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Recommended Citation
Cynthia Grant, Description of the Collateral Under Revised Article 9, 4 DePaul Bus. & Com. L.J. 235 (2006)
Available at: https://via.library.depaul.edu/bclj/vol4/iss2/4

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Description of the Collateral under Revised Article 9

Cynthia Grant*

I. SUMMARY

By the end of 2001, all fifty states and the District of Columbia had adopted the 1998 revision of Article 9 of The Uniform Commercial Code. In the three years since the revision became effective, it has substantially changed the law and practice of secured transactions. The question is—in which way and how much?

This article examines one change: the requirements for the description of the collateral. The revision does not change the requirements for the description in a security agreement, but Revised 9-502 allows a secured party to use the supergeneric “all assets of the debtor” in a financing statement. Complicating this change is the removal of former UCC 9-109, which described the four different types of “goods.” Instead, the definitions of different types of collateral are scattered throughout the revision, sometimes amending the old definitions. Have these changes resulted in case law different from the cases that arose in the last years of former Article 9?

To seek an answer to these questions, this article looks at cases decided between 1984 and 2004, dividing cases among the “types” of collateral and determining if the description of the collateral in the security agreement and/or financing statement was sufficient. Within each group of cases concerning a given “type” of collateral, the article separates cases decided under former Article 9 from those decided under Revised Article 9. It concludes that the handful of cases decided under the revision show no significant change from the cases decided in the 15-20 years before the revision. However, because no case determining the significance of the “all assets of the debtor” description has arisen, the effect of this change has yet to be realized.

II. INTRODUCTION

Since 2001, courts throughout the United States have had the task of applying the changes made to the Uniform Commercial Code to case law. The drafters of Revised Article 9 intended to simplify fi-

* The author would like to thank Ann Lousin for her guidance and wise counsel.
nancing transactions while bringing certainty to issues that plagued the courts under former Article 9. By clarifying the scope of Article 9 and by spelling out the procedures necessary to consummate a secured transaction, the hope of the drafters was to make these transactions less costly and more "user friendly." The extent to which this has been accomplished has yet to be determined since it has been only four years since the majority of states have passed Revised Article 9.

Several changes to Article 9 were merely formalities. Definitions became more clearly established and the limitations of sections were chiseled in statute. However, one of the more interesting, but puzzling, changes made to Article 9 involved the description of the collateral. Under former 9-109 a creditor was to describe the collateral of the debtor in its financing statement under the categories set forth by the Code: goods (consumer goods, equipment, farm products and inventory), accounts, general intangibles, real estate, and instruments. These categories gave creditors a road map to follow when drafting security agreements and financing statements. However, under Revised Article 9, these categories of collateral were completely removed. Instead of having a section which describes these types of collateral, they have merely become definitions of Revised 9-102.

Revised 9-108 replaced former 9-110. Under Revised 9-108, it is insufficient to use "supergeneric" descriptions of the collateral such as "all assets of the debtor" or "all personal property of the debtor."
However, under Revised 9-504 a description in a financing statement will be sufficient if it covers “all assets or all personal property” of the debtor.\(^5\) Revised Article 9 allows for a more lenient description of the collateral for a financing statement but still requires a “reasonable...

\[\text{(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:}
\]

1. specific listing;
2. category;
3. except as otherwise provided in subsection (e), a type of collateral defined in [the Uniform Commercial Code];
4. quantity;
5. computational or allocational formula or procedure; or
6. except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

\[\text{(c) Supergeneric description not sufficient. A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.}
\]

\[\text{(d) Investment property. Except as otherwise provided in subsection}
\]

\[\text{(e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:}
\]

1. the collateral by those terms or as investment property; or
2. the underlying financial asset or commodity contract.

\[\text{(e) When description by type insufficient. A description only by type of collateral defined in [the Uniform Commercial Code] is an insufficient description of:}
\]

1. a commercial tort claim; or
2. in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

\[\text{Id.}
\]

5. U.C.C. § 9-502 (2005). This provision is titled “Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement.” and states:

\[\text{(a) Sufficiency of financing statement. Subject to subsection (b), a financing statement is sufficient only if it:}
\]

1. provides the name of the debtor;
2. provides the name of the secured party or a representative of the secured party; and
3. indicates the collateral covered by the financing statement.

\[\text{(b) Real-property-related financing statements. Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:}
\]

1. indicate that it covers this type of collateral;
2. indicate that it is to be filed [for record] in the real property records;
3. provide a description of the real property to which the collateral is related [sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property]; and
4. if the debtor does not have an interest of record in the real property, provide the name of a record owner.

\[\text{(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:}
\]

1. the record indicates the goods or accounts that it covers;
description" of the collateral in a security agreement. This is because the purpose of a financing statement is to give subsequent creditors notice that a security interest may be present in some property of the debtor and to allow those creditors to conduct an inquiry as to the extent of the security.\(^6\) The question after the passage of Revised Article 9 was whether drafters of security agreements and financing statements would still use the categories of collateral as was required under former 9-109 when describing the security interest. The purpose of this article is to analyze the impact of the different sections of Revised Article 9, including 9-102, 9-109, and 9-504, which, combined, replace and supersede the scope of former 9-109. This article will look at cases under former Article 9 as well as the new Article 9 and the court decisions of those cases; specifically, decisions involving the sufficiency of the description of the collateral. Under Revised Article 9 a financing statement that describes the collateral as "all the assets of the debtor" would satisfy the new requirements whereas under former Article 9 this would not be sufficient.\(^7\) One inquiry of this article is whether drafters have stopped using the categories of collateral as a result. By looking at the recent decisions of the courts as to the sufficiency of the description of the collateral, new light can be shed on the interpretation of the new description requirements of Revised Article 9.

First this article will separate cases under the former Article 9 from cases under the Revised Article 9. The analysis begins with cases decided beginning in 1984 and continuing through the present, all of which were decided under former Article 9. Cases under former Article 9 will be further separated under the collateral categories of goods, general intangibles, accounts and real estate.

The first set of cases under the former Article 9 are those that fall under the category of "goods" as described in former 9-109: invent-

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\(^7\) Id. § 9-504 (2005). Section 9-504 discussing collateral states, "A financing statement sufficiently indicates the collateral that it covers if the financing statement provides: (1) a description of the collateral pursuant to Section 9-108; or (2) an indication that the financing statement covers all assets or all personal property." Id.
tory, farm products, equipment and consumer goods. The analysis of these cases will show that the courts were diligent in requiring drafters of security instruments to adhere to the categories of collateral as put forth under the former Article 9.

III. Consumer Goods

Under the former Article 9 "goods" fell under four sub-categories: consumer goods, inventory, equipment and farm products.\(^8\) Former 9-109 defined “consumer goods” as an item that is “used or bought for use primarily for personal, family or household purposes.”\(^9\) In re Beransen involved the use of consumer goods as a security interest.\(^10\) The debtors financed the purchase of a home water treatment system and signed a security agreement “giving a security interest in the goods or property being purchased.”\(^11\) In the security agreement the serial numbers of the parts were listed but the description of the water treatment system or its components was not given.\(^12\) The court determined that the description of the collateral using serial numbers could make identification possible but it was not practical for subsequent creditors.\(^13\) The court held that the use of mere serial numbers in the security agreement was too broad because, in order to identify the water treatment system, a subsequent creditor would have to look at every consumer good in the house and check the serial number on it in order to ascertain if that item was part of the creditor’s security interest.\(^14\) A serial number standing alone without further identification will not be found to be a sufficient description, especially in connection with consumer goods. There could be hundreds of household items which have serial numbers attached to them but if there is no other identifier a subsequent creditor would have no notice of a security interest of another creditor.

Connected to the idea that consumer goods need more than just a serial number to describe the collateral is the circumstance where a consumer may have more than one of the item which is encumbered by a security interest in their home. A more descriptive security agreement or financing statement using the categories of collateral would better protect the creditor and its security interest if this is in-

\(^9\) Id. at § 9-109(1).
\(^11\) Id. at 429.
\(^12\) Id. at 430.
\(^13\) Id.
\(^14\) Id.
The debtor of *In re Bradel* signed up for a Montgomery Ward credit card which gave security interest in every consumer good purchased by the debtor with his card.\(^{15}\) At issue was whether the description of the collateral combined with a Montgomery Ward inventory number on the sale receipts was a sufficient description of the collateral.\(^{16}\) The creditor argued that it had a perfected security interest in the debtor's lawnmower, television set and some jewelry that the debtor had purchased.\(^{17}\) The sales slip for the lawnmower listed the purchase as a four horsepower lawnmower and the sales slip for the television described the collateral as a "25 Stereo Trad Cnsle."\(^{18}\) The two pieces of jewelry at issue were a gold puff heart charm and a gold chain.\(^{19}\) On the sales receipt the charm was listed as, "14K Charm Oro. . .Puffhrt artw121" and the chain was listed as "14K Chain."\(^{20}\)

The court held that since it was unlikely that a consumer would own more than one lawnmower the description on the sales receipt was sufficient to allow a subsequent creditor to figure out what lawnmower was part of Ward's interest.\(^{21}\) With respect to the television, the court determined that even though a consumer may have more than one television the description of the television, combined with the inventory number, was sufficient to determine what television was part of Ward's security interest.\(^{22}\) The court also found the description of the puff heart charm to be sufficient.\(^{23}\) Given the shape of the charm, the description would allow a subsequent creditor to determine what piece of jewelry the receipt was referring to.\(^{24}\)

The court found that "14K Chain" failed to adequately describe the collateral that Wards had an interest in.\(^{25}\) A consumer may have more than one 14-carat gold chain and there was nothing in the receipt description that would allow for identification of Ward's gold chain over some another dealer's gold chain.\(^{26}\)


\(^{16}\) Id. at *4.*

\(^{17}\) Id. at *5.*

\(^{18}\) Id. at *4.*

\(^{19}\) Id.

\(^{20}\) *In re Bradel*, 1990 Bankr. LEXIS 1334, at *4.*

\(^{21}\) Id. at *21.*

\(^{22}\) Id.

\(^{23}\) Id.

\(^{24}\) Id. at *21-22.*

\(^{25}\) *In re Bradel*, 1990 Bankr. LEXIS 1334, at *22.*

\(^{26}\) Id.
This case exemplifies the problems that drafters have with describing the collateral in connection with consumer goods. The drafters of security agreements have to be able to draft agreements broadly enough to allow for "wiggle" room in case they have to go to court to fight for collateral which is not specifically mentioned in the agreement or financing statement. However, these same drafters have to describe what consumer good they have an interest in with enough specificity so that if a consumer has more than one of that item in their household, the creditor will be able to identify the one that they have an interest in.

Under Revised Article 9, "consumer goods" are still defined as goods which are used or bought by a buyer primarily for personal reasons or household consumption. Since there was no drastic change in the definition of "consumer goods," it is unlikely that the courts will interpret cases any differently under Revised Article 9. In addition, it is unlikely that a creditor would change its description of "consumer goods" in a security agreement or financing statement.

IV. INVENTORY

In contrast to the necessary evil of a specific description for consumer goods, inventory does not have to be described with much specificity at all. This is because the courts have routinely held that inventory, by its very nature, is supposed to change. If it is to constantly change, then a creditor cannot be held responsible to describe with detail, the collateral in which they are taking for security.

The debtor in *Mid City Bank, Inc. v. Omaha Butcher Supply, Inc.* was a wholesaler of restaurant and supermarket supplies, such as knives, cutting tables and flatware. The security agreement listed "all equipment, supplies and parts" as collateral for a loan. The creditor did not list "inventory" or use the definition of inventory in either the security agreement or financing statement. "Inventory" was held to be part of the debtor's "equipment, supplies and parts" since the debtor was in the business of supplying "equipment, supplies and parts" to restaurants and supermarkets. Though not specifically mentioned in the description, the court found that the creditor in-

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27. U.C.C. § 9-102(a)(23) (2005). "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes. *Id.*
28. 385 N.W.2d 917 (Neb. 1986).
29. *Id.* at 920.
30. *Id.* at 919.
31. See *id.*
32. *Id.* at 922.
tended to take a security interest in the debtor's inventory because if the creditor took an interest in the equipment, supplies and parts of the debtor, it must have intended upon taking an interest in its inventory.33

The court in the case of In re Florida Bay Trading Company34 held that it is not necessary to list "inventory" as part of the creditor's interest if it can reasonably be determined that the parties intended it to be part of the interest.35 The debtor imported foreign reptile skins.36 The creditor filed a security agreement and financing statement, securing an interest in 63,082 skins.37 The security agreement did not state what kind of skins they were although it did give the lot number, pack number, and tanner identification number of the Tegue lizard skins.38 The court held that both of the parties knew the Tegue skins were to be used as collateral.39 Here, the court found it unnecessary for the debtor to specifically state what the inventory was because the court was able to deduce from the agreements what the parties' intent was.40

A reoccurring problem has been whether to automatically include after-acquired inventory in the security interest of a creditor in a debtor's inventory. It has been generally accepted that inventory is to include after-acquired inventory. Since inventory by its nature is constantly changing there is little reason to require creditors to list after-acquired inventory as a separate security interest from inventory. However, In re Balcain Equipment Corporation took exception to this rule.41 The creditor had a security interest in "all accounts receivable now existing or hereafter arising; all inventory held in connection with the business of borrower."42 According to the court, "the Uniform Commercial Code contemplates the security agreement should clearly spell out any claims to after-acquired collateral" which the court believed would extend to after-acquired inventory.43 Since the creditor specifically mentioned after-acquired account receivables and not after-acquired inventory the court determined that the creditor must

33. Mid City Bank, 385 N.W.2d at 922.
34. 177 B.R. 374 (Bankr. M.D. Fla. 1994).
35. Id. at 381-82.
36. Id. at 377.
37. Id. at 379.
38. Id.
40. Id.
42. Id. at 461.
43. Id. at 462.
have intended not to take an interest in after-acquired inventory of the debtor.\textsuperscript{44}

\textit{In re Cilek} also required strict compliance with the Code.\textsuperscript{45} The debtor owned a Honda dealership which obtained financing for its inventory through the creditor who took an interest in the inventory. However, the financing statement only stated that an interest in "all Honda motorcycles for which (the creditor) gives purchase money financing, together with any other property now or hereafter acquired in which (the debtor) has an interest."\textsuperscript{46} The court held that the description did not meet the requirements of the Code because it failed to reference any types of collateral as set forth by the Code, such as goods, inventory, equipment, accounts, general intangibles, and instruments.\textsuperscript{47} The creditor's use of "all Honda motorcycles" was not sufficient because it merely summarized the collateral, "instead of itemizing collateral as required."\textsuperscript{48} Since the creditor did not use "Code specific" terms, there was no description of the collateral.\textsuperscript{49} However even if the creditor had listed by serial numbers and VIN numbers the items of collateral, it would seem that had the creditor listed "all after-acquired Honda motorcycles" the court would still have found that to be an inadequate description of the collateral.

As with "consumer goods," the definition of "inventory" under Revised Article 9 has not changed significantly. The only addition made to the definition was that "inventory" in fact includes leased goods which the former Article 9 did not include.\textsuperscript{50} Even though no cases have begun litigation on this point, courts may begin to see cases where they may have to interpret whether or not "leased inventory" is implicit in a security agreement or a financing statement under the general category of "inventory." The courts will have to determine if a creditor is to take a security interest not only in the "inventory" of

\begin{equation}
\text{(48) "Inventory" means goods, other than farm products, which:}
\begin{align*}
& \text{(A) are leased by a person as lessor;} \\
& \text{(B) are held by a person for sale or lease or to be furnished under a contract of service;} \\
& \text{(C) are furnished by a person under a contract of service; or} \\
& \text{(D) consist of raw materials, work in process, or materials used or consumed in a business.}
\end{align*}
\end{equation}

\textit{Id.}

\textsuperscript{44} Id.

\textsuperscript{45} 115 B.R. 974 (Bankr. W.D. Wis. 1990).

\textsuperscript{46} Id. at 990.

\textsuperscript{47} Id. at 994.

\textsuperscript{48} Id.

\textsuperscript{49} See id.

\textsuperscript{50} U.C.C. § 9-102(a)(48) (2005). This provision states:

\begin{itemize}
\item[(A)] are leased by a person as lessor;
\item[(B)] are held by a person for sale or lease or to be furnished under a contract of service;
\item[(C)] are furnished by a person under a contract of service; or
\item[(D)] consist of raw materials, work in process, or materials used or consumed in a business.
\end{itemize}
the debtor but also any "after-leased inventory" of the debtor. This quandary may arise when the debtor is engaged in a business where leasing of the inventory is not done in the ordinary course of that business.

V. Equipment

A third category of "goods" under the former Article 9 is "equipment." A "good" will fall under the category of "equipment" if it is "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..."51 If the collateral is not used primarily in the business, the collateral could still fall under equipment if it is found not to be inventory, farm products or consumer goods.

The case of In re: Harbour Lights Marina, Inc.52 provides an example of how a court determines if an item of collateral falls under the category of "equipment."53 At issue were the gangplanks of a floating restaurant.54 The debtor believed them to be "inventory" whereas the creditor argued that they were "equipment."55 The court used a two-step inquiry put forth by James White and Robert Summers.56 The first inquiry, a purely objective test, was whether or not the gangplanks were within the scope of the security agreement.57 Since the financing statement did cover equipment, the court found that the gangplanks should be within the scope of the financing statement.58 The second inquiry, a subjective test, was whether the parties actually intended for the gangplanks to be covered by the financing statement. The court determined that the parties did not intend for the gangplanks to be covered since there was no evidence that the debtor intended to give an interest in the gangplanks specifically. With this reasoning, more weight is given to the actual intent of the parties rather than the scope of the language in a financing statement or security agreement.59

53. Id. at 969.
54. Id. at 967.
55. Id. at 969.
56. Id. (citing JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE, § 22-4 (3d ed. 1988)).
57. In re Harbour Lights Marina, 146 B.R. at 969.
58. Id.
59. Id.
In *In re Flores de Mexico, Inc.* the court had to determine what category of collateral a rose producer's rose bushes fell under. Since the debtor in this case was a rose producer, the question before the court was whether the rose bushes constituted fixtures or equipment. The court quickly ruled out the rose bushes as being a consumer good and determined that the bushes themselves did not constitute inventory of the debtor since the bushes themselves were not sold to consumers. The court determined that the bushes were not crops since only the blossoms of the bushes were harvested, not the whole bush. The bushes were held not to be equipment even though they were used primarily for business, but rather were held to constitute fixtures. "The evidence shows that the rose bushes were planted directly into the earth, and that each bush has a root system that extends three or four feet into the earth. Thus, the bushes were affixed to the realty . . . . This Court therefore finds that the rose bushes had become so attached to the real estate that an interest in them arose under real estate law and that they became fixtures." However, it is worth noting that the court in this case made no mention of the ability of the rose bushes to be dug up in determining the rose bushes to be "fixtures" of the land.

The court in *Citizens Bank and Trust v. Gibson Lumber Company* found that an omnibus clause in a security agreement cannot always save a creditor's interest. The creditor in *Citizens Bank and Trust* had listed several pieces of equipment as its security interest but also had a non-limiting clause in the agreement. The three pieces of equipment in question were not listed but were ostensibly covered by the omnibus clause "all sawmill equipment." Even though the court found the equipment in question to be covered by the omnibus clause, the court remanded to determine whether the parties had subjectively intended to cover the equipment in question. The court did not give any weight to the non-limiting clause which was included in the itemized list of collateral. Without clear and convincing evidence that the three pieces of equipment were intended as collateral, the ambiguity

61. *Id.* at 579-80.
62. *Id.* at 579.
63. *Id.* at 580.
64. *Id.* at 582.
65. *In re Flores de N. M.,* 151 B.R. at 582.
67. *Id.* at 752.
68. *Id.*
69. *Id.* at 754.
70. See *id.*
would have been construed against the drafter.\textsuperscript{71} Here, it seemed as though the creditor had effectively covered their tracks in order to secure its collateral by using an itemized list, a non-limiting clause as well as an omnibus clause. However, the court seemed to have indicated that it is safer for a creditor to use the general categories of collateral rather than an itemized list of collateral in order to secure an interest.

Another use of limiting adjectives with a general category of collateral is the case of \textit{Morasch Meats, Inc. v. Western Boxed Meats Distributors, Inc.}\textsuperscript{72} The creditor listed specific items of equipment of the debtor, who was in the meat processing business.\textsuperscript{73} The security agreement listed as collateral “all additions, attachments, accessories and repairs at any time made or placed upon the Equipment shall become part of the Equipment and...shall be the property of the [Debtor].”\textsuperscript{74} The court held that the language of the security agreement limited the creditor’s interest to those unlisted items of equipment which could be attached to or placed upon the specifically listed equipment.\textsuperscript{75}

Revised Article 9 defines “equipment” as “goods other than inventory, farm products, or consumer goods.”\textsuperscript{76} This dramatically cut down the definition under the former Article 9 which had a “primary use” test that allowed the courts to determine if the collateral was equipment of the debtor.\textsuperscript{77} Even so, the new definition gives courts a new test to determine if collateral is equipment: if it does not fall into the other three categories of collateral, by default, it is equipment. The Comments to the Revised Article 9 do not shed light on why the drafters excluded the old test “primarily used in the business” test. An assumption can be made that the drafters believed that the courts were going to determine if the collateral was used in the business of the debtor and perhaps thought the extra language to be superfluous. Although the new definition of “equipment” under Revised 9-102(33) excludes a substantial portion of the definition under the former Article 9, in all likelihood, the new definition will not change how creditors take a security interest in the equipment of a debtor nor will it change how the courts define “equipment.”

\textsuperscript{71} \textit{Citizens Bank and Trust}, 96 B.R. at 754.
\textsuperscript{72} 971 P.2d 426 (Or. Ct. App. 1998).
\textsuperscript{73} \textit{Id.} at 428.
\textsuperscript{74} \textit{Id.} at 427.
\textsuperscript{75} \textit{Id.} at 430.
\textsuperscript{76} U.C.C § 9-102(33) (2005) (stating that “‘Equipment’ means goods other than inventory, farm products, or consumer goods.”).
VI. Farm Products

The last category of "goods" under the former Article 9 is "farm products." Former 9-109 defined "farm products" as, "crops or livestock or supplies used or produced in farming operations...and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations." Farm products are broken down into three areas: farm equipment, livestock and crops.

Judges are sometimes forced to become linguists when interpreting documents. A description of the collateral in a security agreement as "all farm machinery, equipment, supplies, feed and livestock now owned or hereafter acquired" required a court to decide whether "farm" modified equipment and supplies. The court overruled a lower court by holding that the "equipment" and "supplies" were indeed modified by "farm." The court again referred to the "notice purpose" of former 9-110 and held that the description of the collateral in the security agreement would have put a prudent subsequent creditor on notice to search what collateral was encumbered by a prior security interest.

In order to perfect a security interest in a farmer-debtor's livestock, former Article 9 did not require a locator clause in the security agreement and the financing statement. The court in First Bank v. East-
(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or
(b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
(c) collateral as to which the filing has lapsed; or
(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ..........
Address ..........
Name of secured party (or assignee) ..........
Address ..........
1. This financing statement covers the following types (or items) of property:
   (Describe) ..........
2. (If collateral is crops) The above described crops are growing or are to be grown on:
   (Describe Real Estate) ..........
3. (If applicable) The above goods are to become fixtures on
   (Describe Real Estate) .........
   and this financing statement is to be filed [for record] in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is ..........
4. (If products of collateral are claimed) Products of the collateral are also covered.
   (use whichever is applicable) (Signature of Debtor (or Assignor))
   (Signature of Secured Party (or Assignee))

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of Section 9-103, or a financing statement filed as a fixture filing (Section 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed [for record] in the real estate records, and the financing statement must contain a description of the real estate [sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state]. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if
(a) the goods are described in the mortgage by item or type; and
(b) the goods are or are to become fixtures related to the real estate described in the mortgage; and
(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
(d) the mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names
ern Livestock Co.\textsuperscript{83} held that a creditor's locator clause for a farmer's livestock was sufficient even though the livestock were moved from the original farm where they were being pastured.\textsuperscript{84} The locator clause in the financing statement was not seriously misleading because even though it may have been the wrong address, a subsequent creditor would have been put on notice to check what livestock was encumbered by the creditor's security interest.\textsuperscript{85}

After-acquired livestock has posed a problem to creditors as well. Since livestock does not turnover like inventory, a creditor must determine whether to specifically state that its interest extends to after-acquired livestock. In \textit{Raasch v. Tri-County Trust Co.},\textsuperscript{86} after the farmer-debtor had pledged his sows and boars, the creditor only listed the total number of livestock on the security agreement.\textsuperscript{87} Subsequently, the farmer-debtor purchased more livestock with a loan from another creditor which made it impossible to identify the livestock which were previously encumbered.\textsuperscript{88} Even though the creditor should have described the livestock with more specificity, the court held that the description was sufficient because the subsequent creditor did have actual knowledge that the livestock were subject to a prior security interest.\textsuperscript{89} The court did not elaborate, however, as to what would happen if there was no actual knowledge as to the prior security interest.

To perfect a security interest in crops of the debtor-farmer a creditor has to use a locator clause in its financing statement.\textsuperscript{90} The locator clause requirement is to make sure the creditor has described with specificity what crops are encumbered and to allow subsequent credi-

\begin{flushright}
\textsuperscript{83} 837 F.Supp. 792, (S.D. Miss. 1993).
\textsuperscript{84} \textit{Id.} at 796.
\textsuperscript{85} \textit{Id.} at 803.
\textsuperscript{86} 712 S.W.2d 5 (Mo. Ct. App. 1986).
\textsuperscript{87} \textit{Id.} at 6.
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Id.} at 10.
\end{flushright}
tors to identify what crops may or may not be part of the creditor’s security interest.

Three brothers had created a farming partnership and allowed a creditor to take an interest in some of their crops.91 Before taking an interest in the land, the creditor had a land survey done of the land where the brothers would grow the crops and the results of the survey were used in both the security agreement and the financing statement. However, the court found that the land survey description had “seriously erroneous descriptions of quarter sections and townships” which kept the creditor’s security interest from attaching.92 Even though the farmer-debtor knew what lands were to be encumbered by the security interest a subsequent prudent creditor would be misled by the description of the land where the crops were to be grown.93

Another problem arises when the farmer-debtor is not the owner of the land but merely a lessee. In *MFA Inc. v. W.L. Pointer*,94 the lessee was farming 1,300 acres of land which was subject to a landlord’s lien.95 The landlord subordinated its lien on 350 acres of crops belonging to the lessee-farmer so that the lessee could use those acres to secure a loan to begin farming operations. The lessee gave a security interest of 350 acres of beans to a subsequent creditor.96 The landlord sold the entire crop after the lessee defaulted and the subsequent creditor claimed conversion of its security interest. Since the 350 acres were part of a larger plot of land, the court held the description to be insufficient since a prudent subsequent creditor would not be able to identify what part of the 1,300 acres was encumbered by the subsequent creditor’s security interest.97 In order for the description to be valid, the creditor must have included some kind of indication of where the 350 acres was to be located within the larger plot.

Identification of crops is a different creature than identification of farm equipment and livestock because crops are grown and harvested yearly. Due to the fact that crops are an annual security for a creditor, a creditor must be vigilant in making sure they file an annual security agreement for crops. However, a creditor can take an interest in future crops of the farmer-debtor without having to file annually. The creditor in *In re Pulley*98 did not state in its financing statement and

92. *Id.* at 964.
93. *Id.* at 961.
94. 869 S.W.2d 109 (Mo. Ct. App. 1993).
95. *Id.* at 110.
96. *Id.*
97. *Id.* at 112.
security agreement what year of crops it was taking an interest in. For the security interest to have been valid, the creditor should have stated in its financing statement that its security interest extended to "crops now growing or hereafter planted."

As already discussed, in order to take a security interest in "growing crops" a creditor must include a locator clause in its financing statement. However, if a creditor's security interest is for crops which have already been harvested, it does not need to have a locator clause because they are no longer "growing crops" but "farm products". One court found that a financing statement which described the collateral as "crops, livestock, supplies, other farm products and farm and other equipment." was a proper description of crops which had already been harvested. The farmer-debtors argued that since the creditor was taking an interest in crops, there needed to be a locator clause. The court held that when crops are severed from the land, "crops" turn into "farm products" which do not need to have a locator clause.

Perhaps the most memorable crop case is In re: Findley. The debtor-farm gave a security interest to a creditor in his "crop" of catfish. However the security agreement of the creditor never listed a locator clause of the catfish as required for crops. The creditor argued that the catfish were more like livestock rather than crops so that they did not have to give a locator clause in its security agreement. The court held the catfish to be crops, not livestock, and found the creditor's security agreement to be valid even without a locator clause.

The definition of "farm products" under Revised Article 9 clarifies the scope of "farm products." Former Article 9 defined "farm products" as crops, supplies or livestock used by the debtor for farming operations. With much litigation over what constituted "livestock" and "crops," the Revised Article 9 more clearly defines farm products. Under Revised Article 9, "crops" are grown not only on land but on

99. Id. at 169.
102. Id. at 778.
103. 76 B.R. 547 (Bankr. N.D. Miss. 1987).
104. Id. at 548.
105. Id. at 551-52.
106. See id. at 551.
107. Id. at 554.
"trees, vines and bushes" as well. In an attempt to avoid the problems of Findley, Revised Article 9 also defines "crops" as "aquatic goods produced in aquacultural operations" which allows crops to also be grown in water. However, whether the collateral constitutes "livestock" or "crops" even if they are grown in water is still up to the courts on a case-by-case basis.

Furthermore, the Revised Article 9 definition makes it clear that "products of crops or livestock in their unmanufactured states" are to be "farm products." Even though this language was the same language used in the former Article 9, the Comments to the Revised Article 9 elaborates further that "farm products" are no longer "farm products" when the crops or products of livestock are subjected to some manufacturing process and become "inventory" of the debtor.

Under Revised Article 9 there no longer needs to be a description of the real-property on which crops are grown. The Comment to the Revised Article 9 makes mention that it seemed "unwise" to require a description of the cropland. To delete this former requirement from the revisions does make sense given that the new requirements of a financing statement are much less than they were before under the former Article 9. To allow a creditor to list as collateral "all assets of the debtor" in its financing statement but then to require a specific location of where the collateral is to be held would defeat the very purpose of Revised 9-108, which was to allow for a more general description of the collateral.

VII. REAL ESTATE

Real estate can also be used as collateral for a security interest. Even though a loan for which the collateral would be real estate


(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:
   (i) crops produced on trees, vines, and bushes; and
   (ii) aquatic goods produced in aquacultural operations.
(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
(C) supplies used or produced in a farming operation; or
(D) products of crops or livestock in their unmanufactured states.

Id.
111. Id. § 9-102 cmt. 4(a).
112. Id. § 9-102(34)(D).
113. Id. §9-102 cmt. 4(a).
114. Id. § 9-502 cmt. 4.
would fall outside the scope of Article 9, the loan could fall under a secured transaction if the "fixtures" of the property are the security. "Fixtures" will also be discussed under real estate although under former 9-313, "fixtures" are a type of "good" which are so related to the land "that an interest in them arises under real estate law."¹¹\textsuperscript{15} Leases,

¹¹\textsuperscript{15} U.C.C. § 9-313(1)(a) (2000) (amended 2001). This provision is titled "Priority of Security Interests in Fixtures" and states:

1. In this section and in the provisions of Part 4 of this Article referring to fixture filing, unless the context otherwise requires

   (a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law

   (b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of Section 9-402

   (c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

2. A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.

3. This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

4. A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

   (a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

   (b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

   (c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or

   (d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

5. A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

   (a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

   (b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.
which fall under the scope of Article 2A, can be a type of collateral which is under Article 9 so long as it is a "true lease." The main characteristic of a true lease is that the collateral which is being leased must, after the duration of the lease, have residual value when it is returned to the lessor. In addition to having "true leases" under Article 9, land trusts can be collateral for a secured transaction as well.

A debtor had given his interest in a land trust agreement as collateral to a creditor. In the financing statement, the creditor's description of the collateral read, "all of Debtor's right, title and beneficial interest in that certain real property described on Schedule 'A' attached." The court held that the description of the collateral in the financing statement was not sufficient because a land trust is a type of personal property, not real property. For the creditor to use the term "real property" instead of "personal property" was found to be seriously misleading because the type of collateral was improper and would not have properly informed a subsequent searcher that it had an interest in a land trust.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.


117. U.C.C. § 9-102(2) (2000) (amended 2001). This Article applies to security interest created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. Id.


119. Id. at 62.

120. Id.
Another way for creditors to bring a real estate transaction under Article 9 is to take a security interest in fixtures which are on the land. The court in *In re: Sand and Sage Farm and Ranch, Inc.*\(^{121}\) had to first determine if a center pivot irrigation system was "farm equipment" or a "fixture."\(^{122}\) The creditor had filed a financing statement which merely took as collateral the farm equipment of the debtor-farmer.\(^{123}\) The court looked at how the irrigation system was installed and the intent of the debtor-farmer when he installed the system and determined that the system was meant to be permanent, therefore, the irrigation system was held to be a fixture.\(^{124}\) In order for the irrigation system to be held as security the creditor in this case needed to have specifically mentioned that fixtures were to be part of its collateral.\(^{125}\)

Another debtor-farmer had built a number of barns on his tobacco farm in order to store his tobacco.\(^{126}\) The manner in which these tobacco barns were attached to the land was complex and costly and the court found that the use of these barns was consistent with the use of the farm, which was to cure tobacco.\(^{127}\) These were all factors that the court used to determine that the barns were fixtures. The creditor had filed security agreements and financing statements in connection with the barns but never used the collateral term of "fixtures."\(^{128}\) The court found the description of the barns as "appurtenances" was insufficient.\(^{129}\)

A creditor may be able to take an interest in the real estate of the debtor, but the interest has to encompass fixtures on the real estate. In order to avoid a non-attachment problem, a creditor would want to state in the security agreement and the financing statement that they are taking an interest specifically in fixtures and in all additions and substitutions made to the real estate of the debtor.

VIII. General Intangibles

The residual category of collateral is that of general intangibles. This category is a catch-all category which encompasses other types of security which the creditor cannot physically possess or control. Under the former Article 9, "general intangibles" were defined as

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122. *Id.*
123. *Id.* at 510.
124. *Id.* at 512.
125. *Id.* at 514.
127. *Id.* at 369.
128. *Id.* at 368.
129. *Id.* at 371.
“any personal property other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit and money.”130 “Account receivables” and “proceeds” are two types of general intangibles which a creditor would want to have as part of its security for any business. “Proceeds” are the money which is given in exchange for some collateral.131 In the realm of intellectual property this category would create the bulk of the collateral for a creditor. Goodwill, trademarks

130. U.C.C. § 9-106 (2000) (amended 2001) (stating that “‘Account’ means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. ‘General intangibles’ means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.”).

131. U.C.C. § 9-306(1) (2000) (amended 2001). This provision is titled “‘Proceeds’; Secured Party’s Rights on Disposition of Collateral” and states:

(1) “Proceeds” includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are “cash proceeds”. All other proceeds are “non-cash proceeds”.

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:
and even "know-how" can be used as value by a debtor who has a business without tangible inventory. A creditor would want to make sure that the general intangibles of a farmer would be collateral because government termination payments and payments-in-kind can be of significant value. Even if the creditor believes that the debtor does not have any general intangibles to which a security interest could be claimed, the creditor should nonetheless still take an interest because there may be something that the creditor overlooked that may be of significant value.

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right to set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Id.
The first type of general intangible that will be looked at will be accounts receivable and proceeds of contracts. Next farming general intangibles will be discussed followed by a discussion of hotel room revenues as a general intangible. There will be a discussion of personal accounts as security collateral and lastly, an assorted mix of general intangible cases will be looked at.

Account receivables are the payments made from the sale of inventory. Since the inventory of a debtor should be constantly changing, there should be a constant account receivable for a debtor's business. The court in the case of In re Bonds Distributing Company, Inc. found that the creditor had a properly perfected security interest in the after-acquired accounts and inventory of the debtor. The creditor had described the collateral as "all personal property . . . all additional equipment, furniture, and fixtures, supplies, inventory, . . . accounts receivable . . . including substitutions, additions, replacements, proceeds and proceeds of proceeds . . ." The court stated that "because of the particular characteristics of accounts receivable and inventory and the fact that they are cyclical and constantly turning over . . .," the description of account receivables and inventory created a security interest in the after-acquired accounts receivables of the company.

However if a debtor and a creditor enter into an agreement at a time when there are no accounts receivables, it may be found that after-acquired accounts receivable are not part of the creditor's security interest. This was the case for a debtor who had executed a promissory note for a creditor but only had inventory and equipment to pledge. The court held since there were no accounts receivables and since the debtor never intended to give the creditor an interest in those future accounts, the creditor could not claim an interest in after-acquired accounts receivable. In order for a creditor to avoid a situation such as that, it would be prudent for a creditor to always include an after-acquired accounts receivable clause in a security agreement and financing statement.

While "accounts receivable" are a type of personal property, courts have held that to describe the collateral merely as "personal property" is insufficient under the former Article 9. One court held that the

133. Id.
134. Id. at *16.
135. Id. at *24.
137. Id. at 859.
description of accounts receivable as "personal property" would not put a subsequent searcher on notice that accounts receivable of the debtor may be encumbered by a security interest.\textsuperscript{139} The court in \textit{In re Boogie Enterprises}\textsuperscript{140} encountered the same problem: the use of "personal property" to describe "accounts receivable."\textsuperscript{141} The court determined the description to be insufficient and stated "Perhaps it would make more sense, in instances where a creditor had a security interest in all of the debtor's assets, for the Code to release the creditor from the identification requirements for financing statements. But we are not free to create such an exception."\textsuperscript{142}

Furthermore, a court found the description of "all Debtor's income" not to be a sufficient description of a security interest for the accounts receivable of a debtor either.\textsuperscript{143} The court in that case held that "income" does not describe the "proceeds" of the debtor; therefore, a subsequent creditor would not be put on notice that the accounts receivable or proceeds of the debtor would be part of a security interest.\textsuperscript{144}

Many cases have dealt with the sufficiency of the description of proceeds which are to be received sometime in the future through contract rights of the debtor. In one example, the debtor was a builder of residential homes.\textsuperscript{145} The debtor contracted for the construction of new homes and, upon completion of those homes, received payment from customers.\textsuperscript{146} The creditor of the debtor-builder wanted the proceeds of the building contracts of the debtor after the debtor went into bankruptcy.\textsuperscript{147} The description of the collateral in the creditor's financing statement read "all property rights of any kind whatsoever, whether real, personal, mixed or otherwise, and whether tangible or intangible, encumbered by the above-mentioned mortgage."\textsuperscript{148} The description did not create a security interest in the proceeds of the building contracts because future building contracts would not be covered as "all property rights."\textsuperscript{149}

\begin{itemize}
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} 866 F.2d 1172 (9th Cir. 1989).
\item \textsuperscript{141} \textit{Id.} at 1173.
\item \textsuperscript{142} \textit{Id.} at 1175.
\item \textsuperscript{143} \textit{In re Cottage Grove Hosp.}, 233 B.R. 493, 496 (Bankr. D. Ore. 1999).
\item \textsuperscript{144} \textit{Id.}
\item \textsuperscript{145} \textit{In re I.A. Durbin, Inc.}, 46 B.R. 595 (Bankr. S.D. Fla. 1985).
\item \textsuperscript{146} \textit{Id.} at 597.
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} \textit{Id.}
\item \textsuperscript{149} \textit{Id.} at 600.
\end{itemize}
As stated previously, there is a fine line between specificity and vagueness which the creditor has to walk when writing a security agreement and a financing statement. If the creditor uses a vague description a court may hold that the creditor's security interest never attached. On the other hand, if a creditor uses too specific of a description of the collateral, he or she may be shooting themselves in the foot by not including collateral which may be of more value to the creditor. The latter scenario is what happened to the creditor of a real estate developer in the following example. A developer was converting an apartment building into condominiums and the creditor made loans to the debtor-developer in connection with this project. The assignment gave the creditor an interest in "all moneys due and to become due from the sale of condominium units in Shaker Heights Condominiums." However the debtor-developer pulled out of the project because there had not been enough sales of the condominiums, left the building as apartments and sold to a subsequent buyer. The creditor sought the proceeds of sale of the apartment building. The court held that the creditor did not perfect its security interest in the apartment building, rather, the creditor merely had a security interest in the condominium building which never was completed. The creditor should have foreseen the possibility of failure and planned accordingly in order to recover the collateral.

Personal accounts are another type of general intangible. A creditor may take a security interest in the personal accounts of a debtor but there are heightened requirements put upon the creditor attempting to do so. Notably, it is prudent for a creditor to specifically name the account and where it is being held if they want to perfect a security interest in an account of the debtor. In re Richman involved a creditor whose collateral included all amounts on deposit in account no. 6282588026038. The court held that the creditor’s description did identify what was being pledged and the court found that the brokerage firm which held the account had actual knowledge of the creditor’s security interest. Perhaps a more important fact in this case is that the creditor never filed a financing statement in connection with the brokerage account but the court still found that the creditor prop-

151. Id. at *2.
152. Id.
153. Id.
154. Id. at *9
156. Id. at 264.
erly perfected its security interest by giving notice to the brokerage firm of its interest.\footnote{157}

Under the former Article 9, a securities account fell under "investment property" of the debtor.\footnote{158} It was sufficient under the former

\footnotesize{\hspace{1cm}}
\footnotesize{157. \textit{Id.} at 265.}

\footnotesize{(1) In this Article:}

\footnotesize{(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.}

\footnotesize{(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:}

\footnotesize{(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or}

\footnotesize{(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.}

\footnotesize{(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.}

\footnotesize{(d) "Commodity intermediary" means:}

\footnotesize{(i) a person who is registered as a futures commission merchant under the federal commodities laws; or}

\footnotesize{(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.}

\footnotesize{(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in Section 8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.}

\footnotesize{(f) "Investment property" means:}

\footnotesize{(i) a security, whether certificated or uncertificated;}

\footnotesize{(ii) a security entitlement:}

\footnotesize{(iii) a securities account:}

\footnotesize{(iv) a commodity contract; or}

\footnotesize{(v) a commodity account.}

\footnotesize{(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.}
Article 9 to describe an interest in a securities account using the term

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity, intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by Section 9-312(5), (6), and (7). Section 9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and
"securities account" or "investment property." A creditor, as evidenced by Richman, can also use a more specific description by using an account number. Under Revised 9-102(47), the definition of "investment property" has not substantially changed from the former Article 9 and the interpretation among the courts dealing with investment properties will not change dramatically.159

An example of an overbroad description of the collateral can be found in In re Googel.160 In exchange for a line of credit, the debtor executed a promissory note in favor of the creditor-bank.161 The note had a section entitled, "Setoff Right" to which the creditor had "the right to apply funds from any deposit account(s) of the [u]ndersigned . . . to pay all or any portion of any amount overdue under this note."162 However, under the section headed "Collateral", the creditor did not describe any of the collateral which it was taking a security interest in.163 The creditor claimed a properly perfected security interest in the account of the debtor which the creditor-bank held because under the "Collateral" section of the note it stated that the creditor-bank had an interest in "the collateral and any other property belonging to, standing in the name of or pledged on behalf of the Undersigned . . . shall constitute continuing security for any and all liabilities of the Undersigned."164 The court found that the description of the collateral to be insufficient because the creditor-bank had not referenced any "types" of collateral nor had the creditor-bank checked any boxes on the note which would have given it a security interest in the accounts of the debtor.165

In Knudson v. Dakota Bank and Trust,166 the court held that a creditor's security agreement failed to take a proper security interest in the checking account of the debtor.167 The security agreement created an

the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

Id.

159. U.C.C. § 9-102(47) (2005) (stating "'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.").
161. Id. at 127.
162. Id.
163. Id.
164. Id. at 128.
165. Id.
166. 929 F.2d 1280 (8th Cir. 1991).
167. Id. at 1283-84.
interest in “All Accounts (rights to payment for Goods sold or leased or for services rendered) of Debtor now existing or hereafter at any time acquired.” The court determined that “all accounts” only applied to accounts receivable, not to the debtor’s checking account. The security agreement executed by the parties had a box designated “Accounts” which could be checked by the creditor. Since the box was not checked, the court held that the creditor did not perfect a security interest in the debtor’s checking account.

In the case of “deposit accounts,” there has been a significant change not only in definition but in application as well. Under former 9-105, a deposit account was a “demand, time, savings, passbook or like account maintained with a bank, savings and loan association... [not] evidenced by a certificate of deposit.” Former 9-306 which defined “proceeds,” categorized a deposit account as a cash proceed.

The Comments of Revised Article 9 clarify that an uncertificated deposit account would be a “deposit account” whereas a certificate of deposit would allow the collateral to be categorized as an “instrument” if the certificate of deposit is not given in the ordinary course of the business. A deposit account under the Revised Article 9 will no longer be considered a “general intangible” but rather be its own “type” of collateral which may be given as security to a creditor.

The third type of general intangibles is “farming intangibles.” These are different types of general intangibles that a farmer may pledge to a creditor as security. One kind of “farming intangible” that causes problems for creditors are government payment-in-kinds (PIKs). PIKs are contract rights between a farmer and the government in which the government pays money to a farmer as a subsidy in exchange for the farmer’s promise not to grow a certain crop or produce a certain farm product. The District Court of Kansas reviewed a number of cases involving PIKs. The court held that PIK payments fall under “proceeds” even though the crop was never grown. One of the cases that the court looked at had a financing statement which

168. Id. at 1283.
169. Id.
170. Id.
171. U.C.C. § 9-105(1)(e) (2000) (amended 2001) (stating “‘Deposit account’ means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit. . .”).
172. Id. § 9-306(1).
175. Id. at 805.
gave the creditor an interest in "all contract rights and accounts now owned and hereafter acquired" as well as the proceeds from the crops. 176 The court held that the description in the financing statement was sufficient to find that the creditor had a properly perfected security interest in the PIK payments of the debtor. 177

In addition to PIK payments for crops, the courts have had to categorize the payments to dairy farmers under a federal milk diversion program. In one example, the security agreement of a creditor gave the creditor an interest in the livestock of the debtor which also included "all natural increase, purchase, exchange, and issue thereof." 178 The debtor participated in a federal milk diversion program and was given payment in exchange for his promise not to produce milk. 179 The court held that the description of the collateral was insufficient to allow an interest in those payments because the payments were held not to be proceeds of livestock. 180 "The milk diversion program payments in the instant case are not the ‘proceeds’ of anything. They are entitlements stemming from an agreement the debtors made to produce less milk – not a subsidy for milk produced." 181

The courts struggled under the former Article 9 to categorize the money that farmers received as part of a government program. Former 9-106 defined “accounts” as [a]ll rights to payments earned . . . under a charter or other contract . . . and all rights incident to the charter or contract are accounts.” 182 This definition allowed PIKs to fall under the category of “accounts.” Whether the debtor’s entitlement to those payments were “proceeds,” “general intangibles,” “contract rights,” or “accounts,” it was only on a case-by-case basis that a determination was made.

Unfortunately Revised Article 9 does not clarify what these payments are to be considered. The drafters of the Revised Article 9 were of course aware of this situation but no new section was created to solve this problem. Instead in the Official Comments to 9-102, it is acknowledged that while there was no codification of what government entitlement payments are as a type of collateral, it does provide that those payments can be “an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral” which would include proceeds of other collateral of the

176. Id.
177. Id.
179. Id. at 90.
180. Id.
181. Id.
Although this may give courts little guidance, it does give creditors some help when drafting a security agreement and financing statement which would be sufficient to cover the PIKs of a farmer-debtor.

Another farming-intangible which came before a court was a covenant not-to-compete between farmers. A farmer-debtor sold his distributorship to another farmer and a non-compete clause was executed between the parties. The farmer-debtor was given $7,500.00 for the non-compete clause and the creditor of the farmer-debtor claimed a security interest in the non-compete clause. The court held that the creditor did have a security interest in the covenant not to compete because the financing statement of the creditor did cover “all proceeds, accounts and notes receivables and contract rights presently in existence or hereafter created...” Since the financing statement did state that contract rights were part of its security interest, the court stated that a third party searching the records would be put on notice that a covenant not to compete would be included under “contract rights.”

There are cases where the security interest at issue constitutes a potpourri of general intangibles and the courts have had the task of categorizing each of these interests. One general intangible that came before a court was an annuities policy of a debtor. The court decided that the annuities policy was a general intangible because the annuitant does not receive an interest in the pot of money from which payments are paid; rather, they receive an interest only in the payments themselves.

Insurance policies are still out of the realm of Revised Article 9 as they were under the former Article 9. Revised Article 9 does not define what annuities are but the new definition of “general intangible” would include annuities, as the court in Custom Coals held. Although the definition of “account” in Revised Article 9 has been expanded, it would still exclude annuities as an “account” because it

185. Id. at 264.
186. Id. at 266-67.
187. Id. at 267.
189. Id. at 603.
190. See U.C.C. § 9-109(d)(8) (2005) (stating that Article 9 does not apply to “a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds.”).
specifically rejects "rights to payment for money or funds advanced or sold." 191

The court in *Custom Coals* determined that the annuities policy was not the same as an insurance policy and therefore found it to be a general intangible. 192 However, a Michigan court found an annuity to be an insurance policy. 193 If a court were to find that an annuity is indeed an insurance policy then it would fall under an "account" under Revised 9-102 since the definition does cover the rights to payments of an insurance policy.

Payment streams from equipment leases where held by a court to be chattel paper and not general intangibles. 194 A creditor, who had purchased the right to receive the lease payments, argued the payments made on the leases were general intangibles because they had merely obtained the right to receive a payment and not the actual equipment lease itself. 195 The creditor characterized the "monetary obligation" of chattel paper as a "general intangible." 196 The court, using the new definitions of Revised Article 9 as well as prior case law using former Article 9, refused to sever the right to receive payments under a loan from the loan itself. 197

A court rejected a creditor's argument that a cash construction bond was property of the debtor's business. 198 The debtor was a construction company who had given a town a cash bond. 199 The court determined that the cash bond was a general intangible and not the personal property of the debtor's business. 200 Since the creditor's financing statement did not cover "general intangibles" but only the property of the debtor and the proceeds from that property, it was held that the creditor did not have a security interest in the cash bond. 201

191. U.C.C. § 9-102(a)(2)(vi) (2005). Article 9 defines "account" and specifically rejects "rights to payment for money or funds advanced or sold . . . ." Id.
195. Id. at *6.
196. Id. at *12.
197. Id. at *22.
199. Id. at 99.
200. Id. at 100.
201. Id.
General intangibles are especially important in the area of intellectual property. Cefrac was a corporation which entered into a licensing agreement with the debtor.202 The debtor created a product which was "heat resistant steel casting and fabrications including (without limitation) products for use in heat treatment and reheat furnaces."203 The debtor agreed to give Cefrac the "know-how" as to how to use the product.204 The parties defined "know-how" in the licensing agreement as "information of any kind relating to the design, construction, manufacture, installation, sale and/or use of . . . [the] product."205 Cefrae argued that they were entitled to the proceeds from the "know-how" agreement. The court determined the "know-how" was a "general intangible" and that since the creditor did not take an interest in "general intangibles" the security interest did not attach.206

Another case involved a debtor who owned and operated a pharmacy.207 The debtor had executed a security agreement with a creditor for "all of the Debtor's inventory, equipment, fixtures, name and goodwill."208 At issue were the proceeds that the debtor had received from the sale of the customer lists of the pharmacy.209 It was held that the customer lists "are the very essence of 'goodwill'" since the vitality of a pharmacy derives from the pharmacy's ability to refill prescriptions and the customer lists are part of its goodwill.210

Proceeds of litigation are often overlooked by creditors when setting forth a security interest. A financing statement of a creditor stated that the creditor was taking an interest in "each and every account, receivable, contract right, lease, chattel paper and other rights of the Debtor to the payment of money, of every nature, type and description. . . ."211 The court held the description to be too vague to include the proceeds from litigation involving the debtor because a subsequent creditor would not be put on notice that the creditor would have an interest in the litigation proceeds.212

The revisions to Article 9 at least seem not to have effectuated any real change in how a secured creditor is to describe intellectual prop-

203. Id. at 668.
204. Id.
205. Id. at 667-68.
206. Id. at 672.
208. Id.
209. Id.
210. Id. at 770.
212. Id. at 234.
erty of the debtor. As long as a creditor still uses the collateral term of "general intangibles" it seems that the description will be held to be valid as for trademarks, copyrights and litigation monies.

In addition Revised 9-102 has brought into the purview of "general intangibles" the collateral of "software." Software is defined as "a computer program and any supporting information provided in connection with a transaction relating to the program." What still has yet to be determined is if debtor modifications to the core software program, which are proprietary to the debtor, would be considered under that definition or if it is solely the original unmodified computer program that constitutes "software." In other words, the courts must determine whether the identified collateral is so changed that the security interest in the "software" is destroyed because the parties never intended the newly created "unique" software to be a part of the secured collateral. A related question deals with the storage and production of data within a computer program that is a security interest. If a computer program is used as security for an obligation, the courts may have to deal with the situation of how to sever the data stored within the program from the program itself.

IX. Cases Decided Since 2001

Under Revised Article 9 there are no longer the categories of collateral as there was under the former. Gone are "goods," "equipment," "inventory," "farm products," and "general intangibles" which were listed under the former Article 9 as "categories" of collateral. Revised 9-108(b), while allowing a creditor to use the former categories of collateral, also allows a creditor to describe the collateral using a specific listing of collateral or any other description which reasonably allows identification of the collateral. Presumably the "category

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213. U.C.C. § 9-102 (a)(75) (2005). "‘Software’ means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.” Id.

214. U.C.C. § 9-108(b) (2005). Section 9-108(b) provides examples of reasonable identification:

Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;
(2) category;
(3) except as otherwise provided in subsection (e), a type of collateral defined in [the Uniform Commercial Code];
(4) quantity;
(5) computational or allocational formula or procedure; or
(6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.
of collateral" referred to in Revised 9-108(b)(2) are the old categories of collateral under former 9-109. Although a category isn't required and a specific listing of the collateral is sufficient, it is necessary for a creditor to use descriptions which can "reasonably identify the collateral" in the security agreement. A creditor's financing statement only has to put subsequent creditors on notice that a potential security interest may lie in some collateral of the debtor. Therefore, a financing statement can take an interest in "all assets or personal property of the debtor" and still be sufficient. This is a change from the former Article 9 which required a description which was more specific than Revised Article 9 requires.

The question that follows is whether creditors will start using the language "all assets of the debtor's" in their financing statements and whether the courts will uphold such language. Admittedly there is not much case law interpreting such language. One can only assume a general reluctance by creditors to use such broad language in its financing statements because of the unknown consequences of doing so. Creditors may not wish to go into the court system to determine if its description of the collateral which would be insufficient under the former Article 9, is sufficient under the Revised Article 9.

The new cases that have been decided under the Revised Article 9 do indicate that the "categories" of collateral are just as important now under Revised Article 9 as they were under the former Article 9. Even though Interbusiness Bank v. First National Bank of Mifflintown was decided in 2004, the court still used the former Article 9. The defendant argued that the plaintiff did not have a valid security interest in the "inventory" and "account receivables" of the debtor because its description of the security only included "goods" and "accounts." The court held that since "inventory" is a subcategory of "goods" the plaintiff did have a security interest in the inventory of the debtor. Furthermore the court determined that "accounts" did refer to general commercial accounts receivable which was part of the plaintiff's security interest. Although the court did use the former Article 9 to reach its conclusions, the court pointed out that it was

216. See id. § 9-502 cmt. 2
217. Id. § 9-504(2).
219. Id. at 233.
220. Id. at 244.
221. Id.
likely that even if Revised Article 9 was applicable, the outcome still would have been the same for the same reasoning.\textsuperscript{222}

Another example of the courts still using the categories of collateral can be found in \textit{In re Wiersma}.\textsuperscript{223} The debtors in that case were dairy farmers who filed for bankruptcy.\textsuperscript{224} Litigation arose against an electrical company who did faulty work at the dairy farm which caused the debtor’s dairy cows to suffer electrical shocks.\textsuperscript{225} After a settlement had been reached, creditors of the debtors claimed an interest in the proceeds of the litigation.\textsuperscript{226} The court held that a creditor’s financing statement which gave a security interest in “general intangibles” did give that creditor an interest in the settlement proceeds.\textsuperscript{227} The court determined that the settlement proceeds were a “thing in action” which fell under the category of “general intangibles.”\textsuperscript{228}

However the Supreme Court of Idaho held in \textit{Karle v. Visser} that the right to collect on a promissory note could be categorized as both “proceeds” as well as “general intangibles.”\textsuperscript{229} In this case, litigation arose between the parties over the sale of a business.\textsuperscript{230} The defendant gave to a third party creditor an interest in “any judgments resulting from the collection of the Note . . . no matter who hands those proceeds from the sale or transfer of the collateral . . . ”.\textsuperscript{231} The plaintiff argued that since the security agreement failed to list “general intangibles” the security interest was invalid.\textsuperscript{232} Under former Article 9, the Supreme Court of Washington had also held that “proceeds” and “general intangibles” were not two mutually exclusive categories of collateral.\textsuperscript{233}

\textit{In re Chorney} also dealt with the collateral of settlement proceeds; however, the court used former Article 9 in reaching its decision.\textsuperscript{234} The settlement proceeds were paid out of an annuity, which the paying insurance company had arranged for.\textsuperscript{235} The payments were made

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{222} Id. at 244 n.12.
\item \textsuperscript{223} 283 B.R. 294 (Bankr. D. Idaho 2002) (discussing whether a debtor’s insurance settlement is a general intangible and subject to a creditor’s security agreement).
\item \textsuperscript{224} Id. at 296.
\item \textsuperscript{225} Id.
\item \textsuperscript{226} Id. at 298.
\item \textsuperscript{227} Id. at 303.
\item \textsuperscript{228} In re Wiersma, 283 B.R. at 303.
\item \textsuperscript{229} 118 P.3d 136, 140 (Idaho 2005).
\item \textsuperscript{230} Id. at 137.
\item \textsuperscript{231} Id. at 138.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Rainier Nat’l Bank v. Bachmann, 757 P.2d 979, 984 (Wash. 1988).
\item \textsuperscript{234} 277 B.R. 477, 486 (Bankr. W.D.N.Y, 2002) (noting that former Article 9 does not apply to the proceeding).
\item \textsuperscript{235} Id. at 479.
\end{itemize}
\end{footnotesize}
directly to the debtor even though the insurance company was the payee. The debtor had secured a loan using the settlement proceeds as collateral. The insurance company argued that the creditor did not have a properly perfected security interest because the settlement agreement made the proceeds non-assignable. Further, the debtor argued that Article 9 did not apply "to a transfer of an interest or a claim in or under any policy of insurance or contract for an annuity." The court found a perfected security interest in favor of the creditor. The court held that while payments from an annuity were being made to the debtor, it was the insurance company who owned the annuity, not the debtor. Therefore, the debtor was powerless to transfer any interest of the annuity thus keeping the claim under the scope of Article 9.

A debtor had taken a security interest in one particular item of equipment of the debtor's. Even though the security agreement did list that one item, the financing statement that the debtor filed described the collateral as "all of debtor's equipment." The debtor argued that the financing statement insufficiently described the collateral because there was only one piece of equipment to which the creditor's security interest attached and not multiple pieces of equipment. The financing statement was held not to be overbroad and sufficiently placed other creditors on notice that there may be a security interest in the equipment of the debtor.

Even though there is no need to use categories of collateral under Revised Article 9 there has to be some kind of description of the collateral in order for a financing statement to be valid. The creditor in In re Lynch entered into a general business security agreement which listed "all equipment, fixtures, inventory, documents relating to inventory, general intangibles, accounts, contract rights ..." as its security interest. However, when the creditor filed a financing state-

236. Id. at 481.
237. Id. at 479.
238. Id. at 480.
239. In re Chorney, 277 B.R. at 487.
240. Id. at 488.
241. Id. at 485.
242. Id.
244. Id. at *8.
245. Id. at *22.
246. Id. at *30.
248. Id. at 799.
ment, there was no description of the collateral listed in the financing statement.\textsuperscript{249} The financing statement merely described the collateral as "general business security agreement . . . now owned or hereafter acquired."\textsuperscript{250} The court held that the financing statement only gave notice that there was a general business security agreement in existence not that there was a prior security interest.\textsuperscript{251} In order for the financing statement to be valid, the court stated that the creditor had to describe the collateral not just give notice.\textsuperscript{252}

Another case which was determined under the Revised Article 9 is \textit{In re Pickle Logging, Inc.}\textsuperscript{253} The debtor had granted a security interest in a piece of equipment known as a "skidder."\textsuperscript{254} The creditor had used the skidder's serial number in its security agreement and its financing statement.\textsuperscript{255} However the serial number that the creditor used in its security agreement and its financing statement was "DW648GX568154" when it was "DW548GX568154."\textsuperscript{256} Even though it was only a one-digit error, the court held that it was still seriously misleading because there was no other description present that would allow a third party to identify what the collateral was.\textsuperscript{257}

The National Conference of Commissioners on Uniform State Laws kept the "seriously misleading" standard under the Revised Article 9. Though a subjective standard, it provides the opportunity for a court to balance interests and create justice without having to adhere to rigid statutory requirements. One place where statutory requirements have been strictly adhered to is the listing of a debtor's name in a financing statement. Under the former Article 9 a debtor could be listed by its trade name in a financing statement so long as it was not seriously misleading. However, under Revised 9-503(c), mere use of a trade name is not sufficient.

The debtor in \textit{In re Asheboro Precision Plastics, Inc.} used its trade name, Wade Technical Molding, to secure a loan from a creditor.\textsuperscript{258} The creditor's financing statement reflected the trade name and not the legal name of the debtor which was "Asheboro Precision Plas-

\textsuperscript{249} Id.
\textsuperscript{250} Id.
\textsuperscript{251} Id. at 801.
\textsuperscript{252} 313 B.R. at 801.
\textsuperscript{253} 286 B.R. 181 (Bankr. M.D. Ga 2002).
\textsuperscript{254} Id. at 182-83.
\textsuperscript{255} Id. at 183.
\textsuperscript{256} Id. at 183.
\textsuperscript{257} Id. at 184 (citing Yancy Bros. Co. v. Dehco, Inc., 134 S.E.2d 828, 830 (Ga. App. 1964)) (noting that if the serial number is inaccurate, there must be additional information that provides a "key" to the collateral's identity).
\textsuperscript{258} 2005 Bankr. LEXIS 1091, at *4 (M.D. N.C. Mar. 1, 2005).
tics."\textsuperscript{259} The court found the financing statement to be ineffective because the name was seriously misleading.\textsuperscript{260} A search by a subsequent creditor under the legal name would not have revealed the security interest of the creditor.\textsuperscript{261}

If a subsequent creditor would have been precluded from finding the prior security interest based upon the name given in the financing statement then, former Article 9 stated and Revised Article 9 states, a financing statement is misleading. However, courts are holding that Revised Article 9 requires much more accuracy in financing statements.\textsuperscript{262} In addition to excluding trade names, creditors will have to use the legal name of the debtor, not a nickname. The creditor in \textit{In re Kinderknect} used a nickname of the debtor, Terry, and not his legal name, Terrance, in its financing statement.\textsuperscript{263} The financing statement was deemed seriously misleading and ineffective by the court, which wanted to clearly set forth what was required in a financing statement.\textsuperscript{264}

This rationale was extended in \textit{Pankratz Implement Company v. Citizens National Bank} where the court held a financing statement ineffective based upon the debtor’s name as it appeared in the financing statement.\textsuperscript{265} The creditor used the name “Roger” instead of the creditor’s correct name, “Rodger,” in its filing.\textsuperscript{266} Using the same line of reasoning employed by the court in \textit{Kinderknect}, the financing statement was found to be seriously misleading since a subsequent creditor would not have found the prior security interest using the standard search logic as required by the state.\textsuperscript{267}

Agricultural liens are now treated differently than they were under former Article 9. The plaintiffs in \textit{Dean v. Hall} leased agricultural land to the defendants.\textsuperscript{268} The defendants took a loan and pledged all crops for the 2002 year in order to help finance the farming operations of the land.\textsuperscript{269} Once the defendants failed to pay rent, the plaintiffs sought to seize and sell the defendant’s crops to satisfy the rent owed.\textsuperscript{270} The court held that the plaintiffs did not have a landlord lien.

\textsuperscript{259} Id. at *5.
\textsuperscript{260} Id. at *25.
\textsuperscript{261} Id.
\textsuperscript{262} \textit{In re Summitt Staffing}, 305 Bankr. 347, 353 (M.D. Fla. 2003).
\textsuperscript{263} 308 Bankr. 71, 76 (10th Cir. 2004).
\textsuperscript{264} Id.
\textsuperscript{265} 102 P.3d 1165, 1168 (Ks. App. 2004).
\textsuperscript{266} Id. at 1166.
\textsuperscript{267} Id. at 1168.
\textsuperscript{268} No. 3:02CV728, 2003 WL 21650145, at *1 (Feb. 25, 2003).
\textsuperscript{269} Id.
\textsuperscript{270} Id.
but an agricultural lien which was protected by Article 9.\textsuperscript{271} Under the former Article 9 a party did not have to file in order to perfect an agricultural lien, however, Revised 9-310 requires filing for perfection.\textsuperscript{272} Since the creditor in this case had filed a financing statement it was the creditor who had the perfected security interest in the defendant’s crops.\textsuperscript{273}

The case that gives the best insight into how cases are to be decided under Revised Article 9 is In re Grabowski.\textsuperscript{274} The debtor-farmers had granted a security interest in three pieces of their farm equipment to two different creditors.\textsuperscript{275} The financing statement of the first creditor did not give the address of the farm but rather the address of the debtor’s business.\textsuperscript{276} The collateral included “all inventory, chattel paper, accounts, equipment and general intangibles.”\textsuperscript{277} The subsequent creditor’s financing statement specifically listed the pieces of farming equipment at issue.\textsuperscript{278} The issue before the court was whether a prudent creditor searching the records would be put on notice that the farm equipment of the debtors was encumbered by a security interest of the first creditor.\textsuperscript{279} The court held that the financing statement of the first creditor, while general, was enough to notify subsequent creditors that an interest in the farm equipment was held by the first creditor.\textsuperscript{280} The description of the collateral was found to be consistent with the new requirements of Revised Article 9 and since it did reference categories of collateral, it fulfilled the “notice” requirement of Revised 9-108.\textsuperscript{281}

X. Conclusion

One of the most notable changes made to Article 9 was the exclusion of former section 9-402 that required creditors to describe the types of collateral which was subject to a security interest. Creditors could either state the specific item or items of collateral or they could use the general categories of “consumer goods”, “equipment”, “farm products” and “inventory.” Instead, financing statements will upheld

\begin{itemize}
\item[271.] Id. at *3.
\item[272.] Id.
\item[273.] Hall, No. 3:02CV728, 2003 WL 21650145, at *3.
\item[274.] 277 B.R. 388 (Bankr. S.D. Ill. 2002).
\item[275.] Id. at 389.
\item[276.] Id.
\item[277.] Id.
\item[278.] Id. at 390 n. 4.
\item[279.] 277 B.R. at 390.
\item[280.] Id. at 392.
\item[281.] Id.
\end{itemize}
by the courts if the creditor covers all assets of the debtor. Under Revised Article 9 there is no equivalent of former 9-109 which defined the classes of goods. However, Revised 9-102 still kept the types of collateral which were defined under "goods" and clarifies what does not fall under "goods." With the passage of Revised Article 9 came new definitions of "goods," "accounts," and "general intangibles" although creditors have not taken to describing the collateral any differently under Revised Article 9. Current case law establishes that despite the leeway that creditors are going to be given when generally describing its interest, the categories of collateral are still being used in financing statements. Ultimately, the classification of collateral has proven so far to be just as important under Revised Article 9 as it was under the former Article 9.

What has yet to be determined is the use of the new rules that allows creditors to take a security interest in all assets of the debtor in a financing statement. Although a security agreement would have to be more specific, a financing statement will be effective if the creditor's security interest covered everything belonging to the debtor. Subsequent creditors will have to become more diligent researching prior security interests, if they have not become so already. No case has yet to be brought using the language of 9-502 and it remains to be seen if creditors will use broad language such as what is suggested.