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SECURED TRANSACTIONS FILINGS UNDER THE FLORIDA UNIFORM COMMERCIAL CODE: A CALL FOR PROCEDURAL NOTICE

FLOYD R. SELF*

I. INTRODUCTION: NOTICE FILING IN THE MODERN COMMERCIAL SCHEME

In the thirty years since the Uniform Commercial Code (UCC) was promulgated, courts have attempted to determine the adequacy of notice provided by a filed financing statement. Almost every court faced with the problem has resolved the issue by drawing upon its own idealized notion of what constitutes legally sufficient notice. Unfortunately, this approach reflects a marked misunderstanding of the purpose of notice filing and of how filing offices today process, store, and retrieve notice data. The result is a hodgepodge of inconsistent decisions and unpredictable rules. The advent of computer and micrographic technologies has served only to further separate legal fact from procedural reality.

The adequacy of notice provided by secured transactions filings under the UCC ultimately affects the entire commercial system. This Comment explores the operation of notice filing in the modern commercial scheme by examining two areas of Florida law that have consistently generated serious problems for creditors and the courts. The first section of the Comment reviews the cases interpreting the Florida documentary stamp tax notation statute. The cases illuminate the historical basis and rationale for notice filing. Additionally, the cases demonstrate some of the difficulties courts face in melding abstract notions of notice with unnecessary statutory requirements and basic procedural operations. The second section of the Comment addresses a more specific problem that affects a significant number of UCC documents: defects in stating the debtor's name. This section focuses on the procedures and practices of the Florida Department of State's Uniform Commercial Code Bureau (UCC Bureau). The discussion illustrates the dichotomy between ideal notions of notice and procedural reality and shows how financing statements often considered to constitute legally sufficient notice cannot in fact provide actual notice. In discussing these two areas of Florida law, the Comment advances suggestions for courts and practitioners on improved methods of eval-

* The author was the Chief of the Uniform Commercial Code Bureau, Florida Department of State, from 1980 to 1982.
uating the adequacy of notice provided by UCC documents. The Comment also develops for practitioners some useful procedures for the preparation of financing statements that will provide meaningful notice.

II. The Sel-O-Rak Problem: Notice and the Documentary Stamp Tax

Section 201.22, Florida Statutes, requires that the excise tax on documents "shall be applicable to transactions covered by the Uniform Commercial Code to the same extent that it would be if the Code had not been enacted." Beyond this statement of legal fact, the statute makes a further requirement:

The clerk or filing officer shall not accept for filing or filing and recording any financing statement under chapter 679, unless there appears thereon the notation that the stamps required by this chapter have been placed on the promissory instruments secured by said financing statement and will be placed on any additional promissory instruments, advances or similar instrument that may be secured by said financing statement.

The original drafters of the Florida UCC wanted this notation to appear on the financing statement to preserve notice of the liability of the tax. While other states have similar requirements for a documentary stamp tax, only Florida, Tennessee, and Maryland require a notation on the financing statement that the tax has been paid or is not applicable.

The necessity for the notation on a Florida financing statement, and its effect on the priority of a secured creditor who failed to include the notation, were recently litigated in a case involving the Sel-O-Rak Corporation, a debtor in possession. The case reflects the failure of the courts to understand that although perfection of lien rights may require acts other than those associated with pro-

1. FLA. STAT. § 201.22 (1983).
2. Id.
3. CONTINUING LEGAL EDUCATION, FLORIDA BAR, FLORIDA STUDY AND COMMENTS ON THE UNIFORM COMMERCIAL CODE § 10.6, at 176 (1966) [hereinafter cited as FLA. BAR CLE].
viding notice, the requirements for notice do not need to include all of the requirements necessary for perfection.6

A. The Sel-O-Rak Cases

When Sel-O-Rak went bankrupt, it owed approximately $1.6 million to Associates Commercial Corporation.7 In the original transaction, the appropriate financing statements were filed8 with the Florida Department of State. However, these financing statements did not bear the appropriate notation that the documentary stamps had been purchased and affixed to the promissory instruments. Indeed, Associates did not purchase any documentary stamps until after the bankruptcy trial had commenced.9

The bankruptcy court held that the financing statement failed to perfect Associates’ interest.10 The court reached its decision after reviewing the documentary stamp tax statute and finding that the payment of the tax is a condition precedent to the perfection of a financing statement by filing.11 Consequently, the purchase of the stamps prior to the commencement of the bankruptcy proceeding had no effect on the lien perfection process.12 This conclusion meant that Associates was not only subject to criminal and administrative penalties under chapter 201,13 but that Associates’ filing would lose its priority.14

On appeal, the federal district court reversed and found that As-

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6. Perfection under the Code tells the world that the debtor no longer owns the property outright. “A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken.” Fl. Stat. § 679.303(1) (1983). Attachment occurs when the secured party is in possession of the collateral or the debtor signs a security agreement, value is given by the secured party, and the debtor has rights in the collateral. Id. § 679.203(1)-(2) (1983). Depending upon the type of collateral, perfection occurs after attachment by filing, taking possession of the collateral, or, in some instances, by attachment alone. Id. §§ 679.302, .304-.305 (1983); see also B. Clark, The Law of Secured Transactions Under the Uniform Commercial Code ¶¶ 1.2[2], 2.1, 2.5-.8 (1980).

7. Sel-O-Rak III, 746 F.2d at 1442.

8. For the purposes of this Comment, references to documents “filed,” or a “filing,” pertain to any financing statement, UCC-1 form, or other document actually submitted and made a part of the official record of the filing officer, as distinguished from a document that is not a part of the filing officer’s official records.

9. Sel-O-Rak III, 746 F.2d at 1442. The fact that the Department of State should not have filed the financing statements because of the failure to include the required stamp tax notation was not litigated in any of the Sel-O-Rak cases.


11. Id. at 227.

12. Id.


sociates had a valid, perfected security interest. The district court took exception to the bankruptcy court's interpretation of chapter 201 and found that the legislature did not intend "to prevent perfection and enforcement of an otherwise valid security interest if the documentary stamp tax is not timely paid." The court further stated that even if the statute does prevent enforcement of the security interest, it only prevents enforcement until the stamps are purchased; it does not void the perfected status of the lien. Prohibiting perfection is not an additional statutory penalty. Sel-O-Rak relied upon several cases in which Tennessee courts declined to give effect to filed security interests where the creditors failed to pay the Tennessee recordation tax. While neither the bankruptcy court nor the federal district court found the cases dispositive on the issue of perfection, the district court nevertheless distinguished the Tennessee law from that of Florida.

In American City Bank v. Western Auto Supply Co., a Tennessee appeals court denied priority to a creditor who failed to pay the Tennessee excise tax. The court found that because of the Tennessee notation requirements, a creditor's security interest is limited to the amount of tax paid. The court reasoned that "those who violate the laws of this state should not be rewarded," and that "the only real way of enforcing this tax is by refusing to give the benefits of priority to those who are found to have not paid it as they should."

The court in Sel-O-Rak II rejected the Tennessee courts' approach, charging that those courts engaged in legislating when they decided what fairness required. The district court found that

[t]he Florida legislature would not have imposed such a drastic change in the rights of creditors under Florida commercial law without some governing language to that effect in the statute itself. This conclusion is reinforced by the observation that the legislature provided specific penalties for failure to comply with the recording statutes.

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16. Id. at 396.
17. Id.
18. 631 S.W.2d 410 (Tenn. Ct. App. 1982).
19. Id. at 425.
20. Id.
21. Sel-O-Rak II, 33 Bankr. at 398. In dictum, the Eleventh Circuit agreed with this contention. Sel-O-Rak III, 746 F.2d at 1444 n.3.
22. Sel-O-Rak II, 33 Bankr. at 398.
On the other hand, the Tennessee recording statute did not provide for any criminal penalty. Therefore, the denial of priority could be construed as an extrajudicial penalty. The court felt that if the Florida legislature had desired to impose the additional penalty that Sel-O-Rak sought, that is, the denial of effectiveness, it could "easily have done so." And if the creditor is to be denied perfection because of the failure to pay the stamp tax, then the holders of secured interests become "the guardians of the state revenue laws and [have] place[d] upon them a continuing responsibility to ensure that all relevant excise taxes are paid." The court refused to endorse such a proposition or to change well-established commercial rights without a "clear expression" by the legislature.

On Sel-O-Rak's appeal, the Eleventh Circuit rendered a concise opinion affirming the judgment of the district court. The main difficulty for the court involved the interpretation of two separate and distinct areas of the Florida Statutes, chapters 201 and 679, and the fact that neither the case law nor the statutes directly addressed the operative relationship between the two acts. Nevertheless, the court found that since "Article 9 of the Florida UCC represents a unified and comprehensive approach to secured transactions," the failure of the UCC to mention the documentary stamp tax, combined with the rule that tax statutes are to be construed strongly in favor of the taxpayer, could not cause the court to "provide another, unexpected penalty" absent a clearer indication of legislative intent.

B. Central Filing Systems and Notice Filing: A Brief History

The role of notice in the overall operation of the UCC and, consequently, the role of the courts in resolving questions of notice cannot be properly understood without some reference to the history of the Code. The Uniform Commercial Code arose from the success of the previous uniform commercial acts proposed by the National Conference of Commissioners on Uniform State Laws and

23. Id. at 398 n.7.
24. Id. at 398.
25. Id.
26. Id.
27. Sel-O-Rak III, 746 F.2d at 1442.
28. Id. at 1444 (citing Roemelmeyer v. Royal Crown Bottling Co. (In re LJP, Inc.), 34 Bankr. 39, 40 (Bankr. S.D. Fla. 1983)).
29. Sel-O-Rak III, 746 F.2d at 1444 (citing State Dep't of Revenue v. Peterson Outdoor Advertising Co., 296 So. 2d 120 (Fla. 1st DCA 1974)).
30. Sel-O-Rak III, 746 F.2d at 1444.
from the need to integrate those separate acts into a single, comprehensive law of commercial relations. The Uniform Commercial Code, promulgated in 1952, swiftly gained national approval despite its many revisions and innovations. The Florida legislature adopted the Code in 1965, effective in 1967, and significantly revised it in 1979 to conform to the 1972 uniform amendments.

Of all of the articles comprising the present Code, Article 9, the secured transactions chapter, has the greatest legal significance. Article 9 integrates and codifies in a single act the diverse pre-Code statutory and common law governing nonreal property security devices. The most innovative improvement of the Article 9 scheme on these various devices is the adoption of a single notice filing system.

Filing systems arose as an alternative, though a less desirable one, to the creditor's retaining possession of the collateral. With the exception of real property, creditors feared that allowing debtors to remain in possession of the collateral provided too many opportunities for fraudulent conveyances.

Creditors gradually came to accept the use of nonpossessory security interests during this century as credit transactions increasingly proved the best or only method of mobilizing the capital necessary to finance business operations. The possession approach proved cumbersome when time frames for commercial transactions became compressed and the requirements for capital and other resources in a national marketplace became greater. The submission and filing of documents with a central repository to provide notice of the transaction to other potential creditors soon came to be viewed not as an undesirable alternative to possession, but as the

31. Schnader, *Foreword* to 1 U.L.A. at ix (1976). Mr. Schnader was president of the National Conference of Commissioners on Uniform State Laws when in 1940 he proposed consolidating the various commercial acts into a single "great uniform commercial code." Schnader, *Address of the President*, in *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings Handbook of the 50th Annual Conference* 35, 58 (1940); *see also* U.C.C. § 1-102, 1 U.L.A. 11 (1976).

32. All of the states have adopted the UCC except Louisiana, which has adopted only Articles 1, 3, 4, 5, and 8. The District of Columbia and the Virgin Islands have also adopted the Code. *See* 3 U.L.A. 1 Table of Jurisdictions Wherein Code Has Been Adopted (1981).


36. *Id.* at 470-71; *see also* Florida Bar CLE, *supra* note 3, at 139-40.

preferred method of perfecting security interests. As these nonpos-
sessory devices evolved and became more prevalent, the procedural
requirements for each device's filing system became simpler and
the penalties for technical noncompliance became less severe.\textsuperscript{38}

The rise of new security devices saw a corresponding develop-
ment of individualized filing systems, each with its own technical
requirements.\textsuperscript{39} Such systems may be broadly classified as either
\textit{transactional} or \textit{notice}. Under a transactional system, the security
instrument itself must conform to particularized technical require-
ments.\textsuperscript{40} This procedure unreasonably burdens business, since at
each step in the process a complete submission of the additional
documents is required.

Notice filing gained its first widespread use through the Uniform
Trust Receipts Act, promulgated by the National Conference of
Commissions on Uniform State Laws in 1933.\textsuperscript{41} Notice filing in-
volves the submission of a single, simplified, summary document
that indicates that the parties have or expect to become engaged in
a course of financing transactions. This is essentially a one-step
process that does not require the submission of original documents
or of seriatim lists.\textsuperscript{42} The notice filing system places the burden on
subsequent parties to examine the documents filed with the filing
officer and to then contact those parties of record regarding the
particulars of any previous transaction. By its nature, a notice sys-
tem does not give a picture of the current state of affairs. Rather,
it merely provides a starting point for ascertaining the present
state of affairs; it is not an end in itself.\textsuperscript{43} The filing officer main-
taining the notice system plays an important role, since the filings
are the common ground upon which potential creditors meet ex-
isting creditors to begin the information exchange process. This
fact is often overlooked by creditors who base their commercial de-
cisions exclusively upon the records of the filing office.

The drafters of the UCC adopted a notice system for Article 9,
though transactional documents may be submitted in lieu of the
required notice document.\textsuperscript{44} Under this system, notice occurs

\textsuperscript{38} Id. at 463.
\textsuperscript{39} Id. The Factors Liens Acts and the Accounts Receivable Acts are two examples. See
\textit{id} chs. 2-8.
\textsuperscript{40} Id. at 466.
\textsuperscript{41} Id. at 99, 468. The Act was withdrawn by the Conference in 1951 upon the promulga-
tion of the UCC.
\textsuperscript{42} B. CLARK, supra note 6, at ¶ 2.9.
\textsuperscript{43} G. GILMORE, supra note 35, at 469.
through the use of a financing statement, which contains the names and addresses of the parties, a brief description of the collateral, and the debtor's signature. With this information, the potential creditor is advised of the identity of the parties and should be able to locate the secured party of record to determine the present status of any outstanding transactions.

C. Analysis: Eliminate The Notation Requirement

The drafters of the Florida UCC originally inserted in chapter 201 the requirement for a documentary stamp tax notation to ensure notice of the stamp tax liability. Such a requirement is, however, contrary to the purpose of notice filing and should be eliminated by the legislature.

The court in Sel-O-Rak II correctly pointed out that chapter 201 provides its own penalties for those who fail to purchase the required stamps. While the drafters of the Florida UCC are correct in their belief that the obligation to pay the tax remains unchanged by the adoption of the Code in Florida, the requirement invites a needless conclusion. There is no necessary connection between preserving notice of the tax liability and a formal requirement for the certification of payment: What reasonable creditor will first check the financing statement to see whether the documentary stamp tax has been paid? The notion that the financing statement will "preserve notice of the liability" fails to recognize that the security agreement and other documents evidencing the transaction must contain the stamps, a fact which an inquiring creditor is interested in ascertaining after the existing creditor has been located. The presence of the documentary stamp tax notation on the financing statement does not contribute to the notice afforded potential creditors searching the records, and the notation is totally irrelevant to the quality of the notice that the financing statement provides. The purpose of the notice system employed by the UCC is to direct creditors to the source of the transaction; the UCC filing system is not a transactional filing system.

Regarding the Code's paramount concern for providing notice, the final holding in the Sel-O-Rak trilogy is right, but for the

45. Id. This requirement is discussed in more detail infra at text accompanying notes 59-75.
46. FLA. BAR CLE, supra note 3, at 176.
47. Sel-O-Rak II, 33 Bankr. at 398.
48. See FLA. BAR CLE, supra note 3, at 176.
wrong reason. The court of appeals is correct in allowing the creditor to maintain its perfected status and enjoy its priority regardless of the stamp tax notation. However, while the court of appeals rescued the notice purpose of the Code, both the district court and the court of appeals failed to contemplate the effect of their decisions on the Code’s overall perfection requirements, or to discuss how their holdings would affect tax liability. The lack of a formal notation should not prevent the filing of a document. This should not suggest that the documentary stamp tax no longer needs to be paid unless and until the security interest is litigated, or that the proper payment of the tax cannot otherwise be a condition precedent to perfection; yet, this is precisely the implication of the Sel-O-Rak decisions.

To better appreciate the ramifications of the Sel-O-Rak decision, consider a creditor who has an otherwise correct financing statement but for the absence of the stamp tax notation. Because there is no notation, the filing officer will reject the document. However, before the first creditor can resubmit a corrected financing statement with the notation, a second creditor submits and has filed an equally correct financing statement that includes the required notation. If the security interest is litigated, only the dates on the filed documents will be relevant, and the first creditor will end up with a junior interest.

The Sel-O-Rak trilogy has thus compounded the problem. In seeking to avoid a penal interpretation, the courts have seriously compromised the effectiveness of the Code, undermined one of the state’s more important revenue acts, and perpetuated a misunderstanding of the role of notice filing under the UCC. Since the statutory formality serves no purpose, though the courts have continued to require it, the legislature should eliminate the notation statement as a filing requirement and amend the Code to specifically make the tax a precondition for perfection. Such a change would have no effect on the other filing requirements. In the interim, creditors who fail to make the notation must continue to have their documents rejected by the filing officers and face the possibility of losing the race for priority.

III. The Glasco Problem: What’s In A Name?

The Sel-O-Rak cases illustrate some of the broad concepts un-
derlying the Code and the need to appreciate the distinction between notice filing and the separate perfection requirements. The case of *In re Glasco, Inc.* focuses more directly on the operation of notice filing systems and demonstrates a perennial problem faced by filers, searchers, and filing officers. Though decided in 1981, the case is frequently cited as authority for the propositions that filings are rarely "seriously misleading" with regard to the debtor's identity and that it is the potential creditor's duty to locate all filings on the debtor. The case continues to be followed even though the underlying rationale is defective and the law it was based upon has changed. *Glasco* has produced a variety of inconsistent progeny and has rendered the concept of notice devoid of any meaning.

**A. The Glasco Case**

The debtor in *Glasco* operated its business solely under the name "ELITE BOATS, DIVISION OF GLASCO, INC." even though its legally chartered name was "GLASCO, INC." In 1977, the Citizens Bank of Perry extended credit to Glasco. As a part of that transaction, Glasco executed promissory notes and a security agreement in its operating name, "ELITE BOATS, DIVISION OF GLASCO, INC." To perfect its security interest, the bank filed with the UCC Bureau in the Florida Secretary of State’s Office a UCC-1 financing statement that listed the debtor as "ELITE BOATS, DIVISION OF GLASCO, INC." The UCC Bureau indexed the filing under the name as it appeared on the UCC-1 form

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52. While the *Glasco* case concerns a debtor's name, the discussion is equally applicable to secured parties' names.

and did not cross-index the filing under the legally chartered name. Subsequently, when Glasco went bankrupt in 1977, the trustee in bankruptcy made a search of the UCC Bureau’s records for “GLASCO, INC.,” the company’s legally chartered name. The UCC Bureau reported no filings of record for “GLASCO, INC.” With the bankruptcy court’s permission, the trustee sold some marine engines. When the bank learned of the bankruptcy and the actions taken by the trustee, the bank brought suit against the trustee to recover the proceeds of the sale.

On appeal to the Fifth Circuit, the court reversed the bankruptcy judge’s grant of summary judgment for the trustee. While the court of appeals recited the usual platitudes that the purpose of the system is notice and that commercial realities rather than corporate technicalities should control, the court found that the substantial compliance section of the Code saved the bank’s interest. The court concluded that “listing the debtor by the sole name in which it did business was not misleading, because any reasonably prudent creditor would have requested the Secretary of State to search under ‘ELITE BOATS’ in addition to ‘GLASCO, INC.’”

Regarding the reasonably prudent creditor, Judge Tuttle, in an extensive dissenting opinion, discussed the ramifications of the majority’s view:

From now on in this Circuit, potential creditors must undertake to discover trade names and to conduct additional searches in order to avoid a judicial determination that they lacked diligence. And even if they follow such precautions they might yet overlook one trade name and face potentially expensive litigation over whether they should have known about that trade name.

54. Glasco, 642 F.2d at 795. According to procedures and rules in effect at that time, the UCC Bureau did not charge a separate fee to cross-index names. Consequently, whether additional names were updated on the Bureau’s computer data base as multiple debtors or secured parties depended upon how the names appeared on the form and the discretion of the clerk updating the information. Under current procedures, each separate name indicated on the form is indexed and subject to the multiple indexing fee. Pla. Admin. Code R. 1C-6.09 (1982). This procedure is facilitated by the use of new filing and search forms adopted by the Bureau in 1981, which provide sufficient space to separately index names. Id. R. 1C-6.08 (1982).

55. Glasco, 642 F.2d at 795.
56. Id. at 796.
57. Id. (capitalization added).
58. Id. at 798.
B. Procedural and Statutory Considerations: Florida’s Requirements

The level of diligence required of a searcher under the Glasco case is not easily achieved: The statutory scheme in chapter 679 is disorganized, simplistic, and incomplete as an expression of procedure. Section 679.402(1), Florida Statutes, requires that a financing statement “is sufficient” if it gives the debtor’s name and mailing address, the secured party’s name and address, and a statement indicating the collateral. However, despite this section’s sweeping statement, other statutes and rules must also be satisfied. The statutes require that each financing statement must set forth a statement regarding payment of the Florida documentary stamp tax, and that the documents be accompanied by the appropriate fees. For documents to be submitted to the Department of State, the UCC Bureau has established by administrative rule additional fees for the indexing of multiple debtors and secured parties, a separate fee for each additional page submitted for filing, and a requirement that the document will not be filed until its “correct receipt” by the department. Though not required by the statute, the financing statement may also indicate whether the debtor is a transmitting utility. Finally, the UCC Bureau may return a document if the writing on the form is not dark enough to be microfilmed.

59. FLA. STAT. § 201.22 (1983). While the focus of the textual discussion is on the UCC Bureau, Florida Department of State, the comments are generally applicable to filings made with the clerks of the courts unless otherwise indicated.

60. FLA. STAT. § 679.403(1) (1983). The only fees enumerated in the Code appear at id. § 679.402(8), which imposes a three dollar additional fee for the use of a non-Florida filing form. The applicability of the remaining fees appearing in id. chs. 15, 28, is dependent upon whether the documents are submitted to the Department of State or to the clerk of the court. Beyond these fee requirements, the UCC Bureau has provided by rule that if the payment for a financing statement is made by a bad check, a termination statement will be appended to the file. FLA. ADMIN. CODE R. 1C-6.02(4) (1982).

61. FLA. ADMIN. CODE R. 1C-6.08. The basis for this provision is found in FLA. STAT. § 679.403(5) (1983).

62. FLA. ADMIN. CODE R. 1C-6.08. The basis for this provision is found in FLA. STAT. § 15.091(1) (1983).

63. FLA. ADMIN. CODE R. 1C-6.03 (1982).

64. FLA. STAT. § 679.403(6) (1983). This provision exists so that secured parties may take advantage of the continuous perfected status allowed for these utilities until the filing is specifically terminated.

65. While there is no rule on this point, the Bureau has rejected documents for this reason. See Department of State reject forms, Nos. 203 (7-83) and 214 (7-83). This requirement has baffled many creditors. While a document may be legible to the human eye; the writing on the form may be so light that a microfilm camera cannot capture on film the
Despite these many requirements, section 679.403(1) boldly asserts that filing with the Secretary of State's Office is accomplished by simply presenting the financing statement and tendering the fee.\(^6\) Several commentators have accepted this section for what it literally says.\(^7\) But if such a proposition is true, the system would eventually provide no notice because the data base of filings would be grossly inaccurate and thus useless. For instance, a filing officer cannot index a document that lacks a debtor's name.

Professor Henson, in his hornbook on secured transactions, places the statutory scheme in a more realistic light. He states that U.C.C. section 9-403(1), which is identical to section 679.403(1), Florida Statutes, "must be read to require a conforming form, at least insofar as this relates to the effectiveness of the filing in its technical aspects."\(^8\) Creditors often argue that these minimal technical requirements vary under the circumstances because U.C.C. section 9-402(8), identical to section 679.402(7), Florida Statutes, provides that financing statements "substantially complying" with the terms of the section shall be effective even though they contain "minor errors which are not seriously misleading."\(^9\) While the substantial compliance clause exists in deference to the concept of substance over form, the clause is at odds with the particularity expressed by the statute and the goal of a uniform rule of filing and interpretation.\(^70\) In Florida, the thrust of the rules adopted by the UCC Bureau, pursuant to chapter 120 of the Florida Statutes, is to minimize the wedge afforded by the substantial compliance section by limiting filing discretion. The Bureau's rules

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69. Numerous annotations discuss different aspects of the effect of the substantial compliance clause. See, e.g., 99 A.L.R. 3d 478 (1980) (debtor's or secured party's name designation); id. at 1194 (change in debtor's name, identity, or business structure); id. at 807 (sufficiency of debtor's address designation); id. at 1080 (sufficiency of secured party's address designation).

provide that a "financing statement or other document shall be filed based upon the date of its correct receipt by the Department of State." 71 "Correct receipt" means that all of the statutory and administrative requirements must be satisfied before the document will be filed with the Department of State.

The filing of the document is only half of the matter. The next problem is storing and retrieving the data. The UCC Bureau utilizes a computer system which maintains two indexes: a C index for corporate debtors, and a P index for personal, or noncorporate, debtors. 72 When an inquiry is made, the searcher enters one of the two debtor indexes and is presented with an alphabetical index beginning with the entered name and respective address, followed by the next nineteen alphabetically closest subsequent debtors' names and addresses. The process is akin to searching listings in a telephone directory. If there is more than one filing with the same name, the identically spelled filings are listed together, followed by the succeeding alphabetical filings and respective addresses. If there is not an exact match, the computer lists the next succeeding names and addresses. For each filing, an individual record screen reports the debtor's name and address, the secured party's name and address, the file number and date, the number of attachments recorded with the filing, whether the debtor is a transmitting utility, and any UCC-3 amendments, assignments, releases, continuations, or terminations. The computer does not contain any statement regarding the collateral, due primarily to the potential length of the collateral statement and the prohibitive cost of updating and storing such information in the computer.

The individual screens for each filing, and hence the index itself, are taken from the information submitted to the Bureau on the financing statements and security agreements. Problems with the documents, such as typographical errors, inconsistencies between the typed name in the debtor block and the information in the signature block, illegible writing, foreign names, and abbreviations all potentially serve to diminish the quality of information fed into the system. 73 Consider, for example, a legally chartered business

71. FLA. ADMIN. CODE R. 1C-6.03 (1982).
72. The discussion of UCC Bureau procedures and practices is based upon the author's personal experience as Chief of the UCC Bureau and upon interviews with Karon Beyer, the present administrative assistant in the UCC Bureau.
73. The UCC Bureau rejects approximately 20% of all financing statements submitted for failure to meet the procedural requirements of the statute. Unfortunately, while the documents that are ultimately filed by the Bureau may meet the technical requirements of the
named "AMERICAN BUILDING CONSTRUCTION COMPANY" that does business only as "AMERICAN CONSTRUCTION." Depending upon the creditor, the financing statement may list this debtor's name on a financing statement as "AMERICAN BUILDING CONSTRUCTION COMPANY," "AMERICAN CONSTRUCTION," "ABC CO.," "AM. BUILDING CO.," "AMER. CONSTR. CO.," "AMERICAN," "AM. CO.," or any number of other spelling or abbreviated combinations which to a creditor might represent the debtor.

The problem is compounded by corporate debtors who appear to be individual debtors. According to the Bureau's internal operating procedures, debtors with the names of individual persons are entered into either the corporate or the personal indexes with the last name first, followed by the first name. For "JOHN SMITH," the searcher would search in the P index for "SMITH, JOHN." But if the debtor is "JOHN SMITH, INC.," the search would be in the C index for "SMITH, JOHN INC." The clerks in the UCC Bureau enter the personal names in the last name-first name form regardless of how the name appears on the financing statement, so long as it is clear that an individual's name is involved, either personally or corporately. However, not all cases are clear. Consider the potential confusion that may result because of foreign names or corporate names that may be interpreted as either a single person or two individuals, as in "HOWARD JOHNSON'S, INC.," "BORG-WARNER, INC.," or "LEE SUE, INC." Depending upon how the name appears on the financing statement, how it is updated in the data base, and how the debtor is named in a search, it is quite possible that exact matches will be missed, and even close possibilities will not appear on the computer's alphabetical listing because there is too great a variance in the spellings.74

Access to the UCC Bureau's records is accomplished by writing to the Bureau or by personally accessing the Bureau's computer data base in Tallahassee. Information searches conducted by the Bureau by rule include only filings that exactly match the name and address requested to be searched, though the Bureau on its

74. The magnitude of the potential difficulty of the problem is reflected by the fact that the UCC Bureau in 1984 filed 251,489 financing statements, for a total of 1,672,810 filings of record, which consists of 2,308,430 debtor's names indexed and 1,745,224 secured party's names indexed. In addition, the Bureau conducted more than 60,000 information search requests in 1984.
own initiative may include similar filings. Generally, the Bureau’s clerks are not likely to constrain the search to the indicated debtor’s address unless the debtor has a very common name, like “JOHN SMITH.” Therefore, the statement of the debtor’s name is critical. While the Bureau may report similarly spelled debtors’ names, there is no guarantee that all similar spellings will be reported. The creativity of the searching party in defining the research parameters and their willingness to pay for the additional spelling variations affect the information reported by the UCC Bureau and the notice that the potential creditor receives.

C. Analysis: Effecting Procedural Reality

The Glasco problem is not a matter of mere identity or similarity between two names. Rather, the case demonstrates the failure to comprehend the intent of the statute and the administrative realities of the filing system. A search by the UCC Bureau, or any diligent creditor, for “GLASCO, INC.” would never have revealed a filing for “ELITE BOATS, DIVISION OF GLASCO INC.” The real issue then is who has the duty to provide or find the required notice.

As dissenting Judge Tuttle makes clear, the Glasco case places the burden of locating a debtor’s filings squarely on the searching party. This is consistent with the duty originally foreseen by those who developed notice filing systems. However, one commentator has suggested that the adoption of the 1972 amendments to Article 9 places the burden on the secured party. This conclusion is grounded upon the new language in U.C.C. section 9-402(7), codified in section 679.402(6), Florida Statutes, which provides that 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 or the names of partners.” The official comment to the Code specifically rejected filings made solely in the debtor’s trade name because such names are “too uncertain and too likely not to be known to the secured party or persons searching the record.”

75. Form UCC-11, FlA. ADMIN. CODE R. 1C-6.09 (1982).
76. Glasco, 642 F.2d at 798.
78. B. Clark, supra note 6, at ¶ 2.9[1] (Supp. 1984).
Even so, the intent of the drafters and the language of the statute is not always conclusive. In *In re McBee*,\(^8\) the Fifth Circuit Court of Appeals held that a filing that utilized only the trade name was not seriously misleading.\(^8\) The court relied upon *Glasco* and found that "the critical inquiry in assessing whether a security interest is perfected is whether a reasonably prudent subsequent creditor would have discovered the prior security interest."\(^8\)

The court in *McBee* recognized that the language of U.C.C. section 9-402(7) makes it sufficient to file under the respective individual or partnership name and to omit the business name. However, the issue for the court in *McBee* was whether the trade name could also be sufficient. The court concluded that "in some cases filing under a trade name would not be seriously misleading and would provide creditors with equal, if not superior, notice of prior security interests."\(^8\) The court came to this conclusion because

> "[a]ny creditor, seeking to ascertain prior encumbrances on the business collateral . . . could assuredly discover pre-existing security interests by virtue of a filing in the name of the [business]. . . . This is not the case of a personal loan; there a creditor might not reasonably be expected to know or search under a business name."\(^8\)

Since the goal of the Code is "to maximize the probability of notice and, simultaneously, to minimize the possibility that a security interest will be defeated by formal and rigid technicalities,"\(^8\) the filing was not seriously misleading.\(^8\)

A different view can be implied from the rules of the Florida UCC Bureau. In 1981, after any change that may have occurred by the enactment of the uniform section in Florida Statutes, section 679.402(6), the Bureau adopted new filing and search forms and established additional filing fees for indexing and searching multi-

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\(^8\) National Bank of Tex. v. West Tex. Wholesale Supply Co. (*In re McBee*), 714 F.2d 1316 (5th Cir. 1983).
\(^8\) *Id.* at 1325. The court applied Texas' adoption of U.C.C. § 9-402(7) (1972), which is identical to FLA. STAT. § 679.402(6) (1983).
\(^8\) *Id.* at 1321.
\(^8\) *Id.*
\(^8\) *Id.* at 1324.
\(^8\) *Id.*
\(^8\) *Id.* at 1325. Professor Clark criticized the Fifth Circuit Court for its decision in *McBee* as compounding the error it created in *Glasco* by interjecting too much uncertainty into the system. B. CLARK, supra note 6, at ¶ 2.9[1] (Supp. 1984); see also Del Duca & Del Duca, *Judicial Highlights*, 17 U.C.C. L.J. 185 (1984).
ple debtors. These actions encourage the submission of both legal names and trade names by providing adequate space and instructions on the forms for entering each party’s name and address. Because of the space limitations on the old forms, it might be argued that the new forms and the multiple debtor and secured party filing fees require the submission of all relevant names, either when originally submitting a financing statement or when requesting a search of the records. However, the provision for additional filing fees may discourage some parties from making the additional submissions.

Another perspective as to who has the duty to give or discover notice is found in In re Tyler. In this case, the bankruptcy court based its decision upon the procedures used at the Ohio Secretary of State’s Office. The debtor in Tyler changed its name from “TRI-STATE MOULDED PLASTICS, INC.” to “TRI-STATE MOLDED PLASTICS, INC.,” but the secured party failed to amend its previously filed financing statements to reflect the new name. The bankruptcy court found it “difficult to conceive of a more insignificant change” and could not find any reason why the secured party “should have had reason to believe refiling was necessary.” Nevertheless, because the filing system utilized by the Ohio UCC Division was “incapable of locating financing statements filed with anything but the precise name of the debtor,” the original filing was found to be “seriously misleading.”

The holding in Tyler is right, but for the wrong reason; the limitation in the Ohio UCC office is not with its system but with its procedures. The Ohio UCC Division maintains a manual filing system of alphabetized documents. This system functions like Florida’s computerized system but without the computer. Under the Ohio UCC Division’s procedures, as under Florida’s, the Division

90. Id. at 807.
91. Id. at 809.
92. Id. at 809-10.
93. Id. at 810.
94. Id. at 809. The court openly admitted that it was unable to reconcile its decision with two similar cases, Corwin v. RCA Corp. (In re Kittyhawk Television Corp.), 516 F.2d 24 (6th Cir. 1975) (change in name from “KITTYHAWK BROADCASTING CORP.” to “KITTYHAWK TELEVISION CORP.” not seriously misleading, applying Ohio law) and White Motor Credit Corp. v. Euclid Nat’l Bank, 409 N.E.2d 1063 (Ohio C.P. 1978), aff’d, No. 40,013 (Ohio Ct. App. April 3, 1980) (change in name from “A.A.A. LIFT TRUCK, INC.” to “A.A.A. LIFT TRUCK LEASING, INC.” not seriously misleading).
reports only filings that exactly match the inquiry. The problem with the decision is that the court in Tyler assumed that the Ohio UCC Division can query the system only by using the exact name requested. But in reality, access to the system is only a matter of office procedure. 95

While the court in Tyler did not completely understand the factual situation in Ohio, the court did attach legal significance to the distinction between a system’s design and its access policies:

[A]n intelligent human looking at [filings] alphabetical[ly] proximate to each other . . . might be expected to investigate further. But if the recording officer’s records are retrievable only by computer matching it may be unfeasible to locate any records except those filed under the absolutely identical name under which the search is made. 96

If there is a legal difference, and it appears that the court believes there should be, this approach has a far reaching effect. If the system is susceptible to manipulation, either by manually examining cards, as in Ohio, or by electronically examining a computer index, as in Florida, it then becomes the duty of the person physically inspecting the data file to locate the names proximate to the inquiry name.

If the notice is going to depend upon who searches the records, then the following factors will influence whether similar filings will appear with the name as queried:

(1) Access Methodology and Style of Name. The access system and the form of the name in the search request. For instance, a computerized system may allow a search for a single word or phrase, regardless of its location in the name record. In this situation, locating the debtor by using part of the name is possible so long as the complete name was originally submitted. For example, a search for “GLASCO” in such a system would have located the filing, since the document was filed as “ELITE BOATS, DIVISION OF GLASCO, INC.” On the other hand, in a manual system or a computer system similar to the one used by the UCC Bureau, the success of the inquiry depends upon the exact order of the

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95. Telephone interview with Janie Knox, Division of UCC, Ohio Secretary of State (Mar. 28, 1985). The Ohio UCC Division is in the process of converting to a computer based system, but its access and search policies will remain unchanged under the new system. Id.

96. Tyler, 23 Bankr. at 809. It should be noted that in some states the computer either matches the exact name or reports no record.
words searched for, as well as how the name appears on the filed document. In this situation, a search of the UCC Bureau's records for "GLASCO" would produce no filings of record because the name of record is "ELITE BOATS, DIVISION OF GLASCO, INC." This system is complicated by the way it handles the name of an individual. If personal names are indexed in the form of last name-first name, as does the UCC Bureau, then foreign names and corporate names that include a person's name may require that the name be searched as indicated, as well as by reversing the order of the names for a second search. This is further complicated if the office separately indexes corporate names and personal names. A single debtor's name in Florida may thus require four different searches of the data base to locate the filing of record, assuming the word order of the search agrees with the filing of record.

(2) *Same Screen.* For computerized offices, whether logically similar filings appear on the same screen as the initial inquiry. For instance, separate filings for "ELITE" and "GLASCO" would not appear on the same index screen, but "MOLDED" or "MOULDED" probably would.

(3) *Duplicate Inquiry Filings.* The number of filings identical to the inquiry name, especially if there are more filings on the debtor than will fill a computer's single index screen. Generally, the more duplicate inquiry filings, the less likely a searcher will be inclined to examine subsequent filings.

(4) *Address Similarity.* The extent to which the street, city, and state are the same for filings similar to the initial inquiry.

(5) *Variety of Similar Filings.* The number of different filings of record that are similar to the inquiry name.

(6) *Duplicate Similar Filings.* The number of additional filings for each name similar to the inquiry name.

(7) *Length of Name.* The longer the name of the debtor and the farther the variance appears from the first letter of the name. For example, "AMERICAN CONSTRUCTION" and "AMERICAN CONTRACTOR" may appear dissimilar, but whether "AMERICAN INTERNATIONAL HOME BUILDING CONSTRUCTION" is the same as "AMERICAN INTERNATIONAL HOME BUILDING CONTRACTOR" is a much closer question due to the greater similarity.

(8) *Type of Variance.* The difference between the inquiry name and subsequent filings. This is especially relevant if the difference is only the form of the word. For example, spelling differences, like "MOULDED" and "MOLDED," or identifying words,
like "INC." and "CORP." may imply a single debtor.

(9) **Workload.** The heavier the workload of the UCC Bureau, the less likely the clerks will be inclined to spend the creative time inquiring into similar filings.

(10) **Availability of Computer Terminals or Filing Cabinets.** When there are a large number of people waiting to conduct their own searches, a private individual may be forced or inclined to be less inquisitive regarding the attempt to locate similar filings. If the courts were to employ an analysis that relied upon the above factors, an even greater element of uncertainty would be interjected into the process. If all UCC clerks or creditors who personally search the files must rely upon their own analytical skills in pursuing possible identical filings, no two searchers are likely to produce the same results. This would occur because the data base is constantly changing and personal knowledge and familiarity with the inquiry name will vary greatly. Consequently, the use of such an approach would continue the case-by-case judicial idealism of *Glasco*, which emphasizes what a searcher should have found instead of what the searcher actually could have found. This would defeat the Code's main purpose of providing uniform, simple notice and would consequently expose creditors to unnecessary risks and lawsuits.

Any test used to determine whether a filing provides notice, and subsequently how liability should be assigned, must be based upon an understanding of the systems and procedures of each filing office and the unique role each actor plays in the process. In Florida, utilizing such an approach would require the following three rules:

(1) **Existing Creditor.** Each secured party of record should have the duty to make each of its filings reflect the correct, unabreviated, and legible name and address of the debtor. Whenever a debtor's name or address is changed, the existing secured party should have the duty to file a UCC-3 amendment, since leaving the filing unchanged will be seriously misleading under the Bureau's procedures. If the creditor has a choice available to it under section 679.402(6), Florida Statutes, the choice should be legislatively eliminated and the creditor should have the duty of filing under each name. The exact corporate name could be located by contact-

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97. Senate Bill 208, passed by the 1985 Florida legislature, may radically affect this element. The bill allows state agencies to provide private individuals electronic access to computer-stored information. Because of the information it contains, the UCC data base is a prime candidate for a flood of requests for electronic access. However, the overall analysis should remain unaffected by the passage of this legislation.
ing the Bureau of Corporate Records in the Department of State.

(2) Potential Creditor. Whenever a creditor is preparing to enter into a transaction, the creditor must determine the debtor’s correct legal name and address and search the records using those names for existing transactions. In a situation involving partners or corporate subsidiaries, the potential creditor must learn each of these names and search for each name whenever it appears that an existing creditor might continue to have a choice under section 679.402(6), Florida Statutes, that there may be a difference due to the address used, or where there is a question as to which is the correct legal name. Corporate names could be found by contacting the Bureau of Corporate Records.

(3) UCC Office. The duty of the UCC Bureau should be to file and index documents exactly as the information appears on the financing statement, provided the document otherwise complies with the statute. Likewise, searches should be for names only as exactly inquired. This requirement would place the primary duty on filers or searchers, thus limiting the liability of the filing officer to his errors in entering and retrieving data. This is the basic procedure followed in Florida and Ohio.

The utilization of these rules would lead to a result contrary to that rendered in Glasco. While recognition of the reality of modern filing systems might appear to destroy much of the flexibility afforded by the Code, in the long run it will result in a more uniformly understood and administratively consistent system. The general ignorance of the operational realities of filing systems and the host of resulting inconsistent decisions must end. By applying the approach detailed above, and ideally, amending the Code to reflect this understanding, any loss in flexibility under the Code will be easily offset by a marked increase in predictability and a new ability to act authoritatively free from judicial second-guessing.

IV. CONCLUSION: THE NEED FOR PROCEDURAL REALITY

The cases reviewed in this Comment reveal several problems with the present UCC notice filing system. First, the systems and policies utilized by a filing officer are designed to fulfill the filing officer’s particularized needs, and unless these requirements are understood, there can be no notice. Second, the judiciary’s failure to consider a filing office’s procedures will result in the establishment of a precedent that adversely affects the rights of other creditors. Finally, the quality of documents submitted for filing is often very poor, which further undermines the quality of notice the sys-
tem can provide. Because of these conflicts, the UCC system has lost its most important attribute: predictability.

The Sel-O-Rak and Glasco decisions exemplify the overall need for reform in several areas. Specifically, the statutes should be amended to eliminate the unnecessary documentary stamp notation requirement; the Code should be amended to more clearly delineate the respective duties of the parties; and finally, the courts should adopt a more realistic approach when examining questions of notice. Ultimately, the Code requires that the duty of creating and maintaining an efficient and useful UCC filing system lies with all of the participants—secured creditors, filing officers, and searchers. The unique role of each must be recognized. In the interim, if creditors would consistently utilize full, legal names, free of abbreviations and typographical errors, a reasonable start will be made toward preventing some of the most glaring errors of record. If the proposals made in this Comment are adopted, the drafters' goal of making the law of commercial transactions uniform and predictable can still be realized.