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FLORIDA'S UCC FILING SYSTEM: HOW A DESIGN OVERHAUL COULD LEAD TO MORE CERTAINTY IN FILING AND SEARCHING FOR FINANCING STATEMENTS

Patrick J. Burton^{*}

I. INTRODUCTION

The 1998 revision to Article 9 of the Uniform Commercial Code (UCC) was designed to both simplify the process of creating a security interest and reduce the amount of ambiguity involved in deciding whether a financing statement was perfected.¹ However, due to the design of Florida's UCC Secured Transaction Registry (the Registry), there is some ambiguity concerning whether a financing statement is effective under U.C.C. § 9-506, which has been adopted by the state of Florida under Fla. Stat. § 679.5061. These ambiguities have led to unneeded litigation to determine whether a financing statement is or is not perfected. Until this design is improved, these controversies will continue to take place. Furthermore, the design of the Registry does not subscribe to the model rules promulgated by the International Association of Corporate Administrators. Although this fact does not render the Registry invalid, it is further proof that the Registry's design should be reconsidered to ensure that there is a reliable and efficient way of checking whether a debtor has a financing statement filed on a piece of collateral.

This comment gives (1) an overview of how a financing statement operates, along with a brief history of the relevant provisions of Article 9 of the UCC; (2) an introduction to the International Association of Corporate Administrators; (3) an examination of Florida's secured transaction registry along with an analysis of two Florida cases dealing with the system; (4) a brief examination of how two other state's UCC filing systems are designed; and (5) proposed suggestions on how Florida's Registry can be improved with a point-and-click interface to create an easier to use and more accurate method of filing and searching for financing statements.

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1. See Lynn M. LoPucki, *The Spearing Tool Filing System Disaster*, 68 OHIO ST. L.J. 281, 284-86 (2007) [hereinafter LoPucki, *Spearing*].

II. AN OVERVIEW OF FINANCING STATEMENTS AND THE RELEVANT PROVISIONS OF REVISED ARTICLE 9 OF THE UCC

A. Financing Statements in Brief under Florida Law and the UCC

In order for creditors to create a security interest in a debtor's collateral that will grant them priority in collection rights over any subsequent creditors, they must "perfect" their security interest.² Perfection is generally achieved by publishing or giving notice to third parties that a party already has a security interest in a piece of collateral.³ There are different methods of perfection depending on the type of collateral being used for security purposes.⁴ Typically, secured creditors choose an Article 9 filing system to perfect their security interests.⁵ Article 9 filing systems give notice to third parties that someone else already has rights to a debtor's property.⁶ This does not mean that a debtor cannot use the same collateral again on another loan; it just means that a second lender has the right to know if someone else would have the right to collect on the collateral before the second lender did.⁷

Secured creditors (secured parties) can perfect their security interest through the Article 9 filing system by filing a financing statement.⁸ Financing statements include the name of the debtor, the name of the secured party, and a description of the collateral.⁹ The financing statement is then filed at a state designated filing office; typically, the Secretary of State's office or with a private party whom the state has chosen to maintain the system.¹⁰ This UCC filing system then gives subsequent lenders notice that in the event of default their rights to collect on the collateral would be subordinate to those of the first secured party.¹¹ The fact that financing statements are filed at the Secretary of State's office is important because this means that there is a different Article 9 filing office for each state. Once filed

2. LOUIS F. DEL DUCA, MARIE T. REILLY, EDWIN E. SMITH & PETER WINSHIP, SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE AND INTERNATIONAL COMMERCE 152 (2002). Additionally, among conflicting security interests in the same collateral, a perfected security interest has priority over a conflicting unperfected security interest. U.C.C. § 9-322(a)(2) (adopted in Florida under FLA. STAT. § 679.322(1)(b) (2011)).

3. *Id.*

4. Some collateral is perfected automatically on attachment, meaning when the security interest is enforceable against the debtor. U.C.C. § 9-309 (adopted in Florida under FLA. STAT. § 679.3091 (2011)). Other collateral can be perfected by the creditor taking possession of it. U.C.C. § 9-313 (adopted in Florida under FLA. STAT. § 679.3131 (2011)). At interest in this comment is collateral that can be perfected by the filing of a financing statement. U.C.C. § 9-312 (adopted in Florida under FLA. STAT. § 679.3121 (2011)).

5. LYNN M. LOPUCKI, ELIZABETH WARREN, DANIEL L. KEATING & RONALD J. MANN, COMMERCIAL TRANSACTIONS: A SYSTEMS APPROACH 958 (4th ed. 2009) [hereinafter LOPUCKI, COMMERCIAL TRANSACTIONS]. Perfection can sometimes also be achieved by possession of the item that is being used as collateral. *See* FLA. STAT. § 679.3131 (2011) *adopting* U.C.C. § 9-313. However, in many cases the debtor needs the item to run their business; therefore, filing is the optimal method of perfection.

6. LOPUCKI, COMMERCIAL TRANSACTIONS, *supra* note 5, at 959.

7. *Id.*

8. *Id.*

9. *See* U.C.C. § 9-502(a) (adopted in Florida under FLA. STAT. § 679.5021(1) (2011)).

10. *See* U.C.C. § 9-501, Legislative Note.

11. LOPUCKI, COMMERCIAL TRANSACTIONS, *supra* note 5, at 958-59. Furthermore, under the Bankruptcy Code, trustees have the power to avoid security interests not perfected prior to bankruptcy; *see also* 11 U.S.C. § 544(a) (2011).

in the state's filing office, financing statements are then indexed by the name of the debtor¹² who could be either a registered organization or an individual.¹³ Many of these UCC filing systems, including the state of Florida's, are searchable online.¹⁴

As these filing systems are indexed by the name of the debtor, any subsequent creditors, as searchers, would first be likely to type the debtor's name into the appropriate state filing system to determine if any financing statements have previously been filed on the collateral. As the name is typically entered manually,¹⁵ the accuracy of the entry of the debtor's name by the original secured party is crucial to a subsequent lender being able to locate it.¹⁶

As mentioned above, financing statements can be filed on either a registered organization or an individual. Under the recent 2010 amendment of Article 9 of the UCC, financing statements that are attempting to secure the collateral of a debtor who is a registered organization must provide the name of the debtor that is stated "on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name."¹⁷ This public organic record has been described as the organization's "birth certificate" as it is "the actual record initially filed with the state or federal government to form the organization or to amend or restate the initial record."¹⁸ It is also important to note that under the UCC, "a financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor."¹⁹

Until recently, Article 9 did not specifically provide a definition of "name" as applied to individual debtors, so courts typically used the legal name of the debtor, nicknames being insufficient.²⁰ However, under the most recent amendment of Article 9, states are given two alternatives when considering the name of the debtor.²¹ Under Alternative A, the secured party is instructed to use the individual debtor's name as that name appears on the individual's unexpired driver's license issued by the state whose laws are being used to show that perfection has

12. U.C.C. § 9-519(c) (adopted in Florida under FLA. STAT. § 679.5191(3) (2011)).

13. See U.C.C. § 9-503 (adopted in Florida under FLA. STAT. § 679.5031 (2011)).

14. The state of Florida's filing system is located at <http://www.floridaucc.com>.

15. A copy of the form used in Florida can be found online at http://www.floridaucc.com/UCCWEB/forms/UCC1form.FS.01_2009.pdf.

16. LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 981.

17. U.C.C. § 9-503(a)(1). The Governor of Florida has recently approved an amendment to corresponding statute FLA. STAT. § 679.5031(1)(a) to match the language in § 9-503(a)(1) of the U.C.C. See 2012 Fla. Sess. Law. Serv. Ch. 2012-59 (effective July 1, 2013). A registered organization is defined in the UCC as "an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of a legislation by the State or the United States." U.C.C. § 9-102(a)(71). Again, the Governor of Florida has recently approved of an amendment to corresponding FLA. STAT. § 679.1021(1)(rrr) to match the language of U.C.C. § 9-102(a)(71). See 2012 Fla. Sess. Law. Serv. Ch. 2012-59 (effective July 1, 2013).

18. Margit Livingston, *Bewitched, Bothered and Bewildered: The Courts and Revised Article 9 of the Uniform Commercial Code Ten Years Later*, 9 DEPAUL BUS. & COMM. L.J. 169, 183 (2011) [hereinafter Livingston, *Bewitched*].

19. U.C.C. § 9-503(c) (amended 2010) (adopted in Florida under FLA. STAT. § 679.5031(3) (2011)).

20. See, e.g., *Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004).

21. See U.C.C. § 9-503(4) Alt. A, B.

occurred.²² In the event that the individual debtor does not have such a license, the secured party is instructed to use the “individual name of the debtor or the surname and first personal name of the debtor.”²³ Under Alternative B, the secured party is given the option of providing “either (A) the debtor’s individual name; (B) the debtor’s surname and first personal name; or (C) the debtor’s name as indicated on an unexpired driver’s license issued by the state of the debtor’s principal residence.”²⁴ In Florida, a bill has recently been approved by the Governor amending state law to mirror the new provisions of the UCC under Alternative A, to be effective July 1, 2013.²⁵

At first glance, it would appear that entering a debtor’s name correctly on a financing statement would be a simple requirement for a secured party to fulfill; however, in many circumstances this can be an arduous undertaking.²⁶ When a debtor is a registered organization, the debtor may give creditors its trade name without indicating that the name is a trade name.²⁷ Furthermore, many times a debtor will misspell the name of its organization or abbreviate words that are not abbreviated on the public record; even spacing becomes an issue when computerized searching is used.²⁸

For the names of individuals, the secured party’s goal of filing under the correct name can also be complicated. First, nicknames can be a problem.²⁹ Under the newest version of the UCC, provided the state uses Alternative A, if the debtor gives the secured party a name other than what is on the debtor’s current driver’s license, the secured party would likely be unable to perfect its security interest on the debtor’s collateral. The nickname problem would also occur if the debtor did not have a driver’s license or personal identification card issued by the state. In this case, the individual name of the debtor or the surname and first personal name of the debtor would be used.³⁰ Another potential source of trouble for filers is non-native English names since certain nationalities do not follow English first name-followed-by-surname rules.³¹ Furthermore, name changes frequently cause a financing statement to be correct when it was filed, but later prevent subsequent searchers who are looking under the current name of the debtor from locating the statement.³² Finally, a problem that exists for both individual debtors and debtors

22. See U.C.C. § 9-503(4) Alt. A. If the debtor does not have an unexpired driver’s license in the state then an unexpired personal identification card issued by the state may be used. *Id.* at Legislative Note 3; see also Livingston, *Bewitched*, *supra* note 18, at 182.

23. U.C.C. § 9-503(5) Alt. A; see also Livingston, *Bewitched*, *supra* note 18, at 182.

24. Livingston, *Bewitched*, *supra* note 18, at 182 (citing U.C.C. § 9-503(a)(4) Alt. B. (2011)).

25. See 2012 Fla. Sess. Law. Serv. Ch. 2012-59 (effective July 1, 2013).

26. See LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 975.

27. LoPucki, *Spearing*, *supra* note 1, at 283.

28. *Id.*

29. Kris Fredrickson, *Amending UCC Article 9 to Fix the Name-Error Problem*, 40 No. 1 UCC L.J. Art 3, 43, 47 (2008).

30. See U.C.C. § 9-503(a)(5) Alt. A.

31. LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 976; see also Fredrickson, *supra* note 29, at 48–49 (explaining how translating Arabic names to a Latin alphabet, Arabic “chain names,” Latin traditions of combining their father and their mother’s surnames, and Chinese traditions of placing family names before given names create inconsistencies on how a financing statement should be filed).

32. See LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 976.

who are registered organizations is simple typographical errors. When a secured party files its financing statement with the state, it is very easy for letters to be transposed or simple misspellings to occur.³³ Errors such as these mean that when a searcher types in the correct name of the debtor, the financing statement may not be located, creating the false impression that no one has rights in the collateral other than the debtor himself.³⁴ Relying on the lack of financing statements located, the searcher would be more likely to extend credit to the debtor, mistakenly believing that in the event of default, the searcher would be able to collect first.³⁵

The coders of the UCC attempted to provide for this problem in 9-506(a). Under this provision, “[a] financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.”³⁶ This “seriously misleading” standard is further described in 9-506(c):

If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading.³⁷

Thus, if someone searches the state’s filing system under the correct name of the debtor and the search results that are returned contain the financing statement that has errors in the debtor’s name, that financing statement would not be seriously misleading. It would therefore still be perfected.

B. Brief History of Article 9 with Regards to U.C.C. § 9-506(a)

Prior to the formation of the UCC, there was a clear and imminent need to modernize commercial law.³⁸ The goal of the UCC was to not only modernize the law of commercial transactions, but to clarify and simplify the law into a single statutory scheme.³⁹ The code is split into separate articles, each addressing a different aspect of commercial transactions. Article 9 addresses credit transactions that are secured by an interest in personal property or fixtures.⁴⁰

33. See Fredrickson, *supra* note 29, at 47 (citing Pankratz Implement Co. v. Citizens Nat’l Bank, 281 Kan. 209 (2006)). In this case, the debtor’s first name was listed as “Roger” instead of the correct name “Rodger.”

34. LOPUCKI, COMMERCIAL TRANSACTIONS, *supra* note 5, at 981.

35. See *id.*

36. U.C.C. § 9-506(a) (adopted in Florida under FLA. STAT. § 679.5061(1) (2011)).

37. U.C.C. § 9-506(c) (adopted in Florida under FLA. STAT. § 679.5061(3) (2011)).

38. RAYMOND T. NIMMER, INGRID MICHELSEN HILLINGER & MICHAEL G. HILLINGER, COMMERCIAL TRANSACTIONS: SECURED FINANCING CASES, MATERIALS PROBLEMS 2 (3d ed. 2003).

39. *Id.*

40. *Id.* at 9.

The UCC is not law in the traditional sense; it must be enacted as state law in order to control.⁴¹ Florida originally enacted the UCC in 1965, becoming effective on January 1, 1967.⁴² After its creation, the code was amended in 1972 to provide for more uniformity in how different states were utilizing the code.⁴³

With regards to a financing statement containing minor errors in the debtor's name, the 1972 version of Article 9 contained a "substantial compliance" standard.⁴⁴ Under this standard, "[a] financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."⁴⁵ Therefore, the debtor's name could contain minor errors and still be perfected, provided that those errors are not seriously misleading. However, problems arose when courts tried to determine whether a financing statement satisfied this test; after all, what is seriously misleading?⁴⁶

To answer this question, Florida courts, as well as many other courts around the country, implemented the "reasonably diligent searcher" standard.⁴⁷ Under this standard, to determine whether a minor error was seriously misleading, the court must consider whether the subsequent creditor, as the searcher, could have found the financing statement if the searcher had performed a reasonably diligent search.⁴⁸ Therefore, a searcher would need to perform multiple searches under different, yet similar, names of the debtor to ensure that no financing statement would have priority over his own.⁴⁹ The idea behind this flexible standard was that perfect accuracy in financing statements should not be required,⁵⁰ because the UCC itself states that it is "directed toward commercial realities, not corporate technicalities."⁵¹ This flexible standard effectively allowed a creditor to maintain priority against subsequent lenders without having to worry about being jumped in line over a small error. Although this may have been a noble goal, it placed a significant burden on searchers who now had to perform multiple searches using different spellings, and even different wordings of both individuals' and organizations' names to ensure that a financing statement was not previously filed

41. *Id.* at 2.

42. Fla. Power & Light Co. v. Westinghouse Elec. Corp., 579 F.2d 856, 859 (4th Cir. 1978).

43. NIMMER, *supra* note 38, at 2–3.

44. Margit Livingston, *A Rose by Any Other Name Would Smell as Sweet (Or Would It?): Filing and Searching in Article 9's Public Records*, 2007 B.Y.U. L. REV. 111, 119 (2007) [hereinafter Livingston, *Rose*]. This provision was carried over from the 1962 version of Article 9.

45. U.C.C. § 9-402(8) (1972).

46. Livingston, *Rose*, *supra* note 44, at 121–22. Accordingly, judges would compare the name of the debtor with the name filed. The judge would then make a determination of whether that name was seriously misleading. U.C.C. § 9-402(8). *Id.*

47. *In re John's Bean Farm of Homestead, Inc.*, 378 B.R. 385, 389 (Bankr. S.D. Fla. 2007).

48. See LoPucki, *Spearing*, *supra* note 1, at 284.

49. *Id.* (citing Citizens Nat'l Bank & Trust Co. v. Star Automotive Warehouse (*In re Thriftway Auto Supply*), 1994 U.S. App. LEXIS 31831, at *8 (10th Cir. 1994) ("A reasonably prudent creditor conducting a reasonably diligent search would have formulated a search aimed at revealing filings under substantially similar names.")).

50. Peoples Nat'l Bank v. Uhlenhake, 712 P.2d 75, 77 (Okla. Ct. App. 1985).

51. *Id.* at 77–78 (quoting Siljev v. Nat'l Bank of Commerce, 509 F.2d 1009, 1012 (9th Cir. 1975) (citing U.C.C. § 1-102(1)(2))).

and would therefore have priority over their security interest.⁵² If a financing statement was not discovered due to an error in the debtor's name, the court would determine if a reasonable searcher using standard search techniques would have located the financing statement.⁵³ After time (and the advent of computerized searching), it was clear that this rather subjective, "reasonably diligent searcher" standard needed to be replaced "with a clearer standard based on the computerized search logic of the filing office."⁵⁴

To meet these challenges, when Article 9 was revised in 1998, the drafters hoped to create more objectivity in the determination of whether a debtor's name was sufficient.⁵⁵ As described above, under the 1998 revision of Article 9, "[a] financing statement . . . is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading."⁵⁶ Seriously misleading is described further as:

If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor . . . the name provided does not make the financing statement seriously misleading.⁵⁷

Thus, when the sufficiency of a financing statement is challenged, the test is not whether the searcher was reasonably diligent in attempting to find the financing statement, but "whether a hypothetical search by the trustee or later lender under the correct name of the debtor *would have found* the financing statement."⁵⁸ This is often referred to as the "single search standard."⁵⁹

The effect of this change was sweeping. When using a state's electronic Article 9 filing system, all that is needed to determine if a financing statement is perfected is to perform a single search under the debtor's correct name. If a financing statement for that debtor is returned using that system's standard search logic, it is perfected regardless of any errors in the name.⁶⁰ For this reason U.C.C. § 9-506(c) has been referred to as the "safe harbor provision."⁶¹ The idea is that if the financing statement is still recovered by the search logic, than the errors in the name must not have been severe. The 1998 revision of Article 9 effectively proposed to take control away from judges and put that control into the hands of a

52. See Livingston, *Rose*, *supra* note 44, at 135.

53. See *id.* at 123.

54. *John's Bean Farm*, 378 B.R. at 389.

55. Kevin V. Tu, *The Rise of State-Specific Attempts to Decipher the Sufficiency-of-a-Debtor-Name Standard Under Revised Article 9 and the End of Uniformity in Secured Transactions*, 59 KAN. L. REV. 85, 85 (2010).

56. U.C.C. § 9-506(a). Florida has adopted this same provision in FLA. STAT. § 679.5061(1) (2011).

57. U.C.C. § 9-506(c). Florida has adopted this same provision in FLA. STAT. § 679.5061(3) (2011).

58. LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 981–82 (emphasis in original).

59. Tu, *supra* note 55, at 126.

60. See Harry C. Sigman, *The Filing System Under Revised Article 9*, 73 AM. BANK. L.J. 61, 73. It should be noted that the case *In re Spearing Tool and Manufacturing Co.*, 412 F.3d 653, 656 (6th Cir. 2005) held that when investigating IRS tax liens, multiple searches need to be performed by the searcher testing various common abbreviations for a debtor's name. This runs in counter valence with the UCC and, by extension, Florida's statute. See LoPucki, *Spearing*, *supra* note 1, at 286–87. However, in cases of non-IRS tax lien situations the court has continued to follow the single search rule. See, e.g., *John's Bean Farm*, 378 B.R. 385.

61. *John's Bean Farm*, 378 B.R. at 386.

state's filing and searching system.⁶² It also switched some of the burden that searchers had to be reasonably diligent in their searches and placed that burden on the original filers to get the debtor's name correct, or at least close enough to the correct name, so that it appeared in the initial results of a filing system search.⁶³ This puts an enormous amount of power in the hands of the state whose chosen search logic now "has a direct effect on whether a filing is considered 'seriously misleading' and therefore effective or non-effective."⁶⁴

The UCC allows discretion on the type of filing system and search logic that can be adopted by a state.⁶⁵ This means that even though a financing statement is flawed in its description of the debtor, one state's search logic and filing system may have still uncovered it, thus making it perfected. Yet a different state's search logic and filing system may not, therefore making it unperfected.⁶⁶ With a state's filing system having this much power, each state's system must be reviewed to ensure that its design is effective in both filing and displaying financing statements. It must also be determined whether the search logic the system uses to locate these financing statements is, in fact, logical.

C. Search Logic and the IACA Model Administrative Rules

When the UCC refers to search logic, it is referring to the set of instructions the state's filing system uses to read the name searched for and to locate equivalent statements in the state's database.⁶⁷ Although the UCC allows a state to determine its own rules for its search logic, the UCC does stress the importance of uniformity.⁶⁸ Furthermore, in determining filing office rules, the UCC declares that a state should consult with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization.⁶⁹

The International Association of Corporate Administrators (IACA) is an organization with a membership that includes filing officers from every state.⁷⁰ "These individuals are responsible for the proper functioning of the Article 9 filing system and have . . . develop[ed] model filing-office rules, with a view toward efficiency and uniformity."⁷¹

Some of the basic provisions the IACA sets for standard search logic are: (1) there should be no limit in the amount of results returned; (2) there is no distinction

62. See *id.* at 395.

63. See *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 354-55 (Bankr. M.D. Fla. 2003).

64. Edward Noyer, *Now UCC It—Now You Don't!*, EZINEARTICLES.COM (Mar. 25, 2010) [hereinafter Noyer, *UCC*], <http://ezinearticles.com/?Now-UCC-It--Now-You-Dont!&id=3996808> (last visited Apr. 12, 2012).

65. See U.C.C. § 9-526(a). "Although uniformity is an important desideratum, subsection (a) affords considerable flexibility in the adoption of filing-office rules." U.C.C. § 9-526 Official Comment 3.

66. See Noyer, *UCC*, *supra* note 64.

67. LOPUCKI, *COMMERCIAL TRANSACTIONS*, *supra* note 5, at 974.

68. U.C.C. § 9-526 Official Comment 3.

69. *Id.* § 9-526(b)(2).

70. *Id.* at Official Comment 3. The IACA has a website located at <http://www.IACA.org> (last visited Apr. 13, 2012).

71. *Id.*

made between upper and lower case letters; (3) ampersands (&) are automatically deleted and replaced with “and”; (4) punctuation marks are disregarded; (5) words such as corporation, corp., incorporation, LLC (so called “noise words”) are ignored; (6) the word “the” at the beginning of a name is disregarded; and (7) spaces are disregarded.⁷²

These IACA Model Rules refer to how the state’s filing system reads the name entered into the search field. They do not detail the precise method the system should use when actually retrieving and displaying financing statements; for this, states have used a variety of formats. Some states, such as Florida, use an alphabetical index.⁷³ Under this system a search for a debtor with the name Potter, Blair, would mean that the system would start by locating the “P’s” then advance to the next letter.⁷⁴ When the name that was searched for is found it is returned at the top of the page. If the name is not found the system will return the name with the closest match; the closest match being determined by the closest matching name when using a letter by letter alphabetical comparison.⁷⁵

The possible errors of a system like this should be clear. A misspelling of the name of the debtor early in the name (such as Poter, Blair), could cause the name to be “thrown to a distant part of the directory where only a psychic could find it.”⁷⁶ This also means that a misspelling at the end of a name (such as Potter, Blaire) would likely still be located, and thus perfected. A real world example of this can be seen in *Coco v. Ranalletta*.⁷⁷ Although this case dealt with a mortgage title search rather than an Article 9 search, the principles are the same when considering the hazards of an alphabetical index. In *Ranalletta*, the listing was under the name of “Ranaletta” when the actual name was “Ranalletta.”⁷⁸ The court stated that although the two names may look and sound similar, when using an alphabetical method of indexing, “there are actually 25 letters of the alphabet separating the two names.”⁷⁹

Another example of an error that could take place in alphabetical listing systems is the use of spaces.⁸⁰ In *Chemical Bank v. Title Services, Inc.*, a search under the correct corporate name of “Boisclair” failed to discover a financing statement finding under the name “Bois Clair”⁸¹ Spacing was also the reason a financing statement was not located in *Receivables Purchasing Co. v. R & R Directional Drilling, L.L.C.*⁸² In this case, a financing statement was not located

72. IACA Model Administrative Rules § 503.1 (2010), available at http://www.iaca.org/downloads/2010Conference/STS/v14-2010_Model_Administrative_Rules.pdf.

73. See *Summit Staffing*, 305 B.R. at 353.

74. See LOPUCKI, COMMERCIAL TRANSACTIONS, *supra* note 5, at 974.

75. See *id.*

76. *Id.*

77. *Coco v. Ranalletta*, 733 N.Y.S.2d 849 (2001), *aff'd*, 2003 N.Y. App. Div. LEXIS 4866 (2003).

78. *Id.* at 538.

79. *Id.* at 540.

80. See Edward Noyer, *Safe Harbors or Treacherous Waters—Debtor Name Issues and the Changes Ahead (Part Three)* (June 16, 2010) [hereinafter Noyer, *Waters*], [http://ezinearticles.com/?Safe-Harbors-Or-Treacherous-Waters---Debtor-Name-Issues-and-the-Changes-Ahead-\(Part-Three\)&id=4481071](http://ezinearticles.com/?Safe-Harbors-Or-Treacherous-Waters---Debtor-Name-Issues-and-the-Changes-Ahead-(Part-Three)&id=4481071).

81. 708 F. Supp. 245, 246 (D. Minn. 1989).

82. 588 S.E.2d 831 (Ga. Ct. App. 2003).

when it incorrectly listed the debtor as “Net work Solutions, Inc.,” rather than the correct name, “Network Solutions, Inc.”⁸³

In other states, the search logic has been designed to recognize functionally equivalent terms to return similar names.⁸⁴ This means that the system looks for similarities in the name, not for a letter by letter alphabetical standard. A system like this could recognize as equivalents “Potter, Blair,” “Potter, B.,” or even “Poter, Blaire.”⁸⁵

III. FLORIDA’S ALPHABETICAL SYSTEM AND THE PROBLEM OF THE *SUMMIT STAFFING* AND *JOHN’S BEAN FARM* CASES

A. Florida’s Alphabetical System

The State of Florida’s Article 9 filing system is accessible through Florida’s Secured Transaction Registry (Registry).⁸⁶ The system’s design and operation have been outsourced from the state to Image API.⁸⁷ The Registry is searchable online and allows its visitors to search all financing statements filed in the state for free. Florida’s system is an alphabetical system.⁸⁸ When a searcher enters a debtor’s name, the sender is brought to the point in the alphabet where the debtor’s name does, or should, appear.⁸⁹ There are twenty results on a page which means that the first result is the debtor’s name, and the subsequent nineteen results are the next results located in the alphabetical sequence.⁹⁰ The result that alphabetically falls one result before the searched for name, appears on the previous page of search results. Any previous page or subsequent page can be viewed by clicking arrows at the bottom of the screen.⁹¹ Because any page can be viewed once the results are retrieved, technically every financing statement filed in the entire state is included in the search results.⁹² However, the Registry’s website states that the first page displayed, when the search data is entered is the true “result of the search.”⁹³

Within the context of this alphabetical method, the system’s design allows users to elect to search either the “Compact Debtor Name List” or the “Actual Debtor Name List.”⁹⁴ The standard search logic is the “Compact Debtor Name

83. *Id.* at 832. It should be noted that in Florida using the “Compact Debtor Name List” function, spaces would be eliminated so these names would have still been located. *See infra* notes 94-100 and accompanying text.

84. *See* LOPUCKI, COMMERCIAL TRANSACTIONS, *supra* note 5, at 974.

85. *See id.*

86. FLORIDA SECURED TRANSACTION REGISTRY, <http://www.floridaucc.com/uccweb/ucc.aspx> (last visited Apr. 13, 2012).

87. Secured Transaction Registry, IMAGEAPI.COM, <http://www.imageapi.com/solutions/secured-transaction-registry> (last visited Apr. 13, 2012).

88. *Summit Staffing*, 305 B.R. at 353; *see also* Ingrid Michelsen Hillinger, *Seek and Ye Shall Find: The Meaning of Search Result in Florida*, 2008 Emerging Issues 3216 (LexisNexis 2008).

89. *See* Hillinger, *supra* note 88.

90. *See Summit Staffing*, 305 B.R. at 353.

91. *Id.* at 353-54.

92. *See* Hillinger, *supra* note 88.

93. *Id.*

94. Search, FLORIDA UCC.COM, <http://www.floridaucc.com/uccweb/search.aspx> (last visited Apr. 13, 2012).

List,”⁹⁵ and it employs special rules in deciphering the name searched for.⁹⁶ The basics of this search logic are that “spaces, common words (a, and, the) and punctuation, etc.” are eliminated.⁹⁷ This means when a name such as Carson, Patrick is entered into the system, the search logic reads it as carsonpatrick, disregarding all spaces.⁹⁸ Thus, if there was a company by the name of “Cars On Sale,” and a person named “Carson, Theodore,” “Cars On Sale” would come first as it is read as “carsonsale.” By using a purely alphabetical letter-by-letter comparison it falls after “carsonpatrick” and before “carsontheodore.” The registry states “individuals with the same last name are not necessarily grouped together.”⁹⁹ “They are intermixed with individuals whose last name is similar and with corporate names beginning with similar words.”¹⁰⁰ The results of this search are still capped at twenty for an individual page, with other pages being viewable by clicking the previous or next button.

The other option is to search by the “Actual Debtor Name List.” This works strictly alphabetically, as in a telephone directory, without deleting spaces.¹⁰¹ The website’s help menu makes it clear that “the entries on the name list screen for actual and compact names will look identical, they may just be in a different order.”¹⁰² As both of these options result in alphabetically displayed results, an incorrect name of the debtor that is similar to the debtor’s correct name could easily appear on the previous page’s search results rendering it seemingly unperfected. This is the very issue the court had to resolve in the case of *In re Summit Staffing of Polk County, Inc.*¹⁰³

B. *In re Summit Staffing and John’s Bean Farm*

Florida’s alphabetical searching standard took center stage in the case of *In re Summit Staffing of Polk County, Inc* (Summit Staffing).¹⁰⁴ In this case, the debtor’s name was Summit Staffing of Polk County, Inc. but the financing statement listed them as Summit Staffing, as the name of the debtor had changed in the interim.¹⁰⁵ The result was that when a searcher entered the correct name “Summit Staffing of Polk County, Inc.,” the financing statement filed under the now incorrect name of “Summit Staffing” appeared on the previous page’s search results.¹⁰⁶ Under the

95. Terms of Use, FLORIDA.UCC.COM, <http://www.floridaucc.com/uccweb/SearchDisclaimer.aspx?> (last visited Apr. 13, 2012).

96. UCC Help Menu, FLORIDA.UCC.COM, available at <http://www.floridaucc.com/UCCWEB/help.aspx> (last visited Apr. 13, 2012).

97. *Id.*

98. *See id.*

99. *Id.*

100. *Id.*

101. *See id.*

102. *Id.*

103. *Summit Staffing*, 305 B.R. 347.

104. *Id.*; see also Hillinger, *supra* note 88 (summarizing and providing analysis of the court’s decisions of both *John’s Bean Farm* and *Summit Staffing*).

105. *Summit Staffing*, 305 B.R. at 348–50. The original name of the organization was Summit Staffing. However, it was changed after the filing statement was filed to Summit Staffing of Polk County, Inc. *Id.* at 349.

106. *Id.* at 349–50.

Registry's description of "results," this would lead one to believe that the entry was not found within the results of the search using the filing office's standard search logic.¹⁰⁷ Therefore, the first creditor's security interest is unperfected and a subsequent creditor could jump the first creditor in line in efforts to recover its loan. The court held that under Revised Article 9 there was no duty for the searcher to perform multiple searches under variations of the debtor's name.¹⁰⁸ The court said:

Although Revised Article 9 does not require that a searcher exercise reasonable diligence in the selection of the names to be searched or the number of searches to conduct, the revisions to Article 9 do not entirely remove the duty imposed on a searcher to be reasonably diligent. One who searches the filings of a state must examine the results of a proper search with reasonable diligence.¹⁰⁹

The court also held that in filing systems where the searches produce an alphabetical listing of debtors, such as the system used by the state of Florida, "a searcher is still required to use reasonable diligence in examining *the results* of the search."¹¹⁰ Then, "[i]f a reasonably diligent searcher would find the erroneous financing statement among the results of a proper search, . . . [the] financing statement meets the requirements of section 679.506(3) and is not seriously misleading."¹¹¹

The court in this case held Revised Article 9 did not require a searcher to perform multiple searches under variations of a debtor's name.¹¹² Instead, it essentially applied the "reasonably diligent searcher" standard in a different context.¹¹³ Although the searcher does not have to be reasonably diligent in the names the searcher chooses to perform the search under, the searcher still must be reasonably diligent in examining the results of the search. However, due to the Registry's design, the searcher must still check pages outside of the original page of results that the system returned. As the Registry's website claims, the first page displayed is the result of the search,¹¹⁴ requiring a searcher to go outside the results of that search in order to determine whether a financing statement was filed to satisfy this standard.¹¹⁵

The design of Florida's filing system was the cause of more litigation in the case of *In re John's Bean Farm of Homestead, Inc.* (John's Bean Farm).¹¹⁶ In this

107. See Hillinger, *supra* note 88.

108. *Summit Staffing*, 305 B.R. at 354–55.

109. *Id.* at 355.

110. *Id.* [emphasis added].

111. *Id.*

112. *Id.* at 354.

113. See Livingston, *Rose*, *supra* note 44, at 145.

114. See Search, *supra* note 94 and accompanying text.

115. See *John's Bean Farm*, 378 B.R. 385; see also Hillinger, *supra* note 88 (summarizing and providing analysis of the court's decisions of both *John's Bean Farm* and *Summit Staffing*).

116. 378 B.R. 385 (Bankr. S.D. Fla. 2007); see also Hillinger, *supra* note 88.

case the debtor's legal incorporated name was "John's Bean Farm of Homestead, Inc."¹¹⁷ Creditors of the debtor then filed a financing statement under the incorrect name of "John Bean Farms, Inc."¹¹⁸ Here under Florida's Secured Transaction Registry, if a search took place under the correct legal name of "John's Bean Farm, Inc." the absence of both "of Homestead" and the "s" in John's, caused the entry to appear sixty screens away from the name as it appeared on its financing statement.¹¹⁹ The absence of the "s" demonstrates a fatal problem that can result in the use of an alphabetically-based filing system. Because the absence of the "s" occurred early in the name (at the end of the first word), it caused the financing statement to be filed far away from where it should have been, as many financing statements under a name beginning with "John" would appear after it.

In this case, the trustee, who wanted the security interest to be found to be unperfected, argued that only the initial page of twenty results should count as the results of the search; and even if the court decided to go outside of that, as the court did in *Summit Staffing*, "the obligation for the searcher to expand its scope beyond the initial page displayed must be reasonable."¹²⁰ The creditor, who wanted the security interest to be perfected, argued that based on *Summit Staffing*, "the results of the 'standard search logic' in Florida means something other than the initial result screen."¹²¹ The creditor went on to say that the reasonableness requirement imposed on the search by the judge in *Summit Staffing*, is not a part of the statute; and as the financing statement did appear after hitting the "previous command" just as it did in *Summit Staffing*, the court should see it as being perfected.¹²² In this case the court held that Fla. Stat. § 679.5061 was unambiguous as it did not obligate the searcher to go beyond the initial page of results, therefore, the financing statement was unperfected.¹²³ However, "the court stated a fall back holding in the event an appellate court concluded the search result included more than the initial display screen."¹²⁴ The Judge stated that if searchers were required to go outside of the initial page in Florida's system, there needs to be a reasonable limit to that requirement.¹²⁵ The Judge found this to be no more than one page before or after the initial results screen noting that the sixty pages the creditor was arguing for were "clearly absurd."¹²⁶

These cases show that when the reasonably diligent searcher standard used in conjunction with the 1972 version of Article 9, is applied to the 1998 revision of Article 9 search results, in the context of alphabetically based filing systems, the

117. *John's Bean Farm*, 378 B.R. at 386.

118. *Id.*

119. *Id.* at 393.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 395.

124. Hillinger, *supra* note 88.

125. *John's Bean Farm*, 378 B.R. at 396.

126. *Id.* at 395-96. The Judge stated that if statute was interpreted so that searchers were required to go outside of the initial result screen but there was no reasonableness requirement to how far they were to look outside of that screen then the purpose of the statute would be "eviscerate[d]." *Id.*

results of that standard are “a long way from [the 1998 revision of Article 9’s] desired certainty, objectivity and uniformity.”¹²⁷

C. The Alphabetical Regression Problem

Another problem that is created by an alphabetical system is the favoring of alphabetical progression over alphabetical regression in applying the safe harbor provision of perfecting financing statements. Florida’s system displays twenty results per page, with the correct (or closest) match appearing first and the next nineteen results in the alphabet listed afterwards. This means that when doing the hypothetical search under the correct name of the debtor as referenced in U.C.C. § 9-503, if the incorrectly inputted financing statement appears up to nineteen results away from where the correct name should be using alphabetical progression, it is perfected. However, when using alphabetical regression, (meaning going backwards in the alphabet,) if the financing statement is only one result away from where the correct name should have been, it would appear on the previous page. As the Registry’s own website says, the initial page returned contains the search results for perfection purposes;¹²⁸ so by falling on the previous page it would therefore be unperfected even though it was only one result away from the correct name. It is true that in this circumstance, falling on the previous page would, under the case law of *Summit Staffing*, still be perfected under the reasonably diligent searcher standard, as a reasonably diligent searcher would have checked the previous page.¹²⁹ However, this is further evidence that the design of Florida’s system could lead to the formulization of further standards than those listed on the registry’s website since those standards, when combined with how the filing system is designed, lead to arbitrary and confusing results.

D. The IACA and Limited Results under Florida’s System

As stated earlier; although the UCC allows a state to determine its own rules for its search logic, the state stresses the importance of uniformity in determining its filing office rules.¹³⁰ In doing so, a state should consult with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization.¹³¹ Although states are not forced to follow the Model Rules promulgated by the IACA, the Model Rules are useful because they provide states with recommendations on how to design their filing systems so that they will work effectively.

The IACA’s Model Rules state that Article 9 filing systems should contain, “no limit to the number of matches that may be returned in response to the search

127. Hillinger, *supra* note 88.

128. *Id.*

129. *See supra* notes 104–15 and accompanying text.

130. *See* U.C.C. § 9-526 Official Comment 3, *supra* note 68 and accompanying text.

131. FLA. STAT. § 679.526 Official Comment 3 (2011), *adopting* U.C.C. § 9-526 Official Comment 3.

criteria.”¹³² It can be assumed that the reason for this rule is that search results should only be limited by either the criteria inputted into the search field, or the filing statements that exist in the systems themselves, rather than being arbitrarily limited due to the design of the filing system. As has been found by the court in *John’s Bean Farm*, the first page of search results retrieved are the results of the search for the purposes of U.C.C. § 9-506.¹³³ As previously stated, the first page of results holds twenty entries.¹³⁴ This means that the design of Florida’s system has a self imposed limit of twenty actual search results for any search that is being conducted. Therefore, Florida’s system creates a limit (twenty) on the number of financing statements that is perfected for any search. This, again, creates the need for courts to go outside of those search results and look for other ways to declare financing statements perfected, such as the reasonable diligence standard, and is further evidence that the Registry is in need of reform.

IV. WHAT ARE OTHER STATES DOING?

As mentioned previously, states are allowed to design their own system for searching and locating financing statements.¹³⁵ Additionally, U.C.C. § 9-506(c) works as a “safe harbor” for filers because as long as their financing statement is located in the initial results, it is still perfected. However, as states can design their own system, each system’s “safe harbor” works differently.¹³⁶ The question is: Should a system base its safe harbor on what statements come next in the alphabet, as Florida does, or are there other more useful ways for a system to help the searcher learn if a financing statement has been filed on the debtor for whom the searcher is searching?

An example of an alternative format is that of the state of Arizona.¹³⁷ Here, there are two options for searchers. One format, which Arizona calls a Revised Article 9 search, employs the rules set by the IACA without the alphabetical directory approach that Florida uses.¹³⁸ It will search for the exact name searched for, while taking into account the noise words and other provisions promulgated by the IACA. The results are still displayed alphabetically, but there is no limit to the number of results returned.¹³⁹ So if the searcher types “Brown” into the last name field, all financing statements filed under a debtor with the name Brown are returned.

In addition to this standard approach, Arizona’s filing system gives an option, called wildcard, that effectively works to search the entire name of the debtor for a

132. IACA, IACA 2010 MODEL RULES, § 503.1.1 (2010), available at http://www.iaca.org/downloads/2010Conference/STS/v14-2010_Model_Administrative_Rules.pdf.

133. *John’s Bean Farm*, 378 B.R. at 394–95.

134. See *Summit Staffing*, 305 B.R. 347 and *supra* text accompanying note 63.

135. See U.C.C. § 9-526 Official Comment 3 and *supra* text accompanying note 68.

136. Tu, *supra* note 55, at 104.

137. UCC Lien Search, ARIZONA SECRETARY OF STATE, http://www.azsos.gov/scripts/ucc_search.dll (last visited Apr. 13, 2012).

138. *Id.*

139. *Id.*

match.¹⁴⁰ An elementary example of this is illustrated by a search for an organization with a financing statement filed on a piece of its collateral with using only a part of a name, such as “jon.” Arizona’s system searches the entire name so entries such as “Detroit Jonny’s LLC”, “Mack Jones Grill” and “Navajo Nation” would appear in the list of results.¹⁴¹ Florida’s system (in both Actual Debtor Name mode, and Compact Debtor Name mode) would instead use the letters “jon” and display alphabetically the first financing statement filed under a debtor’s name that begins with “jon”; such as “Jona’s Deli.” Florida’s approach severely limits the results returned as it only searches the first three letters of debtors’ names. Arizona’s “wildcard” option is an interesting tool that aids searchers in locating financing statements, which should be the goal of any filing system. A benefit to Arizona’s system is that it displays more results therefore creating a higher chance that a wrongly filed financing statement would be found.¹⁴² A disadvantage, however, is that because there are many more results returned, more work is placed on the searcher to examine each and every result.

Colorado is another state with a filing system design that is worth noting.¹⁴³ Colorado’s system provides many different methods of searching its system, the default of which is called “Alpha.”¹⁴⁴ Alpha is described as a “less is more” search; “the less information you enter into the system the more results you will receive.”¹⁴⁵ Here, there is no limit in the amount of results returned, so if a searcher types in the letter “B” in the last name field, the search results will include every financing statement with a last name that starts with the letter “B.” Another option, called “Phonic” is designed to make locating financing statements easier by allowing searchers to search phonetically through the filing system.¹⁴⁶ This means that the search results returned will be based on how a word sounds.¹⁴⁷ Using this format, a search under “Jacksun, Tim” would yield the result “Jackson, Tom.” This allows for spelling errors in financing statements, and also allows for minor variations of names to be found as well; such as “Tom”, “Tommy”, and “Thomas.” If this query, “Jacksun, Tom”, was inputted into Florida’s system, “Jackson, Tom” would not be located on the initial page of results. This is because “Jacksun” falls after “Jackson” in the alphabet, therefore “Jackson” would fall on a previous page of results, and the statements effectiveness would fail under the UCC and could only be perfected under a court created rule, such as reasonable diligence.

140. *Id.*

141. *See id.*

142. It should be noted that a system such as this does not limit the number of results that can be returned. The number of results is instead limited only by the number of financing statements that have the letters “jon” in succession. Because there is no arbitrary system constructed to limit it, it complies with IACA Model Administrative Rule § 503.1.1.

143. Search by Debtor Name, COLORADO SECRETARY OF STATE, https://www.sos.state.co.us/cgi-forte/uccigif/rte_uccprodaccess082509232D7421211F0720042327742126?transactionToken=NA&serviceName=uccprodaccess&templateName=/sessrequ/uccdebtorsearch_outer_form.forte (last visited Apr. 13, 2012).

144. Uniform Commercial Code Frequently Asked Questions, COLORADO SECRETARY OF STATE, <http://www.sos.state.co.us/pubs/UCC/FAQs/searching.html> (last visited Apr. 13, 2012).

145. *Id.*

146. *Id.*

147. *Id.*

However, once again, a system such as this returns more search results, making for a very lengthy list of financing statements. This creates more work for the searcher to ensure that there are no financing statements (even misspelled financing statements) filed under the debtor's name. If a system such as Colorado's was applied to the *John's Bean Farm*, case, there is a high likelihood that the financing statement would have been found, as the missing "s" in "John's Bean Farm" would probably not have been sufficient to make a phonetically based search logic fail to return the financing statement.

While these different styles of computerized searching may make it easier to locate financing statements, one thing that is certain is that no matter how a state designs its system, if creditors are given the responsibility of recording the name of the debtor on the financing statement themselves, errors and eventual litigation will follow. What is needed is a new approach that will solve the UCC search problems once and for all.

V. THE POINT AND CLICK SOLUTION

A. Overview of the System

Although a state can take different approaches to their search logic, one system allows for vastly superior accuracy in determining whether a registered organization or individual has a prior lien on a piece of collateral. This is known as the "point-and-click" system.¹⁴⁸ These systems have been used with registered organizations.¹⁴⁹ The logic behind a point-and-click system for registered organizations organized under state law is that financing statements are already filed in the debtor's state of incorporation.¹⁵⁰ Outside of the world of Article 9, corporations already must file articles of incorporation with the Secretary of State in the state in which they mean to be incorporated.¹⁵¹ This means that the same office in which the financing statement may be filed already has a record of the correct name of the corporation.

Rather than keeping both of these systems separate, a fusion of those systems, a so-called "point-and-click" system, makes it "possible for filers and searchers to select their corporate debtors from a list displayed on the computer screen, rather than typing those corporate debtors' names [into the system themselves]."¹⁵² The logic behind this system is that, with secured parties no longer inputting the name of the debtor into the system themselves, and instead selecting them from a list, there is much less room for error.¹⁵³ Not only would misspelling situations be nonexistent,¹⁵⁴ but problems where a secured party uses a trade name instead of the

148. LoPucki, *Spearing*, *supra* note 1, at 294.

149. *Id.*

150. See U.C.C. § 9-307(e); see also LoPucki, *Spearing*, *supra* note 1, at 293.

151. MODEL BUS. CORP. ACT § 2.01 (2007). Florida law states that a corporation is to be formed "by delivering articles of incorporation to the Department of State for filing." FLA. STAT. § 607.0201 (2011).

152. LoPucki, *Spearing*, *supra* note 1, at 294.

153. See *id.* at 294–95.

154. *Id.*

actual registered name of a corporation would disappear as well since the trade name would not be displayed on the state's list.

A point-and-click system would make search logic when searching for corporate filings irrelevant as both filers and searchers will be filing and searching under the correct name of the debtor.¹⁵⁵ A form of point-and-click has been adopted by Maine, but point-and-click systems have not picked up widespread usage.¹⁵⁶ In Maine's system, the point-and-click system is used only as an option, allowing financing statements to still be filed by a creditor typing the name in himself; which still leaves the opportunity for errors to be contained in a debtor's name.¹⁵⁷

Although a total point-and-click system for registered organization names seems like a welcome change that would eliminate most forms of the debtor name errors, it is difficult to institute a complete point-and-click filing system. This is because in many states, the Internal Revenue Service uses the same filing system to file tax liens as creditors do.¹⁵⁸ These tax liens are not filed in the state of incorporation but in the state where the registered organization's principal executive office is located.¹⁵⁹ As the point-and-click system would be pulling organizations from the Secretary of State's office, (which would only include organizations incorporated in the state) the IRS would need an option that would allow it to file liens in the system too.¹⁶⁰ Furthermore, many filers who are attempting to perfect their security interest want to file in more than one state.¹⁶¹ For example, they may want to file in the state where the registered organization is located and the state where the collateral is located. This is done so that the filer can ensure that others are aware of their security interest even if the searcher is looking in the wrong system. The elimination of the ability to do this may cause an upheaval in the world of secured transactions, and might prevent filers from wanting to support a change to the system.

B. Making Point-and-Click Work with Registered Organizations in Florida

Despite the potential problems of a solely point-and-click system for registered organizations, Florida could still create a partial point-and-click system similar to Maine's. To begin with, in Florida, IRS liens are not displayed in the same system as financing statements by creditors, but are maintained at the Department of State.¹⁶² This means that the Registry should be able to transition to a point-and-

155. *Id.* at 293–94.

156. *See id.* at 294. Maine's UCC filing and searching system is located at the Department of the Secretary of State: Bureau of Corporations, Elections & Commissions: <http://www.maine.gov/sos/cec/ucc/index.html>.

157. *Id.*

158. *Id.* at 299.

159. *Id.* at 308–09.

160. *Id.*

161. *See* Hans Kuhn, *Multi-State and International Secured Transactions under Revised Article 9 of the Uniform Commercial Code*, 40 VA. J. INT'L L. 1009, 1016 (2000).

162. *See* Frequently Asked Questions, FLORIDA SECURED TRANSACTION REGISTRY, <http://www.floridaucc.com/UCCWEB/faq.aspx#liens> (last visited Apr. 132012) (stating that "Tax Liens are not included with UCC filing information on [this website].").

click system without affecting the Department of State's system and the IRS would therefore still be able to file in the state where the registered organization's principal executive office is located.¹⁶³

The issue remains however that some filers like to file in more than one system to ensure that notice of their security interest is given.¹⁶⁴ For this reason, point-and-click filing should remain only an option for filers, while still allowing manual filings to take place; and if for some reason the IRS needed to use this system, they could utilize this feature as well. All that is needed is to provide two methods of searching, providing two sets of results. If the registered organization is registered in the State of Florida, a searcher could simply look up the name in the state's records of registered organizations and click on it to view any filings made under them. If the registered organization is not in the Department of State's records, the searcher could perform a second, traditional search of any manual filings filed under the name they are searching for. As the majority of filings would fall in the first list of results, a check of this second list would not be very time consuming. For the search logic used to display this second list, Florida could assist searchers by abandoning their twenty results per page alphabetical system and adopting the "Alpha" system that Colorado uses as its standard search logic.¹⁶⁵ The State of Florida could also provide the phonetic system that Colorado uses as an option for when searchers are unsure of the spelling of a debtor's name.¹⁶⁶ This would create a higher likelihood that a debtor would appear in the search results.

A problem that can exist with point-and-click systems that display more than one result to the filer is that a filer could accidentally click on the wrong name and therefore file a financing statement on the wrong party.¹⁶⁷ However, because this system would have the address of the registered organization on file, as a fail-safe, an automated letter could go out to the organization when a financing statement was filed on it. If the lien was placed on it by mistake, the organization could contact the state and refute it.

In order for this change to take place, Florida would need to change a provision in the newly passed amendment of Fla. Stat. § 679.5031.¹⁶⁸ Under the proposed amendment, if the debtor is a registered organization the financing statement needs to state "the registered organization's name [that is] on the public organic record most recently filed with . . . the registered organizations jurisdiction of organization."¹⁶⁹ Under the comments of U.C.C. § 9-102 "a published index of domestic corporations would not be a 'public organic record' because its issuance

163. However, searchers would need to make a separate search on the Department of States website as they do now.

164. See Kuhn, *supra* note 161 and accompanying text.

165. See Uniform Commercial Code Frequently Asked Questions, *supra* notes 144-47 and accompanying text.

166. *Id.*

167. Lopucki, *Spearing*, *supra* note 1, at 295.

168. See 2012 Fla. Sess. Law. Serv. Ch. 2012-59 (effective July 1, 2013).

169. *Id.* at 679.5031(1)(a).

or publication does not form or organize the corporations named.”¹⁷⁰ So if a filer were to locate this name in an index and click on it to file under it, technically under the statute this may not be the “correct” name as it may be slightly different than what is on the public organic record. For this reason, Florida should change this amendment to mandate that for registered organizations, the name of the debtor that is on the state’s list of registered organizations is the name of the debtor for filing purposes, not the name on the organic public document.¹⁷¹

C. Making Point-and-Click Work with Individuals in Florida

The creation of a point-and-click option for filers is possible for registered organizations because the state already has a list of the registered organizations on file.¹⁷² If a similar system could be designed to work for individual debtors, there could be much more certainty in the filing and locating of security interests. The problem is that the creation of a point-and-click system for individuals is complex as it is not as easy to find a database from which to pull individual’s information without invading an individual’s privacy. One possible solution is to use state issued birth certificates to attempt to implement a point-and-click system for individual debtors.¹⁷³ This would allow a system to work similarly to that of registered organizations; merging the two systems so that when one files a financing statement they can just point-and-click on the name of the debtor from list that the state already has. However, this will not work because financing statements for individuals are not filed at the debtor’s state of birth but at the state of “principle residence.”¹⁷⁴

Another approach the state could investigate is through the use of driver’s licenses or state issued personal identification cards. The recent amendments to U.C.C. § 9-503, and FLA. STAT. § 679.5031, now endorse the name that appears on an individual’s driver’s license or state issued personal identification card as the

170. U.C.C. § 9-102 Official Comment 11; *see also* Alvin C. Harrell, *The 2010 Amendments to the Uniform Text of Article 9*, 65 CONSUMER FIN. L.Q. REP. 138, 139 (2011) (“[t]his makes clear that the secured party cannot rely on secondary or truncated sources but may rely on a primary source such as a state-issued Certificate or Articles of Incorporation.”); Noyer, *Waters*, *supra* note 80 (“[Y]ou should never rely on names located on legal online systems or state internet sites . . . [as] [m]any states have a history of abbreviating names due to system limitations. As a result the name on an online search will not be the name as listed on the organic document.”).

171. *See* LoPucki, *Spearing*, *supra* note 1, at 302 (“[a] rule that required the searcher to inquire beyond the name listed on the Secretary of State’s website would be incompatible with point-and-click and would require extra steps without adding significantly to system function.”); *see also id.* at 314 (“[to institute a point-and-click system a state] would have to designate the debtor’s name field used in the index of the internet based system, not the name on the articles of incorporation, to be the exact correct name of the debtor for purposes of filing and searching.”).

172. *See* Document Searches, FLORIDA DEPARTMENT OF STATE DIVISION OF CORPORATIONS, <http://www.sunbiz.org/search.html>.

173. *See* LoPucki, *Spearing*, *supra* note 1, at 294 n.48.

174. U.C.C. § 9-307(b)(1). There has been some suggestion that the UCC be modified to specify the place of filing as either the birthplace of the debtor or at a place selected by the debtor. *See* Lynn M. LoPucki, *Commentary on Professor White’s Article: The Article 9 Filing System: Why the Debtor’s State of Incorporation Should be the Proper Place for Article 9 Filing: A Systems Analysis*, 79 MINN. L. REV. 577, 624–25 (1995). However, both of these concern large changes to the UCC itself, rather than modification to Florida’s Article 9 filing system and slight modifications of Florida’s statutes.

individual's name for purposes of financing statements.¹⁷⁵ This provides Florida with an intriguing opportunity. Much like how a point-and-click system with registered organizations would cross reference names of organizations registered with the State upon the creation of the financing statement; a similarly designed system could cross-reference the state's database of Florida drivers' licenses to find the matching individual.

In effect, the system could work as so: When an individual debtor applies for a secured loan, the creditor would ask them for their name as it appears on the individual's driver's license. Additionally, the creditor would ask for the date of birth listed on the driver's license. When the creditor then files his financing statement in the state's filing system online, he would input the name of the individual as it appears on her driver's license along with her date of birth. The system would then return the result from the Department of Motor Vehicles' (DMV) records of the individual who matches that information. If there happens to be more than one match in the state, then the system could give the filer the zip codes of the debtors as they read on the debtors' current driver's licenses to distinguish them. In the vast majority of cases there will probably only be one matching individual for a zip code.¹⁷⁶ The filer/creditor would then click on the individual to file his or her financing statement. If the correct individual was not returned upon entering this information, then clearly the information was entered incorrectly or the debtor gave the filer a false identification. Next, when a searcher is trying to determine if a financing statement already exists on a piece of collateral, the searcher can input the name and date of birth and zip code as it reads on the debtor's current driver's license or personal identification card. The result returned would be any matching individuals from the DMV's database. The searcher could then investigate that result, or in the unlikely scenario, the results,¹⁷⁷ to determine if there has been a financing statement filed on that individual.¹⁷⁸

175. See *supra* notes 22–25 and accompanying text.

176. In the extremely unlikely situation that two Floridians shared the same full name, spelled the same way, were born on the same day, and lived in the same zip code, the system could display the name of the street that each live on, so that the searcher could distinguish between the two.

177. If there is more than one individual in a zip code with this matching information, the system could again display the individual's street name to aid the searcher in recognizing if it is the right individual.

178. Elsewhere, it has been suggested that Social Security numbers be used to link financing statements to individual debtors. Fredrickson, *supra* note 29. This is an interesting proposition. Fredrickson does make a strong case for how this could be done while still maintaining the anonymity of an individual's Social Security numbers. However, in order to provide that anonymity there are drawbacks. Under this proposal, a creditor includes the debtor's social security number on their financing statements. The filing system then links all financing statements under a person's name to their social security number. Searchers then still search by the debtor's name and financing statements that have the same Social Security number attached to them are returned. This would solve many name problems as this list would make it easier for a person to see all the financing statements attached to a certain number. Therefore if the person changed their name, the financing statement would still be found. Furthermore, if a creditor misspelled the debtor's name on the financing statement, it would still be recovered provided the social security number is present and correct. There are still issues with this system though because when a financing statement is filed, the filer still types in the debtor's name which leads to the possibility of errors; which would then rely on the social security number to salvage the result. If that social security number is also wrong, the same problem exists where a searcher would be unable to locate it. However, in a point-and-click system, provided that the debtor had a Florida driver's license or Florida I.D. card, there would be essentially no possibility for error as once the name is typed in, the individual would be displayed. There are also some security risks inherent with social security numbers even if they are shielded from view. Fredrickson admits these but

In this system, no full address is displayed. This protects an individual's privacy. Another benefit a system such as this would have is that if a person were to change their name the information could remain unaffected. The name change would result in a new license, but the DMV would have a record of the change. This means that any financing statements filed under the old name could be carried over to the new name. This would be similar to how points are carried over from one driving record to the next in the event of a name change. The same theory would apply when someone changes their address. For example, assume someone has a lien placed on their collateral under their information which includes their old zip code and address. Now they want to put a second lien on the same collateral but their driver's license lists a different address. The DMV would have a record of this change of address and therefore the online system could automatically refresh itself with the current address when the license is updated, carrying any previously filed liens over with it in the process.

There is the possibility that an individual debtor from one state could move to Florida therefore the debtor would have a Florida driver's license to search under, but any financing statements filed on them would be in a different state's system. In this situation, a driver's license system would work the same way the system works now. Searchers would need to check other states' UCC filing offices to ensure that there have been no financing statements filed on the collateral prior to the individual moving to Florida.

There is also the problem where either the debtor does not have a Florida driver's license (or personal identification card), or the debtor has an out-of-state driver's license but a principal residence in Florida. In either of these occurrences, there would be no matching individual returned in the system. In those special circumstances, there could be an option to still file by typing in the debtor's name as it is done currently.

Accordingly, as there would be some financing statements not returned by the point-and-click driver's license system, the system could return two sets of results when the information is entered for a search. One would have any point-and-click filed financing statements, and a second set of results would search the name of the debtor on any traditionally filed financing statements. Therefore, a searcher would ensure they have looked at all possibilities of where a financing statement could be filed. However, as many financing statements would appear in the point-and-click enabled driver's license search, a scan of this second, traditional, list will not be

argues they are slight. This may very well be true. However, those risks are more severe than the risks imposed by using a system such as this. Additionally, it has also been suggested that state filing systems be forgone in favor of a national system where all financing statements are filed in the same system. See Bryan G. Bosta, Comment, *Bringing Article 9 Up To Speed: The Need for a National Filing System*, 31 DAYTON L. REV. 25 (2005). Bosta's proposal would not be a point-and-click system as the debtor's names would not be cross-referenced with anything. In order to identify the multitudes of debtors with the same name that a search of this system would return, the financing statement would also include the debtor's address, birth date and driver's license number. *Id.* at 40. While intriguing, such a large scale conversion to a national system would be difficult and is outside the scope of this article. Furthermore, as Bosta's system is not a point-and-click system, errors in the entering of the information of the debtor would still exist, leading to uncertainty for searchers.

very time consuming. For the search logic used to display this traditional list, Florida could again aid searchers by adopting the “alpha” system with a “phonetics” option.¹⁷⁹ This would create a higher likelihood that financing statements could be found. Finally, a debtor could attempt to defraud the searcher by telling the searcher they did not have a driver’s license when in fact they did. This would be done to conceal an earlier lien. However, as both the point-and-click and traditional lists are searched at the same time, any financing statements filed under the undisclosed driver’s license would still be located.

Again, when more than one result is displayed in a point-and-click system, there is the potential that a filer could accidentally click on the wrong name and therefore file a financing statement on the wrong party.¹⁸⁰ In this system, most of the time there would only be one result returned due to the unlikelihood of these three fields matching. However, a system such as this has the current address of the individual (as is displayed on the individual’s current driver’s license) recorded in the system. So again, an automated letter could go out to the individual when a financing statement was filed on them. If the lien was placed by mistake, the individual could contact the state and refute it.

To implement a system such as this will take money. To finance the conversion, Florida could start charging people a small fee to search their system as many other states already do.¹⁸¹

Admittedly, this specific style of a point-and-click system is not perfect and additional problems could be found. However, Florida should not abandon the pursuit of point-and-click systems for individuals in general just because the formulation of them may be complex.

VI. CONCLUSION

“In filing systems like Florida, certainty and peace of mind remain elusive for searchers.”¹⁸² Because of this, changes should be made to ensure that Florida’s system is both simple to use and reliable. As Florida already has records of registered organizations, as well as driver’s licenses, the merging of those lists into the Article 9 filing system should be possible. Most importantly, the option for filers to file through a point-and-click system would lead to more certainty that they are filing financing statements under the correct person, and under the correct name. In doing this, filers will also be more confident that their security interest is perfected. Searchers could easily discover whether a debtor has a financing statement filed in their name because they will know with greater certainty whether they are looking at the right debtor. When considering the problems caused by the

179. See Uniform Commercial Code Frequently Asked Questions, *supra* notes 144–47 and accompanying text.

180. See Lopucki, *Spearing*, *supra* note 1 and accompanying text.

181. See, e.g., UCC Search, MAINE DEPARTMENT OF THE SECRETARY OF STATE, <https://www10.informe.org/ucc/search/begin.shtml>.

182. Hillinger, *supra* note 88.

current system, Florida's adoption of the point-and-click option for filing financing statements seems like a welcome solution.