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Article 9 of Secured Transactions: A Forte for the Informed Creditor

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ARTICLE 9 SECURED TRANSACTIONS: A FORTE FOR THE INFORMED CREDITOR

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On January 1, 1967, the Uniform Commercial Code becomes effective in the State of Florida.[1] As of that date such terms as "chattel mortgage," "conditional bill of sale or retain title agreement," "consignments," "trust receipts," "floor planning," "pledge and accounts receivable financing," and the body of law interpreting such terms, become obsolete, and a new concept replaces them. This new concept is embodied in Article 9 of the Uniform Commercial Code — Secured Transactions.

This discussion will attempt to familiarize the reader with the organization and scope of this new concept in personal property financing; will provide guidelines and consider what collateral is; will attempt to show how to create and perfect a security interest; and will attempt to show what are the rights of the parties, and third parties, on default.

There are seven other operative articles of the Code and the Florida practitioner must be familiar with them, but these articles in essence codify and to some extent modify the prior Uniform Acts of Sales,[2] Negotiable Instruments,[3] Warehouse Receipts,[4] et cetera. Although article 9 contains some legal concepts familiar to the Florida attorney, it contains much that will be novel and for a time strange.

Article 9 is made up of five divisions or parts entitled: (1) Short Title, Applicability and Definitions; (2) Validity of Security Agreement and Rights of Parties Thereto; (3) Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority; (4) Filing; and (5) Default.

The Florida Legislature in numbering the various sections of the Uniform Commercial Code has repeated the article number of each section so that there can be no doubt about the article being cited, thus: section 679.9-401 deals with Filing under article 9, Secured Transactions, of the Uniform Commercial Code.[5]

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1. FLA. STAT. §680.10-101 (1) (1965).
2. Article 2 is the UNIFORM SALES ACT.
3. Article 3 is the UNIFORM NEGOTIABLE RECEIPTS ACT.
4. Article 7 is partly the UNIFORM WAREHOUSE RECEIPTS ACT.
5. Chapters 671-80 of the FLORIDA STATUTES (1965) are the new Uniform Commercial Code. The numbering may be unfortunate and could result in some confusion in that there are no Florida Statutes §§679.1-.8.

NEW TERMINOLOGY

The most startling innovation is the creation of a new concept of a single security instrument, styled "security interest." This single device replaces all other types of personal property security. The pledge becomes a security interest in collateral in the possession of the secured party;[6] the chattel mortgage becomes a security interest[7] in goods;[8] trust receipt becomes a purchase money security interest[9] in inventory[10] and the conditional sale becomes a purchase money security interest in goods.[11] Transfers or assignments of these obsolete legal concepts become transfers or assignments of chattel paper.[12]

The Florida practicing attorney must also become familiar with a new concept of security device, employing such terms as "secured party," "debtor," "collateral," and "security interest." Under the Uniform Commercial Code security party is defined as: "[A] lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold."[13] Debtor is "the person who owes payment or other performance of the obligation secured, *whether or not he owns or has rights in the collateral*, and includes the seller of accounts, contract rights or chattel paper."[14] Collateral is defined as "the property subject to a security interest, including accounts, contract rights and chattel paper which have been sold."[15] and security interest means "an interest in personal property or fixtures which secures payment or performance of an obligation."[16]

COLLATERAL

Article 9, chapter 679 of Florida Statutes, does *not* apply to railroad rolling stock or any security interest subject to any "statute of the United States . . . to the extent that such statute governs the rights

6. FLA. STAT. §679.9-302 (1) (a) (1965).
7. FLA. STAT. §671.1-201 (37) (1965).
8. FLA. STAT. §§679.9-105 (1) (f), -109 (1965).
9. FLA. STAT. §679.9-107 (1965).
10. FLA. STAT. §679.9-109 (4) (1965).
11. FLA. STAT. §§679.9-105 (f), -107 (1965). See Hopkins v. West Publishing Co., 106 Ga. App. 596, 127 S.E.2d 849 (1962).
12. FLA. STAT. §679.9-105 (1) (b) (1965).
13. FLA. STAT. §679.9-105 (1) (i) (1965).
14. FLA. STAT. §679.9-105 (1) (d) (1965). (Emphasis added.)
15. FLA. STAT. §679.9-105 (1) (c) (1965).
16. FLA. STAT. §671.1-201 (37) (1965). The principal test in determining whether a transaction comes within this article is whether the parties intended it to have effect as security. Bruce Lincoln-Mercury, Inc. v. Universal C.I.T. Credit Corp., 325 F.2d 2 (3d Cir. 1963).

of parties to and third parties affected by transactions in particular types of property." It does *not* apply to a transfer of any claim arising out of tort; any deposit, savings, pass book or like account maintained with a bank, savings and loan association, credit union, or like organization. It also does *not* apply to an interest or claim in or under any policy of insurance or to a claim for wages, salary, or other compensation of an employee. It does *not* apply to the sale of accounts, contract rights, or chattel paper if it is part of a sale of the entire business; or to their assignment if for the purpose of collection only or if the assignee is to do the performance of the contract; or any right represented by a judgment; or to the right of setoff. It does *not* apply to a landlord's lien, to liens on real property except as provided in section 679.9-313 dealing in fixtures or mechanic's liens except it may establish their priority.[17]

Although article 9, chapter 679 of Florida Statutes, 1965, applies generally to security interests arising out of sales under article 2, chapter 672 of Florida Statutes, 1965, it shall *not* apply so long as the debtor does not have or does not lawfully obtain possession of the goods and: (1) no security agreement is necessary to make the security interest enforceable (2) no filing is required to perfect the security interest; and (3) the rights of the secured party on default by the debtor are governed by the chapter on sales (chapter 672).[18]

Article 9 specifically does *not* repeal chapters 516, Small Loan Business; 519, Discount Consumer Financing; or 520, Retail Installment Sales; or any Florida Statutes relating to usury and any such conflicting statute controls.[19]

All other security interests in personal property and fixtures and all personal property security devices are controlled by article 9 even though the obligation is itself secured by a transaction or interest to which article 9 does not apply.[20]

Helpfully, article 9 contains a rather detailed series of definitions of collateral, which become important when priority determinations and conflict of laws problems arise.[21] Under the Code unless the context otherwise requires[22] account means any right to payment for goods sold or leased by an instrument or chattel paper.[23] A contract right is any right to payment under a contract not yet earned by

17. See FLA. STAT. §§679.9-104 (1)-(11) (1965).
18. FLA. STAT. §679.9-113 (1965).
19. FLA. STAT. §§679.9-201, 203 (2) (1965).
20. FLA. STAT. §679.9-102 (1965).
21. See FLA. STAT. §679.9-103 (1965), which contains a new set of conflict of law rules applicable to secured transactions under the Uniform Commercial Code.
22. FLA. STAT. §679.9-105 (1965).
23. FLA. STAT. §679.9-106 (1965).

performance and not evidenced by an instrument or chattel paper.[24] General intangibles include any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents, and instruments.[25] Documents include bills of lading, dock warrants, warehouse receipts or orders for delivery of goods, and also any other document of title, which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers.[26] An instrument is a negotiable instrument (as defined in section 673.3-104) or a security (as defined in section 678.8-102) or any other writing that evidences a right to the payment of money and is not itself a security agreement or lease and is of a type that is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment.[27] Chattel paper means a writing or writings that evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced by both such a security agreement or a lease and by an instrument or a series of instruments the group of writings together constitutes chattel paper.[28] Proceeds includes whatever is received when collateral is sold, exchanged, collected, or otherwise disposed of by the debtor. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash proceeds and all other proceeds are noncash proceeds.[29] A purchase money security interest is a security interest to the extent that it is taken or retained by the seller of the collateral to secure all or part of its price, or taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.[30]

It is important to note and remember the differences in these definitions. Accounts are distinguished from contract rights because an account is earned while an contract right is not and neither is evidenced by chattel paper. Although the words "document" and "instrument" have familiar precode meanings, "chattel paper" is a new term and can have several meanings. Chattel paper can be evidence of a security in another type of collateral such as goods and at

24. *Ibid.*

25. FLA. STAT. §679.9-106 (1965). Note that this is a catch-all provision and would include such intangible items as patents, copyrights, trademarks, and probably goodwill.

26. FLA. STAT. §§671.1-201 (15), 679.9-105 (e) (1965).

27. FLA. STAT. §679.9-105 (g) (1965).

28. FLA. STAT. §679.9-105 (b) (1965).

29. FLA. STAT. §679.9-306 (1) (1965).

30. FLA. STAT. §679.9-107 (1965).

the same time it can itself constitute collateral. Under article 9, the assignment or transfer of a note or a conditional bill of sale by an automobile dealer to a bank or finance company is generally a transfer of chattel paper.

Goods includes all things that are movable at the time the security interest attaches or that are fixtures,[31] but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights, and other things in action. Goods also includes the unborn young of animals and growing crops.[32] Goods are broken down into four classes that become important for filing purposes. Items are: consumer goods if they are used or bought for use primarily for personal, family, or household purposes;[33] farm products if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their manufactured states (such as ginned cotton, wool clip, maple syrup, milk, and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations. If goods are farm products they are neither equipment nor inventory.[34] Inventory includes goods that "are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment."[35] Goods are equipment if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products, or consumer goods.[36]

It is important to recognize that the use of the goods determines its classification. It is possible for an item of collateral to be classified differently at different times. For example, a piano would be inventory for a retailer who has had it in his store for sale, it would be equipment for the entertainer who purchases it for use in his performance, and it would be consumer goods for one who purchases it for personal or family purposes. If the entertainer took the piano

31. See FLA. STAT. §679.9-313 (1965).

32. FLA. STAT. §679.9-105 (f) (1965).

33. FLA. STAT. §679.9-109 (1) (1965). See, *e.g.*, Atlas Credit Corp. v. Dolbow, 193 Pa. Super. 649, 165 A.2d 704 (1961); U.G.I. v. McFalls, 18 D.C. 2d 264 (Pa. 1959).

34. FLA. STAT. §679.9-109 (3) (1965).

35. FLA. STAT. §679.9-109 (4) (1965).

36. FLA. STAT. §679.9-109 (2) (1965). Note this is another catch-all provision. See United States v. Baptist Golden Age Home, 226 F. Supp. 892 (W.D. Ark. 1964).

home for personal use, it would probably retain its classification as equipment because the primary use controls.

Proceeds are derivative collateral that arise upon the sale of collateral or proceeds. Thus accounts and chattel paper taken back or received upon the sale of inventory are proceeds. In the event these proceeds are resold, assigned, or discounted what is received is proceeds also. Therefore, a secured party may exert a right to the proceeds derived from proceeds. Also, such accounts and chattel paper may be original collateral rather than proceeds and the secured party may exert a security interest against such collateral rather than against the proceeds upon the disposition of the collateral.[37]

If this were not confusing enough, the Uniform Commercial Code introduces a new animal into the Florida legal zoo, familiarly called "the floating lien."[38] A debtor in the security agreement may agree that the lender or secured party will be secured by property that the debtor will acquire in the future. A security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.[39] Such a security agreement then creates a floating lien, which floats over the raw materials to the finished product to proceeds to after-acquired property.

Thus, a floating lien held by a bank on goods and proceeds of a ladies swimsuit manufacturer would attach to material purchased to make the bathing suits and float over to the suits (finished goods), then to the accounts receivable (proceeds) and to new materials (after-acquired property) to make more swimsuits. *Benedict v. Ratner*,[40] which held that a secured creditor lost his position when he permitted a debtor to retain control over the proceeds of the sale of the collateral security, has been legislatively overruled and the debtor is now permitted to retain control over, dispose of, or commingle the collateral subject to this floating lien.[41]

Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to a commitment.[42] Collateral, then, includes almost every form of personal property, both tangible and intangible. The

37. FLA. STAT. §679.9-306 (1) (1965). See Lincoln Bank & Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961) for a discussion of this concept.

38. The floating lien was not in existence prior to the Code and may not exist in bankruptcy.

39. FLA. STAT. §679.9-204 (3) (1965). See Industrial Packing Prods. Co. v. Fort Pitt Packaging Int'l, 399 Pa. 643, 161 A.2d 19 (1960). Except when the property to be acquired consists of certain crops and consumer goods. See FLA. STAT. §679.9-204 (4) (a), (b) (1965).

40. 268 U.S. 353 (1925).

41. FLA. STAT. §679.9-205 (1965). See Erb v. Stoner, 19 Pa. D. & C.2d 25 (C.P. 1959).

42. FLA. STAT. §679.9-204 (5) (1965).

exclusions to this broad definition are set forth with particularity in the article. Therefore, collateral may consist of the debtor's property presently owned, that to be acquired in the future, and proceeds from the sale of either or both.

THE CREATION OF A SECURITY INTEREST

In order to create a security interest, the debtor and the secured party must reduce their agreement to writing, unless the collateral is in the possession of the secured party. The agreement must contain a description of the collateral,[43] but any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.[44] If the security agreement covers crops or oil, gas, or minerals to be extracted; or timber to be cut it must contain a description of the land concerned.[45] In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of *any* character.[46] Although the security agreement need be signed only by the debtor, if it is to be used as the document that it to be filed to perfect the security interest, that is, the financing statement,[47] it must be signed by both the debtor and the secured party. The document must include the mailing address of the debtor and an address of the secured party from which information concerning the security interest may be obtained, plus a description of the collateral, indicating the types or describing the items.[48]

A security interest is not created until there is an agreement, value is given by the secured party, and the debtor has or acquires rights in the collateral.[49] Only when these three events occur, and they need not occur in the above order, does a security interest come into existence.[50] When these three events occur, the security interest attaches and the security interest is created.

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43. FLA. STAT. §679.9-203 (1) (a) (b) (1965).

44. FLA. STAT. §679.9-110 (1965). Query: What is reasonable identification? See *In re* Kowalski, 202 F. Supp. 897 (D.C. Conn. 1962); *In re* Drane, 202 F. Supp. 221 (W.D. Ky. 1962); Yancey Batos Co. v. Deho, Inc., 108 Ga. App. 875, 134 S.E.2d 828 (1964); National Dime Bank of Shamdkin v. Cleveland Bros., 20 Pa. D. & C.2d 511 (C.P. 1959); Barnesboro Fin. Co. v. Thompson, 85 Pa. D. & C. 522 (C.P. 1949).

45. FLA. STAT. §679.9-203 (1) (b) (1965).

46. *Ibid.* (Emphasis added.)

47. See text accompanying notes 71-91 *infra* for discussion of financial statements.

48. FLA. STAT. §679.9-402 (1) (1965).

49. FLA. STAT. §679.9-204 (1) (1965). See Girard Trust Corn Exch. Bank v. Warren Lepley Ford, Inc. (No. 2), 13 Pa. D. & C.2d 119 (C.P. 1957).

50. Unless the agreement explicitly postpones the time of attaching. See also FLA. STAT. §679.9-201 (1965).

As an illustration, let us assume that our ladies swimwear manufacturer desires to purchase some material to manufacture bathing suits. Before he orders the material, he enters into a security agreement with a bank providing that the bank will have a security interest in the material and proceeds and the bank advances him 10,000 dollars. At this point the bank does not have a security interest in the material. The bank's security interest cannot attach until the manufacturer or debtor acquires rights in the collateral, in this instance the material.

By statute, a debtor has no rights in crops until they are planted; in the young of livestock until caught; in oil, gas, or minerals until extracted; in timber until cut; in a contract right until the contract has been made and in an account until it comes into existence.[51] Although a security interest continues in collateral notwithstanding sale, exchange, or other disposal by the debtor, it continues only in identifiable proceeds including collections received by the debtor.[52] Unless the security agreement and the financing statement cover proceeds,[53] the security interest in proceeds ceases to be perfected ten days after receipt of the proceeds by the debtor.

PERFECTION OF A SECURITY INTEREST

A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 679.9-302, 679.3-304, and 679.9-306 of the Florida Statutes. If such steps are taken before the security interest attaches, it is perfected at the time of attachment.[54]

Creation of a security interest, then gives the secured party rights against the debtor, while perfection of this security interest gives the secured party rights against third parties. Perfection requires either filing, possession, or, in those rare instances that require neither filing nor possession, by operation of law or attachment.[55] These will be treated in inverse order and in order of their complexity.

Attachment

Without filing or possession, a security interest is created and attaches to:

51. FLA. STAT. §679.9-204 (2) (1965). See *In re* Halprin, 280 F.2d 407 (3d Cir. 1960).

52. FLA. STAT. §679.9-306 (2) (1965). See Howarth v. Universal C.I.T., 203 F. Supp. 279 (W.D. Pa. 1962) emphasizing the need for identification of the proceeds.

53. FLA. STAT. §679.9-306 (3) (1965).

54. Note certain exceptions in FLA. STAT. §679.9-301 (1) (b) (1965).

55. FLA. STAT. §679.9-302 (1965).

(1) an assignment of accounts or contract rights that are not a significant part of the outstanding accounts or contract rights of the debtor;[56]

(2) a security interest of a collecting bank or arising under the chapter on sales (chapter 672) or one that is perfected pursuant to a federal[57] or state[58] statute requiring central filing;

(3) a security interest temporarily perfected in instruments and documents without delivery under section 679.9-304 or in proceeds for a ten-day period under section 679.9-306;

(4) purchase money security interests in consumer goods or farm equipment costing less than 2,500 dollars, but filing is required if either become fixtures.[59]

If the security interest is assigned[60] no filing is necessary to continue the perfected interest against creditors of or tranferees from the original debtor.

Possession

Other security interests must be perfected by possession or filing, and in many cases the provisions are permissive, indicating optional methods. A Code example of permissive filing provides that a security interest in chattel paper or negotiable documents may be perfected by filing.[61] Unless the secured party takes possession, however, any bonafide purchaser who takes possession without notice of the security interest takes priority over such a perfected interest.[62] Even if such a purchaser has knowledge of a prior security interest he takes priority over it if the security interest is chattel paper that is the proceeds of the sale of inventory.[63] Similar rules apply to nonnegotiable instruments and negotiable securities.[64] A secured party must take possession of instruments to perfect his security interest,[65] but he

56. This raises the question of what is a "significant" part. Reliance upon this section is fraught with danger.

57. *E.g.*, 72 Stat. 772 (1958), 49 U.S.C. §§1402, 1403 (1958) (CAB registration of airplanes).

58. *E.g.*, FLA. STAT. §319 (1965) (automobile title certificates with Commissioner of Motor Vehicles). See Union Nat'l Bank & Trust Co. v. Geyer Auction, Inc., 18 Pa. D. & C.2d 98 (C.P. 1958).

59. FLA. STAT. §§679.9-302 (1) (c)-(d), -13 (1965). See Lonoke Production Credit Ass'n v. Bohannon, 238 Ark. 206, 379 S.W.2d 17 (1964).

60. FLA. STAT. §679.9-302 (2) (1965); French Lumber Co. v. Commercial Realty & Fin. Co., 346 Mass. 779, 195 N.E.2d 507 (1964).

61. FLA. STAT. §679.9-304 (1) (1965).

62. FLA. STAT. §679.9-308 (1965).

63. *Ibid.*

64. *Ibid.*

65. FLA. STAT. §679.9-304 (1) (1965).

has twenty-one days within which to take possession after giving value *under a written security agreement.*[66]

There is no definition of "possession" in the Uniform Commercial Code,[67] and the practitioner must resort to state case law definitions of possession.[68] If a third party, other than one who has issued a negotiable document, is in possession of goods, a security interest in such goods can be perfected by the issuance of a document in the name of the secured party and by filing or by notifying the third party of the secured party's interest.[69] If the third party has issued a negotiable document for the goods, a security interest in the goods can be perfected only by acquiring possession of the document or by filing.[70] It would appear, then, to be advantageous to take possession of all intangible personal property that can be subject to possession.

Filing

Of course, it is ordinarily impossible to take possession of certain intangibles such as accounts, contract rights, and other general intangibles, so filing is the only method of perfecting a security interest in such collateral.[71] In order to perfect other security interests a financing statement must be filed.[72] This statement must be signed by the debtor and the secured party, must give the mailing address of the debtor and an address of the secured party from which information concerning the security interest may be obtained,[73] and must contain a statement of the collateral indicating types or describing the items.[74] It is important to note that neither the amount of the indebtedness nor its terms are contained in the financing statement, which will be the only document of record and which may be of record

66. FLA. STAT. §§679.9-304 (4)- (5) (1965). (Emphasis added.)

67. The statutory definition in FLA. STAT. §673.01 (9) (1963) is specifically repealed by FLA. STAT. §679.9-105 (1965).

68. See, *e.g.*, Reynolds v. State, 92 Fla. 1038, 111 So. 285 (1927), which defines possession as having personal charge of or exercising the right of ownership, management, or control over the item in question.

69. FLA. STAT. §679.9-304 (3) (1965).

70. FLA. STAT. §679.9-304 (2) (1965).

71. *Compare* FLA. STAT. §679.9-302 (1965), *with* FLA. STAT. §679.9-305 (1965).

72. FLA. STAT. §679.9-302 (1965). See Girard Trust Corn Exch. Bank v. Warren Lepley Ford, 12 Pa. D. & C.2d 351 (C.P. 1957).

73. Note the difference between the requirements of the debtor's mailing address and an address from the secured party from which information about the security interest may be obtained. See *In re* Smith 205 F. Supp. 27 (E.D. Pa. 1962), holding the statement must include the address of the debtor.

74. FLA. STAT. §679.9-402 (1) (1965). The description requirement is liberally construed. See Industrial Packaging Prods. Co. v. Fort Pitt Packaging Int'l, Inc. 399 Pa. 643, 161 A.2d 19 (1960).

before a security agreement is entered into.[75] A copy of the security agreement is sufficient as a financing statement if it contains the above information and *is signed by both* parties.[76] When the financing statement covers crops that are growing or are to be grown or goods that are or are to become fixtures the statement must also contain a description of the real estate concerned.[77] A financing statement that substantially complies with these requirements is effective even though it contains minor errors that are not seriously misleading.[78]

If the collateral is consumer goods, equipment used in farming operations, farm products, accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, filing is perfected by recording in the office of the clerk of the circuit court in the county of the debtor's residence. If the debtor is not a resident of Florida then the filing is perfected by recording in the office of the clerk of the circuit court in the county where the goods are kept. If a crop is the collateral, filing must be made by recording in the office of the clerk of the circuit court in the county where the land upon which the crops are growing or are to be grown is located.[79] If the collateral consists of goods that are or are to become fixtures at the time the security interest attaches, filing is perfected by recording in the office or in the record where a mortgage on the real estate concerned would be recorded.[80] In *all* other cases, filing can be perfected *only* by filing in the office of the secretary of state.[81]

Any writing to be filed in the office of the clerk of the circuit court need not be under oath and no acknowledgment is necessary, but it must be filed and recorded with the appropriate clerk.[82] Chapter 695, of Florida Statutes, dealing with recording of conveyances of real property and chapter 28, Florida Statutes, dealing with manner of payment of fees must be complied with and control filing under article 9.[83]

A filing properly made continues to be effective even though the debtor moves or the location or use of the collateral changes.[84] A

75. FLA. STAT. §679.9-402 (1) (1965).
76. *Id.* (Emphasis added.)
77. *Ibid.*
78. FLA. STAT. §679.9-402 (5) (1965). *But see In re* Amity Dyeing & Finishing Co., Inc., 200 F. Supp. 823 (S.D.N.Y. 1962), which held that filing statutes are strictly construed against vendor and vendee and liberally construed in favor of creditors and purchasers.
79. FLA. STAT. §679.9-401 (1) (a) (1965).
80. FLA. STAT. §679.9-401 (1) (b) 1965).
81. FLA. STAT. §679.9-401 (1) (c) (1965).
82. FLA. STAT. §679.9-4011 (1965).
83. *Ibid.*
84. FLA. STAT. §679.9-401 (3) (1965).

filing, even though improper because it was not filed in all required places, if made in good faith, is effective with regard to collateral as to which the filing did comply. It is also effective as to collateral covered by a financing statement against any person having knowledge of the contents of such financing statement.[85]

Presentation for filing of a financing statement and the tender of the filing fee or acceptance of the statement by the filing officer constitutes filing.[86] It would appear that an error by an employee in the office of either the clerk of the circuit court or that of the secretary of state would not invalidate a proper filing, even though no one could be put on notice by such a filing. The filing officer marks each financing statement with a file number[87] with the date and hour of filing.[88] He must hold this record open for public inspection and must index these statements according to the name and address of the debtor[89] and upon request furnish certified copies of all documents filed in his office.[90]

If the security interest is perfected in the original collateral, although the perfection is continuous, it ceases to exist ten days after receipt by the debtor of the proceeds (derivative collateral) unless (1) a filed financing statement covering the original collateral also covers proceeds or (2) a financing statement covering proceeds is filed within the ten-day period.[91]

Duration, Continuation, Termination, or Assignment of Perfected Security Interests

A perfected security interest is effective for a period of five years unless the financing statement specifies a maturity date of less than five years in which event it is effective until such maturity date and for sixty days thereafter. A financing statement that states the obligation secured is payable on demand and is effective for five years from the date it is filed. The security interest lapses, or becomes unperfected, unless a continuation statement is filed prior to or within sixty days after the stated maturity date or prior to the expiration of the five-year period.[92]

85. Fla. Stat. §679.9-401 (2) (1965). See *In re* Babcock, 200 F. Supp. 80 (D. Mass. 1961).

86. Fla. Stat. §679.9-403 (1) (1965).

87. The file number is referred to in the continuation statement and/or the termination statement. See text accompanying notes 93, 95 *infra.*

88. Fla. Stat. §679.9-403 (4) (1965).

89. *Ibid.*

90. Fla. Stat. §§679.9-403 (5), -407 (1965).

91. Fla. Stat. §679.9-306 (3) (1965).

92. Fla. Stat. §679.9-403 (2) (1965). See Lincoln Bank & Trust Co. v. Queenan, 344 S.W.2d 383 (Ky. 1961).

The continuation statement must be filed by the secured party within six months before or sixty days after the stated maturity date or within six months prior to expiration of the five-year period. The statement must be signed by the secured party, must identify the original financing statement by file number and must state that it is still in effect. A continuation statement timely filed continues the effectiveness of the original financing statement for five years, and successively filed continuation statements could continue the effectiveness of the original financing statement indefinitely.[93]

When the debtor has paid the secured obligation and there is no commitment by the secured party to make further advances, or to otherwise give value, the debtor is entitled to receive a termination statement from the secured party.[94] This statement must be signed by the secured party or his assignee stating that he no longer claims a security interest under the financing statement, which must be identified by file number. If the secured party fails to supply the debtor with a termination statement after proper demand has been made, he is liable to the debtor for one hundred dollars and any loss caused to the debtor by such failure. When the debtor files the termination statement, the effectiveness of the filing terminates. The secured party may release all or part of any collateral described in the financing statement by signing a statement of release containing a description of the collateral being released, the names and addresses of the debtor and the secured party, and the file number of the financing statement.[95]

A secured party may assign all or part of his rights under a financing statement by signing and filing a written statement of assignment, which describes the collateral to be assigned, specifies the financing statement by file number and date of filing, and identifies the debtor and assignee by name and address.[96] A copy of the assignment is sufficient and may be filed if it meets these requirements, although the secured party may assign by merely making an appropriate notation on the original filed financing statement.[97]

THE SECURED PARTY AND THE DEBTOR

Unless the security agreement is filed, the only document appearing of record is the financing statement. It may be recalled that the financing statement does not contain the amount of the obligation

93. FLA. STAT. §679.9-403 (3) (1965).
94. FLA. STAT. §679.9-404 (1) (1965).
95. FLA. STAT. §679.9-406 (1965).
96. FLA. STAT. §679.9-405 (2) (1965).
97. FLA. STAT. §679.9-405 (1) (1965).

or its terms.[98] The inquiring creditor has no right under the Uniform Commercial Code to obtain such information from the secured party, but must rely upon the debtor for any such important credit data. Only the debtor may require the secured party to disclose this information and then only infrequently without penalty.

The debtor signs a statement indicating what he believes is the aggregate amount of the unpaid indebtedness on a specified date and a list of the collateral covered by the security agreement. This statement is sent to the secured party with a request that it be approved or corrected and returned to the debtor.[99] The secured party must comply with this request within two weeks of its receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, he indicates this fact in his reply and he need not approve or correct an itemized list of such collateral. If the secured party fails to comply with such a written request without reasonable excuse he is liable for any loss caused to the debtor. If the debtor has made a good-faith request, listing the collateral securing the stated amount of the then outstanding obligation, and the secured party does not comply within the two-week period, the secured party can claim a security interest only as shown in the statement submitted by the debtor against third persons who are misled by his failure to comply.[100] The secured party must supply, at the debtor's request, such a statement once every six months without charge, but may charge up to ten dollars for any additional statements.[101]

The secured party may take possession of the collateral under the provisions of article 9 and when in possession has rights and duties similar to those of a precode common law pledgee. As such, he must use reasonable care in the custody and preservation of the collateral and, if the collateral consists of an instrument or chattel paper, the secured party must take the necessary steps to preserve rights against prior parties.[102] Unless otherwise agreed, the debtor bears the risk of accidental loss or damage to the extent of any deficiency in insurance coverage and the cost of reasonable expenses (including taxes and insurance) incurred in the custody, preservation, use, or operation of the collateral while the secured party may hold as additional security any increase of profits (except money) received from

98. An inquiring creditor may now examine the public records, discover the amount of the indebtedness, its method of payment, and, assuming it is not in default, estimate its outstanding balance.

99. FLA. STAT. §679.9-208 (1) (1965).

100. FLA. STAT. §679.9-208 (2) (1965).

101. FLA. STAT. §679.9-208 (3) (1965).

102. FLA. STAT. §679.9-207 (1) (1965).

the collateral and repledge the collateral.[103] Unless there are statutory exceptions,[104] the parties have freedom of contract and may include almost any provision in their security agreement.[105]

Upon default, the differentiations among the various types of collateral are cast aside, and the rules relating to the rights and procedures are the same. Unless otherwise agreed, a secured party may take possession of the collateral on default and may do so without judicial process if possession can be obtained without a breach of the peace.[106] If the security agreement so provides, the secured party can require the debtor to assemble the collateral and make it available to him at a reasonably convenient place.[107] The secured party may, without removing it, render equipment unusable or may dispose of collateral on the debtor's premises.[108] The secured party is entitled to take possession of any proceeds,[109] and he may charge back uncollected collateral to full or limited recourse against the debtor if the security agreement so provides. He may also deduct his reasonable expenses from the realization of such collections if he has proceeded in a commercially reasonable manner. If the security agreement so provides, the debtor is liable for any deficiency but the secured party must account to him for any surplus.[110]

The secured party may reduce his claim to judgment, foreclose, or otherwise enforces his security interest by any available judicial procedure.[111] If the collateral is a document, the secured party may proceed against the document or the goods covered by the document.[112] If the secured party reduces his claim to judgment, the lien of his levy thereafter dates back to the date of the perfection of his security interest in the collateral.[113] The secured party may purchase at the judicial sale after execution.[114]

Alternatively, upon default, the secured party may sell, lease, or otherwise dispose of any or all of the collateral without judicial pro-

103. FLA. STAT. §679.9-207 (2) (1965). Any money received, unless remitted to the debtor, must be applied in reduction of the secured obligation. Herein lies a "sleeper."

104. See FLA. STAT. §679.9-501 (3) (1965).

105. In practice "freedom of contract" is an illusory freedom for the debtor who will agree to almost anything to obtain the financing desired.

106. FLA. STAT. §679.9-503 (1965).

107. *Ibid.*

108. *Ibid.*

109. FLA. STAT. §679.9-502 (1) (1965).

110. FLA. STAT. §679.9-502 (2) (1965); Family Fin. Corp. v. Scott, 24 Pa. D. & C.2d (C.P. 1961).

111. FLA. STAT. §679.9-501 (1) (1965).

112. *Ibid.*

113. FLA. STAT. §679.9-501 (5) (1965). See *In re* Adrian Research & Chem. Co., 296 F.2d 734 (3d Cir. 1959).

114. *Ibid.*

ceedings.[115] Unless the collateral is perishable or threatens to decline rapidly in value or is of a type having a recognized market, the secured party must give reasonable notice of the time and place of any public sale or reasonable notice of the time thereafter that private sale or other disposition of the collateral is to be made. This notice must be given to the debtor and any other person who has filed a financing statement in the name of the debtor or who is known by the secured party to claim some interest in the collateral.[116] The secured party may purchase at any public sale and, if the collateral has a recognized market, he may purchase at his own private sale.[117] The secured party must account to the debtor for any surplus realized at the sale or foreclosure and, unless otherwise agreed, the debtor is liable for any deficiency. However, if the underlying collateral is proceeds, such as accounts, contract rights, or chattel paper the debtor is liable for any deficiency only if the security agreement so provides.[118]

As a third alternative to the foreclosure by judicial proceedings and foreclosure by sale, a secured party may take possession and foreclose by retaining possession of the collateral in satisfaction of the obligation.[119] If the secured party adopts this alternative, he must send written notice of his proposal to do so to the debtor and, except in the case of consumer goods, to any other person claiming a perfected security interest in the collateral or who is known by the secured party in possession to claim a security interest in it.[120] If the debtor or other person entitled to receive notice objects in writing within thirty days from the *receipt of notice* or if another secured party objects in writing within thirty days *after the secured party obtains possession,* the secured party must sell the collateral at public sale as previously described.[121] If no one objects in writing, the secured party may retain the collateral in satisfaction of the debtor's obligation.[122]

The secured party is obliged to "foreclose by sale" in two specifically delineated situations. Unless the debtor signs, after default,

115. FLA. STAT. §679.9-504 (1) (1965).

116. FLA. STAT. §679.9-504 (3) (1965). No notice is required to third parties if collateral is within the category of consumer goods.

117. FLA. STAT. §679.9-504 (3) (1965). Presumably, however, he must bid the market value of the collateral. See FLA. STAT. §679.9-507 (2) (1965).

118. FLA. STAT. §679.9-504 (2) (1965); Alliance Discount Corp. v. Shaw, 195 Pa. Super. 601, 171 A.2d 548 (1961).

119. FLA. STAT. §679.9-505 (2) (1965).

120. FLA. STAT. §679.9-505 (2) (1965); Alliance Discount Corp. v. Shaw, 195 Pa. Super. 601, 171 A.2d 548 (1961).

121. FLA. STAT. §679.9-505 (2) (1965). (Emphasis added.) Notice the apparent inconsistent difference.

122. FLA. STAT. §679.9-505 (2) (1965).

a statement renouncing or modifying his rights under part V, article 9, Uniform Commercial Code, and has paid (1) sixty per cent of the cash price on a purchase money security interest in consumer goods or (2) sixty per cent of the loan on a security interest in consumer goods, the secured party must foreclose by sale within ninety days of taking possession, or he becomes liable to the debtor, at the debtor's option, for conversion.[123]

When the secured party disposes of the collateral, enters into a contract for its disposition, or appropriates the collateral in satisfaction of the obligation the debtor loses all rights to redeem the collateral.[124] If, during any one of the foreclosure proceedings, it is established that the secured party is not proceeding in accordance with the provisions of article 9, disposition may be ordered or restrained on appropriate terms and conditions. If the debtor or any person entitled to notice has not received it, and the secured party has disposed of the collateral, he may recover from the secured party any loss caused by his noncompliance.[125]

A purchaser at a foreclosure sale acquires all the rights of the debtor and takes free of the security interest under which the sale is made and any security interest or lien subordinate to it, even though the secured party has failed to comply with applicable foreclosure requirements.[126] Any guarantor, endorsor, or the like who receives a transfer of collateral from the secured party is subrogated to his rights and such a transfer does not constitute a sale under article 9.[127]

THE SECURED PARTY AND THIRD PARTIES

A purchaser of collateral from a debtor generally takes subject to any *perfected* security interest in said collateral.[128] Since the exception makes the rule, there are as many as six exceptions to this, which must be considered:

> (1) a purchaser who purchases from a debtor where the secured party authorized sale, exchange, or disposition of the collateral takes free of the perfected security interest;[129]

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123. FLA. STAT. §679.9-505 (1) (1965), for some undefined reason.
124. FLA. STAT. §679.9-506 (1965).
125. FLA. STAT. §679.9-507 (1) (1965). See Atlas Credit Corp. v. Dolbow, 193 Pa. Super. 601, 171 A.2d 548 (1961).
126. FLA. STAT. §679.9-504 (4) (1965).
127. FLA. STAT. §679.9-504 (5) (1965).
128. FLA. STAT. §§679.9-301 (1), -306 (2), -312 (1) (1965). See Casterline v. General Motors Acceptance Corp., 195 Pa. Super. 344, 171 A.2d 813 (1961).
129. FLA. STAT. §679.9-306 (2) (1965).

(2) a purchaser in the ordinary course of business, unless he is buying farm products from a farmer, takes free of any perfected security interest even though he had actual knowledge of it;[130]

(3) a purchaser, who gives value and purchases for his own use, takes consumer goods or farm equipment having a cost of less than 2,500 dollars free of a perfected security interest, if he is without knowledge of it, *"unless prior to the purchase the secured party has filed a financing statement covering such goods;"*[131]

(4) a purchaser of chattel paper or a nonnegotiable instrument who gives new value *and* takes possession in the ordinary course of business and without knowledge that the specific paper is subject to a security interest temporarily perfected or perfected by permissive filing takes priority over such security interest;[132]

(5) a purchaser of chattel paper who gives new value and takes possession in the ordinary course of business has priority over a security interest in such paper which is claimed merely as proceeds of inventory, even though he knows that the chattel paper is subject to such a security interest;[133]

(6) holders in due course of negotiable instruments, holders to whom negotiable documents of title have been negotiated and bona fide purchasers of securities take priority over perfected security interests in such collateral.[134]

When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon *goods in the possession of such person* given by statute or rule of law for such materials or services takes priority over perfected security interests unless the statute provides otherwise.[135]

PRIORITIES

A secured party with a perfected security interest takes priority over attaching or levying creditors and over creditors having unper-

130. FLA. STAT. §679.9-307 (1) (1965). See Sterling Acceptance Co. v. Grimes, 194 Pa. Super. 503, 168 A.2d 600 (1961); Weisel v. McBride, 191 Pa. Super. 411, 156 A.2d 613 (1959).

131. FLA. STAT. §679.9-307 (2) (1965). (Emphasis added.) No filing is necessary to perfect a security interest in such collateral. See U.G.I. v. McFalls, 18 Pa. D. & C.2d 713 (C.P. 1959). Perfection is by "attachment." See text accompanying notes 56-60 *supra*.

132. FLA. STAT. §679.9-308 (1965).

133. *Ibid.*

134. FLA. STAT. §679.9-309 (1965).

135. FLA. STAT. §679.9-310 (1965). *Compare* Schleimer v. Arrowhead Garage Inc., 46 Misc. 2d 607, 260 N.Y.S.2d 271 (1965), *with* Commonwealth Loan Co. v. Berry, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965).

fected security interests.[136] Elaborate and complicated rules govern priorities among conflicting perfected security interests in the same collateral. The race to the courthouse (or to the secretary of state's office) concept is reflected in the first-to-file and first-to-perfect rules.

The first-to-file rule provides that priority among conflicting security interests shall be determined in the order of filing if both are perfected by filing, regardless which security interest attached first under section 679.9-204 (1) and whether it attached before or after filing.[137] Coogan[138] suggests a hypothetical that presents an apparent inequitable result. To return to our bathing suit manufacturer, assume that he orders the material and signs a financing statement covering the material with the bank, which files it on January 5, 1967. Before any advance by the bank, the manufacturer's factor discovers the intended loan and, fearing his position may be jeopardized, it agrees to lend the manufacturer the money at reduced interest. The manufacturer signs a security agreement and a financing statement covering the material in favor of his factor who properly files it on January 10, 1967. On January 10, the factor advances him 5,000 dollars. Thereafter the manufacturer needs more material and signs a security agreement with the bank, which advances him 10,000 dollars. Between the bank and the factor, the bank will prevail. The bank prevails even though its security interest did not come into existence until after the factor and manufacturer completely consummated their transaction.[139]

Article 9 does afford protection for the factor, however. If he had made routine inquiry with the secretary of state's office he would have discovered the bank's filed financing statement, and he could have obtained from the bank either a termination statement, a release on the material involved, or a subordination agreement specifying the material.[140] It is important to note another alternative, that of the purcase money security interest, which would have had priority over the bank's prior security interest.[141] The factor would have acquired a prior security interest if the manufacturer had used the 5,000 dollars advanced to purchase the material and if he had perfected his purchase money security interest.[142]

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136. FLA. STAT. §679.9-301 (1965); In the Matter of Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957).

137. FLA. STAT. §679.9-312 (5) (a) (1965); Thompson v. O. M. Scott Credit Corp., 28 Pa. D. & C.2d 85 (C.P. 1965).

138. Coogan, *Priorities Among Secured Creditors and the "Floating Lien,"* in 1 BENDER'S UNIFORM COMMERCIAL CODE SERV. 673 (1965).

139. FLA. STAT. §679.9-312 (5) (a) (1965).

140. Coogan, *op. cit. supra* note 138.

141. FLA. STAT. §679.9-312 (3) (1965).

142. FLA. STAT. §679.9-312 (3) (a) (1965).

The first-to-perfect rule provides that when one or both conflicting security interests have not been perfected by filing, priority shall be determined in the order of perfection regardless of which security interest attached first under section 679.9-204 (1) and, in the case of a filed security interest, whether it attached before or after filing.[143] If the factor had taken possession of the material on January 10 he would, therefore, have priority over the bank.

A commercially important exception to the first rule is the creation of the purchase money security interest. It may be recalled that a security interest is a purchase money security interest to the extent that it is taken or retained by the seller of the collateral to secure all or part of its price or is taken by a person who, by making advances or incuring an obligation, gives value to enable the debtor to acquire rights in or the use of collateral, if such value is in fact so used.[144] It is important to notice that a nonseller can acquire a purchase money security interest if the debtor uses his advance to purchase the collateral. Priorities among conflicting security interests are determined by chapter 679.9-312 of the Florida Statutes.

A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if:[145]

> (1) the purchase money security interest is perfected at the time the debtor receives possession of the collateral;
>
> (2) the secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, has filed a financing statement covering the same items or type of inventory and has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest;
>
> (3) the notification must state that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

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143. FLA. STAT. §679.9-312 (5) (b) (1965).
144. FLA. STAT. §679.9-107 (1965).
145. FLA. STAT. §679.9-312 (3)- (4) (1965).

Section 679.9-312 (3) enables a supplier to acquire a purchase money security interest that will have priority over a perfected security interest under an agreement including after-acquired property — the floating lien. The purchase money security interest priority does *not* extend to accounts or chattel paper (proceeds) and the supplier must exert his rights against the unsold merchandise supplied or his rights against proceeds of proceeds (derivative proceeds, that is, cash received upon the sale of discount of accounts or chattel paper). Section 679.9-312 (4), important to retail sellers of equipment, dispenses with the notice requirement applicable in inventory financing, and the seller has ten days within which to comply with the filing requirement.

Although the first to file or the first to perfect rules, with the purchase money security interest exception, are generally applicable, several other specific priority rules are established to comply with the ancient maxim of exceptions making the rule.[146] These exceptions establish rules for the determination of priorities among conflicting security interests in the various proceeds and repossessions, fixtures, accessions, or in fungible and processed goods.[147]

Proceeds is defined as "whatever is received when collateral or proceeds is sold, exchanged, collected, or otherwise disposed of."[148] Returning again to our bathing suit manufacturer, assume that the bank's security interest covers proceeds, that the ladies swimwear is sold, and that the manufacturer takes back chattel paper (installment paper). The factor acquires possession of this chattel paper, and both he and the bank claim priority in these proceeds. The factor prevails and would prevail even though he knew of the bank's perfected security interest.[149] However, if the bathing suits are repossessed, although both the bank and the factor have a security interest in them, the bank's priority is paramount to that of the factor's[150] and, of course, both have priority over the interest of the debtor.[151]

There is no definition of fixtures in the Uniform Commercial Code and one must rely upon precode case law.[152] If a security in-

146. See text accompanying notes 132-34 *supra*.

147. FLA. STAT. §679.9-312 (1) (1965), which includes the six exceptions to the rule referred to above.

148. FLA. STAT. §679.9-306 (1) (1965).

149. FLA. STAT. §679.9-308 (1965).

150. FLA. STAT. §679.9-306 (5) (a)- (c) (1965).

151. FLA. STAT. §679.9-306 (5) (1965).

152. *E.g.*, Illinois Grain Corp. v. Schlemal, 114 So. 2d 307, 310 (2d D.C.A. Fla. 1957), which defines "fixtures" as an article that was a chattel, but which, by being physically annexed or affixed to realty by someone having an interest in the soil, becomes a part and parcel of it.

terest attaches to goods *before* they become fixtures, it takes priority as to those goods over the claims of all persons who have an interest in the real property.[153] If the security interest attaches to goods *after* they become fixtures, although it is valid against subsequent purchasers — it is invalid against any person who has an interest in the real estate who has not consented in writing to the security interest or who has disclaimed in writing an interest in the goods as fixtures.[154] There are, of course, exceptions to these rules also, but as phrased by the Florida Legislature they are incomprehensible and meaningless.[155]

Accessions are defined as "goods which . . . are installed in or affixed to other goods"[156] and the rules governing accessions are identical with those governing fixtures. Thus, a security interest in goods, which attaches *before* they become accessions, takes priority as to such goods over the claims of all persons in the whole.[157] A security interest, which attaches *after* they become accessions, is valid against persons thereafter acquiring an interest in the whole, but is invalid against any person with an interest in the whole who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.[158] The same exceptions apply and are likewise incomprehensible and meaningless.[159]

A secured party, who has a priority security interest in goods that become fixtures or accessions, may remove his collateral but he must reimburse any encumbrancer or owner of the real estate who is not the debtor for the cost of repairing "any physical injury . . . caused by the absence of the goods removed and by any necessity of replacing them."[160] A person entitled to reimbursement may refuse permission to remove the goods until the secured party gives adequate security.[161]

A perfected security interest in goods that become a part of a product or mass continues in the product or mass even if the goods lose their identity or if the financing statement also covers the processed goods.[162] If more than one security interest attaches to the processed goods, each ranks according to the ratio that the cost of the

153. FLA. STAT. §679.9-313 (2) (1965).
154. FLA. STAT. §679.9-313 (3) (1965).
155. FLA. STAT. §679.9-313 (4) (1965) contains a sentence that is not a sentence. See also FLA. STAT. §676.6-104 (1) (c) (1965) in which the legislature did not fill in a very important blank.
156. FLA. STAT. §679.9-314 (1) (1965).
157. *Ibid.*
158. FLA. STAT. §679.9-314 (2) (1965).
159. FLA. STAT. §679.9-314 (3) (1965); see note 155 *supra.*
160. FLA. STAT. §§679.9-313 (5), -314 (4) (1965) (unfortunate language).
161. *Ibid.*
162. FLA. STAT. §679.9-315 (1) (a)- (b) (1965).

goods to which each interest originally attached bears to the cost of the total processed goods.[163]

Conflicts between unperfected security interests in the same collateral are determined by the order of their creation or attachment.[164] Creation of a secured interest, then, determines rights between the secured party, the debtor, and holders of unperfected security interests, perfection of the security interest creates elaborate rights in the secured party. No attempt has been made here to discuss the various rights or priorities in the event of insolvency or the arsenal of weapons available to a trustee in bankruptcy against the secured party. These considerations must be the subject of another endeavor.

CONCLUSION

Article 9 of the Uniform Commercial Code definitely enhances the position of the secured creditor, the secured party, over precode Florida law. The status of a secured party under article 9 is easily obtained. If each step is properly taken, this status is literally impregnable and practically immune from successful attack.

It is apparent that the Florida law of personal property financing and security has been completely rewritten by the 1965 Florida Legislature through the adoption of the Uniform Commercial Code. Although the drafting committee of the Code sought to obtain uniformity in commercial transactions through the United States by adoption of the Uniform Commercial Code, the various state legislatures have enacted optional provisions and made certain additions or subtractions. Even though it is far from uniform, the Uniform Commercial Code must become an important part of every lawyer's legal equipment and every Florida practitioner must familiarize himself with this necessary, if at first complicated, tool.

163. FLA. STAT. §679.9-315 (2) (1965).
164. FLA. STAT. §679.9-312 (5) (c) (1965).