is required to be filed is not, as under chattel mortgage and conditional sales acts, the security agreement itself, but only a simple notice which may be filed before the security interest attaches or thereafter. The notice itself indicates merely that the secured party who has filed may have a security interest in the collateral described. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs. Section 9-208 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure. Notice filing has proved to be of great use in financing transactions involving inventory, accounts and chattel paper, since it obviates the necessity of refileing on each of a series of transactions in a continuing arrangement where the collateral changes from day to day. Where other types of collateral are involved, the alternative procedure of filing a signed copy of the security agreement may prove to be the simplest solution.

(3) This Section departs from the requirements of many chattel mortgage

stringent requirements is that the financing statement must contain a description of the property covered by the financing statement sufficient to put future creditors on notice of possible existing security agreements covering the property described.

The description requirement, although theoretically sound, has become the subject of conflicting judicial interpretations, often with harsh results. Some secured creditors have lost their secured status because of the judicial arbitrariness in determining the sufficiency of a description.<sup>2</sup> Other secured creditors have suffered through litigation to protect their secured status merely because an unsecured creditor or a trustee in bankruptcy hoped to avoid their subordinate status by attacking a description of collateral on the grounds that it was "insufficient."<sup>3</sup>

The criteria for determining the "sufficiency" of a description under the UCC are vague and of little value to the practicing attorney. The purpose of this note is to analyze the necessity of the description requirement of the UCC in financing statements. To understand the description requirement it is necessary to scrutinize the pre-Code security devices and their formal requisites, and to analyze recent cases decided under the Code for the rationale behind the current judicial interpretations of sufficiency. With this analysis as a foundation, this note will discuss the possible effect of the elimination of the sufficiency requirement in financing statements.

#### PRE-CODE FILING REQUIREMENTS

Before the adoption of the UCC, one prerequisite of a chattel mortgage was the exact description of the mortgaged property.<sup>4</sup> With the chattel mortgage, however, it was not always possible to describe with accuracy the extent of property that was to be used as collateral.<sup>5</sup> One example of this weakness was the treatment of "after-acquired" property clauses. Under pre-Code law, the after-acquired property lien could not be precisely described in the original mortgage. Therefore, it did not become effective against third parties until a supplemental mortgage, containing a proper description of the after-acquired property,

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statutes that the instrument filed be acknowledged or witnessed or accompanied by affidavits of good faith. Those requirements do not seem to have been successful as a deterrent to fraud; their principal effect has been to penalize good faith mortgagees who have inadvertently failed to comply with the statutory niceties. They are here abandoned in the interest of a simplified and workable filing system.

2. See notes 18-77 *infra* and accompanying text.

3. *Id.*

4. G. GILMORE, SECURITY INTEREST IN PERSONAL PROPERTY § 15.2, 467 (1965). [Hereinafter cited as GILMORE].

5. *Id.*

had been filed.<sup>6</sup>

The description requirement of the chattel mortgage was sometimes treated as a statute of frauds. Failure to describe property in terms suitable to a court's whim often resulted in a void mortgage.<sup>7</sup> This failure could not be cured even by uncontroverted and uncontrovertible proof of the property secured by the mortgage. A typical example of this situation involved a chattel mortgage which covered equipment that was completely described and easily identifiable by future creditors.<sup>8</sup> The lack of a listed serial number, however, was held to render the description of the property insufficient.<sup>9</sup> Such results can be explained by recognizing the fact that courts prior to the UCC looked to Nineteenth Century cases for a standard to use in determining sufficiency. Their decisions were based on real property mortgage requirements and as a result strict description in chattel mortgages was required. It should be noted that the analogy to the real estate mortgage was more compelling seventy-five years ago than it is today and that the decisions of this early period reflected a generalized judicial hostility toward all chattel security transactions where the borrower remained in possession of the secured property.<sup>10</sup>

While the law of conditional sales took over many of the chattel mortgage requirements, many states applied them in a more relaxed manner.<sup>11</sup>

[T]he conditional sale was thought of as exclusively a purchase-money device, and there was never a great deal of experimentation with attempts to extend the vendor's lien to other property of the vendee—thus the after-acquired property question never had much importance in this field.<sup>12</sup>

The description requirements for conditional sales were considered fundamentally the same as those for chattel mortgages. While these require-

6. *Id.*

7. *Id.*

8. *Central Trust Co. v. Worchester Cycle Mfg. Co.*, 93 F. 712 (2d Cir. 1899) (corporate mortgage covering realty and personalty, tools and equipment, void as to personalty even though the personalty was clearly located in the factories named in the mortgage). See *Solinsky v. O'Conner*, 54 S.W. 935 (Tex. Civ. App. 1899) (serial numbers omitted in mortgage description covering two of three machines in mortgagor's possession, held insufficient notice); *Leffel v. Miller*, 7 So. 324 (Miss. 1890) ("one 10 horse power engine and boiler, Mames Leffel Make" insufficient description, even though there was only one on the debtor's property); *Hayes v. Wilcox*, 61 Iowa 732, 17 N.W. 110 (1883) (mortgage describing the only thresher debtor owned, but omitted serial number, void against attaching creditor).

9. *Id.*

10. GILMORE, § 2.7, at 53.

11. *Id.* at § 15.2, at 467.

12. *Id.*

ments dictated that the goods must be described sufficiently for the purpose of identification,<sup>13</sup> great specificity has proven of little value to the searcher of the records. He must still look beyond the record to ascertain the amount of the outstanding debt on the collateral.

Many specialized chattel security devices have been relatively free from the requirement of strict description. The notice filing provided for by the trust receipt and factor's legislation dispensed with any item-by-item description in the document filed. One commentator has noted that "[u]nder UTRA,<sup>14</sup> the filed notice need only describe in general terms the kind of goods to be financed on trust receipts and the entruster is not required to file a notice for each transaction."<sup>15</sup>

Many of the factor's lien acts, however, require the execution of documents whenever new inventory or accounts come under the lien. Most of the account receivable statutes likewise require assignments to be made as new accounts arise; statutory drafting, however, is frequently ambiguous on this point.<sup>16</sup> Typically, these documents and assignments must describe particular items of inventory and particular accounts.<sup>17</sup>

#### FILING REQUIREMENTS UNDER THE UCC

The UCC did not abolish the pre-Code security devices. It did, however, abolish the statutes governing them<sup>18</sup> and their technical distinc-

13. See *Tilton v. H.M. Wade Mfg. Co.*, 2 F.2d 358 (4th Cir. 1924) (Virginia law); *Kammeierv v. Chauvet*, 186 Iowa 958, 171 N.W. 165 (1919); *Wittler-Corbin Mach. Co. v. Martin*, 47 Wash. 123, 91 P. 629 (1907). For a case which evidences a relaxed attitude towards descriptions of property both in chattel mortgages and in conditional sales contracts, see *A.S. Thomas Furniture Co. v. T. & C. Furniture Co.*, 120 Ga. 879, 48 S.E. 333 (1904). The mortgage-inherited insistence on over precise description occasionally carried over into the conditional sales cases. See also *National Cash Register Co. v. Norfolk City Realty Co.*, 110 Va. 791, 67 S.E. 372 (1910) (description of cash registers clearly sufficient to put third party on notice held insufficient).

14. UNIFORM TRUST RECEIPT ACT, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS, 245 (1933).

15. GILMORE, § 4.11, at 122.

16. *Id.* at § 15.2, at 469.

17. The Texas notice filing system for assignments of accounts receivable was virtually nullified by decisions holding that notice had to be filed for each account as it arose. See *Republic Nat'l Bank v. Vial*, 232 F.2d 785 (5th Cir. 1956); *Keeran v. Salley*, 244 S.W.2d 663 (Tex. Civ. App. 1952).

The legislature saved the legislation by amending the statute. The remedial legislative action is described in *Ribaldo v. Citizens Nat'l Bank*, 261 F.2d 929 (5th Cir. 1958). An example of judicial confusion concerning the notice filing provision of UTRA is found in *Coin Mach. Acceptance Corp. v. O'Donnell*, 192 F.2d 773 (4th Cir. 1951), in which the court persistently states that the trust receipts themselves were filed although such was not the case. See also *In re Yost*, 107 F. Supp. 432, 435 (Md. 1952).

18. UNIFORM COMMERCIAL CODE § 9-102(2):

This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipts, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

tions in terminology and scope. Article 9 of the UCC was designed to govern pre-Code devices<sup>19</sup> and to allow all common forms of security transactions to be continued without substantial change.

The UCC, however, does work a substantial change over the pre-Code limitations on notice filing. First, it permits the use of filing with respect to all debtors, including consumers.<sup>20</sup> Secondly, it encompasses all collateral, including those goods which can be described with reasonable specificity.<sup>21</sup> Thirdly, the UCC's abbreviated filing can be used not only for short-term debts, but also for long-term obligations.<sup>22</sup>

One authority expresses the belief that the greatest change from the pre-Code law is "in the availability of notice filing for *all* kinds of collateral rather than just the quick assets of a business where some form of notice filing is pretty much necessary."<sup>23</sup> Unlike most pre-Code chattel security statutes, however, the UCC does not limit notice filing to situations where it is eminently necessary to the businessman's changing assets, such as accounts receivable and inventory.<sup>24</sup>

The problem which arises under the UCC is that all varieties of collateral must be secured by the *same* type of filing requirement. For analysis of judicial interpretations of sufficiency of description in a financing statement, the filing requirement must be examined in the context of specific transactions.<sup>25</sup> To determine what has been deemed a sufficient description of particular types of collateral, it is necessary to consider them separately.<sup>26</sup>

NOTE: *The adoption of this Article should be accompanied by the repeal of existing statutes dealing with conditional sales, trust receipts, factor's liens where the factor is given a non-possessory lien, chattel mortgages, crop mortgages, mortgages on railroad equipment, assignment of accounts and generally statutes regulating security interests in personal property.*

19. See UNIFORM COMMERCIAL CODE § 9-101, Comment: § 9-102(2). Comments 1 & 2.

20. BENDER'S UNIFORM COMMERCIAL CODE SERVICE, SECURED TRANSACTIONS, § 6.04(1), 496 (1968) [hereinafter cited as BENDER'S].

21. UNIFORM COMMERCIAL CODE § 9-102.

22. *Id.*

23. BENDER'S, § 6.04(1), 494 (emphasis added).

24. *Id.*

25. Hanna, *The Extension of Public Recordation*, 31 COLUM. L. REV. 617 (1931).

26. A discussion of fixtures is beyond the scope of this note. The Code provisions regarding fixtures are presently under study by the Permanent Editorial Board of the Uniform Commercial Code and are subject to change. *Review Committee Proposals for Change in UCC Provisions as to Fixtures*, 5 UCC Rep. Serv. 1133 (1968). The problem of fixtures is more one of definition than of description and location of the individual fixtures. The description requirement for fixtures, however, is generally the same as that for crops. See, Coogan, *Security Interests in Fixtures Under the Uniform Commercial Code*, 75 HARV. L. REV. 1319 (1962); Kripke, *Fixtures under the Uniform Commercial Code*, 64 COLUM. L. REV. 44 (1964).

*Consumer Goods*

In *In re Trumble*,<sup>27</sup> a financing statement, which described the collateral as "consumer goods," was held to have perfected a security interest in household goods, two rifles and a shotgun. The Federal District Court for the Western District of Michigan held that the description gave all the notice that is required by the UCC, served a commercially useful purpose and created no abuses which could not occur through other procedures allowed by the UCC.<sup>28</sup> An analysis of the opinion indicates a very liberal interpretation of the UCC's filing requirements.

Shortly after *Trumble*, the same court in *In re Dubman*<sup>29</sup> ruled that a financing statement, which described collateral by reference to the number and date of a previously filed security agreement and provided for a secured interest in the proceeds from such collateral, was an insufficient description of the property covered by that statement. The property covered under the prior filing was a used car and photographic equipment. The original statement contained no mention of "proceeds."<sup>30</sup> The court concluded that the description was not sufficient to include the proceeds obtained from a subsequent trade-in of the photographic equipment because the description insufficiently described the original collateral itself.<sup>31</sup> Apparently, the court believed that the description should be specific enough *to stick out upon the record*.<sup>32</sup> Even though the parties

27. 5 UCC Rep. Serv. 543 (W.D. Mich. 1968).

28. *Id.* at 546.

29. 5 UCC Rep. Serv. 910 (W.D. Mich. 1968).

30. A security interest may attach if the security agreement and financing statement are signed by both parties. See UNIFORM COMMERCIAL CODE § 9-102(1). The fact that proceeds were not secured in the original agreement should not prevent the parties from reaching a new agreement evidenced by their signatures. Therefore § 9-402(2) appears to be irrelevant to this case because it was signed by both parties.

31. 5 UCC Rep. Serv. 910, 914 (W.D. Mich. 1968). The court cited section 9-402(2) (b) of the UNIFORM COMMERCIAL CODE in support of *this* determination. See also *United States v. Atenna Sys. Inc.*, 251 F. Supp. 1013 (N.H. 1966) where a loan agreement, secured by "all furniture, fixtures, and equipment now owned or hereafter acquired by the borrower," was held to specifically identify collateral as required by the UCC. The agreement gave the secured party an interest in such furniture, fixtures and equipment. The bankrupt's drawings, technical data, bids, proposals and cost estimates, however, were considered to be intangibles rather than goods and therefore were not secured.

32. 5 UCC Rep. Serv. 910 (W.D. Mich. 1968). The court stated:

The bank has relied on the fact that the Code adopts a system of 'Notice Filing' and that sufficient information was set forth in the September statement to direct interested parties to inquiry which would have disclosed the Bank's interest in the photographic equipment. This is a good argument except that the same argument could be made as to any requirement for description in financing statements under the Code. While detailed descriptions have been eliminated under the Code, it still requires a statement indicating the types or describing the items of collateral.

*Id.* at 915.

intended to secure specific goods, and those goods could have been identified by reference to the previous filing statement, the description was deemed insufficient.

### *Equipment and Motor Vehicles*

Under pre-Code security devices, filing statements covering equipment and motor vehicles required very exact descriptions of the collateral, including the serial number of each of the secured articles.<sup>33</sup> The UCC and the Comments, however, have specifically dismissed this requirement.<sup>34</sup>

In *In re Bengtson*,<sup>35</sup> the Coca-Cola Bottling Company sold a cooler by conditional sale to the bankrupt. On Form UCC-1 in part four, the collateral was described as "(1) CAV. 80 \$300.00 Ser. 326147."<sup>36</sup> In holding the description sufficient, the court stated:

Obviously with a serial number it was an appliance of some sort sold by the Coca-Cola Bottling Co. The trade name of the article is presumably known to the individuals who trade with Coca-Cola Bottling Co. At any rate, the details could be easily ascertained by inquiry of the secured party and the appliance itself could be precisely identified by the serial number. No one could be "seriously misled" by the description.<sup>37</sup>

*Bengtson*, therefore, indicates that the description need not specifically describe the collateral or name it directly. Apparently the court felt that the important requirement is that the description mislead no one.

A more liberal interpretation of sufficiency is found in *In re Bowser*.<sup>38</sup> The bankrupt was a supermarket and the equipment to be covered as collateral was designated by the secured party's name. The court held that the filing of a conditional sales agreement as a financing statement was sufficient to perfect the seller's security interest, even though a separate sheet describing the equipment in detail was inadvertently omitted from the filed copies.<sup>39</sup> The court concluded that any party interested in the conditional sales agreement should be on notice that the schedule describing the equipment was omitted inadvertently, and that the desired information could be obtained by inquiry to the creditor.<sup>40</sup>

33. L. JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES, § 248 (6th ed. 1933).

34. UNIFORM COMMERCIAL CODE § 9-110, Comment.

35. 3 UCC Rep. Serv. 283 (N.D. Conn. 1965).

36. *Id.* See Appendix for form UCC 1.

37. 3 UCC Rep. Serv. 283, 288 (N.D. Conn. 1965).

38. 1 UCC Rep. Serv. 626 (W.D. Pa. 1961).

39. *Id.* at 627.

40. Notice of facts sufficient to prompt an inquiry concerning secured property capable of identification has been deemed a sufficient compliance in cases construing

The UCC's liberalization of the description requirement for motor vehicles is illustrated by *In re Kline*.<sup>41</sup> The bankrupt was a new and used car dealer, and the financing statement described the collateral as "motor vehicles."<sup>42</sup> Commenting on the sufficiency of this description the court stated:

It is not necessary that the property should be capable of identification solely from the description contained in the financing statement itself. This would appear to have been the intent of the drafters of the Code, as by sections 9-208. They provided a statutory procedure whereby the secured party, at the debtor's request, may be required to approve or correct a list of the collateral and a statement of the unpaid indebtedness. Accordingly, we hold that the designation "Motor Vehicles" utilized by Kline and Harrigan in their financing statement was a sufficient statement indicating the type of property covered.<sup>43</sup>

In *Girard Trust Corn Exchange Bank v. Warren Lepley Ford, Inc.*<sup>44</sup> the following financing statement was filed:

This financing statement covers the following types (or items) of property: (list) motor vehicles, tractors, trailers and their

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similar legislation. In *York Ice Mach. v. Kearney*, 344 Pa. 659, 662, 25 A.2d 179, 180 (1942) the court emphasized that "while of course, as Appellee contends, the statute must strictly be construed, it must also be construed with common sense."

41. 1 UCC Rep. Serv. 628 (E.D. Pa. 1956).

42. *Id.* at 630.

43. *Id.* at 632-33. UNIFORM COMMERCIAL CODE § 9-208:

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

44. 13 Pa. D. & C.2d 1194 (Pa. C.P. Philadelphia 1957).

equipment, appurtenances, appliances, accessories and replacement parts, financed by Girard Trust Corn Exchange Bank under its Wholesale Credit Plan.<sup>45</sup>

The court ruled that when the petitioner agreed to finance the automobiles under the installment plan contract rather than the wholesale credit plan contract, it lost its perfected security interest. The court reasoned that because the latter plan did not permit automobiles financed under it to be used as demonstrators, the demonstrator cars in question were outside the financing statement.<sup>46</sup> Thus, the financing statement was deemed to cover only those automobiles financed under the wholesale credit plan.

The *Girard* interpretation raises the question of whether a new financing statement is needed to cover the same type of collateral if different specifications for financing are used in a separate plan and contract. If a new financing statement were required it would appear that the Code requires transaction filing rather than notice filing. The Code, however, specifically requires notice filing.<sup>47</sup> Notice filing was specifically designed for the type of transaction involved in *Girard* and to avoid the result reached there. The purpose of notice filing is to put future creditors on notice that there *might* be a secured interest in the property described. It would appear that the UCC's requirement of a sufficient description of collateral was used in *Girard* as a device to defeat the security interest.

### Crops

A description of the real estate upon which the crops are growing or are to be grown must be included in the financing statement.<sup>48</sup> The property need not be described by government survey, by lots and blocks, or by meets and bounds if it can be located from the description given.<sup>49</sup> In the *Opinion of the Attorney General of Kentucky*,<sup>50</sup> the financing statement described the collateral "tobacco crops"<sup>51</sup> and described the real estate as "the farm of C.H. Jones in West Allen County near Claire."<sup>52</sup>

45. *Id.* at 1196.

46. For other automobile cases see *In re Esquire Produce Co.*, 5 UCC Rep. Serv. 257 (E.D. N.Y. 1968); *Bank of Utica v. Smith Richfield Springs Inc.*, 294 N.Y.S.2d 797 (Sup. Ct. 1968). See also Townsend, *The Case of the Mysterious Accessory*, 16 LAW & CONTEMP. PROB. 197 (1951); Welsh, *Security Interests in Motor Vehicles Under Section 9-302 of the UCC*, 37 U. CIN. L. REV. 265 (1968).

47. Transaction filing is the filing of a new financing statement every time a new item of collateral is secured. Notice filing is the filing of one financing statement covering all items of a specific type or kind whenever obtained. GILMORE, § 15.2, at 468.

48. UNIFORM COMMERCIAL CODE § 9-402(1).

49. OP. ATT'Y GEN. OF ILLINOIS, 1 UCC Rep. Serv. 660 (1962).

50. 1 UCC Rep. Serv. 679 (1960).

51. *Id.*

52. *Id.*

This description was deemed sufficient to identify the location of the crops.

A problem, however, is presented where the description of collateral becomes too specific. The financing statement in *Piffot State Bank v. Pollard Gin Co.*<sup>53</sup> described the collateral as :

Crops. All of the following crops to be planted or growing within one year from the date hereof on the lands hereinafter described: 7 acres of cotton and 53 acres of soybeans to be produced on the lands of Mary Gilbee; 4½ acres of cotton and 11 acres of soybeans to be produced on the lands of George Nixon; all of the above crops to be produced in Clay County, Arkansas, during the year 1965.<sup>54</sup>

The court held this description inadequate and stated that "a mortgage of a specified number of articles out of a larger number will not be allowed to prevail, unless it furnishes the data for separating the property intended to be mortgaged from the mass."<sup>55</sup> The description in the *Piffot* case in designating the kind of crop, the year, the name of the farmer, the county and the state appears to comply with the general identification requirements mentioned in the *Opinion of the Attorney General of Kentucky*. But, the parties here went further than required and limited their secured interest by the number of acres of crops covered. Had the description been less specific, the financing statement may have been held valid.

#### *Inventory and Accounts*

The UCC repeatedly refers to security interests in "inventory"<sup>56</sup> and defines the term as "all goods held or being prepared for sale."<sup>57</sup> "All goods held for sale" should be readily identifiable in the trade. To require enumeration of all types of articles handled would seem unreasonably burdensome and neither within the letter nor spirit of the UCC.<sup>58</sup> When collateral is described as "inventory" or "accounts receivable," courts have held that it is not necessary to preface them with the word "future."<sup>59</sup>

53. 243 Ark. 159, 419 S.W.2d 120 (1967).

54. *Id.* at 121.

55. *Id.* For details of agricultural financing see Coogan & May, *Crop Financing and Article 9* . . . , 22 U. MIAMI L. REV. 13 (1968); Hunt & Coates, *The Impact of the Secured Transaction Article of Commercial Practices with Respect to Agricultural Financing*, 16 LAW & CONTEMP. PROB. 165 (1951).

56. UNIFORM COMMERCIAL CODE §§ 9-103, 9-109, 9-302, 9-308, 9-312.

57. UNIFORM COMMERCIAL CODE § 9-109(4).

58. Thomson v. O. M. Scott Credit Corp., 28 Pa. C. & D.2d 85 (Pa. C.P. Chester 1962).

59. In re Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

A detailed description of the collateral in the case of accounts and inventory would require the filing of daily statements. The addition of the word "future" to "accounts receivable and inventory" would not seem to help an interested party in determining the status of the debtor. It should be clear that the creditor is concerned with tying up whatever is the current inventory and accounts receivable of the debtor. No reasonable searcher of the records would conclude that the secured party has a lien on only the past accounts and inventory of the debtor, especially where the debtor is in an active retail business.<sup>60</sup>

Great care should be taken in describing collateral with words that have special meaning in a trade. In *Annawan Mills, Inc. v. Northeastern Fibers Co.*,<sup>61</sup> a financing statement described collateral as "cotton waste and proceeds."<sup>62</sup> The secured items in question were "cotton linters."<sup>63</sup> An expert testified that "cotton waste" and "cotton linters" had two different meanings in commercial usage, "cotton waste" being a waste product from cotton mills and "cotton linters" being a by-product in the manufacture of oil from cotton seed.<sup>64</sup> The court, citing the UCC section 1-205(3), ruled that this description was insufficient to cover the items in question.<sup>65</sup>

#### *After-Acquired Property*

The UCC specifically provides that after-acquired property can be secured as collateral.<sup>66</sup> Courts, however, have differed with regard to the specificity of description necessary in the financing agreement to validate the security interest. In *Evans Products Co. v. Jergensen*,<sup>67</sup> a security agreement covering inventory, which included an after-acquired property clause, perfected a security interest by the filing of a financing statement which described the collateral as "inventory." The financing statement, however, did not specifically mention after-acquired property.<sup>68</sup> The court concluded that it was unnecessary for the entire agreement between

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60. *Id.* at 481.

61. 4 UCC Rep. Serv. 787 (Mass. App. 1963).

62. *Id.*

63. *Id.*

64. *Id.* at 118.

65. UNIFORM COMMERCIAL CODE § 1-205(3):

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

66. UNIFORM COMMERCIAL CODE § 9-204.

67. 245 Ore. 362, 421 P.2d 978 (1966).

68. *Id.* at 980.

the secured party and debtor to be put on public record and that the broad description of the collateral as "inventory" in the financing statement was sufficient to warn creditors that after-acquired property might well be included.<sup>69</sup>

The court's interpretation of sufficiency of description in *Evans* appears liberal when compared with *Mammoth Cave Production Credit Association v. York*.<sup>70</sup> In the latter case a security agreement, filed as a financing statement, provided for a security interest in "all farm equipment"<sup>71</sup> presently owned by the debtor and "all property similar to that listed above"<sup>72</sup> thereafter acquired by him. The court ruled that this description of collateral was inadequate to show that the agreement between the parties was intended to include as collateral a tractor or other large equipment later acquired by the debtor.<sup>73</sup> The court stated that while a liberal construction should be given to terms used in filing statements,

[t]he description must still identify the collateral so that it can be distinguished and separated from property not covered. The very purpose of description is to separate this property from all others of like kind . . . . The description is studiously designed to cover everything and describe nothing.<sup>74</sup>

The court's requirement in *Mammoth Cave*, that the record *alone* be sufficient to put future creditors or purchasers on notice of the security interest, would appear inconsistent with the mandate of the UCC.<sup>75</sup> UCC section 9-110 merely requires a description by type or kind, not a description of items *within* a particular type or kind. Therefore, it appears that the decision in *Mammoth Cave* is, at best, questionable in the light of the UCC.

As an alternative approach, the test of sufficiency could be whether the description is adequate to put prospective creditors or purchasers on notice that further inquiry is necessary to determine whether an item in which he is interested is subject to a security interest of the secured party mentioned in the financing statement.<sup>76</sup> The notice required, by a

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69. *Id.* at 981.

70. 5 UCC Rep. Serv. 11 (Ky. Ct. App. 1968).

71. *Id.* at 13.

72. *Id.*

73. *Id.* at 16.

74. *Id.*

75. See note 1 *supra* and accompanying text. Other after-acquired property cases include: *In re Taylored Prods. Inc.*, 5 UCC Rep. Serv. 286 (W.D. Mich. 1968); *In re Goodfreind*, 2 UCC Rep. Serv. 160 (E.D. Pa. 1964); *National Cash Register Co. v. Firestone & Co.*, 346 Mass. 255, 191 N.E.2d 471 (1963).

76. *In re Bloomingdale Milling Co.*, 4 UCC Rep. Serv. 256 (W.D. Mich. 1966).

notice filing statute, even where great specificity is required, can never be anything more than a starting point for further investigations.<sup>77</sup>

COMPARISON OF THE CODE'S DESCRIPTION REQUIREMENT  
WITH OTHER FILING REQUIREMENTS

The decisions under the UCC have shown that financing statements may be extremely sketchy. For example, they may only contain the names, addresses and signatures of the parties, and may either designate the collateral by type or by item.<sup>78</sup> They need not be as informative as filings under many of the accounts receivable statutes, which require the statement that the debtor has assigned or intends to assign certain accounts;<sup>79</sup> nor as informative as filings under the factor's lien acts, which must be based on an existing agreement.<sup>80</sup> The UCC description requirement, therefore, seems not only inexact but vague upon first reading.

In comparison, however, the real property description requirements, which form the historical basis for personal property description requirements, are even less precise: In analyzing real property requirements regarding sufficiency of description it becomes obvious that no guidelines were provided to aid the courts in determining the sufficiency of a property description. A typical real property description must generally contain "a description from which a *competent person* can locate the land intended to be conveyed and can distinguish it from all other land."<sup>81</sup>

The "competent person" standard would seem highly subjective, since a reliable norm cannot be established by judicial interpretation. The UCC's "type or kind" requirement seems clear by comparison. In the numerous decades of recordation of real property conveyances, few cases have dealt with the "sufficiency" of real estate description. The small number of cases that have struck down descriptions as "insufficient" seem to have done so only where the described property could not possibly be ascertained from the recorded description.<sup>82</sup> In contrast, many cases have arisen under the UCC where unsecured creditors have contested the "adequacy" of collateral description; even though the property could be readily identified, too often these creditors have succeeded.

Furthermore, not only does the description requirement for a real property conveyance lack specificity, but it is also interpreted differently

77. GILMORE, § 15.2, 470.

78. UNIFORM COMMERCIAL CODE § 9-204(1).

79. IOWA CODE § 539.7 (1958).

80. OHIO REV. CODE ANN. § 1311.1(c) (1954) (requiring a statement of the maximum length of the period during which advances may be made).

81. 4 AMERICAN LAW OF PROPERTY § 18.34, 710 (A.J. Casner ed. 1958) (emphasis added).

82. See *Carrow v. Davis*, 248 N.C. 740, 105 S.E.2d 60 (1958); *City of Atlanta v. Atlanta Trailer City Trailer Park*, 213 Ga. 825, 102 S.E.2d 23 (1958).

from state to state. The customary description by adjoining<sup>83</sup> in the Eastern states and in portions of the Southern states are rejected by most other states.<sup>84</sup> There is a growing feeling that descriptions by state and federal rectangular surveys<sup>85</sup> are inadequate because the location of the property is ascertained largely by reference to artificial monuments whose existence are becoming more theoretical than actual.<sup>86</sup> Judicial interpretation of these real property description requirements, however, has been quite liberal, and courts have been reluctant to invalidate real estate transactions for vagueness of description.<sup>87</sup> It is submitted that any "insufficiency" of description in a personal property financing statement should likewise be inadequate to strike down the security interest.

#### SHOULD THE DESCRIPTION REQUIREMENT BE ELIMINATED?

To eliminate the arbitrary court regulation of sufficiency, it is proposed that the requirement of a description of collateral in the *financing statement* be eliminated. A description of collateral would still be required in the *security agreement* so that interested parties would know the extent of secured collateral.

The parties affected by a security agreement generally seek different objectives in a secured transaction. The secured party not only wishes the broadest possible description of collateral, but also endeavors to provide adequate specificity to satisfy the vague and oftentimes subjective requirements of "sufficiency."<sup>88</sup> On the other hand, the debtor would probably seek a narrow and more specific description so that all of his property would not be clouded by one agreement and would allow greater flexibility in obtaining future loans. Unsecured or future creditors would benefit from highly specific collateral description requirements, since such requirements facilitate a search of the records for particular secured items.<sup>89</sup> If the search indicates that the item in which the unsecured or future creditor is interested is already attached, recent court interpretations of "sufficiency" permit these creditors to seek loopholes in the description and promote attempts to defeat security interests.

The UCC's requirement for description is a compromise between

83. Description by adjoining is a method of describing property by its relation to adjoining lots.

84. 4 AMERICAN LAW OF PROPERTY, *supra* note 81.

85. Rectangular surveys are surveys in the form of a grid. Property location is measured by its distance from grid corner points. For a description of the different types of rectangular surveys and the type used by each state, see BOUCHARD & MOFFIT, SURVEYING, 311-14 (1963).

86. 4 AMERICAN LAW OF PROPERTY, *supra* note 81.

87. *Id.*

88. GILMORE, § 15.1, at 464.

89. *Id.*

these competing positions.<sup>90</sup> It requires only a description by type or kind and implies that the necessary element is a warning to future creditors that a debtor and creditor *might* have entered into a security agreement by which *some* of the debtor's goods have been secured. Determination of the particulars of the collateral would thus be left for future investigation by the unsecured party.<sup>91</sup>

The compromise, however, has proven inadequate. The decisions indicate the lack of a uniform and reliable standard for judging sufficiency. Confusion and ambiguity reign both in the courts and in commercial practice, and parties acting in good faith are left to the whimsical application of an inherently subjective standard. Change is needed.

The UCC's filing requirements are a liberalization of the common law, the purpose of which is to promote commerce and ease of commercial transactions.<sup>92</sup> The first step in the proposed change would be the elimination of the description requirement in the financing statement. The requirement, however, would be retained in the security agreement.<sup>93</sup> Such an approach would serve to encourage the use of commercially useful and legally sound security devices, as well as to discourage needless litigation instituted in a sense of desperation and pursued in bad faith. Since the language of the UCC presently permits description by type or kind, great specificity would appear unnecessary. Judicial interpretation of UCC sections 9-110 and 9-402(1), however, has exemplified the problem of drawing a nebulous line between a "sufficient" and "insufficient" description.

It is submitted that by eliminating the description requirement in the financing statement, the same objective intended by the enactment of

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90. This compromise may have been politically necessary for the widespread acceptance of the Code. The criticism of the Code before its adoption by the states was that it would revolutionize security law. The Code, however, has not revolutionized security law, which likewise may have been the result of political practicality. Now that the Code has been adopted in 49 of the 50 states, the Code's description requirements should be amended in the interest of commercial certainty. See HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS 293 (1968).

91. The primary object of filing is to provide the searcher of the record with information sufficient to put a reasonable man on notice that further inquiry is necessary to ascertain the particulars of the transaction. This information is to be obtained from the records which are indexed according to the names of possible debtors and held for public inspection. UNIFORM COMMERCIAL CODE § 9-403(4).

92. UNIFORM COMMERCIAL CODE § 1-102.

93. The courts should not transfer the strict requirement of sufficiency from the financing statement to the security agreement. The requirement should be interpreted liberally and should include all the property that the debtor and the secured party intended to be covered. The description in the security agreement will of necessity be more specific because it is designed to cover only that property which is immediately secured.

the UCC would be achieved—unsecured parties would be on notice that some of the debtor's property was secured.

The mere fact that the proposal would not require a description of the collateral in the financing statement does not mean that the debtor would not require it or that the secured party would not volunteer it. Since there is usually a limited number of financiers with a community of interest, it should not be difficult to arrive at an industry-wide understanding.<sup>94</sup> The debtor who persists in filing broad financing statements might find that suppliers and other creditors are unwilling to risk doing business with him. The secured party who persisted in demanding too wide a coverage might lose his borrowers.<sup>95</sup>

Descriptions under the proposed change would provide an identification as was provided under the UCC.<sup>96</sup> Article 9 makes it possible for a lender to take all the debtor's assets as security,<sup>97</sup> and there is a temptation to do so on the principle of the "more security, the better."<sup>98</sup> Yet, it is just as unwise to take too much collateral as to take too little. It would appear to be in the lender's self-interest to leave his debtor with as many unencumbered assets as possible, so that the debtor's credit standing would not be unnecessarily impaired.<sup>99</sup> Both security agreements and financing statements should cover only those types of collateral upon which the lender depends.<sup>100</sup> This principle applies equally under this new proposal. The only real change would be that the pitfall of court regulation of "sufficiency" would be avoided.

The purpose of filing under the UCC is to give future creditors a means to determine whether goods are secured, but the previously men-

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94. Each file searcher should refuse to enter into the proposed transaction unless the debtor and the earlier secured creditor first agree to limit the scope of their financing statement or to enter into a satisfactory agreement designating whose interest is superior. Coogan, *Public Notice Under the Uniform Commercial Code and Other Recent Chattel Security Laws, Including "Notice Filing,"* 47 IOWA L. REV. 289, 338 (1962).

95. Coogan, *Article 9 of the Uniform Commercial Code: Priorities Among Secured Creditors and the "Floating Lien,"* 72 HARV. L. REV. 835, 875 (1959).

96. It might be said that there are some financing statements filed from which a future creditor can learn from the description given that the property in which he is interested is not secured. GILMORE, § 15.2, at 470. The search is therefore completed by scrutinizing the record alone, whereas, without any description, the searcher would have to obtain information directly from the debtor or the secured party. This complaint, however, has little or no merit because the secured party under the present Code is not required to be that precise in his description. Thus, in either situation, the future creditor must look beyond the record for the specificity of collateral. See Everett, *Securing Security*, 16 LAW & CONTEMP. PROB. 49 (1951).

97. GILMORE, § 15.3, at 479.

98. Under the pre-Code law of Massachusetts, which was probably typical of most states, the business debtor could tie up all of the present and future assets of one creditor in order to secure both existing debts and debts arising in the future. Coogan, *supra* note 95, at 850.

99. GILMORE, § 15.3, at 479.

100. *Id.*

tioned cases indicate that many courts have gone beyond this standard. In *Dubman*,<sup>101</sup> the court struck down a financing statement because the specific goods were not listed on the face of the record. In *Girard Trust*,<sup>102</sup> the court nullified the financing statement because it mentioned the "Wholesale Credit Plan," thus unnecessarily narrowing the kind of security intended to be secured. The secured interest in *Piffot*<sup>103</sup> was destroyed because the financing statement was too specific in limiting the amount of collateral. In light of these examples of judicial arbitrariness, court regulation should be abandoned in order to achieve commercial reliability.

These cases raise the question of whether a purpose is served by *requiring* a specific description if the courts continue to strike down valid security interests that are too specific. Determination of sufficiency is arbitrary; yet, courts void secured interests where parties attempt to follow the mandate of the law with specificity.

It should be unnecessary in obtaining a sufficient description of collateral to invalidate secured interests merely because precise descriptions are not given. The courts should not require specificity arbitrarily. Rather, the sufficiency of a given description should be left to the determination of the parties to the secured transaction. They are familiar with the terms of their transactions and can determine the specificity required.<sup>104</sup> The parties themselves are harmed in either case. If the terms are too general, the debtor might not be able to find other creditors, and might possibly face bankruptcy. With a defunct business, the secured party's collateral would depreciate in value.

#### CONCLUSION

The previously discussed cases serve to illustrate the dynamic weakness of the UCC's filing requirements for financing statements. Much of the liberal spirit of the UCC is lost through judicial interpretation of the "sufficiency" of "specificity" in description. Creditors, not the parties to the original agreement, who lack other legal basis for attacking the agreement, are frequently able to defeat the entire security interest upon the vague and technical theory of lack of sufficiency. Diverse and

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101. See notes 26-29 *supra* and accompanying text.

102. See notes 41-43 *supra* and accompanying text.

103. See notes 48-50 *supra* and accompanying text.

104. In Massachusetts, a sample survey of the findings received by the Secretary of State's office on September 27, 1961, indicated that the vast majority of financiers were giving specific descriptions of the collateral covered, usually including serial numbers. There were some general filings, such as all "furniture and fixtures located at . . ." or all "accounts receivable"; however, the vast majority of filings are more specific, such as "one 1961 Chevrolet sedan, engine No. 1234567." Coogan, *supra* note 94, at 332.

arbitrary judicial interpretations permeate the field of secured transactions with uncertainty and danger. This atmosphere is unlikely to encourage the creation and use of security interests as commercially desirable devices.

As this note suggests, an alternative to judicial regulation is available. The suggestion is not concerned with the increasing or decreasing specificity in the financing statement. Indeed, there is a need for a more liberal interpretation of the description requirement as well as ending the judicial regulation of "sufficiency." "[T]here are almost no problems under the present priority rules which cannot be avoided through the intelligent practice of the debtors and creditors."<sup>105</sup>

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105. The parties should continue to file the actual security agreement, especially a chattel mortgage or conditional sale agreement, which typically covers specific collateral and specific debts. The continued use of the trust-receipt pattern of financing would eliminate many problems in industries where such a specific purchase-money lien covering a specific advance has been successfully used in the past. Coogan, *supra* note 95, at 874-75.

DESCRIPTION OF COLLATERAL

VALPARAISO UNIVERSITY LAW REVIEW APPENDIX A

This Statement is presented to a filing officer for filing pursuant to the Uniform Commercial Code.	Maturity date, if any:	File No.....
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1. Debtor—name and address CARPETS, INC. 123 Thames St. Philadelphia, Pa.	2. Secured Party—name and address GIRARD TRUST BANK Broad and Chestnut Streets Philadelphia, Pa. 19101
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3. File number of the original Financing Statement

#..... Filed in the office of the..... at .....

#..... Filed in the office of the..... at .....

#..... Filed in the office of the..... at .....

4.  FINANCING STATEMENT  
 This Financing Statement covers the following types (or items) of property: (Describe)  
 Accounts and contract rights.  
 Inventory, including carpets and other floor coverings.

- a.  (If collateral is crops) The above described crops are growing or are to be grown on: (describe real estate)
- b.  (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to: (describe real estate)
- c.  (If proceeds of collateral are claimed) Proceeds of the collateral are also covered.
- d.  (If products of collateral are claimed) Products of the collateral are also covered.

5.  CONTINUATION  
 The Secured Party certifies that the original Financing Statement is still effective and should be continued in accordance with the statute.

6.  RELEASE OF COLLATERAL  
 The Secured Party hereby releases the types or items of property listed in paragraph 10 below from the above original Financing Statement.

7.  AMENDMENT  
 Item(s) ..... of the original Financing Statement is (are) hereby amended to read as indicated in paragraph 10 below.

8.  TERMINATION  
 The Secured Party certifies that it no longer claims a security interest under the above original Financing Statement.

- 9.
- 10.

CARPETS, INC. By: Nicholas Nap, Pres. By: ..... (SIGNATURE OF DEBTOR)	GIRARD TRUST BANK Secured Party By: A. Specimen
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ALL INFORMATION TO BE TYPEWRITTEN OR PRINTED IN INK.