

Fall 1964

Bulk Transfers

Tebbs P. Forgey Jr.

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Tebbs P. Forgey Jr., *Bulk Transfers*, 29 MO. L. REV. (1964)

Available at: <https://scholarship.law.missouri.edu/mlr/vol29/iss4/4>

This Conference is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

BULK TRANSFERS

TEBBS P. FORGEY, JR.*

On July 1, 1965, the Missouri Bulk Sales Law¹ is replaced by Article 6 of the Uniform Commercial Code.² This is not a drastic departure from the basic concepts of our present statutory law, for both laws have but *one purpose*: to protect a creditor of a dishonest or unmoraled merchant, who sells or transfers to a good faith purchaser, all or the major part of his business, without notice, and pockets the proceeds.³ Every state and the District of Columbia have enacted bulk sales statutes which, among other things, require a verified list of creditors to be furnished to the buyer, and notice by the buyer to the creditors prior to a certain number of days before consummation of the sale or transfer. Some provide for little more than this, while others place the additional duty on the buyer of seeing that the proceeds of the sale are applied to the creditor's claims. There is a division of opinion whether mere notice by the buyer provides sufficient protection for creditors.⁴ This will be discussed later.

What follows is an attempt to correlate the sections of the Code with our present bulk sales sections and case law. Comments are also given, where appropriate, on possible problems and solutions.

I. HOW THE CODE APPLIES

A "bulk transfer" is defined as "any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory . . . of an enterprise subject to this article."⁵ The definition of "inventory" is: "goods are 'inventory' if

*Attorney at Law, Forgey & Sindel, St. Louis, Missouri.

1. §§ 427.010-.050, RSMo 1959.

2. §§ 400.6-101-6-111, RSMo 1963 Supp.

3. Joplin Supply Co. v. Smith, 182 Mo. App. 212, 167 S.W. 649 (Spr. Ct. App. 1914); HAWKLAND, SALES AND BULK SALES UNDER THE UNIFORM COMMERCIAL CODE 163 (1958); Lamey, *How to Handle a Bulk Transfer*, 19 BUS. LAW, 67 (1963); Miller, *Bulk Sales Laws: Businesses Included*, 1954 WASH. U.L.Q. 1; Raff, *Bulk Transfers Under the Uniform Commercial Code*, 17 RUTGERS L. REV. 107 (1962).

4. Comment to § 6-106, 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 § 6-106 (1962)1.

5. § 400.6-102, RSMo 1963 Supp.

they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment."⁶

This subsection should not cause any particular difficulty. The drafters of the Code have seen fit to use the phrases "in the ordinary course of" and "major part of," which phrases will be found in our present statute.⁷ Consequently, it would seem, our present interpretive decisions⁸ will continue to guide. The new section⁹ uses the wording "any transfer in bulk and not in the ordinary course." The present statute does not use the words "in bulk"; instead it speaks of a disposition "whether in one or more parcels or to one or more persons, provided the transfer is all part of substantially one transaction or proceeding or occurs substantially at one time."¹⁰ While our present statutory language is more exhaustive, the words "in bulk" should create few problems. It has been suggested that "the 'in bulk' language can best be utilized to include a series of transfers which, when viewed collectively, constitute a major part of the included property; in fact, it would seem to have no other possible purpose in the Code."¹¹

Further, after requiring the transfer to be "in bulk," "not in the ordinary course of" and "a major part," the goods transferred must be "materials, supplies, merchandise or other inventory of an enterprise subject to this article." The key words here would seem to be "or other inventory" indicating that "materials," "supplies" and "merchandise" are meant to particularize rather than to indicate something different than inventory. This interpretation is further confirmed by the use of only the word "inventory" in subsection 2.¹²

Section 400.6-102(2) tells when the transfer of equipment shall be subject to this Article. Here, contrary to subsection 1, only a *substantial* part of the equipment, rather than a *major* part, need be involved. Further, the transfer must be made in connection with a bulk transfer of inventory. Equipment is defined as follows: "goods are 'Equipment' if they are used

6. § 400.9-109, RSMo 1963 Supp.

7. § 427.020, RSMo 1959.

8. *E.g.* Roberts v. Kaemmerer, 220 Mo. App. 582, 287 S.W. 1057 (St. L. Ct. App. 1926).

9. § 400.6-102(1), RSMo 1963 Supp.

10. § 427.020, RSMo 1959.

11. Miller, *Bulk Sales Laws: Meaning to be Attached to the Quantitative and Qualitative Requirements Phrases of the Statutes*, 1954 WASH. U.L.Q. 283, 323.

12. § 400.6-102(2), RSMo 1963 Supp.

or bought for use primarily in business . . . or if the goods are not included in the definitions of inventory, . . .”¹³ This would therefore cover, among other things, fixtures. The qualification that the transfer of equipment must be in conjunction with a bulk transfer of inventory is not an innovation insofar as Missouri is concerned, since Missouri’s present statute has been interpreted to mean that fixtures and equipment must be sold in conjunction with a stock of merchandise and the fixtures and equipment must *pertain* to the vendor’s business to be subject to the provisions of the statute.¹⁴

Section 400.6-102(3) states “the enterprises subject to this article are those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.” Our present statute did not clearly state that it applied only to those who sold merchandise from stock and that it had to be their *principal* business. This was clarified by our case law which in effect held that the law was meant for businesses who resell what they purchase, in substantially the same form and who seek their credit primarily on the basis of their inventory.¹⁵ However, this subsection adds what would seem to be a new group of businesses, namely, “those who manufacture what they sell.” Certainly the qualifications as stated previously would seem to leave no question that our courts did not contemplate a manufacturer being among the businesses intended to be covered by this law.

It is reasonable to expect that there will be a court interpretation as to what manufacturers are intended. The key seems to be what is meant by the word “manufacture.” First and foremost, the manufacturer will have to sell “merchandise from stock.” The comment to this subsection¹⁶ states that it does not include such businesses as farming, contracting, professional services, nor such things as cleaning shops, barber shops, pool halls, hotels, restaurants and the like whose principal business is the sale not of merchandise but of services. Certainly one who manufactures custom-made

13. § 400.9-109, RSMo 1963 Supp.

14. *Rothenheber v. Pulitzer Pub. Co.*, 262 S.W. 48 (St. L. Mo. App. 1924); *Bolanovich v. Peter Hauptmann Tobacco Co.*, 261 S.W. 723 (St. L. Mo. App. 1924); *Independent Breweries Co. v. Lawton*, 200 Mo. App. 238, 204 S.W. 730 (Spr. Ct. App. 1918).

15. *Roberts v. Kaemmerer*, *supra* note 8; *Rothenheber v. Pulitzer Pub. Co.*, *supra* note 14; *Bolanovich v. Peter Hauptmann Tobacco Co.*, *supra* note 14; *Gallup v. Rhodes*, 207 Mo. App. 692, 230 S.W. 664 (Spr. Ct. App. 1921); *Independent Breweries Co. v. Lawton*, *supra* note 14; *Balter & Miller v. Crum*, 199 Mo. App. 380, 203 S.W. 506 (St. L. Ct. App. 1918); *Semmes v. Rudolph Stecher Brewing Co.*, 195 Mo. App. 621, 187 S.W. 604 (St. L. Ct. App. 1916).

16. Comment 3 to UCC § 6-102(3) (1962).

or "to specification" items does not fit the category of selling of merchandise from stock. In a general sense, the drafters evidently had in mind the manufacturer who, principally, makes what it wants to sell and maintains an inventory to be sold when and as it receives orders. It is interesting to note that one code state has already ruled that the sale of a restaurant-taproom business is within the provisions of this bulk sales act,¹⁷ but a printing business is not.¹⁸

Section 400.6-102(4) is self-explanatory: "Except as limited by the following section all bulk transfers of goods located within this state are subject to the article."

II. TRANSFERS NOT SUBJECT TO CODE

The section¹⁹ listing the types of transfers not subject to the Code has its counterpart in our present statute.²⁰ First, "those transfers made to give security for the performance of an obligation" are specifically excluded. This class of transfers (bulk chattel mortgages) though not specifically excluded in the present statute has been clearly ruled exempt from bulk sales statutes;²¹ thus nothing new is added by the Code. All security interests in personal property are governed by Article 9 of the Code, and section 400.9-111, apparently for emphasis, states, "The creation of a security interest is not a bulk transfer under article 6 (see section 400.6-103)."

Second, "general assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder" are excluded. This is an exclusion under present law although no specific reference is made to subsequent transfers of the assignee. It seems to go without saying however that such transfers would have to be exempt to eliminate an unnecessary burden on an assignee.

Third, "transfers in settlement or realization of a lien or other security interest" are excluded. Comment has already been made as to this category of transfers.

Fourth, "sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process" are excluded. There is nothing new here, since this exclusion is found in the present law.

17. *Uhr v. 3361, Inc.*, 21 Pa. D. & C.2d 348 (C.P. 1960).

18. *Market v. College Offset Press, Inc.*, 6 Pa. D. & C.2d 519 (C.P. 1955).

19. § 400.6-103, RSMo 1963 Supp.

20. § 427.010, RSMo 1959.

21. *Farmers' Coop. Co. v. Bank of Leeton*, 319 Mo. 548, 4 S.W.2d 1068 (1928).

Fifth, "sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency" are not subject to the article. This is new in that it is not expressly stated in our present statute. It seems to have been previously recognized as an exception, however, since the sections relating to dissolution of a corporation require notice to creditors.²²

Sixth, "transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound" are excepted. This is entirely new and affords a means of avoiding delay in consummating a sale. There are, no doubt, many transactions where the transferee has no objection to assuming responsibility for the transferor's debts or as part of the consideration, assumes the debts of the transferor. While public notice is required, it need not be given in advance of closing the deal. It should be noted that a creditor will have not only a solvent purchaser to look to for payment, but also his original debtor. The word "solvent" is not defined in the Code but certainly a fair meaning can be determined by referring to the definition of "insolvent" in section 400.1-201(23): "A person is 'insolvent' who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law."

Seventh, "a transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors" is included among the exceptions. This is another one that is not provided for in our present law. This is designed strictly to deal with changes in ownership of a business; *i.e.*, from sole proprietor to a partnership or corporation, partnership to a corporation, etc., as expressed by the wording "a new business enterprise organized to take over and continue the business." As in the prior category (sixth), public notice is required and there must be an assuming of the debts. Also, you again have the dual liability of the new enterprise and the original debtor.

Eighth, "transfers of property which is exempt from execution" is excepted. This self-explanatory provision is found in the present law.

22. § 351.460 *et seq.*, RSMo 1959.

The section concludes with the provision that as to "public notice" (subsection 6 and 7), the same may be given by publishing an advertisement in a newspaper of general circulation once a week for two consecutive weeks where the transferor had its principal place of business in this state. The advertisement must include the names and addresses of the transferor and transferee and the effective date of the transfer. Further, if there is no qualifying newspaper where the transferor has his place of business, then the newspaper to be used is determined by provisions contained in Article I of the Code as well as our present statutes.²³

III. LIST OF CREDITORS

Section 400.6-104 provides that with the exception of auction sales which are dealt with in section 400.6-108, a bulk transfer subject to the article is *ineffective* against any creditor of the transferor, unless the transferee requires the transferor to furnish a list of his existing creditors. The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. The list must contain the names and business addresses of all creditors of the transferor, with the amounts owing each where known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, then only the trustee need be listed with his address and the aggregate principal amount of the issue still owing. Responsibility for the accuracy and completeness of this list rests on the transferor, and the transfer will not be rendered ineffective unless the transferee has knowledge of errors or omissions in the list.

The parties also must prepare a schedule of the property to be transferred sufficient to identify it. The transferee then preserves the list of creditors and schedule of property for six months next following the transfer and permits inspection of either or both, and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the recorder of deeds of the county in which the transferor resides.

The requirement of a list of creditors and amounts owing, given under oath, is found in our present law.²⁴ Preparation of a list of the property to be transferred is entirely new. Also new is the requirement of preservation,

23. See Chapter 493, RSMo 1959; § 400.1-201(26)(b), RSMo 1963 Supp.

24. § 427.020, RSMo 1959.

and the requirement that both the list of creditors and the schedule of property be made available for inspection and copying, if they are not filed of record. That all creditors, not just creditors of the business, shall be included in the list is no departure from our present language or decisions of our courts.²⁵ However, the phrase "all persons who are known to the transferor to assert claims against him even though such claims are disputed," when read in conjunction with section 400.6-109 which states, "creditors of the transferor . . . are those holding claims based on transactions or events occurring before the bulk transfer," and in conjunction with Comment 1 to Uniform Commercial Code section 6-109 which states, "The claims referred to of course include unliquidated claims," may result in the inclusion of all creditors who have claims in tort or contract, liquidated or unliquidated, secured or unsecured, contingent or fixed, presently due or not due.²⁶

By requiring the list of creditors and schedule of property to be available to creditors, an added protection has been installed. The purpose is to aid in carrying out the policies of the Uniform Fraudulent Conveyances Act and of the Bankruptcy Act. Thus the schedule and list are available so that creditors may know whether they can attack the transfer as a conveyance fraudulent in fact, either in bankruptcy proceedings or otherwise, even though the Bulk Transfer Act has been complied with.²⁷

If the transferee elects he may file the list and the schedule in the office of the recorder of deeds of the county in which the *transferor resides*. The official text of the Code leaves the decision as to the public office in which to file, to each state. By designating the county of the transferor's residence, Missouri leaves open an impractical loophole. When the transferor and transferee are non-residents, there will be no county in which to file, nor is it required that the list and schedule be in the state for purposes of inspection and copying. A preponderance of the states²⁸ that have adopted the Code, have either designated the county in which the business is situated as the place for filing or the Secretary of State, or combinations thereof.

25. McKnight-Keaton Grocery Co. v. McFadden, 107 S.W.2d 176 (Spr. Mo. App. 1937); Roberts v. Kaemmerer, *supra* note 8.

26. Miller, *The Effect of the Bulk Sales Article on Existing Commercial Practices*, 16 LAW & CONTEMP. PROB. 267, 280 (1951).

27. *Ibid.*

28. Alaska, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, West Virginia, Wisconsin, Wyoming.

When there has been an omission of any of the requirements of this section the bulk transfer is *ineffective*. Our courts have stated that "effective" means "operative."²⁹ The prefix *in* is defined as meaning "no, not, without, non."³⁰ Therefore, when there is a failure to comply, the sale will be non-operative. "Any such creditor or creditors may therefore disregard the transfer and levy on the goods as still belonging to the transferor, or a receiver representing them can take them by whatever procedure the local law provides."³¹ With the exception of a judgment creditor, it would seem that creditors' remedies are not as well defined as under the present law. This is particularly true of attachment,³² based on the clear language of the Bulk Sales Law³³ that non-compliance shall make the transfer "fraudulent and void" or that the transferee becomes a receiver for goods of a creditor who can identify his goods in the transferee's hands.³⁴ It is interesting to note that California has substituted the words "fraudulent and void" for the word "ineffective."³⁵ Such a change would seem worthy of consideration for Missouri³⁶ and would permit better utilization of our present decisions.

The Code does not attempt to specify the punishment for making a false list of creditors, as does our present statute,³⁷ but leaves this to be dealt with by the State's criminal sanctions against false swearing.³⁸

IV. NOTICE

Section 400.6-105 provides that a notice must be given at least ten days before the transferee takes possession of the goods or pays for them, whichever happens first. Failure to do so makes the sale ineffective against any creditor of the transferor with one exception—bulk transfers made by auction sale are governed by special rules outlined in section 400.6-108. Re-

29. *Rowan v. New York Life Ins. Co.*, 124 S.W.2d 577 (St. L. Mo. App. 1939).

30. WEBSTER'S NEW WORLD DICTIONARY (College ed. 1958).

31. Comment 2 to UCC § 6-104 (1962).

32. *First Nat'l Bank v. Swan Mach. Co.*, 210 Mo. App. 463, 242 S.W. 429 (Spr. Ct. App. 1922); *Brown Shoe Co. v. Sacks*, 201 Mo. App. 360, 211 S.W. 133 (St. L. Ct. App. 1919); *Joplin Supply Co. v. Smith*, *supra* note 3.

33. § 427.020, RSMo 1959.

34. § 427.030, RSMo 1959; *Riley Pennsylvania Oil Co. v. Symmonds*, 195 Mo. App. 111, 190 S.W. 1038 (K.C. Ct. App. 1916).

35. Cal. Comm. Code § 6105.

36. *Weintraub & Levin, Bulk Sales Law and Adequate Protection of Creditors*, 65 HARV. L. REV. 418 (1952).

37. § 427.050, RSMo 1959.

38. § 557.070, RSMo 1959.

1964]

quiring notice to creditors is the backbone of all bulk sales law. Our present statute³⁹ so directs although it has a shorter time period of seven days.

The code specifically states what the notice shall contain, how it shall be given and who shall receive it.⁴⁰ First the notice shall declare that a bulk transfer is about to be made. Next, it must contain the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within the previous three years so far as known to the transferee. It is difficult to understand why the prior business names and addresses is the responsibility of the transferee and then only insofar as is known by him. A more practical requirement would seem to be that the transferor give such information in conjunction with the list of creditors and schedule of property⁴¹ so that the transferee could make use of it in the notice.

If the debts of the transferor are to be paid in full as they fall due as a result of the transaction, then such should be stated in the notice together with the address to which creditors should send their bills. This is known as the short form notice, and "facilitates honest and solvent transactions."⁴²

In the event the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice should state the location and general description of the property to be transferred and the estimated total of the transferor's debts; the address where the schedule of property and list of creditors may be inspected; whether the transfer is to pay existing debts, and if so the amount of such debts and to whom owing; whether the transfer is for new consideration, and if so the amount of such consideration and the time and place of payment.

The present Bulk Sales Law requires the notice to include only: a statement that a sale is to take place; a general statement of the goods to be sold; the parties to the transaction; the terms and conditions of the purchase, and when and where the transaction will be completed.⁴³ As can be seen, creditors now receive only a bare minimum of information. The added provisions of the Code will supply pertinent facts needed to permit a creditor to evaluate the whole situation and take appropriate action.

39. § 427.020, RSMo 1959.

40. § 400.6-107, RSMo 1963 Supp.

41. § 400.6-104, RSMo 1963 Supp.

42. Comment 2 to UCC § 6-107 (1962).

43. § 427.020, RSMo 1959.

The notice can be delivered personally or by registered or certified mail. It must be given to all creditors on the list furnished by the transferor and to all other persons who are known to the transferee to hold or assert claims against the transferor. Comparing these provisions with our present statutory requirements⁴⁴ we find very little change. Use of *certified* as well as registered mail is new and telegraphic notice is no longer allowed. Requiring creditors not on the list but known to the transferee to be included, would seem to supplement section 400.6-104(3) which places the responsibility for completeness and accuracy of the list of creditors on the transferor unless the transferee is shown to have had knowledge of inaccuracy.

V. AUCTION SALES

Auction sales have never been the subject of bulk sales in our state, consequently section 400.6-108, presents an idea entirely new to Missouri. The drafters of the Code subjected auction sales to bulk transfer provisions on the ground that "if auctions were excluded entirely from the transfers covered by this Article the way would be open to a debtor to carry out a bulk transfer of his property without notice to his creditors. . . ."⁴⁵

Here again the transferor is required to furnish a list of his creditors and assist in the preparation of a schedule of property to be sold, both in keeping with section 400.6-104. "Auctioneer" is defined as "the person or persons other than the transferor who direct, control or are responsible for the auction."⁴⁶ The auctioneer is required to retain the list of creditors and prepare and retain the schedule of property for the same period as stated in section 400.6-104. Evidently it is to be inferred by the reference to section 400.6-104 that the list and schedule are subject to inspection and copying, and that the list and schedule can be filed with the recorder.

Responsibility for sending notice to the creditors is placed on the auctioneer. It must be given at least ten days before the auction occurs and can be given personally or by registered or certified mail. All persons on the list must be notified and the auctioneer must also notify all other persons known to hold or assert claims against the transferor (same as section 400.6-107(3)). Nothing is stated as to what the notice shall contain and it is obvious that much of the information required in the notice under section 400.6-107 would not be ascertainable or necessary in a

44. *Ibid*; Gentry v. Robinson, 55 Mo. 260 (1874).

45. Comment 1 to UCC § 6-108 (1962).

46. § 400.6-108(3), RSMo 1963 Supp.

1964]

notice by an auctioneer. Perhaps it can be assumed that the notice at a minimum should contain the date and place of the auction, name and address of the transferor, and the address where the schedule of property and list of creditors may be inspected, but the less that is left to assumption the better and a revision of this part of this section would seem in order.

Failure of the auctioneer to comply with this section does not affect the validity of the sale or title of the purchasers. Instead, the auctioneer, if he knows that the auction constitutes a bulk transfer, will be liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. Liability is joint and several if the auctioneer consists of several persons.

VI. OTHER PROVISIONS

Section 400.6-109 defines the creditors of the transferor who are entitled to receive notice. They are those holding claims based on transactions or events occurring before the bulk transfer or in other words, before the transferee takes possession of the goods or pays for them, whichever occurs first. Creditors who become such after notice to creditors is given are not entitled to notice, but are however entitled to the protection of the Code. We have no such express provision in our present statute but our courts have interpreted and applied it in this way.⁴⁷

Section 400.6-110 defines the position of one who purchases from a transferee holding defective title by reason of his non-compliance with the requirements of this Article. While we have nothing comparable in our present statute, this section states the rule generally recognized in decisions⁴⁸ dealing with fraudulent conveyances, as they relate to bona fide purchasers from fraudulent vendees.

A purchaser (of such property from such transferee) who *pays no value* or who takes with notice of the transferee's non-compliance, takes subject to such defect, but a purchaser for value in good faith and without such notice takes free of the defect.

"The second transfer may of course itself be a 'bulk transfer' subject to this Article."⁴⁹ In such a situation the affidavit required by section 400.6-104 might best include a statement from the transferor as to when

47. McKnight-Keaton Grocery Co. v. McFadden, *supra* note 25.

48. Wineland v. Coonce, 5 Mo. 296 (1838).

49. Comment 2 to UCC § 6-110 (1962).

he became the owner of the property being transferred, and whether there was compliance with this article at the time he became the owner.

A limitation of time for action to be brought or levy made is set out in section 400.6-111 and we find its counterpart in our present statute.⁵⁰ Ninety days is now the time limit; the Code allows six months. The Code further provides that if the transfer has been concealed, action may be brought or levy made within six months *after its discovery*.

The time limitation in section 400.6-111 applies to both action *and* levy. It is not sufficient to have filed suit or secured a judgment within six months, but the levy also must be made within that period. Missouri courts have interpreted our present section 427.040 to the same effect—that a levy made more than 90 days after the bulk sale was not timely.⁵¹ Uniform Commercial Code comment to this section in part states, "Levy," which is not a defined term in the Code, should be read broadly as including not only levies of execution proper but also attachment, garnishment, trustee process, receivership, or whatever proceedings, under the state's practice, is used to apply a debtor's property to payment of his debts."

VII. CONCLUSION

Generally, Article 6 of the Code should provide better protection for creditors than did the Bulk Sales Law. A change should be made or supplement added to section 400.6-104 to take care of the situation where both transferor and transferee are nonresidents. This section should also require the transferor (in addition to the list of creditors he must provide) to state all business names and addresses used by him within three years last past, when the transferor became the owner of the property being transferred, and if he complied with this article at that time. Further, the words "fraudulent and void" should be substituted for the word "ineffective" both in section 400.6-104 and section 400.6-105.

UCC Section 6-106 has not been enacted in Missouri, but serious consideration should be given to enacting it. Only in this manner can creditors be assured fair treatment.⁵² The section requires the transferee,

50. § 427.040, RSMo 1959.

51. Ward v. Stutzman, 195 Mo. App. 376, 191 S.W. 1090 (K.C. Ct. App. 1917).

52. Billig, *Order Out of Chaos; A Bulk Transfer Article Emerges*, 1952 Wis. L. REV. 312; Billig, *Bulk Sales Law; A Study in Economic Adjustment*, 77 U. PA. L. REV. 72 (1929); Hogan, *The Highways and Some of the Byways in the Sales and Bulk Sales Articles of the Uniform Commercial Code*, 48 CORNELL L.Q., 1, 39 (1962); Lamey, *How to Handle a Bulk Transfer*, 19 BUS. LAW. 72 (1963); Miller, *op. cit. supra* note 26, at 283; Weintraub & Levin, *op. cit. supra* note 36.

when there is new consideration involved, to pay the creditors from the proceeds or prorate the funds if they prove insufficient. Under present law and under the Code as adopted, creditors are in a far better position to protect themselves when there is non-compliance than when there is compliance.

Finally, section 400.6-108 should be changed so as to specify the contents of the notice to creditors required of the auctioneer in bulk transfers by auction sale.