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NOTICE AND FILING UNDER ARTICLE 9¹

ROBERT I. DONNELLAN*

The stated aim of Article 9 of the Uniform Commercial Code is 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 greater certainty.² This laudable objective can be achieved under Article 9 because it permits the use of notice filing and provides for certainty and convenience in the mechanics of filing and recording.³

The main purpose of any filing system for security transactions is to give notice to others. Too often this purpose has been overlooked by the courts and lawyers in their slavish attention to details such as unnecessary minutia in describing collateral and the requirements for acknowledgments and affidavits. These requirements, which are a part of present security statutes, do not seem to have been successful as a deterrent to fraud. On the contrary, their principal effect has been to penalize good faith mortgagees who have inadvertently failed to comply with the statutory niceties.⁴ Article 9 seeks to restore perspective in this area. It has abandoned the requirements of acknowledgments and affidavits and requires only notice filing, although it does permit the use of the traditional chattel mortgage—conditional sale type filing in those instances where it is preferred by the parties or is more practicable. The tool which is made available for this purpose is the financing statement.⁵

I. THE FINANCING STATEMENT

The financing statement is an abbreviated or sketchy instrument. It is sufficient if it is signed by both parties, gives their addresses and indicates

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1. §§ 400.9-101-9-507, RSMo 1963 Supp.

2. Comment to § 9-101, UNIFORM COMMERCIAL CODE, 1962 OFFICIAL TEXT WITH COMMENTS, published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws [hereinafter cited UCC (1962)] with a section number, *e.g.*, UCC § 9-101 (1962)1.

3. As this paper will demonstrate, filing a copy of a financing statement in a public office is the usual method to be followed in giving public notice of a security interest but recording is the sole method (or is required in addition to filing) when the collateral consists of fixtures, crops, railroad and public utility property, or a combination of real and personal property.

4. Comment to UCC § 9-402.

5. § 400.9-402, RSMo 1963 Supp.

the types of collateral covered. As such, it gives notice that the debtor has given or within the next five years may give to the secured party a security interest in some or all of the *type* of collateral indicated which is then owned or may be acquired by the debtor.⁶ It may be filed before the parties actually make a security agreement regarding specific collateral or before a debt exists between them. The only exception to these broad provisions is the requirement that the financing statement must also describe the real estate to which the collateral relates if it is crops or is goods which are or may become fixtures.⁷ However, any description of personal property, crops or goods which are or are to become fixtures which are collateral, is sufficient whether or not it is specific if it reasonably identifies what is described.⁸ Such notice filing is not new to Missouri security transactions. In certain respects it is quite similar to the notice filed under the assignment of accounts receivable statute adopted in 1943⁹ and Factors' Lien Act adopted in 1945.¹⁰

The parties to a secured transaction are not limited by Article 9 to the use of the sketchy financing statement. If the parties prefer, they may file a copy of their security agreement if it contains the information required of a financing statement and is signed by both parties.¹¹ A security agreement is simply one which creates or provides for a security interest.¹² Today's chattel mortgage or conditional sale contract qualifies as a security agreement and would be sufficient to perfect a security interest as a financing statement if it were signed by the mortgagee or vendor and contained the addresses of both parties. Undoubtedly, after Article 9 becomes effective the security agreement will be used almost exclusively as the security device in the usual sale of consumer goods. On the other hand, business enterprises will want to use the financing statement to give public notice of their secured transactions when they expect to make more than one agreement over a period of time regarding the type of collateral indicated in the financing statement, or when they prefer not to divulge to the world through the media of public records the terms of their security agreements. Although secrecy is afforded, it is possible for other parties to obtain information regarding such security transactions. Under the scheme of Article 9 any creditor or other party who wishes to inquire as to the status of a debtor's

6. § 400.9-402(1), RSMo 1963 Supp.

7. § 400.9-402(3), RSMo 1963 Supp.

8. § 400.9-110, RSMo 1963 Supp.

9. §§ 410.010-.060, RSMo 1959.

10. §§ 430.260-.320, RSMo 1959.

11. § 400.9-402(1), RSMo 1963 Supp.

12. § 400.9-105(h), RSMo 1963 Supp.

assets and who finds only a financing statement on file, can probably obtain the specific information he wants by contacting the secured party whose address appears on the financing statement. If the secured party fails to cooperate, the debtor may request the information and the secured party is required to comply or he may be held liable for any loss caused to the debtor for his failure to do so.¹³

II. METHODS OF GIVING NOTICE OF A SECURITY INTEREST

Article 9 provides that public notice of a security interest may be given by filing a financing statement,¹⁴ by possession of the collateral by the secured party,¹⁵ or by notation of the security interest on a certificate of title if provided by other Missouri or federal statutes.¹⁶ The most significant of these three methods is, of course, filing. Possession, although its use is essential in the case of certain intangibles, instruments and documents, has limited application to tangible personal property. At least for the time being the method of giving notice of a security interest by noting the same on a certificate of title will have limited application in Missouri. The current statute requiring the county recorder of deeds to note a chattel mortgage on the certificate of title to a motor vehicle¹⁷ which would be appropriate for the provisions of Article 9,¹⁸ will be repealed with the enactment of the Code.¹⁹ The type of filing required to perfect a security interest in a motor vehicle is discussed below.

III. PERFECTING A SECURITY INTEREST

Having considered the two general types of financing statements that may be filed—the brief notice type and the traditional chattel mortgage-conditional sale type—and the three methods available for giving notice of a security interest—filing, possession and notation on title certificates—their use in perfecting a security interest should be examined. A security interest

13. § 400.9-208, RSMo 1963 Supp. These provisions have been criticized as being weak and inadequate. Even if the secured party answers the debtor's inquiry, there is nothing to protect the second secured party from subordination if the first secured party takes a later security interest which would be perfected by the earlier filing. An estoppel certificate or other form of agreement has been suggested as a remedy. Also, only the debtor can force the information from the secured party. Absent the cooperation of the secured party, a creditor could not obtain any information. See COOGAN, SECURED TRANSACTIONS 528 (1963).

14. § 400.9-302, RSMo 1963 Supp.

15. § 400.9-305, RSMo 1963 Supp.

16. § 400.9-302(3), RSMo 1963 Supp.

17. § 443.480, RSMo 1959.

18. §§ 400.9-302(3)-9-302(4), RSMo 1963 Supp.

19. Mo. Laws 1963, at 637, § 10-102.

is perfected when it has attached²⁰ and a financing statement has been filed, the secured party or some one for him has possession of the collateral, or notation of the security interest has been made on the certificate of title to the collateral.²¹ The general rule for filing provides that a financing statement must be filed to perfect all security interests.²² Following this general rule are several significant exceptions.

A. Possession or Common Law Pledge

The first exception to filing as the only means of perfecting a security interest is possession. As at common law, Article 9 does not require filing when the secured party has possession of the collateral in a pledge transaction.²³ Thus, a security interest in letters of credit, goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral.²⁴ Actually, a security interest in instruments²⁵ (other than instruments which constitute a part of chattel paper) can be perfected only by the secured party taking possession of such paper²⁶ except in cases of short duration as explained below under "temporary perfection." The necessity of possession to perfect a security interest in instruments is clearer when one considers that Article 9 does not limit the rights of a holder in due course, the holder of a negotiable document, or a bona fide purchaser of securities such as stocks, bonds and debentures. Such parties take priority over an earlier security interest in such property even though it has been perfected by filing.²⁷

Although Article 9 provides that a security interest in chattel paper (for example, a chattel mortgage and the note it secures) and negotiable documents (a negotiable bill of lading or warehouse receipt) may be perfected by filing,²⁸ the secured party faces certain risks in merely giving notice of his interest by filing a financing statement which he could avoid by taking possession of such paper. As an illustration, consider the secured party who only files as to a chattel mortgage and the note it secures compared with the debtor who retains possession of the paper and sells it to a

20. "A security interest cannot attach until there is agreement (subsection (3) of Section 400.1-201) that it attach and value is given and the debtor has rights in the collateral." § 400.9-204(1), RSMo 1963 Supp.

21. § 400.9-303(1), RSMo 1963 Supp.

22. § 400.9-302, RSMo 1963 Supp.

23. § 400.9-302(1)(a), RSMo 1963 Supp.

24. § 400.9-305, RSMo 1963 Supp.

25. Generally speaking, "instrument" means a negotiable instrument or a security such as stocks, bonds and debentures. § 400.9-105(1)(g), RSMo 1963 Supp.

26. § 400.9-304(1), RSMo 1963 Supp.

27. § 400.9-309, RSMo 1963 Supp.

28. § 400.9-304(1), RSMo 1963 Supp.

“buyer in ordinary course of business.”²⁹ Such a purchaser takes priority over the first creditor who only filed a financing statement.³⁰ Likewise, if the debtor should sell the note to a holder in due course, such buyer takes priority over the interest of the secured party who merely filed.³¹ Where the creditor takes possession of the chattel paper, he avoids these risks.

B. Temporary Perfection

The second exception to filing as the sole means of perfecting a security interest is what some writers refer to as “temporary perfection.” It relates only to instruments, documents and proceeds and has very limited duration although such perfection is possible not only without filing but with the debtor in possession of the collateral.³² The concept on which this exception is based has been borrowed from the Uniform Trust Receipts Act³³ which has never applied to Missouri secured transactions. Under this exception Article 9 provides for a twenty-one day perfection of security interests in instruments or negotiable documents without filing or delivery of possession where the security interests are in instruments or documents and are created for new value under a written agreement.³⁴ Also, a temporary perfection is provided where a secured party who already has perfected a security interest turns over such collateral to the debtor for the limited purposes described in the Code.³⁵ An example would be a bank which has acquired a bill of lading by honoring drafts drawn under a letter of credit and subsequently turns the bill of lading over to its customer for the purpose of unloading the goods or storing them or some other limited purpose. The period of twenty-one days has been chosen to conform to the provisions of the Bankruptcy Act.³⁶

Article 9 also provides for a temporary perfection of a security interest in proceeds. “Proceeds” includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of.³⁷ Most secured parties will avail themselves of a security interest in proceeds merely by ex-

29. “‘Buyer in ordinary course of business’ means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind” § 400.1-201(9), RSMo 1963 Supp.

30. § 400.9-308, RSMo 1963 Supp.

31. § 400.9-309, RSMo 1963 Supp.

32. § 400.9-302(1)(b), RSMo 1963 Supp.

33. UNIFORM TRUST RECEIPTS ACT §§ 8(1), 10(c).

34. § 400.9-304(4), RSMo 1963 Supp.

35. § 400.9-304(5), RSMo 1963 Supp.

36. 52 STAT. 869 (1938), 11 U.S.C. § 96 (1958).

37. § 400.9-306, RSMo 1963 Supp.

pressly claiming it in the filed financing statement covering the collateral.³⁸ However, if a secured party fails to do so, he has a security interest in the identifiable proceeds created from the debtor's disposition of the collateral for a period of ten days following their creation.³⁹ If before the expiration of that period the secured party files a financing statement claiming a security interest in the proceeds, his interest continues perfected.

In any event, a security interest which has been temporarily perfected under these provisions ceases to be perfected at the expiration of the temporary period unless action is taken by the secured party to perfect it.⁴⁰

C. Purchase Money Security Interest

The principal exemption from the requirements for filing applies where the debtor is a consumer or the goods are farm equipment having a purchase price not in excess of \$2,500.00. A purchase money security interest in such property, except where it consists of licensed motor vehicles or fixtures, is automatically given *some* protection by Article 9 without either filing or possession.⁴¹ Filing is required, however, to perfect a purchase money security interest where the collateral is a licensed motor vehicle or a fixture. This exemption from filing follows the pre-code rules of those states which exempt the conditional sale contract or bailment lease of consumer goods from the requirements of filing.

The secured party who elects to perfect a purchase money security interest in such property without filing takes considerable risk. For example, if after taking possession the debtor sells the collateral in a noncommercial transaction, that is, to another consumer, the buyer takes the property free of the security interest. This risk results from the rule that a buyer of such collateral (consumer goods and "inexpensive" farm equipment), who buys for his own personal, family or household purposes or his own farming operations, takes the property free of an earlier security interest if he buys without knowledge of it and for value unless prior to the purchase the secured party has filed a financing statement.⁴² A retailer, bank, farm implement dealer or other party financing the purchase of such collateral can eliminate this risk merely by requiring and filing a financing statement or security agreement at the time the sale is made. Regardless of the risk involved where certain resales are involved, this exception to

38. § 400.9-306(3)(a), RSMo 1963 Supp.

39. § 400.9-306(3)(b), RSMo 1963 Supp.

40. §§ 400.9-304(6), 9-306(3), RSMo 1963 Supp.

41. §§ 400.9-302(1)(c), 9-302(1)(d), RSMo 1963 Supp.

42. § 400.9-307(2), RSMo 1963 Supp.

filing as a means of perfection is important since the debtor's sale of the property to any other type of buyer or the creation of any subsequent security interests would be subject to the purchase money security interest even though it has not been perfected by filing.⁴³

D. *Accounts and Contract Rights*

Physical possession of the collateral by the secured party is not possible where it consists of such intangibles as accounts and contract rights. Filing is not only required by Article 9 to perfect a security interest in such property but it is the only feasible way of giving notice of a security interest in such property. It should be observed that Article 9 applies to sales of accounts or contract rights as well as to transfers of such intangibles for security.⁴⁴ The filing requirements of Article 9 must be followed in both types of transactions. As an exception, however, filing is not required where the accounts or contract rights do not alone or in conjunction with other assignments to the same assignee transfer a significant part of such property of the assignor.⁴⁵ Any party who regularly purchases or takes assignments of such property should file. The purpose of the exemption is to save from *ex post facto* invalidation casual or isolated assignments.

E. *Collection Items and Sales*

A further exception to the rule requiring filing in order to perfect a security interest in collateral concerns items held by a collecting bank in which the bank has a security interest.⁴⁶ Also, security interests which arise under Article 2 of the Code on sales are exempt from filing. Such security interests terminate when the purchaser-debtor obtains possession of the collateral.⁴⁷

F. *Security Interest Assigned as Security*

The sale of a security interest is specifically covered in the Code.⁴⁸ If such interest has been perfected, no filing is required to continue its perfected status against the creditors of and transferees from the debtor. On the other hand, by implication, filing is required where the secured party assigns the security interest as security. In other words, the assignee

43. A chattel mortgage on farm machinery which sold for less than \$2,500 was a purchase money security interest under the Arkansas Uniform Commercial Code so that the mortgagee prevailed over a subsequent creditor who filed a financing statement and security agreement before the mortgage was filed. *Lonoke Prod. Credit Ass'n. v. Bohannon*, 379 S.W.2d 17 (Ark. 1964).

44. § 400.9-102(1)(b), RSMo 1963 Supp.

45. § 400.9-302(1)(e), RSMo 1963 Supp.

46. §§ 400.9-302(1)(f), .A-208, RSMo 1963 Supp.

47. §§ 400.9-302(1)(f), .9-113, RSMo 1963 Supp.

48. § 400.9-302.2, RSMo 1963 Supp.

who receives the security interest as security must file to perfect his interest in order to be protected from the assignor's transferees and creditors. In this connection it should be recalled that a sale of accounts, contract rights or chattel paper is subject to Article 9 and the interest of the buyer must be perfected by filing.⁴⁹

G. Property Subject to Other Filing Systems

Article 9 exempts from its filing provisions certain secured transactions for which an adequate filing system has been set up under federal statutes or other Missouri statutes.⁵⁰ Where such a filing system exists, perfection of a relevant security interest can be had only by complying with the statute which provides for the system. Filing such a security interest under Article 9 is not a permissible alternative.⁵¹ Examples of the type of collateral which are subject to the filing provisions of a federal statute are copyrights⁵² and aircraft.⁵³

A security interest in a motor vehicle which is not inventory held for sale is exempt from the filing requirements of Article 9 if a state statute provides that a notation of such security interest can be indicated by a public official on the certificate of title to such property. As noted above, Missouri currently has such a statute,⁵⁴ but it is repealed as of the effective date of the code.⁵⁵ Unless new legislation is enacted by the General Assembly a security interest in a motor vehicle may be perfected by filing only by complying with the filing provisions of Article 9.⁵⁶ It should be noted, however, that such new legislation would exempt from filing under Article 9 only security interests in motor vehicles which are not inventory held for sale. Security interests in motor vehicles which are so held must be filed under Article 9.

H. Railroad and Public Utility Property

The filing provisions of Article 9 do not apply to a mortgage security interest in or a mortgage of any property of a railroad or public utility.⁵⁷

49. § 400.9-113, RSMo 1963 Supp.

50. § 400.9-302(3), RSMo 1963 Supp.

51. § 400.9-302(4), RSMo 1963 Supp.

52. 17 U.S.C. §§ 28, 30 (1958).

53. 72 STAT. 772 (1958), 49 U.S.C. § 1403 (1958).

54. § 443.480, RSMo 1959.

55. Mo. Laws 1963, at 637, § 10-102.

56. Several states have adopted the UNIFORM MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE AND ANTITHEFT ACT which comprehensively and uniformly provides for the registration of motor vehicles and the notation of security interests on certificates of title thereto.

57. § 400.9-302(5), RSMo 1963 Supp. A "public utility" is one defined in the Public Service Commission Law, § 386.020, RSMo 1959.

Mortgages of railroads or utilities which include real estate must be *recorded* in the county where the real estate is situated and if they include any type of personal property they must be *filed* in the office of the Secretary of State. In those instances where recording in a number of counties is necessary, liberal use of true copies is permitted.

The Uniform Commercial Code does not contain such provisions. Apparently, Missouri is the only state which has adopted special filing provisions for railroad and public utility property. It is believed that they correct a serious weakness in the Code.⁵⁸ The amendment adopted by Missouri is similar to legislation which has been in effect in Ohio for many years.⁵⁹

IV. FILING

A. *Where to File*

The official text of Article 9 of the Uniform Commercial Code does not prescribe a mandatory set of filing rules for financing statements. It contains a set of three alternative rules which allow for local preferences and variations from state to state in filing mechanics and in the places where legal documents are filed. Missouri has chosen the third alternative which is a combination of local and central filing.⁶⁰ These provisions are set out in Part 4 of Article 9 and are very clearly and concisely stated. First, the collateral is broken down into three logical groups: (1) farm related collateral and consumer goods, (2) fixtures and (3) all other types of property. Second, the groups are further divided or qualified on a location basis—the place of residence of the debtor, the situs of the real property to which the collateral relates and the place of the debtor's business. Thus, (1) if the collateral is farm related or consumer goods, the secured party must file his financing statement in the county where the debtor resides and if he is a nonresident, where the collateral is kept. If the collateral is crops, the secured party must also file in the county where the field is located, and (2) If the collateral is fixtures or goods which are to become fixtures, the secured party must file in the office where a mortgage on the related real estate would be recorded.⁶¹ The Code does not attempt to define fix-

58. See Comment, *Uniform Commercial Code Article 9 Filing Procedures For Railroad, Utility, and Other Corporate Debtors: Some Suggestions*, 62 MICH. L. REV. 865 (1964) and see generally Adkins & Billyou, *Current Developments in Railroad Equipment Financing*, 12 BUS. LAW 207 (1957).

59. OHIO REV. CODE ANN. § 1701.66 (Supp. 1962).

60. § 400.9-401, RSMo 1963 Supp.

61. Use of the term "office" is particularly appropriate where a county has more than one office where real estate mortgages may be filed. See § 59.163, RSMo 1959.

tures. It expressly provides that Missouri law determines whether or when goods become fixtures.⁶² Where doubt may exist as to whether the collateral is personal property or fixtures, the secured party should treat it both ways and file in the office where a real estate mortgage would be recorded and in the office where a security interest in personal property would be filed. Finally, (3) in all other cases the secured party must file his financing statement in the office of the Secretary of State. If the debtor has a place of business in only one county in this state, he must also file in such county. If the debtor has no place of business in this state, but resides in this state, the secured party must file in the county where the debtor resides.

At first glance the logic behind the places of filing for the third group may not be clear. It deals with the collateral of a business entity and requires local filing only if the debtor has a place of business in only one county. The operations of such a debtor are likely to be local and it is preferable that notice of the security interest also be given locally.⁶³ If he has places of business in more than one county, his operations are not limited to one locality and local filing is not necessary. In this connection it should be noted that in certain instances involving fixtures *triple* filing is required. Gas ranges installed in an apartment building is an illustration. Since these may become fixtures, the financing statement must be recorded⁶⁴ in the recorder's office for the county where the apartment house is located. If the ranges are equipment used in the operation of the business, the financing statement must also be filed in the office of the Secretary of State and if the debtor has a place of business in only one county in the state, the financing statement must also be filed in such county, or if the debtor has no place of business in this state but resides in the state, the statement must also be filed in the recorder's office for the county where the debtor resides.

The option adopted by Missouri has much to recommend itself to the file searcher. As to transactions involving business collateral, central filing affords the searcher complete certainty since he must check only the files in Jefferson City.

A secured party who in good faith attempts to comply with the filing requirements but fails to do so correctly is given some help by the Code. The Code makes the filing effective insofar as it is proper and also makes it

62. § 400.9-313, RSMo 1963 Supp.

63. A secured party, who filed his financing statement in the debtor's county but did not file with the Secretary of the Commonwealth until after the debtor's adjudication as a bankrupt, was denied reclamation and the trustee was given priority. *In re Luchenbill*, 156 F. Supp. 129 (E.D. Pa. 1957).

64. See subsection B: Record When the Collateral is Fixtures or Crops, *infra*.

good against any person who has actual knowledge of the contents of the improperly filed statement.⁶⁵ This provision does not afford any protection where filing is required in two places but is accomplished in only one unless, of course, the party to be charged has actual knowledge of it. The significance of this saving provision is that it rejects the decisions which hold that an improperly filed record is ineffective to give notice even to a person who has actual knowledge of it.⁶⁶

Once a financing statement has been filed in the proper place or places in Missouri it continues to be effective even though the debtor's residence or place of business changes, or the collateral moves about within the state.⁶⁷ If the collateral is brought into Missouri from another state, security interests perfected in another state are good for a period of four months, after which filing must be made in a proper place in Missouri.⁶⁸

One of the advantages of Article 9 over non-Code law is that it permits filing in advance of the creation of a security interest. Further, a security interest becomes valid against prior and general creditors once the financing statement has been filed whether the filing is late or not.⁶⁹ If the security interest is a purchase money security interest and the financing statement is filed within ten days after the debtor takes possession of the collateral, the perfection relates back to the date of attachment of the security interest and is prior to the rights of an intervening transferee in bulk or a lien creditor⁷⁰ but not the rights of other purchasers.⁷¹ In any event, the best procedure any secured party can follow is to file his financing statement before he furnishes goods or advances money to the debtor.

The provisions of Article 9 as to the time a financing statement is effective and simple.

A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such ma-

65. § 400.9-401(2), RSMo 1963 Supp.

66. See Comment 5 to UCC § 9-401 and *Nordman v. Rau*, 86 Kan. 19, 119 Pac. 351 (1911) where it was held that an instrument improperly acknowledged was not notice to one who had actually read the record because it was possible the instrument had been forged. In this connection, the code abolishes the requirements of acknowledgments, witnesses and affidavits. § 400.9-402(1), RSMo 1963 Supp.

67. § 400.9-401(3), RSMo 1963 Supp.

68. § 400.9-103(3), RSMo 1963 Supp. and see "Collateral not within the jurisdiction" *infra*.

69. § 400.9-301, RSMo 1963 Supp.

70. A "lien creditor" is one who has acquired a lien by attachment, levy or the like and includes an assignee for the benefit of creditors and a trustee in bankruptcy. § 400.9-301(3), RSMo 1963 Supp.

71. § 400.9-301(2), RSMo 1963 Supp.

turity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. . . .⁷²

The secured party may extend the effective period by signing and filing a continuation statement within six months before or sixty days after a stated maturity date of five years or less and otherwise within six months prior to the expiration of the five year period following the filing date.⁷³ Provisions for the assignment⁷⁴ of a security interest or the assignment of all or a part of a secured party's rights⁷⁵ under a financing statement or the release⁷⁶ by a secured party of all or a part of the collateral described in a financing statement, are provided by Article 9 in clear and concise terms.

B. Record When the Collateral Is Fixtures or Crops

In adopting Article 9 the General Assembly added an entirely new section and set of rules concerning fixtures or crops.⁷⁷ It appears that Missouri is the only state that has done so. At least to this extent Missouri law will not be uniform with that of the other Code states. The difference shows an emphasis by Missouri on land as distinguished from personal property where the filing includes both. The special rules should serve to give better public notice so that the party who holds a security interest in goods, including fixtures or crops, will be more secure and the party who proposes to purchase or take a mortgage on the land to which they relate will be aware of such security interest.

First, the special rules adopted by Missouri provide that when the collateral is goods which are or are to become fixtures or are crops, the *financing statement* is to be *recorded* and indexed in the real estate mortgage records.⁷⁸ Such statements need not be proved or acknowledged and certified. Perfection of such a security interest cannot be accomplished except by recording. However, the recorder is not liable for any loss of a security interest resulting from his failure to record and index a financing statement as a mortgage on real estate unless it is clearly evident that recording is desired either by (1) written instructions endorsed on the state-

72. § 400.9-403(2), RSMo 1963 Supp.

73. § 400.9-403(3), RSMo 1963 Supp.

74. § 400.9-405(1), RSMo 1963 Supp.

75. § 400.9-405(2), RSMo 1963 Supp.

76. § 400.9-406, RSMo 1963 Supp.

77. § 400.9-407, RSMo 1963 Supp.

78. § 400.9-407(3), RSMo 1963 Supp. Presumably, a financing statement, which covers such goods and other types of goods, must be *filed* and indexed as a financing statement and *recorded* and indexed as a real estate mortgage.

ment, (2) payment of the recording fee or (3) otherwise.⁷⁹ The cautious secured party will direct the recorder to record by written instructions on the financing statement.

Second, if the mortgage or financing statement covers real estate and goods which are or are to become fixtures or are crops and if the real estate is the principal security and the security in the goods is incidental, the requirements of Article 9 as to the matters to be included in a financing statement do not apply except that the real estate must be described.⁸⁰ In other words, where such collateral is given, the current form mortgage or mortgage deed of trust may be used to perfect a security interest in all such property and it need be only recorded. This rule, which is peculiar to Missouri, should be especially helpful. It will permit the avoidance of double filing where a security interest is created in apartment or office buildings and all goods therein which are or are to become fixtures.

C. *Record and File When the Collateral Is Real Estate and Goods*

It appears that a security agreement may cover security which consists of both real estate and goods.⁸¹ If it does, but does not include goods which are or are to become fixtures or are crops, it must be recorded as a mortgage on real property and filed as a financing statement covering the goods. The form of real estate mortgage or mortgage deed of trust in common use today would not be sufficient unless the addresses of the parties are added and the instrument is signed by the secured party. Conversely, the form of financing statement provided by Article 9 would not be sufficient as a mortgage. Undoubtedly, a hybrid form consisting of the essential elements of both types of instruments will be developed for this purpose. On the other hand, the parties may elect to use separate instruments for each type of property.

Although it appears that a single instrument may be used to perfect a security interest in real estate and goods, the effectiveness of the filing as to the goods is limited to a maximum period of five years unless a continuation statement is filed by the secured party during the last six months of such period.⁸² Article 9 fails to provide for effective periods of equal duration where both types of property are given as security.

79. § 400.9-407(4), RSMo 1963 Supp.

80. § 400.9-407(5), RSMo 1963 Supp.

81. § 400.9-501(4), RSMo 1963 Supp. This conclusion is not without contradiction. Section 400.9-105(1)(h) defines "security agreement" as an "agreement which creates or provides for a security interest" and § 400.1-201(37) defines "security interest" as an "interest in personal property or fixtures which secures payment or performance of an obligation."

82. § 400.9-403(2), RSMo 1963 Supp.

When a hybrid instrument is used, filing may be required in different places. As a real estate mortgage, the instrument must be recorded in the county where such property is situated. As a financing statement covering goods, it should be filed in the places required by Article 9. As discussed above, such filing depends upon the type and location of the goods and the nature of the debtor's entity and the residence or place of business of the debtor. The unique provisions of Missouri law applying only to Jackson County with its two recording offices⁸³ have not been repealed by the code. Such provisions will apply to the simple financing statement which covers only goods as well as the hybrid instrument which covers both types of property.

In this connection, attention should be called to the possible confusion and problems where the secured party follows the liberal provisions of Article 9 regarding the description of collateral which state that a description of "real estate is sufficient whether or not it is specific if it reasonably identifies what is described."⁸⁴ In any instance where the financing statement is to be recorded, the *legal description* of the land and the name of the owner of the real estate, where the debtor is not the owner, should be clearly set out in such statement. If they are not, the results could be chaotic, particularly for anyone searching the land records for encumbrances against the real estate or the abstractor who is preparing an abstract of title to the real estate or the title insurance company which is preparing a preliminary title report and commitment to insure the title to the real estate. The special rules added to Article 9 by Missouri partially anticipate this problem and require that the financing statement which is recorded as a mortgage must be indexed in the mortgagor index according to the name of the record owner of the real estate *if* the statement shows the name of the record owner of the real estate to be someone other than the debtor or secured party. Obviously, the special rule, which should be beneficial, cannot operate without the cooperation of the parties in setting out the legal description of the real estate in the financing statement or security agreement. Lack of such cooperation could lead to the unfortunate result of the abstractor and title insurance companies amending their certificates and policies to eliminate any financing statements or security agreements that may affect land.

83. § 59.163, RSMo 1959.

84. § 400.9-110, RSMo 1963 Supp.

D. Collateral Not Within the Jurisdiction

As the commentary to Article 9 of the Uniform Commercial Code states, there is a considerable body of case law dealing with the situs of choses in action which is confusing, contradictory and uncertain.⁸⁵ Article 9 attempts to bring order to this area by designating the place to file and to search for the filing of security interests in collateral of these types. In the case of accounts or contract rights which are assigned as collateral, the place to file to perfect a security interest is governed by Missouri law as set out in Article 9 if the office where the assignor keeps his records concerning such accounts or contract rights is located in Missouri. If such office is located elsewhere, the place of filing is governed by the law of the state where it is located.⁸⁶ If the assignor should keep his records in more than one state or if there is any doubt about the matter, the easy and inexpensive solution is to file in each state.

In the case of general intangibles⁸⁷ the chief place of business of the debtor is the controlling factor. If such place of business is located in Missouri, the place of filing to perfect a security interest in such property is governed by Missouri law as set out in Article 9. If it is located in another state, the law of that state controls.⁸⁸ The reason for the distinction as to the place of filing between accounts and contract rights on the one hand and general intangibles on the other is realistic and simple. No records are kept with respect to many types of property included in the category of "general intangibles." For certainty, the best place to file and search for the records for security interests in such property is where the debtor maintains his chief place of business.

Another class of collateral for which Article 9 provides a special rule is mobile goods which move from one state to another. If such goods are equipment or inventory by reason of their being leased by the debtor to others, such as rental autos, and if the chief place of business of the debtor is in Missouri, the place to file is governed by Article 9; otherwise the place to file is governed by the law of the jurisdiction where such office is located.⁸⁹ Of course, this rule is not applicable to the mobile property of a

85. Comment to UCC § 9-103.

86. § 400.9-103(1), RSMo 1963 Supp.

87. § 400.9-106, RSMo 1963 Supp. General intangibles is the catch-all term that includes all personal property except goods, accounts, contract rights, chattel paper, documents and instruments.

88. § 400.9-103(2), RSMo 1963 Supp.

89. § 400.9-103(2), RSMo 1963 Supp.

railroad or public utility. As discussed above, filing as to such property is governed by special rules which Missouri has added to Article 9.⁹⁰

In the case of property subject to the "chief place of business" rule, Article 9 provides still another rule for filing if such place is located in a state which does not provide for a place of filing or recording to perfect a security interest.⁹¹ In such event, the filing may be made in Missouri. This rule would apply where the foreign state does not permit or recognize filing on property not physically present within its borders.

In those instances where the other jurisdiction has adopted the Code, the rules which govern the situs of collateral should apply without difficulty. If the Code has not been adopted by the other state, determining the place of filing will not be easy but the conflict of laws rules should be of considerable assistance in arriving at a solution. In any event, the situs rules of Article 9 will be an improvement over the present confusing state of the law.

E. Goods Coming Into Missouri Subject to a Security Interest

If a security interest has been perfected in collateral under the law of another state where it was situated when the security interest attached and before it is brought into Missouri, the security interest continues in Missouri for four months and thereafter if within such period the security interest is perfected in Missouri.⁹² Such rule does not apply, of course, to accounts, contract rights, general intangibles and mobile equipment which are controlled by the "place of records" and "chief place of business" rules described above.

Still another rule applies to property covered by a certificate of title issued under a Missouri statute or the statute of any other state which requires as a condition of perfection the notation of a security interest on the certificate. The perfection of a security interest in such property is governed by the law of the state which issued the certificate of title.⁹³

A distinction should be made between the filing requirements for mobile property brought into Missouri and that which moves about within the state. Although a new filing is generally required in the former instance, a filing which is made in the proper place in Missouri continues effective even though the debtor's residence, place of business or location of

90. § 400.9-302(5), RSMo 1963 Supp.

91. § 400.9-103(2), RSMo 1963 Supp.

92. § 400.9-103(3), RSMo 1963 Supp.

93. § 400.9-103(4), RSMo 1963 Supp.

the collateral or its use is thereafter changed to a different place or use in the state.⁹⁴

IV. SUMMARY

Article 9 makes a substantial change in the law of Missouri with respect to notice and filing in secured transactions. Under the previous law the lender was concerned with selecting the correct security device to protect his lien. Under Article 9 the emphasis has shifted to the type of collateral and the status of the debtor. The change is the result of efforts to make secured transactions uniform from state to state and to adopt standards which will apply to all types of secured transactions within a state. In the process, anachronisms have been discarded and certain case law has been rejected in order that convenience and efficiency may be achieved.

Lending institutions, recorders of deeds, the office of the Secretary of State and lawyers will find in their study and use of the Code that they must orient themselves to novel concepts. Common words have been arranged into terms which have new and special meaning producing a nomenclature as new as that of astronautics. There will be a great need for study and comprehension. It is believed that after some time has passed and experience has been acquired in the operation of the code, it will be favored and considered to be a vast improvement over present statutory and case law.

94. § 400.9-401(3), RSMo 1963 Supp.