

# NATIONALIZE THE REVISED ARTICLE 9 FILING SYSTEM: A COMPARISON OF THE OLD ARTICLE 9 AND CANADIAN PERSONAL PROPERTY FILING SYSTEMS

## I. INTRODUCTION

Article 9 of the Uniform Commercial Code must be viewed as a legislative success story. Completed in its current form in 1972, Article 9 was accepted by all fifty states.<sup>1</sup> In Canada, Article 9 was used as a model for the Personal Property Security Act,<sup>2</sup> a body of legislation governing secured transactions in most Canadian provinces.<sup>3</sup> Further away, New Zealand based its personal property law on Article 9.<sup>4</sup> Even international treaties and conventions have been influenced by Article 9.<sup>5</sup> Nearly fifty years after its conception, practicing commercial lawyers still view Article 9 as “fundamentally and conceptually sound.”<sup>6</sup>

Still, Article 9 is not without critics. Much criticism centers on the Article 9 filing system. “The [A]rticle 9 filing system is in disarray.”<sup>7</sup> “The rules governing when and where to file a financing statement are incomprehensible at best, diabolical at worst.”<sup>8</sup> Secured parties must untangle a web of federal, state, and local laws in order to perfect their security interests using the Article 9 filing system. Fortunately, Revised Article 9 becomes law in a majority of states on July 1, 2001.<sup>9</sup> Therefore, now is the appropriate time to look back at the mistakes of the original Article 9, to examine how Canada,

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1. See National Conference Committee on Uniform State Laws, at [www.nccusl.org/uniformact\\_factsheets/uniformacts-fs-ucca9.htm](http://www.nccusl.org/uniformact_factsheets/uniformacts-fs-ucca9.htm) (last visited Apr. 20, 2001) [hereinafter, NCCUSL]. Louisiana was the final state to adopt Article 9 in 1988. See 1988 La. Acts 528 § 1.

2. See Michael G. Bridge et al., *Formalism, Functionalism, and Understanding the Law of Secured Transactions*, 44 MCGILL L.J. 567, 569 (1999).

3. See *id.* Nine Canadian provinces and one territory have adopted the Personal Property Security Act. See *id.* at n.6. These include, in order of implementation: Ontario, Manitoba, Yukon Territory, Alberta, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. See *id.*

4. See *id.* at 569-70.

5. See *id.* at 570.

6. *Id.* at 569.

7. Lynn M. LoPucki, *Computerization of the Article 9 Filing System: Thoughts on Building the Electronic Highway*, 55 LAW & CONTEMP. PROBS. 5, 37 (1992). [hereinafter LoPucki, *Computerization*].

8. Todd C. Nelson, *Article Nine Goes Online*, 32 ARIZ. ATT'Y 35 (1996).

9. See NCCUSL, *supra* note 1. The states that have adopted Revised Article 9 are: Alaska, Arizona, California, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, and the District of Columbia. See *id.* A few of these are still awaiting a governor's signature. See *id.* Revised Article 9 has been introduced in: Colorado, Florida, Georgia, Louisiana, Massachusetts, Missouri, New Jersey, New Mexico, New York, South Carolina, and Wisconsin. See *id.*

which modeled its own filing system on Article 9, has adapted to meet the requirements of the information age, and finally, to answer the question of whether Revised Article 9 was written to avoid the mistakes of the current code, or alternatively, whether Revised Article 9 will ultimately succumb to the same pressures that undermined the original Article 9.

## II. THE ORIGINAL ARTICLE 9 FILING SYSTEM

In 1962, the first widely adopted version of Article 9 of the Uniform Commercial Code (U.C.C.) arrived.<sup>10</sup> After a further revision in 1972, Article 9 was adopted by all fifty states, the District of Columbia, Puerto Rico, and Guam.<sup>11</sup> Like other articles of the U.C.C., Article 9 promised to substantially unify what had been a state-by-state approach to commercial law.<sup>12</sup> This included simplifying perfection with the creation of the Article 9 filing system.<sup>13</sup> Grant Gilmore, the reporter for the original drafting committee of Article 9, envisioned this as "one big filing system" in each state.<sup>14</sup> These filing systems would create a means for secured parties to record their liens and effectively put other lenders on notice.<sup>15</sup> Nearly a half-century later, many scholars doubt that the Article 9 filing system can accomplish this limited purpose.<sup>16</sup> The problem is three-fold. First, a secured party must decide where to file its financing statement.<sup>17</sup> Second, a secured party must decipher the requirements of the financing statement for the chosen location.<sup>18</sup> Finally, secured parties must deal with a host of other factors, including specific federal, state, and local government formalities.<sup>19</sup>

The first problem facing a secured party is deciding where to file its financing statement. This has been a complicated question since Article 9's beginning.<sup>20</sup> There was disagreement during the drafting of Article 9 over the proper place to file a financing statement.<sup>21</sup> Agricultural states favored filing

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10. See RUSSELL A. HAKES, *THE ABCS OF THE UCC: ARTICLE 9: SECURED TRANSACTIONS* 2, 3 (1996).

11. See *id.* at 3.

12. See LYNN M. LOPUCKI & ELIZABETH WARREN, *SECURED CREDIT: A SYSTEMS APPROACH* 332 (1998).

13. See U.C.C. §§ 9-401 to 9-408 (1972) [hereinafter, the current 1972 Official Text of U.C.C. Article 9 will be cited as Cur.].

14. LoPucki, *Computerization*, *supra* note 7, at 15. "[O]ne big filing system" should not imply that the drafters of Article 9 envisioned a national filing system. *Id.* The language refers to a preference for statewide filing, as opposed to local filing at the county level. See *id.*

15. See LOPUCKI & WARREN, *supra* note 12, at 328.

16. See LoPucki, *Computerization*, *supra* note 7, at 6.

17. See *id.* at 15.

18. See *id.* at 11-12.

19. See *id.*

20. Not only must a secured party decide in what state to file a financing statement, it must decide where specifically inside that state it must file. See LOPUCKI & WARREN, *supra* note 12, at 330.

21. See *id.* at 331.

in county records (local filing).<sup>22</sup> Industrial states, however, favored filing with the Secretary of State (central filing).<sup>23</sup> Both sides had valid reasons.<sup>24</sup> Because the drafters could not agree on which filing system to use, they settled for a compromise.<sup>25</sup> U.C.C. § 9-401 was created with three alternative sections, with each adopting state instructed to elect one.<sup>26</sup> Those three sections differ primarily with the degree to which they favor central or local filing.<sup>27</sup> Simply stated, these three methods are predominately central filing,<sup>28</sup> predominately local filing,<sup>29</sup> or dual filing at the central and local level.<sup>30</sup> In all three methods, real estate related filings-collateral including minerals, fixtures, or timber-are made in local real estate records.<sup>31</sup>

From its beginnings, therefore, the “where to file” section of the U.C.C. has been non-uniform. Unfortunately for secured parties, the complexities did not stop there. Since 1972, states have continually amended § 9-401(1). The result is that rather than three methods of filing, today there are numerous methods.<sup>32</sup> It is difficult to point to any two states that answer the “where to file” question exactly the same.<sup>33</sup> For example, in Georgia, a secured party

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22. *See id.*

23. *See id.*

24. *See id.* Most states at the time of Article 9’s drafting were already operating central and local filing systems. *See id.* Choosing one method over another would have cost jobs, many of which were political patronage. *See id.* Furthermore, at the time, communications and travel infrastructure were not well developed. *See id.* The issue of whether or not filings would be made at a state capitol or local county seat was significant. *See id.*

25. *See Cur.* § 9-401 cmt. 1. “This section does not attempt to resolve the controversy between the advocates of a completely centralized state-wide filing system and those of a large degree of local autonomy.” *Id.*

26. *See* LOPUCKI & WARREN, *supra* note 12, at 331.

27. *See id.*

28. *See Cur.* § 9-401(1) First Alternative Subsection (1). States that adopted the first alternative: Connecticut, Delaware, Idaho, Iowa, Maine, Oregon, Utah, Washington. *See* Lynn M. LoPucki, *Why the Debtor’s State of Incorporation Should be the Proper Place for Article 9 Filing: A Systems Analysis*, 79 MINN. L. REV. 577, 656 (1995) [hereinafter LoPucki, *Proper Place for Filing*].

29. *See Cur.* § 9-401(1) Second Alternative Subsection (2). States that adopted the second alternative: Alabama, Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wisconsin. *See* LoPucki, *Proper Place for Filing*, *supra* note 28, at 656.

30. *See Cur.* § 9-401(1) Third Alternative Subsection (3). States that originally adopted the third alternative: Arkansas, Maryland, Massachusetts, Mississippi, Missouri, Nevada, Pennsylvania, New York, North Carolina, Ohio, Vermont, and Virginia. *See* LoPucki, *Proper Place for Filing*, *supra* note 28, at 656.

31. *See* LOPUCKI & WARREN, *supra* note 12, at 331-32.

32. *See* LoPucki, *Proper Place for Filing*, *supra* note 28, at 656. A number of states use versions of § 9-401(1) that are not based on any of the three alternatives in the model code. *See id.* These states include: Georgia, Hawaii, Kentucky, Louisiana, North Dakota, and Wyoming. *See id.*

33. Because each state has its own way of numbering legislation, simply finding Cur. § 9-401(1) in a particular state can be difficult. As a result, commercial companies have produced U.C.C. filing guides that attempt to answer the “where to file question” for all states. *See e.g.*,

cannot file centrally.<sup>34</sup> All filings must be made in a local office but are thereafter centrally indexed.<sup>35</sup> In Massachusetts, filings can be made in local real estate offices, in town or city offices, and with the Secretary of State.<sup>36</sup> In Delaware, filings are to be made only with the Secretary of State.<sup>37</sup> All together, there are 4283 different possible locations for filing.<sup>38</sup> A filing in the wrong place can be disastrous.<sup>39</sup>

The second problem facing a secured party is deciding how to meet the specific requirements for filing in the chosen location. The requirements of a financing statement are laid out in U.C.C. § 9-402(1).<sup>40</sup> The basic requirements include: (1) debtor name, (2) secured party name, (3) debtor's address, (4) address where the secured party may be contacted, (5) debtor signature, and (6) collateral description.<sup>41</sup> Unfortunately, like the "where to file" section, the "requirements" section of the U.C.C. has been somewhat altered by state governments.<sup>42</sup> One cannot always, therefore, file the same financing statement in every state. Here the problem is two-fold: nearly every state has its own financing statement form, and the requirements for what must be, should be, or can be included on each form vary widely.<sup>43</sup>

In an effort to assure consistency in financing statements, states developed financing statement forms. These vary widely in appearance and function.<sup>44</sup> Indiana, for example, requires that financing statements be submitted in triplicate, with each page of the form a different color.<sup>45</sup> Not even

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CARL R. ERNST, *THE SOURCEBOOK: TO PUBLIC INFORMATION* (1999).

34. See GA. CODE ANN. § 9-401(1) (1999). "The proper place to file in order to perfect a security interest is with the clerk of the superior court of any county of the state (the 'filing officer')." *Id.*

35. See *id.*

36. See MASS. GEN. LAWS ch. 106, § 9-401(1) (1986).

37. See DEL. CODE ANN. tit. 6, § 9-401(1) (1999). Real estate related filings are still made at local real estate recording offices. See *id.*

38. Joshua Stein, *How to Make the UCC Filing System More Reliable and Easier to Use*, SECURED LENDER ¶ 10 (1996), at <http://www.real-estate-law.com/articles/uccfile.htm>.

39. Unlike other filing mistakes that can lead to a rejection, a filing at the improper place may still be accepted by the filing officer, leading a secured party to believe it is in the proper place. See Cur. § 9-401 cmt. 5. The financing statement may therefore be ineffective. See *id.* Section 9-401(2) seeks to counter this. See Cur. § 9-401(2). It states: "A filing which is made in good faith in an improper place or not in all the places required by this section is nevertheless effective . . . against any person who has knowledge of the contents of such financing statement." *Id.*

40. Cur. § 9-402(1).

41. See *id.*

42. DONALD C. DELICH & JAMES R. DELICH, *UNIFORM COMMERCIAL CODE FILING GUIDE: CONCERNING THE UNIFORM COMMERCIAL CODE AND RELATED PROCEDURES 44-231* (2000). The authors outline the different filing requirements for each state. See *id.*

43. See *id.*

44. See *The Uniform Commercial Code Filing Guide*, UCCGUIDE CHARTS (2000) [hereinafter, *UCC Guide*].

45. See IND. CODE § 26-1-9-402(1) (2000). The relevant portion of the Indiana Code specifies, "Except as provided in subsection (2), a financing statement is sufficient if it is on the form prescribed by the secretary of state." *Id.* The Indiana Secretary of State promulgates the

the size of the forms is uniform.<sup>46</sup> Some states require unique sizes of paper forms, while others settle for the standard 8 ½ x 11.<sup>47</sup> Some states even require forms to be submitted on carbon paper.<sup>48</sup> The practical result is a wide variety

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colored paper regulations. See *The Uniform Commercial Code Filing Guide*, UCCGUIDE IN-FILEFACT (2000).

46. See *UCC Guide*, *supra* note 44.

47. See *id.* Some unique form sizes include, in inches: Alabama, 8 x 10; Illinois, 8 x 5, New York, 7¾ x 5; Iowa, 8 x 5 for U.C.C. filings and 8 x 10 for real estate filings. *Id.*

48. *E.g.*, Maryland's form specifics are some of the most complicated of all:

In addition to other requirements stated herein, any person tendering for filing a financing or continuation statement, or any amendment thereof, or an assignment, termination or release statement, upon a printed form shall cause said printed form to be printed in not less than 8 point type, in black letters upon white paper of sufficient weight and thickness as to be clearly readable. If any such statement shall be wholly typewritten or typewritten on a printed form, the typewriting shall be in black letters, in not less than elite type upon white paper of sufficient weight or thickness as to be clearly readable. In those filing offices where such statements are photostated or microfilmed no such statement upon which a rider or riders have been placed or attached in such a manner as to obscure, hide or cover any other part of the statement shall be tendered or received for filing, and no such statement not otherwise readily subject to photostating or microfilming shall be tendered or received for filing until a charge equal to three times the fee allowed by law for the filing, noting in the index, furnishing a receipt for such filing and recording of the same shall have been paid to the filing officer. Each sheet of any such statement tendered for filing shall not exceed in size 8½ by 14 inches upon which the printed or typewritten matter shall not be more than 6½ by 10 inches and any statement tendered for filing with sheets smaller than this maximum shall have a margin at the top and bottom of at least 2 inches each and with side margins of at least 1 inch each. Any person tendering any such statement for filing shall cause the name or names of every person attached to said statement to be typed or printed and, if a signature, to be typed or printed below such signature. The statement shall also contain a designation of the person and the address to which the filing officer may deliver or mail any such statement after it shall have been recorded as hereinafter provided. A financing statement shall also indicate whether or not the underlying secured transaction or transactions being publicized by such financing statement are subject to the recordation tax imposed by Title 12 of the Tax - Property Article, or whether partially so subject. If such transaction or transactions are wholly or partially subject to the recordation tax then the principal amount of the debt initially incurred shall be stated for the purpose of computing the tax then payable, and the payment and collection of subsequent taxes by reason of additional indebtedness shall be governed by Title 12 of the Tax - Property Article. If a statement is to be recorded in the land records, such statement must state conspicuously at its top "To Be Recorded in the Land Records" and any such statement tendered for filing in Baltimore City or in any county where a block system is maintained for recording papers among the land records shall contain in the description of the real estate the house number and street, if there be any, or the block reference. Statements other than those to be recorded in the land records shall be recorded in a well-bound book or books or other appropriate medium to be styled "Financing Records" and indexed in a book or books or other appropriate medium to be styled "Index of Financing Records."

MD. ANN. CODE § 9-402(9) (2000). This statement is entirely absent from the model version

of state forms, which reflect a diversity of state filing requirements.<sup>49</sup>

In recent years, there has been a movement to solve this inconsistent - forms problem. In 1995, the Secured Transactions Section of the International Association of Corporate Administrators introduced the National Financing Statement form (National form).<sup>50</sup> It was designed to function as a standard form for use in every filing office in the country.<sup>51</sup> Many filing offices around the country quickly accepted it.<sup>52</sup> However, two problems remain. First, in many states, use of the National form over the suggested state form may result in a different filing fee.<sup>53</sup> Second, there is uncertainty about local filing offices' acceptance of the National form.<sup>54</sup> Even though a Secretary of State may allow the National form, there is no guarantee that a local county office will not reject it.<sup>55</sup> Naturally, secured parties shy away from use of a form that has the possibility of rejection.<sup>56</sup>

The form is not the only complicated filing requirement. What is actually required on the form varies from state to state.<sup>57</sup> For example, Tennessee has an indebtedness tax.<sup>58</sup> In several states, a secured party is required to include the debtor's social security number or employment identification number.<sup>59</sup> Also, filing fees are different from state to state and county to county.<sup>60</sup> Failing to meet these state specific requirements can have

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of Article 9. See Cur. § 9-402.

49. See Harry C. Sigman, *Putting Uniformity Into—And Improving the Operation of—the Commercial Code: The New National Financing Statement Form*, 51 BUS. LAW. 721, 722 (1996). An example of the National Form is included in the appendix.

50. See *id.* at 721.

51. See *id.*

52. See *id.*

53. Interview with Gregory J. Seketa, an attorney who has focused his practice on secured transactions, formerly an Executive Vice President of ProValent, Inc., a company that designed a web-based application to allow secured parties to transmit and service financing statements online, in Indianapolis, Ind. (Nov. 1, 2000).

54. See *id.*

55. See *id.*

56. See *id.*

57. See Sigman, *supra* note 49, at 722.

58. See TENN. CODE ANN. § 9-403 (1998). Others states also impose taxes on U.C.C. filings above and beyond normal filing fees. *E.g.* Maryland, MD. CODE ANN. TAX-PROP. §§ 12-101-115 (2000); Alabama, ALA. CODE § 40-22-2 (2000).

59. See Sigman, *supra* note 49, at 729. These states include: Colorado, Georgia, Kansas, Minnesota, Nebraska, North Dakota, Oklahoma, and South Dakota. See *id.* n.16. For example, the Kansas statute adds the following to the standard financing statement requirements: “[the financing statement] shall contain the social security number (SSN) or the federal employer identification number (FEIN) of the debtor, except that when the debtor is a sole proprietorship, the financing statement shall contain only the social security number (SSN) of the debtor.” KAN. U.C.C. ANN. § 84-9-402(1) (West 2000).

60. See Carl R. Ernst, Chair, Property Records Industry Joint Task Force Standards Committee, *Recorder's Guide to New Article 9-5 of the Uniform Commercial Code* 34 (Dec. 21, 1998), at <http://www.prijtf.org/taskforce/Art9RcrdFinal.htm>. [hereinafter, Ernst, *Recorder's Guide*]. Fees per filing range from \$5.00 in Mississippi to \$69.50 in Pennsylvania. *Id.* The amount of the fee has little bearing on the number of filings made. See *id.*

disastrous results.<sup>61</sup> At best, a filing is rejected. This gives the secured party a second chance.<sup>62</sup> At worst, a filing is accepted and recorded even though the statutory requirements are not met.<sup>63</sup> This means that although the secured party believes it has done everything correctly, in reality, it may have an unperfected security interest.<sup>64</sup> As a result, filing offices reject an estimated ten to fifteen percent of filings in the United States each year.<sup>65</sup>

Once a filing is made correctly, however, a secured party cannot assume that it will remain effective in the future. The model version of Article 9 provides that once a filing is correctly made, it remains effective for a period of five years.<sup>66</sup> Unfortunately, states have tampered with this aspect as well. In Maryland, filings remain effective for twelve years.<sup>67</sup> In Arizona, filings remain effective for six years.<sup>68</sup> Although these requirements were designed to afford secured parties more protection, in reality, they make matters more complicated. Secured parties monitor their filings in order to know when to renew.<sup>69</sup> A multiple state filing made simultaneously in Maryland, Arizona, and Delaware, however, would expire at different times.<sup>70</sup> This would make it very difficult for a large commercial lender to monitor financing statements in multiple states.

To properly perfect a security interest, in some situations a secured party must also comply with law outside Article 9 of the U.C.C.. The Food Security Act of 1985<sup>71</sup> was a Congressional attempt to reform an irregular section of the U.C.C. by federal legislation.<sup>72</sup> U.C.C. § 9-307 originally created a "farm products exception" that gave agricultural lenders added protection of their collateral.<sup>73</sup> This section of the U.C.C. was very controversial. As a result, numerous states modified it or omitted it

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61. See Seketa, *supra* note 53.

62. See *id.*

63. See *id.*

64. See *id.*

65. LoPucki, *Computerization*, *supra* note 7, at 12. An ABA Task Force reported that in California alone forty-nine percent of UCC-2 filings (continuations, terminations, amendments, assignments, and partial releases) were rejected in one year. *Id.*

66. See Cur. § 9-403(2).

67. MD. CODE ANN. § 9-403 (1999).

68. ARIZ. REV. STAT. § 9-403 (2000).

69. See Seketa, *supra* note 53.

70. A filing made simultaneously in Maryland, Arizona, and Delaware on January 1, 2000, would need to be continued in order to prevent lapse by January 1, 2012, in Maryland; January 1, 2006, in Arizona; and January 1, 2005, in Delaware, which follows the standard five year rule. Obviously, this creates a nightmare for those who must oversee commercial liens.

71. 7 U.S.C. § 1631 (1985).

72. See Charles W. Wolfe, *Section 1324 of the Food Security Act of 1985: Congress Preempts the 'Farm Products Exception' of Section 9-307(1) of the Uniform Commercial Code*, 55 UMKC L. REV. 454 (1987).

73. Cur. § 9-307(1). Buyers in the ordinary course of business take free of a security interest even though a security interest is perfected and the buyer knows of its existence. See *id.* The farm products exception exempts buyers of farm products from this rule. See *id.* The result is that agricultural lenders have an added guarantee of payment. See *id.*

altogether.<sup>74</sup> Congress decided that federal action was necessary to harmonize that section of the U.C.C..<sup>75</sup>

The Food Security Act creates another level of complexity for secured parties, or at least those that make agricultural liens.<sup>76</sup> Under the Act, agricultural lenders must provide notice to other lenders that they have a lien on farm products.<sup>77</sup> This notice is made either by sending a written form to other lenders, or by registering the lien with the Secretary of State or other central office.<sup>78</sup> This registration acts much like a U.C.C. filing, but it is important to note that a U.C.C. filing in many states must be made in addition to a Food Security Act filing in order for a lender to be properly perfected.<sup>79</sup> Therefore, secured parties that regularly take security in farm products must have an understanding of Food Security Act requirements.

Obviously, given the complexities of the current Article 9 filing system, any transition to online filing and searching would be complicated. A transformation to electronic transactions requires two functions: paperless documentation and electronic payment.<sup>80</sup> The Article 9 filing system is not set up to do either of these.<sup>81</sup> Nevertheless, some states have attempted to make online filing possible.<sup>82</sup> However, currently under Article 9, there are tremendous impediments to filing and searching over the Internet. First, there are over 4200 filing offices and therefore over 4200 possible filing locations.<sup>83</sup> Form requirements are also unnecessarily complex.<sup>84</sup> Finally, debtor signature requirements hinder many states from attempting to offer online filing.<sup>85</sup>

In conclusion, the Article 9 filing system has grown from a somewhat

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74. See Daniel P. Johnson, *Federal Legislation Provides Protection For Buyers of Farm Products: Food Security Act Supersedes the Farm Products Exception of UCC Section 9-307(1)*, 47 U. PITT. L. REV. 749, 761 (1986). At least a third of the states adopted an amendment to U.C.C. § 9-307(1). See *id.* California completely eliminated the farm products exception altogether. See *id.*

75. See *id.* at 765.

76. See Mark V. Bodine, *Clear Title: A Buyer's Bonus, A Lender's Loss—Repeal of UCC § 9-307(1) Farm Products Exception by Food Security Act § 1324 [7 U.S.C. § 1631]*, 26 WASHBURN L.J. 71, 83 (1986).

77. See *id.* at 84-85.

78. See *id.* When a secured party registers a Food Security act filing with the central office, it is entered into a master list. See *id.* at 89. This list is then distributed to all requesting secured parties, effectively putting them on notice of any agricultural liens. See *id.* at 89-90.

79. See *id.* at 89.

80. See Julia Alpert Gladstone, *Designing Legislation to Facilitate Electronic Commerce on the Internet*, 45 R.I. B.J. 13, 14 (Feb. 1997).

81. See *e.g.*, MD. ANN. CODE § 9-402(9), *supra* note 47. A few states do allow payment electronically by credit card. See DELICH, *supra* note 41, at 43. The majority of states do not. See *id.*

82. See Sigman, *supra* note 49, at 723. Texas was the first state to attempt online filing in 1996. See *id.* Other examples include Kansas and South Dakota. See *id.* at 724.

83. Nelson, *supra* note 8, at 35.

84. See *id.* at 41.

85. See Rev. § 9-101 cmt. 4h.



unified law into an overly complex compilation.<sup>86</sup> A secured party must be familiar with federal, state, and local laws and regulations. Even then, it is possible that a filing may be rejected for good, bad, or no reason at all.<sup>87</sup> It is simply impractical for a secured party to do everything necessary to correctly make a U.C.C. filing every time, especially in high volume, low touch transactions.<sup>88</sup> The Article 9 filing system is a product of obsolete technology—it offers substantial limitations for filing systems attempting to move online.<sup>89</sup>

### III. THE CANADIAN PERSONAL PROPERTY SECURITY ACT FILING SYSTEM

Canada's secured transactions law is based primarily on Article 9 of the U.C.C.<sup>90</sup> A natural question, therefore, is whether Canadian provinces have similar difficulties bringing their secured transactions filings online; the answer is two-fold. First, generally, Canadian provinces have been much more willing to design or modify their statutes to suit online financing statement filing.<sup>91</sup> Second, like the United States, there is still a great deal of inconsistency from one province to the next.<sup>92</sup>

The Canadian equivalent to Article 9 of the U.C.C. is called the Personal Property Security Act (P.P.S.A.).<sup>93</sup> Unlike the U.C.C., which began as a model code that each state subsequently adopted, the Canadian P.P.S.A. arose out of individual provincial initiatives.<sup>94</sup> Like the U.C.C., the P.P.S.A. has enjoyed success—it has been adopted by all but one of the common law jurisdictions in Canada.<sup>95</sup> Quebec has adopted its own secured transactions law based on the principles inherited from the French Civil Code.<sup>96</sup> Because

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86. See Nelson, *supra* note 8, at 41.

87. See LoPucki, *Computerization*, *supra* note 7, at 9. “[E]ven a reasonably diligent filer may be unable to achieve or maintain an effective filing.” *Id.*

88. See *id.* at 6.

89. See Nelson, *supra* note 8, at 41.

90. See Ronald C.C. Cuming, *Article 9 North of 49th: The Canadian PPS Acts and the Quebec Civil Code*, 29 LOY. L.A. L. REV. 971 (1996) [hereinafter Cuming, *PPS Acts*]. Canadian law reformers used Article 9 as a building block for their personal property registration systems. See *id.*

91. See *id.* at 971.

92. See *id.* at 975.

93. See Bridge et al., *supra* note 2, at 569.

94. See Cuming, *PPS Acts*, *supra* note 90, at 974. In 1964, the Canadian Bar Association prepared a model of the P.P.S.A. to be used throughout the country. See *id.* at 974 n.8. This model proved to be too weak, and was not widely accepted across Canada. See *id.* Another revision was made in 1972. See *id.* Nevertheless, provinces each created their own versions, with each subsequent enactment of a province reflecting a new version with new features. See *id.* at 974-75. Therefore, it is hard today to point to a single version of the P.P.S.A. as the model act. See *id.* at 975. There is a Uniform Law Conference of Canada, but it has not yet drafted a uniform version of the P.P.S.A. See Uniform Law Conference of Canada, at <http://www.law.ualberta.ca/alri/ulc/> (last visited Oct. 3, 2000).

95. See Bridge et al., *supra* note 2, at 569.

96. See Fabienne D. Struell, *Quebec's Creative Regime as a Model for Chile's Secured*

of its relative difference, the Quebec system of filing falls outside the scope of this note. However, it is important to understand that Canada does not have a unified secured transactions law.<sup>97</sup>

Determining where to file in a Canadian P.P.S.A. province is not a difficult question. All financing statements are filed into a province-wide registry.<sup>98</sup> If a filing relates to real estate, it should also be made in the land records of the local real estate office.<sup>99</sup> Unlike United States filing systems, which rely heavily on paper financing statement forms, Canadian P.P.S.A. statutes provide secured parties with a variety of methods for submitting financing statements. These methods are not uniform from province to province. For example, Ontario allows filing of paper financing statements in any number of branch offices located throughout the province.<sup>100</sup> A secured party may file in any branch office.<sup>101</sup> The financing statement is then couriered to Toronto where it is centrally indexed.<sup>102</sup> In Nova Scotia, alternatively, a secured party cannot even file a traditional paper financing statement.<sup>103</sup> Nova Scotia requires online filing.<sup>104</sup> Generally, the earlier a province adopted the P.P.S.A., the more likely the concentration will be on paper filing rather than on electronic filing.<sup>105</sup> This is certainly true here; Ontario adopted the P.P.S.A. in 1967,<sup>106</sup> and Nova Scotia adopted the P.P.S.A. in 1996.<sup>107</sup> Provinces that adopted the P.P.S.A. after 1990 have designed their systems around on-line access.<sup>108</sup>

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*Transaction Reform*, 5 SW. J. L. & TRADE AM. 207, 224 (1998). Although Quebec's secured transaction law is not modeled after Article 9, it represents a compromise between a civil code system and the P.P.S.A. See *id.*

97. See Cuming, *PPS Acts*, *supra* note 90, at 975.

98. See Ronald C.C. Cuming, *An Overview of a Canadian Personal Property Security System*, at <http://www.natlaw.com/pubs/overview.htm> (last visited Oct 3, 2000) [hereinafter, Cuming, *Overview*].

99. See David L. Denomme, *Registration – Filling Out the Forms*, 14 NAT. B.L. REV. 19 (1995) [hereinafter, Denomme, *Registration*]. E.g., Ontario P.P.S.A. § 54(1) provides that notice of registration when collateral includes fixtures, crops, minerals, or hydrocarbons should be made in the proper land records. R.S.O. ch. P-10 § 54(11) (1998) (Can.). This is similar to the Article 9 § 401 requirement that real estate related financing statement are to be made in the proper local office. Cur. § 9-401(1).

100. See Denomme, *Registration*, *supra* note 99, at 3-4. For years, the only way to complete a financing statement was on a paper form. See *id.* at 3. Although still possible today, most registrations are now done electronically. See *id.* at 4. All online filings are made in the central registry. See *id.*

101. See *id.* Ontario has forty-nine branch registration offices and one central office. *Id.* Ontario does not require paper filing. See R.S.O. ch. P-10, § 54(1) (1990).

102. See *id.*

103. See R.S.N.S. ch. P-13, § 43(1) (1996) (Can.). "There shall be an electronic registry known as the Personal Property Registry for the purpose of registrations pursuant to this Act and pursuant to any other Act that provides for registration in the Registry." *Id.*

104. See *id.*

105. See Cuming, *PPS Acts*, *supra* note 90, at 975.

106. See *id.* at 975 n.9.

107. See R.S.N.S. P-13 (1996) (Can.).

108. See Letter from David Denomme, Legal Counsel, Liquor Control Board of Ontario,

Overall, the function of the registration system of Canada is much the same as the function of the Article 9 filing system in the United States.<sup>109</sup> Registration provides notice to other creditors of a security interest and establishes priority in the event of insolvency of the debtor.<sup>110</sup> A secured party can usually register a financing statement prior to the execution of a security agreement.<sup>111</sup> In both countries, asset based lenders regularly use these registration systems for help in determining whether or not to make loans.

The general requirements to file a financing statement in a P.P.S.A. jurisdiction are similar to Article 9 requirements. The basic form requires: (1) the name and address of the debtor, (2) the name and address of the secured party, and (3) a description of the collateral.<sup>112</sup> The form does not require the debtor's signature.<sup>113</sup> Like Article 9, the particular requirements may vary from province to province. For example, when collateral includes serial number goods,<sup>114</sup> the secured party must include the serial number of the goods that are being used as collateral.<sup>115</sup> In Ontario, there is no requirement for a collateral description at all.<sup>116</sup> Instead, a secured party can simply check the appropriate box, such as "Inventory" or "Equipment."<sup>117</sup> Likewise, each province charges different amounts for filings.<sup>118</sup> In sum, there are irregularities in each provincial P.P.S.A. filing statute.<sup>119</sup> Therefore, a secured

observer member, Personal Property Security Law Subcommittee of the Canadian Bar Association-Ontario (C.B.A.O.) and C.B.A.O Personal Property Security Opinions Committee (Oct. 3, 2000) (on file with the Indiana International and Comparative Law Review) [hereinafter, Denomme, Letter].

109. See Cuming, *PPS Acts*, *supra* note 90, at 980.

110. See Denomme, *Registration*, *supra* note 99, at 1. P.P.S.A. statutes do not provide legal notice of security interests to other secured parties. See, e.g., R.S.B.C. ch. P-359, § 47. Registration not notice:

Registration of a financing statement in the registry does not by itself constitute express, constructive or implied notice to any person of, or express, constructive or implied knowledge on the part of, any person of (a) the financing statement or its contents, or (b) the security interest perfected by the financing statement or the contents of any security agreement.

*Id.* Although this does not legally constitute notice, the registration of a financing statement does provide notice to a secured party that a financing statement has been created. See Denomme, *Registration*, *supra* note 99, at 1.

111. See Cuming, *PPS Acts*, *supra* note 90, at 980.

112. See Cuming, *Overview*, *supra* note 98.

113. See Ronald C.C. Cuming and Catherine Walsh, *Possible Implications of Revised UCC Article 9 for Canadian Personal Property Security Acts*, A Report Prepared and Presented to the Uniform Law Conference of Canada, at <http://www.law.ualberta.ca/alri/ulc/99pro/eppsaucc.htm> (last visited Sept. 19, 2000).

114. The definition of what are "serial number goods" varies in scope from province to province. See Letter from David Denomme, (Jan. 23, 2001) (on file with the Indiana International and Comparative Law Review) [hereinafter, Denomme, Second Letter].

115. See e.g., R.S.N.S. ch. P-13, § 44(8)(b) (1996) (Can.).

116. See Denomme, *Registration*, *supra* note 99, at 14.

117. See *id.*

118. See Cuming, *Overview*, *supra* note 98.

119. See *id.*

party must know the specific requirements for each province.<sup>120</sup>

One major difference between Article 9 filing systems and the Canadian P.P.S.A. filing systems is the degree to which each has been computerized. In Canada, all of these registry systems are computerized.<sup>121</sup> Each province maintains an electronic registry of financing statements and most offer searches through computer terminals.<sup>122</sup> Obviously, this makes searching for financing statements much more reliable than searching a traditional paper filing system.<sup>123</sup> Still, searching in the various provinces is anything but simple. A secured party must understand how each individual system functions.<sup>124</sup>

Another difference between P.P.S.A. and Article 9 filing systems is the duration that a filing is effective. In Canada, secured parties typically set the duration of effectiveness of their financing statement.<sup>125</sup> Likewise, if a secured party wishes to extend the duration of effectiveness, he may do so by filing a financing change statement.<sup>126</sup> The rationale for this flexibility is that computerization renders limiting filing durations unnecessary.<sup>127</sup> Paper record systems need to be periodically cleansed because they physically get very large.<sup>128</sup> Computerized records, however, do not physically require much additional office space as they grow.<sup>129</sup> To provide deterrent to selecting a lengthy or infinite registration, filing offices charge every year a filing is effective.<sup>130</sup>

Because a secured party can register a financing statement for an indefinite period and without a debtor's signature, P.P.S.A. statutes have

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120. *See id.*

121. *See* Norman Siebrasse & Catherine Walsh, *The Influence of the ULSIA on the Proposed New Brunswick Land Security Act*, 20 NOVA L. REV. 1133, 1138 (1996). In this article, the authors describe the personal property registrations systems of Canada as sophisticated computerized data registries. *See id.*

122. *See id.*

123. *See id.*

124. *See id.* For example, some systems are designed to accommodate for errors in registration entries. *See id.* For example, a search of John Smith will also reveal entries under John Smyth. *See id.*

125. *See* Cuming & Walsh, *supra* note 113. Canadian P.P.S.A.s allow registration terms of one to twenty-five years to eternity. *See id.* *See e.g.*, R.S.N.S. ch. P-13, § 45(1) (1996) (Can.). "Except as otherwise prescribed, a registration pursuant to this Act is effective for the period of time specified as part of the financing statement by which the registration is effected." *Id.*

126. *See e.g.*, R.S.N.S. ch. P-13, § 45(2) (1996) (Can.). "A registration may be renewed by registering a financing change statement at any time before the registration expires and, except as otherwise prescribed, the period of time for which the registration is effective shall be extended by the renewal period specified as part of the financing change statement." *Id.*

127. *See* Cuming, *Overview, supra* note 98.

128. *See id.*

129. *See id.*

130. *See id.* Although registration fees vary, they are approximately \$5 per year plus a \$5 administration fee. *Id.* Selecting infinite duration results in a \$400 fee plus a \$5 administration fee. *Id.*

safeguards for preventing abuse.<sup>131</sup> First, secured parties must give the debtor a copy of either the financing statement or verification statement.<sup>132</sup> Second, a debtor may demand that the secured party amend or terminate the financing statement if it was made incorrectly.<sup>133</sup> Failure to meet the debtor's demand, if justified, can result in a statutory \$500 penalty, payable to the debtor.<sup>134</sup> Finally, a province may control who has access to the filing systems.<sup>135</sup> For example, Ontario protects debtors by limiting who can file a financing statement electronically.<sup>136</sup> In Ontario, a filing party must register with the Ministry of Consumer and Commercial Relations, the central filing office, in order to obtain an account.<sup>137</sup> This account allows the filing party, whether a lender or a commercial intermediary, to submit financing statements electronically.<sup>138</sup> Hence, in reality large financial institutions, leasing companies, and some large law firms complete their own registrations.<sup>139</sup> For smaller lenders, financing statements can be filed electronically through use of a third party service provider.<sup>140</sup> These protections help ensure that secured parties are not careless when filing financing statements.

Like Article 9 filing systems, Canada's P.P.S.A. filing systems retain unique provincial qualities. Secured parties in Canada, like in the United States, must therefore acquaint themselves with a host of different filing systems and statutes. Still, Canadian systems in general are more modern in

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131. *See id.*

132. *See id.* A verification statement is issued when filing is done electronically and no paper financing statement exists. *See id.* For example, the Nova Scotia P.P.S.A. provides:

The secured party or person named as secured party in a financing statement shall give to each person named as debtor in the statement, within thirty days after it is registered, a verification statement in accordance with the regulations, except where that person has waived in writing the right to receive it.

R.S.N.S. ch. P-13, § 44(11) (1996) (Can.).

133. *See id.* For example, the New Brunswick P.P.S.A. provides that if a secured party fails to amend or discharge a financing statement after a debtor demands for good reason, the debtor may amend or discharge the financing statement by filing a change form. *See* R.S.N.B. ch. P-7.1, § 50(4)-(5) (1993) (Can.).

134. The Ontario P.P.S.A. provides that the secured party shall pay the debtor \$500 for failing to discharge or amend an incorrect financing statement. R.S.O. ch. P-10, § 46(7) (1990) (Can.). This penalty is in addition to any other damages a debtor can prove. *See* Denomme, Second Letter, *supra* note 114. "Experience in the province of Saskatchewan, where this system [of fines] has been in place for 12 years, has demonstrated that secured parties rarely fail to respond to [debtor] demands." Cuming, *Overview*, *supra* note 98.

135. *See* R.S.O. ch. P-10, § 46(2.2) (1990) (Can.).

136. *See id.* "A financing statement or financing change statement in the form of data in a required format may be tendered for registration by direct electronic transmission of the information only by a person who is or who is a member of a class of persons that is authorized by the registrar to do so." *Id.*

137. *See* Denomme, Letter, *supra* note 108.

138. *See id.*

139. *See* Denomme, *Registration*, *supra* note 99, at 23.

140. *See* Denomme, Letter, *supra* at 108. *See also* Oncorp Direct, Inc., at <http://www.oncorp.com> (providing an example of a website that facilitates electronic filing).

their acceptance and promotion of electronic filing.<sup>141</sup> Even Ontario, the oldest P.P.S.A. province, encourages electronic filing.<sup>142</sup> It does this by charging more for filings on traditional paper medium.<sup>143</sup> Filing paper forms has greater administrative costs.<sup>144</sup> Overall, Canadian filing systems are computerized and automated.<sup>145</sup> This has led to a great deal of trust in registration officials, confidence completely lacking under Article 9 filing systems.<sup>146</sup>

Unlike the process that created uniform laws in the United States, the Canadian P.P.S.A. grew out of a process of legislative evolution.<sup>147</sup> Creating national Canadian standards has proven too difficult because of rapid advances in technology, coupled with intervening introductions of the P.P.S.A. in various provinces, and Quebec's use of an altogether different filing system.<sup>148</sup> Article 9, on the other hand, was created in the 1950's; long before any computerized filing system was foreseeable.<sup>149</sup> The Canadian P.P.S.A.s arrived years later, after electronic filing, and later online filing, became possible.<sup>150</sup> The creation of computerized filing systems in Canada has helped modernize Canadian transaction law.<sup>151</sup> Currently, the Canadian systems represent "the most advanced of their kind in the world."<sup>152</sup>

#### IV. THE REVISED ARTICLE 9 FILING SYSTEM

The success of the Canadian Provinces' adaptation of electronic and online filing, together with the failure of many American Article 9 filing systems to adapt to modern technology, led many scholars searching for ways to improve Article 9.<sup>153</sup> The answer, they hoped, would come from the creation of a Revised Article 9. Only time will tell if it will be as widely received as the original version, but for now, a few conclusions can already be drawn: Revised Article 9 represents great steps forward in simplicity and compatibility with electronic commerce. At the same time, however, like original Article 9 and the Canadian P.P.S.A.s, the revision fails to bring a uniform approach to filing. In this regard, the mistake began even before its creation.

141. See Cuming & Walsh, *supra* note 113.

142. See Denomme, *Registration*, *supra* note 99, at 3. In Ontario, the majority of filings are done electronically. See *id.*

143. See *id.* at 4. The Ministry in Ontario charges an extra \$5 administrative fee on all registrations not completed electronically. *Id.* n.6.

144. See *id.*

145. See Cuming, *PPS Acts*, *supra* note 90, at 982.

146. See Cuming & Walsh, *supra* note 113.

147. See Cuming, *PPS Acts*, *supra* note 90, at 974-75.

148. See Cuming, *Overview*, *supra* note 98.

149. See *id.*

150. See *id.*

151. See *id.*

152. *Id.*

153. See LoPucki, *Computerization*, *supra* note 7, at 5.

The history of Revised Article 9 began in 1990.<sup>154</sup> In that year, the Permanent Editorial Board for the U.C.C., along with the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) established a committee to study Article 9.<sup>155</sup> In 1992, the committee recommended numerous changes and the creation of a committee to revise the code.<sup>156</sup> Organized in 1993, this drafting committee met fifteen times and spent the next five years working on revisions.<sup>157</sup> In 1998, the result was an altogether new Article 9.<sup>158</sup>

The ultimate goal of the new Article 9 is much like the goal of the original Article 9—to communicate the existence of prior security interests to those who will take subject to them.<sup>159</sup> In order to accomplish this, the drafters focused on improving the code in a number of areas. First, the committee wanted to make perfection easier over a greater range of assets.<sup>160</sup> Second, the committee wanted to improve the clarity and precision of the old code.<sup>161</sup> Third, the committee hoped to reduce the cost of compliance and reduce the risk for errors.<sup>162</sup> Finally, and perhaps most importantly, the committee wanted to facilitate electronic commerce.<sup>163</sup>

When examining where to file rules in Revised Article 9, it becomes evident that the drafters had such goals in mind. Unlike the original code, which provided for three alternatives,<sup>164</sup> the model code has only one.<sup>165</sup> All filings are made at the central office, except for real estate related filings, which are made in local real estate records, largely as before.<sup>166</sup> This shifts a significant number of filings away from local filing offices.<sup>167</sup> Most certainly, some local governments will resist this, since local filings in many jurisdictions represent revenue and jobs.<sup>168</sup> More importantly, however, the

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154. See U.C.C. § 9-101 cmt. 2. (1999) [hereinafter, the Revised U.C.C. Article 9 will be cited as Rev.].

155. See *id.*

156. See *id.*

157. See *id.*

158. See *id.*

159. See LoPucki, *Proper Place for Filing*, *supra* note 28, at 582.

160. See JULIAN B. McDONNELL, *UNIFORM COMMERCIAL CODE: ANALYSIS OF REVISED ARTICLE 9 1-2* (1998).

161. See *id.* at 2.

162. See Steven O. Weise, *An Introduction to the Revised UCC Article 9*, in *WHAT LAWYERS NEED TO KNOW ABOUT THE NEW UCC ARTICLE 9-SECURED TRANSACTIONS* 91, 96 (Sandra Stern ed., 2000).

163. See McDONNELL, *supra* note 160, at 2.

164. See Cur. § 9-401(1). Although the original drafters of the U.C.C. provided different alternative locations for filing, they promoted central filing. See *id.*

165. See Rev. § 9-501.

166. See Ernst, *Recorder's Guide*, *supra* note 60. Some states will be harmed more than others, based on filing systems already in place. See *id.* Dual filing states adopting Revised Article 9 have the most to lose. See *id.*

167. See *id.*

168. See *id.* "Even though the operations of most recording offices are paid out of general funds and funded with considerably less than the fees that recorders collect on behalf of the

move to central only filing will undoubtedly help filing systems move online.<sup>169</sup> From an economic standpoint, there are fewer computers to purchase and fewer employees needed to run one central office, as opposed to multiple local offices.<sup>170</sup>

Determining where to file among the states, however, is more complicated than simply knowing where in a state to file. Many security interests are granted in multi-state transactions.<sup>171</sup> In the original Article 9, and in P.P.S.A. jurisdictions, a secured party would need to file in all states, or provinces, where collateral is located.<sup>172</sup> Revised Article 9 changes this. There are three possible ways of determining where to file: file where collateral is located, file where debtor is located, or file where debtor is organized or incorporated.<sup>173</sup> Revised Article 9 abandons the first concept in favor of the second two.<sup>174</sup> The revised code provides that filing should be made in the place of the debtor's location.<sup>175</sup> Section 9-307 specifies a debtor's filing location: if the debtor is incorporated, the debtor must file in the state of incorporation.<sup>176</sup> If the debtor is an entity, but not incorporated, the debtor must file in the state of the chief executive office.<sup>177</sup> If debtor is an individual, the debtor must file at his or her principal residence.<sup>178</sup> The point of these revisions is to simplify the where to file question and to reduce the duplicative filings that are necessary under the current code.<sup>179</sup>

The filing requirements under the Revised code have also been simplified. The basic requirements are set out in Section 9-502.<sup>180</sup> The financing statement has only three requirements.<sup>181</sup> First, the financing

county, town, parish or district, recorders still take seriously their responsibility for providing funds for local government operations." *Id.*

169. *See, e.g.,* Arthur H. Ravers and John L. McCabe, *A Central Filing System for Financing Statements* COLO. LAW. (Sept. 1999). Colorado has recently moved a number of its local U.C.C. records to a centralized computer database. *See id.*

170. Georgia and Louisiana have already connected all local filing offices electronically to the central office. *See* GA. CODE ANN. § 11-9-401 (2000); LA. REV. STAT. ANN. § 9-401 (2000). In both states, one may file a financing statement in any county. *See id.* It is then indexed into a central filing database. *See id.*

171. *See* Sigman, *supra* note 49, at 722.

172. *See* CORINNE COOPER, *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE* 7 (1999).

173. *See* LoPucki, *Proper Place to File*, *supra* note 28, at 580-81. Over half of all filings are for corporate debtors. *See id.*

174. *See* COOPER, *supra* note 172, at 7.

175. *See* Rev. § 9-301. "Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral." Rev. § 9-301(1).

176. Rev. § 9-307.

177. *See id.*

178. *See id.*

179. *See* COOPER, *supra* note 172, at 1.

180. Rev. § 9-502.

181. *See id.*



statement must provide the name of the debtor.<sup>182</sup> This requirement is met by following the guidelines in Sections 9-503 and 9-506.<sup>183</sup> Second, the statement should provide the name of the secured party name or a representative of a third party.<sup>184</sup> This section reflects Revised Article 9's indifference to who files the financing statement.<sup>185</sup> One need not be a secured party to make the filing.<sup>186</sup> Instead, the revision states that any person is entitled to make a filing, provided that he has authorization from the debtor.<sup>187</sup> Finally, a financing statement requires indication of the collateral covered.<sup>188</sup> Unlike the original version, Revised Article 9 allows for extremely general collateral descriptions.<sup>189</sup> These factors together help realize the drafters' goal to simplify filing requirements.<sup>190</sup>

Another simplification involves promoting the use of standard financing statement forms.<sup>191</sup> A large percentage of filings are submitted by parties located outside the state where they are received for filing.<sup>192</sup> A lack of standardized forms from one state to the next made these cross-state filings extremely difficult and expensive.<sup>193</sup> Revised Article 9's drafters recognized this and responded with Section 9-521.<sup>194</sup> Section 9-521 specifies use of a standardized financing statement—the National form.<sup>195</sup> The National form represents the combined efforts of filing officers, secured parties and their counsel, and service companies.<sup>196</sup> All of these parties hope that the National form will achieve four goals: first, improve upon present filing systems; second, help forge a functional national filing system; third, facilitate the move to advanced technologies in the operation of the filing systems;<sup>197</sup> and fourth,

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182. See *id.* § 9-502(a)(1).

183. See Rev. § 9-101 cmt. h. Section 9-503 explains what constitutes a sufficient debtors name when a debtor is a registered entity, estate, trust, individual, or partnership. Rev. § 9-503. Section 9-506 explains that financing statement must substantially satisfy the code's requirements to the point that it is not seriously misleading. Rev. § 9-506.

184. See Rev. § 9-502(a)(2).

185. See Rev. § 9-101 cmt. h. "[The filing section of the code] is largely indifferent as to the person who effects a filing." *Id.* "The filing scheme does not contemplate that the identity of the 'filer' will be part of the searchable records." *Id.*

186. See Rev. § 9-509.

187. See *id.*

188. See Rev. § 9-502(a)(3).

189. See Rev. § 9-504. A collateral description is sufficiently detailed even if it provides only "an indication that the financing statement covers all assets or all personal property" of the debtor. *Id.*

190. See COOPER, *supra* note 172, at 6.

191. See Rev. § 9-520.

192. See Sigman, *supra* note 49, at 722.

193. See *supra*, Part II.

194. See Rev. § 9-521.

195. See *id.* The National form refers to four forms: the National UCC-1, the National UCC-1 Addendum, the National UCC-3, and the National UCC-3 Addendum. See *id.* See also appendix.

196. See Rev. § 9-521 cmt. 2.

197. See Sigman, *supra* note 49, at 727. A quick look at the National form makes one

facilitate the transition to and operation of Revised Article 9.<sup>198</sup> Only time will tell if the National form will meet these goals. Regardless, the National form represents a valid attempt to unify a portion of the code that was very non-uniform.<sup>199</sup>

Use of the National form is recommended in Revised Article 9, but it is not expected to be the only means of filing.<sup>200</sup> Revised Article 9 is medium neutral.<sup>201</sup> This means that references to paper and paper filing have been mostly removed.<sup>202</sup> For example, Maryland's current Article 9 filing system requires that financing statements "to be printed in not less than 8 point type, in black letters upon white paper of sufficient weight and thickness as to be clearly readable."<sup>203</sup> However, Maryland's version of Revised Article 9 does not even mention the word paper.<sup>204</sup> Overall, the drafters of the revised article hope that medium neutral language will promote and facilitate online filing.<sup>205</sup>

Perhaps the most significant change in the Revised Article 9 filing structure is the removal of the debtor's signature requirement.<sup>206</sup> The purpose of any financing statement is to provide notice to another secured party of the original secured party's security interest.<sup>207</sup> This notice merely indicates that a person may have a security interest in the collateral specified in the financing statement, nothing more.<sup>208</sup> Therefore, whether a debtor signs a financing statement makes little difference to a secured party searching for information under that debtor's name.<sup>209</sup> Most importantly, however, doing away with traditional signatures helps overcome one major obstacle to online filing.<sup>210</sup>

However, doing away with signatures may also raise some concern. After all, the filing rules should not be so relaxed as to allow any person to file against anyone he or she chooses. Still, under the current code's signature

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understand why it is technology friendly. Unlike old forms that often had a large square for debtor name and address, the National form has a box for each field, debtor name, debtor street address, debtor city, debtor state, and debtor zip code. See Rev. § 9-521. For a filing officer entering information into a computerized database, the National form's specific boxes greatly decrease the likelihood for mistakes. See Rev. § 9-521 cmt. 2.

198. See Sigman, *supra* note 49, at 722.

199. See *id.*

200. See Darrell W. Pierce, *Uniform Commercial Code Revised Article 9—Changes to the Filing System*, in WHAT LAWYERS NEED TO KNOW ABOUT THE NEW UCC ARTICLE 9—SECURED TRANSACTIONS 82 (Sandra Stern ed., 2000).

201. See *id.*

202. See *id.*

203. MD. CODE ANN. § 9-402(9) (1999).

204. See MD. CODE ANN. §§ 9-501 – 9-521 (1999). The word paper is only used in Maryland's Revised Code when referring to "chattel paper" and not a paper financing statement. See MD. CODE ANN. § 9-513.

205. See COOPER, *supra* note 172, at 1.

206. See Weise, *supra* note 154, at 98.

207. See Rev. § 9-502 cmt. 2. "This section adopts the system of 'notice filing.'" *Id.*

208. See *id.*

209. See *id.*

210. See Weise, *supra* note 162, at 98.

requirement, filing offices have no way of checking validity.<sup>211</sup> Anyone could file by forging the debtor's signature.<sup>212</sup> Nevertheless, in order to protect against fraudulent filings, Revised Article 9 requires the debtor's authorization to file.<sup>213</sup> This authorization does not have to be on the financing statement itself.<sup>214</sup> A security agreement alone is sufficient authorization.<sup>215</sup> If a secured party wishes to file before the security agreement is signed, the secured party must obtain express authorization.<sup>216</sup>

If a secured party fails to obtain proper authorization and commences filing regardless, a debtor is not without remedies. Section 9-625 provides a remedy for debtors when a secured party violates any part of the Revised Code.<sup>217</sup> Furthermore, Section 9-509(d)(2) authorizes the debtor to either terminate or amend a financing statement if it was made in error.<sup>218</sup>

Under current Article 9 filing systems, however, even correctly made filings are not always accepted.<sup>219</sup> This occurs because of a large amount of local filing office regulations and perceived discretion.<sup>220</sup> The drafters of Revised Article 9 felt that filing officers had become "too independent in their adoption of so-called local rules which sometimes resulted in otherwise legally sufficient filings being rejected."<sup>221</sup> The original code is partially to blame; it provides practically no guidelines to filing offices.<sup>222</sup> This lack of consistent rules has caused a great deal of mistrust of local filing office officials.<sup>223</sup> The revised version provides filing officials with a much clearer set of guidelines.<sup>224</sup> First, it specifies exactly what are grounds for rejection.<sup>225</sup> In general, there are very few reasons, such as failure to pay the appropriate fee or use the correct medium.<sup>226</sup> If a filing officer does reject a filing, he must communicate a reason for the rejection to the filer.<sup>227</sup> Second, the Revised

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211. *See id.*

212. *See id.*

213. *See Rev. § 9-509(a)(1).*

214. *See id.*

215. *See Rev. § 9-509(b).* The financing statement must reflect the collateral described in the security agreement and property that become collateral. *See id.*

216. *See Weise, supra note 162, at 98.*

217. *Rev. § 9-625.*

218. *Rev. § 9-509(d)(2).*

219. *See LoPucki, Computerization, supra note 7, at 9.*

220. *See H. Bruce Bernstein, COMMERCIAL FINANCE ASSOCIATION: Summary of Uniform Commercial Code Revised Article 9, at <http://www.cfa.com/public/parent-revised-article-9.jhtml> (last visited Oct. 5, 2000).*

221. *Id.*

222. *See Ernst, Records Guide, supra note 60, at 22.* "Under Article 9-4 some legal issues, and virtually all administrative details of the UCC system, were left to the discretion of the filing office, without even a requirement to explain to the users of the system how it operates in that office." *Id.*

223. *See Cuming & Walsh, supra note 113.*

224. *See id.*

225. *See Rev. § 9-519.*

226. *See Rev. §§ 9-516; 9-520.*

227. *See Rev. § 9-520(b).* Upon rejection, the filing officer must communicate to the filer

Code allows for promulgation of some local filing rules.<sup>228</sup> Because operating a filing office is a very complicated business, the drafters sought to give local offices some flexibility.<sup>229</sup> Section 9-526 provides that the appropriate local government agency should adopt and publish rules consistent with Revised Article 9.<sup>230</sup>

Finally, Revised Article 9 requires filing offices to make annual reports to the governor and the legislature.<sup>231</sup> These reports are to specify how the practices of the particular filing office differs from the practices of other filing offices and how it differs from the Model Code.<sup>232</sup> After an annual report is given to the governor and the legislature, the drafters anticipate that both branches will enact reforms to harmonize their U.C.C. filing system with that of other jurisdictions. Ultimately, the drafters hope that this harmonization of filing office rules will "reduce the costs of secured transactions substantially."<sup>233</sup>

All of the above changes to the Article 9 filing system represent major steps towards the creation of online filing systems. Unfortunately, they still fall well short of creating a national filing system. The problem is not with the changes; the problem is with the structure of the U.C.C. itself. The U.C.C. represents a uniform body of laws to be adopted by each individual state. The system falls apart, however, when states seek to modify the code to suit their local lobbies. This was ultimately the problem with the original Article 9, and this will most likely be the problem with the Revised Article 9 as well. Some states have already made substantial changes to Revised Article 9 in their jurisdictions. For example, Indiana has already adopted Revised Article 9.<sup>234</sup> However, Indiana chose to require debtor authorization on original financing statements.<sup>235</sup> This requirement is essentially the same as original Article 9's debtor signature requirement.<sup>236</sup> It also represents a stumbling block to

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the reason for refusal and the date and time the record would have been filed had the filing been accepted. *See id.* The rejection must not be more than two business days after submission for filing. *See id.*

228. *See Rev. § 9-526.*

229. *See Rev. § 9-526 cmts. 2, 3.*

230. *Rev. § 9-526(a).*

231. *See Rev. § 9-527.*

232. *See id.*

233. *Rev. § 9-526 cmt. 3.*

234. Indiana adopted Revised Article 9 on January 11, 1999. *See Commercial Finance Association: Revised Article 9 By States*, at <http://www.cfa.com/public/parent-revised-article-9-by-states.jhtml> (last visited Oct. 30, 2000). The revised code was enacted on March 15, 2000. *See id.* It will become law in Indiana, as in other jurisdictions, on July 1, 2000. *See id.*

235. *See IND. CODE § 26-1-9.1-502(a)(4) (2000).*

236. *See id.* Indiana's version of original Article 9 actually provided for electronic filing without a debtor's signature. *See IND. CODE § 26-1-9-402(9) (2000).*

A financing statement may be transmitted and filed electronically. A signature requirement under this section is satisfied by: (A) an intent by the filing party to sign the filing under IC 26-1-1-201(39); and (B) the entry of the filing party's name on the electronic form in a signature box or other place indicated by the

moving filing online in Indiana.<sup>237</sup> Likewise, Maryland has already adopted changes to Revised Article 9.<sup>238</sup> The Maryland version of the code adds an additional requirement to the model version—the filer must include the principle amount of indebtedness, the county of the debtor’s residence, and the amount of recordation tax payable.<sup>239</sup> This requirement is much like those in Maryland’s original Article 9 statute.<sup>240</sup> In both of these jurisdictions, filers will need to understand requirements not included in the model code.

These requirements may seem insignificant—and perhaps ten years ago they would have been—but the modern era of electronic commerce demands more uniformity.<sup>241</sup> The Internet and e-commerce make people more willing to cross boundaries and more intolerant of impediments caused by traditional mediums.<sup>242</sup> More than ever, a set of truly uniform standards is needed. The Revised Article 9 filing system is an example of breeding a better horse after the arrival of the tractor. There is no doubt that uniformity was a driving force behind the creation of a Revised Article 9, but it was also the hope of original Article 9, where uniformity has been elusive.<sup>243</sup>

#### V. SUGGESTIONS FOR IMPROVEMENT TO THE REVISED ARTICLE 9 FILING SYSTEM

The logical question to ask, therefore, is what can be done to ensure the U.C.C. filing system is uniform? Revised Article 9 does have a built-in system of unification.<sup>244</sup> Sections 9-526 and 9-527 impose a duty on the central filing office to annually report how filing office rules are not in harmony with rules in other jurisdictions.<sup>245</sup> It is hoped that annual reports will promote the standardization of filing office policies and technologies used in other jurisdictions.<sup>246</sup> These reports may very well succeed at this objective.

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secretary of state.

*Id.* Therefore, Revised Article 9 in Indiana includes a formal barrier to electronic filing not even present in its former version. *See id.*

237. *See* Rev. § 9-502 cmt. 3

238. The Maryland legislature adopted Revised Article 9 on February 17, 1999. *See* Commercial Finance Association, *supra* note 226. Maryland enacted the revised code on April 27, 1999. *See id.* Like most all other jurisdictions that have to date enacted it, it will become effective on July 1, 2001. *See id.*

239. *See* MD. CODE ANN. § 9-502 (1999).

240. *See* MD. CODE ANN. § 9-402(9) (1999).

241. *See* Barry B. Sookman, *Electronic Commerce, Internet and the Law: A Survey of the Legal Issues*, 48 U.N.B. L.J. 119, 159 (1999). “Electronic commerce by its very nature is global. Electronic commerce policies and activities will have limited impact unless they facilitate a global approach.” *Id.*

242. *See id.* at 120.

243. *See* Rev. § 9-526 cmt. 3. This Official Comment is titled “Importance of Uniformity.” *Id.*

244. *See* Rev. §§ 9-526, 9-527.

245. *Id.* *See supra*, Part IV.

246. *See* Rev. § 9-527 cmt. 2. “This section is designed to promote compliance with the

However, if they are only made annually, it will take years before every filing office in the country follows the same policies and guidelines.<sup>247</sup> Waiting years is too long for electronic filing to be put on hold. Therefore, what can be done in the immediate future to improve on the Revised Article 9 filing structure?

First, every state must adopt Revised Article 9. Currently, twenty-seven states and the District of Columbia have adopted it.<sup>248</sup> This is a good start, but the goal of uniformity in secured transaction law will not be realized until every state adopts the revision. In fact, uniformity is frustrated if only a portion of the states adopt Revised Article 9 and a handful hold onto the original version. In that case, secured parties operating in multiple states would have to contend not only with state inconsistencies with Article 9, but with two different Article 9 versions altogether.<sup>249</sup> This would do little to simplify the complexities of the current Article 9 filing mess.

Nevertheless, adopting Revised Article 9 is not enough to improve the current filing systems. Many states seem unable to resist modifying the code and thereby creating local irregularities.<sup>250</sup> This problem appears to already be underway.<sup>251</sup> As states adopt the revision, they continue to unravel its uniformity.<sup>252</sup> This is not entirely the states' fault.<sup>253</sup> Parts of the Revised Article 9 model code have blanks which states fill in.<sup>254</sup> Naturally, states are going to fill in the blanks in unique ways.

Second, the United States needs the creation of a national database for registration of financing statements.<sup>255</sup> This concept would have been completely foreign to the original drafters of Article 9 but was not foreign to the drafters of Revised Article 9.<sup>256</sup> Still, the drafters chose a state-by-state approach. With current computer technology, the idea of a central

standards of performance imposed upon the filing office and with the requirement that the filing office's policies, practices, and technology be consistent and compatible with the policies, practices, and technology of other filing offices." *Id.*

247. This is assuming that legislatures act positively after receiving filing office reports. State legislatures may also further complicate matters by amending Revised Article 9 so that it is even more unlike the Revised Article 9 in other jurisdictions.

248. NCCUSL, *supra* note 1.

249. This statement refers to the original Article 9 filing rules specified in Sections 9-401-409 and Revised Article 9 rules specified in Sections 9-501-527.

250. *See* Sookman, *supra* note 241, at 120.

251. *See supra*, Part V.

252. *See id.*

253. Section 9-525 of Revised Article 9 contains all of the fee requirements for form filing. Rev. § 9-525. Rather than set uniform fees, the model code leaves the exact amount to be filled in by state legislatures. *See id.* In California, a filing costs \$10. CAL. CODE § 9525 (2000). In Nevada, a filing cost \$20. NEV. REV. STAT. § 104.9525 (2000). Even before these sections go into effect, July 1, 2001, they are already significantly different from each other.

254. *See* Rev. § 9-525.

255. *See* Stein, *supra* note 38, ¶ 4.

256. *See* LoPucki, *Computerization*, *supra* note 7, at 16. This article was written in 1992, when drafting of Revised Article 9 was still in its infancy.

computerized financing statement database is very feasible, especially as filing offices move to online filing.<sup>257</sup> The benefits would be multiple. First, a computerized central index should conceivably have no lag time.<sup>258</sup> This would be a great advantage to searchers.<sup>259</sup> Second, online filing into a central database would eliminate the need for multiple filings and searchings in different locations.<sup>260</sup> This would decrease the cost of filing.<sup>261</sup> Secured parties could directly access records without the use for filing agents or filing officers.<sup>262</sup> Third, the computerized database would provide much greater reliability.<sup>263</sup>

There are two ways to create a national computerized database. First, state U.C.C. databases could be linked together to form a national database.<sup>264</sup> This linking method is already somewhat accomplished by private database services.<sup>265</sup> Revised Article 9 also provides for the sale of records to private companies on a regular basis.<sup>266</sup> Although these private service companies may offer online searches, they may not offer online filing.<sup>267</sup> This inevitably leads to a delay from the time a filing is effective until the time a filing can be found through a search.<sup>268</sup> Unfortunately, as long as there are over 4200 filing offices, many of which use paper-based filings, these private companies would still be limited in what they have to offer.<sup>269</sup> The end product would still be slow, inconsistent, and unreliable.<sup>270</sup>

The second alternative to creating a national database requires a new approach. The federal government should preempt Section 5 of Revised Article 9 by creating a central database for U.C.C. filings.<sup>271</sup> The Food Security Act of 1985 demonstrates that federal law can reform irregular state law.<sup>272</sup> This would avoid the local irregularities permitted by Article 9 because

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257. See Stein, *supra* note 38, ¶ 6.

258. See *id.* ¶ 15. Lag time means the gap between when a filing is filed and when it is actually in the records and locatable by another party conducting a search. See *id.*

259. See *id.*

260. See *id.* A decrease in filing offices would decrease government payrolls, which are often politically important jobs. See *id.* ¶ 27.

261. See *id.* ¶ 27.

262. See *id.* ¶ 14.

263. See *id.* ¶ 13.

264. See *id.* ¶ 12.

265. See *id.* ¶ 6. See, e.g., Lexis, at <http://www.lexis.com>; Accusearch, at <http://www.accusearch.com>; Choicepoint, at <http://www.choicepoint.com>.

266. See Rev. § 9-523. The drafters hope that this will facilitate the creation of national databases. See MCDONNELL, *supra* note 160, at 400. "Deep in their corporate hearts, the revisers believe that private agencies will normally do a better job of information storage and retrieval than public officials." *Id.*

267. See Stein, *supra* note 38, ¶ 10.

268. See *id.*

269. See *id.*

270. See *id.* ¶ 12.

271. See *supra*, Part I. The Food Security Act of 1985 proves that federal preemption of the U.C.C. is possible. See Wolfe, *supra* note 62, at 454.

272. See *id.* "[The Food Security Act] represents the first wholesale reformation of the

all filings would be subject to only one set of guidelines—the federal guidelines. This database could be government-run or privatized.<sup>273</sup> Privatization would perhaps improve service and save taxpayer money.<sup>274</sup> It would also create some risks.<sup>275</sup> Nevertheless, a central national database is the only way to truly avoid the irregularities of state-by-state Article 9 filings.

Finally, real estate filing needs to be brought into the twenty-first century. Although Revised Article 9 does much to centralize and standardize financing statement filings, it makes an exception for real estate related filings.<sup>276</sup> Section 9-501 provides for filings affecting timber or fixtures on real property to be made in local real estate records.<sup>277</sup> Moving real estate records in the United States into a centralized database would undoubtedly be an enormous job, but with technological advances it should not seem insurmountable. Only a few years ago, very few states offered computerized central filings for regular U.C.C. financing statements.<sup>278</sup> Now, anything else seems costly and inefficient.<sup>279</sup> Unfortunately, the drafters of Revised Article 9 did little to advance real estate related U.C.C. filings.<sup>280</sup>

“Electronic filing . . . is in its infancy.”<sup>281</sup> If all states adopt Revised Article 9, the move to electronic filing will be advanced. States will need to refrain from tampering with the Revised Article 9 in the way that they did with the original version. Furthermore, the United States needs to create a national filing database.

## VI. CONCLUSION

From a historical standpoint, the original Article 9, the Canadian P.P.S.A.s, and Revised Article 9 fit nicely together. The original Article 9 represents the birth of modern secured transaction law. As technology progressed, Article 9 started to show its age. The Canadian versions, the P.P.S.A.s, represent Article 9's evolution. With advancements in technology, the P.P.S.A.s adapted the original Article 9's filing system to match. Revised Article 9 represents the latest generation. From that standpoint, Article 9 has come a long way. Unfortunately, however, Revised Article 9 is flawed in the

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UCC by federal legislation.” *Id.*

273. *See* Stein, *supra* note 38, ¶ 24.

274. *See id.* ¶ 28.

275. *See id.* ¶ 25. These risks include monopoly pricing or price regulation. *See id.* This could be avoided by having competing private U.C.C. filing networks. *See id.*

276. *See* Rev. § 9-501.

277. *See* Rev. § 9-501(a). If collateral is as-extracted collateral, timber to be cut, or fixtures, then the filing should be made in the office where the mortgage is held. *See id.*

278. *See supra*, Part I.

279. *See* Rev. § 9-526 cmt. 3. Uniformity reduces costs. *See id.*

280. *See* Rev. § 9-501. Nothing in Section 9-501 or the Official Comment mentions the benefits to keeping real estate related filings in local records. *See id.*

281. Ernst, *Recorders Guide*, *supra* note 60.



same way that the original version was, and in the same way that the Canadian P.P.S.A.s are—it is based on a state-by-state approach instead of a national one. This will inevitably lead to an endless string of local irregularities. Ultimately, these flaws are harmful to everyone who seeks credit. “[H]armonization of personal property security law is likely to occur only when the needs of credit grantors are perceived as more important than the unfettered freedom of each jurisdiction to maintain traditional attitudes and approaches.”<sup>282</sup>

*Todd J. Janzen\**

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282. Ronald C.C. Cuming, *Harmonization of the Secured Financing Laws of the Nafta Partners*, 39 ST. LOUIS U. L.J. 809, 810 (1995).

\* J.D. Candidate, 2001, Indiana University School of Law—Indianapolis; B.A., 1995, Bethel College of Kansas. Thank you to my wife, Sarah Janzen, for her love, patience, and support during the writing of this note. I would also like to thank Gregory J. Sekata for his advice and guidance; and David L. Denomme for his essential input regarding Canadian personal property statutes.

APPENDIX

The National form can be found at the Texas Secretary of State's website:
http://www.sos.state.tx.us/ucc/uccforms.shtml#UCC1.

THIS SPACE FOR USE OF FILING OFFICER

FINANCING STATEMENT — FOLLOW INSTRUCTIONS CAREFULLY

This Financing Statement is presented for filing pursuant to the Uniform Commercial Code and will remain effective, with certain exceptions, for 5 years from date of filing.

Form fields: A. NAME & TEL. # OF CONTACT AT FILER (optional); B. FILING OFFICE ACCT. # (optional); C. RETURN COPY TO: (Name and Mailing Address); D. OPTIONAL DESIGNATION (if applicable): LESSOR/LESSEE, CONSIGNOR/CONSIGNEE, NON-UCC FILING

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b)

Form fields for Debtor: 1a. ENTITY'S NAME; OR 1b. INDIVIDUAL'S LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX; 1c. MAILING ADDRESS, CITY, STATE, COUNTRY, POSTAL CODE; 1d. S.S. OR TAX ID #, OPTIONAL ADDNL. INFO RE ENTITY DEBTOR; 1e. TYPE OF ENTITY; 1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION; 1g. ENTITY'S ORGANIZATIONAL ID #, if any; NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b)

Form fields for Additional Debtor: 2a. ENTITY'S NAME; OR 2b. INDIVIDUAL'S LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX; 2c. MAILING ADDRESS, CITY, STATE, COUNTRY, POSTAL CODE; 2d. S.S. OR TAX ID #, OPTIONAL ADDNL. INFO RE ENTITY DEBTOR; 2e. TYPE OF ENTITY; 2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION; 2g. ENTITY'S ORGANIZATIONAL ID #, if any; NONE

3. SECURED PARTY'S (ORIGINAL SP OR ITS TOTAL ASSIGNEE) EXACT FULL LEGAL NAME - Insert only one secured party name (3a or 3b)

Form fields for Secured Party: 3a. ENTITY'S NAME; OR 3b. INDIVIDUAL'S LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX; 3c. MAILING ADDRESS, CITY, STATE, COUNTRY, POSTAL CODE

4. This FINANCING STATEMENT covers the following types or items of property:

Form fields for Signatures and Fees: 5. CHECK [ ] This FINANCING STATEMENT is signed by the Secured Party...; 6. REQUIRED SIGNATURE(S); 7. If filed in Florida (check one) Documentary stamp [ ] stamp tax paid [ ] not applicable; 8. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS Attach Addendum (if applicable); 9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s) (ADDITIONAL FEE) (optional) All Debtors [ ] Debtor 1 [ ] Debtor 2

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The Financing Statement is presented for filing pursuant to the Uniform Commercial Code and will remain effective, with certain exceptions, for 5 years from date of filing.

A. NAME & TEL. # OF CONTACT AT FILER (optional)	B. FILING OFFICE ACCT. # (optional)
C. RETURN COPY TO: (name and Mailing Address)	
<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
D. OPTIONAL DESIGNATION (if applicable): <input type="checkbox"/> LESSOR/LESSEE <input type="checkbox"/> CONSIGNOR/CONSIGNEE <input type="checkbox"/> NON-UCC FILING	

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b)

1a. ENTITY'S NAME						
OR	1a. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS			CITY	STATE	COUNTRY	POSTAL CODE
1d. S.S. OR TAX ID #	OPTIONAL ADDNL. INFO RE ENTITY/DEBTOR	1e. TYPE OF ENTITY	1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION		1g. ENTITY'S ORGANIZATIONAL ID #, if any	
					<input type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b)

2a. ENTITY'S NAME						
OR	2a. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	COUNTRY	POSTAL CODE
2d. S.S. OR TAX ID #	OPTIONAL ADDNL. INFO RE ENTITY/DEBTOR	2e. TYPE OF ENTITY	2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION		2g. ENTITY'S ORGANIZATIONAL ID #, if any	
					<input type="checkbox"/> NONE	

3. SECURED PARTY'S (ORIGINAL SP or ITS TOTAL ASSIGNEE) EXACT FULL LEGAL NAME - insert only one secured party name (3a or 3b)

3a. ENTITY'S NAME						
OR	3a. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS			CITY	STATE	COUNTRY	POSTAL CODE

4. This FINANCING STATEMENT covers the following types or items of property:

5. CHECK <input type="checkbox"/> This FINANCING STATEMENT is signed by the Secured Party instead of the Debtor to perfect a security interest		7. If filed in Florida (check one):	
BOX <input type="checkbox"/> (a) in collateral already subject to a security interest in another jurisdiction when it was brought into this state, or when the		<input type="checkbox"/> Documentary <input type="checkbox"/> Documentary stamp	
(if applicable) debtor's location was changed to this state, or (b) in accordance with other statutory provisions (additional data may be required)		<input type="checkbox"/> Stamp tax paid <input type="checkbox"/> Stamp tax not applicable	
6. REQUIRED SIGNATURE(S)		8. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS	
		Altech Addendum <input type="checkbox"/> (if applicable)	
		9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s)	
		[ADDITIONAL FEE] <input type="checkbox"/> (optional) <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2	

(2) ACKNOWLEDGMENT COPY — NATIONAL FINANCING STATEMENT (FORM UCC1) (TRANS) (REV. 12/18/99)

Office of the Secretary of State of Texas Web Form

THIS SPACE FOR USE OF FILING OFFICER

FINANCING STATEMENT — FOLLOW INSTRUCTIONS CAREFULLY

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A. NAME & TEL. # OF CONTACT AT FILER (optional)	B. FILING OFFICE ACCT. # (optional)
C. RETURN COPY TO: (Name and Mailing Address)	
<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
D. OPTIONAL DESIGNATION (if applicable): LESSOR/LESSEE    CONSIGNOR/CONSIGNEE    NON-UCC/PLING	

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b)

1a. ENTITY'S NAME			
OR	1b. INDIVIDUAL'S LAST NAME		
	FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS		CITY	STATE    COUNTRY    POSTAL CODE
1d. S.S. OR TAX I.D.#	OPTIONAL ADDM. INFO RE ENTITY/DEBTOR	1e. TYPE OF ENTITY	1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION
			1g. ENTITY'S ORGANIZATIONAL I.D.#, if any <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b)

2a. ENTITY'S NAME			
OR	2b. INDIVIDUAL'S LAST NAME		
	FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE    COUNTRY    POSTAL CODE
2d. S.S. OR TAX I.D.#	OPTIONAL ADDM. INFO RE ENTITY/DEBTOR	2e. TYPE OF ENTITY	2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION
			2g. ENTITY'S ORGANIZATIONAL I.D.#, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S (ORIGINAL SP OR ITS TOTAL ASSIGNED) EXACT FULL LEGAL NAME - Insert only one secured party name (3a or 3b)

3a. ENTITY'S NAME			
OR	3b. INDIVIDUAL'S LAST NAME		
	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE    COUNTRY    POSTAL CODE

4. This FINANCING STATEMENT covers the following types or items of property:

5. CHECK <input type="checkbox"/> This FINANCING STATEMENT is signed by the Secured Party instead of the Debtor to perfect a security interest (a) in collateral already subject to a security interest in another jurisdiction when it was brought into this state, or when the (if applicable) debtor's location was changed to this state, or (b) in accordance with other statutory provisions (additional data may be required)	7. If filed in Florida (check one) <input type="checkbox"/> Documentary stamp tax paid <input type="checkbox"/> Documentary stamp tax not applicable
6. REQUIRED SIGNATURE(S)	8. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)
	9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s) (ADDITIONAL FEE) (optional) <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2

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This Financing Statement is presented for filing pursuant to the Uniform Commercial Code and will remain effective with certain exceptions for 5 years from date of filing.

A. NAME & TEL. # OF CONTACT AT FILER (optional)	B. FILING OFFICE ACCT. # (optional)
C. RETURN COPY TO: (Name and Mailing Address)	

D. OPTIONAL DESIGNATION (if applicable): LESSOR/LESSEE    CONSIGNOR/CONSIGNEE    NON-UCC FILING

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b)

1a. ENTITY'S NAME

OR

1b. INDIVIDUAL'S LAST NAME    FIRST NAME    MIDDLE NAME    SUFFIX

1c. MAILING ADDRESS    CITY    STATE    COUNTRY    POSTAL CODE

1d. S.S. OR TAX ID.#    OPTIONAL ADDTNL INFO RE ENTITY DEBTOR    1e. TYPE OF ENTITY    1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION    1g. ENTITY'S ORGANIZATIONAL ID.#, if any     NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b)

2a. ENTITY'S NAME

OR

2b. INDIVIDUAL'S LAST NAME    FIRST NAME    MIDDLE NAME    SUFFIX

2c. MAILING ADDRESS    CITY    STATE    COUNTRY    POSTAL CODE

2d. S.S. OR TAX ID.#    OPTIONAL ADDTNL INFO RE ENTITY DEBTOR    2e. TYPE OF ENTITY    2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION    2g. ENTITY'S ORGANIZATIONAL ID.#, if any     NONE

3. SECURED PARTY'S (ORIGINAL S/P OR ITS TOTAL ASSIGNEE) EXACT FULL LEGAL NAME - insert only one secured party name (3a or 3b)

3a. ENTITY'S NAME

OR

3b. INDIVIDUAL'S LAST NAME    FIRST NAME    MIDDLE NAME    SUFFIX

3c. MAILING ADDRESS    CITY    STATE    COUNTRY    POSTAL CODE

4. This FINANCING STATEMENT covers the following types or items of property:

5. CHECK  This FINANCING STATEMENT is signed by the Secured Party instead of the Debtor to perfect a security interest.

6. CHECK  (a) in collateral already subject to a security interest in another jurisdiction when it was brought into this state, or when the debtor's location was changed to this state, or (b) in accordance with other statutory provisions (additional data may be required)

7. If filed in Florida (check one):  Documentary (Same Tax paid)     Documentary stamp tax not applicable

8.  This FINANCING STATEMENT is to be filed (or record) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)

9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s) (ADDITIONAL FEE) (optional):  All Debtors     Debtor 1     Debtor 2

THIS SPACE FOR USE OF FILING OFFICER

FINANCING STATEMENT — FOLLOW INSTRUCTIONS CAREFULLY

This Financing Statement is presented for filing pursuant to the Uniform Commercial Code and will remain effective, with certain exceptions, for 5 years from date of filing.

A. NAME & TEL. # OF CONTACT AT FILER (optional)		B. FILING OFFICE ACCT. # (optional)	
C. RETURN COPY TO: (name and mailing address)			
[ ]			
D. OPTIONAL DESIGNATION (if applicable):			
LESSOR/LESSEE		CONSIGNOR/CONSIGNEE	
NON-UCC FILING			

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b)

1a. ENTITY'S NAME			
OR			
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
1c. MAILING ADDRESS		CITY	STATE COUNTRY POSTAL CODE
1d. S.S. OR TAX I.D.#	OPTIONAL ADDNL. INFO RE ENTITY DEBTOR	1e. TYPE OF ENTITY	1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION
			1g. ENTITY'S ORGANIZATIONAL I.D.#, if any
			<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b)

2a. ENTITY'S NAME			
OR			
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
2c. MAILING ADDRESS		CITY	STATE COUNTRY POSTAL CODE
2d. S.S. OR TAX I.D.#	OPTIONAL ADDNL. INFO RE ENTITY DEBTOR	2e. TYPE OF ENTITY	2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION
			2g. ENTITY'S ORGANIZATIONAL I.D.#, if any
			<input type="checkbox"/> NONE

3. SECURED PARTY'S (ORIGINAL SP OR ITS TOTAL ASSIGNEE) EXACT FULL LEGAL NAME - Insert only one secured party name (3a or 3b)

3a. ENTITY'S NAME			
OR			
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME
			SUFFIX
3c. MAILING ADDRESS		CITY	STATE COUNTRY POSTAL CODE

4. This FINANCING STATEMENT covers the following types of items of property:

5. CHECK <input type="checkbox"/> This FINANCING STATEMENT is signed by the Secured Party instead of the Debtor to perfect a security interest:		7. If filed in Florida (check one)	
BOX (a) in collateral already subject to a security interest in another jurisdiction when it was brought into this state, or when the debtor's location was changed to this state, or (b) in accordance with other statutory provisions (additional data may be required)		<input type="checkbox"/> Documentary stamp tax paid	<input type="checkbox"/> Documentary stamp tax not applicable
6. REQUIRED SIGNATURE(S)		8. This FINANCING STATEMENT is to be filed (for record) or recorded in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	
		9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s) (ADDITIONAL FEE) (optional)	
		<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2	

### General Instructions for National Financing Statement (Form UCC1) (Trans)

Please type or laser-print this form. Be sure it is completely legible. Read all instructions.

Fill in form very carefully; mistakes may have important legal consequences. Follow instructions completely. If you have questions, consult your attorney. Filing officer cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing officer use.

When properly completed, send Filing Officer Copy, with required fee, to filing officer. If you want an acknowledgment, also send Acknowledgment Copy, otherwise detach. If you want to make a search request, complete item 9 and send Search Request Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, use 8-1/2 X 11 inch sheets and put at the top of each additional sheet the name of the first Debtor, formatted exactly as it appears in item 1 of this form; you are encouraged to use Addendum (Form UCC1Ad).

#### Item Instructions

1. **Debtor name:** Enter only one Debtor name in item 1, an entity's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
  - 1a. **Entity Debtor.** "Entity" means an organization having a legal identity separate from its owner. A partnership is an entity; a sole proprietorship is not an entity, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered entity (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine correct name, entity type, and state of organization.
  - 1b. **Individual Debtor.** "Individual" means a natural person and a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.  
For both entity and individual Debtors: Don't use Debtor's trade name, D/B/A, A/K/A, F/K/A, etc. in place of Debtor's legal name; you may add such other names as additional Debtors if you wish.
  - 1c. An address is always required for the Debtor named in 1a or 1b.
  - 1d. Debtor's social security or tax identification number is required in some states. Enter social security number of a sole proprietor, not tax identification number of the sole proprietorship.
  - 1e, f, g. "Additional information re entity Debtor" is optional. It helps searchers to distinguish this Debtor from others with the same or a similar name. Type of entity and state of organization can be determined from Debtor's current filed charter documents. Organizational I.D. number, if any, is assigned by the agency where the charter document was filed; this is different from taxpayer I.D. number; this should be entered preceded by the 2-character U.S. Postal identification of state of organization (e.g., CA12345, for a California corporation whose organizational I.D. number is 12345).
- Note: If Debtor is a transmitting utility as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check box Ad8.
2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, or one or more additional Secured Parties, attach either Addendum (Form UCC1Ad) or other additional page(s), using correct name format. Follow Instruction 1 for determining and formatting additional names.
  3. Enter information, determined and formatted per Instruction 1. If there is more than one Secured Party, see Instruction 2. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may provide either assignor Secured Party's or assignee's name and address in item 3.
  4. Use item 4 to indicate the types or describe the items of collateral. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
  - 5, 6. All Debtors must sign. Under certain circumstances, Secured Party may sign instead of Debtor; if applicable, check box in item 5 and provide Secured Party's signature in item 6, and under certain circumstances, in some states, you must also provide additional data: use Addendum (Form UCC1Ad) or attachment to provide such additional data.
  7. If filing in the state of Florida you must check one of the two boxes in item 7 to comply with documentary stamp tax requirements.
  8. If the collateral consists of or includes fixtures, timber, minerals, and/or mineral-related accounts, check the box in item 8 and complete the required information on Addendum (Form UCC1Ad). If the collateral consists of or includes crops, consult applicable law of state where this Financing Statement is to be filed and complete Ad3b, and Ad4 if required, on Addendum (Form UCC1Ad) and, if required, check box in item 8.
  9. Check box 9 to request Search Certificate(s) on all or some of the Debtors named in this Financing Statement. The Certificate will list all Financing Statements on file against the designated Debtor currently effective on the date of the Certificate, including this Financing Statement. There is an additional fee for each Certificate. This item is optional. If you have checked box 9, file copy 3 (Search Request Copy) of this form together with copies 1 and 2. Not all states will honor a search request made via this form; some states require a separate request form.

#### Instructions re Optional Items A-D

- A. To assist filing officers who might wish to communicate with filer, filer may provide information in item A. This item is optional.
- B. If filer has an account with filing officer or is authorized to pay fees by means of a card (credit or debit) and wishes to use such means of payment, check the appropriate box and enter filer's account number in item B, or, in the alternative, filer may present this information by a cover letter.
- C. Complete item C if you want acknowledgment copy returned and you have presented simultaneously a carbon or other copy of this form for use as an acknowledgment copy.
- D. If filer desires to use titles of lessee and lessor, or consignee and consignor, instead of Debtor and Secured Party, check the appropriate box in item D. This item is optional. If this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item D, complete items 1-9 as applicable and attach any other items required under other law.

