THE REQUIREMENTS FOR A DESCRIPTION OF THE SECURED COLLATERAL: PAST, PRESENT AND FUTURE

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Chattel mortgages are presently and have always been an integral part of a person's life style in this country. At one time or another, whether he knew it or not, virtually everyone who purchased an automobile, bedroom set, or any other type of personal property on a time-payment plan has been exposed to the requirements of a chattel mortgage. In most states, the requirements for a valid chattel mortgage have been particularized by statutes. These enactments, generally known as recording statutes, have been a part of the laws of the various states since the nineteenth century, and have generally required a valid chattel mortgage to contain a description of the encumbered property.[1] The courts of the various states, because of the length of time these statutes have been on the books, have had sufficient opportunity to perfect the decisions which have construed the provisions of these statutes, particularly with regard to the requisites of the description of the encumbered property. The early statutes in Iowa provided for the recording of chattel mortgages to give notice to existing creditors or subsequent purchasers in order to protect the parties involved in the transaction.[2]

During the century between 1860 and 1960, the courts of Iowa, as well as those of other jurisdictions with similar statutes, had the opportunity to determine the sufficiency of numerous descriptions of secured chattels. As a result, a general rule was formulated which could be used as a guideline by lenders and attorneys commissioned with the duty of preparing chattel mortgages. This rule was intended to withstand the test of an injured third party attempting to show the insufficiency of a chattel mortgage. However, the adoption of the Uniform Commercial Code (UCC) by the legislature of Pennsylvania in 1954 marked the beginning of the end of the prominence of the recording statutes and the almost one hundred years of precedent that they had fostered.[3] In the two decades that have followed that historic step by the Pennsylvania politicians, many states have taken similar steps to reform their chattel mortgage laws. Iowa adopted its own version of the UCC and the unofficial comments thereto, in 1965,[4] and today every state in the United States, except Louisiana, has enacted the UCC in one form or another.

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1. Laws of Iowa §§ 2201, 2202 (1860).
2. *Id.*
3. *In re* Kline, 1 UCC Rep. Serv. 628, 631 (E.D. Pa. 1956).
4. Iowa Code § 554.9101 *et seq.* (1975).

The UCC has changed the thrust of the general rules regarding the sufficiency of the description of encumbered property to be contained in a valid chattel mortgage. The UCC even changed the name of a chattel mortgage to a security agreement in order to attempt to effect a complete break with the traditional statutes. It is the intention of this article to briefly explore the history of the requirement of the description needed in a chattel mortgage under the recording statutes and to review the impact of the UCC upon the description of collateral necessary to ensure a valid security agreement.

I. Description in a Chattel Mortgage: The Past

The questions concerning the sufficiency of a description in a chattel mortgage have rarely arisen between the parties to the transaction; those individuals invariably knew what had been mortgaged. These questions almost always arose when the property was in some way interfered with by a third party,[5] either by purchase or attachment pursuant to a judgment against the mortgagor.

The test applied to determine the sufficiency of a description in a chattel mortgage was more stringent if a third party was involved in the dispute,[6] although there was no question that for any chattel mortgage to be valid it must have contained a description of the encumbered property.[7] The description in such a mortgage would necessarily have to be sufficient to allow identification of the property. This generally meant that the description should include not only a paragraph identifying the property by description, but also a paragraph indicating with as much specificity as possible the location of the property.[8] The inclusion of the location of the property was particularly important because the courts repeatedly refused to recognize any presumption of ownership from the execution of the mortgage itself.[9]

The nature and progress of the economy and the technological advance of a community at any given point seem to dictate what types of property will be subject to a mortgage. The first chattel mortgages in Iowa dealt with farm machinery and livestock;[10] it was not until almost twenty years had elapsed in this

5. Ormsby Bros. v. Nolan, 69 Iowa 130, 28 N.W. 569 (1886); Hayes v. Wilcox, 61 Iowa 732, 17 N.W. 110 (1883); Farmers State Bank v. Garrison, 344 S.W.2d 323 (Mo. 1961); Walker v. Johnson, 108 Mont. 398, 91 P.2d 406 (1939); Ayre v. Hixson, 53 Ore. 19, 98 P. 515 (1908); Robson v. Maloney, 42 Wash. 2d 874, 259 P.2d 836 (1953).

6. National Bank v. O'Brien, 196 Iowa 865, 195 N.W. 611 (1923); Live Stock Nat'l Bank v. Julius, 187 Iowa 748, 174 N.W. 489 (1919); Farmers State Bank v. Garrison, 344 S.W.2d 323 (Mo. 1961).

7. National Bank v. O'Brien, 196 Iowa 865, 195 N.W. 611 (1923); First Mortgage Loan Co. v. Durfee, 193 Iowa 1142, 188 N.W. 777 (1922); Hayes v. Wilcox, 61 Iowa 732, 17 N.W. 110 (1883); Walker v. Johnson, 108 Mont. 398, 91 P.2d 406 (1939); Robson v. Maloney, 42 Wash. 2d 874, 259 P.2d 836 (1953).

8. First Nat'l Bank v. Maxwell, 198 Iowa 813, 200 N.W. 401 (1924); Hayes v. Wilcox, 61 Iowa 732, 17 N.W. 110 (1883); Walker v. Johnson, 108 Mont. 398, 91 P.2d 406 (1939); Dorman v. Crooks State Bank, 55 S.D. 209, 225 N.W. 661 (1929).

9. First Nat'l Bank v. Maxwell, 198 Iowa 813, 200 N.W. 401 (1924); Andregg v. Brunskill, 87 Iowa 351, 54 N.W. 135 (1893).

10. State Bank v. Felt, 99 Iowa 532, 68 N.W. 818 (1896); Gilchrist v. McGhee, 98 Iowa 508, 67 N.W. 392 (1896); Andregg v. Brunskill, 87 Iowa 351, 54 N.W. 135 (1893);

century that problems began to arise with the sufficiency of chattel mortgage descriptions involving automobiles.[11] Iowa, along with many other states, now has a Certificate of Title Law;[12] therefore, automobiles are specifically removed from the impact of the UCC.[13] However, automobiles were often involved in commercial transactions under the old chattel mortgage laws and the cases interpreting those laws reflect the courts' attitude prior to the UCC.

The courts, however, seemed to be equally strict in their demand for an adequate description of the secured property regardless of whether the collateral was livestock or motor vehicles. The often glibly repeated standard stated in the majority of decisions determining the sufficiency of a description of collateral in a chattel mortgage was as follows: "that description which will enable third persons, aided by inquiries which the instrument indicates and directs, to identify the property, is sufficient."[14]

This general standard, which was recited by the courts with a number of minor variations, appears not to have been applied even-handedly to those descriptions which came before the courts on a challenge to the sufficiency of those descriptions. In a few instances, the court honestly expressed the requirement of absolute certainty for the perfection of the mortgage,[15] but for the most part the necessity for absolute certainty was applied under the guise of the previously mentioned standard.

Upon close inspection of the decisions regarding descriptions challenged for their sufficiency, it becomes clear that the courts were demanding something more than a general description from which the secured property could be located when aided by inquiries suggested by the instrument itself.[16] This strict implementation by the courts of the standard which had evolved made it extremely difficult for a mortgagee to have confidence in his security and it resulted in the loss of security for lenders who had previously believed themselves safe.

Ormsby Bros. v. Nolan, 69 Iowa 130, 28 N.W. 569 (1886); Hayes v. Wilcox, 61 Iowa 732, 17 N.W. 110 (1883).

11. First Mortgage Loan Co. v. Durfee, 193 Iowa 1142, 188 N.W. 777 (1922); Iowa Sav. Bank v. Graham, 192 Iowa 96, 181 N.W. 771 (1921); Iowa Auto. Supply Co. v. Tapley, 186 Iowa 1341, 171 N.W. 710 (1919); Commercial Sav. Bank v. Brooklyn Lumber & Grain Co., 178 Iowa 1206, 160 N.W. 817 (1917).

12. Iowa Code §§ 321.17-.52 (1975).

13. No description is necessary to perfect the security interest since no filing is necessary to perfect such a security interest. *See* Iowa Code § 554.9302 (1975).

14. Gilchrist v. McGhee, 98 Iowa 508, 509, 67 N.W. 392 (1896). *See also* State Bank v. Felt, 99 Iowa 532, 68 N.W. 818 (1896); Childress v. First State Bank, 264 S.W. 350 (Tex. 1924); Robson v. Maloney, 42 Wash. 2d 874, 259 P.2d 836 (1953). This applied only to those situations where the third party had intervened. As was stated earlier, disputes between mortgagor and mortgagee were rare; therefore, are not included within the purview of this article.

15. Panama Sav. Bank v. De Cou, 209 Iowa 450, 228 N.W. 35 (1929); Sperry, Watt & Garver v. Clarke, 76 Iowa 503, 41 N.W. 203 (1889).

16. Iowa Auto. Supply Co. v. Tapley, 186 Iowa 1341, 171 N.W. 710 (1919); State Bank v. Felt, 99 Iowa 532, 68 N.W. 818 (1896); Andregg v. Brunskill, 87 Iowa 351, 54 N.W. 135 (1893); Piano Mfg. Co. v. Griffith, 75 Iowa 102, 39 N.W. 214 (1888); Ormsby Bros. v. Nolan, 69 Iowa 130, 28 N.W. 569 (1886); Hayes v. Wilcox, 61 Iowa 732, 17 N.W. 110 (1883); Walker v. Johnson, 108 Mont. 398, 91 P.2d 406 (1939).

Also, it cut down upon the availability of lenders willing to take a chance upon the validity of a chattel mortgage.

This attitude of the appellate judiciary became quite clear when automobiles became a more frequently used type of collateral. The increasing use of cars as security expanded their role in the litigation concerning the sufficiency of the description of collateral required in chattel mortgages. The continued strictness with which the courts applied the previously-mentioned standard gave rise to what is now known as the "serial number" test. In many cases, a one-number variance in the serial number contained in the description of the secured collateral from the actual number on the engine resulted in a determination that the chattel mortgage had no validity against a third party.[17] Of course, the serial number problem was not the only question raised when automobiles were to be used as collateral in a commercial transaction.[18] It was, however, this serial number test which played a major part in the impetus behind the nationwide trend of acceptance and subsequent adoption of the UCC.[19]

Another area where the description of the collateral played an important and often disputed role was when the description in the mortgage was a product of the debtor's desire to encumber all of his property. The question facing the parties to the chattel mortgage was whether to list individually each piece of property to be secured or merely to state that all of the property of a given type was to be the collateral for the loan. The listing of each piece or item specifically, in addition to requiring more paperwork for the parties to the transaction, presented the distinct possibility of an omission, from the list, of a piece of property that the borrower and lender probably intended to be secured.[20] This was particularly true if there were a number of small items involved in the transaction or if the different pieces of collateral were difficult to identify on an individual basis.

The courts, in deciding these cases, seem to have taken the position that a description which by its own terms covered all of the borrower's property was not sufficient to adequately secure the indebtedness of the borrower.[21] Of course, the decisions of the various courts are not without contradiction. It is apparent, for instance, in some of the earlier decisions that if a description of collateral indicated that the mortgage covered all of a given kind of property of a debtor and also gave the proper location of the secured property, the mortgage would be valid and the security of the lender preserved.[22] In *Dorman*

17. First Mortgage Loan Co. v. Durfee, 193 Iowa 1142, 188 N.W. 777 (1922); Commercial Sav. Bank v. Brooklyn Lumber & Grain Co., 178 Iowa 1206, 160 N.W. 817 (1917).

18. Iowa Sav. Bank v. Graham, 192 Iowa 96, 181 N.W. 771 (1921); Iowa Auto. Supply Co. v. Tapley, 186 Iowa 1341, 171 N.W. 710 (1919).

19. IOWA CODE ANN. § 554.9402, Iowa Official Comment (1967).

20. Robson v. Maloney, 42 Wash. 2d 874, 259 P.2d 836 (1953).

21. Hall v. Glass, 123 Cal. 500, 56 P. 336 (1899); Farmers' & Merchants' Bank v. Stockdale, 121 Iowa 748, 96 N.W. 732 (1903); Sperry, Watt & Garver v. Clarke, 76 Iowa 503, 41 N.W. 203 (1889).

22. Dorman v. Crooks State Bank, 55 S.D. 209, 225 N.W. 661 (1929); Childress v. First State Bank, 264 S.W. 350 (Tex. 1924).

v. Crooks State Bank,[23] the South Dakota court was faced with two descriptions of secured property, one of which included a location of the property, while the location of the property purportedly mortgaged by the second instrument was omitted. The court held that the first description which contained the location of the property was sufficient to perfect the chattel mortgage. The other description was held to be too indefinite to give the creditor any interest in the property described.

Descriptions of secured property which described the secured collateral in less than exact terms have always been subject to the whim of the courts. If the description of the collateral was declared to be insufficient, creditors who previously thought they were secured found themselves not only without security, but also often with no hope of repayment of the loan by a bankrupt debtor. The uncertainties of the judicial system, as well as the strictness with which the courts dealt with chattel mortgages, were often deterrents to the extension of credit. The precedents, as they were compiled through the years, made it more and more difficult to predict the sufficiency of a description and consequently, the sufficiency of the chattel mortgage.

The legislators of various states were, in essence, forced to respond to this trend; in 1954, Pennsylvania was the first state to enact the UCC.[24] This was the first step in bringing chattel mortgages and the personal property loan business into accord with modern thinking.

II. Description Under the UCC: The Present

Since the advent of the UCC and its adoption by all the states except Louisiana, the perfection of a security interest in personal property has been simplified. A proper financing statement (or a copy of the security agreement filed in its place) must contain a description of the secured property.[25] This is virtually a universal requirement for the perfection of such an interest.

The description requirement of UCC section 9-402 is explained by section 9-110[26] which states that "*any* description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described."[27] The requirement of a description in the financing statement is for evidentiary purposes.[28] A description in the financing statement is sufficient if it *makes possible* the identification of the thing described.[29] It is apparent from the language of the court in *United States v. First National Bank*,[30] that something less than a detailed description of the property to be covered is suffi-

23. Dorman v. Crooks State Bank, 55 S.D. 209, 225 N.W. 661 (1929).
24. The UCC was first adopted by Pennsylvania in 1954, and Iowa adopted its own version in 1965.
25. Iowa Code § 554.9402 (1975).
26. Iowa Code §§ 554.9110, 554.9402 (1975).
27. Iowa Code § 554.9110 (1975) (emphasis added).
28. Iowa Code Ann. § 554.9203, Official Comment 3 (1967).
29. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. 1973).
30. *Id.*

fient to properly perfect a security interest or chattel mortgage. The UCC specifically, by its own comments, adopts a system of "notice filing."[31] This system rejects the line of reasoning, previously discussed, which dominated earlier chattel mortgage cases and which declared descriptions insufficient unless they were of the most exact and detailed nature—the so-called "serial number" test.[32] The most that is required of the description of the collateral in a financing statement under the UCC is that it be sufficiently descriptive to put a prospective creditor or purchaser on notice that he should make further inquiry to determine if the specific property in which he is interested is already encumbered.[33]

Generally, when litigation has erupted from a commercial transaction involving the description of secured property, the courts have permitted and approved extremely broad language.[34] This tendency of the courts toward liberal construction of the description requirements of a proper financing statement coincides with the clearly stated underlying purposes and policies of the UCC. They are: (a) to simplify, clarify, and modernize the law governing commercial transactions; (b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and (c) to make uniform the law among the various jurisdictions in order to effectively promote the underlying purposes and policies of the act.[35] The UCC must be liberally construed and applied to effectuate the clear purpose of its enactment.

The filing requirements of the UCC were designed and implemented by the various states not only to liberalize the steps necessary to perfect a security interest but also to give notice that a chattel *might* be covered by a security agreement which would require further investigation to discover exactly what property might be secured.[36] If there is any question in the mind of a prospective creditor following his inspection of the filed documents as to which property is actually encumbered, the properly filed financing statement has successfully done its job. Furthermore, the Code provides a procedure which may be followed by the debtor to acquire, for the benefit of a prospective lender, a detailed description of the secured property.[37] This serves as a means of protection for the debtor who has more than one source of credit, and it clearly reinforces the idea that the description contained in the financing statement need not be specific; if it is sufficient to direct inquiry, it is sufficient to perfect the creditor's security in the property.[38]

There have been numerous cases under the UCC dealing with the sufficiency of collateral descriptions contained in financing statements. These cases often arise when a debtor is attempting to encumber "all" of his personalty, "all"

31. Iowa Code Ann. § 554.9402, Iowa Official Comment (1967).
32. Iowa Code Ann. § 554.9110, Iowa Official Comment (1967).
33. *In re* Bloomingdale Milling Co., 4 UCC Rep. Serv. 256 (W.D. Mich. 1966).
34. 44 Ref. J. 102, 105 (1970).
35. Iowa Code § 554.1102(1), (2) (1975).
36. *In re* Stephens, 8 UCC Rep. Serv. 597 (W.D. Okla. 1970).
37. Iowa Code § 554.9208 (1975).
38. First State Bank v. Waychus, 183 N.W.2d 728 (Iowa 1971).

of a specific kind of personalty or when a general category is listed as secured with no further enumeration of the items included in that category. Perhaps the broadest descriptions that have been upheld by the courts are "all personal property of the debtor, whether now owned or hereafter acquired"[39] and "all tangible, personal property now owned or which may hereafter be acquired by debtor of every nature and description and wherever located."[40]

Most of the decisions emerge during bankruptcy proceedings when the trustee is attempting to free some of the assets of the bankrupt. The courts have dealt with and upheld as sufficient other non-specific descriptions, such as "passenger automobiles",[41] "company-owned inventory of Stephens Tire Co.",[42] "equipment",[43] "all furniture, fixtures, and equipment",[44] "consumer goods",[45] "motor vehicles",[46] "construction equipment, motor vehicles",[47] "inventory",[48] and "accounts receivable."[49]

The descriptions just mentioned, each of which was upheld as being a sufficient description of the property involved, are clearly adequate to fulfill the purpose of the description of the collateral as perceived by the drafters of UCC section 9-110. This purpose is only to *evidence* the agreement of the parties and, therefore, *make possible* the identification of the property described.[50] Chief Judge Mathis, speaking for a unanimous court in *First National Bank* stated: "However, we are not convinced that the requirement in section 9-203, *supra*, that the collateral be described, is a device for minimizing the amount of collateral a creditor can secure. That may be a laudable goal, but it is not encompassed by § 9-110."[51]

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39. *In re* Parsons College, Bankruptcy No. 0-24-73 (S.D. Iowa, filed Apr. 16, 1974) (Corp. Reorg. Rep. 1, Oct. 10, 1975).

40. *In re* JCM Cooperative, Inc., 8 UCC REP. SERV. 247, 248 (W.D. Mich. 1970) (sufficient to perfect in bank account as proceeds from sale of equipment).

41. *In re* Stephens, 8 UCC REP. SERV. 597 (W.D. Okla. 1970) (sufficient to perfect in a 1968 Chevrolet, although debtor also owned another car).

42. Security Tire & Rubber Co. v. Hlass, 246 Ark. 1113, 441 S.W.2d 91 (1969) (sufficient to perfect in tires and tubes on debtor's property).

43. *In re* Bloomingdale Milling Co., 4 UCC REP. SERV. 256 (W.D. Mich. 1966) (sufficient to perfect in after acquired truck); *In re* Bowser, 1 UCC REP. SERV. 626 (W.D. Pa. 1961) (sufficient to perfect in shelves, cash registers, and check-out systems of debtor when attached schedule omitted); Goodall Rubber Co. v. Mews Ready Mix Corp., 7 UCC REP. SERV. 1358 (Wis. Cir. Ct. 1970) (sufficient to perfect in curb and gutter forms).

44. United States v. Antenna Systems, Inc., 251 F. Supp. 1013 (D.N.H. 1966) (sufficient to perfect in all furniture, fixtures, and equipment of debtor).

45. *In re* Trumble, 5 UCC REP. SERV. 543 (W.D. Mich. 1968) (sufficient to perfect in a .22-caliber rifle, 16-gauge shotgun, and 303 Winchester rifle).

46. *In re* Kline, 1 UCC REP. SERV. 628 (E.D. Pa. 1956) (sufficient to perfect in after acquired automobile under a floor-plan arrangement).

47. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972) (sufficient to perfect a security interest in "all goods" of debtor).

48. Evans Prod. Co. v. Jorgensen, 245 Ore. 362, 421 P.2d 978 (1966) (sufficient to perfect in after acquired veneer); Matthews v. Arctic Tire, Inc., 106 R.I. 691, 262 A.2d 831 (1970) (perfection in inventory and proceeds sufficient for interest in resulting accounts).

49. *In re* Varney Wood Prod., Inc., 458 F.2d 435 (4th Cir. 1972) (sufficient to perfect security interest in proceeds of a contract); *In re* Platt, 257 F. Supp. 478 (E.D. Pa. 1966).

50. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. 1973).

51. *Id.* at 947.

However, the perfection of security interests in collateral attached to real estate is more difficult. The description "crops" has been held to be a sufficient description, where all crops grown on the land are collateral.[52] In addition, when securing crops as collateral, the description in the financing statement must contain a description of the land on which the crops are to be grown.[53] Similarly, when the secured collateral is fixtures on real estate, a description of that real estate in the financing statement is necessary, if the secured party is to be protected.[54] The official comment to section 9-110 specifies that the reasonable identification test should be applied where a description of real estate is required, just as it does when a description of collateral is required in a financing statement.[55] All that is necessary is that the description be sufficient to put a third party on notice.

The litigation produced by the description requirements of the UCC has not produced uniform decisions from the courts. The United States Court of Appeals for the Tenth Circuit recently had an opportunity to consider the sufficiency of a description which denoted the collateral as "all personal property." The court in *In re Fuqua*,[56] determined this description to be too vague to perfect the interest of the creditor.

The court, in applying the Kansas statute[57] reached the conclusion that: "when the Kansas Legislature said in K.S.A. 84-9-110 that, 'any description of personal property . . . is sufficient,' it must have intended that some description was required to elaborate on the naked phrase 'all personal property.' "[58] Although apparently not relied upon by the court, there was, in that case, an attempt by the secured creditor to overreach the terms of the security agreement by filing a financing statement that contained a broader description of the secured collateral than that contained in the original security agreement.[59] Such attempted overreaching by the secured party is not looked upon with favor by the courts.[60] It is easier to understand that when a court is faced with an overreaching creditor, it might readily conclude that a description such as the one contained in the *Fuqua* financing statement is too vague. The Eighth Circuit, when faced with a creditor not attempting to overreach the security agreement,

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52. United States v. Big Z Warehouse, 311 F. Supp. 283 (S.D. Ga. 1970).
53. IOWA CODE § 554.9402(3) (1975).
54. IOWA CODE § 554.9402(4) (1975).
55. IOWA CODE ANN. § 554.9110, Official Comment (1967).
56. *In re* Fuqua, 330 F. Supp. 1050 (D. Kan. 1971), *aff'd*, 461 F.2d 1186 (10th Cir. 1972).
57. KAN. STAT. ANN. §§ 84-9-110, 84-9-402(1) (1965). These provisions, comprising a portion of Article 9 of the UCC as adopted by Kansas, are identical with the corresponding sections of the *Iowa Code*. IOWA CODE §§ 554.9110, 554.9402(1) (1975).
58. *In re* Fuqua, 461 F.2d 1186, 1188 (10th Cir. 1972).
59. The financing statement in that case described the secured collateral as "all personal property." However, the security agreement between the debtor and creditor actually granted a security interest only in "all livestock, feed, and machinery, to include, but not limited to the following: 26 Holstein Cows and Ayshires, 3 Heifers and Calves, 2 Dry Cows, 12 Calves, and DeLaval Milking Equipment." *Id.* at 1187.
60. *In re* JCM Cooperative, Inc., 8 UCC REP. SERV. 247 (W.D. Mich. 1970).

rejected the reasoning of the Tenth Circuit and arrived at what seems to clearly be the better decision.[61]

If a debtor wishes to give a security interest in everything he owns or in all of a particular type of personalty, the creditor should not be required to itemize each piece of collateral that is secured. This would seem to paralyze the creditor and, in some instances, reduce the chances of a debtor obtaining a viable and continuing source of credit. There is certainly nothing in the Code which prevents a debtor from securing everything he owns or securing all of a particular type of personalty, whether his actions are prudent or not.[62] In fact, at least one commentator has expressed the belief that no other detailed description could be any more accurate than "all household goods", "all equipment", or "all inventory."[63]

The courts' dissatisfaction with any attempted overreaching can again be explained by examining the purpose of the financing statement and the security agreement. The financing statement is to evidence an encumbrance on the personal property of a debtor. The security agreement is the agreement which places that encumbrance on the debtor's property. The financing statement may not replace nor amend the security agreement. If it attempts to do so by expanding the secured collateral, it will be declared insufficient. It seems only logical that, if the purpose of the financing statement is to put third persons on notice of an encumbrance, it should be declared insufficient if it does in fact fail to do so by overreaching.

The Code provides that simple notice to third parties is the purpose of the financing statement and that if such notice is given by the description of the collateral, the security interest is perfected. Perfect accuracy is not required so long as there is enough to put a prudent examiner on further inquiry.[64] The Supreme Court of Iowa addressed this issue in *First State Bank v. Waychus.* The court stated that if a financing statement is sufficient to direct inquiry, it is sufficient to impart constructive notice; therefore, it is sufficient to perfect the security interest of the creditor.[65] In one of the earliest decisions under the UCC, it was held that if the description employed in a financing statement is sufficient to give direction to a course of inquiry concerning the property covered by the security agreement, the party concerned will be charged with notice of all facts ascertainable by pursuing such inquiry.[66] Most courts are following the liberal lead of the early decisions. In some cases, if the description of the collateral in the financing statement uses common terms that will alert all searchers, thereby providing the notice required under the act which cannot mislead pros-

61. United States v. First Nat'l Bank, 470 F.2d 944 (8th Cir. 1973).
62. James Talcott, Inc. v. Franklin Nat'l Bank, 292 Minn. 277, 194 N.W.2d 775 (1972).
63. R. Henson, Secured Transactions Under the Uniform Commercial Code 44 (1973).
64. *In re* Stephens, 8 UCC Rep. Serv. 597 (W.D. Okla. 1970).
65. First State Bank v. Waychus, 183 N.W.2d 728 (Iowa 1971).
66. *In re* Kline, 1 UCC Rep. Serv. 628 (E.D. Pa. 1956).

pective purchasers or creditors, it will be deemed to have perfected the security interest of the creditor involved in the transaction.[67] This trend toward liberal implementation of the UCC, although consistent with the interest of the legislatures of the states adopting the Code, conflicts with precedents under the old recording statutes.

The provisions of the Code and the decisions of the courts involved in this type of litigation make it clear that the necessities and requirements of a description of collateral in a financing statement have changed considerably in recent years. The UCC was designed to be treated differently from the old recording statutes. There is no longer the need to be as precise in the description of collateral in order to perfect the creditor's security interest. The courts have reinforced their position in this matter by stating on more than one occasion that the previous, more restrictive chattel mortgage laws, in the form of either judicial decisions or legislative acts, do not control the more modern disputes, nor are they even present authority for controversies arising under the UCC.[68]

III. The Future

It is apparent that the UCC evolved and was enacted in most of the states because the previous laws dealing with chattel mortgages were being applied unevenly and this often resulted in inequitable decisions. The strictness of the previous chattel mortgage laws worked to the benefit of no one. There was certainly no benefit accruing to the debtor who was unable to obtain credit from an intimidated lender nor to the creditor who was adjudicated to be unsecured because of a misplaced digit in a serial number.

The courts have properly assumed that the description requirement of the UCC is to be interpreted and applied liberally in order to implement and facilitate the extension of credit in commercial transactions. In the future, the requirements of a sufficient description of the secured collateral should continue to be liberally construed and the trend toward upholding virtually any description, except that of an overreaching creditor, should be maintained. It is this trend which benefits both the creditor and debtor and which best serves the intentions of the legislatures of the states which have adopted the UCC.

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67. *In re* Trumble, 5 UCC Rep. Serv. 543 (W.D. Mich. 1968).

68. *In re* Varney Wood Prod., Inc., 458 F.2d 435 (4th Cir. 1972); First State Bank v. Waychus, 183 N.W.2d 728 (Iowa 1971); Evans Prod. Co. v. Jorgensen, 245 Ore. 362, 421 P.2d 978 (1966).