



NATURAL RESOURCES JOURNAL

Volume 3
Issue 3 *Perception and Natural Resources; Fall 1963*

Summer 1963

Uniform Commercial Code: Some New Mexico Problems and Proposed Legislative Solutions, The

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Recommended Citation

David H. Vernon, *Uniform Commercial Code: Some New Mexico Problems and Proposed Legislative Solutions, The*, 3 Nat. Resources J. 487 (1963).

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THE UNIFORM COMMERCIAL CODE: SOME NEW MEXICO PROBLEMS AND PROPOSED LEGISLATIVE SOLUTIONS

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The Uniform Commercial Code¹ went into effect in New Mexico on January 1, 1962.² Prior to this date, the Code was operative in but five other states.³ As of the time this article is being written, the Code has been adopted in a total of twenty-eight states,⁴ including all the major commercial states.⁵

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1. The most recent version of the Code, promulgated jointly by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, is the 1962 Official Text with Comments. All references to the Code, often designated UCC both in footnotes and text, are to this version unless the contrary is specifically stated. (The 1958 Official Text served as the model for New Mexico's version of the Code, but the variations found in the 1962 Text are unimportant for the discussion here.)

2. N.M. Laws 1961, ch. 96, § 10-101: "This act shall become effective at midnight on December 31st following its enactment. It applies to transactions entered into and events occurring after that date."

3. Conn. Gen. Stat. Ann. §§ 42a-1-101 to 42a-10-104 (1960) (Effective date, Oct. 1, 1961); Ky. Rev. Stat. Ann. §§ 355.1-101 to .10-102 (Supp. 1961) (Effective date, July 1, 1960); Mass. Acts 1957, ch. 765, §§ 1-21 (Effective date, Oct. 1, 1958); N.H. Rev. Stat. Ann. §§ 382-A:1-101 to :9-507 (1961) (Effective date, July 1, 1961); Pa. Stat. Ann. tit. 12A, §§ 1-101 to 10-104 (1954) (Effective date, July 1, 1954). Rhode Island adopted the Code before New Mexico did, R.I. Laws 1960, ch. 147, but the effective date was the day after New Mexico's, Jan. 2, 1962.

4. In addition to New Mexico and the six states listed in note 3 *supra*, the following states adopted the Code:

During 1961: Ark. Stat. §§ 85-1-101 to 85-9-507 (1947) (Effective date, Jan. 1, 1962); Ill. Ann. Stat. ch. 26, §§ 1-101 to 10-104 (Smith-Hurd 1963) (Effective date, July 2, 1962); N.J. Stat. Ann. §§ 12A:1-101 to :10-106 (1962) (Effective date, Jan. 1, 1963); Ohio Rev. Code Ann. §§ 1301.01-1309.50 (Page 1962) (Effective date, July 1, 1962); Okla. Stat. Ann. tit. 12A, §§ 1-101 to 10-104 (1963) (Effective date, Jan. 1, 1963); Ore. Rev. Stat. tit. 8, §§ 71.1020-79.5070 (1962) (Effective date, Sept. 1, 1963); Wyo. Stat. Ann. §§ 34-1-101 to 34-10-105 (Supp. 1963) (Effective date, Jan. 2, 1962).

During 1962: Alaska Stat. §§ 45.05.1-101 to 45.05.9-507 (1962) (Effective date, Jan. 1, 1963); Ga. Code Ann. §§ 109A.1-101 to .9-507 (1962) (Effective date, April 1, 1963); Mich. Acts 1962, P.A. 174 (Effective date, Jan. 1, 1964, as reported in 1 CCH 1963 Installment Credit Guide ¶ 700); N.Y. Laws 1962, ch. 553 (Effective date, Sept. 27, 1964).

During 1963: Cal. Laws 1963, ch. 819 (Effective date, Jan. 1, 1965); Ind. Laws 1963, ch. 317 (Effective date, July 1, 1964); Me. Laws 1963, ch. 362 (Effective date, Dec. 31, 1964, as reported in 1 CCH 1963 Installment Credit Guide ¶ 700); Md. Laws 1963, ch. 538 (Effective date, Feb. 1, 1964, *ibid.*); Mo. Laws 1963, S.B. 2 (Effective date, July 1, 1965); Mont. Laws 1963, ch. 264 (Effective date, Jan. 2, 1965); Neb. Laws 1963, L.B. 49 (Effective date, Sept. 2, 1965, as reported in 1 CCH 1963 Installment Credit Guide ¶ 700); Tenn. Laws 1963, ch. 81 (Effective date, July 1, 1964); W. Va. Laws 1963, H.B. 3 (Effective date, July 1, 1964, as reported in 1 CCH 1963 Installment Credit Guide ¶ 700); Wis. Laws 1963, ch. 158 (Effective date, July 1, 1965, *ibid.*).

5. Included in the somewhat arbitrary classification of "major commercial states"

Although called the *Uniform Commercial Code*,⁶ almost every adoption has been accompanied by variations, major and minor.⁷ New Mexico is no exception. It made fewer changes, however, than most other states. In only two sections were there significant and independent⁸ departures from the Official Text, both of these being in Article 9, the secured transactions portion of the Code. In one, New Mexico adopted a filing system which rejected all of the uniform alternatives proposed.⁹ In the other, New Mexico required a more specific description of collateral than that required by the Official Text.¹⁰ Almost inevitably, with a statute containing more than 400 sections, many of them interdependent, variations in one or two sections will have effects on other sections. They did in New Mexico. Because of the failure of the modified sections to mesh with other Code provisions and concepts, both changes have given rise to difficulties. The discussion of various hypothetical fact-patterns attempts to highlight problems caused by the failure of these non-uniform sections to fit within the Code pattern. Alternative statutory solutions will be suggested below.

The adoption of a statute having so broad a scope as the Code can be expected to entail some unforeseen and unintended dislocation of existing law or practice. And in New Mexico, the likely occurred. The adoption of the Code and the simultaneous repeal of the Uniform Trust Receipts Act¹¹ (as recommended in the Official Text¹²) did away with the existing statutory protection accorded persons financing automobile dealers without providing a workable¹³ substitute. Legislation to fill this gap is presented below.

The Uniform Trust Receipts Act was not the only commercial law repealed

are California, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, and Pennsylvania.

6. UCC § 1-101. "This Act shall be known and may be cited as Uniform Commercial Code."

7. These changes are detailed in *Uniform Laws Annotated, Uniform Commercial Code* (1962, Supp. 1962), a two-volume UCC edition published by the Edward Thompson Co. and a part of the *Uniform Laws Annotated Series*.

8. New Mexico, Illinois, and New York omit the words "or lien creditor" from UCC § 2-702(3). This change was dictated by the result in *In re Kravitz*, 278 F.2d 820 (3d Cir. 1960).

9. N.M. Stat. Ann. § 50A-9-401 (1953).

10. N.M. Stat. Ann. § 50A-9-110 (1953).

11. N.M. Laws 1961, ch. 96, § 10-102.

12. UCC § 10-102. The section calls for the repeal of the Uniform Negotiable Instruments Act, the Uniform Warehouse Receipts Act, the Uniform Sales Act, the Uniform Bills of Lading Act, the Uniform Stock Transfer Act, the Uniform Conditional Sales Act, and the Uniform Trust Receipts Act.

13. The intent of the UCC § 9-302(3) Alternative A, as adopted in New Mexico, is that the Motor Vehicle Code control the floor planning of automobiles. The Motor Vehicle Code, however, fails to provide a practical method for such inventory financing.

when the Code was adopted. Statutes creating and regulating other forms of chattel security arrangements—chattel mortgages, conditional sales, and the like—were also repealed.¹⁴ The Code effectively fills the gaps left except for the floor planning of automobile dealers. Terms such as “secured party”¹⁵ replace chattel mortgagee and conditional vendor; “security interest”¹⁶ describes the secured party’s interest; “security agreement”¹⁷ substitutes for conditional sale contract and chattel mortgage; “debtor”¹⁸ takes the place of chattel mortgagor and conditional vendee. Although the Code and the accompanying repealer abolish the various traditional security devices, references to them are still found throughout New Mexico’s statutes. Cleanup work is necessary to eliminate what has, with the adoption of the Code, become obsolete language. I will suggest ways to accomplish this. Finally, some typographical errors contained in New Mexico’s version of the Code are pointed out here in the hope that the Legislature will note them and take corrective action.

I

THE BACKGROUND

A. Alternative Uniform Filing Provisions

Filing is the primary method of perfecting security interests under the Code.¹⁹ The Official Text proposes three alternative place-of-filing systems for consideration by adopting states. (Several states, New Mexico included, rejected all of them.²⁰)

With an exception for fixtures,²¹ the first “official” alternative calls for the filing of all financing statements²² in the office of the Secretary of State. Documents establishing an interest in fixtures must, under the exception, be filed in

14. N.M. Laws 1961, ch. 96, § 10-102. Conditional sales legislation repealed by the Code was N.M. Laws 1923, ch. 8. The repealed chattel mortgage statutes were N.M. Laws 1923, ch. 72; N.M. Laws 1925, ch. 25, §§ 1-4, 8-13; N.M. Laws 1929, ch. 83; N.M. Laws 1935, ch. 54, §§ 1-7; N.M. Laws 1947, ch. 26; N.M. Laws 1953, ch. 51, § 2; N.M. Laws 1959, ch. 253, § 1.

15. N.M. Stat. Ann. § 50A-9-105(i) (1953).

16. N.M. Stat. Ann. § 50A-1-201(37) (1953).

17. N.M. Stat. Ann. § 50A-9-105(h) (1953).

18. N.M. Stat. Ann. § 50A-9-105(d) (1953).

19. UCC § 9-302.

20. Ga. Code Ann. § 109A-9-401 (1962); Ky. Rev. Stat. Ann. § 355.9-401 (Supp. 1961); Me. Laws 1963, ch. 362, § 9-401; Md. Laws 1963, ch. 538, § 9-401; Mich. Acts 1962, P.A. 174, § 9-401; Neb. Laws 1963, L.B. 49, § 9-401; N.M. Stat. Ann. § 50A-9-401 (1953); N.Y. Laws 1962, ch. 553, § 9-401; Wis. Laws 1963, ch. 158, § 9-401; Wyo. Stat. Ann. § 34-9-401 (Supp. 1963).

21. UCC § 9-401(1) (a), *First Alternative Subsection (1)*.

22. UCC § 9-401(1) (b), *First Alternative Subsection (1)*.

the office where a mortgage on the real estate concerned would be recorded.²³ Central filing along with the fixture exception has been adopted by only one state, Connecticut.²⁴ An obvious advantage of the system is simplicity since practically all filing is done in a single office. And as one of the officially proposed alternatives, it has the further advantage of fitting into the over-all scheme of the Code. Central filing, however, has a potential shortcoming in that often it makes a personal check of the record difficult.²⁵ Reliance must be had on the efficiency of the central office, and if that is lacking, the system breaks down. This may explain the reluctance of the states to adopt the system. In addition, pre-Code central filing of non-inventory chattel security was rare.²⁶ Some opposition to the system may have resulted simply from the fact that people were not used to it.

23.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.

UCC § 9-401(1)(a), *First Alternative Subsection (1)*.

24. Conn. Gen. Stat. Ann. § 42a-9-401 (1960).

25. The amounts involved in personal property security transactions often are relatively small and while they would justify checking the file in the county clerk's office, they would not justify a trip to Santa Fe.

26. Pre-Code filing statutes of present Code states: Alaska Comp. Laws Ann. §§ 22-6-5, 29-2-6 (1949); Ark. Stat. Ann. § 16-201 (1947); Cal. Civ. Code §§ 2957, 2980, 2980.5; Conn. Gen. Stat. Rev. § 49-96 (1958); Ga. Code Ann. §§ 67-108, 67-1403 (1957); Ill. Rev. Stat. ch. 95, § 4 (1955); Ind. Ann. Stat. § 51-509 (1951); Ky. Rev. Stat. Ann. § 382.670 (1955); Me. Rev. Stat. Ann. ch. 119, § 9, ch. 178, § 1 (1954); Md. Ann. Code art. 21, §§ 45, 66 (1957); Mass. Gen. Laws Ann. ch. 255, § 1 (1956); Mich. Stat. Ann. § 26.929 (Supp. 1961); Mo. Ann. Stat. § 443.460 (Supp. 1962); Mont. Rev. Codes Ann. §§ 52-304, 74-204 (1947); Neb. Rev. Stat. §§ 36-207, 36-301 (1960); N.H. Rev. Stat. Ann. §§ 360:3, :5-:7 (1955); N.J. Stat. Ann. §§ 46:28-5 to -7 (1940); N.M. Stat. Ann. §§ 61-8-2, 50-11-2 (1953); N.Y. Lien Law § 232 (Supp. 1963) (central filing regarding tug-boats, etc.); N.Y. Pers. Prop. Law § 66 (Supp. 1963); Ohio Rev. Code Ann. §§ 1319.02, 1319.11 (1953); Okla. Stat. Ann. tit. 46, § 57 (1951); Ore. Rev. Stat. §§ 76.010, 86.350 (1961); Pa. Stat. Ann. tit. 21, § 864, tit. 69, § 403 (1936); R.I. Gen. Laws Ann. § 34-24-1 (1956); Tenn. Code Ann. § 64-2404 (1955); W. Va. Code Ann. §§ 3993, 3995, 4012 (1961); Wis. Stat. Ann. §§ 122.06, 241.10 (1957); Wyo. Stat. Ann. §§ 34-239, -244, -249 (1957).

Filing provisions of present non-Code states: Ala. Code tit. 47, §§ 110, 111, 131 (1958); Ariz. Rev. Stat. Ann. §§ 33-753 (Supp. 1963), 44-306 (1956); Colo. Rev. Stat. Ann. § 20-3-4 (Supp. 1961); Del. Code Ann. tit. 6, § 906, tit. 25, § 2308 (1953); Fla. Stat. Ann. §§ 28.22 (1961), 698.01, 699.07, 726.09 (1944); Hawaii Rev. Laws § 343-51 (1958) (central office filing in the Bureau of Conveyancing); Idaho Code Ann. §§ 45-1103, -1104, 64-801 (1948) (central filing permitted when property is moved from the county of origin); Iowa Code Ann. § 556.3 (1950); Kan. Gen. Stat. Ann. §§ 58-301, -314 (1949); La. Rev. Stat. § 9:5353 (1950); Minn. Stat. Ann. §§ 511.04, .20 (1945, Supp. 1962); Miss. Code Ann. § 863 (1942); Nev. Rev. Stat. § 106.100 (Supp. 1957); N.C. Gen. Stat. §§ 47-20, -20.2, -20.3 (Supp. 1961); N.D. Cent. Code §§ 35-04-06, 51-07-10 (1960); S.C. Code § 60-101 (1962); S.D. Code §§ 39.0408, -.0409, 54.0206 (1939); Tex. Rev. Civ. Stat. Ann. art. 5490 (1958), art. 6645 (1960);

The second proposed alternative is the same as the first except when the collateral is consumer goods²⁷ or arises out of farming operations.²⁸ For such collateral, the proper place to file is as follows:

when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the _____ in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the _____ in the county where the goods are kept, and in addition when the collateral is crops in the office of the _____ in the county where the land on which the crops are growing or to be grown is located.²⁹

Local filing is proposed in this alternative for transactions which the UCC Comments refer to as being "of essentially local interest."³⁰ Farming operations necessarily are tied to the land. And consumer goods normally, though not necessarily, are used around the home.³¹ Along with local filing for fixtures, which by definition are relatively immobile,³² local filing for consumer goods and farm-related collateral can be made to work effectively within the context of the Code. Nine states have adopted the combination local-central system.³³

The third place-of-filing provision is identical with the second in handling

Utah Code Ann. § 9-1-1 (1953); Vt. Stat. Ann. tit. 9, §§ 1691, 1754 (1958); Va. Code Ann. §§ 55-88, -96, -97, -102 (1950); Wash. Rev. Code §§ 61.04.020, 63.12.010 (1961) (some central filing permitted under § 61.04.020).

27. UCC § 9-109. "Goods are (1) 'consumer goods' if they are used or bought for use primarily for personal, family or household purposes"

28. UCC § 9-401, *Second Alternative Subsection (1)*.

29. UCC § 9-401 (1) (a), *Second Alternative Subsection (1)*.

30. UCC § 9-401, Official Comment 4.

31. See definition of "consumer goods," UCC § 9-109(1).

32.

There are three general tests applied by the courts in determining the question whether an article used in connection with realty is to be considered a fixture. First, annexation to the realty, either actual or constructive; second, adaption or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and, third, intention to make the article a permanent accession to the freehold.

Patterson v. Chaney, 24 N.M. 156, 159, 173 Pac. 859, 860 (1918). See also Fairbanks v. Williams, 25 N.M. 74, 75, 177 Pac. 745, 746 (1918); Post v. Miles, 7 N.M. 317, 328, 34 Pac. 586, 589 (1893).

33. Alaska Stat. § 45.05.768 (1962); Cal. Laws 1963, ch. 819, § 9-401; Ill. Ann. Stat. ch. 26, § 9-401 (Smith-Hurd 1963); Ind. Acts 1963, ch. 317, § 9-401; Mont. Rev. Codes Ann. § 87A-9-401 (1963); N.J. Stat. Ann. § 12A:9-401 (1962); Okla. Stat. Ann. tit. 12A, § 9-401 (1963); R.I. Gen. Laws Ann. § 6A-9-401 (1961); Tenn. Laws 1963, ch. 81, § 9-401. With minor exceptions, the listed states follow the pattern established in the Second Alternative.

fixtures, consumer goods, and farm-related collateral. For other cases, it provides for filing

in the office of the [Secretary of State] and in addition, if the debtor has a place of business in only one county of this state, also in the office of _____ of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of _____ of the county in which he resides.³⁴

This "duplicate" system, with overlapping local and central filing for the same collateral, has little to recommend it. If central filing is to be used at all, it will operate to give convenient notice of security interests to interested parties without the additional local filing. The scheme may be rooted in a political need to placate local officials who do not wish to see their administrative domain diminished.³⁵ Despite what seems to be an obvious lack of utility, several states have adopted the system.³⁶

Along with the three "place-of-filing" alternatives described above, adopting states are given an additional choice concerning refiling in the event the debtor changes his residence or the collateral is moved. The options are:

Subsection (3)

A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.³⁷

Alternative Subsection (3)

A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the

34. UCC § 9-401(1)(c), *Third Alternative Subsection (1)*.

35. Pressure from local officials forced Massachusetts to expand the duplicate filing system to cover consumer goods financing. Braucher, *The Legislative History of the Uniform Commercial Code*, 58 Colum. L. Rev. 798, 805 (1958).

36. Ark. Stat. § 85-9-401 (1947); Mass. Ann. Laws ch. 106, § 9-401 (1958); Mo. Laws 1963, S.B. 2, § 9-401; N.H. Rev. Stat. Ann. § 382-A:9-401 (1961); Ohio Rev. Code Ann. § 1309.38 (Page 1962); Ore. Rev. Stat. § 79.4010 (1962); Pa. Stat. Ann. tit. 12A, § 9-401 (Supp. 1962); W. Va. Laws 1963, H.B. 3, § 9-401. With minor exceptions, the listed states follow the pattern established in the Third Alternative.

37. UCC § 9-401(3).

new county. A change in the use of the collateral does not impair the effectiveness of the original filing.³⁸

Of the twenty-eight Code states, only three adopted the Alternative Subsection.³⁹

B. New Mexico's Filing Provision

From the Official Text, New Mexico adopted the fixture provision and subsection (3).⁴⁰ All other proposed alternatives were rejected, however, and section 50A-9-401(1) was enacted:

The proper place to file in order to perfect a security interest is as follows:

- (a) in the office of the county clerk in the county of the debtor's residence or, if the debtor is not a resident of this state and the collateral is goods, then in the office of the county clerk in the county where the goods are kept, and in addition, when the collateral is crops, in the office of the county clerk in the county where the land on which the crops are growing or to be grown is located;

* * * *

- (c) in all other cases, in the office of the secretary of state.⁴¹

Thus, New Mexico's version of the Code calls for local filing unless the debtor (1) is a nonresident of New Mexico, and (2) the collateral is either intangible or is located outside of the state. And it is the rare secured party who will feel impelled to file with the New Mexico Secretary of State when he lends money to a nonresident of New Mexico on collateral located elsewhere.

New Mexico's Code filing is thus essentially local, with central filing only in rare instances.⁴² Although it follows none of the officially proposed alternatives, the system is identical to Alternatives Two and Three as applied to consumer goods and farm-related collateral. For other collateral, for which the official alternatives call for some form of central filing, New Mexico's filing remains local. It is this departure that causes much of New Mexico's difficulty.

38. UCC § 9-401(3), *Alternative Subsection (3)*.

39. Okla. Stat. Ann. tit. 12A, § 9-401(3) (1963); Pa. Stat. Ann. tit. 12A, § 9-401(3) (Supp. 1962); W. Va. Laws 1963, H.B. 3, § 9-401(3).

40. N.M. Stat. Ann. § 50A-9-401(3) (1953).

41. N.M. Stat. Ann. §§ 50A-9-401(1)(a), (c) (1953).

42. In addition to the case of the nonresident borrower with collateral outside of New Mexico, central filing is called for when a nonresident borrows money using intangibles as collateral. Few, if any, lenders would want to file in New Mexico in such a case. Some central filing currently may be necessary when a corporation, either local or foreign, is the debtor. See problem 3, *infra*, at 502, and discussion thereof.

II

NEW MEXICO'S UCC IN OPERATION

A. Problem 1—Filing: Generally

X Department Store, located in Albuquerque, sold a spinet piano which was on casters to A, a professional musician living in Corrales. A paid \$200 down and signed a \$1,000 note for the balance. At the time of the sale, both a financing statement and a security agreement, neither of which was acknowledged, were executed.

1. Filing: Where?

If *A* bought the piano for personal, family, or household purposes, *X* would not have to file to perfect its interest. The piano would be classified as consumer goods,⁴³ and purchase money security interests⁴⁴ in such collateral need not be filed to be perfected.⁴⁵

But *A* is a professional musician. The piano is small and on casters. A question would arise whether he bought it for family or professional use. If he bought the piano with the intention of transporting it from job to job as the band moved around, or giving lessons in his home, the collateral would be classified as equipment rather than consumer goods.⁴⁶ And with equipment, *X* must file to perfect its interest.⁴⁷ Because the classification is thus uncertain, *X* would be well-advised to file.

The filing should be in Sandoval County. Although *A* bought the piano in Albuquerque, part of Bernalillo County, New Mexico's Code provision calls for filing in the office of the county clerk in the county where the debtor resides.⁴⁸ To this point no difficulty appears. But assume for the moment that *A* sells his house in Corrales shortly after buying the piano, moves to Albuquerque, and notifies *X* of the move. *X* need not refile to retain a perfected security interest.⁴⁹ It can ignore the fact of *A*'s move. If *A* then wishes to borrow money with the piano as collateral, a prospective lender in Bernalillo County

43. N.M. Stat. Ann. § 50A-9-109(1) (1953).

44. N.M. Stat. Ann. § 50A-9-107 (1953):

A security interest is a 'purchase money security interest' to the extent that it is (a) taken or retained by the seller of the collateral to secure all or part of its price; or (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

45. N.M. Stat. Ann. § 50A-9-302(1)(d) (1953).

46. N.M. Stat. Ann. § 50A-9-109(2) (1953): "Goods are . . . (2) 'equipment' if they are used or bought for use primarily in business . . . or if the goods are not included in the definitions of inventory, farm products or consumer goods"

47. N.M. Stat. Ann. § 50A-9-302(2) (1953).

48. N.M. Stat. Ann. § 50A-9-401(1)(a) (1953).

49. N.M. Stat. Ann. § 50A-9-401(3) (1953).

cannot, by checking the records there, discover *X*'s prior security interest. Further, unless the prospective lender is aware that *A* had moved to Albuquerque from Corrales, he would not know where else to look, or even that he had to check elsewhere.

With the piano classified as equipment, all of the official alternatives would have required *X* to file in the office of the Secretary of State.⁵⁰ Under any of these systems, the prospective lender could discover the existence of *X*'s interest by checking the records in a single office. Currently in New Mexico this is not possible. To assure himself that no prior security interest in the piano existed, the lender would have to check the records in all thirty-two counties just as he was required to do before the adoption of the Code.⁵¹ Since it is impractical to make such a check, the system breaks down. Serious consideration should be given to adopting either (1) one of the official filing proposals, perhaps the second with its local filing for transactions which are essentially local in nature, or (2) at a minimum, adopting the official Alternative Subsection (3) requiring refiling within four months of a change in circumstances.⁵²

2. Filing: What?

Assuming *X* decides to file, what document should it file? *X* has in its possession both a security agreement⁵³ and a financing statement.⁵⁴ Neither has been acknowledged. The financing statement is merely a writing (1) signed by *A* and *X*, (2) giving the addresses of both, and (3) containing "a statement indicating the types, or describing the items of collateral."⁵⁵ It need not spell

50. See UCC § 9-401.

51. Nothing in New Mexico's pre-Code mortgage statutes called for a re-recording when the mortgagor removed from the county of filing. See N.M. Laws 1923, ch. 72, §§ 1-2; N.M. Laws 1925, ch. 25, §§ 1-4, 8-13; N.M. Laws 1929, ch. 83; N.M. Laws 1935, ch. 54, §§ 1-7; N.M. Laws 1947, ch. 26; N.M. Laws 1953, ch. 51, § 2; N.M. Laws 1959, ch. 253, § 1.

52. UCC § 9-401, *Alternative Subsection (3)*.

53. N.M. Stat. Ann. § 50A-9-105(h) (1953): "Security agreement' means an agreement which creates or provides for a security interest . . ." N.M. Stat. Ann. § 50A-9-203(1)(b) (1953): "[A] security interest is not enforceable against the debtor or third parties unless . . . (b) the debtor has signed a security agreement which contains a description of the collateral . . ."

54. N.M. Stat. Ann. § 50A-9-402(1) (1953):

A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

55. *Ibid.*

out the rights or duties of the parties, nor need it relate to the specific transaction between them. Its purpose is to indicate "merely that the secured party who has filed *may* have a security interest in the collateral described."⁵⁶

After the prospective lender discovers the financing statement on file, the statute contemplates that further inquiry by him will be necessary to enable him to determine the precise interest claimed by *X*. The Code system is referred to as "notice filing,"⁵⁷ the public record being intended merely to put third persons "on notice."

The security agreement is intended to be more detailed than the financing statement—to spell out the specific agreement between *A* and *X* as it relates to the piano *A* purchased.⁵⁸ It is much closer to the traditional chattel mortgage⁵⁹ or conditional sale contract than is the financing statement. While couched in terms of filing a financing statement, the Code also permits, in lieu of this, the filing of a security agreement if it contains all of the information required to be in the financing statement and it is signed by both parties.⁶⁰ If *X* decides that the sale is an isolated transaction and contemplates no continuing course of business with *A*, *X* normally would file the security agreement. Otherwise *X* would be wise to file the more general financing statement.

For *X* in New Mexico, the decision whether to file a financing statement or a security agreement is of more significance than in other Code states. The Code itself "departs from the requirements of many chattel mortgage statutes that the instrument filed be acknowledged or witnessed or accompanied by affidavits of good faith."⁶¹ Although New Mexico's chattel mortgage and conditional sales statutes requiring the formality of acknowledgment were repealed with the adoption of the Code,⁶² and although the Code itself requires no such formality, a general filing-recording acknowledgment requirement, in force when the Code was adopted, probably continues in force, at least as regards *financing statements*.⁶³ Prior to the adoption of the Code, the statute, section 71-1-3, provided:

Any instrument of writing, duly acknowledged and certified to, shall be entitled to be filed and placed of record. Any instrument of

56. UCC § 9-402, Comment 2. (Emphasis added.)

57. *Ibid.*

58. The security agreement need not be so limited and, in fact, may operate effectively to secure the lender as regards after acquired property. N.M. Stat. Ann. § 50A-9-204(3) (1953): "[A] security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement."

59. Like the chattel mortgage, it need be signed only by the borrower. N.M. Stat. Ann. § 50A-9-203(1)(b) (1953).

60. N.M. Stat. Ann. § 50A-9-402(1) (1953).

61. UCC § 9-402, Comment 3.

62. N.M. Laws 1961, ch. 96, § 10-102.

63. N.M. Stat. Ann. § 71-1-3 (1953).

writing, not so acknowledged and certified to, shall not be entitled to be filed and placed of record, nor considered of record, though so entered⁶⁴

With the adoption of the Code, section 71-1-3 was amended to exclude from the operation of the section "any *financing agreement or security agreement* required to be filed under the provisions of the Uniform Commercial Code" ⁶⁵ The obvious intent was to permit financing statements and security agreements to be filed without acknowledgment. Reference in the statute, however, is to "financing agreements" rather than to "financing statements."

To be safe, if *X* planned to file the financing statement—the only practical use to which it can be put—*X* should have had it acknowledged. An unacknowledged though recorded document is treated as though unrecorded; it gives no constructive notice.⁶⁶ Thus, if the unacknowledged financing statement is filed on the assumption that *A* may do more business with the store, the filing *may* be ineffective. Security agreements being specifically and properly exempted from the operation of section 71-1-3, *X*'s failure to have it acknowledged would not affect its validity as a filed document.

Acknowledgment is an unnecessary formality. Consistent with the Code's policy of simplifying secured transactions, section 71-1-3 should be amended to permit the filing of unacknowledged documents. The following is suggested:

An Act

Relating To Requirements For The Filing And Recording Of Written Instruments; Amending Section 71-1-3 New Mexico Statutes Annotated, 1953 Compilation (Being Laws 1901, Chapter 62, Section 18, As Amended).

Be It Enacted By The Legislature Of The State Of New Mexico:

Section 1. Section 71-1-3 New Mexico Statutes Annotated, 1953

64. N.M. Laws 1901, ch. 62, § 18.

65. N.M. Stat. Ann. § 71-1-3 (1953):

Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; Provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated, and instruments of writing in any manner affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; and, Provided further, any financing agreement or security agreement required to be filed under the provisions of the Uniform Commercial Code [50A-1-101 to 50A-9-507] is not required to be acknowledged in order to be filed and recorded.

66. *Vorenberg v. Bosserman*, 17 N.M. 433, 440, 130 Pac. 438, 439-40 (1913).

Compilation (being Laws 1901, Chapter 62, Section 18, as amended) is amended to read:

"71-1-3. Acknowledgment Necessary For Recording—Decrees—Exceptions.—Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated, and instruments of writing in any manner affecting lands in this state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; and, provided further, any [financing agreement or security agreement] filing or recording permitted or required [to be filed] under the provisions of the Uniform Commercial Code, being Chapter 96 of the Session Laws of 1961, need not comply with the requirements of this section."

3. Filing: Describing the Collateral

Assuming *X* is a careful merchant, how should the collateral be described in the financing statement and security agreement obtained from *A* when he bought the piano? Prior to the Code, the New Mexico Supreme Court had developed a liberal rule concerning the adequacy of collateral descriptions in chattel mortgages—a rule which, if operative under the Code, would effectively implement the "single filing-continuing financing" Code concept.⁶⁷ The following description in a pre-Code chattel mortgage was challenged as being inadequate:

'[A]ll of the crops I may raise or cause to be raised during the year 1931, and being 300 acres on my place 10 miles northwest of Clovis,

67. UCC § 9-402, Comment 2:

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

in Curry county, New Mexico, in corn, kaffir, higeria, cane, maize, sudan, etc.’⁶⁸

Rejecting the inadequacy argument, the court said :

[W]hile not as full as it might have been . . . [the description] was sufficient to put appellant on inquiry⁶⁹

* * * *

*The rule is that a description in the mortgage which, aided by such inquiries as a reasonably prudent man would make under the circumstances and which the mortgage itself indicates, will lead a third person to the information is sufficient.*⁷⁰

Applying the court’s language to the documents held by X, probably a statement that the collateral was “musical instruments of all kinds” would be sufficient to put a reasonably prudent man on inquiry when he contemplates lending money to A with the piano as collateral.

What of the Code? Both the Official Text and the New Mexico version—New Mexico having rejected the Official Text—seem to contemplate something akin to the pre-Code rule in New Mexico. The provisions read :

Official Text (Section 9-110)

For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.⁷¹

New Mexico Version
(Section 50A-9-110)

For the purposes of this Article any description of personal property or real estate is sufficient if it identifies what is described.⁷²

The Comment to the Official Text, adopting New Mexico’s pre-Code rule, states that the section rejects “the so-called ‘serial number’ test.”⁷³ Query whether New Mexico’s UCC operates similarly?

If the background of section 50A-9-110 is ignored, a court could read the section as codifying New Mexico’s pre-Code rule. Since the language departs from the Official Text, however, a court probably and properly could decide that something different from the Official Text was intended. Deleting the words “whether or not it is specific” and “reasonably” must have been intended to require a more specific description than is called for in the Official Text.

68. Security State Bank v. Clovis Mill & Elevator Co., 41 N.M. 341, 342, 68 P.2d 918, 919 (1937).

69. *Id.* at 343, 68 P.2d at 919.

70. *Id.* at 344, 68 P.2d at 920. (Emphasis added.)

71. UCC § 9-110.

72. N.M. Stat. Ann. § 50A-9-110 (1953).

73. UCC § 9-110, Comment.

The latter does away with the requirement of a "serial number" description. How far does New Mexico's version retreat from this? There is no easy answer.

The existence of the change, however, would make the careful lawyer uneasy about using a general description. And if using specific descriptions of collateral becomes the practice, much of the advantage of the Code's single-filing provision will be lost. Under the Code, a single filing continues effective for five years⁷⁴ and, with a proper description, may cover a whole series of transactions throughout the period.⁷⁵ To make certain that the single-filing system operates effectively, New Mexico should adopt the language of the Official Text. Such an adoption would insure against unnecessary trouble and contribute toward a workable "single filing-inquiry notice" system in New Mexico.

B. Problem 2—Disposition of Repossessed Collateral: Notice

X Department Store, located in Albuquerque, sold a spinet piano which was on casters to A, a professional musician living in Albuquerque. A paid \$200 down and signed a \$1,000 note for the balance. At the time of the sale, a security agreement was executed designating the piano as collateral for the loan. X filed the security agreement with the county clerk of Bernalillo County, A then being a resident of the county.

About six months after the sale, A moved to Santa Fe, bringing the piano and his family with him. After he had been in Santa Fe for a few months, A borrowed \$500 from the Y Loan Company, the piano being used as collateral for the loan. Y filed a security agreement covering the transaction with the county clerk in Santa Fe County. Two months later, A returned to Albuquerque to live.

Within six months of his return, A being in default, X retook possession of the piano. X gave the required notice of his intention to A, placed the piano back in stock, and sold it to B for a reasonable price. In fact, after deducting expenses of the resale and A's obligation to it, X was able to turn over a \$350 surplus to A.

Should X have given notice to Y before disposing of the repossessed collateral?

The default provisions of the Official Text were adopted by New Mexico without change.⁷⁶ Under them, X, upon repossessing the piano, has the right to dispose of it "by public or private proceedings."⁷⁷ Whether the piano is

74. N.M. Stat. Ann. § 50A-9-403 (2) (1953).

75. See note 67 *supra*.

76. N.M. Stat. Ann. §§ 50A-9-501 to -507 (1953).

77. N.M. Stat. Ann. § 50A-9-504 (3) (1953).

equipment or consumer goods, *X* must give notice to *A*, the debtor, of his intention to dispose of the collateral.⁷⁸ *X*'s duty to give notice to *Y*, the holder of a junior interest, depends on the classification of the collateral. If the piano properly is classifiable as consumer goods, notice need *not* be given *Y* even when *X* has knowledge of his interest.⁷⁹ If *X* is using the piano commercially, it constitutes equipment⁸⁰ and *X* is obligated to notify *Y* of the pending sale.⁸¹ Since the classification of the piano is doubtful, *X* should be advised to give *Y* notice.

Where the collateral is other than consumer goods, section 50A-9-504(3) requires that notice be given to any secured party

who has a security interest in the collateral and who had duly filed a financing statement indexed in the name of the debtor in his state or who is known by the secured party to have a security interest in the collateral.⁸²

Since *Y* has duly filed under *A*'s name in Santa Fe County,⁸³ *Y* is entitled to notice prior to any disposition of the collateral. But unless *X* is told the facts by *A*, or unless he checks the files in the offices of all of the county clerks in New Mexico, *X* would be hard put to discover that someone had "duly filed a financing statement indexed in the name of the debtor" somewhere in New Mexico. In fact, unless *A* makes the disclosure, no practical way of learning of the existence of junior interests exists. Despite this, unless *X* notifies *Y* as required by section 50A-9-504(3), *Y* is entitled to recover "for any loss

78.

Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

Ibid.

79. *Ibid.*

80. N.M. Stat. Ann. § 50A-9-109(2) (1953).

81. N.M. Stat. Ann. § 50A-9-504(3) (1953).

82. *Ibid.*

83. To have duly filed his interest, *Y* was required to file in the office of the county clerk in the county where *A* resided, *i.e.*, Santa Fe. N.M. Stat. Ann. § 50A-9-401 (1953).

caused by . . . [X's] failure to comply with the . . . [notice provision]."⁸⁴ X is liable though not at fault.

The Code's "notice-repossession" provisions work effectively under all three of the officially proposed filing options. "Duly" filed, as used in section 50A-9-504(3), means centrally filed under all three of the official options when the collateral is neither consumer goods nor farm-related.⁸⁵ With central filing, of course, X could learn of Y's interest by checking in the Secretary of State's office. The absence of central filing for consumer goods under official Alternatives Two and Three does not affect the workability of the notice provision. Notice need not be given holders of duly filed junior interests when the repossessed collateral being sold is consumer goods. And farm-related collateral is so intimately tied to the farm itself that there is little likelihood that an interest would be filed, or could be "duly" filed, in a location other than that of the farmer's residence or the farm itself.

This difficulty concerning notice is thus caused almost entirely by New Mexico's failure to adopt one of the official filing alternatives. The most effective solution would be to adopt one of these alternatives. Alternative Two, with local filing for consumer goods and farm-related collateral, comes closest to the present system in the state. If this is considered undesirable, however, the notice provision itself should be modified to fit within the pattern established by New Mexico's present Code filing provision. Since the filing provision departs from the norm, the notice provision must do the same. A suggested statutory solution, for adoption only if New Mexico retains its present filing system, is set forth in Appendix 1.⁸⁶

C. Problem 3—Filing: A Corporate Debtor

(a). *X Corporation, organized in New Mexico, has its main office in Roswell, Chaves County, and branch offices in six other cities in the state, each being located in a different county. The manager of X's Albuquerque office, as authorized by the board of directors, arranges for the corporation to borrow \$100,000 from a local financier, A, the corporation's inventory being designated as collateral. A wants to know where he should file his financing statement in order to perfect his security interest. What advice should an attorney give?*

(b). *Assume the same facts, except that the borrower is Y Corporation, organized in New Jersey rather than in New Mexico. Would the advice be the same?*

84. N.M. Stat. Ann. § 50A-9-507 (1953).

85. UCC § 9-401. The third alternative additionally would require local filing in some cases.

86. See text at 514-16, *infra*.

The attorney whose advice is solicited will be unable to respond with any degree of certainty. He must apply the following language of section 50A-9-401(1) to the facts:

The proper place to file in order to perfect a security interest is as follows:

- (a) in the office of the county clerk in the county of the debtor's residence or, if the debtor is not a resident of this state and the collateral is goods, then in the office of the county clerk in the county where the goods are kept, . . .

* * * *

- (c) in all other cases, in the office of the secretary of state.⁸⁷

Subsection (1)(a) deals with two specific situations, *e.g.*, where the debtor resides in a *county* and where he does not reside in the *state*. The catch-all provision, subsection (1)(c), covers all other cases. The section gives reasonably accurate directions for filing when secured loans are made to individuals. Corporate and other organizational borrowers do not fit within the statutory pattern as easily.

As a corporation organized in the state, *X* probably can be treated as a New Mexico resident.⁸⁸ Since *X* is a resident, *A*'s security interest cannot be perfected by filing in those counties where the collateral is located. Such filing is effective only if the debtor is a nonresident of the state.⁸⁹ *A* can perfect by filing in the county of *X*'s residence. Does a corporation organized in New Mexico reside in a single county of the state, or does it reside in the state generally? Probably the strongest argument can be made for the position that *X* resides in Chaves County, the county where, according to its articles of in-

87. N.M. Stat. Ann. § 50A-9-401(1) (1953).

88. *E.g.*, *Johnson & Johnson v. Picard*, 282 F.2d 386, 388 (6th Cir. 1960): "Inasmuch as Winne is incorporated and has its principal office in Philadelphia, it cannot be deemed to 'reside' in North Carolina. The domicile of a corporation is in its state of incorporation."; *Vandevour v. Southeastern Greyhound Lines*, 152 F.2d 150, 152 (7th Cir. 1945): "A corporation can have no legal existence outside of the sovereignty by which it was created. Its place of residence is there and it can be nowhere else."; *Guterman v. Rice*, 121 F.2d 251, 253 (1st Cir. 1941); *Food Mach. and Chem. Corp. v. Marquez*, 139 F. Supp. 421, 422 (D.C.N.M. 1956): "The law is so well settled that a corporation is a citizen of the State . . . wherein it is organized, as not to require citation of authority as to said proposition."

89. N.M. Stat. Ann. § 50A-9-401(1)(a) (1953): "The proper place to file in order to perfect a security interest is as follows: (a) . . . if the debtor is not a resident of this state and the collateral is goods, then in the office of the county clerk in the county where the goods are kept"

corporation, its principal office is located.⁹⁰ At least arguably, however, *X* can be thought to reside in New Mexico rather than in a county of New Mexico.⁹¹ And since residence, unlike domicile, is not a unitary concept and a party can have more than one residence,⁹² one can always argue that *X* resides in each of the seven counties in which it has an office.⁹³

90. *E.g.*, *Cannon v. Century Constr. Co.*, 252 Iowa 88, 89, 106 N.W.2d 65, 66 (1960): "Polk County is defendant's principal place of business as stated in its Articles of Incorporation and, hence, is its statutory residence."; *Thomas v. Hector Constr. Co.*, 216 Minn. 207, 12 N.W.2d 769, 773 (1944): "Ordinarily, a private domestic corporation 'resides' where it has its principal place of business . . ."; *Texas Highway Dep't v. Kimble County*, 239 S.W.2d 831, 832 (Tex. Civ. App. 1951).

91. The argument is unlikely to succeed. There are general statements to the effect that "a corporation is a mere ideal existence, subsisting only in contemplation of law—an invisible being which can have in fact, no locality and can occupy no space, and therefore cannot have a dwelling place" and that "corporations have no domicile, residence, or citizenship in the sense those words apply to natural persons, but only in a metaphorical sense." *Gibbes v. National Hosp. Serv., Inc.*, 202 S.C. 304, 306, 24 S.E.2d 513, 514 (1943), quoting from C.J.S. and Am. Jur. Despite the general statement, however, the court went on to pinpoint the corporate residence.

92. *State ex rel. Magee v. Williams*, 57 N.M. 588, 261 P.2d 131 (1953). See also *Myers v. Commissioner*, 180 F.2d 969, 971 (4th Cir. 1950); *Inter-Insurance Exch. v. Feys*, 205 F. Supp. 42, 44 (N.D. Cal. 1962): "[O]ne can have several residences if he chooses."; *In re National Discount Corp.*, 196 F. Supp. 766, 769 (W.D.S.C. 1961):

In statutory construction, it is settled that 'reside' is an elastic term to be interpreted in the light of the purpose of the statute in which such term is used; 'reside' is a term whose statutory meaning depends upon the context and purpose of the statute in which it occurs. . . . It is not synonymous with 'citizenship' . . . [W]hile a person may be said to have but one domicile, he may have several residences.

See also *Board of Educ. v. Dille*, 165 N.E.2d 807, 811 (Ohio Ct. App. 1959):

Although the terms 'residence' and 'domicile' have different meanings, they frequently bear an important relationship to each other. One can have no domicile where he has never had a residence, and the character and significance of a person's presence at a certain place may conceivably be affected by the location of his domicile at that place.

Efforts to define each of these terms sometimes appear almost as varied as the facts to which they are applied. Therefore, without attempting an exhaustive review of these voluminous definitions, it may be observed that two fundamental characteristics of a person's domicile are that it is single and continuing—that is to say, a person can have but one domicile at a given time, and such domicile continues until another is established. . . .

But a person may have more than one residence at the same time.

93. *E.g.*, *In re Rice Chocolate Co.*, 36 F. Supp. 365, 366-67 (D.C. Mass. 1941):

More recent decisions clearly indicate that the effect of the original designation by a corporation of its principal place of business is to fix its 'domicile in law.' It is now recognized that a corporation may have its legal domicile in one place and a residence in another. . . . In a very real sense it is a resident of the place where its corporate activities are carried on and its corporate functions are performed.

Thomas v. Hector Constr. Co., 216 Minn. 207, 12 N.W.2d 769, 773 (1944):

A corporation is deemed to be a 'resident' within the purpose and intent of statutes defining the jurisdiction of courts and venue of actions. . . . Ordinarily, a private domestic corporation 'resides' where it has its principal

The lawyer's job is to advise specifically concerning the place of filing. Certainly he should recommend filing in Chaves County; and to be on the safe side, he should also advise filing in all seven counties where corporate offices are located, *e.g.*, in each place of possible residence. And since it is at least arguable that *X* resides in New Mexico generally but not in any specific county, *A* should be advised to file in the office of the Secretary of State under the provisions of subsection (1)(c).

Advising *A* when he lends the \$100,000 to a foreign corporation, *Y*, requires a slightly different analysis, although one that is no less difficult. Since *Y* was organized in New Jersey, it seems reasonable to treat *Y* as a nonresident of New Mexico.⁹⁴ As such, and since the collateral is goods, *A*'s interest could be perfected only by filing in each county where the goods are located. But when an out-of-state corporation is authorized to do business in New Mexico, its application must set forth its principal place of business in the state.⁹⁵ The place so designated may be treated as *Y*'s New Mexico residence.⁹⁶ Safety for *A* would call for filing in that county. And it is even possible that *Y*, like *X*,

place of business; that is, where it exercises its corporate powers. . . . Under § 542.09 . . . , a private domestic corporation, other than certain public service corporations, 'shall be considered as residing in any county wherein it has an office, resident agent or business place.

Texas Highway Dep't v. Kimble County, 239 S.W.2d 831, 832 (Tex. Civ. App. 1951):

Appellant cites . . . authorities, to the effect that a corporation resides in the county where its principal offices are located. That this is correct does not militate against our holding that a corporation also resides in the county named in the charter as the place where its principal office is located. A person, including a corporation, may reside in more than one county.

Compare 28 U.S.C.A. § 1332(c) (Supp. 1962): For purposes of diversity jurisdiction of the federal court, a corporation is "deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place business."

94. See *Vandevor v. Southeastern Greyhound Lines*, 152 F.2d 150, 152 (7th Cir. 1945):

Defendant argues that the legal existence, the home, the domicile, the habitat, the residence, and citizenship of a corporation can only be in the state by which it was created, notwithstanding that it may lawfully do business in other states and subject itself to the processes of those states. With this contention we are impelled to agree, since many decisions of various courts have so held.

A corporation can have no legal existence outside of the sovereignty by which it was created. Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will, and, although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there.

95. N.M. Stat. Ann. § 51-10-4(a) (1953).

96. See *Pittsburgh-Des Moines Steel Co. v. Incorporated Town of Clive*, 249 Iowa 1346, 91 N.W.2d 602, 604 (1958):

[W]hile recognizing the rule that the domicile of a foreign corporation is in the state where it is incorporated, [this court] has frequently held that a foreign corporation doing business in the state is a resident within the meaning of the respective statutes then under consideration.

will be deemed to reside in New Mexico generally but in no specific county. If so, and to be assured of full protection, the attorney might advise filing with the Secretary of State.

Uncertainty and confusion pervade New Mexico's filing provision as applied to non-individual debtors. Primarily the problem stems from New Mexico's failure to adopt one of the officially proposed filing provisions. With central filing, of course, the debtor's residence or nonresidence is irrelevant. Alternative Two (local filing for consumer goods and farm-related collateral and central filing for all other collateral) also avoids the difficulty. Consumer goods, by definition, can not be collateral when the borrower is other than an individual.⁹⁷ And the farm goods exception is operative only with a farmer-debtor, *i.e.*, an individual debtor.⁹⁸ The duplicate filing system of Alternative Three creates problems similar to those now present in New Mexico, but less extremely since the general local filing provision of the section is inoperative when the debtor has a place of business in more than one county in the state.

If New Mexico retains its present local filing system, it seems essential that a definition pinpointing the residence of various non-individual debtors be added. If the Legislature adopts one of the first two official alternatives, no such definition will be required. With Alternative Three, the definition is necessary. The suggested change for New Mexico is found in Appendix 2.⁹⁹

97. To be consumer goods, the collateral must be purchased for personal, family, or household purposes. N.M. Stat. Ann. § 50A-9-109(1) (1953).

98. UCC § 9-401(1), Alternative Two. The reference in the section is to a "farmer," a word apparently connoting an individual. If the reference to "farmer" includes a corporate debtor, the place-to-file problem would be presented under Alternative Two.

99. See text at 516-18, *infra*.

Several states have recognized the problem of the non-individual debtor's residence and have made an effort to define it. *E.g.*, California added subsection (5) to section 9-401 as follows: "(5) The county of residence of an organization is the county in which it has its chief place of business in fact." Cal. Laws 1963, ch. 819, § 9-401(5); Nebraska, which rejected all of the proposed alternatives, has a filing provision controlled by residence and in § 9-401(1)(c) provides:

If the debtor shall be a Nebraska corporation, a foreign corporation qualified to do business in Nebraska or a foreign corporation domesticated under Nebraska law, then it shall be deemed a resident, and its residence for purpose of filing shall be the county where the office of its last appointed resident agent is located.

Neb. Laws 1963, L.B. 49, § 9-401(1)(c); New York also has a special provision spelling out the residence of organizational debtors. Subsection 1(d) was added to section 9-401 as follows:

(d) for the purposes of paragraph (a) of this subsection, a foreign corporation which is authorized to do business in this state is deemed a resident of this state and the residence of a debtor which is

(i) a domestic corporation, is the county in which the office of the corporation is to be located as specified in its certificate of incorporation or most recently filed certificate of amendment thereto;

(ii) a foreign corporation, is the county in which the office of the corpora-

D. Problem 4—Filing: Fixtures

A, the owner of two apartment houses, one located in Albuquerque and the other in Santa Fe, decides to modernize his buildings. He arranges with X to buy 100 stove-oven units, one to be built-in each apartment. The wholesale price per unit is \$215, of which \$85 is paid down. A signs a note for the balance and a security agreement listing the units by serial number and stating that they are to be located in the two apartment houses, one in Albuquerque and one in Santa Fe, with the addresses of each being set forth.

The units are delivered to A. By using large crews, A is able to have all of the units installed in eight days. As soon as the installation is completed, A notifies X and X files the security agreement in the office of the county clerk of Bernalillo County, A being a resident of the county. The clerk stamps the document and indexes it alphabetically as required by the Code upon the filing of a document dealing with goods.

A few weeks after the "built-ins" are installed, B, who for the past two years has held a properly recorded real estate mortgage on both apartment houses, advances funds to A under an open-end arrangement contained in the mortgage.

Will B or X have a priority interest in the built-in stoves?

To perfect its interest in the fixtures (and the built-in stoves are fixtures)¹⁰⁰ X must file "in the office where a mortgage on the real estate concerned would be filed or recorded."¹⁰¹ On the facts stated, X filed only in Bernalillo County although the "built-ins" were located in Santa Fe County as well. Thus, at best, X has perfected as to the units located in Bernalillo County. B, a mortgagee under an open-end mortgage who has recorded his interest both in Bernalillo and Santa Fe Counties, and who advanced funds prior to any perfection in Santa Fe, clearly takes priority as to the units installed there.¹⁰²

For the Bernalillo units, B has a priority only if he advanced funds without knowledge of X's interest and before X perfected that interest.¹⁰³ Assuming that B did not know¹⁰⁴ of X's security interest, the question is whether X,

tion within the state is to be located as specified in its application for authority to do business in this state or most recently filed amendment thereto;

(iii) a partnership and has filed in the office of the clerk of a county of the state a certificate under section four hundred forty of the penal law, is that county.

N.Y. Laws 1962, ch. 553, § 9-401(1)(d).

100. See note 32 *supra*.

101. N.M. Stat. Ann. § 50A-9-401(1)(b) (1953).

102. N.M. Stat. Ann. § 50A-9-313 (1953).

103. *Ibid*.

104. "A person 'knows' or has 'knowledge' of a fact when he has actual knowledge of it." N.M. Stat. Ann. § 50A-1-201(25) (1953).

by filing as it did, perfected its interest in the "built-ins" located in the Albuquerque apartments.

A real estate mortgage on the land in question would be recorded in the office of the county clerk of Bernalillo County,¹⁰⁵ and this is the office in which *X* filed the security agreement. Literally, the statutory requirement was satisfied. But *X* filed in that portion of the clerk's office given over to personal property records rather than in the portion handling real estate records. Fixtures, of course, by definition, are an integral part of the real estate.¹⁰⁶ A search of the real estate records should disclose any claimed security interest in fixtures; and this is the very thing the Comments indicate the Code attempts to accomplish.¹⁰⁷ The Comment is clear but the Code provision itself is not, in that it fails to make clear *where* in the clerk's office *X* should file.

Both New Mexico and all alternatives in the Official Text contain the same filing provision for fixtures. Under section 50A-9-401(1),

[T]he proper place to file in order to perfect a security interest is as follows: . . . (b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded¹⁰⁸

Under Official Alternative One (complete central filing except for fixtures), the provision causes little difficulty. Almost necessarily, the local filing for fixtures would be with the real estate records, there being no personal property records. Both of the other official proposals call for some local filing for personal property security interests and, thus, may create a problem similar to New Mexico's. New Mexico, of course, compounds the difficulty because of its almost completely local filing system.

As noted, the Comments make it clear that the draftsmen of the Code intended that security interests in fixtures be filed as a part of the real estate records. Unless the section accomplishes this, the special treatment fixtures receive is hardly justified. And substituting one of the official alternatives for New Mexico's filing provision would not eliminate the difficulty unless Alternative One (central filing) is adopted, a solution not here recommended. The safest course for New Mexico would be to adjust the fixture part of section 50A-9-401 so that it specifies that security interests in fixtures are to be filed with the real estate records. Such a provision is found in Appendix 2.¹⁰⁹

105. N.M. Stat. Ann. § 71-2-1 (1953).

106. See note 32 *supra*.

107. UCC § 9-313, Comment 6: "Under this Article as under the Uniform Conditional Sales Act the place of filing with respect to goods affixed or to be affixed to realty is with the real estate records and not with the chattel records."

108. N.M. Stat. Ann. § 50A-9-401(1) (1953).

109. See text at 516-18, *infra*.

E. Problem 5—Filing: Financing Automobile Dealers

X, a finance company, decides to enter the field of financing automobile dealers. X's president calls the company's lawyer, informs him of the decision, and asks him what steps X will have to take to perfect its security interest in the vehicles.

What advice will the lawyer give?

The filing provisions of New Mexico's UCC do not apply when motor vehicles are the collateral. At the time it adopted the Code, New Mexico had to choose between the following officially proposed alternative Code provisions relating to automobile financing:

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute . . .

Alternative A—

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

Alternative B—

(b) of this state which provides for central filing of security interests in such property, or in a motor vehicle which is not inventory held for sale for which a certificate of title is required under the statutes of this state if a notation of such a security interest can be indicated by a public official on a certificate or a duplicate thereof.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.¹¹⁰

As a result of adopting Alternative A rather than B, the financing of automobile dealers in New Mexico has been unnecessarily complicated.¹¹¹ For automobiles subject to registration under the motor vehicle law, the only way a security interest currently can be perfected is by satisfying the requirement of the title certificate law.

Before the adoption of the Code, those engaged in financing car dealers relied on the Uniform Trust Receipts Act.¹¹² Under it, they used the trust

110. UCC §§ 9-302(3), (4).

111. N.M. Stat. Ann. § 50A-9-302(3) (1953). The Legislature followed the advice of the Commissioners for the Uniformity of State Laws in adopting Alternative A, and the Commissioners followed the recommendation of the author who was in error in making the recommendation.

112. N.M. Laws 1947, ch. 151, §§ 1-19.

receipt,¹¹³ filed annually with the Secretary of State,¹¹⁴ and were protected against all third persons except buyers in ordinary course of trade from the dealer.¹¹⁵ There was no need to file with the Motor Vehicle Division. When Alternative A was adopted, however, the Uniform Trust Receipts Act was repealed,¹¹⁶ and this form of financing ended.

The Motor Vehicle Code¹¹⁷ is ill-suited to inventory financing. Its purpose is to protect those engaged in financing *consumer* purchases of motor vehicles, and it is couched in terms of a separate filing for each vehicle being financed.¹¹⁸ As applied to those financing a dealer, the system is physically cumbersome and expensive.¹¹⁹ In addition, if used for inventory financing, it would double the work of the Motor Vehicle Division, because when the car is sold to a consumer-buyer another filing is necessary—a filing which, in fact, should be the first.

Once the requirements of the Motor Vehicle Code have been satisfied, the filing constitutes

constructive notice of all liens and encumbrances against the vehicle described therein to creditors of the owner, to subsequent purchasers and encumbrancers except such liens as may be authorized by a law dependent upon possession.¹²⁰

The protection accorded the secured party under the Motor Vehicle Code, if the statutory language applies literally, is substantially greater than he would have under either the old trust receipts law or the Uniform Commercial Code. Both of the latter limit the protection of the party financing inventory in that they permit the buyer in ordinary course from the retailer to take free of a security interest in the goods;¹²¹ and they permit this "even though the security interest is perfected and even though the buyer knows of its existence."¹²² By the specific terms of the Motor Vehicle Code, all subsequent purchasers take subject to the filed interest. As against a consumer-buyer, such protection is wholly unjustified and unlikely to be sustained in a court test. New Mexico's high court has never decided whether the financing party would be estopped to assert his claim against a buyer from the dealer being financed. Most other courts, when facing the question, have found such an estoppel.¹²³

113. N.M. Laws 1947, ch. 151, § 2.

114. N.M. Laws 1947, ch. 151, § 13.

115. N.M. Laws 1947, ch. 151, § 9.

116. N.M. Laws 1961, ch. 96, § 10-102.

117. N.M. Stat. Ann. §§ 64-1-1 to 64-33-8 (1953, Supp. 1963).

118. N.M. Stat. Ann. §§ 64-3-1 to -20, 64-5-1, -2 (1953, Supp. 1963).

119. N.M. Stat. Ann. §§ 64-2-20, 64-11-1 to -15.2 (1953, Supp. 1963).

120. N.M. Stat. Ann. § 64-5-2 (1953).

121. N.M. Laws 1947, ch. 151, § 9. See N.M. Stat. Ann. § 50A-9-307 (1953).

122. N.M. Stat. Ann. § 50A-9-307 (1953). See also N.M. Laws 1947, ch. 151, §§ 1-9.

123.

By the contract and by the course of conduct of the mortgagor and mort-

New car inventory financing may be subject to UCC filing. For complete protection, therefore, the secured party should file in the county where the dealer resides.¹²⁴ UCC filing is inoperative only when the property is subject to a statute providing for central filing of security interests or the notation of such interests on title certificates.¹²⁵ "Vehicles of a type required to be registered" under the Motor Vehicle Code come within the UCC's central filing-title certificate exemption.¹²⁶ Other vehicles do not.¹²⁷ If vehicles in the hands of dealers are "of a type required to be registered," UCC filing is useless. If they are not of such a type, however, such filing protects the secured party to the same extent that others financing inventory are protected. For new cars, a relatively strong argument can be made that they are of a type *not* required to be registered. For them, the Motor Vehicle Division issues no title certificate while the car remains in the hands of the dealer. The manufacturer delivers a manufacturer's certificate to the dealer.¹²⁸ He, in turn, delivers the certificate to the consumer-buyer who registers the car with the Division for the first time.¹²⁹ Arguably then, the vehicle is not of a type required to be registered, at least while in the hands of the dealer. Ultimately the car must be registered if it is to operate on New Mexico's highways. Is a car which must be registered to be operated on such highways of a type *not* required to be registered within the meaning of the statute? There is no clear answer.

A used vehicle normally is already registered when it comes into the possession of a dealer. While the transfer to the dealer need not be registered with the Motor Vehicle Division,¹³⁰ the vehicle would seem to remain of a type subject to being registered and, thus, not subject to the UCC. While

gagee, the mortgagor was allowed to hold itself out to the public as a retail dealer in automobiles, with the right to sell the mortgaged cars without let or hindrance; and now to permit the mortgagee to assert its mortgage against the defendant, an innocent purchaser in the usual course of trade for value and without notice, would be, under the circumstances of this case, a fraud upon such innocent party, and would permit the one who made the fraud possible to take advantage of its own wrong. We hold the mortgage, as against the defendant, to be void and of no effect.

Hostetler v. National Acceptance Co., 36 Ohio App. 141, 145, 172 N.E. 851, 852 (1930). See also, *e.g.*, *Gernazian v. Harrison*, 66 Ga. 668, 19 S.E.2d 165 (1942) (proceeding on an agency theory); *Budget Plan v. Savoy*, 336 Mass. 322, 145 N.E.2d 710 (1957); *General Credit v. Winchester, Inc.*, 196 Va. 711, 85 S.E.2d 201 (1955). *Contra*, *Merchants Bank v. McKenna*, 29 Misc. 2d 50, 212 N.Y.S.2d 541 (1961).

124. N.M. Stat. Ann. § 50A-9-401 (1953).

125. N.M. Stat. Ann. § 50A-9-302 (1953).

126. N.M. Stat. Ann. §§ 64-5-1, -2 (1953).

127. *Ibid.*

128. N.M. Stat. Ann. § 64-4-5 (1953).

129. *Ibid.*

130. N.M. Stat. Ann. § 64-4-4 (1953).

UCC filing should be recommended whatever vehicle inventory is being financed, its effectiveness remains open to doubt.

Firms financing automobile dealers in New Mexico are today faced with the choice of (1) complying with an almost impossibly cumbersome central filing-title certificate system, (2) operating without filing and, thus, without legal protection against claims of third persons, or (3) filing under the UCC—perhaps uselessly.

Legislative action is necessary. The most effective solution would be to adopt Alternative B in place of Alternative A. Under B, the motor vehicle law would control only that aspect of motor vehicle financing it controls effectively—consumer financing. Inventory financing clearly would come under the Code filing provisions, and automobile inventory would be treated as all other inventory. The Commercial and Motor Vehicle Codes can be made to work effectively side by side. The adoption of Alternative B is urged as the means to accomplish this.

III

CLEAN-UP LEGISLATION

Article 9 of the Code “applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor’s lien, equipment trust, conditional sale, trust receipts, other lien or title retention contract and lease or consignment intended as security.”¹³¹ Since the Code controls all of the various forms of chattel security, pre-Code statutes dealing *directly* with such transactions were repealed when the Code was enacted.¹³² Other statutes dealing more peripherally with chattel security were amended to achieve consistency with the Commercial Code.¹³³

More work remains to be done, however, in eliminating reference in New Mexico statutes to material made obsolete by the adoption of the Commercial Code. References to such material still abound. Thus, various municipal liens and other interests are still required to be filed or foreclosed in the same manner as chattel mortgages.¹³⁴ And much of the time-purchase regulatory

131. N.M. Stat. Ann. § 50A-9-102(2) (1953).

132. N.M. Laws 1961, ch. 96, § 10-102, repealing N.M. Laws 1923, ch. 8, §§ 1-4 (conditional sales); N.M. Laws 1947, ch. 151, §§ 1-19 (Uniform Trust Receipts Act); N.M. Laws 1924, ch. 24, § 1, N.M. Laws 1933, ch. 31, § 1 (crop mortgages); N.M. Laws 1923, ch. 72, N.M. Laws 1925, ch. 25, §§ 1-4, 8-13, N.M. Laws 1929, ch. 83, N.M. Laws 1935, ch. 54, §§ 1-7, N.M. Laws 1947, ch. 26, N.M. Laws 1959, ch. 253, § 1 (chattel mortgages); N.M. Laws 1884, ch. 35, §§ 1, 2 (conditional sale of railroad property).

133. See N.M. Laws 1961, ch. 96, art. 11, with particular reference to amendments made to N.M. Stat. Ann. §§ 10-2-10, 61-7-1, 64-1-26 (Supp. 1963), and § 71-1-3 (1953).

134. N.M. Stat. Ann. §§ 7-8-43 (foreclosing rights under an assignment of a grazing lease), 14-39-4 (filing notice of lien), 14-39-21 (foreclosing of lien), 47-12-3 (filing partido contract), 61-3-11 (foreclosing of lien) (1953).

legislation is couched in terms of chattel mortgages and conditional sales.¹³⁵ These references should be in Code terms—security agreements, financing statements, security interests. Other examples are found throughout the 1953 Compilation.¹³⁶ The various obsolete references, particularly those having a substantive effect, should receive legislative attention.

In addition, some clean-up work is necessary to eliminate various typographical errors and unintended omissions and additions in New Mexico's version of the Code. A few of these change the meaning of a section,¹³⁷ and certainly

135. N.M. Stat. Ann. §§ 50-15-2, 61-8-15, -16, 64-31-1 to -6 (1953).

136. Granting priorities over chattel mortgages: N.M. Stat. Ann. §§ 51-8-21, 61-3-5, 64-5-1, -2, 72-16-31 (1953, Supp. 1963). Granting various organizations the power to mortgage personal property: N.M. Stat. Ann. §§ 45-4-23, 51-2-2, -7, 51-8-18, -21, 51-15-4, 51-18-3, 65-6-21, 68-2-4, -16, 69-2-6 (1953). Reference to the interest of the mortgagee in insurance policies: N.M. Stat. Ann. §§ 58-8-10, 58-13-9 (1953). Auctions and chattel mortgages: N.M. Stat. Ann. § 67-13-4 (1953). Right of representative to mortgage property: N.M. Stat. Ann. §§ 31-5-4, 32-1-27 (1953). Effect of a duly filed mortgage on an assignment for the benefit of creditors: N.M. Stat. Ann. § 27-1-1 (1953). Sale of chattel by virtue of mortgage interest: N.M. Stat. Ann. § 24-2-1 (1953). Recording fees for chattel mortgage: N.M. Stat. Ann. § 71-1-10 (1953). Destroying old records including chattel mortgages: N.M. Stat. Ann. §§ 64-2-17, 71-4-10 (1953).

137. See N.M. Stat. Ann. § 50A-2-708(2) (1953):

If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710 [50A-2-710]), *less* due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [Emphasis added.]

The italicized word *less* is not found in the Official Text. The intent of the Official Text is to permit recovery by the seller of his profit plus any incidental damages and costs reasonably incurred. The buyer is to be given due credit for payments or proceeds of resale. Under the New Mexico language, however, the figure arrived at by adding together lost profit and incidental damages is to have subtracted from it the sum of the costs incurred by the seller and the proceeds he receives from a resale. The word *less* should be deleted.

In N.M. Stat. Ann. § 50A-3-403(2) (b) (1953), the bracketed word "not" was inadvertently added and should be deleted:

An authorized representative who signs his own name to an instrument

* * * *

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that representative signed in a representative capacity, or if the instrument does not name the person represented but does [not] show that the representative signed in a representative capacity.

Finally, in N.M. Stat. Ann. § 50A-9-402(3) (1953), setting forth a statutory form of financing statement, the bracketed words should be deleted and the italicized words inserted:

A form substantially as follows is sufficient to comply with subsection (1):
 Name of debtor (or [assignee] *assignor*)
 Address Name of secured party (or [assignor] *assignee*)
 Address

these should be corrected. At some point, all of the errors should be eliminated.¹³⁸

CONCLUSION

The primary change recommended in New Mexico's version of the Uniform Commercial Code is that it be made more uniform. Even with the local variations and the problems presented by them, the Code has worked well in the state. If the Code is made more uniform, or if the less desirable route is followed and modifications are made to compensate for local variations, I believe its operation will be improved. New Mexico should keep pace with the rest of the country and work to make the Commercial Code as effective as possible.

APPENDIX 1

A proposed statute for consideration if New Mexico retains its present UCC filing provisions rather than adopting one of the officially proposed alternatives.

138. Other typographical errors in the Code as adopted in New Mexico, primarily harmless punctuation and spelling mistakes, are here listed. [References to pages in this footnote are to pages in N.M. Laws 1961.]

1. § 1-201, immediately after the word "Act" in 4th line of section, semi-colon should be colon (p. 181).
2. § 2-104, immediately after the word "DEFINITIONS" in the title to the section, the period should be a colon (p. 192).
3. § 2-512(2), second line, "buyers right" should be "buyer's right" (p. 225).
4. § 3-407(2), the period after the 12th word should be deleted (p. 268).
5. § 3-412(2), 3rd line, "United State" should be "United States" (p. 270).
6. § 3-412(2), the word "and" next to the last word in the subsection should be "or" (p. 270).
7. § 3-503(2) (b), first line, the word "endorser" should be "indorser" (p. 277).
8. § 3-506(1), second sentence, between the 5th and 6th words, the word "a" should be inserted and the phrase should read "in a good" rather than "in good" (p. 279).
9. § 5-108(1), words in quotation marks at end of sentence should be "notation credit" and not "notation of credit" (p. 315).
10. § 5-114(4) (c), there should be a period at the end of the subsection (p. 319).
11. § 6-104(1) (c), second line, between second and third words, insert the word "next" so that the language reads "six months next following" (p. 323).
12. § 6-104(1), reference after Section 6-108 should be to "6-107" (p. 323).
13. § 9-304, title to section, should be a comma after the word "DOCUMENTS" the first time the word is used (p. 390).
14. § 9-311, title to section, should be a colon after the word "RIGHTS" (p. 395).

In addition to these mistakes in the bill, a great many mistakes were made in printing the Session Laws of 1961. These mistakes, although not affecting the operation of the UCC, make it difficult to use the session laws as a primary source. The mistakes appearing in the session laws are listed in Appendix 3. See text at 518-19, *infra*.

The bill as enacted by the Legislature, signed by the Governor, and on file with the Secretary of State is recognized as the only official document. For the sake of convenience, however, the bill used here as having been adopted is that on file with the New Mexico Legislative Council Service. It is believed that this bill is identical to that on file with the Secretary of State, and it is against the Council Service's bill that the 1962 Official Text of the UCC and the 1961 session laws were read.

An Act

Relating To The Uniform Commercial Code; Changing Certain Notice Provisions Contained Therein, Amending Section 50A-9-504 New Mexico Statutes Annotated, 1953 Compilation (Being Laws 1961, Chapter 96, Section 9-504).

Be It Enacted By The Legislature Of The State Of New Mexico:

Section 1. Section 50A-9-504 New Mexico Statutes Annotated, 1953 Compilation (being laws 1961, Chapter 96, Section 9-504) is amended to read: "9-504. Secured Party's Right To Dispose Of Collateral After Default; Effect Of Disposition.

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorney's fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other

intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. If the secured party disposing of the collateral filed a financing statement in the place or places designated by the preceding section either before his security interest attaches or within ten (10) days thereafter, a filing by another secured party shall be deemed due filing requiring the giving of notice as contemplated in the preceding sentence only if such secured party has filed in at least one of the places where the secured party disposing of the collateral filed; Provided that filing shall not be deemed to require such notice unless the transaction between the debtor and the secured party disposing of the collateral was of the kind requiring either possession or filing for perfection under the provisions of this Article. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article."

APPENDIX 2

An Act

Relating To The Uniform Commercial Code; Providing Clarification Of The Filing Provision Thereof, Amending Section 50A-9-401 New Mexico Statutes Annotated, 1953 Compilation (Being Laws 1961, Chapter 96, Section 9-401).

Be It Enacted By The Legislature Of The State Of New Mexico:

Section 1. Section 50A-9-401 New Mexico Statutes Annotated, 1953 Compilation (being laws 1961, Chapter 96, Section 9-401) is amended to read: "9-401. Place Of Filing; Erroneous Filing; Removal Of Collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) in the office of the county clerk in the county of the debtor's residence or, if the debtor is not a resident of this state and the collateral is goods, then in the office of the county clerk in the county where the goods are kept, and in addition, when the collateral is crops, in the office of the county clerk in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then with the real estate records in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the Secretary of State.

(d) For the purpose of this section,

(i) A corporation or incorporated association organized under the laws of this state shall be deemed to reside in the county where its registered or principal office or place of business is located as set forth in its articles or certificate of incorporation or agreement;

(ii) An unincorporated association organized under the laws of this state shall be deemed to reside in the county where its statement of organization is filed;

(iii) A partnership shall be deemed to reside in the county where its principal place of business in this state is located;

(iv) A corporation organized outside of this state and authorized to transact business in this state shall be deemed to reside in the county where its principal office in this state is located as set forth in documents filed with the State Corporation Commission;

(v) All other non-individual debtors shall be deemed nonresidents of New Mexico.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing state-

ment against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in Section 9-103 determine whether filing is necessary in this state."

APPENDIX 3

Despite the Secretary of State's certification of accuracy, the following list of mistakes appeared in the 1961 Session Laws, although they did not appear in the bill passed by the Legislature. References to pages are to pages in N.M. Laws 1961. All references to sections are to sections of chapter 96 of N.M. Laws 1961.

P. 180, § 1-105, last line, word "Section" should be "Sections"; p. 187, § 1-201(44)(a), last sentence in subparagraph, word "colleciton" should be "collection"; p. 190, § 1-101 should be § 2-101; p. 191, § 2-103(2), next to last line, "sale on return" should be "sale or return"; p. 192, § 2-104(1), second line of subsection, the word "hold" should be "holds"; p. 194, § 2-107(1), second line of subsection, "structure of" should be "structure or"; p. 194, § 2-107(3), next to last line of subsection, "notice to the third" should be "notice to third"; p. 195, § 2-201(1), seventh line of subsection, "beacuse" should be "because"; p. 195, § 2-201(3), there should be no period after "enforceable"; p. 202, § 2-305(3), third line of subsection, "contracts" should be "contract"; p. 209, § 2-319(1)(c), "F.O.B. vesel" should be "F.O.B." vessel"; p. 212, § 2-323(2), last sentence in subsection, "expressley" should be "expressly"; p. 216, § 2-401(1), ninth line, "(Articue 9)" should be "(Article 9)"; p. 217, § 2-402(3)(b), first line, "contrary" should be "contract"; p. 220, § 2-503(3), first line, "deilver" should be "deliver"; p. 233, § 2-612(3), last line of subsection, "demand" should be "demands"; p. 235, § 2-616(1)(a), "hereby" should be "thereby"; p. 237, § 2-705(2)(c), "as a warehouseman" should be "as warehouseman"; p. 241, § 2-711(3), first line of subsection, "justiafiable" should be "justifiable"; p. 244, § 2-718(3)(b), "amount of value" should be "amount or value"; p. 257, § 3-122(1)(b), there should be a period after "issue"; p. 257, § 3-122(2), "until or after" should be "until on or after"; p. 260, § 3-206(4), fifth line, "that he does not so" should be "that he does so"; p. 261, § 3-207(1)(d), there should be a period after "duty"; p. 275, § 3-501(1)(c), second line of subsection, "pavable" should be "payable"; p. 277, § 3-504(1), "payor or by" should be "payor by"; p. 278, § 3-505(1), "made without" should be "made may without"; p. 291, § 4-105, in title there

should be a quotation mark before "INTERMEDIARY"; p. 298, § 4-208, "Secion" should be "Section"; p. 300, § 4-211(3), "become" should be "becomes"; p. 303, § 4-214(2), third line of subsection, "settlemen" should be "settlement"; p. 305, § 4-302(a), fourth line of subsection, "or receipt" should be "of receipt"; p. 307, § 4-402, "Secion" should be "Section"; p. 307, § 4-403(1), third line of subsection, "such order" should be "such manner"; p. 308, § 4-405(1), fourth line from top of page, "or incompetence" should be "of incompetence"; p. 309, § 4-406(3), "lack or" should be "lack of" and the last word in the subsection should be written "item(s)"; p. 309, § 4-406(4), last line of subsection, "signature and" should be "signature or"; p. 310, § 4-501, sixth line, "or brought" should be "or bought"; p. 311, § 4-503(b), last paragraph, should be "to reimbursement" instead of "to reimubrsement"; p. 312, § 5-102(2), "honor drafts for payment" should be "honor drafts or demands for payment"; p. 321, § 5-117(2), this subsection should be placed after subsection (1)(c); p. 342, § 7-309(1), next to last line, "uopn" should be "upon"; p. 379, § 9-105(1)(c), "papers" should be "paper"; p. 389, § 9-301(2), next to last line of subsection, "arises" should be "arise"; p. 392, § 9-304(6), "subsection" should be "subsections"; p. 392, § 9-306(3), next to last line of subsection, "aftr" should be "after"; p. 408, § 9-501(1), fourth line from top of page, "an" should be "any"; p. 409, § 9-501(5), fifth line of subsection, "interest such" should be "interest in such"; p. 410, § 9-504(1)(a), fourth line of subsection "attorney's" should be "attorneys'"; p. 411, § 9-504(3), eleventh line from top of page, "who has security" should be "who has a security".